CAMPBELL TICKELL

Board effectiveness review

Report

March 2023

Contents

1. Introduction

1.1 As the independent economic and safety regulator of Britain's railways charged with monitoring the performance and efficiency of England's strategic road network, the Office of Rail and Road (ORR) plays 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, National Highways, railways in Northern Ireland and the UK section of the Channel Tunnel.

1.2 It is a non-ministerial department established under the provisions of the Railways and Transport Safety Act 2003 (RTSA), which provided for the functions of the then Rail regulator to be transferred to ORR. The Railways Act 2005 transferred safety functions for railways in Britain to ORR. The Infrastructure Act 2015 gave ORR responsibility for monitoring the functions of Highways England (now National Highways). The Railways (AMLRU) Regulations 2016 extended ORR's remit to cover the economic regulatory responsibilities for railways in Northern Ireland. ORR also has regulatory responsibilities for the northern half of the Channel Tunnel. These responsibilities bring formal, technical dimensions to Board decision making.

1.3 ORR is funded almost entirely by the railway industry, including passenger train companies and Network Rail. It recovers regulatory costs relating to the Channel Tunnel, HS1 and Northern Ireland by charging the relevant organisations. ORR also receives some funding from the Department for Transport for its roads work and a token resource budget from Parliament.

1.4 At the time of writing, the Board (including the Chair) comprises eight non-executive directors (NEDs), the Chief Executive and the Chief Inspector of Railways.

1.5 The Board operates with the following committees: Audit and Risk (ARC), Remuneration and Nominations (RemCo), Health and Safety Regulation (HSRC), and Highways.

1.6 This report comprises the synthesis of ORR's external review of its Board by Campbell Tickell. In carrying out this review we have undertaken the following activities:

- An online survey completed by the Board exploring its effectiveness, and interviews with all Board members;
- Focus groups with the Executive staff and the Assistant/Deputy Directors listed at Appendix 1 of this report;
- An interview with the independent member of ARC;
- Observations of the ARC meeting on 4th November and of the Board meeting on 22nd November;
- An interview and liaison with the Board Secretary, who has played a significant role in supporting and facilitating our work.

1.7 We put on record our thanks to the time devoted to this review by all NEDs and staff who participated, and also for the open and balanced approach they took to sharing their views with us.

2. Summary

2.1 The Office of Rail and Road (ORR) is a non-ministerial department established under the provisions of the Railways and Transport Safety Act 2003 (RTSA), tasked with being the economic and safety regulator of Britain's railways and monitoring the performance and efficiency of England's strategic road network. Campbell Tickell undertook a review of the Board in 2022-23 in line with good practice which comprised the traditional elements of a review of this kind – reviewing documents, surveying and interviewing Board members, interviewing staff and observing a Board and committee meeting.

2.2 We have found change and improvements to the Board and to ORR's governance since our review of 2019. ORR is clear on and committed to the importance of good governance, and the Board is imbued with a strong sense of integrity and purpose. The organisation also appears to be respected and trusted by key stakeholders.

2.3 The current ORR Board is strong, dynamic and challenging. Board renewal and increased diversity have created a different complexion of Board in terms of diversity of thought. In 2019 there was the solid base of a well-functioning Board, but this Board appears more proactive and engaged in an anticipatory way around critical challenges.

2.4 Inevitably, with a refreshed Board, the collective mind and intent of the Board is still taking shape, which can feel unsettling, but the Board is also set upon probing and testing assumptions. The unprecedentedly uncertain and unpredictable operating environment places demands of any Board that it reflects on its organisation's positioning to understand the degree of its agency to make things better for whoever the organisation serves, and this Board is indeed engaged in that kind of enterprise. The corsetry of statutory duties for arms-length bodies does not negate the value of this kind of reflection and deliberation. There is also an intentionality about the areas in which this Board feels it needs to influence and push.

2.5 Our recommendations are focused on exploring and cementing agreed ways of working between the Board and Executive so that expectations and understanding of language is shared, as well as discussing what kind of strategic goals are appropriate for ORR. As part of the strategy reflections, the Board and Executive should table a discussion about risk appetite across the different activities of ORR, and there is scope for the Board to better own the strategic risks to ORR. More widely, the Board is attending to its own development and learning in a way that feels generative and not just technical, for example looking to bring in outside people to talk about different subjects.

2.6 Chairs of committees can be more explicit and consistent about how their committees offer assurance, or need to escalate issues, to the Board.

2.7 There are other aspects of communication which can be improved arising from our findings, for example feedback to staff from Directors after meetings.

2.8 These points for consideration are about how to evolve further from a strong governance base and extract most value from this Board.

3.   Document review

3.1   It is clear that a lot of work has been undertaken internally since the last external review with regard to ORR's documents, and we note in particular that: the Terms of Reference for the Committees are included as part of a Board Procedures manual which was last reviewed and approved by the Board in May 2021; ORR now has a more detailed governance calendar; the conflict of interests policy was last reviewed in May 2021 and is a well-documented procedure, with the register of interests available on the ORR website. There has also been an internal review of governance processes conducted in January to March 2022.

3.2   There are matters of continued strength consistent with the previous review. The Board papers continue to be of a good standard and well written. A recent internal governance review confirmed that "*The Board demonstrably showed that it considered all matters that came to it for decision, or discussion, or below the line methodically and transparently*". Board agendas show that meetings are well planned. The Board packs are comprehensive.

3.3   The latest annual report remains a comprehensive and well written document. It shows that ORR met all its service standards in the last financial year.

3.4   ORR is an organisation to which people can 'blow the whistle' in respect of other organisations for which it regulates. ORR has a policy which is available on its website and provides an avenue for people working in the rail and road industry to raise concerns about perceived wrongdoings, illegal conduct etc. This policy explains the Public Interests Disclosure Act 2003. This also covers how anonymous reports will be handled. Concerns can be reported in writing or by phone. ORR has addressed the comments on external whistleblowing raised in the previous external review.

3.5   There is an internal whistleblowing policy which was updated in May 2022. This is a fairly comprehensive policy which allows for escalation to the Chair of the Audit Committee and ultimately the Civil Service Commission. It defines the difference between 'whistleblowing' and 'raising a concern', although the procedure treats the handling of these distinctions in the same way.

3.6   ORR's latest business plan remains a concise document, beginning with a foreword by the Chief Executive in which he covers the key priorities for the year ahead. The plan includes six Strategic Objectives (the last two having been added this year) covering:

- Health & Safety
- Better Rail Customer Service
- Better Highways.
- Value for Money from the Railway
- Policy & Rail reform
- People and Performance

3.7   The Service Standards for 2022-23 are broadly the same as previous years. It is recognised they these are 'service standards' and as such they are focused on the administrative side of

the business (e.g. the processing of train driver applications or timeliness of response to information requests).

3.8   ORR's internal Service Standards are quantitative rather than qualitative measures. It remains the case that ORR does not set any objectives which seek to measure the impact of its involvement on the sectors it regulates because it is seen to involve so many assumptions of limited value. However, the plan does set target timescales for key deliverables. (Similarly, the commentary in the annual report is mainly focused on what ORR has done over the year. The question arises as to whether it is possible – and how – for the Board to interpret the difference the organisation makes and then ask the Executive to identify the sources of evidence to support that.)

3.9   ORR has the requisite elements in place for risk management: identification of top risks and mitigations, as well as quarterly risk report and risk dashboard. There is a risk framework which forms a guide for Risk and Strategic Champions, Activity Managers, Risk Owners and those working in corporate risk management. There is no risk appetite statement. The next development of risk that would be beneficial to ORR is for the Board to have a focus on strategic high-level risks.

3.10   ORR commissioned Savanta ComRes, an independent research organisation, to conduct its stakeholder research study. The Savanta survey provided the Board with a good deal of data on how ORR is viewed by its stakeholders. As we understand it, the results will be used to inform ORR's communications strategy which is reviewed every 6-9 months or as the external operating environment demands.

4.   Overall findings

4.1   This section sets out the findings from our online survey work (which helps to shape our engagement), our Board member interviews, and several focus groups with Executive staff and Assistant/Deputy Directors, as well as an interview with the independent member of ARC.

4.2   Of some 93 statements for which respondents (restricted to Board members only) were asked to assess their agreement (a spectrum from Strongly agree to Strongly disagree), only four did not have a majority of respondents in agreement with the statement. They were:

- *The Board is clear about its risk appetite across the range of the organisation's activities.* Four agreed, four disagreed, one didn't know/couldn't say

- *The Board periodically considers whether committees should have more decision making powers*. Three agreed, five disagreed, one didn't know/couldn't say

- *Board member appraisals are periodic, rigorous and challenging*. Only two agreed, two disagreed, and the remainder did not know. (This position may have changed since the time of our survey.)

- *The Board reviews (at least annually) its collective performance and that of the committees*. Four agreed, three disagreed, and two didn't know/couldn't say

4.3   More than four-fifths of the statements had agreement from 85% or more of respondents. Only 15 statements (16%) attracted any disagreement. In comparison with the results from the survey of the last review, we would suggest that these findings are less focused on the mechanics of Board operations and more about the positioning of ORR. In general, respondents want to see the Board focusing more on providing a clearer future strategy for the organisation, considering the current context of change within the industry sector.

Board leadership and duties

4.4   It should be noted that this is a refreshed Board still in the process of 'settling'; within that frame, a few respondents reflected on whether they 'fully' understand the organisation, as it has diverse and wide-ranging powers/duties which the Board is called on to exercise on rare occasions.

4.5   In terms of the Board's strategic role, this is very much a 'live' conversation. In the survey responses, two respondents expressed the lack of a clear strategy for the organisation, including some disagreements within the Board itself and between the Board and the executive team on strategic leadership specifically while being clear that the ongoing work of the Board is unaffected.

4.6   We learned in our interviews with both NEDs and Executive staff that everyone had been slightly disappointed in the outcomes from a Strategy Day (which had taken place the day before our observation) because of a mismatch of expectations on Board and Executive sides, with some learning about how the agenda and content might need to be socialised in advance with the Board.

4.7   The difference in view derives in part from how each party interprets 'being strategic' and the value of being strategic against the backdrop of the various sectoral (and perhaps political) challenges. Everyone agrees that the work that ORR does well (e.g. PR23 or health and safety) needs to continue to be done well. There is also broad agreement about the need to be agile and alert to how external uncertainties may change; the tactical responsiveness of ORR is seen as a strength, while the tactical anticipation of topics (e.g. rail services in the north compared with the south) is seen as something that could be sharpened. The Strategy Day (referred to above) did offer deep dives into short term issues, and this appeared to be of value in informing the debate for some of the topics at the following Board meeting, but reportedly did not step back to examine the changing political context. The Board would like to consider what kind of changes may be ahead, for example the impact of a General Election on the rail and road industries, the scope for engaging across the political spectrum, recognising that the rail industry cannot continue in its current form with Train Operating Companies in an uncertain position, and that environmental considerations will need to come into play with any future Government at some point.

4.8   Interestingly a view from some Assistant/Deputy Directors was that the lack of organisational strategy is a potential weakness and that there is a lack of consideration of future risks. Strategic thought was seen as an area where NEDs wider experience and

backgrounds was seen by staff as bringing something into the organisation from which they felt they could benefit.

4.9   The main area of debate between the Board and Executive focuses on the value in longer term thinking about what it means to be a modern progressive regulator and what this could mean for ORR's target operating model (e.g. if political change heralds the loss of economic regulation). Some Board members are keen to explore this, whereas the Executive are more in the space of believing that '*we are trying to find more strategy than we actually need*' and feeling it may not help in the world of ALBs which is seen as more constraining than other types of organisations. On the one hand, there is an appetite to probe into what excellent looks like for a regulator and how any regulator can act as a stabilising force against a background of uncertainty, being 'the grown up in the room', and on the other a scepticism about what this thinking will deliver, a concern about whether the organisation's duties are fully understood, and a belief that a low profile and doing the day job best protects the organisation's reputation. There is a view that the ORR has a limited ability to determine its future beyond a three-year horizon. Senior staff are inclined to question whether this is time well used when there are many issues to deal with.

4.10   The stalemate 'set piece' nature of the debate does create frustration on all sides. The gap in step between the Board and Executive on these matters does reflect a good and open culture in that it is not hidden from plain sight. There was said to be a healthy tension in the gap, although everyone desires for it to be openly discussed and resolved. There are different views about the scope to influence change, and there is a view in the Executive that the organisation needs to be more open to change in future, and it was felt that this was where Board members could help, providing their own experience of what good looks like. However, it would need smaller and more discursive meetings to actually tackle this effectively.

4.11   The strategic challenges are not only for the rail industry. The issues of ORR's vision (in this context for roads), tone and positioning also surface in NED reflections on National Highways, where ORR has an oversight rather than regulatory role. Interviews were positive about the fact that National Highways is given good weight on the Board's agenda, but that perhaps the catalyst of SMART motorways and of the pushing of the Transport Select Committee has spurred ORR to be on top of this agenda and to explore what kind of data is missing. Some feel that the level of scrutiny and public concern invites ORR to be more proactive than reactive.

4.12   There are significant challenges in the external environment that mean ORR is somehow cast into an uncertain present that offers no clear horizonal perspective. Traditionally it has managed the industry relationships, particularly in the rail industry, but now there are huge amounts of uncertainty, and limited improvements and little sign of stability returning. ORR has restricted ability to influence and this lack of normality affects the organisation's ability to focus: "*Every time a grand settlement gets close, it shifts again.*"

4.13   Despite these differences, we note however that ORR has an effective and agreed communications strategy and that there is a real focus on engagement with stakeholders in

the industry and beyond. There is no stalemate on engagement and influence, but perhaps a progression that has further to travel and a recognition that this environment demands a kind of omniscience about different potential routes/perspectives and an ability to pivot and be agile if or when anything changes.

4.14   We asked in the online survey what the Chair, with the CEO's support, should focus on over the next 12 months to ensure this Board is as effective as it can be, and the answers perhaps reflect some of the preoccupations we have just been outlining. Some suggestions were about continuation of what ORR does well, e.g. safe and efficient operations, managing communications with key stakeholders, being seen as objective and independent. Others focused on a slight shift in current approaches, e.g. better management of the external environment; elevating the relationship with government; preparing the organisation to the challenges arising from the rapid and significant changes to the external landscape of the industry and the inevitable impacts it will create; and better defining the future strategy of the organisation. It was said that the Board could be used more effectively by the Executive team to interrogate and shape the strategy and future direction of the ORR during a period of change and industry reform.

Integrity

4.15   Many respondents used the survey as an opportunity to commend the integrity of the Board and its members. Our findings point to confidence that the Board acts in the public interest, is independent, handles actual or potential conflicts of interest well, and demonstrates and ensures high standards of corporate governance and probity at all times.

Decision-making, risk and control

4.16   Quality of debate and challenge. In terms of the (November 2022) Board meeting we observed, there was a fairly full discussion on most topics, with different members focusing on different points, and a free-flowing style of conversation. Members indicated a good level of understanding of the issues under discussion and put their own points across clearly, while also listening to other points being made. They were highly engaged and well prepared.

4.17   Board members identified clear and appropriate challenges at a number of points (e.g. an item relating to the 10 minute target for live lane breakdowns and underlying statistical robustness) and made sure that these were sufficiently addressed before moving on.

4.18   There was a tendency towards quite a long and sometimes detailed discussion on each of the topics, with all Board members having something to say, and with questions sometimes becoming more operational than strategic (although this was also in response to operational information provided in the Board papers). We wondered whether the Board's time could be slightly more focused on the key areas for its input (and this was something that Executive staff raised too), though we note the willingness in the Board and Executive to engage and perhaps a propensity at this stage to want to 'walk through' some areas together. And, as we noted in the opening to this report, the statutory responsibilities of

this Board invariably bring some topics into play that are technical in nature and need to be fully understood by the Board.

4.19   <u>Oversight of performance</u>. The Board was provided with quite a lot of management information about performance, which was presented well visually and clearly explained in the papers. There were intelligent questions, demonstrating good understanding of the data and its implications, although, as above, some were a little detailed.

4.20   <u>Risk and control</u>. The observed Board meeting conveyed a Board well aware of the primary strategic risks; although there was not a lot of reference to the actual risk register, it was clear that an understanding of the risks was driving many of the questions and challenges, such as when discussing the key decision about the GUT access application (Item 9).

4.21   NED interviews threw up concern and surprise at some internal failures of controls. Positively, the issues identified were dealt with and taken seriously, but they have prompted questions about the wider culture and the need to learn lessons about culture and processes. It was suggested to us that the small size of ORR has meant little focus on internal operational matters, as it is possible to manage most of the operational risks adequately without a lot of focus from the Board and ARC. A point raised by an ARC member is that ORR should recognise capability gaps and think about where it can bring in other sorts of assurance and support. They suggested that the shocks should be used to review the approach to assurance and look to move to a model of 'slight unease' rather than 'high trust'.

4.22   Feedback from the independent member on ARC is that, while risk reporting is fairly solid and extensive and discussions at ARC are good (with the Head of Risk at every meeting), there is scope to better focus the reporting.

4.23   There is a desire among some on the Board to look at ORR's risk appetite (viewing it as a Board responsibility) and understand it better rather than assume implicit agreement about where it is positioned. (The 12 Principles of Governance for all Public Body NEDs state that NEDs should '*Champion high standards of risk management by ensuring your organisation has effective risk reporting, controls and governance, risk expertise and risk tolerances to effectively manage risk*'.)[1]

4.24   Our own view of ORR's approach to risk and assurance is that it appears rather 'bottom up' than 'top down' in design. There is a spreadsheet that is quite detailed – with lots of rows. At the observed ARC meeting, the risk dashboard did not appear to drive the agenda and the links of the internal audit programme (e.g. around level crossings orders) to top risks were unclear. One person said that there is a lot of focus on activities and processes and not outcomes, and that it has not always been easy to find suitable topics for internal audit. ORR's auditors have recently changed, so this may bring some different challenge. On the evidence of the observed meeting, it was not entirely clear as to how ARC provides assurance to Board on the control of top risks.

---

[1] See 12 Principles of Governance for all Public Body NEDs - GOV.UK (www.gov.uk).

4.25   ORR's risk management strategy sets out that the Board's role is:

- Articulating a clear vision for ORR and providing clarity about how policy activities contribute to achieving this vision, including managing risk and ensuring, at a high level, controls are in place.

- Periodically reviewing risk and providing its view of the current and future strategic risk landscape (the latter through horizon scanning), so that it can assure itself that: there is a proper framework of effective controls, so that risks can be assessed, managed and mitigated; there is clear accountability for managing risks; and departmental officials are equipped with the relevant skills and guidance to perform their assigned roles effectively and efficiently.

4.26   There is no mention of reviewing the Top Risks dashboard, which seems to be delegated entirely to ARC (though we understand it's tabled at meetings 'below the line'). While interviewees were generally positive about the Board's understanding of risk, there was a view that the focus is largely on the risks for each particular topic, rather than the Board actively considering future strategic risks or its broader risk appetite.

4.27   We also note that, in terms of health and safety, while there is confidence in the committee and the priority placed by the Board on this subject, there was reflection on whether more value can be extracted from discussions around the Chief Inspector's report.

Board operations

4.28   We explored various aspects of Board operations: structures and the annual calendar making good use of people's time; effective paper, agendas, meetings, minutes and action log, and good governance support.

4.29   There was a lot of praise for the Board secretariat and the work of the Board Secretary, who is viewed as an important source of support not only to the Board but also to senior staff when needed.

4.30   In terms of planning and organisation, the agenda for the Board meeting we observed was well planned and covered a reasonably large number of topics. The agenda was divided into separate sections reflecting the different nature of the topics (i.e., for Decision, Discussion, Information or Holding to Account), which was helpful in making clear the purpose of each set of items, as well as creating a well-balanced agenda for the meeting.

4.31   The meeting pack was provided sufficiently in advance of the meeting and was well put together. Papers were clearly written, and the majority used a similar header template to provide summary information about the paper and what was required of the Board. The Annex for Item 9 (a paper regarding a train company's application for track access that required a Board decision, with an annex clearly setting out ORR's duties) was helpful, to ensure that the Board understood its responsibilities for this key item and everyone was complimentary about how strong and well framed a paper this was. In interviews, one Board respondent mentioned the improvement in quality of the papers circulated by the Board over the last couple of years; but a few others think there is further scope for improvement in paper length and format. Papers were said to lean towards including a lot

of information and technical data (though statutorily some of this may be needed), but not necessarily focusing on what the Board *needs* to know and what the Executive staff really want the Board to decide upon. (The 'perfect' Board paper is probably something that surfaces in every Board evaluation; the question for the Board is how specific it has been about its expectations, with targeted feedback on papers it has received to indicate what was more and less helpful, and whether the Board and Executive have discussed this together. Good papers will have focused executive summaries and if there has been a decent progression of 'concept ,discuss, decide' in how complex matters are approached decisions should be reasonably straightforward.)

4.32   It was quite a long meeting, with a full agenda, although a break half-way through helped maintain energy levels. Under AOB the Chair provided a useful update relating to key activities; however, if this is a regular update it may be better placed as an agenda item at the beginning of the meeting.

4.33   The observed Board meeting was well chaired. The Chair managed the discussions so that everyone could contribute, and generally provided good summaries, although some follow-up actions could maybe have been a little clearer. He clearly set a positive and constructive tone for the meeting.

4.34   It may have been beneficial at times to remind the meeting of the purpose of the items, in order to manage the time and contributions more efficiently; for example, the topic on Smart Motorways was intended for decision, but in practice was quite a detailed discussion about the wording of the report. This could maybe have been taken off-line, whereas the decision originally requested of the Board (to delegate finalisation to the Chief Executive) was not ultimately determined.

4.35   There were mixed views from Executive staff about attendance at the Board. A minority view was that too many people attend every month, and that the number of people present can inhibit a more meaningful discussion. Others, however, felt it was a good size of meeting and everyone is able to contribute. It is clear that the Board views the wider exposure to and presence of staff as an opportunity for staff at different levels of ORR to develop and see themselves valued by the Board: there is a generous and developmental intent behind numbers of people in and out of meetings.

4.36   We learned from Executive staff that papers presented to meetings have normally been through a large amount of internal review first, and several pre-meetings, so are seen as 99% complete, whether the item is tabled for decision or discussion. There was some feeling that it may be more effective, and make better use of the Board, to have some items for discussion at an earlier stage in the process. Assistant Directors reported that a lot of work is put into papers before they get to the Board – e.g. two weeks to produce a paper, and then six weeks debating it internally, double-checking it, fine tuning it, and that this can be frustrating and inefficient. Some felt it would be better to allow slightly less polished papers for discussion, rather than expecting them to be seen as final, given that the NEDs always have comments to make.

4.37   They would also find it helpful to receive more general feedback from Board meetings – partly to understand better how the Board perceived the papers presented, and also to understand more about what is discussed. A few people had frustrations about whether papers really give NEDs what they want and whether indeed NEDs are clear about what they wish to see. There is a contextual read-out from the Chief Executive after meetings, but it was reported to us that it largely depends on each Director as to whether they pass on more feedback to their teams.

4.38   Additionally, some topics are very complex to present/explain and it is welcome that there are targeted teach-ins; staff say they would benefit from being able to present them with more visual aids. (We note that Board paper guidance indicates authors can use the medium best suited to their purpose.)

4.39   Assistant Directors saw the Board in a positive light overall. Particular points raised were:

- Meetings are chaired well

- Discussions are rigorous, can be challenging, but respectful and collegiate

- Generally sensible, relevant questions

- Board members are welcoming to staff attending and engage well with them

- Engagement before the meeting is useful to avoid surprises

- New NEDs were seen as good additions, increasing diversity and bringing a different balance to the Board.

Board culture and dynamics

4.40   The Board works well together, with healthy and collaborative debate, and good relationships between NEDs and the Exec team. There are no dominant egos in the room and members of the Board are confident in their own skins. The addition of several new NEDs to the Board was mentioned by several people as helpful in broadening Board perspectives. New members underlined how open they have found the organisation, and how straightforward it has been to 'get up to speed'.

4.41   Some of the NEDs (primarily but not exclusively the newer ones) are seen to lean towards sometimes being overly operational in their questioning and interest. Concerns were raised about earlier experiences of NEDs ringing up more junior staff directly, which is unhelpful in blurring non-executive/executive boundaries in any organisation. We understand this has now been improved, with contact being managed through the secretariat (aligning with the kind of norm we see in other organisations).

4.42   The Board meeting we observed was conducted very professionally. All attendees were courteous and respectful, members provided positive feedback to senior staff and other presenters, and there appeared to be a good sense of rapport between management and Board members. Questions and challenges were provided politely and responded to openly and without defensiveness. The senior staff presented information clearly and with confidence, with papers largely being taken as read, and other members of staff were

brought in to contribute to some of the topics. In interviews the comment was made that this may prove more useful to the staff members (recognising contributions to a paper and exposing them to Board mechanics) than to Board since the mainstay of the talking usually falls to one member of any team that has attended. But this was not a universal perception, with some more negative about their Board experience.

4.43   Different Board members focused on different aspects throughout the meeting, indicating a broad range of skills, and it did not appear that there were any obvious skill gaps.

4.44   In terms of understanding the organisational culture, NEDs who have attended events speak of a friendly, open, business-like atmosphere, with a strong sense of purpose. There was an employee survey about to be out at the time of our research. It was said that the Board sets the tone by having a respectful and inclusive environment, which is demonstrated at all colleague days too. NEDs are involved in shaping the culture and have spoken on values. Engagement with staff is primarily through Board meetings, and a couple of people said that they would welcome more site trips. One Board member had been able to access the intranet through having an ORR email address and had found this helpful in terms of understanding the different active staff communities at ORR.

4.45   At Assistant/Deputy Director level, there was keenness for the Board (and not just RemCo) to devote time to the topic of organisational culture, although Directors see the Board operating in line with ORR's values. (We are aware, from the evidence of our interviews, that the Board's interest in understanding the organisational culture is keen.) The culture can affect how the values are enacted – e.g. innovation is one of the core values, but in practice ORR operates largely on a permission basis, so there can be a lack of empowerment in day-to-day decisions, although it was also said that innovation is encouraged at a more technical level.

4.46   Some staff members felt that the Board could be visible to staff and, while recognising that governance will not feel of direct relevance to all, formal briefing on this might be helpful. The function of this is different to the Chair's regular participation in all-staff briefings and the concerted communication on vision that emerges from those sessions.

4.47   NEDs are very mindful of the churn that has happened in the Executive team, with established directors having left ORR, and the impression we gained is of a Board that feels it understands the strengths and areas for development of the Executive and wants to do what it can to support their development. It was felt that more could be done to cement a sense of leadership 'team' among Board and Executive.

Board effectiveness

4.48   People who joined the Board this year were made to feel welcome, and spoke of a good and rich induction programme, with individual meetings, visits and information packs. Directors were effective in bringing in members of their team.

4.49   In terms of Board (and Executive) development, there is encouragement for use of some external expertise and stimuli, for example around the use of data. It was felt that ORR could do more to think laterally and divergently (in a funnelling way) before filtering down

and converging on the right solutions. There is a desire among a couple of people to see Board development in a wider frame than technical knowledge (e.g. PR23) and instead to engage in evolving ways of thought and behaviour, for example conflict resolution, unconscious bias, team dynamics, and that there can be benefits in Board and Executive (or even committee chairs) participating in these kinds of workshops together.

4.50   There are some matters of succession to work through, e.g. the Chair of the Health and Safety Committee (where interviewees underlined the value of someone having regulatory and enforcement experience, perhaps also industry understanding) and Vice Chair.

4.51   NEDs are anticipating some clear outputs from appraisals (which we know can also help with securing NED reappointments because there is some documentation available). Given the absence of a formal SID it would be helpful to have someone empowered to give feedback internally to the Chair and not just through the formal process of reappointment. (The survey results at 4.2 of this report regarding appraisal reflected the fact that new people have joined the Board.)

4.52   Several respondents mentioned that the Board as a whole is committed to diversity and has a constant focus on ensuring its improvement, but constant efforts are needed.

Stakeholder engagement

4.53   Regarding the external stakeholder events, NEDs are very enthusiastic about these opportunities to meet local staff (e.g. in Scotland and York) as well as the staff of stakeholders such as Network Rail or National Highways. The dinners (described as 'lively') have demonstrated a high degree of respect towards ORR, with open, frank and professional conversations; their success is signalled in the number of stakeholders who wish to attend. The sequencing of these events and Board meetings works well. For ORR the events develop the relationship with stakeholders, and for the Board they bring insight about the organisation's national nature and an experiential dimension of learning.

4.54   Engagement with stakeholders outside London was also seen by Executive staff as very effective and leading to some good relationships.

4.55   The wider points interviewees made about stakeholder engagement and relationships return back to the choices for ORR about how it looks to frame its strategic intent. A number of NEDs feel that ORR could be informing the debates around the rail industry through the range of the facts that are shared, and thereby discharging its responsibilities to Parliament. Another viewpoint is that relationships with the Department of Transport, Network Rail and Treasury require careful maintenance. ORR has worked hard to establish itself as a well respected organisation and as a necessary corrective or antidote to a past where a franchise system had allowed costs to spiral out of control.

4.56   Regarding other stakeholder activity, we learned of concerted and ongoing effort by ORR to continue to invest in building its relationship as a critical friend with National Highways.

Committees

4.57   Assurance from the committees to the Board is verbally orientated and not particularly consistent or systematic. People with experience of other Boards spoke of creating one-pagers by way of summaries for other Board NEDs.

4.58   There were verbal updates from the recent ARC and RemCo meetings at the Board meeting we observed. There was however a very detailed discussion about one of the ARC topics, which may have risked simply repeating the ARC discussion. The update from RemCo could have focused a little more on the key assurance aspects for the Board.

4.59   Our impression is that, with new members on board, committee teams are still 'forming'. NEDs said that they feel there is a key role for staff at committees and that some of the Directors who are less vocal at Board get more airtime in the committee environment, which NEDs find helpful.

4.60   There was positive feedback about the work of ARC, with the committee seen by interviewees across the spectrum to offer a high degree of challenge and also support.

4.61   We understand that RemCo is very focused on understanding succession plans at Executive level and (typically for committees of this kind) the 'benchstrength' in the organisation. Some concerns were raised about whether NEDs in RemCo stray too far into operational matters (though this 'straying' may relate to building a wider understanding of capabilities).

4.62   Our sense is that the Highways Committee is going in the right direction, but (judging from some feedback) may still be looking for the right balance of what belongs at Board and what should be delegated to the committee.

4.63   The Chair of the Health and Safety Committee is credited with a thorough understanding of the subject matter, and has been supportive also outside meetings, for example attending and speaking at the safety staff conference in October. The Chair of the Committee feels that NEDs are more engaged now than ever before and two new NEDs are on the committee and active. The Chair and the Chief Executive were credited with some of this raising of importance of health and safety, with the Chair's background in the aviation industry seen (e.g. by the Chief Inspector) as particularly helpful. We also note, however, that health and safety has consistently been prioritised at ORR and positioned as the first item on the agenda at Board meetings.

ARC meeting observation

4.64   We observed an ARC meeting on 4th November 2022. Overall it was an efficient and effective Audit and Risk Committee, with good contributions from all attendees, and demonstrated a productive relationship between the NEDs and the Executive

4.65   The agenda was well-structured, allowing a good coverage of topics with a reasonable time allocated for each. Papers were provided in good time for the meeting. Papers were well written and clear, with a useful "cover page" summarising the topic and indicating the purpose of bringing it to the ARC. In the meeting, papers were largely "taken as read", which

is an efficient use of time, and it appeared that all members had sufficiently prepared in advance of the meeting.

4.66   The meeting was a hybrid one. The camera for on-line attendees was behind a number of the people who were present in the room, which meant that on-line attendees could not see the faces of several of the speakers. It may help meeting dynamics to ensure that the camera is positioned where all speakers can be clearly seen.

4.67   The meeting was broadly in line with the ARC Terms of Reference, in terms of covering the risk register and a number of topics related to specific risks. At this meeting there was no particular focus on the finances although a quarterly business review paper was provided for information.

4.68   The paper and initial discussion on the risk register was useful and ensured that the committee had a good understanding of these. However, there was subsequently not a clear relationship between the topics under discussion – or those covered by Internal Audit – and the main strategic risks. The risk register did not always make clear the actual controls in place, or assurances that these were effective. The topics covered in detail in the meeting, for example the deep dive on roads data (requested by the committee) and the internal audit report on level crossings, did not evidently appear to link back to these risks, or controls or assurances. (We understand that the internal audit topics are approved by the committee.)

4.69   We were left with a sense that perhaps more of the assurances provided were at the request of the Executive rather than being driven by the risk register. Consequently this meeting did not clarify how ARC would be in a position to give the Board assurance that its strategic risks were being effectively managed.

4.70   All members of the ARC contributed well to the meeting. Different members had different areas of focus and style, and it appeared that there was a sufficient balance of skills to address all topics appropriately. Contributions were generally succinct and clear, and the discussions and questions were largely at an appropriate level, i.e. related to risk management and controls without becoming too detailed or operational.

4.71   There appeared to be a good rapport between the ARC members and senior staff. Members raised questions politely, but were also comfortable to provide a reasonable level of challenge where appropriate, in a manner which was constructive and non-confrontational. Senior staff responded well to questions, and appeared to be providing open and thoughtful responses.

4.72   The Chair managed the meeting well and efficiently. He ensured that everyone was able to contribute to each agenda item, while managing the agenda well to the allocated time. While most outcomes were clear, it may help if the Chair provided a clear summary at the end of each topic as to the consensus, decisions and actions.

4.73   However, it would be beneficial to ensure that there is a clearer relationship between the strategic corporate risks (which should have been agreed by the Board) and the agenda

items, to ensure that the ARC's role in reviewing the comprehensiveness of assurances can be fully met.

The Chair

4.74 Against a context of change and uncertainty, the Chair's professional skills are held in high esteem by his Board colleagues, and this respect is palpable. He is seen as strategic, organised, able to grasp the bigger picture, diligent (attending committee meetings for example) and adroit in external stakeholder management (something that Executive staff also remarked upon). He can focus the Board's attention and 'lift it up'.

4.75 He is also an able steward of meetings, allowing a diverse Board to make its views known so that it feels an inclusive, effective and business-like forum. Staff suggested that they would like to see more marshalling of NEDs as a team, to help ensure better communications, and establish a clearer collective view; perhaps inevitably with a Board that is still moving towards cohesion, NEDs seem to react individually (and repeat points) rather than working together.

4.76 The Chair attends every committee, takes part and was described as adding value to those meetings.

4.77 The relationship between the Chair and Chief Executive is viewed as very solid, with each able to be open with the other. The Chief Executive feels backed by the Board, and views the Board as coming together on key decisions.

4.78 There was positive feedback about the Chair from staff. He is seen as having presented challenges which helped them understand the perception of the ORR with government, leading to improvements in their communications. He is also seen as very supportive with external situations; there was a difficult situation with HS1 in the summer, and the Chair was very visibly supportive of the organisation. It was noted that his views in Board meetings can be very influential, which on occasion can constrain debate (though we did not see this in the meeting we observed).

4.79 The Chair is seen as a busy and time-constrained person (though no suggestion that he is not making sufficient time for ORR). It was suggested that he could make better use of the (well respected) Vice-Chair to increase his effectiveness. New Board members were not all aware of who holds the role of Vice-Chair or what the content of the role is; it has somehow been largely redundant or somewhat unacknowledged. The point was made that all NEDs from time to time can welcome 'touching base' and that there might be scope for the Vice-Chair to support the Chair in this.

4.80 It was said that the Vice Chair (with his thoroughness and rigour) will be a big loss when he leaves.

5. Conclusions

5.1 We begin first with some observations of the changes we can see at ORR since 2019.

5.2 There is a change in Board dynamism. ORR has been highly effective in the management of Board succession planning, transitioning from a good, competent (perhaps more traditionally orientated) Board in the past towards the current, slightly more diverse and challenging, team in place. Many see the Chair as deserving credit in pursuing a vision for change. The average age of the Board is younger than previously, there are more female members on the Board than in 2019 and there is a more diverse range of professional backgrounds. The style and dynamics of the Board have evolved – in a good way.

5.3 It is also striking how much NEDs love being on this Board, enjoy the perspectives of their peers, and the regard in which they hold ORR. This is a Board enthusiastically leaned in to its work.

5.4 Despite the changes to the Board, it continues to be a well-functioning one. The previous Board was solid and well functioning too, and the Chief Executive and Board Secretary can take some credit for the consistently smooth running of governance at ORR. The Board is becoming discerning on not wasting time on matters which do not need further debate, and is aided in that endeavour by the conscientious work of ORR staff. We can attest to the appetite for improvement in the governance secretariat, with changes to documents implemented since our last review.

5.5 We note also a collective confidence about ORR and its Board, as though there is satisfaction in the cementing of ORR's reputation and general solidity. In our review of 2019 the (now permanent) Chief Executive was operating in an interim role and there was keenness for resolution of his leadership status both internally and externally. Stakeholder survey results suggest that advocacy for ORR is at a higher than average level, those who offer a view are more inclined to note improvements, and ORR is generally seen as independent and successful in its role. NEDs are very complimentary in their expression of support and respect for the Chief Executive and recognise the progress ORR has made under his leadership. He is well thought of by his Board.

5.6 There are other changes under way and these may in the short term feel knotty to work through. Inevitably, with a refreshed Board, the collective mind and intent of the Board is still taking shape. This can feel uncomfortable, even random at times (for example to Executive staff trying to get to grips with why a NED is focused on a certain line of questioning and how to marshal the aforementioned enthusiasm), but will find a settling point as personalities understand each other better. The impact of new NEDs is disruptive, challenging the status quo but also slightly rocking the notion of equilibrium about ORR's role and identity that the Executive feel they have worked hard to build and are keen to preserve. There is an underlying anxiety for senior staff about losing hard-won credibility and respect, and a humility with which that is framed. But this is also a Board's role to probe and challenge, and to understand how well an organisation is positioned to be able to pivot and change in response to the environment.

5.7   More widely, the risk appetite of this configuration of the Board needs to find its settling point. The majority of the Board is more ambitious perhaps in its leanings than the previous Board, and some of the challenges raised to us by interviewees were highly focused on how to transition from being a performing Board and organisation to 'high' performing or what kind of innovation ORR should be open to (e.g. in relation to how technology might serve its purposes). There is an eagerness, alacrity even, to see the next significant evolutionary step. There is also a feeling that the environment demands a different response: regulators are not there to campaign, but they can influence the parameters of debate through the kind of evidence they make available in the public domain.

5.8   The Board and Executive are also still finding their shared language with each other: what each party means by strategic, insight, data, influence, tone of voice, for example. It is not that either party is somehow mistaken in their perspectives but rather that they can sound as though they speak slightly different tongues and are not quite communicating on the same plane. This is a healthy, constructive tension to work through and will ultimately benefit ORR, however the short-term discomfort. It can also be worked through from the strong foundation of a successful organisation with a mutually respectful, open and honest relationship between the Board and Executive.

5.9   Alongside this strategic deliberation, there is an opportunity for the Board to better own strategic risks, and for committees of the Board to be more explicit about the quality of assurance they are offering to the Board and their colleagues, For example, ARC should rotate through the risks on the strategic risk register, and prioritise where there is the most difference between the inherent and residual scores. It should then ask for presentations from the next tier to probe the controls and assurance, and gain a sense of the style and embeddedness of risk culture. Possible outcomes from this kind of exercise are: amending descriptions/scores/controls, demoting risks from the Board risk register, identifying assurance gaps and seeking to plug them, and/or escalating concerns to the Board.

5.10   We are well aware that this is an (unprecedentedly?) difficult fiscal and policy environment for the rail industry in particular, whether wrestling with the status of rail reform, EU deregulation, financial headwinds, behavioural changes among service users, or the challenges arising from climate change. It is this kind of environment of prolonged uncertainty that should mean a Board can add more value, through its hypothesising, sense-making and playing out of scenarios and through its helicopter view of the organisation. We would suggest that there is scope for the Board to continue to place a focus on how it knits learning into the frame of its Board meetings, whether around horizon scanning or influence or risk or insight.

5.11   In ideas around generative governance, Boards can play a valuable role in enabling an organisation to move forward on complex problems that defy a 'right' answer or 'perfect' solution.[2] The Board and Executive need first, however, to work through translating their

---

[2] In *The Practitioner's Guide to Governance as Leadership* (Tower C. 2013), Trower compares the 'generative' mode of governance with more established modes:

Traditional governance	Generative governance

strategic intent and agreeing how they would like to work together in the future to cement becoming a high performing leadership culture.

5.12 Lastly, there are matters of 'open' governance where ORR can learn from the examples of other regulators, whether the Chair reporting back to staff after Board meetings in the form of a blog, or staff observers at Board meetings. As a minimum, however, there is an opportunity to think about how to educate staff about the Board's role and value.

6. Recommendations

6.1 We recommend that:

Ways of working

6.2 It is timely for the Board and Directors to have an open discussion about ways of working and their expectations of each other, with the explicit purpose of cementing what is still a nascent relationship. This discussion could extend to when it might be appropriate to receive/discuss papers at an early stage of thinking/development.

Strategy

6.3 The Board and Executive need to set aside time to 'bottom out' the strategic conundrum that is creating frustration, and it is welcome that a session is planned for the end of February that will allow them to make progress in this respect.

Risk management

6.4 The Board should be tabling and considering its key strategic risks at least once a year and this should be a prominent item on the agenda.

6.5 As part of the strategy conversation suggested above, the Board and Executive should table a discussion about risk appetite across the different activities of ORR.

Conduct of business

6.6 Directors should improve the way they feed back to their teams after each Board meeting as part of debriefing authors.

6.7 *Board effectiveness*

6.8 The Board needs to continue to reflect on what it needs to learn and ensure that it has a plan for the year ahead.

6.9 The Chair might also consider how the Vice Chair role can support him in continued connectivity across the NEDs outside meetings.

Choose among alternatives	Generate alternatives
Make decisions	Decide what to decide
Solve problems	Discern and frame problems
Preserve congeniality	Promote collegiality
Pursue consensus	Pursue perspectives
Meet efficiently	Discuss robustly
Consider realities	Consider hypotheses
Pose pragmatic questions	Pose catalytic question

6.10   The NED appraisal process audit trail could be further strengthened by sharing a core list of areas to explore in advance and the feedback notes broadly being captured under these headings.

6.11   The Board needs to ensure that it is clear about what is being sought in terms of skills, competencies, diversity and experience in relation to the roles of Chair of the Health and Safety Committee and Vice Chair.

Committee assurance

6.12   Committee Chairs should have a one-page summary (this can be bullet points) after committee meetings that summarises any substantive matters that merit escalation to the Board and gives the Board assurance about areas covered that do not require the Board's attention (a model of assure/advise/alert was discussed with the Board). This could be a question that Chairs ask of their fellow committee members at the end of meetings.

6.13   All committee minutes should be circulated to all Board members for information.

Open governance

6.14   One of the staff briefing sessions should include a short 'teach in' on the Board role, which can be recorded and used with new staff too.

7.   Appendix 1: Review participants

Board members

- Declan Collier, Chair
- John Larkinson, Chief Executive
- Xavier Brice
- Madeleine Hallward
- Anne Heal
- Bob Holland
- Justin McCracken
- Ian Prosser
- Daniel Ruiz
- Catherine Waller

Independent member of the Audit and Risk Committee

- Nick Bateson

Focus groups were conducted with the following individuals, who report to EDs and have some experience of Board meetings:

- Jake Brown – DD of Legal Team
- Richard Coates – DD in Rail Planning and Performance
- Carl Hetherington – DD in Finance
- Anna Rossington – DD for Strategy and Reform
- Martin Jones – DD for Access, Licencing & International
- Lucy Doubleday – AD for Finance and Governance
- Steve Fletcher – DD Capital investment and management
- Richard Hines – DD Deputy Chief Inspector of Railways
- Victoria Rosolia – AD for HR

Interviews were conducted with the following Directors who attend Board meetings:

- Stephanie Tobyn
- Will Godfrey
- Feras Alshaker
- Vinita Hill
- Russell Grossman
- Elizabeth Thornhill

And also with Tess Sanford, Board Secretary.

CAMPBELL TICKELL

Telephone +44 (0)20 8830 6777
Recruitment +44 (0)20 3434 0990

info@campbelltickell.com
www.campbelltickell.com
@CampbellTickel1