

**Office of Rail Regulation**  
**Minutes of the 98<sup>th</sup> Board meeting on 1 October 2013**  
**(09:00 – 17:00), ORR offices, One Kemble Street, London – Room 1**

**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), 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:** Daniel Brown (Director of Strategy) Juliet Lazarus (Director, Legal Services), Alasdair Frew (Head of Corporate Communications), Tess Sanford (Board Secretary), and Richard Gusanie (PR13 Project Manager). Carl Hetherington, John Larkinson, Sue Johnston

**In attendance, part:** Geoff Horton (Interim Economist)

Abbreviations: Network Rail (NR), Final determination (FD) draft determination (DD) Strategic Business Plan (SBP)

[References to individual slides from the papers are given as Sxx for the main pack and SSxx for the supplementary pack. All single slides referenced in the minutes are included in an annex which begins on page 15. These slides do not stand alone and so will not be published]

**Item 1: Welcome and apologies for absence**

1. The Chair welcomed everyone to the meeting. There were no absences.

**Item 2: Declarations of interest**

2. None.

**Item 3: PR13 Final Determination**

*Introduction*

3. John Larkinson introduced the meeting where he hoped the Board would feel ready to make decisions on the final determination. The slide pack which had been circulated would be familiar: it was based on that used on 16 September at the Periodic Review Committee (PRC) to debate points of policy. There were minor discrepancies in the pack because of the time lag between different iterations of the models. These were not material. The detailed figures, which would be generated by a final run of model, would be updated for the final determination document. If any material differences emerged in the final model run the team would raise these with the Board.

*Summary of proposed approach*

4. A draft of the executive summary would be circulated to all NEDs for comment on or about 10 October and comments would be very welcome. There was a conference

call that NEDs could join if they wished on 16 October and that was the final deadline for comment on the executive summary.

5. John would present the various decisions at today's meeting. Almost all the recommendations were based on the collective view of the executive team. One issue remained (level crossings) where the executive had not had time to reach a view because discussions had been going on with NR. This would be addressed in the meeting.
6. Since the PRC meeting on 16 September, further discussions had taken place on the issues around Schedules 4 and 8 and he understood that most questions about the implications of the changes proposed had now been answered.
7. John reminded the Board of the decision making framework that we were under and our statutory duties. He drew our attention to the factual slides about routes and time limits for legal challenge. The executive believed they had undertaken a robust process which mitigated the risk of successful challenge as far as they could.
8. John said that all the representations made to ORR following the publication of the draft determination had been considered. Where new or additional evidence was offered this had been assessed. Many of the representations made by NR were effectively assertions which had not been supported by credible evidence. It was important for ORR's credibility that we were able to communicate clearly why changes had been made – or not made.
9. There were some changes proposed between the draft and final determinations. These were largely the result of adjustments either on the basis of new evidence or of a better understanding of NR's likely exit position on CP4 performance and its likely debt level.
10. John reminded us that NR had objected to the level of scrutiny that we were seeking in respect of asset management, but that the rest of the industry had positively supported our approach. We felt that the information we were seeking was a subset of the management information that Network Rail should be collecting anyway.
11. John said that it was important that NR were clear that our long term intent continued to be towards more risk based regulation. We would reduce the level of scrutiny if Network Rail demonstrated that it was effectively managing its risks and assets.
12. NR had also asked for clarification on our approach to 'spend to save'. We were relaxing constraints on this to support a more commercial attitude, which would help send a balanced message.
13. We agreed that some of the key messages about the final determination would be around the evidence base for the changes between it and the draft.
14. John updated us on progress on discussions about financial monitoring of NR in CP5. It was clear that this could not be resolved before publication of the final determination and discussions were ongoing. Relevant wording would be agreed between ORR and NR for inclusion in the final determination.

For publication

*[The discussion of each segment of the determination ranged widely and can be described as information which relates to the formulation of policy. Given the detail included in the final determination, we have redacted paragraphs 15-91 from the published minute as relating to policy development.]*

*Expenditure and revenue requirements (affordability)- paras 15-19*

**Outputs:**

*PPM – paras 20-27*

*Network availability – para 28-32*

*Northern Hub/non-HLOS enhancements – para 33-36*

*Journey times – para 37*

*Performance: HLOS target – para 38*

*Climate change and extreme weather resilience para 39-41*

**Efficient expenditure – para 42**

*Track and signalling renewals – para 43-45*

*Information management – para 46-47*

*Level Crossings – para 48-51*

*Cross cutting efficiency: occupational health – para 52*

*Cross cutting efficiency: Management of inflation – para 53*

*Innovation match funding cap- para 54-56*

*Property income – para 57-58*

*Financing costs and financial framework – para 59-60*

*Use of outperformance – para 61*

*Financial framework – para 62*

*True-up mechanism – para 63*

*Cost of capital – para 64*

*Network grant – para 65-66*

*Sustainability adjustment – para 67*

*REBS (Route-level efficiency benefit sharing mechanism) – para 68*

*Capacity Charging – para 69-75*

*Financial monitoring – para 76*

*Decisions on areas where we have not made changes.- paras 77-78*

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*Overall position on safety – para 79-83*

*Schedule 8 rates – para 84-90*

*Scotland – para 91*

Redaction ends

*Overview*

92. John Larkinson drew our attention to the two slides (141, 142) summarising changes to 'impacts on' compared to the DD, the latest affordability position on slide 136 and the projection of long term sustainability on slide 193.
93. We agreed to discuss the success criteria for CP5 at a later meeting before CP5 started so that criteria could be published before April 2014. [Action]
94. We noted that NR had identified five major areas of the DD where they had sought changes. Small adjustments were proposed in each area which were based on new evidence that had been submitted.
95. We noted that the final question for us was about deliverability – did we think that NR could deliver under this package? We also wanted to review whether there were any areas where we could more actively support them in delivering.
96. The Chair asked board members to comment on the overall package and to say whether they agreed with it overall. The comments included:
  - a. We had responded positively on NR's requests for more on track renewals and level crossings, but only given 10% of what they had asked for on support, operations, maintenance and renewals. There was a risk that they would continue to meet PPM and underperform on volumes.
  - b. NR's major concerns had been addressed. They had set themselves challenging targets on track renewals but understood the importance of getting it right.
  - c. We should remember that station improvements were important to passengers.
  - d. The passenger experience would be mixed in CP5 – disruption followed by improvement when enhancements were completed; mechanisms were in place to involve passengers in relevant decisions and overall it would result in a better experience.
  - e. Our process was soundly based on evidence and we had responded to new evidence and representations appropriately.
  - f. There was a good level of challenge in the package overall but there was a risk that NR would underperform. This package included mechanisms for NR to address any issues. We needed to find a way to help NR tackle the challenges positively and own the solutions.

- g.* It was important that NR believed that the package was deliverable as that confidence would support delivery. We had concerns about NR's internal motivation and it was suggested that if Year 1 was not delivered then performance was unlikely to be recovered during the remainder of CP5.
  - h.* There remained an issue around the change in leadership at NR and particularly the quality of route leadership. This was a programme which required considerable cultural change and NR's history in that area was not encouraging. The new leadership would be essential in driving this through and we should support this where possible.
  - i.* We noted the need to work with the new leadership and to support development of route level leadership at NR so that they could work better with industry colleagues. We needed to make sure that the way that we regulate is transparent and seen to be supporting delivery.
  - j.* There was no evidence that more money would drive better performance from NR.
  - k.* We needed to learn from CP4 where we had spent too long before intervening on performance and we must move quickly to identify mechanisms for that before CP5 starts.
  - l.* How ORR regulates during CP5 will influence the way that NR performs. In principle we supported the motivational model but NR had to show its willingness and determination to deliver.
  - m.* There was not much slack in any part of the settlement and that meant that there was a reasonably high level of risk around delivery. It was vital that we made sure that safety was maintained and improved through the control period.
  - n.* The interaction of the various elements had been explored, was understood and needed to be explained clearly in the FD.
97. Overall, we felt confident that the package was balanced, achievable and defensible.

*Handling strategy*

98. We noted that the handling strategy would build on that used for the draft determination in May with key changes being identified and explained. One essential part of the story would be any differences in how ORR would be monitoring or regulating differently between CP4 and CP5.

*Success criteria*

99. We noted the slides setting out suggested success criteria for PR13 (slides 144-149) and that these would be discussed again before CP5 began (Action).

For publication

*Next steps*

100. It was noted that there would be a final run of the financial model to generate the numbers for the final determination. Only if something anomalous or unexpected emerges would staff bring issues back to the Board.
101. The draft executive summary would be circulated to all board members for comment on or around 10 October, with comments welcomed ahead of the NEDs phone call to discuss the summary on 16 October. After that call, the text would be finalised for the Chair/Chief Executive to sign off.
102. The Board would discuss the handling strategy at their meeting in October.
103. The Board would consider a scoping proposal for an evaluation exercise of the PR13 process in the new year (add to forward programme).