

THE OFFICE OF RAIL AND ROAD
MINUTES OF THE 122nd BOARD MEETING
09:00-14:30, TUESDAY 26 JANUARY 2016
ONE KEMBLE STREET, LONDON, WC2B 4AN

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

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

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

ORR staff in attendance are shown in the text.

Peter Antolik (Director Highways) was present for items 1 - 4

ITEM 1 APOLOGIES FOR ABSENCE

1 There were no apologies.

ITEM 2 DECLARATIONS OF INTEREST

2 No relevant interests were declared.

ITEM 3 APPROVAL OF DRAFT MINUTES OF DECEMBER BOARD

3 The shorter style of minutes was noted and approved. The minutes from December were agreed.

ITEM 4 MONTHLY HEADLINES FROM EXECUTIVE DIRECTORS

Ian Prosser – RSD – reported on:

- 4 the continuing absence of industry caused fatalities throughout 2015 and into 2016.
- 5 successful and unsuccessful prosecutions.
- 6 some of the impacts of bad weather on the network (eg Lamington Viaduct and Hexham earthslip) and the reactions of the NR management to these both locally and at senior level.
- 7 the final draft of the industry Health and Safety strategy which shows encouraging evidence of the industry working together.
- 8 discussions with RSSB about ORR's review of them. The review would not begin until the Shaw report has been published.

Alan Price – RPP – reported on:

- 9 £150m + work which was delivered successfully over Christmas (eg Borough viaduct, Lincolnshire resignalling, new station at Leeds).
- 10 a successful workshop to resolve issues with electrical clearances on GWEP.
- 11 a National Task Force meeting (stakeholder meeting for train performance) which had discussed PPM and how CP5 targets could be met.
- 12 a Ministerial (Clare Perry) meeting with MPs affected by GTR performance issues.
- 13 DfT's query about our monitoring of HS1's rate of cost recovery.

John Larkinson – RME reported on:

- 14 a smooth handover from Joanna with excellent support and engagement from Deputy Directors.
- 15 the start of procurement of rolling stock for WCML by Alliance (ie meeting a condition of award of access).
- 16 next steps in the ECML open access decisions: DfT had commented in a public consultation that their decisions on investment would be affected by ORR's decisions on open access.
- 17 the super complaint and progress towards a decision by the deadline.
- 18 the broadening scope of asset disposals under consideration by NR.

Joanna Whittington CEO reported:

- 19 The Shaw review, which was evolving quickly and also progress with the DfT review
- 20 The final decision on Project Marshall had been published.
- 21 The new HS2 Bill which contains a new duty for ORR to facilitate construction of HS2 without overriding ORR's other S.4 duties.
- 22 Delay to the introduction of ORR's powers on the channel tunnel: the team were working with Araf and Eurotunnel to prepare for the role in particular in relation to the review of the Network Statement.
- 23 ORR's efficiency review of Highways England.
- 24 ORR's work with DfT on RIS2 and the change control for RIS1.
- 25 Plans to move private office into the tower at OKS.
- 26 Confirmation of next year's funding for rail and road from HMT and DfT respectively.

- 27 The Chair thanked the Directors for their updates.

Item 5 REGULAR REPORTS

Tom Taylor joined the meeting for this item

- 28 The monthly safety report, monthly CP5 Tracker and Quarter 3 report against the business plan had been circulated and were noted.
- 29 The board discussed the impact of bad weather on rail asset condition and how NR was responding in terms of future asset management.
- 30 NR was due to supply an updated business plan which would enable the team to revisit ORR's stated concerns about the potential implications for safety and sustainability of the network. The board was reminded that NR was working under a fixed funding cap.
- 31 The board noted that the team were seeking clarity on the public comment by DfT about how their choices about investment on ECML would depend on ORR's decisions on open access. **[Action: John]** This would provide important context for the final decision. The board would receive an update on ECML in February and could expect to take decisions in April.
- 32 An additional board meeting (by teleconference) would be arranged at a time to suit the *Which?* supercomplaint critical path **[Action: board secretary]**.
- 33 Joanna reported that the Nichols report had been published.
- 34 The board noted that the current year budget showed a projected underspend – a recurring pattern at ORR. This would be discussed under business planning later on the agenda.

ITEM 6 UPDATED MEMORANDUM OF UNDERSTANDING BETWEEN THE CMA AND ORR

- 35 Juliet set out the background to the review. The board agreed the MOU and that Joanna should sign the final version on behalf of ORR. **[Action: Joanna]**

ITEM 7 HEALTH AND SAFETY COMPLIANCE AND ENFORCEMENT POLICY STATEMENT

Sally Williams joined the meeting for this item

- 36 Ian Prosser explained that the policy is reviewed regularly following consultation in the industry. The principles underpinning the policy had not changed - language and guidance were designed to help duty holders understand what might trigger regulatory intervention.
- 37 The board agreed the policy statement.

ITEM 8 HEATHROW SPUR – LONG TERM COSTS EXCEPTION

Laura Majithia and Rob Plaskitt joined the meeting for this item

- 38 The board thanked the team for their analysis of the evidence and the helpful slide pack.
- 39 Juliet Lazarus presented the slide pack, reminding the Board to focus on the evidence in determining whether the test for applying the exception (the 'paragraph 3 test') was passed or not passed. ORR's Section 4 duties were not relevant in this decision. No discussion of next steps or

implications of the decision should take place until that issue had been decided.

40 Juliet reminded the Board that the Heathrow airport link had been constructed before the regulations came into force and that the passage of time meant that records were patchy.

41 The board was satisfied that two of the three criteria for the exception were met in this case: the timeframe requirement and the improvement to efficiency or cost-effectiveness.

42 The remaining test was to determine whether *'the project could not otherwise have been undertaken without the prospect of such higher charges'*.

Paragraphs 43-49 have been redacted from the published version as regulatory decision and legal advice

50 The Board discussed next steps. Given that this might be a market sensitive decision, the team were asked to reach a view on the best way to announce the decision. .

51 There would be a short consultation on the decision and an oral progress update at the February board meeting. [Action: Juliet]

52 The team explained the next steps for HAL in determining its charges.

53 The communications team would keep the board informed on emerging issues.

ITEM 9 BUSINESS PLANNING

Tom Taylor joined the meeting for this item

54 The proposal de-coupled the public facing business plan document about ORR's aims and plans for the year from the detailed holding to account of the executive.

55 Following the Board's steer in November 2015, the executive had agreed budget allocations, aiming for more accurate budgeting.

56 The board noted the budget allocation and agreed the approach proposed to the public document and executive accountability.

ITEM 10 CP5 MONITORING

Graham Richards, Carl Hetherington and Nigel Fisher joined the meeting for this item.

57 John introduced the paper and set the context. The board reviewed and endorsed the list of general principles and assumptions set out in the paper.

58 The board noted that the MIP¹ letter was part of the public reporting regime which was not covered in the paper.

59 The board noted that some monitoring functions would not be easy to re-start once they had been stopped either because of changes in resources

¹An annual letter from ORR's board to NR's remuneration committee in relation to their Management incentive plan

or gaps in retrospective data. The board noted the discussions underway with NR on their internal scorecard.

60 The board discussed the various options and approaches set out in the paper although no preferred options were identified at this stage. Overall they were looking for a realistic, pragmatic approach which would encourage NR to deliver improvements during CP5.

61 The team would further explore these issues with NR and DfT and return to the board with a proposal at the February meeting. **[action: John]**

62 The team would reflect on whether the eventual proposal might mean that monitoring for Scotland would need to be on a different basis to England and Wales in order to meet the governments' different approaches. **[action: John]**.

Item 11 PR18 INITIAL CONSULTATION DOCUMENT

Chris Hemsley and Richard Gusanie joined the meeting for this item

63 John Larkinson introduced the paper and stressed the importance of this consultation in setting the scene for the later stages of PR18. The themes set out in the paper had already been seen and discussed by the board.

64 The document would be prepared for issue in April, but would need to reflect the findings of the Shaw report and other reviews which might alter the content or timetable for the periodic review. It was important however that the process was not delayed too far should the government reports be delayed, as this would store up delivery problems for later.

Item 12 ON RAIL COMPETITION

Chris Hemsley and Rishi Mandavia joined the meeting for this item

65 Chris Hemsley briefed the board on the Arup and Leigh Fisher (LF) studies and the key conclusions of both were noted. It was agreed that the LF report would be published in February. **[action: CH]**

66 CMA's chief executive would attend the February board meeting to update ORR on its consultation on on-rail competition. This consultation would be a welcome addition to the public debate. HMT and BIS were also taking an interest in the study, taking part in a cross-governmental workshop in February.

Item 13 RISKS TO ORR STRATEGIC OBJECTIVES

Tom Taylor joined the meeting for this item

67 The Audit and Risk committee had discussed in December the risks that ORR faced in delivering its strategic objectives.

The next paragraph has been redacted from the published version as internal policy development

Item 14 ANY OTHER BUSINESS

Committee memberships

- 69 The board noted the following revised memberships for its committees following the departures at the end of 2015.

Health and Safety Regulatory Committee: Chaired by Justin McCracken with Stephen Glaister, Bob Holland, Ian Prosser, Alan Price, Joanna Whittington, Juliet Lazarus

Highways Committee: chaired by Stephen Glaister with Tracey Barlow, Joanna Whittington, Peter Antolik, Graham Richards (with Terry Hill and Garrett Emmerson as independent members)

Audit and Risk Committee: chaired by Bob Holland with Michael Luger (with Melvyn Neate as independent member)

Remuneration Committee: chaired by Michael Luger with Tracey Barlow, Justin McCracken.

REMCO feedback (24 January)

- 70 Michael Luger reported on progress on career families – where Remco had sought assurance about the degree of understanding among staff. Changes to the SCS performance appraisal timetable and approach had been agreed.

Highways Committee feedback (24 January)

- 71 Stephen Glaister described the new ‘watchlist’ which underpinned the roads regulatory escalator. The committee had discussed Operation Stack and the questions it raised about HE’s approach to the public interest when responding to emergency issues. The committee had also agreed to respond to the Transport Select Committee on the question of all lane running.

NED feedback on DfT review discussions (24 January)

- 72 Justin, Michael and Bob had met with DfT officials on their review of rail regulation and reported on their discussions, which had focused largely around the benefits of regulatory independence and issues around the future treatment of enhancements.

Board visit to London Bridge (24 January)

- 73 The board agreed that the visit to the construction site at London Bridge on 25 January had been very helpful in understanding the scale of the project and the challenges that NR face in delivering it.

[Ends]