

THE OFFICE OF RAIL AND ROAD
216th BOARD MEETING
Tuesday 25 June 2024, 09:00 – 15:50
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.

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

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 Catherine Waller, whilst Graham Richards would join the meeting after lunch.

Item 2 DECLARATIONS OF INTEREST

2. Xavier Brice, Non-Executive Director, referred to his position at Sustrans, making reference to funding by National Highways, for the purposes of transparency. The Board were of the view that he be permitted to participate in Item 12.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the meeting held on 21 May 2024 were approved. A brief update was provided on actions arising and completed from previous meetings.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

4. Richard Hines (RH) introduced the report, referring to discussions at the meeting of the Health and Safety Regulation Committee (HSRC) the day prior, namely: Avanti West Coast's risk assessment for the introduction of new Class 80x Hitachi trains; communications to West Coast Railways Company Limited (WCR) following their application for an exemption from regulation 5 of the Railway Safety Regulations 1999; preparatory work and arrangements for the Fatal Accident Inquiries concerning the Carmont derailment incident

and Saughton tram fatality; and the NEBOSH quality assurance audit where Bronze status was recognised.

5. Further update and discussion related to:
 - Signals Passed At Danger (SPADs) including analysis of the trends and causes; and
 - The effectiveness of the 4 lines modernisation project (4LM).

Item 10 REPORTS FROM COMMITTEES

6. Justin McCracken (JM) reported on the meeting of the HSRC held on 24 June. The Committee had considered, among other items:
 - Reflections on Network Rail (NR) health and safety performance, with external guests Rob Brighthouse (Non-Executive Director) and Martin Frobisher (Group Safety and Engineering Director, Technical Authority);
 - Rail Accident Investigation Branch annual report 2023;
 - Improved assurance and performance using KPIs to enhance the efficiency of investigations and enforcement decisions; and
 - Strategic Risk Chapters and the proposal for a new approach.
7. The Committee suggested that the Board be consulted on whether to send a letter from the Committee Chair to his equivalent at NR, outlining reflections from the discussion with the NR guests. The Board agreed with the proposal, and a draft letter would be shared with appropriate officers for their input and copied to the Chair of the Board. Further consideration was given to culture and communications within NR, with particular attention to enforcement processes and in the context of rail reform.
8. It was noted the July Chief Inspector Report would be succinct in nature. Further information on the recent internal audit would be reported to the Audit and Risk Committee in July, and to HSRC in a year's time. Finally, it was noted that an offer had been extended by NR for board members to visit a New Measurement Train.

Item 5 CHIEF EXECUTIVE'S REPORT

This report is redacted from the published version as time-sensitive and covering confidential issues.

9. [...]

Item 6 NATIONAL HIGHWAYS

Rachel Gittens (Deputy Director, Strategic Road Network) joined the meeting for item 6.

13. Feras Alshaker (FA) introduced the item, referring to a meeting with Treasury (HMT) the week prior regarding RIS3, where publication was estimated by DfT to be in December. The Board requested that the options and implications

of a no-RIS scenario and recommendations ORR would provide to government be set out **[Action 06/01]**.

14. Rachel Gittens (RG) provided an oral update to the report, that the draft letter of advice referred to within had now been received. Further mention was given to the KPI summary at Appendix B, as well as challenges to National Highways' (NH) delivery of Emergency Refuge Areas (ERAs). The Board requested that clarity be provided regarding the ERA programme, including initial expectations and objectives, current status and means of monitoring **[Action 06/02]**.
15. The Board further discussed:
 - NH's proposal for renewal of on-road technology, particularly in the context of smart motorways;
 - Performance against the pavement condition, road user information, and roadworks information KPIs;
 - Concerns over the calculation and amendment of KPIs during the current road period, and whether they encouraged appropriate behaviour, as well as any incentives under performance-related pay; and
 - Cultural observations of NH.

Item 7 2023-24 ANNUAL REPORT AND ACCOUNTS

Lucy Doubleday (Associate Director, Finance and Governance) joined the meeting for item 7.

16. Vinita Hill (VH) briefly introduced the report referring to discussions at the meeting of the Audit and Risk Committee on 17 June and responses to the feedback received. Lucy Doubleday explained that the National Audit Office's completion report had been delayed as a result of the pre-election period. Two potential low value spend control breaches had been identified by ORR and Government Campus clarification was being sought. Finally, an oral update was given to the report that it was no longer anticipated to receive pensions information for inclusion and that appropriate wording had been provided by HMT. Confirmation was outstanding as to whether the report would be laid in Parliament before the summer recess.
17. The Board welcomed the refreshed presentation of the annual report and accounts. Minor suggestions were made to explain appointment of doctors and psychologists; include additional wording regarding HS1 in the foreword, and make reference to the Consumer Expert Panel within the report; and future improvement of stock photos.

Item 8 HS1 PR24 DRAFT DETERMINATION BRIEFING

Howard Taylor (Head of Capital Investments) and Debbie Daniels (Delivery Manager) joined the meeting for items 8-9.

18. Feras Alshaker (FA) introduced the report, referring to HS1 Ltd's five-year asset management strategy (5YAMS) and current relationships. Howard

Taylor (HT) outlined the provisional timeline of board engagement in the PR24 process, with items upcoming at both the July and September Boards, as well as a potential teach-in to be scheduled for early September. Work was summarised into four themes, namely: asset management maturity, efficient pricing, systems synergy, and managing uncertainty (given the requirement for 40-year forecasts). The Board also referred to freight users. It was confirmed that station operating costs did not fall within the ORR's remit, and nor did the setting of the Investment Recovery Charge (IRC).

19. The Board returned to relationships with relevant stakeholders, having heard from Eurostar and HS1 at previous board meetings, and noting the guests from South Eastern next on the agenda. Comparisons were made to the context of PR19, whilst the impact of the pandemic was acknowledged where relevant.
20. The Board also considered competition and the performance of markets, namely: domestic, freight, and international, including potential barriers such as station and depot capacity, or maintenance.

Item 9a INTRODUCTION: EXTERNAL GUESTS

21. Feras Alshaker (FA) briefly introduced the external guests, referring to a briefing included in the agenda as an appendix to item 8.

Item 9b EXTERNAL GUESTS: SOUTH EASTERN

22. The Chair welcomed Robin Gisby (Chair, South Eastern) and Paul Barlow (Director of Finance, South Eastern), and invited them to present their views on PR24 and other matters of relevance.
23. The presentation referred to: context and customers; comparative costs, contribution, implications and risks of high speed vs classic services; the domestic underpin; and implications for high-speed travel including future volume.
24. Further discussion from the Board considered the balance between subsidies and charges; condition of assets and the impact of additional international services.
25. The Chair thanked the guests for their attendance and presentation.

Item 9c REFLECTION: EXTERNAL GUESTS

26. The Board reflected on the guest's contributions with particular regard to asset renewal and maintenance; charges; service levels; competition and access; and market growth.

Item 10 REPORTS FROM COMMITTEES

27. Anne Heal (AH) reported on the meeting of the People Committee held on 24 June. The Committee had considered, among other items:
 - SCS Performance 2023-24 (at item 15 of the agenda);

- A directorate deep-dive into railway planning and performance, and highways, with attention to structure, roles, accountabilities, gender split, temporary promotions, and performance review completion. It was said that any future deep-dives would relate to the cultural audit;
 - The Q4 people pack and employee relations dashboard, as well as early indications of workplace attendance requirements and management of it;
 - The Non-Executive Director induction programme; and
 - An EQIA summary into non-SCS pay and reward.
28. Xavier Brice (XB) reported on a site visit with NR on 31 May 2024 to habitat pilots on the north Kent coast, to observe biodiversity management and integrated work between teams.
29. Daniel Ruiz (DR) reported on the Bi-National Committee (BNC) seminar for international rail stakeholders in the ORR offices in Cabot Square on 18 June 2024. The event was viewed as productive, with 19 organisations represented. Discussions had covered depot and station access, as well as renewals, among other issues of importance to stakeholders.

Item 11a INTRODUCTION: EXTERNAL GUESTS

30. John Larkinson (JL) briefly introduced the external guest and referred to a recent meeting, which the Chair had also attended, at which ORR's current activities and priorities were discussed. The Chair had also raised the Non-Executive Director recruitment process and the impact of the pre-election period, as well as diversity considerations. As the appointment process had been paused, it was indicated that Justin McCracken's tenure on the Board would be extended beyond 31 July 2024.

The Board adjourned for lunch from 12.20-12.55pm.

Item 11b EXTERNAL GUESTS: DAME BERNADETTE KELLY, DCB

31. The Chair welcomed Dame Bernadette Kelly DCB, Permanent Secretary of the Department for Transport. In discussions, the Board referred to access applications; the post-election regulatory landscape; rail reform; the holding to account of NR and NH performance; and efficiency of costs. Other issues considered included stranded trains; system resilience and climate change; renewals and maintenance; public perceptions of safety; freight; and ORR/DfT relationships.
32. The Chair thanked the guests for their attendance and presentation. Due to time constraints, reflections on the discussion were postponed to a future meeting.

Item 12 NATIONAL HIGHWAYS INVESTIGATION

Rachel Gittens (Deputy Director, Strategic Road Network) and Louise Butcher (Head of Strategy and Policy) joined the meeting for item 12.

33. Rachel Gittens (RG) introduced the report, providing an overview of context, structure and timelines of the investigation. Louise Butcher (LB) introduced the recommendations presented to the Board in the report, as laid out in the executive summary, and described how they had been determined. Reference was also made to NH's response to the case to answer letter (included at Annex B of the report). The Board welcomed the comprehensive report and were invited to consider the investigation findings, representations and recommendations as to whether there had been a licence breach, and where relevant, consider whether enforcement action is appropriate.
34. Discussion ensued regarding weaknesses at NH around some of the capabilities underpinning delivery and performance. This included limitations on how it evidences its decision making; the quality, type and timeliness of the information and data it provides; whether the company is sufficiently proactive; the effectiveness of its internal communications and how its divisions and teams work together to deliver its statutory duties; and whether the requirements under the company's licence were effectively understood. It was noted that the company had engaged well with the investigation and that ORR ensured it had ample opportunity to make its case and provide appropriate evidence from the right teams. There was further discussion about the examples of breach provided to NH and whether it had satisfactorily explained how these had come about or whether they had been addressed. The board's view was that the evidence pointed towards a breach of condition 7.3(e) of the company's licence.
35. The Board considered the constructive tone of the response from NH to the case to answer letter but sought assurance as to how the company would be held to account to deliver its proposed improvement plan. RG referred to NH's intention to make a public commitment in its forthcoming Delivery Plan Update for 2024-25 to produce and implement an improvement plan to bring the company back into compliance with its licence. If the plan and its intended outcomes are not delivered then a short investigation would be straightforward, given the work already carried out by ORR in this area. It was anticipated that an improvement plan would be provided by NH in September 2024. This would then be monitored to ensure progress is achieved.
36. The Chair referred to the report recommendations. **The Board resolved that:**
 1. **National Highways was and is non-compliant with condition 7.3(e) of its licence;**
 2. **Based on the additional evidence provided by National Highways in response to the case to answer letter and the complexity of interpretation of condition 4.2 that it is compliant with conditions 4.2(a), (b) and (c) and condition 5.6(b); and**
 3. **Enforcement action not be taken, given the constructive response National Highways provided to the case to answer letter.**

37. RG confirmed that ORR would meet with National Highways over the coming weeks as it finalises its improvement plan to bring it back into compliance with its licence. This would be monitored and reported to Highways Committee and tracked at working level through enhanced monitoring. Finally, reference was made to communication of the decision to relevant stakeholders.
38. The Board recognised the appointment of a new Non-Executive Director as Chair of NH, and an upcoming engagement event would be held between the ORR and NH Boards. It was suggested that an overview of the objectives (asks and priorities) of the event be provided, as well as a brief history of KPIs and targets over RIS1 and RIS2, in the context of culture and performance.

Item 13 WALES AND WESTERN REGULATORY INVESTIGATION

39. Liz Thornhill (LT) introduced an overview of the representations received and explanation of the process to date. It was confirmed that after the meeting, a further paper would be circulated for the board meeting scheduled on 27 June 2024. Representations had been received from Transport Focus, Rail Future, Transport for London (TfL) and Network Rail (NR). It was highlighted that the representation of NR included points supposing the misapplication of statutory and regulatory frameworks, procedural irregularities and a failure to take account of relevant factors (which were refuted). The Board reflected on culture and behaviours in response to the investigation.
40. The Board would consider at its next meeting, amongst other matters, whether Network Rail were taking all appropriate steps to address performance and secure compliance with its licence. LT explained that at that meeting, the Board would consider the draft order and whether it should be finalised.
41. The Board suggested that if the recommendation was to make a final order, it would be helpful to receive specific examples of why the statutory exception does not apply, or in other words, what appropriate steps Network Rail is not taking. In response to a question on consideration of whole-industry impact, LT confirmed that the evidence report addressed stakeholder contributions.

Item 14 ANY OTHER BUSINESS

42. The Board reflected on points raised during the meeting on culture, noting the business plan deliverable of a culture audit and impact of the ways of working principles (notably the in-office attendance requirement). The Board encouraged management to promote the benefits of in-person working.
43. The Board noted the dates of the next meetings and items below the line, namely: the Board forward programme; and committee minutes approved since the last meeting.

Item 15 PEOPLE COMMITTEE REPORT AND SCS PERFORMANCE 2023-24

This item was for Non-Executive Members of the Board only (from 3.35pm).
Victoria Rosolia (Associate Director, HR & Organisational Development) joined the meeting for this item.

44. AH relayed the discussions of the Committee on SCS performance. NED Board members had received the summary paper submitted to People Committee by JL and found it helpful as a basis for considering performance rankings.

[Continued in restricted minutes]

50. The Board examined the recommendations in depth, before making a final determination. Any decision on financial reward would be made following receipt of Cabinet office guidance which had not yet been issued.

Meeting end: 4.11pm
Approved: 23 July 2024