

Office of Rail Regulation
Minutes of the 103rd Board meeting
on 25 March 2014
(09:00-17:15), ORR offices, One Kemble Street, London

Present:

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

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

In attendance, all items: Dan Brown (Director of Strategy) Juliet Lazarus (Director, Legal Services), Richard Emmott (Director of Communications) Tess Sanford (Board Secretary), John Larkinson (Director of Economic Regulation), Gary Taylor (Assistant Board Secretary)

In attendance, specific items:

Items 1-4: Melvyn Neate (independent Audit and Risk Committee member) Items 4-6: John Gillespie and Clair Dickinson, Item 7: Richard Coates

Item 1: WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting, in particular she welcomed Joanna Whittington the new Director of RME.

Item 2: DECLARATIONS OF INTEREST

2. There were no declarations of interest.

Item 3: MONTHLY SAFETY REPORT

3. Ian Prosser gave highlights from his report. He noted with sadness the death of Bob Crow, whose funeral was taking place that day. He also reported the first death of a worker on the Crossrail project – any investigation would be led by the HSE as it is currently a construction site without an operational railway.
4. He reported that NR had sought a second extension to the improvement notice on unearthed electrical cabinets – and that this would be refused. There was a significant and ongoing risk to the public from these cabinets and NR had failed to engage properly with the issue. He had discussed this with the NR chief executive, Mark Carne.
5. The Chair noted that this was the third general enforcement order we had issued in recent months to drive a corporate response to systemic issues about basic safety issues. It was agreed that this should be drawn to the attention both of Mark Carne and of the NR SHE committee. It was not clear to what extent the NR Board was sighted on these orders or the executive response. [\[Action A\]](#)
6. Ian also reported that at a stakeholder event there had been broad support for the RSD workplans for 2014/15 – and that for the first time, there had been trades union representatives at the event.

Item 4: REPORT OF MELVYN NEATE'S REVIEW OF RAIB RECOMMENDATIONS AND SAFETY CERTIFICATION

7. Tracey Barlow said that Melvyn Neate's report had been considered at the Audit and Risk Committee (ARC) as a process review. Process actions would be followed up by the Committee similar to an internal audit report.
8. Mark Fairbairn said that the report had also been considered at the Safety Regulation Committee (SRC) which Carolyn Griffiths (RAIB) had also attended. The SRC had persuaded RAIB to agree that there should be a bilateral workshop to take forward the substantive issues and agree next steps.

Paragraphs 9-13 to be redacted from the published minutes as relating to on-going regulatory issues and policy formulation

9. Mark reported that there was more work to do on this relationship from ORR's point of view, but he had been disappointed in RAIB's response, which seemed to suggest they did not recognise the problem.
10. He thought that there had been good responses from RSD to the report's recommendations and improvements were already in hand.
11. The safety certification issue required a process change which was important but could easily be dealt with. Safety certification would not be given for new companies/operations until either there was proof of safety or inspection took place quickly once operations had started.
12. The problem with RAIB was more intractable. We needed to be much clearer when we had decided that a recommendation from RAIB was not reasonably practicable and share that view fully with them. We agreed it was very important to draw a line under an issue when it had been discussed by those concerned - and record differences of opinion with RAIB where they exist.
13. We asked Melvyn Neate whether there was anything he wanted to add to his written report. He said that he thought the workshop was crucial for forcing issues into the open. Any relationship needed both parties to engage. He was confident that ORR staff were keen to see change.

Redaction ends

14. We thanked Melvyn for his very thoughtful and helpful report.
15. We agreed that Richard Price should write to RAIB following the consideration of the report by the Board. It was important for passengers that we worked closely with RAIB but we noted that our remits had significant differences (RAIB's recommendations are not tested against the 'reasonably practicable' standard and ORR's is the decision maker on implementation). The Board considered the shared ORR/RAIB database was very important so that there was 'one version of the truth' and it should be informed of any key areas of disagreement with RAIB. The SRC would receive an update following the workshop and issues would continue to be included in the monthly safety report to the Board. [\[Action B\]](#)
16. Mark Fairbairn reported that a review of business critical processes and safety processes was being discussed between SRC/ARC. It was important that we kept processes under review and checked that they remained fit for purpose.
17. Ian Prosser said that RSD were looking at how to build the review of its processes and subsequent assurance and planning systems into a robust framework. The safety priorities and policy had been agreed two years ago and the SRC had almost finished a complete review.

18. We agreed that both exercises would be valuable. The Board needed to be confident that processes and methodologies were kept under review and improvements identified and embedded. We asked for the opportunity to look at this in the summer [\[Action C\]](#) when we would also consider risks and our internal priorities.

Item 5: TRANSPORT SELECT COMMITTEE REPORT ON LEVEL CROSSINGS

19. Ian Prosser updated us on the Select Committee report and went through the recommendations. A formal response to the report would be drafted. We noted that ORR had made a fundamental shift in how we regulate level crossings in CP4 and have funded NR in CP5 to continue to make risk reductions.
20. We discussed Ian's report on the recommendations. We agreed that, in the light of the committee's comments, we should again consider levels of resourcing and the mix of skills across RSD and RPP so that we can be comfortable that the executive had set the resources at the right level and secured adequate funding to meet our duties [\[Action D\]](#).
21. We agreed that we could not all articulate what 'a 25% reduction in LX risk by NR' meant. This is part of the broader understanding the board needs to develop about safety. [\[Action E\]](#) We also wanted the SRC to look at whether we have got a grip on NR's processes for assessing level crossing risk – although we needed to be aware of the scope of our own powers: it was for NR to assess and respond to the risk at each crossing: ORR looked at NR's assessment. We noted the high cost of improving level crossings and the judgement on investment that needed to be taken by NR on this. [\[Action F\]](#)
22. Ian said that he thought NR were focussing on the lessons from the Moreton on Lugg investigation.
23. We noted that there was a parliamentary review of rights of way legislation and a deregulation bill that should be watched carefully in case it had inadvertent knock-ons for level crossings and increased costs for passengers. We noted that implementing the Law Commission's proposals would allow these issues to be resolved more quickly.

Item 6: ORR'S OCCUPATIONAL HEALTH PROGRAMME 2014-2019

24. Claire Dickinson and John Gillespie explained that the first programme had aimed at establishing consistent practice in identifying and acting on health risks in the industry and the second programme aimed to build on that. We noted that there is no legal distinction in our duties between health and safety issues – both are equally important.
25. This was an area where we aimed at ensuring our public expectation of better health management would drive the right behaviours in responsible bodies. We also wanted to encourage other participants to consider these issues and RSSB were adopting a health agenda for the first time. The work picked up a cross-government agenda to improve health and wellbeing because investment in health saves lives and reduces costs.
26. John drew our attention to the priorities on page 8 and explained how the programme had been built with the collaboration of stakeholders.

27. We noted that the programme document was well laid out and accessible. We asked that it began by setting out comparisons between rail and other sectors as the rail record was not good. We asked whether it could be stronger on measuring progress towards outcomes aimed at and setting out ORR's ambition - what would good look like?
28. Claire Dickinson explained that the team would consider the forthcoming HSE workforce survey and assess those results against the baseline for the original programme. There would be a report against that assessing the success of the first programme. We asked that our second occupational health programme made it clear that targets for the programme would be set against the new baseline. We asked the Board Secretariat to ensure another discussion when the report was available. **[Action G]**
29. Claire reported that feedback from workshops was that the programme's pace and travel were about right. RSSB, NR and our own strategies were all aligned. The first programme had been new and radical and had resulted in some improvement; the new programme would be able to build on that.
30. We noted that NR had commissioned work to identify how better health management can contribute to efficiencies. Their strategic approach was good, but action needed to follow and the issue was currently much lower priority at route management level.
31. We asked the Chair and Chief Executive to raise with NR the importance of its Board paying attention to health management or it would not be counted as important as safety by local managers **[Action H]**.
32. The RSSB board had supported the ORR programme and will require NR to present regularly on progress. It had also been well received by the trade unions.
33. We noted that the sector still compared poorly with other industries. Our role is to pursue enforcement of the law and we should pursue legal intervention if we need to. It was also to encourage improvement.
34. We noted that not much useful data is available on health management. Figures around sickness absence are available, but cutting absence was not the same as improving health: we must not perversely incentivise NR to manage sickness absence inappropriately.
35. We thanked the team for an excellent paper and their work on a very important and progressive programme

Item 7: POTENTIAL ROADS MONITOR ROLE

36. At our useful pre-meeting the day before we had discussed the issues of principle that we considered should apply in responding to the letter from the Minister, Robert Goodwill MP. We believed that ORR already has some of the experience and many of the skills needed to successfully perform the role and that there were additional national benefits (such as economies of scale) in our taking on the role. We were keen therefore to accept the additional work but that could not be unconditional.
37. We were clear that this would be a new function for the ORR as part of our broad portfolio and it would have to be dealt with in line with our normal practice. We recognised the distinction between this new monitoring function and our work as an economic regulator in rail. We would need to ensure that

our governance was proportionate and that it did not distract the Board from the rail agenda.

38. It was a key point of principle however that the main ORR Board retained accountability for the function and we would therefore expect the executive and any roads committee to report regularly on activity, and specifically to refer any matters of policy or novel or contentious issues to the Board. These boundaries could be dealt with internally by careful process design and clear terms of reference or delegation as appropriate. The important issue now was that there was complete clarity on this issue so that the Board's role in exercising its responsibility in this area was not misunderstood by the Department.
39. We noted John Larkinson's very useful summary note of the areas discussed the previous day.
40. We agreed there were some areas where the details would need to be worked out at official level either before an announcement or after the legislation and licence terms had been drafted: our agreement was therefore conditional on some of these details. It was also conditional on securing adequate funding from the DfT.
41. We noted that we could not agree the detail until the legal framework was sorted out (legislation, licence, MOU etc), but we would make clear what our approach would be. We also noted that we would need powers to enable us to secure from the Highways Agency the information we needed to deliver our functions.
42. We asked that a meeting should be held with Steve Gooding and Philip Rutnam to take this forward urgently. [\[Action I\]](#)
43. We thanked John and his team for their work thus far.

Item 8 2014-15 BUSINESS PLAN

44. Tom Taylor introduced the plan which had been revised following board discussion and feedback, in particular drawing the link between immediate activity and long term aims and including more metrics and service standards. The plan committed us to publishing a mid-year review, which would be an improvement in our accountability. He said that the resource envelope was as discussed at our last meeting.
45. Each of the Directors set out their headline priorities – and added any internal development issues that were not reflected in the published text.
46. We asked Tom Taylor to ensure that sufficient work was undertaken on workforce planning, particularly in light of the Select Committee report on level crossings We would also need to publish something in relation to plans if we were asked to take on a role in roads. [\[Action K\]](#)
47. We also asked him formally to review our status as a civil service organisation and report back to the Board. [\[Action J\]](#)
48. We emphasised our commitment to ORR being more transparent.
49. Ian Prosser noted the shift in inspectors' time to over 60% proactive inspection, thereby improving supervision of dutyholders. Our aim was that NR should recognise the same issues and reach the same conclusions as ORR did, but before we pointed them out.
50. John Larkinson said that the business plan objectives did not map neatly across the directors' responsibilities but he and Joanna Whittington had clear

- boundaries agreed. He thought that the current team would be stretched in terms of progress on consumer issues, and that there would be a significant, complex and challenging workload on monitoring of NR (which reclassification would make more difficult). He also thought we would be stretched on developing a new access policy and thinking about on-rail competition.
51. We accepted that current access applications must be considered under existing policy. We agreed that we must have the resourcing to review the policy properly and that might lead to changes in resourcing because of its importance. We suggested that we should move quickly to discuss these issues further (by the June meeting). [\[Action L\]](#)
 52. We asked that the team consider whether more should be said about Scotland and Wales in the published document. We also suggested that the language around monitoring should reflect the move to route-based reporting and monitoring wherever appropriate.
 53. Dan Brown assured us that he was considering the possible impact of next year's general election on the industry and the ORR, and other strategic issues which it would be inappropriate to include in the published plan.
 54. Joanna Whittington said that more work was needed on our strategic approach to PR18 – the 'big ticket' items. She wanted to review the relevant evidence in setting priorities. That would mean spending some time this year pulling evidence together, setting internal workstream priorities and developing a clear message for the industry. RME had done well to deliver PR13, but she wanted to develop RME's capability to maximise their impact. Her focus this year would be to build the evidence base for making key decisions on the approach to PR18.
 55. Juliet Lazarus reminded the Board that the competition team was very small and had a big case on already. The Board would need to consider whether we had the right level of resources on competition.
 56. We challenged the executive to tell us whether there was enough capacity in ORR to deliver this plan. We wanted a stretching plan, but they must help the Board understand the risks and emerging issues so that we could support their delivery.
 57. Richard Price said that there were real capability issues in different areas: some were about behaviours and discipline and some about specific skills. The executive team had identified these and were working on them – things were getting better. The plan was stretching, but it should be within reach. Much of the organisational improvement would not be trailed in the public plan, but its importance was very well recognised by the team.
 58. Alan Price noted that he expected his team to be staffed up by the beginning of the year to meet the new requirements of CP5, particularly additional analytical capability for monitoring purposes. He thought that changing relationships with NR and TOCs, including joint meetings on routes, would help drive improvements. He noted that the civils adjustment mechanism had an unanticipated benefit, in that it would help with investment to improve weather resilience.
 59. Dan Brown talked about activity in the year that would support long term aspirations. Reclassification was still being worked through, with governance conversations in hand between NR and the government. Thinking would be shared with the Board and any views fed back. We needed to be alert to the risk that the department might do something in the process of reclassification

- that inadvertently caused confusion in the industry about the demarcation between the government and the regulator's role. We also noted the importance of having a Board discussion on value for money as soon as possible – both ORR's and how ORR assesses vfm in the sector. **[Action M]**
60. We noted the importance of being able to explain what ORR delivers for consumers and the advantages of independent economic regulation in a post-reclassification period.
61. We approved the business plan subject to final sign off by the Chair. We congratulated Tom and the executive team on their best business plan yet. This had been a very helpful and effective dialogue. We asked the executive to reflect on whether emerging capability gaps were becoming more significant and if so whether they needed anything from us in resolving this. **[Action N]**

Item 8 **COMMUNICATIONS STRATEGY**

62. Richard Emmott introduced the updated Communications Strategy which reflected the work undertaken to strengthen the team and the findings of perception research. The strategy focused on influencing the key reputational drivers: safety, vfm and passengers. We would develop narratives on each area for segmented audiences. The strategy also proposed rationalising our current public reporting and setting perception objectives on a one, three and five year time period.

Paragraph 63 has been redacted as relating to stakeholder relationships.

64. We noted the big political themes around cost of living and the future of regulation plus the 2015 election. Less obviously, there was an emerging debate about the public sector's role in financing risk in essential public services. We needed to have a robust view and story around the benefits of economic regulation.
65. We noted that our LTRS¹ had raised a number of longer term questions and stimulated useful discussion in the industry and government. We should consider whether the next step was for us to develop possible solutions to those questions. In order to do so we would need to develop our thinking on issues such as the effectiveness of incentives in the industry, government's role in managing the money in the reclassified NR, etc.
66. We agreed that Joanna Whittington would work with her team on some of these thought leadership pieces over the summer **[Action O]** for us to consider later in the year.
67. We noted the continuing importance of clarity in our messaging and Richard Emmott reminded us of the risk of wilful misinterpretation of our publications – which it was hard to remove.
68. We asked how much the communications strategy dovetailed to the stakeholder engagement strategy. Richard described the local management approach which was developing the comms team's understanding of industry

¹ Long Term Regulatory Statement, <http://orr.gov.uk/publications/policies-and-statements/opportunities-and-challenges-for-the-railway-orr-long-term-regulatory-statement>

issues, risks and opportunities. The Board also asked for more to be done with MPs.

69. We noted that the new website would be the focus of considerable activity and followed by an improved intranet – which was essential to further improving our staff engagement.

Item 9 GOVERNANCE UPDATE

70. Tess Sanford introduced the paper. The time critical element was the approval of revised Board Procedures to accommodate new competition processes. The procedures had been updated to reflect the decisions taken by the Board in November 2013.
71. We had rehearsed some of these issues when we had considered what governance we wished to use to manage the roads function.
72. After discussion we noted that each competition case decision group (CCDG) would require detailed terms of reference and delegation. We were content that issues such as reporting progress to the Board could be captured in those documents, which would need board approval.
73. We agreed to adopt the revised board procedures [\[Action P\]](#)
74. The later parts of the paper were not time critical.
75. The Chair reminded us that the committee review had been set up to consider the underlying issue of what business came to the Board across all ORR's various responsibilities. It was clear that different processes had developed in different parts of our functions over time, but they had not been reviewed for coherence against each other. This was rooted in a question about what sort of board we wanted to be and she was keen to find time in the programme to allow us to explore that question.
76. Her own view was captured in the paper. She proposed that we should move to a more decentralised scrutiny structure, with significant issues being reported to, and considered at, the board. There was a risk that collective responsibility was undermined so it would be important to ensure that every member of the board understood and supported the proposals from any committees.
77. We asked that time be found on the forward programme for us to debate a fresh approach to governance. [\[Action Q\]](#)

Item 10 FEEDBACK FROM RECENT BOARD COMMITTEE MEETINGS

78. **Audit Committee:** Tracey Barlow noted that the NAO had again been complimentary about our approach to the year end audit, although we had lost the two senior staff members who had previously managed the process.
79. She also reported on a shared procurement of internal audit services which had been run by the regulators' group in response to a drive for cost savings. The process had produced only one tender and the appointment had been made – but the cost was higher than our existing supplier (who had declined to tender). This was not satisfactory and the Committee had asked for more information. She would report back to the Board [\[Action R\]](#)
80. **Safety Regulation Committee:** Mark Fairbairn reported on a presentation from NR on their proposed national operating/ERTMS strategy. This was

envisaged as a 40 year programme. This was not acceptable either from a safety or from an economic perspective. The SRC had asked for further discussions to be held with NR. Mark would report back to the Board in the light of these discussions [**Action S**]

81. Both committees had also discussed Melvyn Neate's report – as noted earlier.

Item 11: CHAIR'S REPORT

82. The report was noted

Item 12: CHIEF EXECUTIVE'S REPORT

83. The report was noted.

Paragraph 84 has been redacted as relating to stakeholder relationships.

85. He reported on the launch of the UKRN² which was developing a programme of work including cross sectoral investment, consumer engagement and switching, affordability, cross-sector resilience and possible climate change resilience. The Board would be asked to approve an MOU between ORR and UKRN at their next meeting.

Item 13: BOARD MINUTES AND FORWARD PROGRAMME

86. The Board minutes for 25 February were approved. We asked for a report on the staff conference and proposals for improved board transparency to be added to the forward programme [**Action T**].

Item 14: MATTERS ARISING

87. We noted the log of actions. There were no matters arising.

Item 15: ANY OTHER BUSINESS

88. Tracey Barlow and Joanna Whittington had been trialling a new secure electronic transmission of board papers to their tablets using off the shelf apps. Both recommended this as easy to use and effective. The Secretariat team would issue guidance on how to take advantage of this smarter working option. Hard copy papers would continue to be supplied if requested. [**Action U**].

89. There was no other business additional to the original agenda.

Item 16: NETWORK RAIL PERFORMANCE PLAN AND OTHER OUTSTANDING AREAS FOR CP5

90. John Larkinson reported on progress on discussions about **measuring financial performance** in CP5. It was important for NR that performance was looked at in the round and that perverse incentives were avoided. Not all concerns had been resolved, but NR had been told how we would calculate performance and any adjustments. The Boards had an understanding that ORR would revisit that formula if it did not deliver a sensible outcome.

91. John reported that the **CP5 Delivery Plan** was broadly fit for purpose, although final detailed scrutiny was still underway.

² UK Regulators' Network

92. We asked whether the £12.5bn would be spent. Alan Price thought that some of the capital programme would slip, but most of it would be delivered. Plans for passenger involvement were still developing, but TOCs and NR were well engaged so staff were confident they would eventually be in place. The governance of the innovation fund was also not yet agreed but was in hand.
93. Outstanding issues for ORR included a better understanding of why volumes had changed in the final plan, and lack of clarity around buildings numbers. Essentially the plan was moving in the right direction.
94. Alan Price said that his team were gearing up to review the **CP4 outturn performance** figures as soon as they were available: they were also considering how to treat extreme weather periods. Juliet Lazarus reminded us that the Long Distance order was in place and investigations on going on other routes. Options for mitigating the existing order were very limited.
95. Alan Price reported on the **CP5 performance plan**. The plan would set out NR's plans for recovering the trajectory on PPM and ORR would judge against it whether NR were doing everything reasonably practicable to deliver performance. Overall the plan was coming together, it had been discussed with TOCs and should meet ORR's requirements. We asked for the plan to be brought to the Board in April. [\[Action V\]](#)
96. We discussed **NR's management incentive plan** in advance of Richard Parry Jones joining the meeting. We wanted NR to be able to attract good people and incentivise its management through a system which allowed it to manage its senior team effectively. Reclassification had heightened public and political focus on the existing scheme and made the Minister more obviously accountable for senior pay. There was very little guidance available from the shareholder executive because of the structure of the company. It was clear however that the move to a state owned company was likely to lead to a shift in structure towards consolidated pay.
97. ORR's role in senior pay was limited to determining whether the proposed MIP met the relevant licence conditions and assessing organisational performance each year.
98. After discussion we agreed that our aim was for NR to have the best possible mechanism for incentivising its senior people and that what we wanted to see most was effective responses to poor performance.

Network Rail plans for a new MIP³

99. Richard Parry Jones (Chair) and Paula Hayes (Head of Reward and Benefits) of Network Rail joined the meeting. Richard thanked us for finding time to discuss the issue as part of their consultation in developing firmer plans. He brought an updated slide pack giving examples of the underlying detail.

Paragraphs 100-108 have been redacted as relating to the internal management of Network Rail

109. NR believed that their proposals met the licence requirement, but not their existing incentives policy, which would need to be amended. They would be grateful of an early indication from ORR if their proposals did not seem likely to meet the licence requirement.

³ Management Incentive plan

110. We asked to see the business case for the change and the elements underpinning sustainability. We promised to consider the issue finally at our April board meeting. [\[Action W\]](#)
RPJ and PH left the meeting.
111. We agreed that we needed to look at the overall pattern of incentives we have for NR to see if there were enough other levers to reduce our reliance on senior pay. We noted that the licence condition required NR to meet its incentive policy, but amending that policy would meet the condition. One outstanding issue might be the requirement for a long term element in the scheme and the adequacy of the new system in that respect would need to be looked at.
112. We asked John Larkinson to draft a revised set of principles to replace those that fell away at the end of CP4. It was important that the new system reflected the imposition of financial penalties in assessing performance.
[\[Action X\]](#)

