Office of Rail Regulation
Minutes of the 102nd Board meeting
on 26 February 2014
(09:30-16:15), ORR offices, One Kemble Street, London – Room 2

Present:

Non-executive directors: Anna Walker (Chair), Tracey Barlow, Peter Bucks, Mark Fairbairn, Ray O'Toole.

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), John Larkinson (interim Director of Railway Markets and Economics), Gary Taylor (Assistant Board Secretary), Joanna Whittington (Director designate RME)

In attendance, specific items: Chris Fieldsend

Abbreviations are explained in the endnotes.

Item 1: WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting, in particular she welcomed as an observer Joanna Whittington who would take up her post as Director of RME and a member of the Board on 3 March. In welcoming Joanna, the Chair also expressed the warm thanks of the Board for the excellent job that John Larkinson had done in covering both Joanna's role and his own during the interregnum.
2. Stephen Nelson had sent his apologies.

Item 2: DECLARATIONS OF INTEREST

3. There were no declarations of interest.

Item 3: MONTHLY SAFETY REPORT

4. Ian Prosser gave highlights from his report. He reported with regret the death of John Wright, the line worker whose injuries had previously been reported. Investigations into the death were ongoing. We were continuing to pressure NR to further reduce or remove red zone working as part of improving track worker safety. The issue had been raised with the new Chief Executive, Mark Carne, and he had made clear that he and the Board of NR felt that the issue needed much more focus from management.
5. The new version of the PIM[i] had been received and was being run in parallel with the old version to enable comparisons and trend monitoring. Objects on the line have increased significantly. NR have adopted new ways of working when poor weather is forecast – for example imposing speed restrictions to mitigate the risk of hitting debris on the line – and no passenger injuries had resulted from the many incidents of trees and debris on the line over the Christmas period. We continue to press NR to improve vegetation management, but a significant proportion of the trees which had fallen had come from third party land.

6. Ian offered the board a detailed briefing on the new PIM to help them understand what it meant **[Action: Board Secretariat to add to the forward programme]**. The model captured an important set of indicators and needed to be properly understood by the board.
7. The RSD[ii] LUL team had been active during the recent industrial action to make sure that safety standards continued to be met, particularly in terms of appropriately trained staff and staffing levels in stations. There had been no major issues and it seemed that LUL had kept stations open safely – an improvement on the previous strike.
8. Ian updated the Board on the impact of our notice on track twist faults which had prompted improved handling across the country. The Chair highlighted how the use of general notices (track twist and Scotland earthworks) had triggered changes in systemic behaviour across the network and encouraged the team to bear this in mind when considering ways of tackling systemic issues.
9. Ian said that some of his team were focusing on safety at the passenger/train interface (PTI) and particularly around crowding (Cambridge and Birmingham New Street were examples). They were considering action to address some safety issues arising as a result of increasing footfall in stations where infrastructure had not been adapted to match. Over-crowding on platforms and stairs carried significant safety risks. This issue had also been raised by stakeholders.
10. Ian reported that the number of outstanding RAIB recommendations had reduced to 18, all of which were less than 2 years old.
11. The Chair said that Melvyn Neate had produced a very thoughtful report on the certification processes and the handling of RAIB[iii] recommendations. The report would be going to the Audit and Risk Committee (ARC) and Safety Regulation Committee (SRC) for discussion in March.
12. The Chair drew attention to the report of the SRC discussion on business planning (para 64 -66 of the monthly safety report). She could not immediately see where freight and SPADs[iv] would be picked up, and asked Ian to consider this. He replied that precursors to SPADs were important and that at the stakeholder event on 24 February TOCs had reported that they have added some TPWS's[v] where they would help reduce SPADs.

Item 4: RECENT SEVERE WEATHER

13. A briefing paper had been circulated which had been prepared in case ORR had been asked to comment, as the regulator, during the recent severe weather episodes.
14. Richard Price explained that the severe weather impact triggered three main areas of concern: safety, passenger experience, and resilience of the network (short and long term).
15. On safety, we were seeking assurance from NR that they are alert to changes in their risks as a result of the weather, that they are responding in terms of asset management and operations, and that what they are doing are the right things to respond to changing risks (for example, managing incidents actively, improving the condition of assets, and planning for future).

16. Richard reported that staff had seen improved responses by NR over the last few months. Our regime would respond to the changes: making sure that changes in practice reflected risk, that safety at work sites was being well observed, including the increased risk of worker fatigue given the urgency and volume of work needed.
17. On passenger experience – it was too early to assess the industry response on the January/February storms but this would be reported in due course. NR and TOCs had responded by making timetable changes, issuing information updates to travellers, lifting ticket restrictions, and making alternatives available. Initial assessment of industry handling over Christmas had been positive. As far as possible, the industry had worked together to avoid stranding people and on the whole had managed information well.
18. Staff had also begun to think about the implications for the performance regime and whether we should make adjustments for the weather. They were considering a range of approaches – including the application of 'reasonably practicable', and discounting excessive PPM ranges.
19. On resilience of the network: ORR's role was to make sure that NR was identifying both the short and long term impacts of the weather and is addressing those in a cost effective way. The western route has been assessed for resilience and NR was focusing on where else on the network it would need to add resilience. Their report on the whole network will be with ORR by September '14. We noted that resilience was both about improving assets (hard resilience) and about skills and kit for swift, effective incident management (soft resilience). Staff told us that while the focus was largely on hard resilience, some organisational changes demonstrated improved management handling, for example, the time to site had been driven down. We noted that some relatively small sums invested (e.g. to lift electrical cabinets off the ground) could have a significant impact. We noted that these were more likely to be delivered and better value for money than big investment in re-routing lines, which public opinion currently favoured.
20. We asked whether temporary flood protection measures and investment in specialist equipment were being considered by NR and it was confirmed that these were being explored as part of the package of solutions.
21. The chief executive told us that ORR was also looking at similar issues across other regulators. He cited the potential for interdependencies between rail earthworks and flood protection - but noted that the infrastructure would need to be designed and built accordingly – it could not be assumed that a rail embankment could also double as a dyke without additional engineering work.
22. Ian reported anecdotally on inspection visits; he made clear that rising groundwater had been as significant a problem on the network as rain and sea flooding. He said that NR was very focused on what would happen to track geometry and other issues as the water recedes and track settles. They had set up a work group with a high level of resource available to monitor the situation. In turn, ORR would be watching that inspection regime over the next 3-6 months as the groundwater levels returned to normal. It was clear that risks had increased – and NR's mitigation needs to be effective and well implemented.
23. The Chair said it was clear that ORR had a good story about our knowledge of the industry's response to the weather but we had not yet needed to tell that story publicly. She had been very encouraged to hear the extent to which the

teams have already been out on the network and were focused on the increased residual risk.

24. Richard told us that there had been some local issues between NR and the Environment Agency (EA). He explained that that EA did not include protecting transport links as part of its strategy. He said that ORR was supporting a proper dialogue between the two to enable increased resilience for transport infrastructure which also supported EA priorities. We would also look out for EA's lessons learned review to make sure we identified any useful learning for ourselves.

25. We thought we should consider agreeing a 'resilience standard' for the network (or at least for particularly vulnerable parts of it). We should also consider whether there could be a pre-agreed level of severity of weather at which point NR ceased to be on risk for performance in that period .

26. **Action: Richard Price and staff to consider whether or what standards might work.**

Item 5: OUTSTANDING CP5 ISSUES

27. John Larkinson explained there were four areas of continuing activity before CP5 could be implemented: NR's delivery plan, their performance plan, maintenance strategy, and CP5 financial performance monitoring. There were also discussions going on about CP4 financial performance.

paragraphs 28-37 have been redacted as being the development of a document which was later published.

38. John asked us to look at this in broad terms in correspondence before the Board meeting in March and we agreed. [Action: Board Secretariat and John Larkinson]

39. At the same time as CP5 preparation, the team were working on the annual efficiency assessment for the last year of CP4 where it was clear that no-one wanted a re-run of last year's dispute over the result. It would be helpful to sort out the process for the summer and staff would then be able to warn the Board early if there was major disagreement.

Item 6: NR MANAGEMENT INCENTIVE PLAN (MIP)

40. John Larkinson reported that NR were developing a new MIP for CP5 and had sought a steer from ORR on the direction of travel. Information provided so far was necessarily high level but essentially involved a higher benchmarked salary and a smaller proportion of remuneration at risk as bonus.

41. ORR's role as regulator was to assess whether any new proposal was consistent with NR's obligations and licence conditions, which included considering whether the incentive properties were sufficient to protect the public interest obligations in CP5.

paragraphs 42-47 have been redacted as relating to policy development.

48. The Chair summarised by saying that ORR recognised that NR needs the capability to do its job, that we do not believe the licence condition will be a barrier to the approach NR was suggesting, but that it was very difficult to give a steer as we had so little information. There was some scepticism around timing and we wanted to see proper benchmarking of the salaries for roles, on which funders and members would have to agree. We also wanted to see

benchmarks on the split between variable and fixed pay. Particularly we wanted to see how the top team would be incentivised to deliver CP5 and safety, and the consequences of failure had to be demonstrated and well understood.

49. We noted the importance and challenge of recruiting excellent people in an international market and the scale of the management challenges which the outgoing CEO had not yet managed to resolve. The NR Board had to get this right and be accountable for it. **[Action: JLK speaking note on outcome.]**

Item 7: CP5 SUCCESS MEASURES

50. We agreed that Option 1, monitoring against the objective and outcomes specified in the final determination, offered a better approach than the original proposal and should be adopted.

51. Chris Fieldsend explained that the team had consulted internally on what was needed. The reasons for selecting these criteria were set out in the paper: the impact on customers and funders had been added. The table of proposed metrics also showed them mapped to ORR's strategic objectives so that it was clear how PR13 reflected our strategic approach. Stakeholders had also been consulted during development. It was proposed that our progress would be reported as an annex to the annual report and that there would relevant updates included in the Monitor, the annual H&S report and the annual financial assessment of NR.

52. We welcomed this good piece of work. It was good to see the measures anchored back to a rationale, the purpose, and a baseline. We thought the work would give a good return over the next five years by combining good success measures with mechanisms for public transparency.

Item 8: PR13 PROCESS EVALUATION

53. We were asked to consider the purpose and scope of the review and to suggest any suitable individuals to carry it out.

54. We noted that the Nelson review had been useful in confirming and articulating our anecdotal learning from the PR08 process. We wanted to ensure that the PR13 review added to our understanding of the process and staff suggested that the scope might be more carefully mapped to answer particular questions. In order to be useful these questions must offer sufficient challenge to the process we undertook to offer additional insight.

55. We agreed the proposal to involve a combination of industry and regulators – particularly the NAO and Audit Scotland – in the process and suggested that Melvyn Neate might also be added to the team. It was important that we got value from the resources invested (which would include staff time).

Item 9: HS1

56. Alan Price introduced the paper which clearly set out the very tightly scoped areas of our regulatory involvement. HS1 operates on a commercial contract with DfT which was a very simple model. He described the areas of the periodic review where the team had challenged HS1, which included improving response to customer feedback. He noted that with train punctuality currently around

4 seconds, performance was not an issue. Costs were the main area of challenge.

57. HS1 had plans which were based on the lives of individual assets and these had enabled them to develop a very detailed asset policy. He noted that ORR has no oversight on stations so station funding is not part of this review. Overall the line had been built to a very high specification (drainage, construction, vegetation) so weather resilience was not an issue here.

58. The team had pushed HS1 very hard on costs in its 5YAMS, and funding for the escrow account had been adjusted to meet the latest forecasts for asset replacement in the long term. Alan said that maintenance costs, NR(HS)'s management fee and risk premiums were all areas where costs had been driven down from the original submission.

59. He commented on the very good support RPP had received from the legal team (Laura Majithia) to ensure that charging was properly structured and compliant.

60. One area where this had been particularly helpful was on freight where the original pricing had been based on high volumes of freight traffic. Actual volumes in the current control period were very low (190). Costs allocated to freight overall were down by 60%, but when these were spread over a much smaller (actual) number of trains then the cost per train (proposed in the original submission) became very high. The team had continued to push that number down by driving improved clarity of charge allocation and improving charging on, for example, the Ripple Lane sidings. The actual cost was now a serviceable number (£5.36 - without government subsidy) and below the existing cost so it was likely to be accepted by the industry without further argument.

61. We asked that the draft determination included detail on outcomes so that we are consistent on our expectations of transparency across the industry.

62. We agreed the draft determination should be published.

Item 10: Preparation for meeting with Department for Transport (DfT)

63. We discussed the importance of hearing from DfT of their concerns about the industry and what they wanted to see from ORR. We were particularly keen to hear about their organisational review and plans for the franchising programme. We thought it was important to give them an update on our safety priorities for 2014/15.

64. DFT DISCUSSION – see separate note - not for publication

Item 11: CHANNEL TUNNEL

65. Brian Kogan drew out the headlines from the paper. ORR will take on economic regulation of the British side of the tunnel from April 2015 with ARAF on the French side. This was a positive development as it transferred the function to a proper independent regulator.

66. This was a difficult environment with legislative, contractual and funding complexities. Regulatory issues were complicated by the bi-national nature of the issues – for example each end had different systems of law. Brian also pointed out that the physical structures pre-date our economic regulatory model so there was an element of trying to retro-fit the structure to the regulatory

regime. Building, operation and regulation of the tunnel were covered by an international treaty and were therefore very hard to change, even where change might be desired by both sides. The concession agreement for the operator had been agreed for a long period and was fundamental to the concession's business model. The operations were entirely private sector and under law cannot be publicly subsidised.

67. Brian explained that ORR had been undertaking economic regulation on behalf of the IGC on a very small budget. He recommended very strongly that, as ORR will have to take more on under the new regime, the Board should be careful that the function is properly resourced in future. This was a new function and the cost of delivering it was being worked up carefully to ensure that it covered all costs. Scoping our activity and understanding our boundaries would be vital to managing the work well.

68. Brian described some of the responsibilities, but there were areas where it was not clear whether government would give us duties or retain them. ORR must make sure there is a compliant network statement, that the charges are compliant, and would have oversight of the market unless government retain particular duties. Even oversight of the charging framework in England was not consistent: for NR it is us, for HS1 it is the SOS – and the framework for the Tunnel was still undecided. Current legislation includes a requirement for the infrastructure manager to drive efficiency and charges down - but it was not clearly defined. While the UK can enforce decisions, Araf also has that power so the team were working on how to make and enforce decisions jointly - as that seemed preferable to the confusion that would result in a change in regime at the mid-point of the tunnel.

69. The French authorities are concerned about disparity between the two national approaches to competition but the position in the UK is unclear. Even if ORR's powers are applied to the tunnel, they would only apply to competition in the railway sector and, since other cross channel transport (Le Shuttle) is legally not a railway (nor a licensed undertaking), other markets would depend on CMA intervention.

70. We asked to be kept in touch with developments but were content for the executive's European Board to work up a resource plan at the appropriate level.

71. Brian also updated us on the infraction proceedings. The British and French governments had received infraction notices on three areas: the lack of independence of the IGC, governance of Eurotunnel – (the concessionee also owned the TOC), and that charges were too high and therefore could not be compliant with the law. Both governments had defended robustly and, under the recast, the economic regime issue had now fallen away.

72. Eurotunnel had made some reductions in freight charges for new services and the Commission was seeking to use this to leverage a permanent reduction on all freight charges of 50%. If agreement could be reached on freight charges the Eurotunnel governance issue would fall away.

73. Brian would pull together a detailed resource plan and proposed a workshop for the Board on the underlying issues. **(Action: board forward programme)** We stressed it was important to be very clear about how we will approach this job and that we would expect our approach to align with our broader regulatory approach as well. We noted that we would want to see policy on HS1, HS2, and

the Tunnel converge but, in terms of consistency, it could be hard to do that and also align with Araf.

Item 12: TRANSPARENCY

74. Richard Price introduced the subject. He said an important element of the programme was to use our own data more proactively and to focus on producing high quality data that is more accessible and usable for everyone and also to promote transparency across the sector.

75. Our purpose in doing this would be so that
    a. funders can make better choices about what they are buying and what they are getting,
    b. taxpayers and the public can see what they are getting (disaggregated so that the choices are really clear),
    c. consumers are in a position to make informed choices about how they use the railway – information around ticketing, disruption, planning ahead, exercise of rights and purchase conditions;
    d. and because we saw increased transparency as an important way of making markets work better.

76. Richard Emmott said that this was a programme with a number of strands and lines of responsibility across the organisation. He had reviewed previous board discussions which had been high level and theoretical in scope. This paper set out a more business-like approach to what was achievable given the current resource envelope and in what timescale.

77. The work that was in hand included a strand in the external affairs team, some in the markets team, and some in RPP. The RPP team dealt with our analytical publications: GB rail financials, TOC costs and ROSCO costs, passenger compensation etc. along with a whole category of performance reporting and CP5 metrics across the period (scorecard, Monitor, H&S etc.).

78. He thought that the objectives from 2012 consultation were still valid – particularly the questions about our own transparency. The aims of the programme were
    1) to expand users of our data, and
    2) explain how transparency supports industry growth and reputation and
    3) encourage the sector towards greater transparency

79. He thought there was a good case to make to the RDG (where there were clearly some concerns about open data) that there was a major reputational up-side to openness – which was borne out by the experience of other industries. It was inevitable that public services run on a private franchise would get close scrutiny: he cited the energy sector. Pre-empting such scrutiny would help build trust.

80. Richard mentioned that there were transparency issues for ORR where we need to work harder at being a best practice operator if we are to exhort others to do more. He would bring forward a paper on this in due course. (Action: Board Secretariat on forward plan)

81. John Larkinson brought the Board up to date on real time train information (RTTI). Given RDG's new executive capacity (from ATOC) and leadership with

a proven track record in improving transparency, and DfT's positive interest in the issue, the new proposal was that we should allow RDG time to take RTTI forward and we should put our proposal on hold for a multi-stakeholder group unless RDG do not take action or are delayed beyond six months.

82. Juliet explained that it was could be difficult under our legal powers to drive open data – and industry initiatives might deliver more than we could drive through a stakeholder group.
83. We noted that a system operator would need to have access to all this information - and if we achieved that goal, we would seek to include this in the licence conditions.
84. The board agreed that we should give RDG time to develop a better approach.
85. Richard Emmott explained that while the transparency board will enable coordination of the various elements of the programme, he was responsible for the coherence of the overall programme - managed through different lines.
86. We asked Richard to take elements of the programme and apply timescale and outcomes/success criteria with milestones that would sit in the business plan and could be extracted for us to see. **(Action: Richard Emmott)**
87. Joanna Whittington said that she saw transparency as an important part of ORR's role – to become a trusted, authoritative, evidence-based organisation and which in turn would help demonstrate the value of economic regulation.

Item 13: BUSINESS PLANNING

88. Tom Taylor introduced the item and fed back on Monday's stakeholder event which had included discussion about success measures and metrics. He had been impressed by the very constructive engagement at a senior level by our stakeholders. The event had posed three questions:
    a. *was this the right direction for the industry?* Overall agreement, and: surprise there was not more focus on ORR's competition role (particularly in relation to DfT and franchising); a desire for a clearer narrative on our aims for consumer work (TOCs want to be clear what value ORR will be adding so we need to articulate our vision better); and suggestions that we should engage more with TOCs on NR performance issues.
    b. *what would success for ORR look like*? Delivering this plan would be positive; and there was encouragement for ORR to be increasingly proactive in the use of leading indicators eg on assets and renewals, to hold NR to account.
    c. *how do you want ORR to measure our own performance?* Suggested we publish more clearly commitments to timescales for transactional business. Stakeholders also suggested that if CP5 fails then ORR had failed – but we felt that the success of CP5 was now in the hands of NR.
89. We noted the feedback from the discussion and agreed that Tom should continue to work up the Business plan with milestones and measures. We pointed out that the current plan has next year as its focus with a 2020 vision – but that there was no mid-term trajectory and we thought it would be helpful to have one.

90. Tom would continue to develop the plan. He reminded us that there is a limited range of areas where quantitative measures can be used – much of what we do can only be assessed qualitatively.

Item 14: CIVIL SERVICE SURVEY

91. Richard Emmott reported on an excellent staff event on 25 February (the day before). He thought the survey showed some good results and was particularly pleased that the areas in which we had targeted action had shown movement in the results. This showed that if we continue to work in the same steady way we could expect to see continuous improvement: we did not need radical initiatives at this point.
92. He also highlighted the distinction between objective data – which tells us quite a lot about lots of people in the organisation – and the subjective comments, which can be attention-grabbing, but which represent the views of significantly fewer individuals.
93. Quinten Manby reminded the Board of the headlines of the report. We noted RSD's poorer results. We reflected on the particular challenge of helping staff based in regional offices or working from home to feel as engaged and supported as colleagues in a main office felt.
94. We noted the different drivers and motivations that apply across the organisation where it is clear that some approve of financial bonuses for outstanding performance and some disagree with them fundamentally.
95. We agreed that the Board and senior leadership should make greater efforts to be visible but we were encouraged that efforts to date had delivered improved results. The executive would look again at improving support for people working remotely and were expecting that new technology (including a new intranet) would make things easier for remote teams. They also aim to get out more frequently among the teams and on the railway.
96. We noted that the reward strategy was now being consulted on with the staff and that we expect this to go some way to improving our scores in this respect.
97. We noted that investing in our staff was a priority and L&D should continue to be promoted. Inspectors in particular really valued our investment in ICOSH membership.
98. Quinten summarised that this was a very positive set of results and demonstrates that where we have taken action, it delivers results.

Item 11: Chair's report

99. The report was noted

Item 12: Chief Executive's report

100. The report was noted.

Item 13: Board minutes and forward programme

101. The Board minutes for 27 and 28 January and the note of the board phone call on 4 February were approved.

Item 14: Matters arising

102. We noted the log of actions. There were no matters arising.

Item 15: Any other business

103. There was no other business.

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[i] Precursor indicator model
[ii] Rail safety directorate and London Underground Limited
[iii] Railway Accident and Investigation Board
[iv] Signals passed at danger;
[v] Train protection and warning system