

Office of Rail Regulation

Minutes of the 89th Board meeting on 28 November 2012

(10:00 – 16:45) in Room 1, ORR offices, One Kemble Street, London

Board present:

Non-executive directors: Anna Walker (chair), Tracey Barlow, Peter Bucks, Mike Lloyd, Stephen Nelson, Ray O'Toole, Mark Fairbairn and Steve Walker.

Executive directors: Richard Price (chief executive), Michael Beswick, Ian Prosser, Alan Price and Cathryn Ross.

In attendance, all items: Dan Brown (director, strategy), John Larkinson (acting director, RPP), Juliet Lazarus (director, legal services), Ken Young (director, external affairs), Alastair Gilchrist (director of corporate operations), Tess Sanford (Incoming Board Secretary) Sam McClelland Hodgson (outgoing Board secretary), Gary Taylor (asst. board secretary).

In attendance, specific items: Andrew Wright (Ofgem), items 1-8), Carl Hetherington (RME) (item 5), Elise Weeder (RME) (item 6), Geoff Horton, RME (Item 6), Susanna Rogers, Legal (item 5), Emily Bulman, Richard Gusanie, RME, Joe Quill, RME (all item 6) , Alastair Gilchrist, Corporate Operations (item 12) .

Item 1: Welcome and apologies for absence

1. Anna Walker welcomed Alan Price, the new director, Railway Planning and Performance and Tess Sanford, the new ORR Board secretary to their first meeting. We also welcomed Andrew Wright from Ofgem, who was joining the meeting as an observer.

Item 2: Declarations of interest

2. There were no interests declared relevant to the agenda.

Item 3: Monthly Safety report / issues to advise the Board

3. We noted Ian Prosser's update provided via the CE's report.

Paragraph 4 – 7 have been redacted as containing sensitive information.

8. We noted the increase in high risk SPADs. Ian confirmed that RSSB was looking at these incidents alongside ORR's work to understand whether there were underlying trends through these incidents and he would report back to the Board. The Health and Safety six monthly report would be discussed by the Board in January and this issue would be highlighted. There were questions about the capability of routes to take on civils work.

9. We noted that system safety was raised and discussed at the recent Transport Select Committee. Ian reminded the Board that a paper had been produced in 2011 which provided detailed information on a number of aspects of our system safety work. Board members asked Ian to circulate the paper again after the meeting so that they could be reminded of its content. We also agreed that it would be important to schedule a discussion on system safety at the Board in the New Year.

10. Following a discussion we agreed that Ian would circulate to the Board the judge's sentencing remarks on the Merseyrail incident.

Board 28.11.2012 Action A: Ian to circulate system safety report and judge's sentencing remarks on Merseyrail train guard.

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Board 28.11.2012 Action B: Ian agreed to circulate ORR's system safety paper to all Board members.

Board 28.11.2012 Action C: Item on system safety to be scheduled at future Board/SRC agenda

Item 4: Report from the October Safety Regulation Committee meeting

11. Steve Walker provided a summary of the discussions which took place at the Safety Regulation Committee on 24 October 2012.
12. We noted the discussion on the introduction of GSM-R. Steve confirmed that the introduction of GSM-R had an end-of-December deadline. We noted the committee's concerns around late submission of authorisations to ORR and the small number of our staff dealing with these. Ian assured the Board that the necessary arrangements are in place to handle the outstanding submissions.
13. SRC had received a report on the work undertaken with DLR and Serco around command control and signalling. SRC were pleased to recognise a successful intervention from ORR inspectors in this respect.
14. SRC noted the proposed railway safety business plan priorities for 2013-14 and provided comments.
15. At the ORR/ATOC joint board session in September 2012 it had been agreed that we should strive for better understanding of shared safety concerns. Charles Horton and Gary Cooper from ATOC would be in attendance at the December SRC meeting to help deliver this ambition.

Item 5: PR 13 - Financial framework – Indexation

Paragraphs 16-18 have been redacted as they relate to policy development

19. We thanked Carl and his team for the significant amount of work which had been carried out to produce the draft document and to guide the Board through these complex issues.
20. We agreed that Carl would revise the executive summary of the decision document on indexation in line with our discussion and circulate to Board members for information. Any comments would be welcomed but they would need to be provided swiftly. We agreed that Richard and Anna would review the executive summary in advance of the publication.

Board 28.11.2012 Action D: Carl to circulate exec summary to Board members for information with comments to Carl by exception.

Board 28.11.2012 Action E: Richard and Anna to review executive summary before publication.

Item 6: PR13 Volume Incentive

21. Cathryn Ross and Elise Weeder presented a set of slides which set out the issues around the volume incentive which is the mechanism by which we aim to incentivise NR

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to maximise capacity on the network and its efficient use. Network Rail was currently incentivised to concentrate on performance at the cost of capacity.

Paragraphs 22-26 have been redacted as they relate to policy development

27. We thanked Elise and her team for the insightful and informative presentation.

Cathryn confirmed that the document would be amended to reflect the Board discussion. It was agreed that once completed, the executive summary would be reviewed and signed off by Richard and Anna in advance of pre-Christmas publication.

28. We agreed that a further discussion on the volume incentive would be scheduled at the Board to consider the outcome of the consultation exercise. As part of the discussion we agreed it was very important for us to understand what behaviour the proposed revisions to the volume incentives might prompt and therefore whether it remained an incentive worth retaining.

Board 28.11.2012 Action F: Consultation document to reflect Board discussion. Most notably focusing on looking at the governance arrangements to ensure incentives and stressing the need to look at the issues in the long term context.

Board 28.11.2012 Action G: Agreed that as part of the sign off process, AW and RP would review the executive summary of the document

Board 28.11.2012 Action H: Discussion to be scheduled on Board agenda following conclusion of consultation exercise.

Item 7: PR13: Freight specific charge

29. We noted the key issues for consideration following the decision relating to the freight specific charge which was made by the Board on 24 October 2012.

Paragraphs 30-39 have been redacted as they relate to policy development

Board 28.11.2012 Action I: Further discussion to be held at PRC on 29 October

Board 28.11.2012 Action J: Further analysis to be provided to the Board for discussion at the PRC meeting. This includes:

- road/rail analysis
- Looking at implications of the proposal to delay ESI coal and the treatment of other groups; and
- Look at the broader freight package

Item 8: HLOS – SoFA affordability

40. We noted the presentation from John Larkinson which provided the Board with an update on the work undertaken to assess the affordability of the HLOS.

Paragraphs 41-43 have been redacted as they relate to policy development.

44. We agreed that we should re-visit the issue in the April Board meeting, when updated information should be available. John confirmed that the DfT will have a

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clearer understanding of the implications of the Brown review on the franchising process in March. We agreed that the Board would be provided with an update at the April 2013 meeting.

45. We thanked John for the useful update. Anna confirmed that she would speak to John outside the meeting to discuss the Network grant issues.

Board 28.11.2012 Action K: Schedule discussion on Board forward agenda for April 2013.

Board 28.11.2012 Action L: Anna to meet with John Larkinson outside of the Board meeting to discuss the Network grant.

Item 9: Outputs – specific funds

46. Due to timing issues, it was agreed that this item would be rescheduled to be taken as part of the wider Outputs discussion which was scheduled to take place at the Board session on 11 December 2012.

Item 10: Performance issues

47. We received an update on the issues around performance relating to the long-distance sector, London and South Eastern performance and industry planning.

Paragraphs 48-53 have been redacted as containing sensitive material

54. Overall we thanked Michael for an extremely useful update and agreed that a significant amount of work had been carried out to develop the working relationship between ourselves and Network Rail on these issues. We agreed that Michael would continue to keep the Board updated on the latest developments relating to performance issues.

Item 11: Franchising update and lessons learned from WCML

55. We received an update from Dan Brown on issues relating to the Brown review of franchising and the Laidlaw report.

56. In relation to the review of franchising, Dan confirmed that discussions had taken place with Richard Brown to ensure that we have directly fed in our views. Dan confirmed that these had been positive with the team looking at the broader issues around franchising. Overall these discussions had been extremely useful and productive. Dan also confirmed that we have had significant discussions with DfT, HM Treasury and Number 10.

57. Dan confirmed that we will continue to feed our comments directly back to Richard Brown and the review team.

58. We thanked Dan for the useful update. We agreed that it was now appropriate to draw together all the points that we have made and reiterate these in a letter to the Secretary of State which should be made available on our website. We agreed that we would look to do this following a meeting with Richard Brown and the next DfT high level meeting which is taking place w/c 3 December 2012.

59. We also agreed it would be important for us to review the recommendations in Laidlaw's final report to ensure ORR learnt any appropriate lessons.

Board 28.11.2012 Action M: Letter to be drafted to the Secretary of State to reiterate the points we have raised through the Brown Report.

Item 12: Business planning 2013-14

60. We received an update from Alastair Gilchrist on the development of the 2013-14 Business plan.

61. We noted our five strategic objectives and the suggested main areas of focus for our activities in 2013-14. We agreed that a number of choices were emerging around where we place our main focus in each of these areas. We recognised that not everything could be achieved in year with existing resources and choices would need to be assessed as the plan is developed.

62. We discussed each objective in order and raised the following points:

- We noted that the budget for 2013-14 would remain at the same level as 2012-13. Although there was a considerable amount of additional work expected to be undertaken next year, this was appropriate in the current climate and given the pressures on the industry to reduce costs.
- We agreed that we wanted to make a real difference in the areas of transparency and passengers. It was agreed that we would manage our resources to do this. We noted that a paper on the approach to transparency would be discussed at the Board in February and that the Board would want clarity of what we expected to do in 2013/14 in both these important areas.
- The resource allocation for each objective was discussed. We asked to see a comparison of resources planned for 2013-14 with this year's allocation. Alastair confirmed that this would be provided in the Board update in December.
- Following discussion around ORR's capability to deliver the work for 2013-14 we wanted an update on the work which had taken place to date to address the Capability Review recommendations. We asked for an update early in the New Year.

63. We thanked Alastair for the useful update on the development of ORR's business plan for 2013-14 and the associated resource implications. We looked forward to receiving a further update in December.

Board 28.11.2012 Action N: Further update on the Business Plan to be provided at the Board session in December. Further discussion on transparency and passengers to be scheduled at a Board meeting.

Item 13: Chair's report

64. We noted the Chair's report (circulated via email), which provided details of Anna Walker's recent meetings with Government, industry and stakeholders over the course of the past month.

65. In particular we noted the discussion on the proposal for new legislation under which sector regulators could lose their concurrent powers on competition issues when the new Competition and Markets Authority come into being in March 2014 if they were not using them effectively. Richard confirmed that the joint regulators group would be

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picking this issue up going forward looking particularly at how sectoral regulators could work more closely with the CMA. Richard would keep the Board informed of any developments.

Board 28.11.2012 Action O: RP to report back on joint regulators group.

Item 14: Chief executive's overview and monthly data pack

66. We noted the recent issues highlighted in the Chief Executives monthly report and management data pack. In particular we noted the update on GSM-R, the update on the recruitment of senior staff and the current budget figures which showed an overall underspend of 5%.

67. We noted and approved the protocol for national safety authority for setting up cross acceptance procedures of railway vehicles for high speed and conventional railway systems between the national safety authorities of the United Kingdom and France.

Item 15: Board forward programme

68. We noted the Board events taking place in December. We agreed to use the Board session on 11 December to discuss outputs and receive an update on the development of the 2013-14 Business plan.

69. The dates for the November 2013 Board meetings were highlighted as being inaccurate. We agreed that these would be revised.

Board 28.11.2012 Action P: Board forward programme to be amended accordingly

Item 16: Approval of minutes of the Board meetings of 23 and 24 October 2012

70. The minutes of our meetings held on 23 and 24 October were confirmed without amendment subject to the Chair's final review.

Item 17: Matters arising (not taken elsewhere on the agenda)

71. The updates on the outstanding Board actions were noted.

Item 18: Any other business

72. We noted that this was Sam's last Board meeting as Board Secretary. On behalf of the Board and its attendees, Anna thanked Sam for all her hard work and support over the last five years. We wished Sam well in her new role as Licencing and Network regulation manager in RPP.

Anna Walker

Chair

Draft Minutes approved by the Board 15 January 2012