

**THE OFFICE OF RAIL AND ROAD
182ND BOARD MEETING**

Tuesday 25 May 2021, 10:30 – 15:00

At 25 Cabot Square, E14 and by MS Teams

Non-executive members: Declan Collier (Chair), Stephen Glaister, Madeleine Hallward, Anne Heal, Bob Holland, Michael Luger, Justin McCracken in Cabot Square and Graham Mather online.

Executive members: John Larkinson (Chief Executive), Graham Richards (Director, Planning and Performance); Ian Prosser (Director, Railway Safety)

In attendance: Dan Brown (Director, Economics, Markets and Strategy), Russell Grossman (Director of Communications and interim Director, Corporate Operations), Juliet Lazarus (General Counsel), Tess Sanford (Board Secretary)

Other ORR staff in attendance were on-line and are shown in the minutes

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to this first face to face meeting of the ORR Board since February 2020.
2. There were no apologies.

Item 2 DECLARATIONS OF INTEREST

3. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

4. The board approved the minutes of the April 2021 meeting.
5. The board noted updates on the outstanding actions which were not yet due.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

6. Ian Prosser briefed the board on the issues with the Hitachi class 800s which had caused significant disruption to some services. Work was in hand to identify the root cause which was not yet known. The immediate challenge after the problem had been identified had been to decide which vehicles could continue to be used and which needed to be withdrawn for repair. A working standard for inspections was set to enable this distinction. ORR's safety and engineering teams had worked closely with industry to find a way through the immediate crisis. John Larkinson and Ian Prosser had briefed the rail minister. No enforcement action was being considered. A lessons learned exercise had been scoped by ORR to cover the technical and consumer impact (particularly available information, assisted travel and refund arrangements). DfT had also asked for that review to consider the contractual arrangements in place. The review was now being resourced and timetabled. ORR inspectors were on-site to ensure that the local inspections were being done well and were attending workshops to identify the underlying cause.

7. The board asked about the number of vehicles impacted and the impact on consumers.
8. The board noted other items in the report including: NR's invitation to ORR to sit on its safety validation panel as it restructured its maintenance function, a short update on the Carmont investigation, and progress on agreeing in-cab safety surveillance for drivers.
9. The board asked whether, in the light of the recent cable car accident in Italy, ORR had taken appropriate steps to ensure that heritage operators who had been closed during lockdown were ready to safely open to the public. The inspection team had worked closely with the industry to prepare and were alert to the risks of a long shutdown.
10. The board discussed safety at EuroTunnel (ET). *[the rest of paragraph 10 and paragraph 11 have been redacted pending discussion with ET]*
12. The board noted the confirmation that Sheffield Trams had no systemic issues around collisions and the letter to all tram operators requiring them to improve their understanding and compliance of RIDDOR reporting.
13. The board noted the report including: work to encourage guidance that was consistent between national governments on mask wearing on public transport, the planned return of full driver training in June, the importance of on-train staff in supporting passenger confidence, the return of revenue protection to the network, work with the North Yorkshire Railways to facilitate an action film shoot and the investigation into the derailment at Dalwhinnie.
14. HSRC in June would receive an update on Network Rail's track worker safety taskforces.

Item 5 CHIEF EXECUTIVE'S REPORT

15. John Larkinson updated the board on recent developments and took questions on the written report.
This report is redacted from the published version as time-sensitive and covering confidential issues.

Item 6 HIGHWAYS UPDATE

25. Graham Richards noted that key issues appeared elsewhere on the agenda and there was nothing to highlight in this report.

Item 7 ANNUAL REPORT AND ACCOUNTS

Lucy Doubleday joined the meeting for this item.

26. Lucy Doubleday presented the draft report and accounts for comment following scrutiny by the Audit and Risk Committee. There was one outstanding issue which remained before the audit opinion could be finalised and this might delay the laying of the report. The necessary retrospective approvals were expected to be granted and the audit opinion should then be unqualified. If there was a different outcome the board would be informed promptly.
27. The board queried how the process error which required a retrospective approval had happened. An additional requirement for Cabinet Office approval had been overlooked during the procurement process and this error had been picked up

during the internal audit. Russell Grossman reported that he expected to receive the necessary approvals in time for laying before summer recess.

28. The board queried some of the details and these would be addressed in the final draft. This was an important document for the record, but not one which ORR used actively in its communications, so it simply needed to be factually accurate.
29. The board approved the annual report and accounts subject to final audit approval.

Item 8 GOVERNANCE – REVISED BOARD PROCEDURES

30. Tess Sanford introduced the revised procedures. The board noted and approved the changes to the main procedures.
31. The board discussed the importance of clarity of principle around conflicts of interest and particularly the materiality of any potential conflict and its time-limits. The board noted the need for the Board Procedures to include the restrictions included in the statute.
32. It was important that ORR could recruit people with direct experience of its regulatees to its board, and this added levels of complexity to the rules around conflicts. The board asked for the annex on conflicts to be reviewed again to see if it could be made simpler and clearer. **[Action: Juliet Lazarus and Tess Sanford]**.
33. The board otherwise accepted the recommendations in the paper and endorsed the proposed changes.

Item 9 ANNUAL REPORTING – NETWORK RAIL

Richard Coates and Sneha Patel joined the meeting for this item.

34. The team introduced the paper which set out the current draft key messages for ORR's report on Network Rail's performance for the last business year.
35. Overall the board welcomed the report as comprehensive and clear. The board debated whether the balance between positive messages and areas of continuing concern was appropriate. The report would be launched alongside the Chief Inspector's Annual Report on safety, but poor safety performance should still be a prominent key message in this report since in future the report would not always be seen alongside the CIAR.
36. The continuing development of the regional narrative was very welcome and comparisons across regions (which were still being added) would add further depth, including a number of specific areas for improvement. It was important to be clear and direct on areas where Network Rail's performance was poor – or where good performance was the result of things out of their control. The board repeated their wish to see Network Rail working at pace to address shortcomings – they had demonstrated considerable agility during the pandemic so it was clear that swifter responses were possible in some situations.
37. The board noted the evidence that the shift to a regional focus had delivered improvements in the current control period and that the story on efficiency and asset volumes was a good one. However, as the overall picture improved, expectations around other areas where performance had been less positive would inevitably increase. There were also unanswered questions around how so much of the risk funding had been used this early in the control period.
38. The board noted that the overall messages give recognition for successful delivery, but also make sure that Network Rail's management recognised the challenge to them to continue to improve and to deliver with greater pace and urgency.

39. The final report would be approved by John Larkinson and Graham Richards.

Item 10 ANNUAL REPORTING – HIGHWAYS ENGLAND

Feras Alshaker, Harry Garnham and Louise Butcher joined the meeting for this item

40. The team introduced the paper which set out the current draft key messages for ORR's report on Highways England's performance for the last business year.
41. The board discussed the draft report. It was considered important that it did not prejudge the ALR review, which will have been handed to the Secretary of State on 28 June but is unlikely to be in the public domain by the time the AA is laid in Parliament shortly after. The report should make clear that ORR's review of all lane running data would still be in hand so that comment on HE's safety performance could not include that. It would be important that the report confined commentary to areas where evidence was complete. This might best be represented by separating out commentary on safety performance on the wider network (where the KPI was likely to be met) from that on smart motorways.
42. The final report would be approved by John Larkinson and Graham Richardson.

LUNCH

Item 11 ORR EFFECTIVENESS

Sneha Patel, Harry Garnham and Louise Butcher joined the meeting for this agenda item.

43. This report reviewed the two earlier documents to reflect on how well aligned ORR's approach to regulation was across road and rail functions. There were some good examples of cross directorate working. Messaging was broadly aligned, with the pandemic having a significant impact on both.
44. The board welcomed the comparison and discussed the reduction of risk reserves in both companies (with specific issues identified for each). They noted the differences between regional targets for NR and national targets for HE and how regional targets had helped drive improved performance on rail.
45. The inclusion of issues of sustainability was welcomed – this would be an area of increasing public focus.

Item 12 COMMUNICATIONS SIX MONTHLY REPORT

46. Russell Grossman presented a broadly positive report on ORR's profile and reporting in the media over the last period. He highlighted work to issue regular updates and interest pieces during the quiet period preceding the White paper publication. Media coverage was increasingly positive (or neutral). Work around myth-busting continued and seemed to be making a difference.
47. An updated strategy would be brought to the July board to enable the implications of the white paper to be included.
48. The board noted that regulators' reputations often track the success of their regulatees. ORR needed to continue to focus on the evidence.

49. The board noted the success of the ORR podcast and continuing excellent work by the internal communications team.

Item 13 IMPLICATIONS OF THE WHITE PAPER

50. The board received an oral update on reactions to the white paper, including from staff. Next steps were outlined, but are somewhat dependent on DfT's implementation plan, which is still under development. Conrad Bailey of DfT would attend the next board meeting for a discussion on how ORR would work with DfT and others through implementation with a further discussion in July on ORR's plans. A bid for the necessary additional ORR resources would be discussed with HMT very soon.
51. The board discussed a number of areas where there was little clarity about how the white paper would be implemented. While implementation was being planned ORR continued to have an important day job to ensure the existing system delivered. Management distraction was a real risk for ORR and for NR and it needed to be guarded against. Major questions remained around the constitution and governance of the interim guiding mind (IGM) and this was under close consideration by HMT and DfT.
52. Primary legislation was planned for 2023 and this would need to be developed in the context of other existing statutory frameworks. Detailed drafting would be very tricky and ORR would need to play close attention. ORR will have a whole industry oversight and assurance role, but the detailed parameters were yet to be determined.

Item 14 HIGHWAYS – UPDATE ON ALL LANE RUNNING REVIEW

Feras Alshaker joined the meeting for this item.

This item has been redacted from the published version of the minutes as relating to the development of a report for future publication.

Item 14 ORAL UPDATES FROM ADVISORY PANELS, AND FEEDBACK FROM BOARD COMMITTEES

57. Bob Holland reported on the Audit and Risk Committee's annual meeting to scrutinise the annual report and accounts.
58. Stephen Glaister reported on the Highways Committee and particularly the appearance of Peter Molyneux from Transport for the North who is the lead on the sub-national transport bodies group. This had helped the committee understand a different stakeholder's view of Highways England and their working relationship.

Item 15 ANY OTHER BUSINESS

59. The board noted the items below the line including the forward programme

60. Future board and board committee meetings would return to in-person unless regulations prevented this. The board hoped to resume regional visits later in the year.

The non-executive directors held a short review of the meeting privately.