

**THE OFFICE OF RAIL AND ROAD**

**124th BOARD MEETING**

**09:00-15:00, TUESDAY 22 MARCH 2016**

**ONE KEMBLE STREET, LONDON, WC2B 4AN**

**Non-executive members:** Stephen Glaister (Chair), Tracey Barlow, Bob Holland, Michael Luger, Justin McCracken,

**Executive members:** Joanna Whittington (Chief Executive), Ian Prosser (Director Railway Safety),

**Executive directors:** Graham Richards (Director Railway Planning and Performance)

**In attendance, all items:** Tess Sanford (Board Secretary), Russell Grossman (Director Communications), Juliet Lazarus (Director Legal Services), Dan Brown (Director Strategy and Policy)

Tom Taylor (Director Corporate Operations *to item 5*)

**Other ORR staff in attendance are shown in the text.**

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. John Larkinson (Director Railway Markets and Economics), and Peter Antolik (Director Highways) had sent apologies.

**Item 2 DECLARATIONS OF INTEREST**

2. None relevant to this agenda

**Item 3 APPROVAL OF PREVIOUS MINUTES**

3. The minutes were approved subject to some minor corrections.

**Item 4: MONTHLY HEADLINES**

4. Ian Prosser reported on:
  - A visit to West Coast Railways to review their actions since the prohibition notice and set conditions for its removal.
  - His engagement with Network Rail (NR) on their Business Plan;
  - health and safety performance across the industry as we approach year end – particularly noting that so far this year there had been no industry-caused fatalities among passengers, workers or the public; if this continues it would be the first year on record.
  - Feedback on the industry emergency preparedness exercise including some concerns about the speed of Health and Safety Executive's (HSE) response and the limitations of ORR's information and communications technology;
  - Myth-busting engagement with stakeholders around clarifying the importance of risk based assessment of the cost of safety, particularly in terms of electrical standards and level crossings.

5. Graham Richards reported on:
  - Publication of passenger usage statistics (revenue totalled £2.4 billion, a 4% increase compared to Q3 last year).
  - Authorisation of new rolling stock to be introduced on Thameslink in April in 13 calendar days (well within our service standard of 28 days).
  - Work with industry on possible new metrics to measure passenger punctuality; exploring measures that more effectively represent passenger experience, such as excess journey time and all station right time arrivals. This was presented by the industry to Clare Perry (Rail Minister) on 16th March and seemed to be well received.
  - ORR's check on NR's preparedness for Easter works, focussing on the quality of operational contingency plans. In a change to current procedure, NR ran scenario testing in advance.
  
6. In John Larkinson's absence, Joanna Whittington highlighted:
  - ORR's response to the super-complaint which was published within 90 days and drew a balanced response from the complainant. There was significant positive media coverage - broadcast, radio, press and digital. Overall an impactful piece of work from a cross discipline team showing how the regulator adds value.
  - Publication of the GB rail financials. In 2014-15, Rail industry received £13.5 billion. 71% was from passengers, with governments providing 26% of funding.
  - The ECML hearing went well. The team is writing to applicants setting out ORR's position on various technical issues. This is part of the preparation for the April board.
  
7. As chief executive, Joanna Whittington reported on:
  - Her continuing internal engagement work including reinstating quarterly 'meet the CEO' sessions for new starters, and developing stakeholder relationships.
  - The first tri-lateral meeting between Bernadette Kelly (DG Rail DfT) , Mark Carne (CEO, NR) and herself.
  - Meeting parliamentarians: Claire Perry, Transport Minister (with Stephen) – an introductory meeting which focused on the supercomplaint response. Louise Ellman (Chair of the Transport Select Committee) was also briefed ahead of that announcement.
  
8. Joanna went on to give a high level overview of the Budget and the various reviews that government had reported on, in advance of Dan Brown's briefing later on the agenda. NEDs had received a note on Budget announcements last week and there was time set aside on the agenda later in the day.
  
9. She highlighted key points following the publication of the Shaw report and DfT's ministerial statement, and Treasury and BIS requirements on regulators to look at options for efficiency improvements through joint working. These

were mostly already captured in the UKRN<sup>1</sup> work plan for next year and would be pursued by UKRN members where the business case justified it.

10. Joanna also set out the way that the executive planned to work with DfT in developing an MOU and new statutory guidance and in any consideration of streamlining ORR's duties.

### *Highways*

11. Highways England was largely delivering its capital programme commitments for 2015-16, but the team remain concerned that it has not yet set out a clear baseline of schedule, cost and output information for the remainder of Road Period 1.

### *Communications*

12. We used the opportunity of the super-complaint publication to maximise coverage for ORR's work and the value of the regulator in protecting the interests of the travelling public.
13. Our ComRes annual stakeholder survey is underway – Russell will update the Board on the results in May.
14. We have progressed development of the 'ORR Story' and filmed a number of directors for 'stock' material to explain the work of ORR.

## **Item 5      REGULAR REPORTS**

15. The Board discussed monthly reports on rail safety and the NR CP5 Tracker,

### **SAFETY**

16. The board noted IP's update on the situation with West Coast Railways and his intention to lift the prohibition notice. They discussed the risk that the previous pattern of immediate compliance followed by a drift back to old habits would be repeated. Ian explained why he thought there would be a more acceptable outcome this time, mostly around improvements to driver management. His team would be monitoring the operation very carefully.

### **CP5 TRACKER**

17. Graham reported that the team were reviewing the tracker to reflect any changes to the way that NR is monitored.

## **ITEM 6      HEATHROW AIRPORT LIMITED UPDATE**

18. Juliet Lazarus reported on responses to the consultation on the Board's 'minded to' decision in relation to Heathrow Airport Limited's ability to levy a charge to recover the historical costs of constructing the Heathrow Spur itself, and establish a charging framework for the Spur. Additional evidence had been offered by some of the parties (some of it apparently conflicting). The team

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<sup>1</sup> UK Regulators' Network

would be reviewing this evidence to see how it affected the current position. All parties were pushing for a swift decision and she sought the Board's agreement to a conference call between the April and May board meetings if the material points were susceptible to resolution without a face to face meeting.

19. The board noted the update and agreed to an additional call if necessary.

## **ITEM 7 HIGHWAYS BENCHMARKING PLAN**

*David Hunt joined the meeting for this item*

20. David Hunt introduced the paper which had been discussed at the Highways Committee the day before.
21. The board agreed the importance of establishing useful benchmarking information and considered the issues around identifying a current set of metrics that would remain comparable over time.
22. The board noted the importance of having a clear baseline against which an organisation could be monitored and that the baselines for Highways England had not yet been set in a way which could support close scrutiny.
23. The board agreed the priorities in the benchmarking plan and agreed that Peter Antolik should sign off the final version for publication.

## **ITEM 8 ORR BUSINESS PLANNING 2016-17**

24. The board agreed the budget allocations for 2016-17.
21. The board discussed and agreed the approach proposed to a published business plan document and a staff version of the same.

## **ITEM 9 APPOINTMENT OF INDEPENDENT MEMBER OF THE RISK AND AUDIT COMMITTEE**

22. The board agreed to reappoint Melvyn Neate as the Independent member of the Risk and Audit Committee on the same terms for a further two years.  
[Action: TS]

## **ITEM 10 MONITORING NR FOR THE REMAINDER OF CP5**

### **MONITORING ENHANCEMENTS DELIVERY**

23. The board agreed that ORR should continue to report publicly on milestones as baselined in the delivery plan.

## ECAM<sup>2</sup>

24. Graham reminded the board of the history of ECAM and its purpose. Although the original purpose has fallen away, there remained a need for some process which allows the regulator to establish the cost of new assets for the RAB.
25. DfT had undertaken to establish the efficient cost of enhancements and report against it. The board agreed that, subject to confirmation from the superior accounting officer at DfT that arrangements for this were in place, the ECAM process for England and Wales should be stopped. It would continue in Scotland where Transport Scotland found it useful.

## ENHANCEMENTS IMPROVEMENT PLAN

26. Staff were continuing to develop a proposition on this.

## PPM

27. The team had received the draft scorecard templates for the routes which appeared to have relevant route-specific performance metrics. They were working to understand which operators had been fully engaged in developing these. TOCs had given a mixed picture of engagement and it was vital for effective regulation that the process is effective and comprehensive and that the TOCs agreed their specific outputs.
28. The board noted that this was an emerging regulatory approach which could evolve in future years.
29. Graham noted that there were a number of operators where PPM<sup>3</sup> would be below target at the year end and the team was gathering information to consider whether investigations were appropriate.
30. IP noted some concerns about the Scotland deep alliance which his team were working on.

## LUNCH

### **ITEM 11      REVIEWS UPDATE**

*Dan Brown, Robert Cook, Chris Hemsley, Richard Gusanie joined the meeting*

31. The Board congratulated Dan on his effective work with the various review teams which had delivered outcomes that ORR was able to broadly welcome and recognised the importance of the organisation's role and constitution.
32. The Shaw review endorsed much of the approach planned through PR18 and in setting a helpful agenda for the future. The board discussed the importance of maintaining momentum and ensuring that the Shaw recommendations were not forgotten.
33. The executive would be reflecting on the outstanding issues arising from Shaw and the board asked for a future discussion about how ORR could best use the report to drive or underpin progress [Action: Dan Brown].

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<sup>2</sup> Enhancement cost adjustment mechanism

<sup>3</sup> Public performance measure

34. The DfT review had called for an MOU with the department, closer working with Transport Focus (where the relationship was already good) and not mentioned streamlining of ORR's duties. The process of developing an MOU would be helpful in establishing better mutual understanding between the organisations and would be an area of careful management focus. [Action: Joanna Whittington]
35. The board felt this outcome had secured a stable regulatory environment for the immediate future.
36. The BIS review required regulators to consider the business cases for co-location and shared services – which was already part of the UKRN work programme for next year. BIS had suggested that regulators' duties could be aligned and streamlined, but other areas of government were proposing additional duties, so this seemed a difficult area. The executive would consider opportunities for further improving efficiency and reducing costs by closer working.
37. The scope of the CMA's annual concurrency report would be broadened to include a judgement about whether regulatory changes facilitated competition and/or deregulation during the year. The board noted the risk to resources and senior management time that preparations for the annual report might present.

*Robert Cook left the meeting*

## **ITEM 12 PR18 INITIAL CONSULTATION**

38. Chris Hemsley described the way that elements of the Shaw report supported the PR18 agenda including route-based regulation, system operator, charging review and enhancement planning.
39. The board discussed the draft summary and commented that it needed to recognise the needs of different funders and the complexities of devolution more clearly. They also suggested that the document needed more explanation of issues around cost identification and allocation – who pays for what – in the context of charging.
40. The board asked that a final draft be circulated to the board as a below the line item in April for final comment. [Action: CH].

*Chris Hemsley and Richard Gusanie left the meeting*

## **ITEM 13 'MEASURING UP' ANNUAL RAIL PASSENGERS REPORT**

*Kasia Majkut joined the meeting with Stephanie Tobyn on speakerphone for this item.*

41. Kasia Majkut introduced the item and invited the Board to comment on the TOC<sup>4</sup> template for the document which was included in the presentation. The board discussed the audience for the document and the process for publication.

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<sup>4</sup> Train operating companies

42. All the TOCs had provided data which was now being put into the templates along with data from NR, ATOC and ourselves (including some from the supercomplaint investigation). The board discussed the level of comparability across TOCs. They asked the team to consider whether the information could be expressed on a route basis in future.
43. The board agreed that the report was a useful base-data report that would help identify priorities for ORR's work and should encourage TOCs to deliver improvements before the next report.

## **ITEM 14 FEEDBACK FROM COMMITTEE MEETINGS**

### **AUDIT AND RISK COMMITTEE**

44. Bob Holland reported on the committee's discussion of risk where recruitment and retention had been identified as the highest organisational risk. An internal audit report on the new risk management system had been encouraging and discussion at the meeting demonstrated that the executive's approach to identifying and mitigating risk had matured.
45. The NAO had given a very positive report about their initial annual financial audit.
46. The committee had taken a comprehensive update on the work which had been done to improve IT resilience and the preparations for the next IT services tender.

### **HEALTH AND SAFETY REGULATION COMMITTEE**

47. Justin McCracken said that the committee had considered updated risk chapters on level crossings and a new one on safety by design. Presentations on occupational health and from the electrical safety team had both highlighted the business case for better health and safety.
48. Concerns remained that senior commitments to improvement were not always consistently delivered by staff on the ground in NR.
49. The committee had also taken a report from Melvyn Neate on RSD<sup>5</sup>'s systems for reviewing business processes and his recommendations would be implemented.

### **HIGHWAYS COMMITTEE**

50. Stephen Glaister reported that in addition to a useful discussion on benchmarking, the committee had approved the publication of research into the supply chain, which he thought might be of wide interest. They had also discussed Highways England performance, particularly questions as to how to track HE's progress when the organisation was still in a fairly fluid state.

## **ITEM 15 ANY OTHER BUSINESS**

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<sup>5</sup> ORR's rail safety directorate

51. Non executive board members thanked the staff for a marked improvement in papers and the volume of the board packs. Shorter, more accessible papers were helping the NEDs carry out their roles effectively.
52. The board agreed to continue with the current format of meetings for a further three month period. They found the context section at the beginning particularly helpful.
53. The next board meeting would be held in Manchester along with site visits and a stakeholder dinner. Board members agreed that the purpose of the stakeholder event was to enable them to hear directly from as many stakeholders as possible about concerns and issues and they were content with the proposed format.