

**Office of Rail Regulation**  
**Minutes of the 99<sup>th</sup> Board meeting on 22 October 2013**  
**(09:00 – 14:00), 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, and Steve Walker.

**Executive directors:** Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance),

**In attendance, all items:** Dan Brown (Director of Strategy) Juliet Lazarus (Director, Legal Services), Richard Emmott (Director of Communications) Tess Sanford (Board Secretary), Cathryn Ross (former Director of Railway Markets and Economics), Gary Taylor (Assistant Board Secretary)

**In attendance, specific items:** John Larkinson (acting Director of Railway Markets and Economics), Carl Hetherington (Deputy Director, RME), Alasdair Frew (Head of Corporate Communications), David Keay (Head of Inspection, Railway Operators)

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

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

1. The Chair welcomed everyone to the meeting and noted that Ray O’Toole had sent apologies.

**Item 2: Declarations of interest**

2. None.

**Item 3: Monthly safety report**

3. Ian Prosser noted that the precursor indicator model (PIM) was now being produced each month and continued to show improvement after the temporary rise associated with earthwork failures during last year. Moving train risk was also down.
4. We discussed a number of aspects of worker safety. The introduction of close call reporting was starting to change attitudes – but very slowly. We discussed red zone working and noted that though it was desirable to eliminate the practice, it was currently impracticable. We noted that we had ‘rolled over’ the 7 day working funds to support the reduction of red zone working. IP reported that NR were changing the way safety was managed for teams on the railways with changes to the Controller of Site Safety (COSS) and Sentinel systems amounting to a ‘permit to work’, aimed at improving the safety and management of workers on the railway. IP said that these measures would take time to embed and to deliver improvements but should deliver significant advances and NR were being given time to implement these changes.
5. We discussed the relative importance of PIM and level crossing risk models and whether these could inform the way RSD resources should be targeted to maximise benefit. Ian Prosser said that one reason the PIM had not improved as quickly as hoped was because that it reflected increasing misuse of level crossings by users.

Network Rail were targeting improvements at crossings with high levels of misuse along with foot crossings which could be replaced by footbridges.

6. We noted the review of our recommendation handling processes commissioned by the Chief Executive from Melvyn Neate (independent Audit & Risk Committee member) which was covered in the CE's report. This review would cover a) how effectively ORR deals with RAIB recommendations generally and b) determine whether the criticisms by RAIB of ORR as a result of the Stafford SPAD incident had already been addressed by recent process enhancements or whether further improvement was needed. It was suggested that the terms of reference for Melvyn Neate's work should include a review of how ORR ensured NR was acting on agreed recommendations.
7. We noted that Carolyn Griffiths (the Chief Inspector, RAIB) had twice expressed concerns to our Chair about some aspects of ORR's response to RAIB recommendations and included criticism of ORR and the industry in her annual report. This was therefore an important piece of work to help the Board unpick those concerns and look at the underlying evidence.
8. We agreed that RAIB was a very important stakeholder for ORR and had a different, complementary role to ours. The chain of organisations in the UK responsible for rail safety (RSSB, ORR and RAIB) need to have strong mutual respect and good working partnerships to deliver a joined up and coherent approach that was credible across the industry. If those partnerships were not functioning well, ORR should first consider whether it had done all it could to improve them. It was important that all the bodies presented sufficient appropriate challenge to each other to avoid complacency and that any such challenge was based on robust evidence.
9. We noted that the Regulations under which RAIB operated had first been introduced ten years ago and might benefit from a review which brought them up to date with other developments in safety regulation. This would be a matter for the DfT as RAIB reported to the Secretary of State.
10. Melvyn Neate's report would be considered at the Audit and Risk Committee in December and reported to the Board in January. (**Action:** update forward programme)
11. Ian Prosser briefly reported that:
  - Two letters had been sent to NR asking 1) to see their internal review of 2B2C and 2) to understand their plans for managing safely the 15% reductions announced recently in managers' posts.
  - Two recent freight derailments (Gloucester and Camden Road) seemed likely to be related to poor track maintenance. Ian had asked his team to consider whether there was sufficient emerging evidence to suggest a national enforcement notice should be issued.
  - The efficiency saving imposed on NR on maintenance in the final determination of 16.4% across the control period was still felt by the

executive to be the correct judgment given the trajectory proposed. We expected the projected savings to be generated by the move from a find-and-fix approach to a planned maintenance schedule.

- The Law Commission's report on level crossings had been published and offered a welcome opportunity to achieve a step change in risk.
  - A prohibition notice had been issued on the Wells & Walsingham Railway preventing it from operating as it had no effective safety management regime. (**Action:** NEDs to receive prohibition notices when issued, noting that they are not public until 28 days after issue.)
12. We noted that the November report would include a discussion of the issue of zero hour contracts in the industry which had been raised as a safety issue by the unions. We agreed that the detail of employment contracts would only be a matter for ORR if they prevented the competence or capability of staff responsible for safety from being properly managed.
  13. We asked that the safety report should in future be separated from the Chief Executive's report within the board papers. (**Action**)

#### **Item 4: Communications plan for the Final Determination**

14. Richard Emmott introduced the paper which built on the successful process for the draft determination, and set out the key messages for the final determination and a plan for delivering them to key audiences.
15. Key elements of the plan included strong messages that
  - ORR had responded to passenger concerns and priorities,
  - the overall package reduces the financial pressure on the taxpayer and passenger;
  - a 'predict and prevent' approach to maintenance is better value than find and fix,
  - safety underpins every regulatory decision;
  - the overall package is deliverable,
  - NR can and must improve its performance.
16. We had noted that NR used the executive summary of the DD as a key internal communications tool and this would be borne in mind over the final few days of drafting.
17. We expected NR to assert that they were doing everything reasonably possible to improve performance, that extreme weather had not been taken into account, that the real story was reactionary (secondary) delays. We should be careful to allow credit where it was justified and robust where we could demonstrate otherwise.
18. **Action:** the Board asked to see the final version of the press release with an accompanying script.

## **Item 5 PR13 Remaining Policy issues**

19. John Larkinson said that a great deal of work was going on to finish the Final Determination text. There had been a flurry of new representations and three of these were being brought to the Board today.

*The discussion of the detail of the determination contains information that relates to the formulation of policy. Given the detail included in the final determination, we will redact paragraphs 20-31 from the published minute as relating to policy development.*

### *CP5 measures of success*

32. These were still to be developed and agreed but were unlikely to be included in the text of the final determination. They needed to be in place before the beginning of CP5. (**Action:** add to the forward programme for early 2014)

## **Item 6 – Developments in wider government policy affecting ORR**

33. Dan Brown introduced the item which followed on from the discussion at the Board evening session on 21 September. He described how the current political agenda had changed to focus on the cost of living, the cost of regulated services and infrastructure investment. There was a great deal of discussion and thinking going on in government around transport, railways and regulation – we should actively contribute where relevant but we should not be distracted from performing our core functions diligently and well.

*The rest of this item (paras 34-42) has been redacted as it relates to the development of policy*

## **Item 7 Business plan Q2 update**

43. Richard Price introduced the paper, setting out headlines under the five strategic objectives. Ian Prosser clarified a point around the level crossing guidance which must be implemented by NR, not by ORR. Cathryn Ross said that while good progress had been made on consumers, she thought she had been over-ambitious in setting the business plan and the unanticipated changes in the competition regime had displaced some of her resources. Richard noted that VfM was in a good place overall, although CP4 exit was likely to be disappointing. On sector development, the team was reviewing the LTRS engagement plan to ensure that we did not lose momentum. On our journey to becoming a high-performing regulator we were making progress and any delays were likely to be recoverable.
44. We noted the high number of vacancies and Richard explained that these were being carefully managed and would provide sufficient headroom for the management changes planned over the rest of this year. The budget would be tight for next year.

For publication

45. We asked whether we should be concerned about the apparent rise in RME sickness rates and were reassured that this was caused by a single long term sickness. It was not a reflection of the pressure that the team were under on PR13 although individuals were under considerable short term pressure.
46. We queried the high number of deliverables that had been reforecast and asked how the risk report reflected these changes. We said that it was important that proper programme discipline was followed on the business plan and that we wanted to see better evidence of it in the next report.
47. Richard told us that he was receiving regular assurance from the directors that most of the slippage was recoverable in year and that it was largely caused by overspill from PR13. We were still in the first year of this business management system and the team had learned a lot about which milestones should be set and reported which would be applied next year.
48. We asked that the reports be reviewed and should in future include: an indicator of how long a milestone would take to be recovered, some reiteration of the business plan, highlights of issues for the board, comments on divergence from critical paths and key issues.

#### **Item 8 Organisational Development quarterly update**

49. Alastair Gilchrist introduced the report. There was one red flagged item – on performance management, where there had been a delay in agreeing new arrangements and there was continuing difference of views between the Executive and the Remuneration committee which was being worked through.
50. We agreed we would not expect it to be possible for the programme to have an overall green status while the underlying report included a red flag. We noted the link between delay to the policy development programme and the underlying risk to ORR capability. Dan Brown explained that the programme was largely additional to people's individual targets and therefore proceeding only slowly.
51. We noted that while improvements were visible in many places in the organisation, these were not adding up to the step change from where we are to where we need to be. We looked forward to seeing the results of the staff survey and the programme report would come back to the Board again in February 2014.

#### **Item 9 Feedback from Committees**

*Remuneration: Stephen Nelson*

52. Stephen Nelson reported on the previous day's meeting. David Chapman had presented some good and comprehensive work on pay and performance management for non-SCS staff. The process this year would be much the same as in previous years with a guide distribution between the four categories although the Committee was not recommending a forced distribution. Implementation of the process would be improved with RP having oversight of the whole and no announcement of individual ratings until moderation was complete. Acting on feedback from HMT there was a proposal that the size of individual awards should

be reduced and the Committee had noted this. Stephen said that he had asked to see the comparable awards made by other CS and non CS bodies (Action to be captured for Remco).

53. The Executive had also sounded out the committee on the use of the 1% increase in the consolidated pot. Their preferred option, given the smallness of the amount in question and the rate of inflation, was to give all staff achieving a 'good' rating a 1% increase. The Committee had discussed and endorsed this approach.
54. The Board was minded to agree to this and the Board Secretary would circulate the proposal in writing for formal agreement.
55. Stephen said that in the mid term some structural inequalities had been imposed by the pay freeze and they would need to be addressed soon. ORR needed to be liberated from the current pay constraint and we should explore ways to do so.
56. The Remco minutes would capture the confidential issues which formed part of Stephen's report.

*Safety Regulation Committee: Steve Walker*

57. Steve reported to colleagues that the agenda had generated useful discussion on the Channel Tunnel, followed by one on interoperability and its relationship to safety strategy. They had received assurance on the four (now five) international incidents reported at the last meeting and how learning from them was being applied in the UK. The Committee had been reassured that ORR and NR were taking these lessons very seriously.

*Rail Industry Health and Safety Advisory Committee: Mike Lloyd*

58. The meeting had received an interesting presentation on the platform interface from Passenger Focus and LUL. Engagement from the various representatives was mixed but it was a useful forum and the only formal interface with the Unions, who responded positively to the opportunity. We noted that ATOC still refused to allow individual TOCs to attend but continued to engage themselves only half-heartedly. It would continue to be chaired by an ORR NED after Mike left (in the interim Tracey Barker has agreed to Chair).
59. **(Action:** Secretariat to ensure that approved minutes of committee meetings are included in the Board papers as below the line items).

**Item 10      Chair's report**

60. The report included a six month update against the Board objectives. There was a great deal of senior recruitment underway, including NEDs, the RME director and the director of regulatory economics.
61. John Larkinson reported that the task of appointing a chair to the RTTI task force was proving challenging and a field of candidates was being considered.
62. The Chair reported on three successful sessions with managers which had produced three different sets of messages for the Board. This had been a very useful exercise and should be repeated in the new year. (Action: EA to plan additional sessions.)

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**Item 11: Board Forward programme**

63. We noted the forward programme.

**Item 12: Minutes of the Board meeting on 17 September 2013**

64. We noted the minutes.

65. The Board Secretary reported that some minutes had been posted on the website and the remainder of the outstanding minutes would shortly be up posted (ie excluding the September minutes).

**Item 13: Any other business**

*Resignation*

66. Steve Walker said that he was resigning from the end of 2013. He had found that his time was increasingly pressed and he was unable to remain on the Board. He said he thought ORR was fortunate generally in the quality of its staff but he had necessarily spent most of his time with RSD staff and he was very comfortable that rail safety was in good hands.

67. The Chair thanked Steve for his important contribution, particularly as chair of SRC. She thought the RSD staff in particular would be very sorry to see him go.

*Departures*

68. The Chair noted that this would be Mike Lloyd and Cathryn Ross's last Board meetings and wanted to record the warm thanks from the whole Board for their significant contribution.

69. Mike said that ORR was full of very loyal and capable people and he had great admiration for the organisation. He had learned a great deal and was sorry to be leaving.

70. Cathryn said that the rail industry carried a higher degree of complexity than any other she had encountered. She said it was important to make sure that we got the best contribution from our staff and from the Board members.

Anna Walker