

**THE OFFICE OF RAIL AND ROAD
149th BOARD MEETING
09:00-14:15 TUESDAY 26 JUNE 2018
ONE KEMBLE STREET, LONDON WC2B 4AN**

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

Executive members: Joanna Whittington (Chief Executive), John Larkinson (Director Railway Markets and Economics), Graham Richards (Director Railway Planning and Performance); Ian Prosser (Director Railway Safety).

In attendance: Dan Brown (Director Strategy and Policy) (to item xx), Freya Guinness (Director Corporate Operations and Organisational Development) – to item xx, Russell Grossman (Director of Communications), Juliet Lazarus (Director Legal Services and Competition), Tess Sanford (Board Secretary)

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The chair welcomed everyone to the meeting. He offered Ian Prosser the very warm congratulations of the Board on the award of his CBE.

Item 2 DECLARATIONS OF INTEREST

2. No new external interests were declared.
3. Graham Richards would recuse himself from discussion of the Timetable Inquiry to avoid any perceived conflict of interest on that item.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

4. Slight corrections to the circulated minutes were noted. The chair would sign updated minutes.

Item 4: HEADLINES AND REGULAR REPORTS

5. **Ian Prosser** updated the Board on: progress on investigations into the Sandilands tram incident and continuing issues with securing funding for the new standards body; a forthcoming campaign by NR and TOCs on trespass, safety implications of the recent timetable disruption, a worker fatality in Scotland which was being investigated. The board asked about NR's slow rate of response on RAIB recommendations and asked for it to be raised directly. They also discussed trespass issues, Heathrow Express proposed change of operations, and the apparent continuing issue with hand-back of track after work.
6. **Graham Richards** reported on roads: work to support government in setting the SoFA and emerging issues with their timetable. The board noted the challenging public spending environment.
7. On rail: he reported on progress with the Wessex deep dive and the implications of government's appointment of Michael Holden to carry out a review. He highlighted changes to the performance information pack which showed the real pattern of performance around the timetable changes. At the end of P3 the

- percentage of NR caused delays was lower than usual at 45% with train crew and fleet issues being the main causes.
8. The board noted the number of DfT inquiries underway and the importance of clarity around our respective roles and interests.
 9. **John Larkinson** reported on impact of the draft determination with stakeholders and changes to the timetable which would require re-planning; Wales' new franchise arrangements which were able to take advantage of the self contained nature of the system; the significant resource being used to respond to public concerns over treatment of passengers with restricted mobility. It was important to be clear about what ORR could or could not deliver in this area.
 10. The board discussed industry reaction to the draft determination, particularly the recognition that the settlement was a maximum figure.
 11. **Joanna Whittington** reported on: conference speeches, meetings with stakeholders including the National Infrastructure Commission, organisational matters including the laying of the annual report and accounts.

Item 5 ARC INDEPENDENT MEMBER APPOINTMENT

12. The board approved the selection panel's recommendation to appoint Louise Grainger to the role.

Item 6 GOVERNMENT CONSULTATION

13. Juliet Lazarus introduced the item. Responses to consultations by government which included issues around ORR's powers are a matter reserved to the Board.
14. The board discussed the areas where the response was silent, which were those where we had no evidence. They observed that the response could be stronger on benefits for markets where ORR brings sector-specific knowledge.

Item 7 CONSUMERS – INFORMATION PROVISION

Stephanie Tobyn joined the meeting for this item.

15. Stephen Glaister described the relationship between the T-12 investigation and the Timetable Inquiry. The investigation was not to be impeded by the Inquiry.
16. JLk explained that a further major concern was the December 2018 timetable change where ORR had written to Network Rail, copied to the DfT to set out key areas where understanding of reality and risk was very important. Issues such as enhancement completion and rolling stock changes all had serious impacts and it was not clear that all issues had been taken into account when deciding whether a new timetable could be delivered in December. The letter would be copied to Board members. **[Action]**
17. The board discussed 'optimism bias' and the degree to which it repressed a realistic view of deliverability in the industry. It was important that ORR did what it could to make the challenges transparent to the parties. Staff anticipated an active response and would continue to press for action if none was visible, including raising it with the National Task Force.
18. The board discussed the degree to which the NR board might be expected to be alert to these issues.

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19. The board discussed the investigations into whether NR and the TOCs had breached their respective licence conditions around timetabling and passenger information.
20. The ORR board would be asked in due course to take a decision on breaches of licence by NR and some TOCs. It was likely that there would be a recommendation to defer any enforcement order pending the outcome of the Inquiry to ensure a coherent approach overall.

Para 21 has been redacted as relating to potential regulatory action

Item 8 MAY 2018 TIMETABLE INQUIRY

*Graham Richards left the meeting
Claire Simpson joined the meeting for this item.*

22. Dan Brown explained the standard investigative approach that ORR was using in the first phase of the Inquiry. Alongside this Ian Prosser would be undertaking a prior involvement review (PIR). This was standard regulatory self-scrutiny and not an assumption that Graham Richards (or other ORR staff) had done anything wrong. The review would be published alongside the first Inquiry publication.
23. Dan Brown outlined the timetable and approach for the Inquiry team particularly in this evidence-gathering stage.
24. Joanna Whittington noted that the next opportunity for the board to comment would be in September when they would see evidence reports and draft findings. There would be more need of Board involvement in developing findings and recommendations for the final report.
25. The board noted the update.

Graham Richards returned to the meeting

Item 9 ANNUAL REPORT ON HEALTH AND SAFETY ON THE RAILWAY

26. The key messages had been discussed at HSRC the previous day. It would draw on the themes of the previous report including the importance of renewals to the safety of the network. Ian Prosser mentioned the focus on trespass, NR's ability to implement change successfully and the lack of any legislative reform on level crossings.
27. The board noted the key messages of the report.

Item 10 CONSUMERS – MEASURING UP

Stephanie Tobyn and Nick Wortley joined the meeting for this item

28. The board noted the third year of this report. They encouraged staff to be more confident in drawing on the data included to illustrate good and poor practice. The report had been an important tool in developing ORR's credibility within the industry as a voice for users.

Item 11 STAKEHOLDER SURVEY REPORT

Jennifer Webber joined the meeting for this item

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29. Russell Grossman introduced the item: the survey would underpin the refreshed communications strategy to be considered at the next meeting. It would propose a greater focus on Parliamentary relations.
30. The board noted the useful report and discussed current and hoped-for levels of awareness among Parliamentarians and the public. Ways of increasing levels of awareness and understanding of the ORR and its role were discussed.

Item 12 PR18 IMPLEMENTATION

Robert Cook and Liz Thornhill joined the meeting for this item

31. This discussion would focus on the management incentive programme so that the consultation on licence modifications could go ahead.
32. Robert Cook explained that ORR's historic role on the MIP could be considered intrusive in the light of reclassification. In practice the MIP applied to only two individuals, but it also had a role in the annual incentive scheme which applied to a large percentage of NR's staff. In assessing how prescriptive to be, the risk of legal challenge should be considered.
33. Government was undertaking a wide review of NR's salary structure, so it would be important to keep some flexibility in ORR's approach.
34. The board discussed the risk of challenge, the appropriateness of a regulator or shareholders intervening directly on executive pay as opposed to the board, mechanisms for directing that fines be paid from a specific budget area, the importance of transparency around reward, the relationship between performance pay and route scorecards, and the degree of intrusion that would be tolerable.
35. The board agreed that the consultation should propose a hybrid of options 3a and 3b and set them in a broad context.

Item 13 LONDON ACCOMMODATION UPDATE

36. Freya Guinness reported on progress to date exploring options in advance of the end of the lease in One Kemble Street. A fuller paper would be taken to Audit and Risk Committee in July.

Lunch

item 14 HIGHWAYS MONITOR – VISION

Richard Coates joined the meeting for this item

37. Richard Coates introduced the presentation which explored ORR's role in relation to a government-owned company and found ways to add value in the long term.
38. The board welcomed the presentation and discussed key areas of public concern where ORR could use its knowledge to be more influential. The board discussed audiences where we needed to establish better understanding, which included our own staff. This was a useful statement of how the organisation had developed and where it saw its future.

Item 15 ARTIFICIAL INTELLIGENCE

Feras Alshaker and Howard Taylor joined the meeting for this item

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39. The board saw a presentation of a machine learning process to help identify enhancement projects which were likely to miss milestones and a robotic process to help spot trends in daily reports. This was an interesting area to explore, though the team stressed that opportunities for the ORR to develop such tools were limited by the small number of areas that had sufficient data. The board discussed the opportunities that might exist possibly through cooperation with other bodies or similar. It was encouraging to see the office exploring the potential for technology to improve our effectiveness.

Item 16 FEEDBACK FROM COMMITTEES

40. Justin McCracken reported on HSRC which had discussed: safety regulation in the heritage and charter sectors, regulation of the channel tunnel including an update on future safety challenges which the Intergovernmental Commission was pursuing.

Item 17 ANY OTHER BUSINESS

41. As a result of GDPR Board members would be asked to formally consent to the use of their image on ORR material including the website.
42. The board noted the committee minutes circulated below the line and the board forward programme as well as dates for meetings in 2018.

Item 18 SCS STAFF PERFORMANCE

All executive staff left the meeting except the Board Secretary

43. The non executive board members heard a report from the previous day's RENCO including the process by which the ranking had been reached. The board considered the ranking of SCS members recommended by the Committee noting that the Cabinet Office had not yet issued guidance on pay and so financial reward was not part of this discussion.
44. The board agreed the rankings as proposed by the RENCO.
45. The board recognised the limited nature of the SCS reward structure and noted the important contribution of consistent strong performance alongside the delivery of high profile projects.