

Office of Rail Regulation

Minutes of the 94th Board meeting on 21 May 2013

(09:00 – 14:00) in Room 1, ORR offices, One Kemble Street, London

Board present:

Non-executive directors: Anna Walker (Chair), Tracey Barlow, Peter Bucks, Mark Fairbairn, Mike Lloyd, Stephen Nelson, Ray O'Toole, and Steve Walker.

Executive directors: Richard Price (Chief Executive), Michael Beswick (Director, Rail Policy), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance), and Cathryn Ross (Director of Railway Markets and Economics)

In attendance, all items: Richard Emmott (Director, External Affairs), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), and Gary Taylor (Assistant Board Secretary).

In attendance, specific items: Dan Brown (Director of Strategy) (items 1-4), Alasdair Frew (Head of Corporate Communications), John Larkinson (PR13 programme Director) (items 4- 6), Carl Hetherington (Deputy Director, RME), Gordon Cole (Principal financial analyst)

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. There were no apologies for absence.

Item 2: Declarations of interest

2. None.

Item 3: Monthly Safety report / issues to advise the Board

3. Ian Prosser raised the following safety points:

- Following the update in April, Ian reported that track quality and broken rails issues in the Sussex area had improved but continued to remain a concern. Ian would keep Board members updated.
 - The yearly assessment of Network Rail safety performance using the RM3 assurance model shows that there is improvement in a number of safety areas. Ian confirmed that improvements in overall safety culture were still required.
 - The recent rise in Signals Passed at Danger (SPADs) had now reduced. Ian reported that the industry had carried out research to assess whether there were any trends to explain this rise without any definitive conclusions. Ian confirmed that ORR will continue to monitor.
4. We noted that the data for level crossing fatalities showed an increase in fatalities inside vehicles while the Precursor Indicator Model (PIM) showed a downward trend. There were a number of factors which affected this. Mike Lloyd would discuss this with Ian outside of the meeting. We discussed further the process for inspection at level crossing incidents. Following discussion Michael Beswick suggested that discussions with Peter Rayner (NR) should take place. Ian agreed that he would ask David Keay to contact Peter.
5. We discussed the impact of severe weather on the PIM. Ian agreed to circulate a report which highlights the issues and the approach being adopted by Network Rail to address this.

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6. We discussed a recent incident involving a runaway Road Rail Vehicle which was highlighted in the useful summary of prohibition notices which Ian had shared with the Chair. Ian confirmed that work was ongoing in this area and Network Rail has made some improvements to braking systems to address this. Ian confirmed that this was an area where ORR would continue to monitor. We agreed that it would be useful for all Board members to receive the summary of prohibition notices. Ian agreed to circulate this summary to all members in the future.

Board 21.05.13 Action i: Mike Lloyd to discuss the data on level crossing fatalities with Ian Prosser off line.

Board 21.05.13 Action ii: Weather impacts report to be circulated by Ian to Board members

Board 21.05.13 Action iii: Agreed that Ian would circulate summary of prohibition notices to Board members for information.

Item 4: Freight: Cumulative impact of changes to access charges

7. Cathryn Ross presented this item which provided the Board with a number of detailed options for final decision.
8. Cathryn provided a reminder of our previous discussions on 9 May 2013 highlighting that we had discussed the move towards cost reflective charging and how best to mitigate the effects. We also discussed the framework of charges which relate to costs directly incurred (CDI) and mark ups. We agreed that we wanted a CDI cap which was more cost reflective.

The rest of this item has been redacted as it relates to policy development

Item 5: Draft Determination Executive Summary

16. John Larkinson presented the draft determination executive summary for Board consideration and comment. John confirmed that the first draft had been seen by both the Department for Transport and Transport Scotland. John also confirmed that an initial discussion has been held with David Higgins (CEO Network Rail) and other relevant points shared with selected contacts at NR. The final cut of the document would be completed by the end of May with further internal comments.
17. Board members made the following comments:
 - The summary was crucial as it highlighted the significant points of our PR13 story. We agreed that refinements would be made to highlight those key points but stressed the importance of making the summary concise and to the point to ensure that that the document does not become too long and detailed which could result in loss of impact.
 - the consideration given to our section 4 duties should be explained
 - Presentation should be improved – including presenting key facts in info-graphics.
 - We discussed the status of the McNulty study projected efficiencies. We agreed that ORR's analysis was now better and more current than McNulty's and that we should explain this and make clear that we had confidence in it.

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- We agreed that the tone of the executive summary was appropriately measured. We agreed that more clarity was needed on transparency, passengers and the continuous improvements we expected in safety.
18. John thanked everyone for their comments. We noted that a revised executive summary document would be circulated to Board members week commencing 27 May for final comments.

Board 21.05.13 Action vi: John Larkinson to revise DD Executive summary and circulate to Board members for comments.

Item 6: Draft Determination Handling Strategy

19. Richard Emmott presented this paper which set out the draft handling strategy for the publication of the Draft Determination.
20. Richard highlighted the following points:
- The sequencing of the publications was crucial to ensure that the messaging is aligned and consistent. We agreed that the language used will stress that robust but balanced assessments have been made.
 - A segmented approach to the way in which the document is published will be adopted to ensure that the messages are delivered effectively to the variety of audiences we will be targeting.
 - The PR13 microsite will be developed with greater use of social media to direct web traffic to the microsite.
 - No press conference will be held. Pre briefings will take place. On 11 June embargoed briefing will be provided to members of the trade press. Staff will also be briefed at an all staff session.
 - Work is ongoing to develop the approach to handle the post publication questions.
21. We thanked Richard and welcomed the opportunity to review the revised document through correspondence.
22. **Board 21.05.13 Action vii** Richard Emmott to circulate strategy to Board members for information.

Item 7: MIP Structure

23. We noted the paper which set out the arrangements for the NR Management Incentive Plan (MIP) for the final two years of CP4 and the first year of CP5.
The remainder of this section has been redacted from the published minutes as it relates to policy development.

Item 8 has been redacted from the published minutes in its entirety as it contains sensitive information relating to regulatory policy formulation

Item 9: Review of High Level Risk Register

28. We noted the latest version of ORR's High Level Risk Register (HLRR). The following points were raised:

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29. Tracey Barlow confirmed that the Audit Committee received a substantial report on how the high level risks were linked to activity in ORR's new business management system. The committee have asked for the format of the HLRR to be revised to better reflect the new approach to managing risk.
30. We suggested that the HLRR should include a risk on Europe as there are significant risks facing ORR and the British rail industry. The Chair agreed to circulate a note from her recent meetings in Brussels.
31. We agreed that the Board needed to own ORR's high level risks and that we should therefore continue to review risk quarterly with an annual discussion to focus on a review of risks.

Board 21.05.13 Action y: The Chair agreed to ask Agnès Bonnet to produce and circulate note of recent discussions in Brussels.

Item 10: CE's Assurance and accountability report – Quarter 4

32. The Chief Executive presented this report which provided an end of year assessment against our activities for 2012-13.
33. There was agreement that significant progress had been made in a number of areas. We did recognise that there were some workstreams which did not progress as significantly as planned – these included our work on consumers, competition, transparency and Europe – but overall it had been a very busy year and much had been achieved. The Chief Executive confirmed that this work would be addressed during 2013-14.

Item 11: Chair's report

34. The Chair's report was noted. The Chair confirmed that the Board objectives for 2013-14 would be circulated to Board members shortly for clearance through correspondence.

Board 21.05.13 Action xi: The Chair and Board Secretary to review Board objectives for 13-14 and send to Board members for clearance through correspondence.

Item 12: CE's overview report

35. The Chief Executive's report was noted. No comments were made.

Item 13: Report back from the May Audit Committee

36. Tracey Barlow highlighted the following:
 - The NAO provided the Audit Completion Report on the 2012-13 financial statement audit; the 2012-13 financial statements are anticipated to be certified with an unqualified audit opinion, without modification.
 - The Draft Internal Audit Annual Report 2012/13 was noted. From 12 audits carried out in 2012/13, no "nil assurance" opinions were issued and three "limited

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assurance” opinions were issued. All agreed management actions were implemented by 30 April 2013.

- We noted ORR’s annual report and resource accounts 2012-13. A small number of minor amendments were suggested and Elaine Horton agreed to incorporate these amendments before the annual report and resource accounts are taken to the Board.

Item 14: Board forward programme

37. The Board forward programme was noted. No comments were received.

Item 15: Approval of minutes of Board meetings held on 29 and 30 April 2013

38. The draft minutes of the meetings held on 29 and 30 April 2013 were noted and agreed.

Item 16: Matters arising not taken elsewhere on the agenda

39. The updates on the outstanding Board actions were noted.

Item 17: Any other business

40. We noted the recent correspondence received from David Higgins to the Chief Executive in relation to NR’s expectations for the Draft Determination. It was agreed that Board members would receive a draft of the Chief Executive’s reply to provide any comments in advance of it being sent. It was important that the Chief Executive was able to rely on the Board’s support for his response.

Board 21.05.13 Action xii Draft response to recent David Higgins letters to be sent to Board members for comment.

Item 18: Meeting review

41. We agreed that the meeting had been constructive and well-structured to allow significant time to discuss the substantive items on the agenda.

Anna Walker

Chair

Minutes approved by the Board on 25 July 2013