

Office of Rail Regulation

Minutes of the 97th Board meeting on 17 September 2013

(10:00 – 16:00), ORR offices, One Kemble Street, London – Room 1

Board present:

Non-executive directors: Anna Walker (Chair), Peter Bucks, Mark Fairbairn, Stephen Nelson, Ray O'Toole, and Steve Walker.

Executive directors: Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance), and Cathryn Ross (Director of Railway Markets and Economics)

In attendance, all items: Daniel Brown (Director of Strategy) Juliet Lazarus (Director, Legal Services), Richard Emmott (Director, External Affairs), Tess Sanford (Board Secretary), and Gary Taylor (Assistant Board Secretary).

In attendance, specific items: Geoff Horton (Interim Economist) item 4, Steve Armitage (Head of Competition Economics) item 4, Brian Kogan (Deputy Director, RME) items 4 and 5, Agnes Bonnet (Head of European Policy) item 5, Alan Bell (Head of Railway Safety Policy) item 5, Alasdair Frew (Head of Corporate Communications) item 6, Rachael Durrett (Corporate and Industry relations manager) item 6, Andrew Winston (Head of Media relations) item 6, Quinten Manby (Head of Internal Communications) item 6, Alastair Gilchrist (Director, Corporate Operations) item 7, David Chapman (Associate Director, HR) item 7.

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. Apologies for absence were received from Mike Lloyd and Tracey Barlow (non-executive directors).

Item 2: Declarations of interest

2. None.

Item 3: Monthly Safety Report

3. Ian Prosser told the Board that a freight derailment had taken place at Sellafield on 16 September. He confirmed that Inspection of the incident had taken place and a full report was currently being prepared. Ian would update the Board next month.

4. Ian Prosser presented an item on four major train accidents which took place overseas during July. For each incident we discussed the causes of the incidents and the follow up investigations and actions which have taken place. As part of this presentation, Ian highlighted any lessons for the UK to ensure that protection against similar incidents on our network is improved.

5. We noted that the incident in **Canada** had its roots in the de-regulation of the freight sector which ultimately led to less regulatory site inspection and poor practices. New legislation had already been implemented in Canada following the accident.

6. The Board noted that it did not have sight of the frequency of ORR's site inspections. Ian confirmed that management information was available on the numbers of ORR proactive and reactive inspections. Ian agreed to consider how to present this to the Board going forward to improve board scrutiny and awareness. We agreed that the level of information received by the Board was one area that should be reviewed following the Board Safety training session on 3 December.

7. The incident in **France** which appeared to have resulted from a detached fishplate had similarities to a crash in the UK at Southall East in 2002. Ian said fishplates have been a historical issue which had been addressed since 2002 although a slight increase had been seen in the last three years. We agreed that an important lesson to learn is the need to ensure that adequate maintenance and mitigating controls are in place at sites where renewal has been deferred past the expected life of the asset. Switches and crossings are an important area of risk for the inspection programme and it was essential to ensure that NR maintain switches and crossings effectively.

[Paragraphs 8-9 have been redacted, along with the related Action point G to avoid potential prejudice to on-going inspection and enforcement activity.]

10. We noted Ian's report on the catastrophic derailment in Spain. The incident appeared at this stage to have been caused by over speeding and driver distraction. We noted that the number of deaths was extremely high for a single train derailment (as opposed to a head on collision) and that this raised questions about passenger survivability of the rolling stock. Ian highlighted that the Spanish rolling stock would not meet current UK standards but would have been licensed under Technical specification for interoperability (TSI). We noted that the European Railway Agency (ERA) have acknowledged our position and recognised the points raised.

11. We noted that there had been no early speed reduction systems in place compared to Britain where the Train Protection Warning System + (TPWS+) is in place. We agreed that any learning would be particularly relevant in the European rail traffic management system (ERTMS) transition period. We noted that the risks caused by not having effective systems had been discussed at SRC and that it would be important to explore those at our Board training session in December.

12. We noted that RENFE were exploring whether to expand their operations into Britain and that any evidence about their culpability in this case may be relevant to considering any future licensing applications from them.

13. We noted the incident in **Switzerland**. The authorities there had again acted to prevent a recurrence. Ian confirmed that a similar incident would be unlikely with our track and signalling layouts and the Driver Reminder Appliance, designed to prevent similar incidents.

14. Ian would provide an update to SRC on 21 October 2013.

15. Richard Emmott said he felt strongly that a rehearsal of communications in a catastrophic incident should take place across a number of organisations to take into account the learning from these incidents and ensure that these processes are current and effective. The immediacy of social media meant that an entrenched view of the cause of any accident could be adopted by the public before inspectors were even on site. Significant work might then be needed to over-write that perception with an evidence based understanding.

16. We agreed that this was important to follow up and the exercise needed to involve all those who might become involved in a real case. The Chief Executive agreed to write to NR to ensure that this consideration of handling issues happens.

17. As part of his monthly update to the Board Ian noted the improvement notice served on NR after they had switched off level crossing obstacle detector safety equipment on the Ely-Norwich line without performing an appropriate risk assessment. Indications were that NR had agreed to turn the equipment back on and the notice would therefore be withdrawn.

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18. We had asked for a detailed discussion of the trends in the Precursor Indicator Model (PIM). Ian noted that a 5% improvement in the PIM since March 2013 had wiped out the 2012 risk increases. He said that RSSB would be making changes to the PIM to help NR baseline the end of CP4 against which CP5 would be measured. Ian noted that a focus of work on stretcher bars had resulted in fewer incidents with these. He said that rolling contact fatigue was now becoming an issue. These incidents required whole sections of track to be replaced.

19. We thanked Ian for a thorough and comprehensive report.

Board 17.09.2013 Action A: Ian Prosser to provide update on the freight train derailment on the Sellafield line at the October Board meeting.

Board 17.09.2013 Action B: Ian to ensure a new metric on pro-active and reactive inspections should be added to regular Board reports to increase visibility of this at the Board.

Board 17.09.2013 Action C: Ian to add Board report content to the SRC agenda following the safety training in December.

Board 17.09.2013 Action D: Ian to provide the Board with the findings of the ORR audits taking place on NRs maintenance delivery units.

Board 17.09.2013 Action E: We agreed that the safety item on the November agenda would be extended for Ian to provide further updates on these points. (change to the forward programme) – Tess to put on forward plan.

Board 17.09.2013 Action F: RP to write to NR to suggest a crisis communications exercise.

[Redacted action point G]

Item 4: Open Access consultation

20. Cathryn Ross and Geoff Horton presented this item which set out the responses received as a result of the Open Access consultation exercise which opened in June 2013. The paper also set out a number of options for potential change to the current Open Access policy.

21. We considered the consultation responses and the follow up discussions with stakeholders which had focused on three options for taking forward our Open Access policy. The three proposed options were:

- Option 1, maintain the existing policy
- Option 2, where the mark-up is based on the level of abstraction.
- Option 3, where the mark-up is calculated on the basis of costs.

22. We discussed these options and the consultation responses. In conclusion we agreed with the Executive's recommendation to maintain the current policy for the time being and to not introduce additional mark ups at this time but to include them in our forthcoming review of charges when a proper review could be undertaken. We agreed that we should aim to address those areas that will make a difference in the longer term for CP6 - such as reviewing the structure of charges and the structure and effectiveness of the not primarily abstractive (NPA) test.

23. We noted the significant links to other important areas including the capacity charge, and the European move towards an economic equilibrium test, which was likely to raise additional hurdles to open access operators. We thought we had successfully intervened on the economic equilibrium test (see below). We discussed the overall

competition landscape and agreed that we should consider a full review of the variety of competition issues arising from Europe and franchising, open access and charging to ensure that we understand how the various tensions worked together. We acknowledged that open access was an imperfect response to the very difficult question of how to encourage on-rail competition but it was the best solution we had at this time.

24. We agreed that this work would be discussed as part of the development of the 2014-15 business plan. We noted that the charges review should not be delayed by including these aspects.

25. Brian Kogan provided an update on the Alliance open access application. Brian confirmed that a decision would be sought from the Board in November.

Board 17.09.2013 Action H: Agreed that an internal strategic review of our approach to competition should take place and be picked up as part of the business planning round for 2014-15.

Board 17.09.2013 Action I: discussion on the application from Alliance will take place at the November Board (change to forward programme).

Item 5: Europe update on objectives

26. Brian Kogan and Agnès Bonnet provided an overview of the progress made to date on delivering against our strategic objectives for European activity – as agreed by the Board in May 2013. We reiterated how important it was to have objectives for our work in Europe and assess progress against these regularly.

27. Agnès highlighted the following:

28. Consideration of the initial proposals for the Fourth Railway package had been a significant piece of work. We noted that that ORR had been successful in influencing the debate on the technical pillar (interoperability) of this work and our compromise proposal for the award of technical authorisations has been adopted by member states in the European Council. We still had concerns on what was proposed for safety authorisation (a choice of NRG or ERA) and would need to continue to work with the DfT and the Commission on this.

29. We discussed the economic equilibrium test. Brian Kogan confirmed that significant progress had been made in explaining our concerns in this area and we have influenced the thinking of the European Commission significantly. Agnès confirmed that our approach to the economic equilibrium test was consistent with our approach to Open Access.

30. We discussed the Channel Tunnel. Alan Bell confirmed that much had been achieved to remove unnecessary safety rules. Brian confirmed that once the recast is implemented the economic regulation of the tunnel will be carried out by ORR and the French Regulatory body. Brian confirmed that this was a significant issue which should be discussed by the Board in due course.

31. We discussed whether we should be encouraging DfT to take a more active role in Europe. We asked the executive to share our views with DfT officials.

Board 17.09.2013 Action J: Paper on the joint economic regulation of Channel Tunnel to be prepared and scheduled on the Board forward programme.

Board 17.09.2013 Action K: Agreed that the executive should meet the DfT to discuss the European agenda.

Item 6: ORR's communications plan

32. Richard Emmott highlighted the progress made in implementing the communications strategy which was agreed at the Board in February 2013.

33. Richard highlighted the following significant pieces of work which had taken place:

- media coverage for the draft determination was highly focussed in terms of message delivery and extensive in quantity
- each successive edition of Monitor has increased impact – enhancing ORR's reputation for holding NR to account for performance.
- team now fully resourced with high quality hires in media relations and stakeholder/parliamentary functions
- evaluation tools now in place to measure our effectiveness and show the organisation how it is perceived.
- Closer relationships have been developed across the office to improve proactive communications work
- started to use social media routinely as part of our delivery. twitter account drives traffic towards news announcements and reports

34. Richard highlighted that there were a number of significant challenges facing External Affairs over the next six months. These include the publication of the Final Determination and the scene setting for CP5. The re-launch of the Transparency programme would also be a significant piece of work.

[Paragraphs 35-37 and related action have been redacted as relating to sensitive stakeholder relationships.]

Item 7: Performance and Reward

[This item to be redacted as the content of the proposed new scheme is subject to negotiation with staff and OTUS.]

Item 8: Board Committee feedback

Audit Committee

46. Mark Fairbairn highlighted the following significant items discussed at the Audit Committee on 16 September:

- The committee received a presentation on the use of “bow tie” analysis to assess the industry risk landscape.
- Cathryn Ross and John Larkinson attended the meeting to discuss the risks associated to the PR13 project with a focus on the actions currently in place to mitigate significant risks.
- The National Audit Office presented their audit strategy and key dates for the year ahead.
- The committee noted the work undertaken to prepare an assurance map of third party information published by ORR.

47. We noted that the Audit Committee had approved the proposal to jointly procure Internal Audit services with other regulators whose internal audit contracts also expire on 31 March 2014. The aim of this approach would be to reduce our costs while securing an effective internal audit service. Due to timing requirements, it was proposed that final approval be delegated to the Chief Executive. This would be conditional on a note being provided to the Board at its January meeting with the list of

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those providers shortlisted, in order that the Board has the opportunity to comment. We agreed with this recommendation.

Board 17.09.2013 Action P: Board Secretary to update delegations list to permit the Chief Executive to approve the final appointment of an internal audit service after the January Board consideration of the shortlist.

Nominations Committee

48. The Chair highlighted that the inaugural Nominations committee meeting took place on 3 September. The discussion focused on the upcoming recruitment exercise to replace departing Non-Executive Directors and the skills and experiences required to fill subsequent capability gaps.

Item 9: Chair's report

49. The Chair highlighted the following points from the report:

50. Useful discussions had taken place with Nicola Shaw (HS1) on the franchising function at the DfT and the current review at the DfT. HS1 issues were also discussed – in particular concerns around ongoing work in Europe which could be considered to be a significant risk to markets both in the UK and in the EU.

51. The meeting with Hitachi had proved extremely interesting where technology developed for on train communications would help maximise capacity on the network. The Chair had been invited to an onsite demonstration of the technology and welcomed any Board members to accompany her on this visit.

Board 17.09.2013 Action P: Secretariat to invite Board members when the visit to Hitachi has been arranged.

Item 10: Chief Executive's overview

This item (para 52-55) has been redacted as containing sensitive information about our stakeholder relationships

Item 11: Board forward programme

56. The Board forward programme was noted. The Board Secretary said that a definitive list of confirmed Board and Board committee dates for 2014 will be circulated to Board members.

Board 17.09.2013 Action R: Confirmed dates for 2014 to be circulated to Board members

Item 12: Approval of Board minutes from 22 and 23 July 2013

57. We noted and agreed the minutes from the meetings on 22 and 23 July subject to two amendments suggested by Ian Prosser and the Chief Executive. The Board Secretary agreed to amend accordingly.

58. Following discussion the Board Secretary agreed to highlight areas for redaction in the draft Board minutes.

59. We noted the continuing absence of published minutes on our website and asked the Board Secretary to expedite work to bring these up to date.

Board 17.09.2013 Action S: Board Secretary to amend July Board minutes accordingly

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Board 17.09.2013 Action T: Draft Board minutes to include suggested redactions for Board members to note

Board 17.09.2013 Action S: Board Secretary to expedite work to bring website up to date with published minutes

Item 13: Matters arising

60. The actions from the previous meeting were noted. We agreed that the revised format was useful and would ensure better tracking of actions in the future.

Item 14: Any Other business

61. No items were raised.

Item 15: Meeting Review

62. It was noted that the papers had been well written, clear and concise and prompted thorough discussions.

63. We agreed that having fewer items on the Board agenda helped to ensure that we had thorough discussions at the appropriate level which did not feel rushed or cut short.

Anna Walker

Chair

Minutes approved by the Board on 22 October 2013