

Office of Rail Regulation
Minutes of the second session 101st Board meeting
on 28 January 2014
(09:00-16:30), ORR offices, One Kemble Street, London – Room 1

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)

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 (interim Director of Railway Markets and Economics), Gary Taylor (Assistant Board Secretary)

Item 6: Richard Coates and Gordon Cole; item 7: Rob Plaskitt and Ian Williams
item 8: John Holmes, Nigel Fisher

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. There had been some overnight changes to the agenda to accommodate pressing business. There were two alterations: the CP5 success measures and the Channel Tunnel regulation papers had been deferred to the March meeting. The meeting agreed that the overall approach to the Channel Tunnel issues was broadly correct and the team should not suspend activity pending the Board discussion.
2. There were no apologies.

Item 2: Declarations of interest

3. There were no declarations of interest.

Item 3: Network Rail performance measure and acceptance of the Final Determination

4. The previous day's discussion, had identified questions for the NR NEDs at the joint meeting scheduled for the next afternoon. The agenda NR had proposed was not appropriate and a new one would be given. There was a difficult balance to be struck between listening carefully to their position and avoiding regulatory capture. It was important that we ensured we were robust and independent in our deliberations.

Paragraphs 5-9 inclusive have been redacted as relating to policy development

10. We noted that the outturn of CP4 would not be known for some months and we would have to consider that in due course. We reminded ourselves that we were required under NR's licence to decide whether NR had done everything practicable in all the circumstances to deliver performance - that was a

judgement that could only be made in the knowledge of the outturn and all the circumstances.

11. It was very important that we remembered other stakeholders and particularly passengers in all our discussions with NR. CP4 outputs had not been achieved. Passengers and stakeholders would be entitled to feel disappointed.
12. We agreed the agenda for the meeting the next day.

Item 4 Half yearly Health and Safety Report

13. Ian Prosser reported to the board that an experienced track worker had been seriously injured at Newark while working as a lookout. [The worker died later from his injuries.]
14. The 6 monthly report had been broken into risk priority areas. Overall it showed passenger safety well up over CP4 with a good PIM reduction, mostly attributable to reduced numbers of infrastructure failures. The improvement notice on track geometry served in Scotland appeared to be having the desired effect. There was a new NR programme of maintenance which looked good on paper – although implementation was not yet in hand.
15. SPAD risk was up – mostly at unprotected signals – the RSSB risk rankings were being reviewed after a 15 year gap and staff were looking at unprotected signals that ought to be TPWS. ORR was also inspecting training processes for drivers. Ian explained that as the network grew more congested, drivers were more likely to see red signals.
16. 750+ Level crossings had been closed in CP4. The new NR level crossing managers were being kept under scrutiny but progress seemed positive.
17. PTI (passenger/train interface) would be increasingly significant and an industry group had been set up to keep this under review. Higher footfall through stations had not always been matched by appropriate infrastructure improvements and this would need to be watched to manage passenger crowding.
18. NR's vegetation management needed improvement – this was a predictable problem and impacted on performance when preventive work was not done. A national enforcement notice had been served on embankment examinations. The work was a soft target for cost cutting but it was equally easy to reinstate and simple to deliver.
19. Workforce safety was a generally improving story in the industry but not in NR. Close call reporting was giving a better overall picture, but not yet leading to changed behaviours.
20. We noted that driver inspections now included issues around worker fatigue – an area of major concern for Ian. ORR's occupational health programme (for the industry) would be brought to the Board in March for discussion.
21. We noted that the strategy for managing the changeover from TPWS (Train protection warning system) to ERTMS (European Rail Traffic Management System) would be discussed at the March meeting of the Safety Regulation Committee (SRC). ORR's participation would be coordinated between the Safety and Planning & Performance directorates.

22. We continued to press for safety information disaggregated by route and Ian said there would be more in the annual H&S report as RSSB were working on this. NR PIM would be available by route in the summer and CP5 reporting would also be more route based.
23. We asked for the annual report to include, against each key risk, a note of anything that the Board needed to do or that ORR was already doing to address that risk. We noted the importance of the resource discussion scheduled as part of the business planning item on the agenda later today.
24. Richard Emmott drew our attention to the forthcoming Level Crossing report from the Transport Select Committee and to the Supreme Court judgment which dismissed NR's appeal against a £500,000 fine relating to severe injuries to a boy at Wrights Crossing. The published judgment included comments relating NR's management bonuses to failures of safety management.
25. The monthly report included comment on this case.

Item 5 Health and Safety Monthly report

26. Ian noted the 10 year anniversary of the Tebay incident in which four track workers were killed. 70 enforcement notices on track worker safety had been issued since then and this continued to be an area where we needed to see significant improvement.
27. Ian reported that the HSE triennial review had recommended that ORR engage on major rail projects early, rather than HSE covering development and then handing off to ORR when operations started. This would allow us to pursue safety by design on major projects like HS2 and Crossrail.
28. The Chair suggested that SRC review the HSE triennial review to see if there was any read across for ORR. **[Action: SRC forward programme]**
29. We delegated to Ian the approval of the amendments to the RSSB constitution which he reported.
30. Ian said that inspectors would be monitoring carefully safety critical roles in the NR delivery units – particularly in the light of the forthcoming reductions in maintenance headcount. We were also continuing to counter local mis-reporting of the settlement where ORR had deliberately aimed off maintenance budget reductions because of safety concerns but staff seemed to think that the budgets had been cut.
31. Some board members had noticed increased wait times at local level crossings and said it would be useful to explain to local communities why waits were being increased (if they were). There was concern that people would be tempted to take more risks to get across when the barriers were already moving if they knew a long delay was coming. Ian said he would follow this up with other general level crossing issues.

Item 6: ORR's proposed role in roads

32. John Larkinson updated us on discussions with DfT on the proposed monitor role on roads. He noted that DfT continued to refuse to allow us to speak directly with the Highways Agency and briefed us on some of the arguments that were being made against giving ORR this role. We speculated on the various

models that were available to DfT and where these might lead ORR, but we recognised that this was a matter for government at this stage.

33. We agreed that we felt there was a synergy across funding models and strategic thinking on road and railway; that having a single body with high levels of asset expertise would leverage the best information and advice for government, and that we were well placed to take on the independent monitoring and scrutiny role proposed. The precise contribution ORR could make would depend on what was requested and funded by DfT, and would become clearer as DfT went through the process of developing the first road investment strategy (RIS) for 2015. We believed that using ORR for this function would deliver more benefit for the UK across both road and rail sectors than a single purpose organisation could on roads alone. We also concluded that ORR had real professional expertise to offer on roads from its core expertise on rail – eg setting of KPIs, monitoring of asset management and performance, setting of stretching targets, etc. We agreed that we should work positively to secure the role and sufficient funding to deliver it well.
34. We discussed how the ORR board would secure appropriate quality external advice on roads and thought that an expert panel would be one possible mechanism – funding for this and the role as a whole would need to be adequately budgeted. We would need to be very clear about ORR's role – would we be expected only to comment on evidence underpinning HA advice, or to offer our own advice, for example. The team had scoped three levels of activity and priced them. The sums involved were between £1.8m and £2.5m. These were higher than DfT had originally proposed, but John Larkinson said that DfT were sighted on our developing thinking and had not challenged the basis of the calculations. He assured us that the three options were internally robust – each would deliver something worthwhile for the cost. The Board was clear that if ORR was to take on the role, adequate funding from DfT was essential.
35. We discussed how much recruitment would be necessary and to what extent it would be possible to use consultants rather than permanent staff. We asked the team to reflect on whether they would need in-house skills in environmental management, project management, local authority planning, infrastructure investment and more modelling expertise.
36. One of the major risks in planning for a new function was scope creep – we needed to be very careful to scope the new role within the funds available and deliver it in budget. There would not be room for speculative activity outside the formal scope.
37. The Chair emphasised that the board's role would need to be carefully thought through.
38. We noted that the overall approach by staff was credible and should be continued. John Larkinson explained that the workload would increase very quickly once the role was given and he intended to draft his initial team from existing staff and then recruit later. We asked to see a timeline which set out key landmarks and timescales which would apply once government had made a decision. **[Action: JLK to update Board as plans develop]**

Item 7: Access applications for East Coast mainline

39. The team briefed us on a number of applications that were out for industry consultation before submission to ORR, some of which were on a significant scale. We would need to look at these under our existing open access policy when they arrived. However we recognised that our current open access policy is designed to allow access to marginal capacity, rather than to allocate large numbers of paths, and that it might need to be reviewed in the light of the WCML application considered in November 2013.
40. The team told us that they were reviewing the guidance on the existing policy, because it seemed some applicants had assumed that passing the Not Primarily Abstractive (NPA) test was, in itself, sufficient to receive rights. This had never been the case but the present guidance did give more prominence to the test than the policy itself.
41. We talked about the applications in the context of the forthcoming franchise competitions, which government would run to maximise the value of franchises. They would be seeking maximum capacity from the network for the franchises. It seemed likely that the allocation by ORR of significant rights to open access operators in response to these applications would seriously distort the competition for those franchises and reduce the likely return to government. We were also alert to the risk that some of the mooted applications could be about blocking competitors rather than offering genuine choice to passengers, because of the way we process applications individually.
42. The differences between the current UK model and the European preferred model for open rail competition were highlighted. It was recognised that this would need further discussion and exploration by the Board **[Action: new RME director to schedule update]**

Paragraph 43 has been redacted as relating to an existing application

43. []
44. John Larkinson told us that work was planned to look at capacity pricing for PR18. We were also pressing NR to think about maximising available capacity as a vital part of the system operator function. This would require it to significantly improve its timetabling skills.
45. We agreed that we should review our approach in this area and suggested that Joanna Whittington should make it a priority on her arrival. [Action: JW to think about system operator issues as part of PR18] We agreed that applications should be addressed under the policy in place when they are received. The guidance should be clarified to better articulate the policy. [Action: Access Team]

Paragraph 46 has been redacted as relating to an existing application

46. []
47. We returned to the question of how the industry got a better understanding of capacity. We were told that NR were unable to predict the capacity return on maintenance. We asked whether the additional paths projected as a result of enhancements and renewals, and some relationship between paths and line speed, might be a first step (pending the PR18 work). We agreed further thought was needed to be given by ORR as to how increases in capacity were assessed and reported. **[Action: as part of PR18 preparation consider how to measure and report on capacity]**

Item 8: Passenger Focus

48. Colin Foxall and David Hewitson of Passenger Focus (PF) were welcomed to the meeting. They said that the relationship with ORR was improving and was a very positive one – we were not competitors
49. Colin Foxall introduced PF as an evidence based consumer organisation designed to act as the driver for passenger improvements in a closed industry. The main vehicle was the national passenger survey (NPS) which was now widely respected and used as a benchmark for performance. Data from the NPS also signposted the other research that PF subsequently pursued.
50. Colin said that ORR’s consumer work was a helpful addition to the wider debate; it was important that the industry took a broad view of performance and did not focus only on the numbers.
51. He highlighted PF’s forthcoming programme of work, including the new role in franchising and the consumer parts of franchise bids. It was clear that disruption was a significant issue for passengers and that information and fare recovery needed proper codes of practice.
52. John Larkinson said that everything that ORR did impacted on passengers and the office needed to be joined up – the trick was to use passengers to drive a virtuous circle of improvement. We were also very clear that our work needed to be anchored in data and were increasingly aligned with Passenger Focus who offered valuable challenge on our policies and processes.
53. Colin said that consumers did not behave in line with economic theories: efficiency might drive an operational decision in one direction, but that might not be towards what passengers wanted. At the moment there were no mechanisms to balance the system: for example passengers could not make a decision between trains based on the likelihood of getting a seat at different times – and price mechanisms could not respond to that either. Smart ticketing would be a significant step forward but was still some way off.
54. We asked what PF wanted to see ORR focused on. Colin said that transparency on punctuality and crowding would be helpful as would RTTI. While the resilience of the network needed improvement, better communication would help passengers’ cope better with disruption. It was clear that a single bad experience was remembered for months after the event. PF had been reviewing relevant websites during the recent poor weather and had seen poor information and inappropriate design among other weaknesses.
55. Overall, better information resulted in better consumer responses when disruption occurred – particularly among occasional users.
56. The Chair thanked Colin and David Hewitson for attending and for their useful contribution to the debates about transparency and passengers in general.

Item 9 Business Planning

57. Tom Taylor explained how the executive had progressed since the useful discussion in November with the Board. The plans kept within the HMT

envelope and that had required some reallocation of resources to address the Board's priorities. Some items would be delivered over a longer period because they could not be resourced at full speed.

58. Richard Price said that significant lessons had been learned from the first year of the business planning system – particularly around the identification of appropriate milestones- and it should be a more useful management tool in 14/15. Plans were also in hand to use the functionality of the system to support our risk management and reporting.
59. We were reminded that reporter costs had figured prominently in the previous year's stakeholder event and Alan told us that ORR was moving away from using reporters so there was a good story to tell in terms of accountability.
60. Tom explained how the executive had developed their proposal on changes to the balance of resources within the complement and across directorates.
61. We asked Ian about the level of resourcing in RSD where we had noted a steady reduction. He said there would be a lower level of reactive work than previously planned, with more proactive work planned. Two new inspectors meant the training budget would need to be higher than previously. The central team on prosecutions was working well and we were better prepared for prosecutions, comfortably meeting timescales for the courts. He did not think there was any scope to reduce the overall resources of the directorate any further in subsequent years. He was content that he had sufficient resources to meet ORR's responsibilities at this time.
62. We asked whether sufficient investment was being made in training and development for staff – something that was vital in an environment where pay restraint was applied. The budget indicated that the 13/14 budget was significantly underspent. The team told us that spend for the current year was largely focused on Q4 because of the effect of PR13 on earlier quarters. The budget for 14/15 was based on £1,000 per staff member. The IIP report had been positive about the impact of learning and development. The executive reported some good impacts around staff being moved between functions and that they are planning to focus more on middle management development during the forthcoming year.
63. On the business plan itself, we emphasised the importance of definition around timescales and deliverables to help our accountability. We asked about the overall resource envelope, which had been provisionally accepted before changes like the reclassification of NR. Richard Price said that there was scope to seek funding for additional functions or if the Board thought that we would be unable to deliver our core functions within the envelope. The subletting of the third floor had been helpful in easing pressures but overall the plan could be delivered within the existing envelope.
64. The executive drew our attention to the potential risks around:
 - a. relying on RDG to deliver work on PR18 that was fit for our purposes;
 - b. the consumer programme where the yet-to-be-recruited Deputy Director would be formulating plans in the second half of the business year;

- c. transparency, where we agreed that the February Board paper would allow us to review the level of resources necessary; [Action]
 - d. competition – where a plan for more active use of our powers needed to be considered by the board when the deputy director was in post. [Action]
65. Tom Taylor explained that ORR had been carrying a number of vacancies which had been temporarily filled to deliver PR13 but were now being reallocated to meet business need in future.

Item 10: Feedback from Board Committees

66. Stephen Nelson briefed colleagues on the remuneration committee held the previous day. The executive had worked hard to reflect previous Board comments on the developing reward strategy including appropriate external advice and further work on what ‘competence’ really meant. The Committee had considered whether the new proposals would engage and incentivise people properly, and whether it would counter perceptions that the existing system was unfair. ORR was operating in a very constrained envelope for its financial reward strategy. The Committee had proposed one significant change to the executive proposal which was that consultation with staff should explore 15-25% of top performers receiving individual awards –against the current proposal of 10-15%.
67. The proposal was that the executive should consult staff on the proposals on organisation and individual awards and that work should continue to develop a deliverable system for team awards.
68. On the issue of base pay, a good case had been made to move towards job families with spot salaries which reflected market conditions for specific roles. This should eventually address inequalities that had resulted from the imposed pay freeze, although the low level of funding available meant that this would take time.
69. The Committee recommended that both proposals were taken to staff consultation by the executive.
70. Steve Walker reported on the Safety Regulation Committee, which had been his last meeting. They committee had continued the systematic review of key risk areas – looking this time at animal and vehicle incursion and the passenger/train interface and station safety. SRC had carefully scrutinised the allocation of RSD resources proposed in the business plan and endorsed them.
71. Tracey Barlow reported on the Audit and Risk Committee which had looked at how ORR was getting risk into its thinking, management and controls around government purchasing cards (where processes were sound, but reputational risk was high), new staff briefings and the TOR for the Committee had been reviewed by the Board in 2013.

Item 11: Chair’s report

72. The Chair drew to our attention the report of progress against our objectives for 13/14. Comments were invited to the Board Secretary.

Item 12: Chief Executive’s report

73. Richard Price explained that some milestones in the business plan had slipped and others needed to be re-cast. Overall, the milestones were not always appropriate or clear and the 14/15 business plan would be more coherent in that respect.
74. He was delighted to be able to report the appointment of Joanna Whittington and John Larkinson to Director roles and recruitment was in hand for the deputy director roles.
75. The website would be re-launched on February 12.

Item 13: Board minutes and forward programme

76. The Board minutes for 26 November 2013 and the notes of the board phone calls on December 11 and 16 were approved.

Item 14: Matters arising

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

Item 15: Any other business

78. We discussed the speaking note and handling approach for the meeting next day with the NR Board.