

THE OFFICE OF RAIL AND ROAD

126th BOARD MEETING

09:00-14:30, TUESDAY 25 MAY 2016

ONE KEMBLE STREET, LONDON WC2B 4AN

Non-executive members: Stephen Glaister (Chair), Tracey Barlow, Bob Holland, Michael Luger, Justin McCracken

Executive members: Joanna Whittington (Chief Executive), Ian Prosser (Director Railway Safety)

Executive directors: Graham Richards (Director Railway Planning and Performance), John Larkinson (Director Railway Markets and Economics)

In attendance, all items: Dan Brown (Director Strategy and Policy), Russell Grossman (Director Communications), Juliet Lazarus (Director Legal Services), Tess Sanford (Board Secretary),

Peter Antolik, (Director Highways Monitor) (part as shown)

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. There were no apologies from members. Tom Taylor was on leave so Lucy Doubleday would cover his items.

Item 2 DECLARATIONS OF INTEREST

2. There were no relevant declarations of interest.

Item 3 APPROVAL OF PREVIOUS MINUTES

3. The draft minutes had not yet been reviewed by the executive. The Board Secretary would circulate a finalised set to the Board and seek agreement in correspondence [Action].

Item 4: MONTHLY HEADLINES

4. Ian Prosser reported on:
 - Action taken against GWR¹ and Network Rail following the collision incident in Plymouth.
 - The third meeting of the Health and Safety Regulators Network. The board asked whether it would be appropriate to include a representative to consider the highways aspect separately to the Health and Safety Executive's (HSE) involvement. IP committed to consider how this could be done [Action].
 - Work with Transport for London (TfL) which included looking at the introduction of the night tube and Crossrail progress.
5. Graham Richards reported on:
 - The cross office collaboration which had gone into preparing the NR Monitor involving the RME, legal and RPP teams.

¹ Great Western Railway

- Greater confidence in NR's management arrangements for vegetation following an appointment to bring national level focus. This had led to a slight reduction in the score on the regulatory escalator where it had been a concern for more than two years.
6. John Larkinson highlighted:
- The work to publish and then follow up on the East Coast Main Line (ECML) access decisions.
 - Progress on working papers on PR18
 - Pressure to publish *measuring up* as scheduled and before the Transport Select Committee hearing on the customer experience.
 - Rising demand for resources from Welsh government to help them move their agenda forward. This was demonstrating the need for strong regulation in a devolved model.
 - A plan to address resourcing issues with a major consultancy contract to give flexible pr18 support over a sustained period. This was an attempt to address historic under-estimates of what support would be needed and to respond to issues of retention and recruitment which the board had already been made aware of.
7. The board discussed ways to engage and retain staff and offered support around engagement if this would be helpful. JW noted that ORR had not yet agreed its funding beyond 2016/17 with Treasury because at the last review our future role had not been clear.
8. JW reported that a normal lessons-learned review of the ECML decisions was in hand and that the team were thinking about the medium to long term future of access regulation.
9. Joanna Whittington reported on:
- A recent night visit to LUL to observe a safety inspection.
 - Discussions with NR on a route for the north and implications for regulation
 - Discussions with DfT on their response to Shaw and the development of our MOU.
 - Media coverage of the ECML decision and steps to set out our PR18 thinking.
 - A new focus on internal engagement including the establishment of a social committee among staff.
 - Non-executive director recruitment
 - The roll-out of new Blackberry smart handsets which reflected progress on the IT agenda.

Item 5 REGULAR REPORTS

10. The Board discussed monthly reports on rail safety and the NR CP5 Tracker and the Q4 report against the ORR business plan.

SAFETY

11. The board asked about the Plymouth intervention and discussed whether the two derailments reported reflected systemic issues (they did not appear to). In discussing the PIM² the board noted an encouraging long term overall

² Passenger indicator model

reduction in risk, and that this did not take into account the higher number of people travelling on the network – and so could be seen as under-representing the actual improvement in safety over time.

12. Bearing in mind all the risk that a single accident could undo many years of steady statistical progress, the board agreed the industry deserved more recognition for its work in making the UK's railway currently the safest in the world.
13. The board noted that the relationship with the Rail Accident Investigation Branch (RAIB) continued to be positive.

CP5 TRACKER

14. Graham introduced the new format CP5 Tracker. This included
 - a. summaries of national and TOC performance with more detail on TOCs of particular interest,
 - b. an overview and national summary of asset management with more detail on a particular set of assets (this month it was renewals in Scotland) and
 - c. a piece of analysis on an area of interest (this month: *why have delay minutes and PPM³ failures increased while infrastructure failures have fallen?*).
 - d. There were then reports on regulated milestones in enhancements, forward looking financial information, and a summary of the regulatory escalator.
15. The board welcomed the new format and its focus on evidence. They asked for previous period measures to be included to give a flavour of movement between periods. **[Action]** They noted the analysis piece with interest and commented that this sort of analysis added to evidence to inform NR's operational thinking and might help close any information gaps.
16. GR said that the form and content of the Tracker report was still being finalised and it might move to a quarterly report for some of the areas which were better suited to that timeframe.

Lucy Doubleday joined the meeting.

Q4 BUSINESS PLAN

17. Lucy Doubleday explained that the percentage of business plan commitments met was not a complete picture of performance because it necessarily failed to reflect the changes in year – particularly around additional work responding to changes in the wider environment. In 2015/16 that had included the super-complaint and the government's reviews of ORR.
18. The underspend on rail was disappointing and ORR would operate to tighter planning margins this year. The underspend on roads was well rehearsed with the board and largely a result of slower than planned recruitment.
19. The board discussed the low level of consultancy spend in the context of the retention and recruitment issues. A significant part of the underspend had

³ Public performance measure

related to consultancy planned to support ECAM⁴ – but that process had been suspended and the funds had not been used.

20. The board noted that a low sickness rate could normally be taken to reflect good morale among staff.

ITEM 6 ORR ANNUAL REPORT AND ACCOUNTS

21. Lucy Doubleday reported that the NAO would issue an unqualified audit opinion. The staff budget would be lower than planned, but the parliamentary funding outturn would be met. She highlighted changes to the standard reporting format which had been adopted by ORR this year (Chair's foreword and a new piece on risks and mitigations). The timetable for laying had slipped as a result of the additional Parliamentary recess associated with the European referendum. The accounts should be laid on 27 June.
22. The board discussed the new section on strategic risks, which they did not feel adequately distinguished between what ORR could do in mitigation of the listed risks and what mitigations depended on the industry.
23. The board discussed the two forewords suggesting they include mentions of the impact of NR reclassification, stronger references to our highways work (as new and significant) and, as discussed earlier, the current high level of rail safety performance.
24. Overall the document was readable and the team were commended on the content.

Lucy Doubleday and Peter Antolik left the meeting

ITEM 7 HEATHROW AIRPORT LIMITED (HAL) CHARGING PROPOSALS

Adedayo Ajibade and Laura Majithia joined the meeting

25. Juliet Lazarus introduced the item and summarised the responses received to the consultation on ORR's 'minded to' decision on HAL charging. Of the respondents only HAL was strongly against the decision. They had offered new documentary evidence which they believed demonstrated that the project could not have gone ahead without the prospect of higher charges to rail users.
26. The evidence had helpfully dated the decision on the investment to 1993. There had been no RAB at this time, but its pre-cursor, the Single Till, had included HAL.
27. Juliet explained the team's view that the new evidence demonstrated that the BAA had taken a commercial decision on the investment in the project in 1993, that the project had not met the threshold IRR but had been recognised as adding to the airport's competitive potential, and that HAL had actively worked to secure an exemption from the Railways Act 1993 access and licensing regime.

Paragraph 28 has been redacted as covered by Legal Professional Privilege

⁴ Enhancement cost adjustment mechanism

29. The board noted that this had originally been a finely balanced decision and agreed, based on the evidence available, that the decision had not changed. The board therefore agreed to implement their minded-to decision. They noted again the difficulty of retrospectively applying regulations that had not been anticipated at the time the project was being developed.
30. The decision would be treated as price-sensitive and announced at the end of the week. It was agreed that the chair, chief executive and legal advisor would agree the process for the announcement. [Action]

Laura and Adedayo left the meeting.

ITEM 8 ANNUAL REPORTING KEY MESSAGES: HIGHWAYS ENGLAND AND NETWORK RAIL

Peter Antolik joined the meeting

31. Graham Richards introduced the paper which bundled together the key messages on the Monitors for Network Rail and Highways England. This was the first year that we had reported on both organisations and an important opportunity to ensure alignment across our responsibilities.

Roads

32. Peter Antolik reviewed the key messages on roads. Broadly he thought HE had had a reasonable year but there was not yet a comprehensive set of targets against which they could be accurately assessed. The performance letter and annual report would set out the risks to future success, particularly around the capital investment programme. The KSI⁵ measure was improving along the trajectory required to meet the end of period target – but it was difficult to identify what was driving that improvement. He described performance against the other measures.
33. The board discussed the quality of underlying data and how it was assured. HE needed to establish an agreed baseline and forecast spend across the period. At the moment, the board was concerned that HE has not yet fully demonstrated how it is managing risks to delivery of the investment plan in the remainder of the period. HE and DfT were working to plan the programme properly during this business year (2016/17) and the challenges of this should not be under-played in our annual report.
34. The board also discussed the delivery of maintenance and renewals in 2015/16 where a consistent underspend in the first three quarters of the year had been followed by a very high spend in the final months. There were mechanisms available to HE which could have been applied to deliver a more regular spend across the year, but these had not been called on.

⁵ Numbers killed and seriously injured on the network

35. The board agreed that ORR's reporting should draw on available evidence and offer a balanced view as clearly as possible. Overall the regulator supported the development of good management practice as crucial to efficient operation.
36. PA explained how the report and accompanying performance letter would be shared with HE and submitted to the Minister. As with rail, the principle was that there should be no surprises for them at the point of publication.

Rail

37. GR reviewed the key messages on rail. Performance on enhancements was still problematic although productivity had been better over the last three months. Cost escalation remained a significant issue.
38. The board noted the way that capital commitments were already running into CP6 and that this needed to be made transparent to manage expectations for future investment. Future funding challenges included the reduced income projections from single till sources following projected asset sales.
39. The team explained the series of meetings with NR and DfT officials to share the content in advance and that a meeting would be offered to the minister to discuss the content of the report.
40. Jlk noted that some of the enhancement cost risks in Scotland that ORR had highlighted now seemed to be materialising.

ITEM 9 NETWORK RAIL'S DELIVERY OF PERFORMANCE IN 2015-16

Matt Durbin, Liz Thornhill joined the meeting

41. Graham Richards explained that the executive had agreed that there should be no investigation into NR's delivery of performance in 2015-16 given the evidence of their active engagement with a wide range of performance issues. This was in a year when performance was the worst it had been in several years. The paper set out the reasons behind this decision.
42. In reaching this position, the team had focused on the four TOCs where performance by NR had not met the agreed targets and considered whether NR had done all it could to address the issues. This was being referred to as the 'reasonable test'. Essentially the team had reviewed NR's response to poor performance to see if they had identified what needed fixing and whether it was being fixed. The executive had considered how ORR could best add value by supporting improvement and break the constant cycle of investigation.
43. Matt Durbin gave a detailed account of the issues looked at by the team in each of the four TOCs and for particular issues with individual TOCs. Overall the team looked at NR's ability to understand what was happening, its targeted interventions to improve resilience, the effectiveness of its response systems, and its planning to recover from incidents. On individual TOCs, issues considered included GTR's train crew challenges and timetabling in Scotland.
44. The executive had included as an annex in the paper a letter from NR which demonstrated a step change in engagement with these issues by senior management.
45. Overall the team's judgement was that an investigation would be backward looking, would not add value and might become a distraction to NR's management. Discussions with TOCs – NR's customers – showed cautious

confidence that NR was beginning to address issues. However, the problems persisted and needed to be kept under close review, and the regulatory escalator would be monitored to identify quickly any reduction in management engagement.

46. The board discussed the importance of measuring the impact of the work that NR was doing to improve performance to inform future improvements. It was noted that this change in approach in adopting the score card system had the potential to be more customer focussed.
47. The board noted the report and discussed the benefit of a pragmatic approach which gave NR the room to agree areas of improvement with its customers (TOCs) in line with their priorities for their customers.

Lunch

ITEM 10 UPDATE ON MONITORING NETWORK RAIL IN THE REMAINDER OF CP5

Matt Durbin, Liz Thornhill joined the meeting

48. Graham Richards described the proposition in the paper around how NR should be monitored in the latter years of CP5. It looked at the current mechanisms, available analysis and evidence referred to in the previous paper gathered from TOCs – all in the context of the current environment and resources.

Performance outputs

49. The team had considered the proposal that NR's route-based scorecards should form the basis of ORR's monitoring over the rest of CP5. It was important to remember in this context that the new route scorecards were an NR tool designed to support their management approach including staff incentives – they were not ORR's tool.
50. The board discussed how it could satisfy itself that the scorecards included sufficiently challenging targets, noting the executive's report that the quality of engagement between TOCs and NR suggested that the target setting process was credible. It also considered whether there was a risk of perverse incentives emerging.
51. The executive described the process that NR had engaged in with TOCs to establish the scorecards and particularly in the way that the scorecards recognised and embedded TOC's reasonable requirements. They had held meetings not just with the national taskforce but also written to all TOC MDs and met with some key individuals in that group.
52. Analysis had been done to consider the likely outturn on the regulated targets across the network by the end of the period assuming the projected improvements in performance are delivered. This analysis suggested that the final outturn will show that about 1% of passenger journeys (say 4m from 1.7bn) will miss the target ppm. This was a new way of looking at the analysis and legitimately took into account the size of the routes that were not performing well.
53. The board was supportive of this approach for the current year although more assurance would be necessary for a permanent change.
54. The board discussed the generally positive impact on ORR's resources of this change, which included ceasing monitoring the NR Performance Delivery Plan.

It would be important to check the level of TOC confidence on their input to the targets and scorecards properly.

55. The board agreed to adopt this approach in 2016/17 and to consider proposals for following years in due course.

Enhancements improvement plan (EIP)

56. The board noted the proposal to use business as usual enhancement monitoring and RSD inspections to monitor the intended EIP benefits and improvements in projects, programmes, and at the 'investment portfolio' level.

ECAM

57. Officials had sent a draft letter to DfT proposing ending the ECAM process in England and Wales to give greater clarity on roles, but there had been no response. We needed DfT's commitment to establishing efficient baseline costs before we could end ECAM. The Board would be notified when an exchange of letters was complete. It was noted that the proposed MOU with DfT would need to be able to rely on clarity around our mutual responsibilities on enhancement spending.

Financial monitoring

58. The board noted the proposals on financial monitoring and reporting. The remaining outstanding issue (our requirements for NR financial data) could be addressed (as suggested) alongside the proposed item on financial monitoring of routes.
59. The executive was continuing to consider how to simplify processes around CP5 monitoring and how to respond to challenge from NR to make things easier.

ITEM 11 STAKEHOLDER ATTITUDES TO ORR

60. The board discussed the results of the survey, noting the large proportion of neutral responses which suggested that there was room for improvement. This survey would act as a useful baseline having been taken during the period of uncertainty around the government reviews – although it was noted that these results were not markedly different from previous surveys.
61. The board discussed whether the survey questions about ORR reflected appropriately our ability to act or to influence in different areas – and were therefore useful gauges of areas of concern for us. The board recognised that our role and powers were poorly understood and noted the importance of working to change that with key audiences – although it would take time. ORR needed to demonstrate competence, authority and leadership.
62. Given the outcome of the reviews and ORR's recent high profile decisions, the board stressed the importance of having an effective and proportionate communications function.
63. The non-executive board members discussed their ability to engage with stakeholders to demonstrate ORR's willingness to listen and to develop their own understanding. Staff would consider further how to involve NEDs in PR18. Formal board engagement needed to deliver high impact for a proportionate cost. The board discussed the efficacy of different models of

group engagement in different locations and the importance of measuring impact on each occasion.

64. The board agreed that the Chair and Chief Executive should continue to meet with the NR board when appropriate. They proposed inviting the chair and chief executive of NR to discuss areas of interest with the whole ORR board – these might in due course include scorecards and route based regulation and the additional pressures for route MDs that might arise.

ITEM 12 ANY OTHER BUSINESS

65. The significant feedback from the Highways Committee the day before had been shared during the board meeting.
66. The board noted the items below the line.

All staff left the meeting except for the Chief Executive and Board secretary.

SENIOR CIVIL SERVICE PAY POLICY 2014/15

67. Members of Remco briefed fellow board members on this year's SCS pay policy which closely followed the previous year's and was therefore being recommended for noting by the Board. The forced distribution on performance meant that 4-5 SCS members could receive a performance bonus.
68. Remco would consider the chief executive's recommendation for performance awards at their meeting that afternoon and seek the board's agreement to the distribution by correspondence.
69. The board adopted the SCS pay policy.

Meeting closed 2.45 pm