

THE OFFICE OF RAIL REGULATION
MINUTES OF THE 116TH BOARD MEETING
08:30-15:30, TUESDAY 23 JUNE 2015
ONE KEMBLE STREET, LONDON, WC2B 4AN

Present:

Non-executive directors: Anna Walker (chair), Tracey Barlow, Mark Fairbairn, Bob Holland, Michael Luger, Stephen Glaister, Justin McCracken

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: Tess Sanford (Board Secretary) **All items except 23:** Peter Antolik (Highways Director), Juliet Lazarus (Director, Legal Services), Rachael Durrett (External Affairs), Dan Brown (Director, Strategy & Policy), John Larkinson (Director, Economic Regulation), Peter Walley (Secretariat)

ORR staff in attendance, specific items: Item 7: Carl Hetherington (also item 10), Mark Morris, Graham Richards, Colin Hudman. Item 11: Elise Weeder, Emma Bentley. Item 12: Olivia Bingley. Items 13-23: David Chapman

ITEM 1 APOLOGIES FOR ABSENCE

1 There were no apologies.

ITEM 2 CONFLICTS OF INTEREST

2 There were no declarations.

ITEM 3 MINUTES OF THE PREVIOUS MEETING

3 There were no comments on the minutes.

ITEM 4 MATTERS ARISING

4 We noted the outstanding action in relation to a strategy paper on technology issues across the railway. We had also asked for a wide ranging paper on freight strategy. The board secretary undertook to ensure these papers were commissioned through the executive committee [**Action**]

ITEM 5 HEALTH AND SAFETY MONTHLY REPORT

5 Ian told us that the investigation into the West Coast Railway SPAD incident was ongoing.

6 Ian also reported that his team had been running workshops with NR on RAIB recommendations with a view to closing out the long running issues. This would support a better understanding of what will be needed to deliver the recommended changes and how to get a speedier resolution in future. Ian said he had now met the new safety head at NR who had a background at Rolls Royce.

7 Ian told us that the outcome of the coroner's inquest into the deaths of two NR welders in a road accident on the A1 enabled the team to move to a prosecution. If this was successful, it would signal the importance to the industry of thinking about fatigue and road safety in relation to their workforce. – an area where he had long thought more could be done.

8 Ian noted that traffic accidents were one of three main areas of harm to the workforce with the other two being electrical installations and moving rolling stock during work on the track.

9 The chair told us that there had been implied criticism of ORR from the outgoing RAIB Inspector in her final annual report. Anna had asked SRC look carefully at this and particularly to identify criticism that is justified and needs action to address. The report would be shared when published. **[Action: IP]**

10 Richard Price said that while we were aiming to explore differences between our and RAIB's professionals more actively, the response to particular recommendations had to be owned by the licence holder.

11 We asked when we would see number of outstanding RAIB recommendations coming down as a result and Ian thought it would be at least 3-4 months.

ITEM 6 ANNUAL H&S REPORT

12 There were two parts to this discussion: first Ian was looking for support from the board on key messages in the published annual report, and second he wanted to discuss the six month report to the Board.

13 Ian identified four key messages: that the industry remains plateaued in absolute terms (ie no improvement or deterioration in overall safety risk), and that there were some areas of improvement and some of real concern. Growth on the network results in growth in inherent risk and there was still room for broader industry improvements.

14 He reminded us of the difference between risk measurement – which is predictive but backward looking - and harm – which was only backward looking. Risk is modelled from the industry's safety risk model (updated every 18-24 months). The passenger indicator model (PIM) is now run every month – and is a proxy for catastrophic risk measurement. It does not include risk to passengers within stations (6000 injuries every year). Harm and risk measures could give conflicting outcomes: so the mainline risk (which is modelled) had declined, but overall harm (which is reported) has increased in absolute terms by 2%, although if it is normalised, then it has decreased by 2%. Workforce harm remains static.

15 Ian said that although earthwork risk was significantly down this year that may be a result of a benign winter, so the trend would need to be watched. We discussed how NR's understanding of the condition of its assets had improved over recent years partly as a result of our interventions. They now had better contingency and mitigation plans in place.

16 Overall safety performance was either steady or improving. LUL passenger harm continues to improve **[Action: IP to circulate suicide figures on LUL to enable comparison with NR]**. LUL workforce safety is significantly better than NR,

Ian pointed out the large numbers of trauma being reported on LUL which indicated a good culture of reporting and issue recognition.

17 PHRTA¹ incidents were down, which was encouraging, but freight train derailments were up and these were usually the result of track faults (geometry interacting with loading and rolling stock design). This was an area where a single incident could lead to a catastrophic incident involving the public.

18 We discussed the question of SPAD²s where the overall risk went down last year – although the numbers of incidents were up. Ian thought that there was no simple solution to this problem. There is research going on which may help the industry understand the issue better. He explained the importance of driver training and management and how it varied across some of the TOCs.

19 Ian told us that the level of track twist faults remains stubbornly high and that issues around access mean that quick fixes are put in and a long term solution deferred. This is a major future concern for him.

20 In looking at the RM3³ assessments in Ian's presentation, he characterised NR's RM3 assessment as average. TOC operators varied widely with some very high performers such as LUL and Chiltern. Ian observed that while some owner groups have good shared learning across their companies, some did not. We talked about how sharing the RM3 assessment for routes might drive improved performance. We had an ambition to use the information in that way, but recognised that doing so would mean ensuring the route level information was robust.

21 Ian suggested that the information could be used anonymously in public but shared among duty holders in more detail. We thought this an idea worth pursuing.

22 There would be a board paper in July or September on what we should publish (or not) on safety following SSWG⁴. On the one hand, our instinct as a regulator was to publish as much as possible. On the other hand, we had to examine legal constraints and ensure that publication would improve safety performance – the key objective. We recognised some companies would favour publication and sharing information and others would not. One argument for publication was that it would open our RM3 model to scrutiny and challenge which would lead to improvement. The information could be used anonymously this year. all of these issues would be addressed in the Board paper on publications.

23 We were reminded to consider how our thinking on this area in rail might read across to our roads function.

24 We noted again our current position at the top of the European table of safety performance but Ian also pointed out that Spain's single catastrophic accident had significantly affected its record.

25 We looked at the key messages set out on slides 18/19 and asked Ian to make clear which related to NR and which did not.

26 Ian reported that our occupational health report would be published today.

¹ Potential high risk train accidents

² Signals passed at danger

³ Risk Management Maturity Model

⁴ ORR's safety strategy working group

27 We noted that this report was a much brighter story overall than the one we had been discussing for the future in the NR business plan. However we noted that, in the business plan context, the emerging concerns were about the maintenance of a safe and sustainable railway in the future, not about the present.

28 Ian stressed that, in relation to NR, his current concerns were the scale of the challenge on vegetation and earthworks, and repeat track twist faults. NR was still trying to catch up with limited resource and although there was some progress that progress could be very vulnerable to reduction in resources.

ITEM 7 BUSINESS PLAN NR

29 The chair said that the board needed to reach some settled views on this material in order to give the ORR team sufficient guidance on interaction with DfT and ministers later this week.

The remainder of this item (paragraphs 30-73) has been redacted as relating to current regulatory activity

74 We reviewed our discussion and agreed we wanted to think about what it means for us to regulate a publicly owned monopoly as opposed to a private sector company. Dan would explore how to pursue this **[Action]**.

ITEM 8 CP5 MONITORING

75 Alan reported that the downward trend in performance (PPM) had stabilised. There were some slight causes for optimism. If only a small number of trains could start to arrive a couple of minutes earlier, then PPM would be markedly improved.

76 Anecdotally, visualisation boards on the routes were starting to show more green. The freight measure was giving good results - good service and metrics in freight corridors and freight customers appeared pleased.

77 The possession disruption index is below target (which is a good outcome) though it reflects some cancellations of work.

78 The performance investigation was very much focused on Scotland, GTR and Southern, and a paper would be brought to the July board. A case to answer letter would be issued to NR this month.

Paragraphs 79-81 have been redacted as relating to current investigations

82 We noted the report.

ITEM 9 BOWE REVIEW

83 Dan reminded us of the background to the Bowe review which had been set up in March to review the process for handling the planning and delivery of enhancements in CP5 and to learn lessons for CP6. He updated us on the latest draft of the findings which had been circulated before the Bowe liaison board meeting on 24th June (DfT, CO, HMT, ORR).

- 84 We agreed it was important to make sure that key messages are not lost. We thought it important that in commissioning enhancements DfT needed to look for improvements which were passenger led, not industry led.

Paragraphs 85-86 have been redacted as relating to a document still in development

ITEM 10 NR COMMERCIAL PROPERTY

- 87 Dan introduced this paper which looked at the non-core activities of NR that generate single till income but are ancillary to the main job of running the railway.

- 88 NR's stations were a big part of its property portfolio. Reclassification means that NR has to comply with rules on public investment so some of the assumptions we had made about their ability to grow their income were now in question.

The remainder of this item (paragraphs 89-95) have been redacted as potentially commercially sensitive and relating to policy development.

ITEM 11 PR18 STRUCTURE OF CHARGES

This item (paragraphs 96-111) has been redacted as relating to policy development

ITEM 12 HIGHWAYS COMMITTEE AND ENFORCEMENT POLICY

- 112 Stephen Glaister reported to the Board on the first meeting of the Highways committee. The committee had reviewed the terms of reference and agreed the process to appoint two external members. They were beginning to rough out the form of report against KPIs for HE for quarterly transmission to the board. He said that at the moment, the ORR staff were giving the benefit of the doubt to HE on their willingness to provide the right data, but there was concern in DfT that this should be produced.

- 113 We noted that the new CE of HE was Jim O'Sullivan – who had formerly been a NED at ORR.

- 114 The committee had discussed ORR's commitment to establish an external advisory panel but wanted to reflect on whether the proposed approach of a separate panel was the best one, given ORR's existing framework of specialist panels.

- 115 35 responses to the highways consultation had been received and most suggested that ORR's approach was broadly right.

- 116 Olivia Bingley explained the background to the enforcement policy consultation document.

The rest of this item (paragraphs 117-119) has been redacted as relating to a document in development for publication

- 120 We agreed to the publication of the consultation document.

ITEM 13 NON SCS PERFORMANCE

This item has been redacted pending Ministerial approval

ITEM 14 INTERNAL AUDIT OF GOVERNANCE

- 124 Tess Sanford introduced the paper and the plan to respond to the three findings, which would be captured in the forward programme **[Action]**.
- 125 The three findings were: the need for shorter board papers with better options analysis, better risk reporting to the Board and risk ownership by the Board and the need for the Board to reflect on whether it received the right management information.
- 126 Richard Price confirmed that the executive would welcome more discussion on the quarterly report on progress on the ORR business plan. We also agreed that we should consider whether to have a more consistent approach to all the regular reports we get of industry management data: the CP5 tracker, the monthly health and safety report and – shortly – the quarterly highways report. The board would welcome a move towards seeing less of the underpinning data and more analysis of what the data was telling us. **[Action]**

ITEM 15 FORWARD PROGRAMME

- 127 We agreed the forward programme and Tess undertook to ensure the autumn plan was closely reviewed by Exco. **[Action]**

ITEM 16 CHAIR'S REPORT

- 128 We noted the chair's report which included an assessment of progress against the board objectives for 2014/5. Some progress had been made in all areas it was noted that the Board objectives focused more on outcomes than the ORR Business plan. We agreed to look at making the Board's assessment of progress against its objectives available to staff to support a consistent message of the importance of looking at outcomes. **[Action: Secretariat]**

ITEM 17 CE'S REPORT

- 129 The retail review was published today. Richard told us that Project Marshall is still progressing. We talked about safety recruitment and whether a Welsh presence might be needed in due course.

ITEM 18 AUDIT AND RISK COMMITTEE

- 130 Bob Holland reported on his first committee as chair.

ITEM 19 REMUNERATION COMMITTEE

- 131 Michael Luger reported that the committee had reviewed directors' objectives for next year – looking particularly at team boundaries, expectations and metrics for measurement. He thought the skills assessment work was delivering useful information but Remco had commissioned further work on ORR's future skills needs **[Action]**.

ITEM 20 RIHSAC

- 132 Justin McCracken had observed the meeting and would chair them in future. He particularly noted a presentation by RSSB on the road risk mentioned by Ian Prosser in his safety report.

ITEM 21 STAFF SESSIONS

- 133 Stephen and Michael reported on the sessions they had held with staff which had gone very well. They had found the staff engaging and interested – and had enjoyed an hour of robust discussion on several big issues including regional devolution. They both remarked the strong loyalty that staff showed to ORR. Their main concerns have been about the organisation's IT problems.

ITEM 22 ANY OTHER BUSINESS

- 134 There was no further business for the general meeting.

All the executive left except David Chapman (HR Associate Director) and Tess Sanford (Board Secretary)

ITEM 23 SCS PERFORMANCE AND INDIVIDUAL BONUSES FOR 2014/15

- 135 The non-executive members discussed the pay and bonuses proposal, which was based on recommendations from the chief executive as reviewed and revised by the Remuneration Committee.
- 136 We noted the stringent conditions imposed by the Cabinet Office on SCS pay and bonuses, particularly the limit on the number of recipients of performance bonuses (the top 25%). We thought the system made it very difficult to incentivise senior management financially.
- 137 We agreed the approach to consolidated pay across the group.
- 138 We noted cabinet office guidance on the distribution of performance ratings across the SCS group and what that meant for the specific numbers in each rating.

- 139 There was a non-consolidated bonus pot of 3.3% of the SCS paybill – which could be shared between a maximum of five from among the eligible candidates.
- 140 We discussed the Chief Executive’s recommendations and Remco’s comments, which were made in the context of difficult choices between a bigger number of high performers than we had bonuses for. We reflected on the degree to which team performance (as assessed for non-SCS staff) was relevant in assessing senior leaders. We agreed the distribution and size of bonuses to five individuals.
- 141 We discussed the process and noted the relationship between team awards for the non-SCS staff and senior awards. We thought the process for SCS performance decisions could be improved. We did not feel the chief executive’s recommendations should be ‘rubber stamped’ by Remco or the NEDs, but there were some SCS members whom we did not see as frequently as others and it was difficult therefore to assess their impact except through the chief executive’s assessment. We would review the internal decision making process before it was used again next year.
[Action: Remco forward programme]