

THE OFFICE OF RAIL AND ROAD

128th BOARD MEETING

14:00-16:50, MONDAY 26 SEPTEMBER and

09:00-15:00 TUESDAY 27TH SEPTEMBER 2016

ONE KEMBLE STREET, LONDON WC2B 4AN

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

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

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

In attendance: Dan Brown (Director Strategy and Policy), Russell Grossman (Director Communications), Tess Sanford (Board Secretary)

Juliet Lazarus (Director Legal Services and Competition) items 1-11

Peter Antolik, (Director Highways Monitor) item 8

Tom Taylor (Director Corporate Operations) item 12

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. Tracey Barlow had sent apologies as she was moving house.

Item 2 DECLARATIONS OF INTEREST

2. There were no relevant declarations of interest. *[During the meeting, the question of the introduction of an ombudsman for rail passenger complaints was reported as something Transport Focus, DfT and ORR are discussing. In this context, Justin McCracken reminded the board that he is a director of Ombudsman Services Ltd.]*

Item 3 APPROVAL OF PREVIOUS MINUTES

3. The Board agreed the July minutes subject and the Chair signed them. The board noted the updates on board actions.

Item 4: MONTHLY HEADLINES

4. Ian Prosser reported on:
 - The bridge collapse at Barrow on Soar and the landslip at Watford which were both being investigated. His team would also look at the wider implications of any findings.
 - The planned meeting on train dispatch was set for 18th October.
 - A fine of £4m imposed by the courts on Network Rail for a fatality at the Gypsy Lane level crossing. *[Action: IP to circulate the judge's summation]*
 - His first visit to Innotrans (the international rail technology exhibition).

5. Graham Richards reported on:
 - Work his team had done in ‘myth-busting’ to support DfT’s thinking about interoperability standards and which had resulted in a more effective working relationship.
 - The opening of the London Bridge concourse and the implementation of track changes there.
 - Progress on Great Western electrification and how it was reported in ORR’s regulatory escalator.
 - Chris Gibb’s review of Southern Trains’ performance issues.
6. John Larkinson highlighted:
 - NR’s progress on asset disposal, where NR were now seeking ORR’s advice on regulatory implications, including around managed stations.
 - Performance and major projects in Scotland;
 - The Consumer Rights Act 2016, which will become law on 1 October, and the industry’s response.
 - The appeal by TfL against HAL’s access arrangements for Elizabeth Line/ Crossrail services due to run in May 2018. Because the HAL judicial review would not be resolved in time to inform ORR’s formal consideration of the appeal, the executive were attempting *without prejudice* a series of trilateral discussions centred on the passenger interest.
7. Joanna Whittington reported on:
 - Progress in thinking through our contribution to RIS2;
 - Specific issues on data provision and board level assurance of it at Highways England which would be discussed again with their audit committee chair;
 - The establishment of an in-house European project team to respond to Brexit;
 - Continuing good relationships with DfT and the progress on the MOU which was now ready for signature;
 - Her appearance before the Transport Select Committee and their programme of rail inquiries for the autumn [*Action: board members to be sent ORR’s written evidence to the TSC*]
 - Two significant financial claims against the office, one for pension liabilities and one on a commercial contract. Both were being investigated further and she would keep the board informed.
8. Juliet Lazarus updated the board on the HAL judicial review. The board agreed to release its May 2016 paper and delegated to Juliet the oversight of the legal action, with reference to the chair and chief executive on any urgent issue.

Item 5 REGULAR REPORTS

9. The Board discussed monthly reports on rail safety and the NR CP5 Tracker.

SAFETY

10. The board discussed available data on earthworks failures noting that NR were ahead of volume target for renewals, and that this did not show whether the highest risk renewals were being identified or prioritised by route management.

11. The board noted that track condition indicators continued to improve.
12. The board noted that depots were now included in the SMIS data – which meant this data set was fully comprehensive.
13. The board also discussed the implications for programmed renewals of financial pressures on NR, particularly in the final year of CP5.
14. The board noted the death of a passenger on the Gatwick Express which was being investigated.
15. The board noted that it was Rail Safety Week.

CP5 TRACKER

16. GR reported that the composite reliability index (CRI) had shown improvement but had now plateaued and the board noted an apparent disconnect between the CRI improvement and overall network performance. *[action: GR to explore this disconnect in the tracker next month]*

ITEM 6 PR18 PRIORITISING OUR REFORMS

Chris Hemsley and Richard Gusanie joined the meeting for this item.

17. Chris Hemsley updated the board on progress with the PR18 consultation process. Route based regulation and a separate system operator function would build on NR's devolution plans and appeared to be well supported but would present significant challenges for NR and the industry.
18. John Larkinson reported on work within NR to prepare for route devolution and system operation. The board discussed the challenges and advantages of route based regulation and the importance of effective system operation in the context of the Shaw report.
19. The board discussed the importance of understanding customer needs. The team should ensure that there are opportunities for NR's plans to be challenged by customers, funders and passenger representative bodies, but not set up formal mechanisms such as 'passenger challenge panels' for this review.
20. The team should also seek to maximise TOC/FOC-NR engagement on shorter-term performance metrics, with regional funders also involved where relevant, and take a more traditional approach where necessary for developing policy on other outputs.
21. Chris Hemsley reported on work to explore changes to charges where there had been resistance to some of ORR's initial options. The board agreed the team should prioritise, explore options for incremental changes in the near-term, and look for options where ORR could credibly commit to longer-term reforms to charges. *[forward programme: PR18 to be on the October board agenda]*.
22. The board discussed cost forecasting and the proposal that the team focus on volume as well as unit cost in setting targets to ensure sustainability issues were fully addressed. They considered the likelihood that there would be risk aversion around the setting of efficiency and output levels.
23. ORR faced a timetable and resourcing challenge in scrutinising business plans alongside the difficulty of forecasting CP5 outturn and CP6 trajectories.

The process for setting efficiency in PR13 had led to an efficiency trajectory which NR had not delivered by a considerable margin and we had to learn the lessons from this. PR18 would also be settled in the context of a ‘hard’ borrowing limit, which would impose particular discipline on NR.

24. The board agreed that PR18 should aim to improve incentives on route managers to improve performance and cost efficiency, and focus our business plan scrutiny on the delivery of maintenance and renewals volumes, and on initiatives that improve NR’s capability (spending less time refining efficiency targets).
25. The board agreed to delegate to PR18 programme board the sign off of conclusions to the initial consultation.

ITEM 7 DfT’s TIMETABLE FOR PR18

26. John Larkinson introduced the paper and explained the background to DfT’s position on the statutory process. The board discussed the importance of the HLOS/SOFA documents, their purpose and the time available to deliver the very complex PR18 settlement. The rail industry would be planning its participation in the process in the expectation that the statutory stages would be met.
27. The board asked the executive to bring a paper assessing a written request from DfT to the October board meeting.

[Tuesday 25th October]

Attendees as before.

ITEM 8 REGULATORY TOOLKIT

Peter Antolik, Robert Cook, and James Lobo joined the meeting

28. Dan Brown reminded the board of previous discussions on this subject. The challenge was to develop a regulatory toolkit that creates effective incentives for public sector bodies. The existing model was originally designed for private sector bodies, relied on shareholder pressure to improve performance so as to avoid financial penalties, and had proved of reduced effectiveness in a public sector context. ORR aimed to consult on a new incentives and penalties regime in PR18 by July 2017.
29. The board discussed previously used incentives and penalties and whether they had proved effective and why. The board considered a range of issues:
 - the right relationship between the regulator, shareholder and business,
 - whether to target incentives at the business or the shareholder;
 - the relative effectiveness of financial and reputational penalties in this context;
 - whether regulatory action should target individuals or the organisation, the executive or the board;
 - what the most effective balance might be between rewards and penalties;

- whether the toolkit should be more or less automatic or discretionary;
 - what ultimate sanctions were available and when they might be used.
30. It would be important to understand what customers thought about the service as the board wanted to take customer views into account when determining whether the business was delivering.
31. Dan described how the discussion would be taken forward in advance of the publication of the consultation next year. The board noted that the Transport Select Committee's current programme of rail inquiries was likely to touch on the funding and governance of Network Rail.

Peter Antolik and James Lobo left the meeting.

ITEM 9 ORR'S REVIEW OF RSSB

Johnny Schute joined the meeting for this item

32. Justin McCracken updated the board on progress on the review. Johnny Schute tabled a note setting out feedback from members of the working group on the draft findings which had been circulated to the board.
33. The board discussed the draft findings including:
- the important role that RSSB played in improving the industry's health and safety performance and the support of the consultees for its continued existence as an independent membership body;
 - the challenges of delivering effective operation for a membership with mixed and potentially conflicting interests and particularly the importance of effective senior engagement by Network Rail;
 - the importance of clear strategic leadership from the chair and board;
 - that RSSB could do more to encourage the industry to act to improve occupational health outcomes for employees,
 - that it was not immediately clear how the 'safety leadership' role proposed in the Cullen Report could be articulated and delivered in the maturing industry environment;
 - That RSSB's current work in administering innovation funds did not necessarily fit with its wider purpose. This question needed to be resolved in advance of the PR18 settlement.
34. The board noted that the final report of the Review would be on the agenda for a future meeting. *[forward programme]*
35. Justin McCracken commended the members of the steering group whose work had helped deliver the draft report ahead of timetable. Overall the work was going well.

Johnny Schute and Robert Cook left the meeting

ITEM 10 EXTERNAL VISITOR BRIEFING SESSION

36. The board prepared for two sets of external visitors.

ITEM 11 NETWORK RAIL

Peter Hendy, Chair and Mark Carne, Chief Executive of Network Rail joined the meeting

37. Stephen Glaister welcomed the visitors.
38. The meeting discussed a range of topics including:
 - Current operational issues such as network performance, the cost of renewals, evidence on track condition and levels of risk around earthworks.
 - Challenges for performance and cost efficiency for the rest of CP5, the development of route scorecards which align performance measures for routes and TOCs, and the importance of high quality local leadership for NR's routes.
 - Potential use of scorecards in route regulation in CP6, the size of the enhancement programme in CP6 and the difficulty of predicting the CP5 outturn/start of CP6 during the PR18 process.
39. The board agreed that such exchanges were very useful and thanked the visitors for attending.

Peter Hendy and Mark Carne left the meeting

Juliet Lazarus left the meeting

ITEM 12 SHAPING THE VISION FOR ORR

Tom Taylor joined the meeting

40. Joanna Whittington introduced the two presentations.
41. The board welcomed the articulation of the guiding principles of '*predictable, transparent and authoritative*', and endorsed their adoption by the leadership team in advance of an exercise to better understand what we needed to do differently in the future.
42. The board discussed the presentation on ORR's financial position and considered anticipated future funding needs. Government's reviews had demonstrated the importance of the regulator to the rail industry. The board noted that ORR had delivered a year on year reduction in maximum statutory charges to the rail industry since 2009-10 and evidence showed that the ORR was relatively low cost when compared with other regulators.
43. This year's operating budget was being run very tightly and was under pressure, so that there was no scope for significant savings without reductions in staff costs. At the same time, the board anticipated some increasing resource pressures in the future.
44. Overall, the board agreed that the ORR should continue to plan on the basis of the existing level of charges to the industry in real terms.
45. The board considered the headlines of the report from PA Consulting on the question of whether regulators would reduce costs if they shared services. The analysis showed that none of the options gave a significant financial return. Furthermore the board considered that service quality and disruption

risks were significant factors to consider at a time when ORR's IT services were being reconfigured and the organisation was relocating.

46. The board agreed not to pursue a shared services model.
47. The Executive should continue to explore options around relocation.

ITEM 13 TRANSPORT FOCUS

Stephanie Tobyn joined the meeting

Anthony Smith (Chief Executive) and Mike Hewitson (Director Strategy and Policy) of Transport Focus joined the meeting for this item.

48. The chair welcomed the visitors to the meeting.
49. Anthony Smith briefed the board on Transport Focus' work and priorities.
50. The meeting discussed the good working relationship between the two bodies, how evidence from the national rail passenger survey might support route regulation, shared research around the super complaint, and consumer issues including the new Consumer Rights Act.
51. The board agreed that such exchanges were very useful and thanked the visitors for attending.

ITEM 14 REPORTS FROM THE COMMITTEES

52. Bob Holland reported on the ARC meeting the day before. Along with audit reports on complaint handling and internal management of stretching budgets, the committee had considered the two financial claims mentioned earlier, updated risk templates and procurement of internal audit services when the current contract expires.
53. Stephen Glaister reported on the Highways Committee meeting the day before. The committee had discussed the HE data issue mentioned by the CEO earlier and associated issues on board assurance, the developing approach to RIS2, and progress on benchmarking work.

ITEM 16 ANY OTHER BUSINESS

54. The board welcomed the appointment of new non-executive members from 1 October.
55. There was no other business. The next meeting would be in October in Glasgow.

Meeting closed 3.00 pm