

## THE OFFICE OF RAIL AND ROAD

### 194<sup>TH</sup> BOARD MEETING

Tuesday 26 July 2022, 09:00 – 13:00

At ORR 25 Cabot Square, London, E14 4QZ  
and by MS Teams

**Non-executive members:** Declan Collier (Chair), Xavier Brice, Madeleine Hallward, Anne Heal, Bob Holland, Justin McCracken, Daniel Ruiz and Catherine Waller

**Executive members:** John Larkinson (Chief Executive) Ian Prosser (Director, Railway Safety)

**In attendance:** Feras Alshaker (interim Director of Planning and Performance), Russell Grossman (Director of Communications), Vinita Hill (Director, Corporate Operations), Tess Sanford (Board Secretary) Elizabeth Thornhill (General Counsel), Stephanie Tobyn (Director, Strategy, Policy and Reform)

Will Godfrey (Director of Economics, Finance and Markets) – on line (Covid)

*Other ORR staff who attended (remotely or in person) are shown in the minutes.*

#### Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. There were no apologies.

#### Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared as relevant.

#### Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The board approved the minutes of its meeting in June 2022.
4. The board received an update on actions outstanding and noted the background note on environmental measures for PR23 which had been attached.

#### Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

5. This was the shorter monthly report. Ian Prosser reported on industry safety performance during industrial action. Overall the industry had delivered on their plans and addressed any emerging issues over subsequent days. Ian was considering a detailed letter from RMT setting out incidents of concern. John Larkinson added that operators had also provided advance information to passengers and responded well to feedback during the action to improve the accuracy and usefulness of information.
6. Ian reported that the safety notices to Network Rail (NR) on Track Worker Safety (TWS) had been complied with and were now closed. He would report to the board if there was any response from NR [Action 07/01]
7. The board discussed NR's risks around the maintenance modernisation programme. Although the principles were clear, few details had been seen yet.

The plans would be put to the safety validation panel (NR and others) and then cascaded down to depots. Implementation of such a programme would require excellent planning and would be very challenging.

8. Ian explained that after a staff resignation there had been a disappointing 2 week delay by ORR on the Carmont investigation report to the Procurator Fiscal. ORR had written to Network Rail to prevent any risk of future conflict of interest on the case. He updated the board on other investigations and reported that the Sandilands prosecution was scheduled for May 2023.
9. The board discussed the way the network had reacted to the recent heatwave, whether NR's various taskforces on climate related resilience would align, and the risk of management distraction in responding to multiple taskforces. It was noted that not all regional plans on earthworks were yet in place.
10. The board discussed the different heat tolerances of modern equipment and older installations – such as on the ECML. It was reported that the design specification for track and OLE is to operate at a maximum of 38 degrees. The impact on passengers of repeated line closures was an issue for concern – both in real terms and in reducing their appetite to travel by train in future.
11. The board noted NR's TWS<sup>1</sup> taskforce continued to be held as a successful model for change, but also that the significant cost of the response had been met from central risk funds. Such funds were now very low for CP6 and may not be available at all in CP7.
12. The board also discussed the importance of regularly reviewing long-standing safety exemptions and the GBRF derailment.

#### Item 5 CHIEF EXECUTIVE'S REPORT

*Redact this report from the published version as time-sensitive and covering confidential issues.*

#### Item 6 HIGHWAYS MONITOR

19. Feras Alshaker updated the board on the TSC follow-up hearing on smart motorways. He also reported that in spite of improvement it seemed unlikely that National Highways (NH) would meet the September 2022 deadline for the 10 minute target response time. He described emerging challenges for the RIS3 timeline, scope and budgets.
20. The board discussed the importance of the 10 minute response time target in building public confidence and the ongoing challenge which NH faced in this space. The team were preparing to investigate whether NH had done everything reasonably practical to meet the target if it was missed in September.
21. The board noted that Operation Brock was likely to be a regular draw on traffic officer resource and should be built into NH's plans for meeting the response time target.
22. The chair reported on a meeting with Dipesh Shah (NH's Chair) about the key messages in ORR's annual assessment. Dipesh Shah had agreed to identify an individual to help work through the issues of access to evidence and data which the report highlighted. [Action: 07/04 Feras Alshaker]. Liz Thornhill reported a meeting with NH's legal team to explain the information sharing regime for ORR as a regulator.

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<sup>1</sup> Track Worker Safety

23. The board noted that the SRUS<sup>2</sup> had recently been published but there were no associated targets until year 2.

#### Item 7 ORR PERFORMANCE – Q1

*Corinne Wellington joined the meeting for this item.*

24. Vinita Hill introduced the new quarterly business report which covered financial and non-financial performance. The board welcomed the low underspend achieved in Q1. The board discussed the missed prompt payment standard, projected outturn spend on in-year awards, reviews of internal processes, and work with local schools and summer interns which had been piloted this year.
25. The board commented on the presentation and content of the new report. On facilities, the board noted the importance of fully effective options for hybrid meetings.

#### Item 8 HS1 –ANNUAL PERFORMANCE REPORT

*Debbie Daniels and Howard Taylor joined the meeting.*

26. Feras Alshaker introduced the report, noting that the concession had now entered a period when the asset's age would lead to a more challenging period for its asset management. While HS1 Ltd continued to manage train performance well its asset management capability was less developed. In PR19 there had been an emphasis on gathering better asset information and better data strategies but these had not yet delivered better intelligence.
27. The board discussed the need for assurance around HS1's plans to assess the real need for maintenance and renewals on the network and its ability to make informed and evidenced decisions. A trajectory for delivery and an assessment on whether that trajectory could be met should then follow. HS1 was relying on NRHS<sup>3</sup>'s assurance about its programme and whether it could be recovered: the team thought this reliance was not well informed. The board asked whether ORR supplied guidance on an appropriate asset management regime and it was confirmed that the ISO55000 series was used as recognised best practice.
28. The board discussed the tone of the report and the importance of the recipients being very clear on the potential seriousness of the situation.
29. The board noted the report needed to be completed in July and delegated final sign off to John Larkinson.

#### Item 9 HS2 INVESTMENT RECOVERY CHARGE (IRC)

*Jake Brown, Gareth Clancy and Justin Nsengiyumva joined the meeting online for this item.*

30. Jake Brown introduced the item which set out the responses to ORR's public consultation on granting HS2 the option to charge an IRC. Of the responses, some had objected to the government's vfm work, but ORR was of the view that the business case exercise had been properly conducted at the right point in the process, and did not consider that the points made in the responses altered that view. Accordingly, there was no scope for ORR to consider that in this case, and Leading Counsel agreed with this approach.

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<sup>2</sup> Strategic Roads User Survey

<sup>3</sup> Network Rail High Speed

31. The board noted the low number of responses to the consultation and were told that an IRC is a common approach in major construction of this type. The board noted that the operating model for HS2 had not yet been developed and the IRC would be an enabling mechanism. Questions around charges, including track access charges, would be addressed later as part of the normal regulatory process when the network neared operation. The board asked that documents setting out the conclusion following the consultation should be accessible to lay readers, recognising the high level of public interest in HS2.
32. The board approved an IRC for Phase one of HS2.

#### Item 10 PR23 – CHARGES REVIEW

*Will Chivers, Jennifer Genevieve and Carl Hetherington joined the meeting for this item and the next with Will Holman, Katherine Brownstein and Robert Carruthers on line for item 10.*

33. Will Chivers introduced the paper, noting that consultation responses were broadly supportive of our April consultation proposals, but that DfT had asked for further discussions on one specific issue (the open access ICC). The board discussed the paper, options for changing specific charges and a recent issue raised by DfT as to whether inflation indexation should continue to apply to charges. The board reiterated their position that we should focus on incremental changes within the overarching charging framework and that any proposal for change needed to be backed up with clear evidence. The board discussed indexation, changes in major freight markets, the level of ICC for open access operators, and next steps.
34. The board noted the update pending further work over the summer on the issues discussed as part of PR23.

#### Item 11 PR23 – INCENTIVES REVIEW – SCHEDULES 4 AND 8

*Will Chivers, Jennifer Genevieve and Carl Hetherington remained for this item with Will Holman, Giulia Gamberale, Katherine Brownstein, Joe Quill and Ethan Byrne on line.*

35. Will Holman reported on the consultation responses which broadly welcomed the limited change proposed. Work was in hand to look at ways to respond if planned legislation was passed.
36. The board discussed the diminution of incentive effects and the resource cost of the current performance measurement regime. In a reformed industry it would be even more important to be clear about financial and other incentives for GBR and operators.
37. The board discussed the monopoly power that GBR will hold, its commercial incentives for effective and timely delivery, and the legitimate anxieties of others who wished or needed to use the network. The hybrid system being considered was intended to maintain protections for other users.
38. The board noted the update pending further development.

#### Item 12 RAIL REFORM UPDATE

*Anna Rossington joined the meeting for this item with Rob Cook and Fabio Hirschhorn Zonana.*

39. The draft consultation response aimed to capture the board's views on the rail reform proposals that have been discussed over nearly two years, reflecting the

independence of ORR as a constructive partner, whilst being accessible to a wide audience beyond DfT. Some detailed matters, such as discussions around competition in the new system, were not advanced enough to be included at this stage.

40. The board discussed risks around the wider rail reform programme and the complexity of issues outside ORR's remit, such as ticketing and fares policy, which were not yet resolved. Given the current fiscal situation, affordability would become an increasingly important consideration.
41. The board discussed overall tone and asked for a stronger message highlighting that the pace of decision making for reform implementation needed to accelerate. The board also suggested emphasising the importance of the retention of ORR's safety responsibilities in the proposed rail model and engagement with development of whole system safety. The board delegated final sign off of the consultation document to John Larkinson.

#### Item 13 REPORTS FROM COMMITTEES

42. Bob Holland reported on the ARC meeting the day before, particularly the discussion of corporate risks and cyber security.

#### Item 14 ANY OTHER BUSINESS

43. The chair reported on recent meetings with the UKRN Chairs and the Secretary of State's Railway Advisory Board.
44. The board noted the items below the line and some forthcoming network visits to Scotland and Folkestone to look at earthworks challenges.
45. Next meetings would be in September in London.

*Meeting closed at 1.00 pm.*

*Minutes approved at ORR board meeting on 27 September 2022*