# Office of Rail Regulation
# Minutes of the 105th Board meeting
# On Tuesday, 20 May 2014
# (09:00-15:30), ORR offices, One Kemble Street, London, WC2B 4AN

**Present:**

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

**Executive directors:** Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance) (item 6 onwards), Joanna Whittington (Director Railway Markets and Economics)

**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 (Director of Economic Regulation), Gill Bull (Assistant Board Secretary)

**In attendance, specific items:**

Items 4, 6 and 7: Carl Hetherington (Deputy Director RME). Item 5: Rob Plaskitt (Head of access and licensing), Ian Williams (Track Access Manager). Item 6: Mark Morris (Deputy Director, Engineering & Asset Management), Amanda Clarke (Interim Senior Financial Analyst)

## Item 1: WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. Alan Price would join the meeting later in the morning.

## Item 2: DECLARATIONS OF INTEREST

2. There were no declarations of interest.

## Item 3: MONTHLY SAFETY REPORT

3. Ian Prosser drew out some highlights from his monthly report. Mark Carne, NR's new Chief Executive, had chaired a meeting of RDG on the risk model with a strong message about his intention to drive cultural improvement in NR around worker safety as a driver for efficiency. This had been well received.
4. Ian reported that at the inquest into a young child's death at a level crossing the Coroner had been very critical of a RAIB report which had identified NR as responsible. The Coroner said that they had not taken into account an eye witness' statement and added that a move to allocate blame in this way was potentially obstructive to the process of the coroner's court. These points had been made by ORR to RAIB previously.
5. The date of the workshop with RAIB was still to be set and the Board pressed for this to be identified quickly, noting that DfT were showing interest in the outcome. **[Action A]** The next round of regular meetings with Carolyn Griffiths was on 17 June (IP and AW).
6. Ian continues to push for more consideration of safety during design stages of improvements; he highlighted two improvement notices which had been issued on parts of the Great Western upgrade where insufficient risk assessments had been applied.

7. Ian highlighted a serious double SPAD[1] in the report on Chilterns. The driver ignored the TPWS[2] warning light but up to date TPWS would not have allowed him to proceed. While the numbers of SPADs had stabilised there was no space for complacency and his team would be keeping a focus on driver management (they were considering enforcement on Chiltern Trains). We discussed the risk that in franchises that were so commercially tight, (for example where they had a short extension) investment in driver and safety training was vulnerable to cost cutting.
8. We asked about the failures in rolling stock axles and bearings related failures where there appeared to be an underlying issue with quality assurance checks. This appeared to be a manufacturing problem at the suppliers which was being looked at.
9. We were reminded that after reducing level crossing risk by 30% over CP4, we were working towards a further 5% reduction in CP5.
10. We asked about the rise in RCF (rolling contact fatigue). Ian explained NR's approach which indicated that they were aware of the problem and also had a way to manage the risk. His team would be watching progress on this.
11. We asked whether Louise Ellman's widely quoted statement that hundreds of level crossings failed health and safety standards was true. Ian explained that ORR and NR had responded to the statement in writing by showing that the HSE guidance had been misapplied in this context. Everyone knew that passive crossings were high risk, but the statement was inaccurate. He explained that ORR had arranged for Ms Ellman to do a cab ride near her constituency to look at crossings (on 30/6). She would be accompanied by an experienced crossing inspector who would explain how risk assessments are done.
12. We noted that BTP done very well with both cost and risk reduction. Ian highlighted that staff training to help them intervene at the point of danger for suicides has resulted in more than 300 confirmed successful interventions.
13. We asked for a note reminding us about what it means when we talk about a 5% reduction in Level Crossing risk and how it is calculated**. [Action B]**
14. We talked about why county councils might resist level crossing closures. It seemed to us there would in some cases be an overall financial case for highways authorities to close crossings or replace them with footbridges. We asked Ian to consider whether a conference/workshop on sensible solutions would be helpful. **[Action C]**
15. Ian reminded us that in June he would be asking us to comment on a draft of his Annual Health and Safety report.

## Item 4: NETWORK RAIL RECLASSIFICATION – LIMITS ON DEBT

16. John Larkinson introduced the item.
17. The CP5 determination had capped NR's financial indebtedness in terms of a net debt-to-RAB ratio. This was intended to allow NR to deliver efficiently but also to give the company sufficient operational freedom to respond to unexpected circumstances.

[1] SPAD – signal passed at danger
[2] TPWS - train protection warning system

18. Under reclassification, HMT will set a fixed monetary limit to NR's borrowing. This change could constitute a risk to the delivery of CP5 if the sum allowed proves insufficient for NR to deliver the package. There is a further risk that the change drives perverse behaviours in NR.
19. The team had been working with HMT, DfT and NR to articulate the various tensions and try to identify a range of figures that NR and ORR would feel gave NR sufficient scope to deliver. ORR's starting position was that there was no reason to change the basis on which the determination had been set – ie a new figure should be the same as the old figure except where it was rational to make an adjustment. This debate had identified a few areas where NR were currently on risk, but might not be under a fixed borrowing limit following reclassification (eg ECAM and borrowing costs).
20. The ranges of possible figures thought acceptable to each organisation were captured in a diagram showing a range from £26bn - £32bn. The ORR analysis and modelling had helped take the debate forward.

*Paragraphs 21-33 have been redacted as recording discussion around policy development.*

34. The Board agreed with the analysis and the range presented by the staff and reiterated the importance of rooting the borrowing limit in our original settlement and the importance of avoiding perverse incentives. Dan Brown said there should be a decision after the bank holiday for NR to consider.
35. We asked John and Dan to continue to take forward these discussions in line with the Board's steer. **[Action D]**

## Item 5 ACCESS APPLICATIONS FOR THE EAST COAST

36. John Larkinson introduced the slides. No decision was needed; the aim was to make sure that the Board were sighted on the approach and process for reaching decisions in a timely way.
37. DfT and NR were cooperating fully by providing the information required and DfT had been keen to share Ministers' views. NR's capacity analysis was due in June. As in previous cases, if it became apparent that a sufficient picture had emerged that any staff recommendation would be that the application could not meet the criteria then the Board would be invited either to reject the application or to agree to further investigation.
38. John advised that NR should have completed the capacity analysis over the summer so that an update could be brought to the September board meeting.
39. DfT would announce winning franchise bids in November, and that would be a further possible decision point, depending what was announced.

*Paragraphs 40-60 have been redacted as incorporating legal advice and regulatory issues discussion*

## Item 6 NR FINANCIAL AND EFFICIENCY PERFORMANCE 2013/14

61. Amanda and Carl introduced the item which was to explain to the board what story we would be telling in the annual efficiency assessment. At this stage, the team were still waiting for further information from NR and there had been no

opportunity for a full discussion among the executive – but this would be addressed shortly in order to deliver a joined up corporate view. The underlying data was still not very clear although the issues were roughly as expected.

62. We asked how this year's assessment built on the previous years. John said that there was continuity between assessments. The methodology agreed by the board the previous year had been applied again this year – there had been no reason to change. Last year we had not set out how we would address some financial issues like inflation accretion. But we have now included our views on these issues in our financial assessment this year.

*Paragraphs 63-73 have been redacted as recording discussion around policy development.*

**Item 8 NR's PERFORMANCE MANAGEMENT FRAMEWORK**

74. John Larkinson explained that following the discussion with Richard Parry Jones at the March Board meeting about NR's new MIP, the Chair had invited the new Chief Executive, Mark Carne, to talk to us about his approach to performance management. This was prompted by the observation that a system (such as the MIP) is only as good as its operators.

*Paragraphs 75 to 84 have been redacted as they record a discussion with the new NR CEO of his management approach*

85. We talked about the importance for ORR of NR taking ownership of their own performance and delivery. We were keen to support that and had made some progress in explaining our approach to the assessment of performance.

86. The Chair thanked Mr Carne for his presentation and a very useful discussion. We had felt positively about much of what he said and identified with his areas of focus. ORR did not want to be a surrogate for NR's performance management. There was agreement between the organisations on several areas: CP5 determination, approach to reclassification, working to a longer time frame and increased investment in new technology). However, NR is a monopoly and in receipt of significant public subsidy so ORR had a very important role in looking out for the public interest and there was a need for proper performance oversight.

87. ORR understood the importance of NR's ownership of performance targets – but needed to be able to offer external commentary to reassure the public that there was clarity on what Network Rail planned to deliver and its progress towards this in CP5. Network Rail's MIP for CP5 therefore needed a clear line of sight between what it was rewarding and the CP5 regulatory targets.

88. ORR was already thinking about CP6 and beyond and we would be glad to discuss these issues with NR's board in due course.

89. Mr Carne thanked the board for the opportunity to meet. He said he was also looking at ways of delivering a digital railway much earlier than currently planned as it offered significant improvements for safety, passengers and workers.

*Mr Carne and Mr Haskins left the meeting.*

[break for lunch]

**90.** We reflected on Mr Carne's presentation and our discussion with him. We thought his approach positive in the face of considerable challenges. We felt he would need to move quickly to secure early improvements on which to build mid-term. We thought his approach to workforce safety would be welcomed by the unions.

**Item 9 NR's MIP FOR CP5**

91. John Larkinson and Carl Hetherington presented the paper.

92. John told us that following our discussion with Richard Parry Jones at the Board in March and subsequent executive discussion, NR had now supplied the detailed measures proposed as part of the new MIP. The team had been surprised that the performance measures could not all easily be mapped to the outputs in the determination, particularly around financial performance, asset management and safety. NR had said that this was because the determination outputs could not sometimes easily be annualised or used to incentivise managers but that what had been suggested were proxies that would deliver the necessary outcomes.

93. We discussed the importance of NR having a system of performance targets that worked for them in terms of granularity and clarity, but that it also needed to work with our requirement for them to demonstrate how they were delivering against the CP5 determination.

*Paragraphs 94-97 have been redacted as relating to policy development.*

98. We agreed that there was a great deal in the proposed MIP that we supported and that their direction of travel in developing the scheme was encouraging. However, it was important that it must be seen to support delivery of the CP5 regulated outputs and on the basis of what we have seen, the proposal did not do that. If this was not remedied, there was a real risk that the proposed MIP would enable failure to be rewarded.

99. John thanked the Board for a useful discussion. He would revert to NR to seek a more direct line of sight between the MIP and the CP5 regulated outputs and report back to the Board **[Action H]**

**Item 10 MOU - UKRN**

100. Richard Price introduced the paper. The UK Regulators Network (UKRN) had been set up to share resources on some of the conceptual thinking around economic regulation – eg cost of capital and cross regulators policy. BIS and HMT were pressing all the economic regulators to work more closely to reduce confusion for industry and multi-sectoral investment and to exploit synergies across our professional specialisms.

101. The MOU sets out the basis for collaboration including a small financial contribution to a secretariat. The MOU was not binding, but a practical way of disparate organisations working together to respond to government's concerns, the Penrose report and the wider debate about the value of economic regulation. The UKRN would report to its chairs individually.

102. We discussed the scope of work for the UKRN and the issues it might consider, noting the planned areas of focus. If it worked well, it could be very useful, but there was a risk that it would distract from our own work.

103. Richard Price thought that it would be a useful addition rather than a distraction. He was clear that no work was to be begun unless there was a clear outcome in view. He commented that BIS/HMT had originally sought to impose a duty to collaborate on the regulators, but that this had been forestalled by the UKRN's

formation. The wider debate on economic regulation was likely to continue but a proposed review of regulators had been dropped for the moment.

104. Richard would chair the group for the first year. All the individual organisations had their own statutory responsibilities which had to remain paramount and which would not always align with a shared agenda. The Chair suggested that the mix of public and private sector investment in rail meant that we were different in many respects to other economic regulators. In the meantime, however, UKRN gave us a useful vehicle to make the case for the importance of economic regulation and it was good to have dedicated resources for that.

## Item 11 GOVERNANCE

105. The Chair reminded the Board that a number of key decisions were taken in July 2013 as a result of the Board committee review, but further issues had been deferred until after the completion of PR13. This paper set out some of the thinking about changes that might be introduced. She was seeking views on those proposals.

106. One of the recommendations was to set up an ‘Economic regulatory committee’ (ERC) to replace the ‘Periodic review committee’ (PRC). The Chair would initially chair ERC but in due course, one of the new NEDs would take the committee forward.

107. We agreed it was important for staff to have a better understanding of the board’s vision and the need to improve the staff survey score which (though improving) at 39% was too low.

108. Staff now needed urgently to take forward the work articulating why ORR had structured its decision making as it did, and make proposals for aligning the various areas in the context of a new committee structure.

109. We discussed issues relating to the options for delegating decisions; the need to avoid duplication of effort; the length and complexity of current agendas, and the lack of time currently available for the board to consider strategic issues.

110. The Chair recognised that there were different views on whether to have an economic regulatory committee or not and asked Richard Price with the executive to look at the issues in more detail **[Action I]**. It was important to establish a different way of doing board business given the requirement to deal with roads through a specialist committee and our increasing range of activities and powers.

111. We agreed that we wanted to aim for shorter, more focused board meetings but noted that this would require a change in culture and behaviours and should not result in an increased number of hours in meetings. Some NEDs felt that the Executive board members were not always heard in meetings.

## Item 12 ANNUAL REPORT AND ACCOUNTS

112. Richard Emmott introduced the report and accounts. He noted that a new version had been issued and apologised for the mix up. He said the report this year had broader content than previously and clearly distinguished between the Chair and CEO roles.

113. Tracey Barlow, speaking as chair of the ARC, commended the accounts to the board for approval. The process of internal scrutiny and feedback from NAO had

led to an unqualified set of accounts with a very high level of accuracy, which was to be commended. She noted that the final piece of content on pensions had been delayed by others.

114. In response to a question, Tracey said there were no concerns to draw the Board's attention to. It had been a clean set of accounts produced by a new finance team to very tight timescales. This was partly due to the legacy from Elaine Holt and Stuart Hamill , but she also gave credit to the interim team and to the NAO team for their excellent work.

115. The board agreed the Annual Report and Accounts, subject to any minor corrections.

116. After some confusion during the process this year, the Chair proposed that the ARC took over oversight of the whole report next year. This was agreed **[Action J]**

117. Tom Taylor noted that this was likely to be among the first three reports laid in Whitehall in 2014.

## Item 13 REMCO FEEDBACK

118. Stephen Nelson reported on the previous day's REMCO meeting.

119. Overall it was clear that the more robust business plan was offering a good foundation for objective setting and performance management/reward against objectives.

120. Remco had looked at bonus arrangements and base pay for non-SCS staff. They had approved executive proposals on the use of the consolidated and non-consolidated pots for this group. Stephen explained to us what that would mean in practice.

121. The level of other non-consolidated bonus payments was agreed. These were slightly down over the previous year, but still high in the context of civil service organisations.

122. Remco had also agreed SCS pay policy.

123. The committee had discussed directors' objectives and given Richard Price their views on individual performance for 2013/14. On objectives, they had asked Anna and Richard to ensure that there was a line of sight from all the areas in the business plan through to the Directors' objectives.

124. In considering the developing proposals for a new reward system, the committee heard the outcome of staff consultations and noted that there was a great deal of work still to be done to develop the detailed scheme. The committee asked that:

    a. a range of 10-25% of staff receiving performance awards should be included in the proposals;

    b. 'competency' be defined as including delivery, behaviour and skills;

    c. more detail worked up on career family groupings, team awards and possible criteria for organisational awards;

125. It was clear that not all the necessary detail could be worked up by the next meeting, but it was hoped that broad criteria might be available.

## Item 14 CHAIR'S REPORT

126. The Chair drew the Board's attention to the draft Board objectives for this year and asked for final comments by 30 May. The report against last year's objectives showed some good progress with more still to do in other areas.

**Item 15 CE's REPORT**

127. Richard said that most of the items he wanted to highlight had been covered elsewhere:

a. PR14 had been published, and there was lots to learn from the way this process had been delivered.

b. The Accounts had received a clean audit opinion

c. The office development programme was virtually complete with a good impact on the office environment, making it feel more dynamic and professional. The smarter working IT and policy development/impact assessment workstreams were still in hand.

*Paragraph 128 has been redacted as commercially confidential.*

**Item 15: BOARD MINUTES AND FORWARD PROGRAMME**

129. The Board minutes for 20 May were approved, subject to corrections.

**Item 16: MATTERS ARISING**

130. We noted the log of actions. There were no matters arising. The Executive committee would be reviewing the log before the next meeting.

**Item 17: ANY OTHER BUSINESS**

131. There was no other business.

**Item 18: MEETING REVIEW**

132. There had been few decisions to make, but some good focused discussion.
133. We asked again whether we were giving our executive members enough space to engage in the board discussion.
134. We had found the refresher session on our enforcement regime very helpful.
135. The papers for all the sessions were very helpful.