

THE OFFICE OF RAIL AND ROAD
213th BOARD MEETING
Tuesday 26 March 2024, 09:00 – 12:00
At ORR, 25 Cabot Square, London, E14 4QZ

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

Executive members: John Larkinson (Chief Executive)

In attendance: Feras Alshaker (Director of Planning and Performance), Fiona Bywaters (Board Secretary), Will Godfrey (Director of Economics, Finance and Markets), Russell Grossman (Director of Communications), Vinita Hill (Director, Corporate Operations), Richard Hines (Acting Director of Railway Safety), Graham Richards (Director, TfL Analysis), Elizabeth Thornhill (General Counsel), Stephanie Tobyn (Director, Strategy, Policy and Reform).

Other ORR staff who attended are shown in the minutes.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. Apologies for absence were received on behalf of Ian Prosser (Director of Railway Safety).

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the meeting held on 27 February were approved, subject to an amendment in paragraph 23 – in the context of wider discussions around open access – to refer to the assessment of economic and environmental considerations.
4. A brief update was provided on actions arising and completed from the previous meeting. An update to action 02/01 would be included in the next Chief Inspector's report.

Item 4 CHIEF INSPECTOR'S QUARTERLY REPORT

5. Richard Hines (RH) introduced the report, referring to the meeting of the Health and Safety Regulation Committee (HSRC) the day prior and highlighting: health and safety matters relating to Network Rail (NR); station roof safety; drainage asset management; weather resilience; SPAD risk; and a recent internal audit report relating to enforcement. In response to a question, it was confirmed that engagement with duty holders had raised no concerns arising from RAAC (Reinforced Autoclaved Aerated Concrete).
6. The HSRC chair, Justin McCracken (JM), additionally referred to an update within the report on welding fume compliance.

7. The Board discussed the safety of the roof at London Victoria Station. Following a site visit, a letter had been sent to NR requiring a timebound action plan on which an update would be provided in the next Chief Inspector's report. Acknowledging the range of expert opinions on the level of risk, and given the unique nature of the structure, it was noted that a recent independent expert report produced by NR stated that there wasn't 'any cause for alarm' and there was 'no evidence from the inspection reports that the structure is showing any signs of distress'. A further survey would take place to enhance understanding of the asset, noting the need for pace. Discussion ensued as to NR's management of its assets across its estate and how assurance had been sought in this regard.
8. Further discussion related to:
 - The culture of engagement with enforcement of health and safety concerns at NR;
 - Level crossing risk management (as discussed at the HSRC meeting);
 - Data on trams and comparison with other modes of transport;
 - Data on SPADs (as discussed at the HSRC meeting);
 - Safety in Control Period 7 (CP7);
 - Regulatory supervision of station-related infrastructure within ORR; and
 - The Four Lines Modernisation (4LM) programme and an upcoming meeting with Transport for London.

Item 5 CHIEF EXECUTIVE'S REPORT

This report is redacted as time-sensitive and covering confidential issues.

9. [...]

Item 6 NATIONAL HIGHWAYS

17. Feras Alshaker (FA) introduced the report, referring to the meeting of the Highways Committee the day prior and highlighting: National Highways' (NH) target for pavement condition (with an update in the next report); changes being proposed by DfT and NH in the final year of the road period; pressure on the DfT capital budget; the efficiency review; and schemes for the next Road Period.
18. The Chair of the Highways Committee, Madeleine Hallward (MH), additionally referred to the committee's discussion with external guest Elliot Shaw (Chief Customer and Strategy Officer, NH), and a meeting of the Road Expert Panel which had raised questions on the third Road Investment Strategy (RIS3) and asset management.
19. The Board further considered road user satisfaction and the change in methodology (which made pre-pandemic comparison difficult).

Following a short break, the Board watched a brief video of staff conference highlights.

Item 7 UPDATE: WALES & WESTERN TRAIN PERFORMANCE

Richard Coates (Deputy Director, Railway Planning and Performance) joined the meeting for item 7.

20. At the outset of the item, Elizabeth Thornhill (ET) reminded the Board of decision-making processes relating to enforcement. Any decision on a case to answer, based on an evidential report, lay with the Director of Planning and Performance. If it was determined that there was a case to answer, NR would be given the opportunity to send representations and any further evidence for the Board to determine. It was important that the Board did not discuss specifics of the investigation at this stage, to remain impartial in any future decision required.
21. Feras Alshaker (FA) introduced the item, expanding on the possible outcomes to any investigation (and without reference to that at hand) such as: no further action, early action and monitoring of progress; potential licence breach and issuing of 'case to answer' letter.
22. The Board further explored outcomes in general if a licence breach were determined. This included the effectiveness and perception of fining (including in the context of executive remuneration), demonstrating effective regulation, reputational impacts, nature of possible recommendations, reparations, and whole-industry considerations. It was expected that a list of options be provided to the Board, were a 'case to answer' found by the Director of Planning and Performance.

Item 8 WRITTEN RESPONSE TO TSC REVIEW OF RAIL REFORM BILL

Patrick Johnson (Head of Strategy & Policy Projects) and Martin Leggett (Senior Policy Advisor - Future of Regulation) joined the meeting for item 8.

23. Stephanie Tobyn (ST) introduced the report, referring to the review context and noting the date of submission for the response to be 27 March 2024. Material comments were invited from the Board, and it was confirmed the final response would be published. The Chair and Chief Executive were also due to meet the Chair of the Transport Select Committee (TSC) in advance of any hearing.
24. The Board proposed the inclusion of 'evidence-based', alongside 'strong and independent oversight and assurance'. The response regarding the Secretary of State's proposed power of direction was also noted. The Board discussed the detail of how IRB would be licenced and the respective roles and powers of ORR and the Secretary of State, as well as enforcement.
25. Further comments included: integrating the ORR's public reporting role; an additional paragraph regarding oversight and assurance; attention to language implications such as the use of 'welcome'; restatement of oversight of IRB; and reference to whole-industry perspective.

Item 9 OPEN ACCESS: REVIEW OF THE NPA TEST

Martin Jones (Deputy Director, Access & International), Esther Sumner (Head of Access Reform Delivery), and Steve Armitage (Head of competition economics) joined the meeting for item 9.

26. Stephanie Tobyn (ST) introduced the report, referring to the context of the report and the commission from the Minister of State for Rail on reducing barriers to open access.
27. The Board examined the differences between the Not Primarily Abstractive (NPA) test and Benefit Cost Ratio (BCR) assessment presented in the report. The Board were broadly content with the report's initial findings that ORR should continue to base its economic assessment approach on the NPA test – noting it was well understood by decision-makers and stakeholders, and provided helpful support to the Board in weighing its duties.
28. However, Board members suggested that further work be undertaken to compare modelled levels of generation and abstraction involved in previous NPA forecasts with the actual revenue impacts experienced by affected open access and public service operators. ST confirmed that consultancy work had been commissioned to address this.
29. The importance of assessing a variety of factors, beyond the NPA test, was noted as important to determining open access applications. Final comments related to the length of the report's executive summary.

Item 10 2024-25 BUDGET APPROVAL & BUSINESS PLAN

Lucy Doubleday (Associate Director, Finance & Governance) joined the meeting for item 10.

30. Vinita Hill (VH) introduced the report, referring to a change in presentation style, a more concise length, and amendments to the section on service standards. Lucy Doubleday (LD) further mentioned a claim regarding the civil service headcount cap, and set out plans for budget allocation for which the Board's approval was sought. The approach was noted to be higher-risk, in that it may involve reprioritisation during the financial year.
31. The Board requested that the term 'overprogramming' not be used, given recent comments toward the use of 'overlay' in a stakeholder document. Regarding the business plan, the Board requested inclusion of service level standards pertaining to proactive inspection work, and deliverables under 'A Safer Railway' that adequately reflected train accident risk.
32. The Board **approved** the budget allocations for 2024-25 and priorities for forthcoming annual plans, subject to integration of comments made.

Item 11 REPORTS FROM COMMITTEES

33. Anne Heal (AH) reported on the meeting of the Consumer Expert Panel held on 13 March. The Panel had considered, among other items:

- Briefings on current work, including price dripping, availability of lifts at stations, and the consultation to amend guidance on Accessible Travel Policies (ATPs).
 - A recent audit on passenger assistance;
 - Disabled persons experience of the complaints process; and
 - Passenger-oriented work on stranded trains, and information regarding annual crisis management exercises in Switzerland.
34. The report of the Highways Committee was seen as provided under Item 6.
35. Justin McCracken (JM) reported on the meeting of the Health and Safety Regulation Committee, noting the majority of updates had been provided under Item 4. The Chief Inspector's annual report on health and safety, and its emerging themes, were additionally mentioned.

Item 12 ANY OTHER BUSINESS

36. The Chair confirmed that no stakeholder dinner would take place in April (with the next being organised for May in Glasgow); the pre-election period associated with the local elections had commenced; initial sifting and shortlisting had taken place for Non-Executive Director recruitment; and that any expenses should be submitted in advance of the financial year end.
37. The Board noted the dates of the next meetings and items below the line, namely: the board forward programme.

Meeting end: 12.30pm
Approved: 23 April 2024