

Board effectiveness review

Report

April 2020

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1. INTRODUCTION AND METHODOLOGY

- 1.1 The Office of Rail and Road (ORR) is a non-Ministerial department accountable to Parliament and was established under the provisions of the Railways and Transport Safety Act 2003 (RTSA). It is the independent economic and safety regulator of Britain's railways, and is charged with monitoring the performance and efficiency of England's strategic road network, playing an important role in protecting the interests of rail and road users and future users. ORR has wide oversight duties across Network Rail and High Speed 1, the rail industry, Highways England, railways in Northern Ireland and the UK section of the Channel Tunnel.
- 1.2 Campbell Tickell (CT) was appointed in November 2019 to conduct a Board effectiveness review, with the stated aim of assisting the ORR Board in improving its effectiveness by reviewing the Board's current structures and processes, behaviours and decision making; and advising on improvements to support the Board in securing long term sustainable success for ORR. This document brings together all of the findings from the review.
- 1.3 The ORR Board currently has provision for 12 members, four of whom are Executive Directors. In line with the RTSA, the Secretary of State appoints the Chairman and at least four other members of the Board. Appointments are for up to five years (with scope for reappointment). ORR has four standing committees: Audit & Risk, Remunerations and Nominations, Health and Safety Regulatory, and Highways.
- 1.4 The review has been carried out over the period of November 2019 to February 2020. In carrying out this review we have undertaken the following activities:
- A review of key documents, policies and procedures;
 - Conducted two online self-assessment surveys. One survey was completed by all of ORR's Board members (both non-executive and executive) and the other by ORR's Directors and Deputy Directors. The survey asked respondents to assess the Board's effectiveness and how it may be enhanced;
 - Conduct of 10 stakeholder interviews with representatives from the Department for Transport, Highways England, Network Rail, Rail Accident Investigation Board, Rail Delivery Group, Rail Freight Group, Rail Industry Association, Rail Safety and Standards Board, and Transport for London;
 - Interviews with seven NEDs, the interim Chief Executive, two executive directors and the independent member of the Audit and Risk Committee. Interviews were also held with five Directors alongside a staff focus group with seven Deputy Directors;
 - Observation of an ORR Board meeting held on 26th November 2019; and
 - Discussion of findings with the Board on 24th February.

2. FINDINGS

2.1 This section sets out the findings from all of our interviews and from CT's observation of a Board meeting.

Stakeholder interviews

2.2 We summarise headlines from stakeholder interviews below.

2.3 There is widespread recognition that ORR has worked hard to position itself as an organisation that is open, transparent and approachable. For the most part, stakeholders were very positive in their perceptions of ORR's culture and felt staff represented the organisation well.

2.4 There were anxieties among all of the people we spoke to about what will transpire in the post-Williams Review space. Among stakeholders there is an appetite for ORR to be more proactive in being vocal about the functions that need to continue, whatever the body that is fashioned to execute them.

2.5 A few stakeholders recognised that ORR operates in a legislative framework that requires the organisation to be responsible for safety but also requires proportionality, and this duality may not always be straightforward to hold. There was encouragement for the Board to continue to ensure that safety interests and economic regulation are balanced. ORR was said to be very good at using robust frameworks (for example two interviewees mentioned RM3, the rail maturity framework) for assessing stakeholders' approach to safety.

2.6 One stakeholder underlined the critical role ORR has in holding Network Rail to account and suggested that its profile in this regard could be stronger. The Board might also consider whether it has the right profile of skills in relation to managing public money and change management.

2.7 There is evidence that the Board takes seriously its responsibilities to other stakeholders' interests. Two examples were given about the willing responsiveness of the ORR Board and Executive to rail safety investigations and recommendations.

2.8 A number of stakeholders commented on how impressed they are by the Chair and by the CEO (and it was clear that both have been active in attending events and meetings). The Chair was credited with helping to improve relationships with their organisations, while emphasising that the style of the relationship is professional, challenging, direct and clear. The CEO was seen as engaged and approachable in his dealings with fellow leaders. Other senior staff also drew compliments for their engagement and contributions.

2.9 A couple of people commented on the fact that (unsurprisingly) the wider Board is not hugely visible, though there was some awareness of individual NEDs.

Board observation

- 2.10 We observed ORR's Board meeting on 26 November 2019. There were no apologies for absence, and everyone was in attendance.
- 2.11 The Board papers were of good quality and followed a standard template. It was apparent that Board members had read the papers and that everyone had prepared for the meeting. Board members appeared to have a clear understanding of the items under discussion, even those items complex in nature. The dynamics whereby various report authors attended for their agenda items appeared to work well.
- 2.12 Overall, the Board exercised a good collective mind, displayed an impressive level of thought and demonstrated an ability to work through the diagnostics of issues presented to it. Board members were alive to the sensitivities of handling relationships with key stakeholders and appeared politically astute in their discussions.
- 2.13 Board discussion was refreshingly free of point scoring or grandstanding. Board members had clearly thought through their governance role throughout, and they were helped in this thinking by the Chief Executive. Throughout several of the debates 'golden threads' of public interest and value-for-money were woven into the Board discussions.
- 2.14 We saw lots of examples of critical challenge and problem solving in evidence, and of reciprocal challenge, for example from the Chief Executive to the Board. Staff made a concerted effort to contextualise an issue before going into specifics, and this seemed particularly helpful given the complexity of some of the issues at hand.
- 2.15 Within an overall context in which the dynamics between the NED and Executive Board members generally worked well, we did observe that some Board members contributed mainly in their perceived area of specialism.
- 2.16 Overall, the meeting was well chaired, and we observed the Chair summarising the outcome of discussions where needed and of routinely thanking staff for their input.
- 2.17 Among minor points we observed: it was a long meeting (six hours with 30 minutes for lunch); the agenda was very rail focused; there were a lot of handouts and verbal updates accompanying the Board papers; and it was surprising to see so many people around the Board table reliant on hard copies of the Board papers, rather than electronic Board software.

NED and senior staff feedback*Board leadership and duties*

- 2.18 The Williams Review sits in the background of ORR's role and creates a degree of limbo between ORR's current duties and whatever functions may follow as a result of the Review and a Government White Paper. Some Board and committee members would like to see the Board taking a more active and vocal role in shaping the policy debate (and this viewpoint was also advocated by most of the various stakeholders that we engaged, as

demonstrated in the previous sector of this report), while staff views were predominantly more cautious about speculating though Directors reported that they were better at predicting Board areas of interest.

- 2.19 The lack of a longer-term vision, and who owns it, appears a wider challenge for the industry and a source of frustration for some Board members and staff (and external stakeholders). As regards how ORR delivers its current role, it is clear that there are aspects of its remit that perhaps frustrate and wouldn't be an ideal starting point for a sectoral oversight body.

Board operations

- 2.20 The beginning of Board meetings, when Directors provide their updates, can become rather diffuse and have a negative impact on agenda timings and items lower down the agenda. The updates were seen to have value as an exercise in holding the Executive to account, but the majority of interviewees wanted more structure to this segment. Several Board members identified that a formal monthly CEO report (c. 10 pages), with input from other Directors, would help save time in Board meetings and provide a useful positioning piece at the beginning of meetings (and it was said to be important to have something that went 'across the range' monthly). There might still also be a separate health and safety report from the inspector of railways. A couple of interviewees suggested that it's important that safety isn't conflated with other issues and that the Board takes proper cognisance of safety matters.
- 2.21 For the most part, NEDs are positive about how their time is used: each Board member sets aside two days a month – one day is for a Committee, or a visit or a strategy day and the second day is for the Board meeting. (Board meetings are monthly aside from August and, normally, December.)
- 2.22 As we understand it, there has been an increasing focus on horizon scanning and looking ahead, with several Board workshops focused on working in this way, and NEDs are supportive of this way of working.
- 2.23 The general consensus is that Board papers have improved and are reasonably well written, but still have scope to be more strategic and thematic, and better targeted at drawing people's attention to the salient points. This is particularly true of the two key performance reports. The perception from at least a couple of NEDs is that ORR has expertise in collecting data and reports, but the challenge is around what 'surfaces' and that wider structural changes might be needed to realise the value, for example investment in data analysts.

Board culture and dynamics

- 2.24 It's clear that there is an intended injection of more dynamism into relationships (by the current Chair), and this is having a positive effect as the dynamics become increasingly embedded. Senior staff said that a lot of the time they got a positive reception when

presenting to the Board, felt that the Board asked sensible questions and did periodically challenge the organisational culture. The Board was said by some of the senior staff to excel at making tough decisions, and this was respected by them.

- 2.25 There are different views about who should be present at meetings but also a feeling that moving to a different model (e.g. fewer Directors present for the whole meeting) would create a different dynamic and in any case some of the areas for presentation are highly technical.
- 2.26 There was a lot of positive feedback for the interim CEO and a clear view from NEDs that the ORR is benefiting from having a good CEO at the helm with an approachable leadership style.
- 2.27 It was suggested that the Board would benefit from occasional NED-only time, whether formal or informal, and more feedback from the Chair in relation to external engagements when appropriate.
- 2.28 The impression we were left of ORR's culture is that it is naturally inclined to learning, perhaps because of the type of sector and challenges it straddles, and that it does this well.

Approach to risk

- 2.29 It is clear that ORR has invested a lot of effort in improving the risk management framework. Interviewees seemed satisfied that it has improved and that the quality of information around risk has improved. It was suggested that clarity of high-level strategic outcomes might further improve how risk is contextualised.
- 2.30 The Board does not carry out a risk appetite assessment; people had different views on how helpful this would be.
- 2.31 It was suggested that assurance mapping would benefit both the Board and the Audit and Risk Committee, and might also help orientate discussions on health and safety towards assurance rather than towards being reactive to events.

Governance framework

- 2.32 There is a concern for Board size to not grow too much. While one or two people were anxious about swelling the numbers from where they are currently, another expressed view was that populating the unfilled vacancies is important in terms of helping to share committee responsibilities.
- 2.33 There were some anxieties about how attractive ORR is to potential Board candidates and that other Boards can remunerate NEDs at better levels, and so it may be hard to attract the right industry skills in the future.
- 2.34 Several interviewees were explicit about the need to address the under-representation of women and people from a BAME background when vacancies on the Board are addressed. (Positively, in terms of staff considerations, we know that there is an audit of EDI under

way at ORR, which has been discussed at RemCo and that there is further research into gender pay matters, which has been discussed and supported by committee members.)

- 2.35 There were different views expressed about what kind of skills are most needed for the future on the Board, for example: a customer service perspective; succession planning for experience of roads; additional experience of the rail industry; asset management; expertise in economics and markets; additional commercial, operational experience; ideally (resources permitting) an IT or cyberrisk person on the Audit and Risk Committee. The issue of succession planning is both one of skills and of other diversity considerations, as well as looking where possible to level out 'cliff edges' in the renewal process.

Board effectiveness measures

- 2.36 The Director-organised 'teach ins' are part of the Board's collective learning and development. We would advise that it's helpful for the Board to consider as a unit what it most needs to learn and get to grips with in the year or 18 months ahead.
- 2.37 It is clear that a formal process for appraisal needs to be recommenced for the future.
- 2.38 As we understand it, there is a process under way to determine the ORR's stakeholder strategy, and NEDs' networks and skills will be utilised as appropriate.

Committees

- 2.39 General feedback from interviewees was that people were positive about all of the committees, their chairing, efficacy and remits. (Some points of detail were raised which have been fed back to the relevant Chairs.) We note, however, that staff feel that committees can lean too much towards requesting quite operational information from staff and that there are opportunity costs in complying with such requests.
- 2.40 From our discussions with stakeholders, it is clear that a high degree of comfort is derived from a separate place in the governance structure for road issues through the Highways Committee, and considerable confidence in the Committee Chair. We are not minded to suggest any change to the committee structure and would suggest instead that Highways is a standing item on Board meeting agendas.

Board support

- 2.41 Interviewees were positive about the support they receive from the Board Secretary. Her attitude was said to be consistently positive and constructive, highly efficient, and doing a good job against the background of having a tiny team.
- 2.42 A couple of people were keen for the Board and committees to have dedicated software for Board and committee papers, rather than PDFs.

3. DOCUMENT REVIEW

- 3.1 Generally, ORR appears to have a comprehensive and good quality suite of governance policies and documentation in place. It has clearly paid time and attention to its governance processes.
- 3.2 There is a well-planned forward programme for future Board meetings and there might be scope to introduce something similar for committee meetings.
- 3.3 While the NED application pack does provide an overview of the Board member role and a person specification, there may be benefit in drawing up detailed role descriptions for Board members and, in particular, for office holders. This description could also be included in a new formal written document covering succession planning, the selection process and the Department for Transport's role in that process.
- 3.4 ORR has an internal whistleblowing policy which is comprehensive, easy to understand and part of the staff handbook. The organisation can also be contacted by people externally who wish to 'blow the whistle' in respect of other organisations ORR regulates, with a website link that lets people report concerns. The online guidance is brief and there is no specific policy document or procedure note relating to external whistle-blowers. Given the sensitivity of this work ORR may wish to consider the need for a policy and/or procedure which sets out how ORR handles complaints from whistle blowers and how it will respond to anonymous reports. We do know that there is evidence that people have successfully raised issues with ORR through a number of channels, so the issue may be less about how effectively processes work inside ORR (our sense is that there is a programmatic way of dealing with issues) and more about greater published transparency about the procedure.
- 3.5 In terms of Board reporting, our view is that while reports are well-written, they have a tendency to be too operational and may not enable the Board to operate effectively at a strategic level – the reports are data rich but there is insufficient analysis of the data to allow the Board to judge outcomes.
- 3.6 We reviewed the ORR Business Plan, which covers ORR's internal operations and its responsibility to stakeholders to carry out its regulatory duties effectively, transparently and in a way that provides best value for money. The Service Standards for 2019- 20 are naturally focused on the administrative side of the business (since they are service standards). To an external reader, however, the focus appears based on what is easy to measure (timelines around processing paperwork) rather than what are important indicators of success. While we acknowledge the difficulties in doing this, we believe ORR could reflect on whether it can better measure the quality of what it does and the outcomes for stakeholders.

4. CONCLUSION AND RECOMMENDATIONS

- 4.1 The most important finding from this review is the external assurance we can provide that governance operates well at ORR and that the organisation's governance arrangements and documents are generally of a high quality.
- 4.2 Board business is generally well managed. The Board is thoughtful and informed, there are competent people and experts around the Board table who bring real skills, with Board members providing decent challenge, and generally respectful and courteous in their contributions. In terms of whether ORR is setting about its work well – an evidence-based regulator – all of our work suggests that it is.
- 4.3 There are also signs that the Board and Executive have steered improvements in the design of their work: whether establishing a culture in which relationships are respectful and boundaries for the most part observed, improving the structure of meetings or the presentation of papers.
- 4.4 The positivity stakeholders expressed about the culture of their relationships with ORR was striking, with particular praise for the Chair and CEO. This is something of note in an exercise of this kind and perhaps provides evidence of the value in the organisation looking outwards and looking to engage and understand industry perspectives.
- 4.5 Our comments around improvement must be understood against the background of a strong foundation, with no pressure on ORR to make changes. The focus of our efforts has been on how to optimise what the organisation has, and perhaps the most significant challenge is one in which ORR has little control – that of the external operating and political environment for the sector.
- 4.6 Our findings point to a transitional period for ORR and the Board. ORR's current duties obtain and must be observed but there is a sense of being in between the demands of one regime and the potential shape of another under a new Government. It is important to note that stakeholders are keen for ORR to articulate some kind of thought leadership in relation to the preservation of key functions for the sector (not least because of the organisation's credibility and standing with stakeholders), however they might be delivered.
- 4.7 There is a complexity about how a Board of this type adds value and we probed this in interviews. The Board cannot necessarily replicate the specialised expertise of some of the senior staff (though there is specialised expertise among the NEDs), but it can challenge assumptions and probe and play a 'sense-making' role. Getting the right kind of information feels more critical when replicated expertise isn't a given. The work ORR does is highly technical and needs a vehicle which makes sense of it together and how it plays out in the external world. Our reading of the Board is that it grasps this dimension of its role.

- 4.8 Generating the right kind of reporting for any Board is challenging, perhaps a little more so for ORR because of the very diverse nature of its remit. That said, we do see scope for ORR to develop its dashboard reporting to focus more on the difference it makes.
- 4.9 We have discussed recommendations and choices with the ORR Board to move further along the spectrum of continuous improvement. We set out below the actions to progress as well as statements of intent that the Board has determined as a result of this review.
- 4.10 Leadership and purpose**
- 4.10.1 As part of the White Paper process, ORR will continue to be proactive in progressing and shaping its role, with a plan to work with other stakeholders.
- 4.10.2 Separately to the White Paper, the Board will engage a number of times annually – but as the need arises – in horizon scanning.
- 4.10.3 In response to the report findings in respect of thought leadership, the Board will also look to ensure that the organisation’s expertise, evidence and insight is appropriately channelled into framing or prompting debate about cross-cutting themes that affect the sector and in which ORR has a locus to comment, e.g. approach to fines, enforcement, legal challenge. (Further consideration will be given to how this kind of subject matter is utilised by the Chairman and publicised more widely.)
- 4.10.4 As part of the above process, the Board will determine and ensure its risk appetite is aligned on a topic by topic basis.
- 4.11 Conduct of Board business**
- 4.11.1 The Board supports subject-based groups of staff attending Board meetings as part of the presentation and deliberation on a particular subject. It was felt that this offers a useful opportunity for exposure by the Board to the staff and the staff to the Board.
- 4.11.2 The Board recognises and supports the CEO’s freedom in keeping under review the attendance of non-Board members (Directors) in the interests of what best serves his management of the organisation.
- 4.11.3 There will be two key performance reports at the start of Board meetings, one a CEO’s report (that draws in contribution from other Directors’ work) and one a Chief Inspector’s report. There will be oral updates by the CEO at the meeting, as needed. The Board will trial this approach and review it within six months.
- 4.11.4 The Board is not looking to establish any target in respect of the length of Board meetings but will maintain a focus on ensuring meaningful content is under consideration at each meeting.

- 4.11.5 The Board will introduce a Board software package (ideally by mid-year). The secretariat will investigate the optimum process to implement this (cost and practicalities).

4.12 **Board effectiveness**

- 4.12.1 NEDs will meet without other Directors present a number of times per annum, preferably after a Board meeting has been conducted, to discuss the design of Board work and their own efficacy.
- 4.12.2 The Board will continue its efforts to appoint new NEDs to the Board.
- 4.12.3 The number of Executive members on the Board will remain unchanged.
- 4.12.4 As ORR's new role develops, a skills matrix (competence and capacity) will be developed for the whole governance structure (Board and committees) that takes account of those changes.
- 4.12.5 The Board is already focused on equality, diversity and inclusion to the degree to which it can control and influence these matters at ORR. No further action is required beyond what is already in hand.
- 4.12.6 There will be an annual appraisal process that takes the form of one-to-one discussions with Board members by the Chair; a note will be taken of these meetings.

4.13 **Committees**

- 4.13.1 In line with the White Paper process and the likely changes in ORR's role, the demands of change management are likely to precipitate the need for a new committee.
- 4.13.2 The Audit and Risk Committee will take up discussion about the report's recommendations for its work, including assurance mapping.
- 4.13.3 There will be a standing item on the Board meeting agenda for the Highways Committee.
- 4.13.4 There will be annual reviews of committee effectiveness which will be considered at Board in respect of any changes arising. Committees at the same time will consider their forward plan.

4.14 **ORR transparency:**

- 4.14.1 There will be a fuller description on ORR's website for how whistleblowing by external stakeholders will be handled.

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