

THE OFFICE OF RAIL AND ROAD
217th BOARD MEETING
Thursday 27 June 2024, 14:00 – 15:30
Via MS Teams

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

Executive members: John Larkinson (Chief Executive), Richard Hines (Director of Railway Safety)

In attendance: Fiona Bywaters (Board Secretary), Feras Alshaker (Director of Planning and Performance, Will Godfrey (Director of Economics, Finance and Markets), Russell Grossman (Director of Communications), Vinita Hill (Director, Corporate Operations), 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.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 WALES AND WESTERN REGULATORY INVESTIGATION

Richard Coates (Deputy Director, RPP), Steve Helfet (Deputy Director, Railway Operations), Siân Jefferies (Senior Legal Advisor, via MS Teams) and Patrick Crowley (Senior Regulation Manager) joined the meeting.

3. Liz Thornhill (LT) introduced the report and outlined the investigation and decision-making process to date. Reference was made to the report recommendation before the Board: to proceed with the final order without any modifications. However, it was explained that the Board may decide otherwise, with options outlined in detail at section B of the report. These were: to modify the proposed order, or, not to proceed with making the final order (if it was considered that a relevant exception applied – such as the view that Network Rail (NR) is taking all steps, as appropriate, to secure compliance with the licence. Relevant factors referred to include the representations received on the draft order, and the Board's Section 4 duties (Railways Act 1993)).
4. The Board queried whether NR could be considered to be taking all steps as appropriate, or, what more action could be taken in response – particularly in light of the representations submitted on the part of NR. Richard Coates (RC) referred to five areas where it was thought that NR could take further steps to improve performance:

- a) A governance structure that fully supports and drives good train performance;
 - b) A fully developed plan for managing assets that drives sustainable, long-term improvements in train performance;
 - c) Sufficient strategic engagement with operators on delivering good performance;
 - d) Robust approach to learning lessons from complex delay-causing incidents; and
 - e) Prioritised plans for a more joined-up approach to operating the railway, for example recovering from delays.
5. The Board further explored (a) and the maturity of associated plans to improve governance structures. RC referred to the lack of a clear, finalised plan of changes to be made to the governance structure, also adding that Project Brunel was not yet fully evolved, with the plans required to be fully matured by August. Plans were not currently at a level of maturity to provide assurance of what would be delivered and by when. Some changes had been made to governance structures and reporting lines, but a broader approach was sought to facilitate good train performance, for example, when making asset management decisions.
6. A query was raised as to the distinction between points (d) and (e). For the former, it was explained that this referred to lessons learned and implementation thereof following a large-scale multilateral delay event, and for the latter, this referred to effective collection and analysis of operational data to prioritise improvement plans, including for NR's operating culture. The Board asked if this was particular to the Wales and Western (W&W) region, or reflected elsewhere across the network. RC confirmed that W&W was considered an outlier in terms of performance, but observations on process had come to light through the investigation. Steve Helfet (SH) explained that the Western route in particular had undergone a foreseen change in its train service characteristics over the previous two years, adding metro-style operations and a greater volume of heavy freight traffic. Despite starting good initiatives such as Project Fusion, the operating culture had been proven not to be ready to support this change successfully.
7. The Board referred to NR's representations on Project Brunel, where it was contended that significant development had been achieved and ORR had insufficiently reviewed the relevant evidence. RC confirmed that all evidence received had been reviewed accordingly, and the onus had been on NR to provide any additional evidence to support their contention through its representations, but nothing further had been received in this regard.
8. LT explained that the draft order required "a robust and evidenced plan identifying those further activities that Network Rail will undertake to secure the operation and management of the network to deliver the facilitation of railway service performance to meet customer reasonable requirements to the greatest extent reasonably practicable" such that ORR could consider it by 31 October. The Board had reflected on whether, in the absence of an order, it could have confidence in NR undertaking the necessary improvements.

9. It was discussed as to whether the five points cited used effective tangible language to understand how they might be met, and whether specific examples should be added to the order. The Board also discussed the need to ensure that the order provided sufficient flexibility for NR to own and develop its plans. The Board further examined 'strategic engagement' under (c), referring to the industry roundtable and querying action on NR's part since. It was explained that a more committed approach was sought from NR to demonstrate all such steps as it appears to ORR to be appropriate had been taken, and this had not been demonstrated in the representations nor otherwise evidenced.
10. The Board also considered adequate communication with passengers and freight users, referring to the representation of Transport Focus which encouraged the order to be more explicit in that regard. It was advised however, that a plan would not be considered robust were it not to include points regarding communication with passengers and stakeholders, meaning explicit reference was deemed unnecessary.
11. The Board considered the balance sought between overarching and specific statements, emphasising the utility of clear and detailed points. RC suggested that engagement with NR could allow for more detailed discussion on the nature of its response, rather than mandating individual explicit actions.
12. The Chair proposed that any outstanding points from the representations be reviewed to assess whether modification to the draft order was appropriate. The TfL representation referred to including specific reference to an improvement plan on the Paddington to Heathrow section of the infrastructure. LT advised that a specific reference to one part of the region within the order was not appropriate but that such a plan would be expected under current wording.
13. The Rail Future representation referred to insufficient penalty but also a detriment to the public purse. LT clarified to the Board that a reasonable sum would only be sought if ORR is not satisfied by 31 October that a robust and suitable improvement plan has been received.
14. The Board was of the view that the representations received did not necessitate modification to the draft order.

The following paragraph is partially redacted [text in square brackets] from the published version due to legal privilege:

15. The Board referred to its meeting in May and how the reasonable sum had been determined, considering how this, and any decision, might subsequently be communicated. Siân Jefferies referred to the penalty statement which accompanied the consultation and outlined the Board's reasoning. It was requested that the Director of Communications ensure the Board receive appropriate briefing documents prior to any public announcement [**Action 06/03**]. The Board also reflected on how stakeholder communications would be managed upon publication of any final order and relevant timings. [...]

The following paragraph is partially redacted [text in square brackets] from the published version due to legal privilege:

16. The Board returned to the report and whether its explanation of the areas where it was thought that NR could take further steps to improve performance had been sufficiently comprehensive to allow for a final decision on the order. It was requested that management provide additional information and clarification on the five areas, including reflections on performance management in other regions, and that an additional board meeting be convened. [...]

Item 4 ANY OTHER BUSINESS

17. The Board reflected on its meeting held on 25 June 2024 and the external guest speaker, Dame Bernadette Kelly DCB (DfT).
18. The Chair and Chief Executive also reported on their attendance at a board meeting of National Highways, the day prior.

Meeting end: 3.48pm

Approved: 23 July 2024