

THE OFFICE OF RAIL AND ROAD
MINUTES OF THE 120th BOARD MEETING
09:00-15:45, TUESDAY 24 NOVEMBER 2015
ONE KEMBLE STREET, LONDON, WC2B 4AN

Non-executive directors: Anna Walker (Chair), Tracey Barlow, Mark Fairbairn, Bob Holland, Michael Luger, Stephen Glaister; Justin McCracken, Ray O'Toole

Executive directors: Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Joanna Whittington (Director Railway Markets and Economics), Alan Price (Director of Railway Planning and Performance)

In attendance, all items: Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary),

ORR staff in attendance are shown in the text.

ITEM 1 APOLOGIES FOR ABSENCE

1 There were no apologies.

ITEM 2 DECLARATIONS OF INTEREST

2 Bob Holland reminded the Board of his previously declared interest in ECML¹ – he would absent himself for that item.

ITEM 3 APPROVAL OF DRAFT MINUTES

3 The minutes were approved subject to any further corrections.

ITEM 4 ACTIONS OUTSTANDING

4 The report was noted.

ITEM 5 MONTHLY SAFETY REPORT

Johnny Schute, Deputy Director Policy, Strategy and Planning attended the next four items

5 Ian Prosser drew out some headlines from his report.

6 A key area of activity was meetings with NR to review the models they used to underpin their business planning choices to help NR understand ORR's concerns. He wanted to see evidence that supporting maintenance is being planned and delivered to manage delayed renewals.

7 We understood that NR propose to re-write their asset policies at a high level to reflect the decision that they would not do as much on earthworks and other asset groups as previously anticipated. This would require them to operate a more interventionist regime in maintenance and the two activities needed to be linked. We will review these documents when they are produced to ensure safety and asset sustainability are not compromised.

8 We talked about the degree to which a constrained budget might reduce our expectations of what was reasonably practicable for NR. In this circumstance, our shared view was that NR was choosing to reduce current spending on renewals

¹ East Coast Main Line

and maintenance in favour of enhancement spending. NR could choose to revisit asset policies because of constrained budget - but must demonstrate that safety was maintained if we were to approve revised asset policies. Ian said that next year inspectors would look at the list of deferrals and the mitigation NR has put in place to assure continuing standards of safety.

9 We talked about the way our two regulatory regimes overlapped. The licence on the economic side required NR to sustain or improve the network condition. The safety regime was concerned with immediate and future threats. Both regimes might bear on a single incident but it was our job to be sure we knew where the boundaries were and how our specific concerns needed to be addressed.

10 We noted that changes to NR's asset policies would require ORR agreement. To give agreement we would need to be clear about what the changes were and where NR thought the risks had changed and why our decision on agreements would be influenced by those factors.

11 We noted that our role was to protect the long term life of the assets, but that some decisions could be made with the short term in mind. We agreed that we needed to make this difference and any concerns we had clear publicly.

12 Ian reported that NR's planning for delivering their safe work program had been paused as a result of technological and operational problems. The exercise had particularly highlighted the cultural issues around planning in delivery units.

13 Ian highlighted two other points:

- The annual TU safety representatives conference had been successful;
- He had just heard that West Coast Railways were about to get a prohibition notice on their steam engines as they had again interfered with the TPS². Investigations continued for the prosecution associated with the SPAD³ at Wooton Bassett in March.

ITEM 6 SIX MONTHLY INDUSTRY SAFETY REPORT

14 Ian reported that the last six months had reported the lowest harm ever. There had been no workforce or level crossing fatalities and the one passenger fatality seemed to be related to intoxication. He welcomed the results but was concerned that they might reinforce complacency in operators and the industry. Workforce safety was also beginning to improve. The main focus of the report was around asset issues like drainage (where a national improvement notice was still in place) and planned maintenance. He was particularly anxious about the medium term impact on earthworks of pausing renewals.

15 He drew attention to the data on track twist faults where detection was dependent on local human oversight and knowledge. NR needed to improve their own assurance and help people use the new systems to do the job better but there had been some improvement in repeat faults and improved measurement of twist faults at crossings.

16 Ian reported that the new road vehicle incursion powers were giving inspectors extra clout with local authorities and helping control the risk on this.

17 There had been a record low number of collisions at level crossings with other vehicles. NR had been considering a reduction in their level crossing fund but he understood this was now less likely.

² Train protection system

³ Signal passed at danger

- 18 The main focus recently for ORR had been passive crossings where night time curfews of whistles were sometimes being applied with no mitigation. Some of these crossings saw increased use in the early morning (ie still in the dark in winter) and NR needed to recognise and address this risk. One way NR currently responded was to apply a temporary speed restriction, but those apply for 24 hours, not just at night, and impact badly on performance.
- 19 Ian said he had received the latest report on SPADs from RSSB the day before. The reported increase was not statistically significant but it remained an area for concern – the figure was relatively static, but higher than 2012-13. RSSB aimed to finish their SPAD strategy for industry in the new year: he remained concerned that the volume of traffic on the network meant that safety would come down to human inputs.
- 20 Other issues covered included:
- The team had worked hard with NR to help them focus on addressing the outstanding RAIB recommendation with a panel to set priorities.
 - LUL was focusing more on their assurance processes - particularly on their invisible places.
 - Mick Cash, RMT, had written to Ian about BTP prosecuting a guard on Merseyrail.
 - The Scotland team were keeping a close eye on the Alliance in Scotland to be sure that they did not conflate the duty holders' responsibilities..
- 21 We noted that this continued to be a success story – but that it carried a risk of complacency.
- 22 We noted that failure to keep ahead of vegetation control would impact on performance as well as safety.
- 23 We talked about the challenges that NR faced in improving its safety culture. In other places, such as LUL, successful change had been delivered quickly: we asked if there was anything we could do to support NR in this important field. We understood that the senior management recognised management of safety culture as an issue. We needed to be sure that DfT did not inadvertently undermine that drive to improvement.
- 24 We were reminded that we had sought an NR capability improvement plan which included cultural change. This work had been crowded out by the Hendy review but now needed to be revived.
- 25 We recognised the importance of giving NR appropriate credit for their current safety record but we were concerned that the organisational culture was poor and that the new management had a difficult, medium term challenge to address.
- 26 We reminded Ian that NR's chair had asked for a safety escalator so that his board could keep abreast of what ORR's board was concerned about. [Action: Ian Prosser]
- 27 Justin commented that he had been surprised at some of the RAG ratings in the report, given what we had heard about the poor state of NR's asset knowledge and on Safety by design and occupational health and road safety. Ian would take these up off line. [Action: Ian Prosser]
- 28 The chair reported on a meeting with the RSSB board – where they now recognised the need to work in partnership with us on their review. Their chair had suggested we both meet with RAIB to make more of the partnership. [Action: Board Secretariat]

ITEM 7 SAFETY BY DESIGN

Dawn Russell (RSD safety policy) and Olivia Bingley (senior legal adviser) joined the meeting for the next two items

- 29 We discussed this extension of our powers into the area of safety by design. We needed to get the balance right between being available with proportionate advice and the risk of creating a dependency in NR. The team were clear that this was not introducing a new or earlier gateway – that would continue to be the authorisation processes before commissioning could take place. The team were, for example, working with HS2 to help them get their authorisation strategy right.
- 30 We asked about whether there was a risk that staff might insist on unreasonably expensive solutions and were reassured that the SFAIRP principle applied. The main issue was enabling NR to balance short term vs long term costs.
- 31 We agreed that the team should seek Secretary of State’s authority to enter into the proposed agency agreement with HSE to deliver enforcement functions in relation to the design of railway infrastructure projects. The new enforcement functions should be delivered in accordance with our existing enforcement policy. The Board delegated to the chief executive the authority to sign this agreement. [Action: Richard Price]

ITEM 8 MOU with ONR

- 32 We agreed that the ORR should enter an MOU with ONR and delegated to the chief executive the authority to sign this MOU. [Action: Richard Price]

ITEM 9 FREIGHT UPDATE

- 33 Alan Price updated us on some of the current challenges for the freight sector such as Channel Tunnel security issues, the shrinking coal market, etc.
- 34 The new Freight Measure on freight corridors was running well ahead of targets and this was being used in marketing for the industry: right time depot departure performance was working well – and overall this was a good news story.
- 35 The industry had been working together to hand back unused paths and this had made a significant contribution to increasing capacity. This improvement was being delivered in a private sector market.
- 36 Although the overall story was positive, we were reminded that under PR13, freight charges would increase in years 3-5. So it would be very important that delivery on time and quality of service were maintained.
- 37 Alan said the sector was concerned about the impact of HS2 during its construction (eg waste removal issues at Euston). There was also concern about the impact that our PR18 structure of charges work might have, as well as the level of charges that might be introduced. There was a desire to see more improvements on the network for freight customers and a sense that NR did not give sufficient attention to customers in the sector. There was also the question of the level of subsidy for the sector. The RFG were in discussion with the DfT on this issue.
- 38 The chair said that these issues were all raised at the recent freight event.
- 39 We talked about how the government’s approach to freight in relation to network grant was developing. They continued to be in discussion with RDG on this and the structure of charges. The freight sector expected to benefit from a system operator approach and were engaging actively on this subject. They wanted

reassurance that in a route-led network their 'overall' network interests would not be overlooked. Alan reported that it was a very tough environment and the sector was under pressure. Although the broad picture policy debates were positive, the small changes to charges and other issues might become difficult.

- 40 The sector and cross country services shared access and other concerns which might be addressed in part by a better system operator function. It would be important to demonstrate that we understood their wider concerns and were considering these as we develop PR18. The freight panel had suggested a separate consultation chapter on freight issues, and though we did not plan to use the same approach to that document or the process, we did need to retain their confidence that we recognised their concerns and would take these into account [Action Point].
- 41 We noted that the whole industry needed to have clarity in the HLOS and a clear indication from government on what treatment (in terms of subsidy) freight could expect in PR18. The structure of the cost of charging would also be very important.

ITEM 10 HIGHWAYS ENGLAND (HE)

Jim O'Sullivan and Mark Bottomley of Highways England joined the meeting for this item.

- 42 The Chair welcomed the visitors and made introductions. Jim O'Sullivan gave a short presentation setting out progress to date and key issues for the future. He particularly focused on safety issues, describing worker safety as 'unacceptable' and explaining the challenge of meeting an absolute KSI⁴ target in the face of growth in traffic.
- 43 This was our first meeting and we spent some time talking about issues around:
- The first RIS⁵ and the need to make preparations for the second in good time; use of the network was growing quickly so future investments would be crucial to the network's success.
 - Challenges on the current RIS construction programme, including the level of uncertainty about projects due to begin in the final year and the potential knock on effect on funding for RIS2;
 - Forthcoming changes in funding when the vehicle excise duty is hypothecated to roads;
 - Regional growth and financial pressures on authorities who maintain the local connections to the national network;
 - The risk that local anti-roads opposition became more vocal and more active;
 - The opportunity for data to improve the user experience of the network;
 - The impact that more traffic will have on safety, traffic flow and consumer attitudes;
 - Ways to improve the consumer experience where HE were working with a user panel and developing use of digital channels for customer information. HE were clear that understood what customers wanted and had to deliver this.
- 46 HE planned to use the same data for all reporting – its own board, ORR and DfT - so differences of views would not be caused by differences in data. Jim said that HE was expected to manage its budget by deferring schemes if necessary.

⁴ Numbers of people killed or seriously injured on the network

⁵ Roads investment strategy

- 47 We talked at some length about how to improve road safety: vehicle design improvements and safe road design would make significant contributions but individual user behaviour was probably the most important. It was also a major contributor to others' experience of the network and therefore to customer satisfaction.
- 48 Jim welcomed the opportunity to meet and discuss the issues with the board. The regulatory relationship was clear, and he was committed to a constructive approach that would give HE the best possible chance of success. Both HE and ORR were committed to a 'no surprises' approach and to sorting issues out before they became significant problems.

ITEM 11 HIGHWAYS MONITOR

Richard Coates, Head of Performance and Ian Ritchie, Performance analyst, joined the meeting for this item

- 49 We agreed we had found the previous session very helpful and Peter Antolik confirmed that it reflected generally good relationships with HE. Peter thought that Jim O'Sullivan was making an impact but the old Highways Agency culture would take time to change. Importantly, Jim recognised the capacity for the Monitor to act in the interests of the nation.
- 50 We recognised that the scope for improving road user behaviour was enormous and initiatives to support it should be encouraged. Managing speed in key places improved safety but it was also important for efficient flow. We also agreed that HE's open-data approach would make it easier to share data with app developers.
- 51 We talked about the importance of recognising the ambition of the construction programme. We discussed the genesis and breadth of the KPIs and the other measures mostly focused on outcomes.
- 52 We thought it likely that HE would come under pressure in due course on some parts of its development programme, particularly if parts of it were delayed.
- 53 We reviewed the Monitor, acknowledging that the detail had been updated in some places. HE and DfT had both seen an earlier version and generally welcomed it.
- 54 We recognised the contribution of the whole team – this was a good document and set us up well for future years.

ITEM 12 NR CP5 TRACKER

- 55 Alan Price drew out some headlines from the report: in spite of a benign autumn so far performance had been poor. When the team looked at the top 50 incidents in delay minutes terms, 40 of those were NR caused – not TOC caused.
- 56 He reported progress on the introduction of ROCs⁶ which had the effect that intelligent local signallers (who know their own areas) had been replaced by centralised systems which could not react quickly to issues. He believed reactionary delay had gone up as a result.
- 57 Alan was particularly concerned that the number of very small ppm misses had increased substantially. He continued to believe that NR could deliver the ppm trajectory set out in CP5 if they focused on removing these small misses, but he did not think they shared this view.

⁶ ?regional operations centres

- 58 We noted that NR's approach would save money, but it seemed an ineffective way of managing local traffic. In the initial plans, new traffic management systems would have delivered improvements alongside the ROCs. Credible plans had now been replaced with some that are not.
- 59 Data on impacts was still being examined, but the three biggest incidents in terms of delay minutes in period 8 did not have an attributed cause – so it could not be known what had caused the delay.
- 60 Alan said there would be a significant timetable change in December and they were continuing to press NR to improve their planning and preparations to make sure this went smoothly.
- 61 We discussed the degree to which our view might be shared by the NR board – and particularly their new chair.
- 62 NR was a large sprawling network and central control was difficult to effect. They were learning from their experience in regionalisation.
- 63 Alan said that the enhancements programme improvement plan had not been delivered because of pressure on their resources. Juliet reminded us that we had agreed not to impose an order on condition that an improvement plan was delivered. Staff would keep this under review in case it became necessary to re-open that issue.
- 64 Alan said he would review their progress after the Hendy review was finalised. He would put it on the escalator and talk to them about what they needed to do to get it taken off and the timing of those conditions. Alan observed that Malcolm Brinded was also pushing for this plan. [Action: Alan Price]
- 65 Alan had been alarmed at the very low productivity targets set for the re-scoped GWEP – though he had not seen the underpinning figures for this yet.
- 66 Alan had been observing NR's reviews of the preparations for Christmas engineering including doing deep dives into high risk projects. We asked Alan to offer to brief ministers. [Action: Alan Price]

ITEM 13 PERFORMANCE PENALTY

Sam McClelland Hodgson, Manager Network Regulation, and Nigel Fisher, Head of Operations and Network Regulation joined the meeting for this item.

- 67 Alan introduced the paper and rehearsed the history of this penalty.
- 68 The Board considered all representations received in response to the notice and ORR's regulatory policies and statutory duties and determined that NR's offer to fund a package of performance improvements schemes costing a total of at least £4.1million complies with our reparations criteria. The package includes:
- Station management and Incident response
 - Customer management
 - Tactical workstream to improve incident management service recovery
 - Strategic workstream to implement Incident Management System
- 69 Having reached this decision the Board then went on to consider if the proposed penalty sum should be mitigated in light of its acceptance of the reparation fund. ORR reparations criteria sets out a reparation offer will be judged against whether it is: genuinely additional, appropriately targeted and proportionate to the harm done (as far as practicable); deliverable. Given that the range of schemes proposed target both immediate performance improvements and long term

benefits for passengers (and the level of funding NR will provide to deliver these) the Board agreed to accept NR's offer in lieu of the proposed penalty of £2million because it did not believe that imposing the penalty would further incentivise NR to comply with its licence.

- 70 We talked about the importance of ensuring that whatever the fund was spent on offered value for money. It was not enough that the money was being spent, it had to deliver benefits. It was also important that whatever had been trimmed elsewhere to fund the reparations was sensible and offered fewer benefits than the new solution. In all this, we had to ensure that we did not second guess or over-specify the solution for NR.
- 71 These issues should also be considered when we came to consider the new enforcement policies later in the meeting.
- 72 We asked the team to let the board know the timetabling and handling plan for the announcement of this positive outcome. [Action: Network regulation team].

ITEM 14 ORR'S APPROACH TO RAIL REGULATION IN NORTHERN IRELAND

Gerry Leighton, Head of stations and depots and network code, and John Larkinson, Director Economic Regulation and Consumers joined the meeting for this item

- 73 The paper proposed that ORR pursue the minimum European model for rail regulation in NI. This is not what we do with NR or for some of the other infrastructure managers that we regulate. The chair was concerned that we reflect on the proposed resourcing and charging level, which she thought low.
- 74 John said that the budget proposal was for some foreseeable work and some reactive work: currently a total of around 65 days. He suggested altering that figure to reflect a wider range – say £25k-£50k. He knew that there was a risk that many regimes could begin simply but quickly generate difficult or complex issues. He proposed to add a time limit for a review of sensible scope and cost after a couple of years.
- 75 We agreed the broad approach.
- 76 We had found Annex B of the paper, which set out a comparison of the different regimes we run, enormously helpful. It would be helpful to be able to see who did have a power if we do not. [Action: John Larkinson]

lunch

ITEM 15 DFT REVIEW OF ORR

Dan Brown joined the meeting for this item

This item (paragraphs 77-88) to be redacted as it involves policy development.

ITEM 15 ENFORCEMENT POLICIES FOR RAIL AND HIGHWAYS

Olivia Bingley, Senior Legal Adviser, Nigel Fisher, David Hunt, Head of Highways Economics, Gary Taylor, Senior Executive Network Regulation, Peter Antolik, Director Highways Monitor joined the meeting for this item.

- 88 The draft policies had both been revised following the Board's discussion last month. There were four specific items for consideration in the paper. Essentially both policies aligned except where it was not possible to do so.

Paragraphs 89-94 have been redacted from the published version as containing policy development

95 The Board agreed the two draft policies subject to final editing and corrections.

ITEM 16 HEATHROW AIRPORT CHARGING PROPOSAL

John Larkinson, Director Economic Regulation and Consumers, Laura Majithia, senior legal adviser and Rob Plaskitt, Head of access and licensing joined the meeting for this item

This item has been redacted in its entirety (paragraphs 96-100) as it contains discussion of a current regulatory decision

ITEM 17 ECML TIMEFRAME

101 John told us only that the two major reports which would enable the Board to determine the applications were running late (the CH2MHill analysis and the capacity analysis work). A decision date of the February board was most likely.

The remaining items were taken as read:

ITEM 18 BOARD FORWARD PROGRAMME

ITEM 19 CHAIR'S REPORT

ITEM 20 CE'S REPORT

ITEM 21 COMMITTEE FEEDBACK

ITEM 22 ANY OTHER BUSINESS

There was no other business and the meeting was closed.