



Capability Review of the Office of Rail Regulation

April 2012

Foreword

The purpose of Capability Reviews is to use honest and robust assessments to identify the specific measures that different parts of government must address to enable Britain to meet the considerable challenges of the future.

Britain's railways have a vital role to play in enabling the Government's wider strategy of promoting economic growth and sustainability while improving services and safety for passengers. But the industry also has to demonstrate value for money in the way a large public subsidy is spent.

The role of the regulator is central to the overall effectiveness of the railway sector. This requires the regulator to be honest, robust and transparent in assessing its own capabilities. The Office of Rail Regulation has chosen to achieve these requirements by inviting an independent team¹ to assess the overall capability of the organisation, both what it does well and what it needs to do better, against the recognised capability review process and methodology².

The ORR Board commissioned this independent review in November 2011.

The review's scope was

- To assess ORR capability against its current functions;
- To assess ORR capabilities against a potentially expanded role as recommended in Sir Roy McNulty's 2011 report on Britain's railways.

The review team was also aware of the views which the National Audit Office and the Public Accounts Committee have expressed both on ORR itself and on the wider regulatory framework, and took these into account in shaping the review. The review team undertook a work programme between the 21st November and the 2nd December 2011. The team met or spoke with 113 people³ from inside ORR, across the wider rail industry and government.

The review team also had access to a series of insightful diagnostics and internal reports about ORR's culture, performance and effectiveness. These confirmed that ORR does not back away from being self-critical about both what it does and how it does it, in its efforts to become a more effective regulator.

Having considered the evidence received and generated by the review, the team reported its findings to the ORR Board on 20th December 2011 identifying strengths and areas for improvement against the agreed scope.

¹ The review team's details can be found at Appendix 1.

² A methodology statement can be found at Appendix 2.

³ The full list of people spoken with can be found at Appendix 3.



The review recognises that ORR is committed to raising its game. This is vital if it is to anticipate and tackle the scale of the changes ahead. Almost half of the members of the Board are new to ORR, having joined in the last eight months, including a new Chief Executive. ORR has already initiated a range of steps to strengthen its capability and performance. Overall capability has been assessed against the backdrop of developing plans and proposals and the report should be read with this in mind.

The review team has outlined suggested different actions it considers appropriate. However, decisions as to the way forward are a matter for ORR. It is suggested that, should ORR wish to follow up this review and assess progress in improving its capability, they be measured against the overall impact they have made in raising the organisation's ability to secure the delivery of improvements for the public, rail users and taxpayers.

Mark Addison | Richard Brown | Terry Hill | William Moyes | Andrew Templeman

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1. ORR's Response To The Capability Review

This is ORR's first Capability Review and we welcome the assessment. This is a critical time for Britain's railways. Demand for rail services is at its highest level since the 1920s and the industry is seeing a remarkable period of sustained growth. Rail has a major part to play in Britain's economic recovery. Funders have shown that they are willing to invest in the development of Britain's rail infrastructure. Through ORR's reviews of Network Rail's finances over the last ten years, efficiency gains have reduced infrastructure costs by some 40 per cent⁴. Yet there is much more to do: the costs of the system remain too high, and performance across the network is not always what customers expect.

As the specialist regulator for railways – independent of government, and combining economic and safety regulation – ORR has a big part to play in creating the framework and environment in which the industry can tackle these problems and meet growing demand and expectations.

While we are the safety regulator and the competition authority for the whole industry, our role in economic regulation is focused on the finance of, and access to, rail infrastructure.

The UK Government has signalled that it wants ORR to take a bigger role in regulating the system as a whole, ensuring that customers are at the heart of what we do and so that the sector improves the passenger experience. Its ambition is to broaden regulation and ORR's role in the assessment of whole-industry efficiency and performance. In a sector which is so dependent on the linkages and interactions between the providers of track and trains, we agree that consistent whole-system regulation is essential if the industry is to achieve its potential in efficiency and service, both for taxpayers and for customers. We are also working closely with the Governments in Scotland and Wales on their aspirations for the railways and how independent regulation can help to secure value for money and serve customers well.

We believe that our organisation should be subjected to independent scrutiny and analysis, just as we ourselves apply these disciplines to the industry we regulate. We commissioned this Review to assess ORR's capability against its current functions and to assess ORR's readiness to take on new functions. Capability Reviews are well established across central government departments, and have proved a robust, insightful and transparent way of assessing the leadership, focus and organisation of government departments.⁵

⁴ The cumulative reduction in operating, maintenance and renewals expenditure achieved during the 10 years of Network Rail's Control Periods 3 and 4, starting in 2003-04, is £15 billion. Network Rail's efficiency gains mean that annual operating, maintenance and renewals expenditure in 2013-14 is projected to be around 40 per cent lower than at the efficiency levels of 10 years earlier. Operating expenditure includes support costs and network operations costs.

⁵ The capability review methodology is summarised in Appendix 2.

We were pleased to be the first independent regulatory body to commission a Capability Review. We were also delighted to have assembled a strong and independent team of reviewers from across government and industry to review and challenge us. We – and they – have engaged in this work in a spirit of identifying what ORR can do better as we face new challenges and potential new functions at this critical time for the industry we regulate. In addition to applying the established Capability Review approach, we asked the reviewers specifically to consider our skills base to assess our current strengths and the areas we need to address in relation to our current remit, and also to identify areas which we would need to strengthen before we take on new functions.

The reviewers took evidence from a wide range of people who deal with ORR, or have experience of our work, across government, industry, consumer groups and the regulatory community, as well as ORR's own staff. We are very grateful to everyone who gave their time to be interviewed or to participate in the series of workshops the reviewers organised.

The Review found that ORR is an organisation with many positives and much we can be proud of. Our stakeholders rate us as a professional body, with capable staff that are committed to the task of ensuring that the railways are safe, reliable and efficient, and do a good job. As we hoped, the Review has also identified areas in which we can do better. These range from aspects of our governance and processes, to specific areas of skills and succession planning – which we need to address both in our current remit and in taking on new functions. The Review identified change management capability as a particular area which we should strengthen in the short term.

Their overall conclusions were that ORR is ready to take on many of the new functions set out in the joint Consultation Document which we issued with the Department for Transport⁶, because we already perform similar functions in relation to Network Rail – including areas such as monitoring train operating company (TOC) performance. Further functions such as enforcement of TOC contracts, fares regulation and ticketing, which represent a more substantial extension of our role and require new areas of expertise, could follow when progress has been made in implementing ORR's change agenda, addressing the recommendations the Review identifies.

The reviewers recommend that we should use the processes it identifies to plan ahead and prepare for these changes in our role. The reviewers' analysis and recommendations are set out in detail in chapter 4 of this document. The Review findings echo other recent reports – our Stakeholder Survey in autumn 2011 and our Investors in People re-assessment in February 2012. This analysis tells us that we are an improving organisation, with much to be proud of, and importantly, that we are now very well placed to take a significant step up in our own regulatory role in driving progress across the industry.

⁶ *A greater role for ORR regulating passenger franchisees in England and Wales – jointly published by ORR and DfT.*

We therefore accept the recommendations made by the Capability Review. Drawing these together with threads arising from the other work, we will put our ambitions into action. We will tailor some of the actions where we have identified better ways to make progress, but recognising and accepting the reviewers' analysis.

We have already begun acting on the Review's conclusions – for example, we are strengthening our engineering and asset management capability with a new deputy director role for these areas; to improve our technical and commercial understanding of the railway we are setting up an advisory panel of experts; we have strengthened our governance processes so that Board papers and discussions are much more focused and sharper and we can make decisions robustly and in a more timely way; we are assessing how to make better use of technology and processes in Corporate Services to improve internal efficiency and effectiveness, improving for example our succession and skills planning; and we have restructured and strengthened our HR team in the last six months. We also recognise the Review's finding that – like many organisations – ORR has in the past been better at talking about change rather than making it real; and we are strengthening our capacity for systematically driving change through the organisation, supported by our people.

Alongside the Capability Review, we have also improved the way we draw in insights from our people in developing our strategy and business plan; and are developing new thinking on the way whole-system regulation of the railway can develop in the interests of customers and taxpayers. Since the Review was completed, we have also undergone an assessment by Investors in People, which assessed ORR as having taken very significant steps forward in the way our people are managed and motivated; the clarity across ORR on the nature and scale of the regulatory challenge we face and our vision for the future; and the engagement of staff with the regulatory agenda. This gives us a very strong platform from which to build. We will continue with the process of strengthening ORR, including addressing the recommendations of the Capability Review in the coming year.

We would like to thank the Capability Review team for a robust and insightful piece of work, which points to key areas in which we will strengthen our organisation. ORR's ambition is to be best-in-class as a regulator, because the reality is that we face some of the most complex and difficult challenges in regulation, and we have to meet those challenges on behalf of all those who use and fund the railways. This Review is an important stepping-stone to achieving that ambition.



Anna Walker
Chair



Richard Price
Chief Executive

2. The Office Of Rail Regulation

The Office of Rail Regulation (ORR) is the independent regulator for economic and safety regulation of the railway industry.

ORR oversees an industry that carries 1.3 billion passengers and 100 million tonnes of freight every year. The industry has a collective turnover of £18 billion per annum when Network Rail (the monopoly infrastructure provider) and other train and freight operating companies, rolling stock companies, suppliers and contractor revenues are taken into account. The sector receives a significant public subsidy of circa £5 billion per annum (2009-10).

ORR is a non-ministerial government department with around 270 staff and a budget of about £30 million each year. ORR is funded by the railway industry it regulates.

ORR's powers are vested in a statutory Board. The Board consists of 13 members: eight Non-Executives (including a Non-Executive Chair) and five Executives. The Secretary of State for Transport appoints the members of the Board.

ORR operates out of 6 main offices that are distributed across the country. Over half of ORR's staff are based in the London head office. ORR is structured, staffed and resourced around 7 directorates and groups.

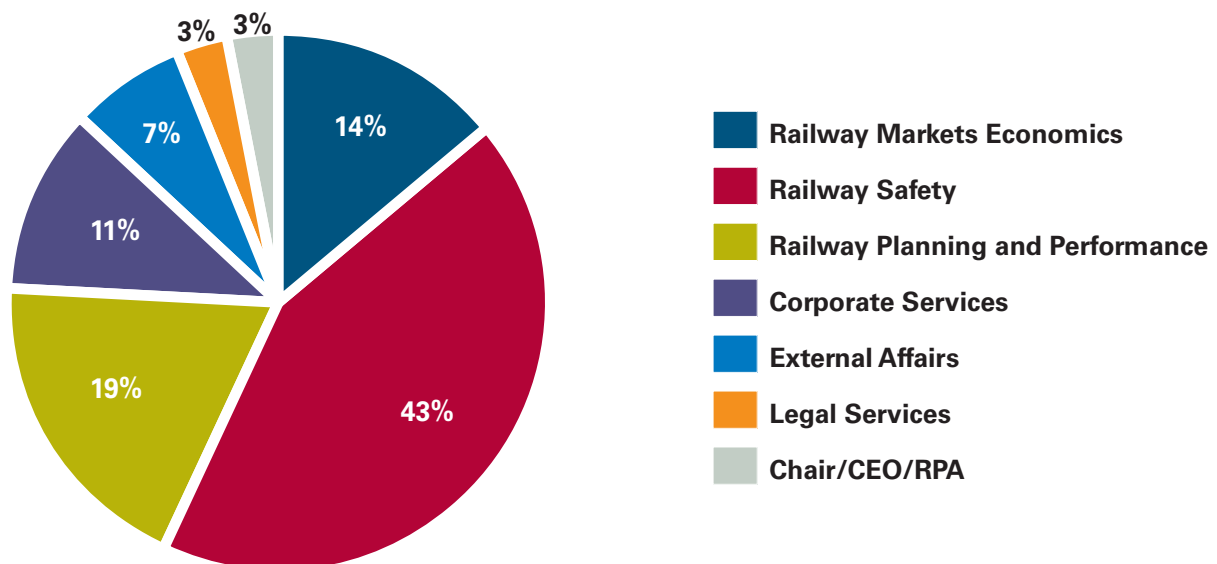
Headcount as of February 2012

- Chair/Chief Executive's office and Rail Policy Advisor (7)
- Corporate Services (29)
- External Affairs (20)
- Legal Services (9)
- Railway Markets and Economics (39)
- Railway Planning and Performance (50)
- Railway Safety (115)

Some support functions, including IS, have been outsourced.



ORR staff allocation: directorates by percentage



ORR's legal functions come from UK and EU legislation, principally the Railways Acts 1993 and 2005, the Health and Safety at Work Act and competition law. These include licensing all railway asset operators, setting track access charges, access arrangements with train operating companies (TOCs), exercising competition and consumer law powers and enforcing health and safety legislation across the rail industry.

Most of what the regulator does in terms of economic regulation focuses on Network Rail as the owner and monopoly provider of the national railway network. Network Rail manages and maintains track, signalling, stations and other assets. ORR is responsible for regulating Network Rail's stewardship of the rail network but as the National Safety Authority, ORR's health and safety responsibilities cover the whole industry including train operators, heritage and light rail sectors. Similarly ORR's competition responsibilities have a broader base. All of ORR's different responsibilities are summarised on the next page.

It is important to note that ORR does not regulate all aspects of the industry. In particular, the Department for Transport has retained various powers and responsibilities. These include the awarding of franchising agreements to TOCs, oversight on TOC performance and regulating fares.

The different regulatory responsibilities of ORR

ORR regulates health and safety across the sector including the mainline railway, High Speed 1, London Underground, light rail and the heritage sector. ORR also provides resources for regulating the Channel Tunnel.

ORR regulates Network Rail as a monopoly provider of rail infrastructure. This involves periodic (five yearly) reviews of the prices Network Rail charges for access to the network, setting the outcomes the company has to achieve (e.g. in terms of enhancements to the network and performance requirements). The periodic review also sets performance measures and incentives affecting the whole sector. ORR also monitors Network Rail's performance against periodic review and other obligations and enforces its licence.

ORR is responsible for the development of European economic and safety policies in a way consistent with the delivery of ORR's strategy of promoting continuous improvement in the value the railways offer to users and funders.

ORR ensures the economic and safety regulation of HS1.

ORR is responsible for establishing terms and conditions for Train Operating Companies including non-franchised open access operators and freight operators to access the network.

ORR has competition powers to address competition issues including e.g. predatory pricing or exclusionary behaviours. These are concurrent with OFT powers.

ORR has consumer protection powers, for example, to ensure passengers get the information that they need.

ORR is responsible for the publication of key statistics on the performance of railways.

3. Current And Future Challenges

Over the last 15 years the rail network has seen a sustained period of growth in both passenger and freight markets. The industry can demonstrate continued improvement in safety, increasing customer satisfaction, historically high levels of operational performance and significant investment in rolling stock, infrastructure and customer information. All these factors have contributed to the recovery in passenger numbers that have steadily increased since the mid 1990s after half a century of decline.

As the ORR Annual Report 2010-11 notes, ORR has been challenging Network Rail to reduce its costs for many years with a target of a 21% reduction by March 2014 on top of savings of around 30% already delivered since 2004-05. Looking forward, the railway sector as a whole faces a number of significant challenges, set out in Sir Roy McNulty's 2011 report. Overcoming these will impact on the role of the regulator; both what it does and how it does it and requires ORR to evolve to be a more effective regulator of the railways.

The amount of public subsidy given to the industry will inevitably reduce over time to reflect wider economic conditions and constraints. In line with this reduction there will be a requirement to demonstrate that both expenditure and subsidy offer improving value for money.

Sir Roy McNulty's Rail Value for Money Report published in 2011 called for reforms across the industry to deliver at least £1 billion's worth of savings each year from the industry as a whole. ORR has a key role in overseeing the delivery of better value for money and informing Ministers' decisions on the level of public subsidy.

ORR's consultations for Network Rail's next price control (2014-19) are just beginning. Efficiency gains in the last decade notwithstanding, ORR benchmarking suggests Network Rail is still significantly less efficient than the best of its counterparts. Control Period 5 (CP5) must address both how this gap is closed and meet an expectation for new targets for safety, punctuality and cost efficiency. ORR must maintain pressures to improve health and safety both by individual duty holders and in system risk, ensuring these measures are cost effective as the industry continues to grow and delivers a historically large investment programme. All this requires ORR to understand the interactions and potential trade-offs between these competing demands and drivers.

4. Capability Review Findings And Areas For Action

ORR is charged with regulating a complex, often confrontational, industry. The McNulty Report has raised expectations across the industry, and envisages a key role for ORR in contributing to a more integrated approach to running and improving Britain's railways.

Devolution, alliancing, and the need to secure more efficient, economic and effective spend of a big public subsidy, all bring new challenges to the way ORR needs to operate as regulator. The situation is complicated by the fact that ORR is regulating Network Rail, a monopoly supplier with substantial public funding, and the associated rail sector, with economic regulatory levers that are different to those found in other regulated sectors. For example, when regulating a single monopoly supplier (Network Rail) there are different challenges in applying leverage through benchmarking the cost and quality of different suppliers and encouraging "competition through comparison".

Changes to the way the industry is currently structured present opportunities. As part of its reform agenda, ORR is looking beyond conventional levers like licensing, inspection and enforcement to bring the industry closer together and stimulate efficiencies. These include, for example, greater transparency of information to allow benchmarking and, where cost effective, the development of competition and comparative competition. Generally, the exploration of a wider range of levers is to be welcomed.

The UK Government has also recently said that it wants to see ORR put passengers at the heart of its activities; it has supported ORR in taking on a new role with the train operating companies in relation to passenger information at times of disruption and, jointly with ORR, has put out a consultation document on further extensions to ORR's passenger activities.

Collectively, the industry has come a long way over the last ten years. ORR has played a significant part in this improvement and has secured a solid reputation among many stakeholders.



This industry recognition is balanced against the fact that sound past performance cannot guarantee future success. This is reflected by ORR's determination to become "best in class"; an aspiration shared by the Chair, Chief Executive and the Board as a whole. This combination of awareness and ambition is acknowledged as a core strength for the organisation going forward. Other strengths recognised by the review team include:

- Train Operating Companies and other stakeholders rate the leadership team's potential to respond to the challenges ORR faces.
- ORR-DfT and wider government relationships are strong and productive.
- Control Period 4 illustrates a successful ORR intervention in driving better efficiency and effectiveness in the way money is spent by Network Rail and ORR now needs to develop this as a successful platform for the increasing demands of Control Period 5.
- Stakeholders generally acknowledge professional and committed staff and recent appointments, particularly executive and non-executive Board members, are well regarded, internally and externally.
- Internally, there is a clear appetite for change amongst the majority of staff who recognise the reasons they must evolve the way they work.

These strengths mean ORR is well placed to respond both to the challenges that lie ahead and stakeholders' increasing expectations of them as an organisation. Feedback from across the industry confirms that the majority want, and need, a confident, authoritative regulator. These expectations can be met if ORR now focuses on four key areas that will help it build on the improvement work already underway to strengthen ORR's overall capability.

4.1 Key Finding: The Role Of The ORR Board

The ORR Board consists of talented and insightful individuals. Recent recruitment has further strengthened a Board that has the capability required to lead ORR effectively. Almost half the Board: 3 Non-Executive directors, 1 director and the Chief Executive, have joined in the last 8 months.

These appointments provide a good platform for leading further change. There are examples of effective decisions by the Board over the last six months. These include passenger information during disruption and tackling Network Rail's performance on some of its CP4 targets.

Given the complexity of ORR's future tasks, the Board needs to focus on the clarification and development of its strategy, both to guide the organisation effectively and to meet the challenges posed by the external environment. This is pressing for two reasons. First, the existing ORR strategy was inherited and does not command support from the current Board. Consequently, it does not underpin ORR's plans, priority setting and resource allocation. Second, and as a result, staff at all levels of the organisation need to benefit from a much clearer sense of ORR's purpose and how it is seeking to influence the rail industry in order to generate a clear context for their work.

The Board will also need to give concerted attention to ensuring that the senior management team, led by the Chief Executive, carries out the development of staff capability required by its strategy. This in turn will require the Non-Executive Directors (NEDS) to hold Executive Directors closely to account whilst reducing the excessive time and energy that ORR senior executives devote to supporting the Board through the generation of papers and organisation of meetings.

The measure of Board success against this leadership agenda will be seen by the degree to which the momentum and development of the organisation as a whole is accelerated over the crucial period leading to the delivery of Control Period 5. The recent changes at Board level provide the skills and opportunity to do this.

AREA FOR ACTION 1

What the Board does and how it conducts ORR business needs to evolve

The organisation would benefit from the Board spending more time on ORR's strategy (including health and safety issues), risk, accountability and value for money. It would be helpful to put more focus on the impact it makes, on taking good and timely decisions and put a priority on leading the development of a clear narrative on ORR's purpose and its regulatory approach. The Board needs to be very clear on how the periodic review for Control Period 5 will be conducted, what the desired impact is and how results will be measured. The Board could usefully take stock of how it can be clearer and more systematic about when and how ORR consults and when to act rather than consult. The Board needs to evolve its style of operation around sharper conclusions and decisions based on better and clearer advice from ORR's Directors' Group.

New NEDs will benefit from structured induction to understand better ORR's role, the context in which it operates and the wider rail industry. NEDs need to assess regularly and collectively how well ORR is delivering its responsibilities in relation to strategy, accountability, ORR's organisational development, external relations and internal decision taking.

Recent appointments have broadened and deepened the expertise and experience of the Board's NEDs. They now need to ensure they develop into a cohesive group. This is important if the Chair is to create and sustain an effective and improving Board, given its size and its new membership. A clear channel of communication between the NEDs and the Chair would be valuable, allowing the Chair to take soundings without the need to consult each NED individually. This could be achieved through the appointment of a Senior Independent Director (SID) whose primary purpose should be to support the Chair in convening the NEDs and the Board. NEDs could meet privately without the Chair from time to time. The NEDs and the Chair could also meet privately, to review and debate wider ORR issues. The use of additional formal sub-committees to delegate responsibilities and explore areas in depth, reporting back to the Board should be explored.

4.2 Key Finding: The Chair-Chief Executive Relationship

The Chair and new Chief Executive of ORR are well regarded by many stakeholders. The Chair has a strong reputation and seen as knowledgeable open and committed. In particular, the Chair can take the credit for the good relationships with many key external bodies in the sector, the Department for Transport in particular and government more generally.

The Chief Executive has been in post for 8 months and is viewed as having a background, skill-set and approach that equips him for the role and the challenges ahead. There are high expectations that he will meet those challenges.

The Chair and Chief Executive are alive to the fact that there needs to be more clarity about their respective roles and responsibilities. There is recognition that in the period before the current Chief Executive's arrival the Chair needed to be more involved in the day to day running of the organisation. There is now the opportunity to ensure that the roles become more delineated, and that the tasking of the organisation is simplified and unified. This definition of roles will need to be accompanied by a general strengthening of the overall capability of the wider organisation (considered below). The Chair and Chief Executive are currently trying to fill gaps in capability and capacity in the wider ORR that need to be addressed rather than compensated for. Without this shift in emphasis, and action to reduce the overlap in roles, there will be inadequate incentives for the organisation to improve.

AREA FOR ACTION 2

The Chair and Chief Executive need to clarify their respective responsibilities

The Chair's focus should be on leading the Board, on building the Board as a team, and on refocusing the Board's role as set out above. The Chair should lead on the high level external relationships at "Chair to Chair" level, on links with key EU stakeholders and Ministerial links within Government, particularly the Secretary of State for Transport. The Chair should be the "guardian" of the ORR strategy and be responsible for generating Board ownership of it.

The Chief Executive's focus should be on running the organisation and leading its development and management. This will mean ensuring the Directors' Group develops as an effective and united leadership team that works corporately to drive and model the changes needed across ORR. The Chief Executive should lead the organisation in the support it gives the Board for the fulfilment of its statutory functions. In particular, he should lead on the development of options for the Board on the ORR strategy and vision. He, supported by the executive team, should take responsibility for managing the commissioning of Board papers and their subsequent production.



4.3 Key Finding: Making Change Happen

People at every level of ORR are thoughtful and enthusiastic in identifying areas for improvement across the organisation. Some of the capability required to drive changes and improvements in the way the organisation works is being put in place. The new Chief Executive's arrival and the changes he is making are generally viewed positively.

There are active conversations about how ORR needs to change its role and behaviours and evolve its approach to regulation. Recent recruitment enhances ORR's change capability.

The Chief Executive has initiated a range of steps to strengthen ORR's capability and performance. There has been recent engagement with staff on priorities and behaviours, but staff nevertheless still find it difficult to offer examples of what's improving within ORR and previous change initiatives are not seen to have delivered the impact envisaged. This means the Chief Executive's recent changes and appointments must be supported, augmented and driven home at all levels and their effectiveness must be regularly reviewed. It is particularly important at Director level that a focus on collaboration, on teamwork, and on the drive required to lead the ORR workforce forward, becomes a central part of the role, and more evident to staff.

Although it is too early to expect them fully to reflect recent changes, ORR's ratings on leadership and managing change have not improved over the last two years, both of which have the strongest associations with overall employee engagement. The self-assessment offered by consecutive staff surveys confirms that, internally, people need to see a better alignment of skills, behaviours and plans to make ORR the regulator it aspires to be.

AREA FOR ACTION 3:

ORR's internal capacity to drive improvements across the organisation needs to be strengthened

Change needs to be seen to start at the top and focus on different behaviours, rather than new processes. The Chief Executive needs to be seen to lead change in the organisation. He should consider securing additional support from an external "change agent" reporting directly to him, working with the Chair and the Board, for a fixed period. This would enhance ORR's overall capability in making successful change happen. The Board needs to agree and unite behind a clear plan for the development of the organisation. The Directors' Group, which supports the Chief Executive, needs to align and role model the necessary behaviours to support change. A cull of previous change initiatives and the abolition of some symbolic processes, controls, forms and programme boards would send out an important message to the wider organisation about the way ORR is changing. The periodic review for Control Period 5 should be an important focus for these changes.



4.4 Key Finding: ORR's skills and capability

The recent appointment of some senior staff from outside the railway industry has brought ORR a valuable and healthy injection of sound management and leadership to the organisation. ORR's people are often respected. There is widespread acknowledgement of the skill and dedication of the safety regulation capabilities from important stakeholders. The good and improved safety record of the railway industry is evidence of this.

Each regulatory regime, health and safety and economic is derived from separate legislation but, where cross-disciplinary work is needed, there is evidence that it does happen, and that collaboration is growing.



The recent strengthening of ORR across some key skill areas, and the plans to take this further, are all recognised. This progress allows a number of other issues to rise up the priority list.

There needs to be more internal focus on capability issues in the round. For instance, as senior people within ORR leave or retire, the organisation risks losing many core capabilities, skills and associated corporate memory. Effective succession planning is needed to ensure that the organisation is not at risk. Alongside succession planning, a more strategic approach to talent management, the use of secondments in and out to augment skills and experience and a focus on critical skills, are needed. The business needs to take responsibility for good workforce planning and the Corporate Services and the HR function may need reshaping and strengthening to help address these issues effectively. ORR has a difficult balance to strike in ensuring it has the skills and experience it needs to make the right judgments. It is tasked with regulating organisations with far greater means than the regulator but cannot be expected to replicate their resources and depth of expertise. But given these restrictions, there are areas that ORR could look to strengthen.

In particular, the widespread use of independent Reporters, jointly appointed, but paid for by Network Rail, providing both ORR and Network Rail with professional advice, can lead to tensions with Network Rail when reports are not only critical of performance but may also be disputed.

Second, achieving total asset knowledge is the job of Network Rail and the TOCs but ORR needs to be able to make authoritative judgments on their performance. Despite the jointly agreed trajectories for asset management and safety performance the current methodology to support such judgments is frequently disputed. Risk assessment is core to the safety regulatory framework. Challenging duty holder risk assessment process and conclusions often at present draws on external expertise. An in-house Quantitative Risk Assessment (QRA) capability, for both safety and economic regulation, would offer real benefits and help the Board make the best regulatory judgements.

Third, there was a widespread view that ORR needed to be more commercially knowledgeable and informed from an operational perspective. The key issue is for ORR to make the correct regulatory judgments, and these are necessarily different from commercial judgments. But there is a case for strengthening within ORR an operational perspective, grounded in direct industry experience, and an understanding of the whole system and the connections between its parts. An enhanced role for ORR will make it more important to address these issues.

AREA FOR ACTION 4:

Action should be taken to strengthen ORR's grip on skills and technical capabilities

ORR should strengthen its ability to address skills and capability issues internally. In particular, consideration should be given to:

- an agreed and transparent succession plan for the wider organisation.
- a structured and managed programme of secondments between ORR, Network Rail and the TOCs.
- a new programme of induction and staff engagement to align and energise new people around ORR's evolving corporate culture.

More technical and engineering capability should be brought in-house and the use of Reporters reserved for resource peaks and specialist advice. The credibility of ORR will increase if the industry knows it has a greater breadth of respected and experienced people.

ORR needs to adopt a rigorous risk-based approach to both safety risk and commercial risk, for example, through a new QRA unit and/or the appointment of a risk manager.

ORR should generally strengthen its capability and understanding of railway operations and commercial drivers and of how the rail industry works, its "whole system thinking and understanding". This will be vital for Control Period 5 and how ORR anticipates and manages the interactions between safety, punctuality, cost efficiency, growth and investment.

ORR could usefully consider:

- bringing its cost capability together to ensure a consistent approach.
- steps to ensure it has sufficient evidence-based capital and maintenance cost forecasting and accounting capability.
- recruiting a senior person to address the demands of ERTMS, inter-operability and the adoption of new technology.
- refreshing its capability in relation to civil engineering and permanent way.
- working up a succession management plan on asset management, and considering the need for additional resource.

ORR could helpfully elevate its reputation as a respected authority on all areas of rail technical competence. Toward this end ORR might appoint an advisory Expert Panel comprised of world class, recently retired, senior rail leaders, managers and academics who have had a record of success and experience in their respective fields. Potential terms of reference are a matter for the Board but might include ensuring currency by limiting membership to three years and crafting how significant ORR pronouncements, determinations and notices are “peer reviewed” by the panel.

Finally, ORR should encourage, and further strengthen, cross-working across the two separate functions of economic and safety regulation. Use could be made of time-limited “task and finish” groups drawing staff from both sections. The preparation for Control Period 5 and other work, for example, on level crossings and new technology for signalling, offers obvious opportunities.



5. New Responsibilities

The case for a more integrated regulator carries intellectual force and stakeholders accept this, even if some have concerns about whether ORR is yet well enough placed to take on new responsibilities for regulating the railway industry. ORR has recognised this challenge – this Review being commissioned to assess what is needed to help it to meet the organisation’s ambition to be ‘best in class’ as a regulator.

The proposals currently on the table are reasonable extensions of existing monitoring and accountability activity. ORR should use the process of bringing in new responsibilities as an opportunity to bring in new skills and to make other changes that would help address some of the wider areas identified. This goes together with the proposals above on strengthening the organisation’s capability and skill base.

More specifically, areas like passenger information during disruption, complaints and disability are responsibilities which ORR can usefully and credibly absorb in parallel with the steps it is taking to enhance its overall capability. This also applies to the monitoring of TOC performance given that performance monitoring is an existing skill set which ORR has in relation to Network Rail.

Other responsibilities, for example, enforcement for TOC contracts, fares regulation and ticketing, which would represent a more substantial extension of ORR’s current role, and require new areas of expertise, could follow when progress has been made with ORR’s own change agenda and in tackling the areas for action set out in this report. ORR should use the processes set out above in Areas for Action 3 and 4 to look ahead to, and prepare plans for, potential changes in the organisation’s role. This, successfully delivered, should put ORR in a position to give the necessary assurance to its Board and external decision-makers that it is ready for the wider set of functions envisaged.



Mark Addison



Mark Addison is our lead reviewer. He was a career civil servant before leaving in 2006 as the Director General of Operations and Service Delivery for the Department for the Environment, Food and Rural Affairs. He has held Director posts at both the Cabinet Office and the Health and Safety Executive and was Chief Executive at the Crown Prosecution Service.

Mark is currently a Civil Service Commissioner and a Non-Executive Director on the Board of the National Archives.

Bill Moyes



Bill Moyes was Chairman and Chief Executive of Monitor, the Independent Regulator of NHS Foundation Trusts between 2004-2010. Before that he was Director-General of the British Retail Consortium for nearly four years, and Head of Infrastructure Finance in the Bank of Scotland between 1994-2000. Bill spent 10 years in Whitehall, in the Departments of the Environment, Transport and the Cabinet Office, where he was a member of the Economic Secretariat in 1980-1983.

Bill also spent just over 10 years in the Scottish Office in Edinburgh, where he served in the Finance, Education, Fisheries and Health departments. Bill has a Ph.D. in theoretical chemistry from the University of Edinburgh. He is a lay member of the Legal Services Board, a Non-Executive Director of the Office of Fair Trading, a Non-Executive Director of the Priory hospital group and a Governor of Heythrop College.

Richard Brown



Richard Brown was Chief Executive of Eurostar from August 2002 to April 2010 and is now Chairman. As Chief Executive, he turned around its performance, delivering record passenger numbers and punctuality, and successfully launched the first high speed passenger service in Britain, overseeing the flawless overnight transfer of services to Eurostar's new UK home at St Pancras International. He was previously Commercial Director of National Express Group plc, where he set up its UK Trains Division, at the time the largest UK passenger franchise operator. He has spent 32 years in the transport industry, and was a

Director of British Rail's Intercity Division before privatisation. He is immediate past President of Railteam and the Chartered Institute of Logistics and Transport.

Terry Hill



Terry Hill is Chairman of the Arup Trust heading the Board of Trustees. Previously he held the position of Arup Group Chairman (2004-2009) responsible for the overall strategic direction of the firm. Terry has a background in civil engineering and economics and previously held the position of Chairman - Global Transport Market (2009-2011) focusing on developing the Aviation, Maritime, Rail and Highways businesses, ensuring the delivery of the best Transport projects to clients throughout the world; and earlier led Arup's Infrastructure Division, where his role centred on consulting, infrastructure and managing major projects.

Andrew Templeman



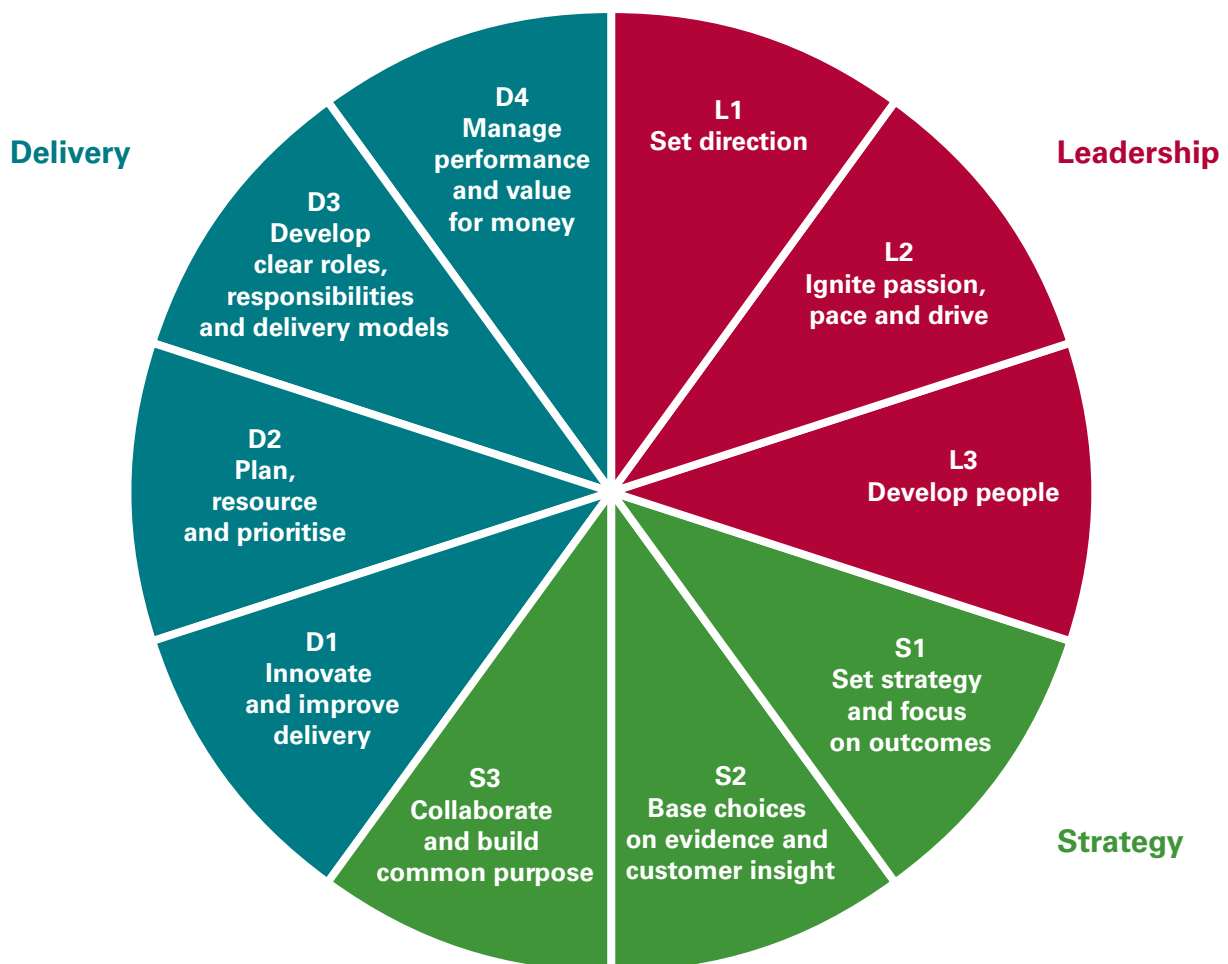
Andrew Templeman has worked at senior levels across the public and private sectors. Andrew recently worked with Serco Consulting, leading their response to the reform of the Criminal Justice System. In a previous role at the Cabinet Office he was a founder member of the team that created the Capability Review Programme. Andrew worked to the Cabinet Secretary on the programme's design and subsequent delivery, drawing on his experience of the Audit Commission's regulatory framework.

The ORR Capability Review was conducted using the established Cabinet Office process and methodology. ORR asked an independent team to undertake the Review. It included members who have significant experience of the approach based on their extensive involvement in designing and delivering the Cabinet Office's original programme.

Given that the Model of Capability (as set out in Fig 1 overleaf) was developed primarily for central government departments, some minor adaptations were required to reflect ORR's role as a regulator. The focus given to "customers" in S2 of the model: "Base choices on evidence and customer insight" was finessed to reflect that ORR does not have a direct relationship with customers as such. The team focused more on stakeholders in its interpretation of S2. The team also took account of the fact that ORR is the independent safety and economic regulator for Britain's railways and accordingly, has a different relationship with "political leadership" than that envisaged in S3 of the model: "Collaborate and build common purpose". All other elements of the review were consistent with the process adopted in the original programme.

The team developed Key Lines of Enquiry (KLOE) about the organisation. These were used to test ORR's capability with staff, non-executive directors, stakeholders and Network Rail. The KLOE were regularly iterated against the Model of Capability and their relative importance was assessed against the relevant assessment criteria. The findings from the Review were fed back directly to ORR's Chair, Chief Executive, Non Executives and Directors. Finally, as with all externally assessed Capability Reviews, the Review was published in order to demonstrate transparency and provide the benchmark for measuring improvements in capability going forward.

Figure 1: Model of Capability



Assessment Criteria

The model of capability has been designed specifically for Capability Reviews and was developed through consultation with senior leaders in Whitehall and external experts. The model is designed to focus on the most crucial areas of capability – **leadership, strategy and delivery**. The model enables judgements to be made against the 10 elements across leadership, strategy and delivery through specific questioning and analysis.

List Of Contributors

Appendix 3

Internal	
ORR Non-Executive Directors	ORR Chair & Chief Executive
Stephen Nelson	Anna Walker (Chair)
Tracey Barlow	Richard Price (CEO)
Mark Fairbairn	
Peter Bucks	
Steve Walker	
Mike Lloyd	
Ray O'Toole	
ORR Directors / Deputy Directors	
Ian Prosser	Director of Railway Safety
Michael Beswick	Director of Rail Policy
Michael Lee	Director of Railway Planning and Performance
Cathryn Ross	Director of Railway Markets and Economics
Lynda Rollason	Director of Corporate Services
Ken Young	Director of External Affairs
Juliet Lazarus	Director of Legal Services
Brian Warrener	Deputy Director of Corporate Services
Jessica Walters	Deputy Director of Legal Services
Brian Kogan	Deputy Director of Railway Markets and Economics
John Larkinson	Deputy Director of Railway Planning and Performance
Paul McMahon	Deputy Director of Railway Markets and Economics
Allan Spence	Deputy Director of Railway Safety
Caroline Wake	Deputy Director of Railway Safety
ORR Workshops	
Name	Title
David Robertson	Head of Track Access
Alasdair Frew	Head of Corporate Communications
Gordon Cole	Principal Financial Analyst
Colin Greenslade	Special Projects Manager
Jenny Godfrey	Head of Information Management Services and Facilities
Paul Hooper	Manager – Interoperability and Standards
Keith Atkinson	Principal Inspector of Railways – TFL Team Manager
Sally Williams	Head of Strategy Planning and System Safety
Elaine Horton	Head of Finance and Procurement
Nick Wortley	Manager – Competition and Consumer Policy
Martin Jones	Manager – Channel Tunnel and EU Safety
Katherine Hyde	Senior Media Relations Officer
Gary Taylor	Senior Executive Business Planning
Oliver Stewart	Executive – Railway Safety Directorate Unit
Sue Johnston	Head of Network Rail National Team

Paul Hadley	Head of Operations
David Chapman	Head of Human Resources
Annette Egginton	Head of Competition and Consumer Policy
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Ian Maxwell	Senior Engineer Control, Command and Signalling
Matthew McNeal	Principal Inspector of Railways – Wales, Wessex and Western
Ian Morrice	Principal Engineer of Civil Engineering and Electrification
Philip Willcox	Competition and Consumer Support
Rob Plaskitt	Head of Licensing and Network Regulation
Jim Bostock	Head of Engineering and Asset Management
Graham Richards	Head of Planning and Operations
Michelle Travers	Principal Inspector of Railways – LNW (N) Route Team Manager
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Andrew Winstone	Head of Media Relations
Tim Ward	Senior Executive Licensing and Network Regulation
Corrine Wellington	Assistant Accountant
Tom Mackay	Rail Industry Contact Officer
Alice Jones	PA to Director of Legal Services
Neil Anderson	Inspector of Railways – LNE Route Team
Stuart Freer	Stations and Depots Access and Network Code Executive
David Keay	Head of Inspection, Railway Operators
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Darren Anderson	Principal Inspector of Railways – LNW (S) Route Team Manager
Claire Dickinson	Team Manager, Central Specialist Inspector Team
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Nigel Bunce	Inspector of Railways – LNW (N)
Satyatjit Maitra	Engineer, Structures and Property
Stephen Poole	Inspector of Railways – (FOC)
Chris O'Doherty	Manager – Rail Accident Investigation Branch – Relationship and Recommendations Handling
Julie Chadwick	Inspector of Railways – Risk Assessment
Natalie Corsentino	Administrative Support – LNW (S) Team
Alan Bell	Head of Railway Safety Policy
Christine Richardson	Railway Industry Contact Officer

External

Name	Title	Organisation
Train Operating Companies/ Industry		
Roger Cobbe	Director of Policy	Arriva Trains
Tim O'Toole	Chief Executive	First Group
Mike Strzelecki	Director of Safety	London Underground

Chris Burchell	Managing Director	Southern Railways
Malcolm Brown	Chief Executive	Angel Trains
Andrew Chivers	Managing Director	National Express East Anglia
Jeremy Candfield	Director General	Railway Industry Association
Anton Valk	Chief Executive	Abellio
Tom Smith	Chair	Association of Train Operating Companies
Michael Roberts	Chief Executive	Association of Train Operating Companies
Nicola Shaw	Chief Executive	High Speed 1
Peter Anderson	Managing Director	Balfour Beatty Rail Services
Peter Maybury	Chief Executive	Freightliner
Tim Shoveller	Managing Director	East Midlands Trains
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Network Rail		
Rick Haythornthwaite	Chair	
David Higgins	Chief Executive	
Robin Gisby	Managing Director of Network Operations	
Paul Plummer	Group Strategy Director	
Dave Ward	Route Managing Director	
Gareth Llewellyn	Director of Safety and Sustainable Development	
Other		
Lin Homer	Permanent Secretary	Department for Transport
Nick Bisson	Director of Rail Policy	Department for Transport
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David Middleton	Chief Executive	Transport Scotland
Frances Duffy	Director of Rail	Transport Scotland
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Peter Schofield	Director of Enterprise and Growth Unit	HM Treasury
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Carolyn Griffiths	Chief Inspector	Rail Accident Investigation Branch
Dieter Helm	Economist/Professor	Oxford University, New College
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Andrew Haines	Chief Executive	Civil Aviation Authority
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