

Office of Rail Regulation
Minutes of Board meeting
On Tuesday 27 January 2015
(09:00-15:00), ORR offices, One Kemble Street, London, WC2B 4AN

Present:

Non-executive directors: Tracey Barlow (chair), Mark Fairbairn, Bob Holland, Michael Luger, Justin McCracken, Ray O'Toole

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

In attendance, all items: Dan Brown (Director of Strategy), Andrew Winstone (Associate Director of Communications), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), Tom Taylor (Director of Corporation Operations) Gill Bull (Assistant Board Secretary)

ORR staff in attendance, specific items:

John Larkinson (Director of Economic Regulation),

Colin Greenslade (Head of strategy, planning and regulatory management RSD) (Items 1-7)

Item 1: Louise Deadman, Tom Leveson Gower

Item 3: Carl Hetherington, James Tricker

Item 4: Deren Olgun, Matt Westlake

Item 5: Richard Coates, Amanda Clark

Item 8: Agnès Bonnet, Brian Kogan

ITEM 1 APOLOGIES FOR ABSENCE

1. The Chair of the ORR, Anna Walker, had sent apologies as she was on annual leave. Tracey Barlow would act as chair in her absence.

ITEM 2 DECLARATIONS OF INTEREST

2. Justin McCracken noted there was a reference to the Ombudsman service in the Chief Executive's report in the context of the Alternative Dispute Resolution Directive. As previously declared, he is a non-executive director of Ombudsman Service Ltd.
3. There were no other declarations of interest from members of the board or staff.

ITEM 3 APPROVAL OF BOARD MINUTES

4. The Board approved the notes of the strategy away day and their dinner on 24 November and the note of the 5 January 2015 conference call. There were some corrections to the minutes of 25 November and these would be incorporated into the final version.

ITEM 4 ACTIONS OUTSTANDING

5. We noted progress against the outstanding actions. John Larkinson had prepared a written update on Network Rail's MIP (management incentive plan) and this was tabled.

ITEM 5 HEALTH AND SAFETY STRATEGY WORKING GROUP UPDATE

6. Ian Prosser reminded the board that the working group had identified four key actions. One of these had recognised the need for an overarching strategy

document that captured ORR's current health and safety regulatory strategy and helped to identify key issues. He invited the board to comment on the draft document circulated with the board papers.

7. We welcomed the creation of the document and felt that it would form a very useful tool for a wide audience, including the public. We suggested that it could also include some international comparators to give a wider context for the UK industry's performance. We thought it should be properly promoted to key stakeholders, rather than just pushed out onto the website. However, in order for that to be effective the document needed to be handed over to the communications team for proofing and presentational improvements.
8. The other three actions from the working group were:
 - A template for the six monthly report (which was on the agenda today)
 - Structured reviews of our processes (which would be planned through the audit and risk committee's forward programme)
 - A review of what ORR can/should publish from its safety work, with the aim of publishing as much as possible (which would be completed by the summer).
9. Ian aimed to report to the board in March that all the actions were complete or programmed for board consideration in a given timescale. In order to achieve this, the working group would need to meet in late February to consider and sign off the Strategy document. The need for the working group format to continue would be determined following the update to the March Board. **[Action A]**
10. The strategy could then be reviewed again early in 2016.

ITEM 6 SIX MONTHLY HEALTH AND SAFETY REPORT

11. Ian gave a brief view of changes in safety trends which were indicated by the report. There was a slight reduction in the passenger indicator model (PIM) risk score which reflected a continuing reduction in the level crossing risk. There had been two passenger fatalities so far this year and both were apparently related to alcohol use.
12. The biggest contributor to passenger risk was now earthworks. Although Network Rail (NR) was working to improve its information about these assets, the local responses were patchy. In particular the plans for improvement were not being routinely delivered. Overall, drainage was also still not getting enough attention.
13. ORR's improvement notice on the management of vegetation was having some impact, although Scotland were looking at a longer term (10 year) plan to recover the position.
14. There was an overall reduction in track twist faults but again, improvement was patchy across routes. Repeat faults continued to be a matter of concern.
15. Ian thought that there were signs that the maintenance backlogs were improving. However, there were emerging concerns following some individual failures that the condition of lesser assets such as footbridges, signalposts, hoardings and so on, were not being monitored effectively.

16. Ian reported that NR were struggling to ensure safe working by their contractors and were increasing their oversight of contractors. However, work to introduce the safe workleader scheme was going to plan with training going well. ORR had planned to ensure monitoring of the implementation of the plan as part of its business plans for 2015/16.
17. Ian told the board that his staff were reporting that whereas we wanted to encourage enhancements that had safety built-in ('safety by design') deep seated issues with project planning, design and management were being revealed as development progressed. We needed to find a way to ensure that NR addressed these issues quickly and effectively, particularly as our proposed arrangement with the health and safety executive (HSE) means we are likely to have access to consider such issues at an earlier stage.
18. Ian said that the team had raised some concerns with London Underground Limited (LUL) about lone worker and contractor safety following a couple of incidents. This would be monitored carefully.
19. There was less monitoring needed in the next year's business plan for the heritage sector as their activity would be less.
20. Finally Ian reported that he was seeking a prosecution against NR for their failure to respond adequately to an improvement notice on the earthing of electrical cabinets. NR had applied for an extension on the deadline to meet this notice, and such applications were usually allowed. In this case, however, there was a real risk to the travelling public and NR had failed to respond adequately. NR were very unhappy that the extension had been declined.
21. We discussed the report and Ian's useful summary of the messages he took from the data. It was important that he helped us understand the report in the wider context. We were particularly keen to understand the difference between what inspectors were seeing on the ground and what they expected to see.
22. We took assurance from the level of detailed data available and the scale of work in hand. We discussed whether Ian's articulated concerns on worker safety and electrical safety should have been reflected by red flag indicators in the report.
23. We talked about the six month report and what it was for. What we wanted to see was Ian's reflections on what had changed over the period and whether the changes mattered (and why) plus a sense of what the overall strategic issues were and what ORR was doing about them – we also needed some assurance that resource allocation was responding in the right way. We asked for each report to show what the RAG (red/amber/green) rating flag had shown in the previous report so that we could see any changing areas.
24. We agreed that the six monthly report format needed more work to respond to these comments and suggested this be considered by the safety strategy working group at its meeting in February **[Action B]**
25. We expected sudden changes in risk or acute risks to be reported in each monthly report.
26. Reflecting on NR's data quality issues with some key management data, we asked about the level of confidence in the safety data which RSD rely on. Ian said that understanding about the importance of accurate safety reporting was well recognised within NR at local levels. He thought it had taken about four years to get to the current situation where he was broadly happy with data

quality. Richard Price said that there were lessons to be applied to the economic data collection.

27. The six monthly report is shared with NR and presented to their SHE¹ committee. The executive observed that in safety as in other areas, the devolution by NR of local management to the routes had not been accompanied by the development of centralised assurance processes over data.

ITEM 7 MONTHLY SAFETY REPORT

28. Ian told us the headlines from his monthly safety report. The team had been keeping a very close eye on overcrowding at Birmingham New Street over Christmas and new year. NR had made some changes which had helped, but more needed to be done. The issues of overcrowding associated with the refurbishment of London Bridge continued to be challenging though some had been addressed.
29. The closure of the Mexico level crossing in Cornwall had finally been achieved after significant local resistance. Such resistance was common on crossing closures even where there had been fatalities.
30. He highlighted some near-miss incidents over the Christmas period. The volume of work being done on the network and the complexity of it at such times made it harder to deliver safely. Some specifics would be picked up in the Kings Cross report.
31. Joanna told us that the Rail Delivery Group (RDG) was undertaking a piece of work on these issues (planning/density and intensity of activity/supervision of contractors) and we would be reviewing this to see what ORR could add.
32. We accepted that there was a culture of cramming activity into short slots to minimise planned disruption on the network but this simply increased the need for high quality plans and high standards of on-site supervision – whether by or of the contractors.
33. Ian informed us that ORR had received an application from NR for a temporary exemption from the automatic train protection requirements on the Paddington-Heathrow section of the route. This was being sought as part of contingency planning, but it was not clear that the proposal would carry a tolerable risk level. Discussion was continuing between safety and RPP² colleagues.
34. Ian reminded us that Mick Cash, the general secretary of the RMT union, had been invited to attend the next board meeting to discuss worker safety and raise any other issues of concern.

ITEM 8 EUROPE

35. Dan Brown explained how ORR coordinated its response to policy development in the European space. The European commission had a long term ambition to establish a single European rail market. This report was to update the board and demonstrate the wide range of issues being dealt with.
36. Agnès Bonnet explained that the team's work was to influence legislation and regulations originating in Brussels as the Commission worked to harmonise

¹ NR's Safety and health executive committee

² ORR's railway planning and performance directorate

safety across borders and worked towards market opening. For the past six months the focus has been on negotiations on the fourth package which would build towards passenger market opening in 2019. Although the UK was broadly in favour of the package, there were concerns for us about alliancing, where ORR permits co-working between infrastructure and train operators. We remained vigilant against the risk that ERA³ might challenge the role of national safety authorities.

37. Work on a European freight corridor was going well and the UK should be ready to join by 2016. Because this was joining an existing corridor there was limited scope for changing existing agreements. The team was also looking at regulation-implementing acts in charging and access areas. European regulations become active immediately with no national legislative scrutiny so it was important to address any national interest issues before they are implemented. Although some negative impacts could be mitigated, there was a limit to what could be achieved in the wider European context.
38. We noted the topics covered by Agnès should form the basis of key activities for the office during the 2015/16 programme and asked to be kept apprised of progress. **[Action C]** We also noted these topics as items for our 15/16 'Europe' focused objectives.
39. Agnès said that ORR continued to work constructively with the IRG⁴ on issues such as infrastructure management, and the group was growing in visibility and credibility. Demonstrating that regulators can work together voluntarily would reduce any pressure for the creation of a joint European rail regulator.
40. We discussed the extent to which ORR was the main visible representative of the UK on rail issues and recognised that vigorous national debate about EU membership (for example during an election campaign) was likely to limit the UK's influence, at least in the short term.
41. The executive assured the board that European developments were closely watched by all parts of the office, information was shared actively and mitigating actions were pursued where a clear threat to the UK industry's effective ways of working appeared. The impact of any European intervention could be very significant, but our opportunities for mitigating that risk were small.
42. Dan Brown reminded us that we had agreed to consider by correspondence the text of any agreement with ARAF for our mutual regulation of the channel tunnel. This text would be circulated for agreement within the next few days. **[Action D]**

ITEM 8 RDG⁵ FREIGHT GROUP: THE VALUE OF RAIL FREIGHT CONTINUITY AND SUSTAINABILITY

Peter Maybury, Nigel Jones, Paul McMahon, Lewis Atter, Russell Mears joined the meeting

43. Tracey Barlow welcomed the representatives of the RDG Freight group (RDG-F).

³ European Rail Agency

⁴ International Rail Group

⁵ Rail Delivery Group

44. The freight group comprises the five major freight operators and NR with representatives from the DfT, ORR executive and the RDG executive. It had developed into a forum for mature debate, although since operators compete fiercely among themselves and are all customers of NR there were limits on what could be shared. There were three current workstreams of interest: the freight joint board was addressing performance and operational issues, the network policy group was seeking to make smarter use of the network, and the long term sustainability group was addressing the value of rail freight to UK plc and long term financial sustainability. RDG-F gave us a presentation setting out these workstreams and areas where ORR's actions would have an impact.
45. Tracey Barlow thanked the RDG-F for their presentation and the lively discussion which followed. We agreed that there was no sense from ourselves or government that we wanted to see a reduction in the rail-freight sector.

RDG-F left the meeting

46. We agreed that this had been a useful session in adding to our understanding of the freight sector's concerns. We felt it was not sensible to attempt to decouple freight from the wider questions of funding and charging for the whole industry. We had some sympathy with RDG-F's desire to see DfT engaging actively with the question of how to reduce the risk (and hence the cost) of private sector investment in freight in the same way that it had reduced TOCs' risks over a given franchise period.
47. We asked the executive to bring back to the board a response to RDG-F's presentation by March **[Action E]**.

ITEM 9 STAFF SURVEY RESULTS

48. Tracey Barlow said her overall impression was that the hard work which had been put into improving staff engagement was paying off and that staff were increasingly positive about the office.
49. Quinten Manby introduced the headline results from the staff survey. For the second year running overall scores were up and for the first time, ORR was in the top quartile of the civil service for most questions. It was lagging behind on pay and benefits.
50. In previous surveys the quality of management of change and leadership had scored poorly, but two years of focus on these areas had been reflected in strong improvements.
51. We discussed the significance of the noticeably poorer scores on pay and benefits. Historically, ORR had paid more than equivalent organisations in the civil service. The rail sector outside the civil service has seen pay growth in the same period that civil service pay restrictions and increased pension contributions have led to lower real terms take home pay for most staff. We hoped that the work in hand to introduce a career families approach to grading and the revised approach to performance awards would contribute to a system which would feel fairer and therefore score more positively.
52. We noted the importance in this fiscal environment of encouraging staff to see learning and development opportunities and flexible working practices as part of the benefits package. Although the budget for learning and development had historically been underspent, we noted that most staff were now meeting the five training days a year benchmark set for the civil service.

53. We were very pleased to see the continuing improvement and encouraged the executive to reflect on how what they (and we) were doing differently had contributed to the change and asked to see their action plan for responding to the staff survey [**Action F**].
54. We agreed the importance of continuing to improve the score on board vision by helping staff understand the board's approach and contribution better. We had discussed the previous day a plan for NED engagement with ORR staff which should have the added benefit of improving this score.

ITEM 10 QUARTER 3 REPORT AGAINST THE 2014/15 BUSINESS PLAN

55. Tom Taylor introduced a report against the 2014/15 business plan. The executive had taken steps to bring forward planned spending to address the forecast underspend, which was now expected to be relatively modest by year-end – around 2%. Business plan milestones were being progressed, though there were some issues among the published milestones.
56. Richard Price said that the executive no longer expected an unmanageable 'bow wave' of deferred milestones in Q1 of next year. There were five key delays, one of which was the result of resourcing pressures and the rest were defensible business choices. There was a looming set of risks to the plan. As set out in the paper these included: CP5 monitoring, the safety strategy, ECAM⁶, NR's capacity and costs, PIDD⁷.
57. Resources were stretched by important unplanned activity like the Christmas investigation, and delays generated by other organisations on things like ECAM. This had been worsened by the buffeting of senior management by unplanned DfT activity so that there was a constant conversation among the senior team about where to focus resources to get the best outcome for ORR. It was clear that the NR delivery plan would require a major effort to review it within a sensible time, but because it had not yet been delivered by NR this work was likely to further distort existing workplans. Much of the expected disruption would not be visible to the board. Tom Taylor commented that the planning environment for 2015/16 felt especially uncertain at the moment.
58. We agreed that the executive should keep the board informed of key pressures and the choices they were making. We asked for an update at the February board to look at resourcing and current pressures.

ITEM 11 BUSINESS PLANNING 2015/16

59. Tom Taylor explained that this iteration of the plan reflected the board's comments from their last discussion. As well as the identified priorities there was naturally a large amount of activity which was business as usual because it was the 'day job' of regulating the railways.
60. We talked about likely pressures on resources, including project Marshall and any pressing short term imperatives which might emerge, and the possibility of over-resourcing for key skills. The executive explained that there were additional posts in the plan which would help establish a buffer. We asked that special consideration be given to ensuring sufficient consumer programme resources

⁶ Enhancement cost adjustment mechanism

⁷ Passenger information during disruption

were available for the 15/16 programme, particularly if further work was required in project Marshall during the year.

61. We asked to see the roads business plan and plans for recruitment and integrating the new function into the wider office, which John said were in hand. It was important that this was done effectively and that funding was entirely transparent.
62. Bob Holland asked about the work planned on network capacity, and John explained the work that ORR would be doing with NR to improve their capacity planning. This was part of planned work on PR18.
63. The team explained the various areas where competition was being looked at: the CMA⁸ review, casework, PR18 etc. This needed to be reflected more clearly in the plan, where it was understated.
64. We asked that the next draft more clearly described all our planned activities in the consumer, capacity, competition and value for money areas.
65. We talked about the importance of the executive knowing what comprised 'business as usual' for their teams. We expected them to have a high level of internal challenge around what this work was and whether the activity was delivering value.
66. Tom reminded us about the stakeholder event on 10 February and undertook to provide a revised business plan including the roads function for comment to the February board. **[Action G]**
67. Tom drew our attention to the two items which were below the line on the agenda: the interim reports on the CS status review and the skills and competency review. He would be glad to receive comments or questions on either document.

ITEM 12 FORWARD PROGRAMME

68. We noted the forward programme. On the face of it, delivering the April agenda outside London looked unfeasible. There was appetite among the NEDs for meetings to be held outside London, but April in Cardiff did not look sensible. This should be reviewed by the executive as part of our stakeholder engagement plan (discussed the previous day). **[Action H]**

ITEM 13 CHIEF EXECUTIVE'S REPORT

69. The board noted the report.

ITEM 14 REMCO FEEDBACK

70. Michael Luger updated the board on progress on the career families project and the work on performance awards for individuals, teams and the ORR overall. He had also had an interesting session with the staff representative group who had particularly asked him to look at the possibility of staff members attending board meetings. This and the question of performance awards would be brought back to the board.

ITEM 15 ANY OTHER BUSINESS

⁸ Competition and Markets Authority

71. NEDs had noticed a number of IT issues in the preceding weeks with email and other issues. We asked for an update. Tom explained that the executive team were hearing that week from the Capita director responsible for the ORR's information systems support contract. Capita would be funding an external audit of the integrity of the assets associated with our contract, the management of those assets and the resilience of the overall system. Although Capita were meeting most service standards, there was one which was not met. So far the failures had been the result of single point hardware failures with subcontracted services or suppliers. There was one outstanding issue on the PSN⁹ access which was managed by Vodafone, which Tom had escalated.
72. Tracey reminded Tom that he could engage the audit and risk committee on this matter if that would be helpful.
73. We asked Tom to keep us up to date on the overall IS situation.

Meeting closed 15.00

⁹ Public sector network

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