

**THE OFFICE OF RAIL AND ROAD  
176<sup>TH</sup> BOARD MEETING  
24 November 2020, 09:00 – 13:30  
By MS Teams**

**Non-executive members:** Declan Collier (Chair), Stephen Glaister, Madeleine Hallward, Anne Heal, Bob Holland, Michael Luger, Justin McCracken, Graham Mather

**Executive members:** John Larkinson (Chief Executive), Graham Richards (Director, Planning and Performance); Ian Prosser (Director, Railway Safety)

**In attendance:** Dan Brown (Director, Economics, Markets and Strategy), Russell Grossman (Director of Communications), Freya Guinness (Director, Corporate Operations), Juliet Lazarus (General Counsel), Tess Sanford (Board Secretary)

**Other ORR staff in attendance are shown in the text.**

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. The chair welcomed everyone to this eighth video-conference meeting of the ORR Board.
2. There were no apologies.

**Item 2 DECLARATIONS OF INTEREST**

3. No new interests were declared.

**Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING**

4. The board noted one suggested amendment to paragraph 23 of the minutes of the October meeting and approved them.
5. The board noted the updated action list.

**Item 4 CHIEF INSPECTOR'S MONTHLY REPORT**

6. Ian Prosser reported on Network Rail's programmes for structures inspection and the taskforce on earthworks and drainage. Proposed changes in drainage management could be significant and staff would continue to monitor NR's response to the findings of their own report. Level 1 (frontline) assurance was an important part of risk management and needed constant focus.
7. Ian updated the board on RAIB's urgent safety notice following the Welsh derailment. Following immediate checks by the industry of all affected vehicles, ORR would increase its focus on the proper maintenance of third party vehicles. He also outlined initial findings of the likely cause of the Sheffield derailment.
8. ORR had participated in a two day industry-run health and wellbeing conference which had been very successful and should help improve mental health management across the network.
9. The board asked about two issues in one TOC in the report. The TOC was under new management, had suffered a significant Covid impact, and had

- some weaknesses in the HR systems. These were being addressed and the TOC would be monitored closely.
10. The board discussed the way that ORR's teams of engineers on rail and highways were well aligned and working together on extreme weather and structure condition issues to ensure shared learning.
  11. The board asked about current and historic enforcement action and particularly noted the time taken for the Lamington case to be finished. The board asked whether the final RAIB report on Margam fitted with the current programme of work to comply with ORR's 2 Improvement Notices on trackworker safety or if there was a risk of distraction. IP reported that this would not be allowed to happen and a workshop would be held with NR to discuss this. The board discussed NR's move to a more localised response to extreme weather – particularly rain.
  12. Ian reported on a meeting with the new TfL Commissioner who had offered assurances that the focus on asset safety would continue. The board discussed the implications of government's conditions around its Covid funding, particularly the mothballing of all preliminary work on Crossrail 2.

## **Item 5 CHIEF EXECUTIVE'S REPORT AND BOARD INFORMATION PACK**

13. John Larkinson noted that the Board had had a comprehensive written and oral briefing on the rail reform agenda at their strategy day on 23rd November. He welcomed the full discussion which followed and which would inform the executive's approach as the situation developed.
14. The ORR's 1 year settlement under the spending review had included some funds for unavoidable cost increases and to meet statutory responsibilities.
15. He reported to the board on an outstanding decision on last year's pay award (for the year ending March 2020) the final part of which was still with the Secretary of State for agreement. DfT officials had been helpful in offering assurance that the proposals were completely in line with Civil Service guidance. Staff had always been aware that this final step was part of the approvals process however this intervention had been unexpected because the proposal was within policy.
16. The new intranet would be launched that day, complementing the other good work now taking place in internal communications.

*para 17 redacted as legal advice*

*para 18 redacted as commercially sensitive*

19. The board noted that ORR's role in determining appeals on access and protecting access rights was rooted in statute and it should continue to be rigorous and consistent in delivering that work until the law changed.
20. The board noted oral updates on potential future decisions on freight track access extensions, each of which needed to pass a specific legal test and to make its own case for a longer statutory extension. These decisions could be taken under delegation, but might be remitted back to the board if they proved likely to be contentious as a group.
21. The board welcomed the rail industry's Equality, Diversity and Inclusion Charter. A forthcoming refresh of the membership of the ORR consumer panel would be a good opportunity to improve its diversity. The board noted the EHRC had welcomed ORR's substantive engagement during the review of ATP guidance as well as the content of the final guidance itself.

22. The board asked for an update on the NR PMO and timetable process issues at its next meeting [Action 11/01].

## **Item 6 HIGHWAYS**

23. *One sentence redacted as confidential information* The board pack included an update on monitoring the smart motorway programme, which would adapt to ensure no overlap with DfT's monitoring.
24. Graham reported on a Highways Committee meeting with HE senior staff to discuss post-Brexit arrangements and a subsequent exchange of letters between CEOs setting out ORR's continuing unease. HE recognised the challenges and had a well-rehearsed system of warnings and responses in place and were particularly well prepared in Kent. They were confident that they were taking the right course. The correspondence would be shared with DfT [Action 11/02]
25. The board asked for an update on the financial impact of the end of RIS1 on RIS2. This would be addressed in the papers for the December Highways Committee [Action: 11/03 last bullet p 56 of pack]

## **Item 7 CHANNEL TUNNEL - END OF BREXIT TRANSITION AND ORR WORKING ARRANGEMENTS WITH OTHER SAFETY AUTHORITY**

*Martin Jones joined the meeting for this item*

26. Martin Jones updated the board on what additional formal cooperation agreements with French authorities would be necessary under the new working arrangements. There would be a new agreement between ORR and the EPSF from on how the NSA tasks would be done together. The relationship between the NSAs and the IGC would also need to be articulated and might be set out in a separate document. The board was asked to agree to formalise cooperation, to consider a draft of any agreement in correspondence and delegate final sign off to the Director of Railway Safety.
27. Martin reported a correction to the paper, the EPSF were not planning on withdrawing from CTSA, but could not agree to CTSA having authority over the future working arrangements. This could be addressed in the drafting process.
28. The board discussed the principles underlying binational regulation: 1) be very clear about what decisions sit with which body to avoid overlap or gaps, 2) no action without informing the other body ("no surprises") to allow parallel decision making wherever possible. Noted that the UK would be choosing to adopt the current version of EU rules in the channel tunnel – with both ends imposing the same technical and safety requirements and using their own processes. It was noted each of France's other cross border infrastructures operated with a single infrastructure manager, an IGC and the relevant national safety regulator.
29. After discussion of items 8 and 9 below the Board returned to this issue and agreed that work should continue on cooperation agreements so that necessary drafts could be shared in correspondence during December and delegated the final sign off of such documents to Ian Prosser [Action 11/04].

## **Item 8 CHANNEL TUNNEL – ELECLINK: DECEMBER IGC DECISION ON PRIOR CONSENT AND NEXT STEPS**

*Laura Majithia, Ruth Luxford and Martin Jones joined the meeting for this item.*

*Redact paras 30-36 as potentially commercially sensitive and including legal advice*

## **Item 9 CHANNEL TUNNEL – GEOFFREY PODGER, HEAD OF UK DELEGATION, IGC**

*Geoffrey Podger joined the meeting*

37. The board was keen to hear Geoffrey Podger's assessment of relationships between parties including CTSA, Eurotunnel, IGC national delegations, and the two governments, and his assessment of immediate and potential risks.
38. The meeting discussed lines of accountability, improving relationships with Eurotunnel following a change in its leadership, achieving access to the right resource and skills mix for the CTSA, and the importance of a collaborative approach and open communication between parties.
39. The board thanked Geoffrey for attending and all agreed it had been a very useful discussion.

## **Item 10 LEVEL CROSSINGS**

*Anna O'Connor, Dawn Russell and Clare Povey joined the meeting*

40. The board received a presentation on the significant challenges for NR of operating level crossings whether in engineering, safety or public behaviour terms. Closing rights of way was seldom popular with local communities and authorities. While investment in other safety measures (eg stretcher bars, better isolation of electrical cabinets) often brought efficiencies, spending more on level crossings did not.
41. The board also heard about how HSWA applied to level crossings and the regulatory framework under which changes in risks at crossings needed to be assessed. NR is required by the law to reduce risk as much as reasonably practicable, and to do so must weigh cost/resource against potential benefit.
42. The presentation included examples of the impact on level crossing risk of increased frequency or speed of services and the sorts of responses that would be proportionate in different scenarios.
43. The board welcomed the presentation and discussed some case studies, including one upgrade scheme which had originally been costed with every crossing being replaced by a bridge because this was what local communities wanted. Later, having applied risk assessment more proportionate solutions were identified for managing the level crossing risks and the projected costs had reduced by 75%.
44. The board discussed the need for Network Rail to do better risk assessment at level crossings and better analysis of the reasonably practicable options, and how ORR needed to do more to help Network Rail in this area, for example by producing better guidance which covers all aspects of the decision making process including the use of gross disproportion factors.
45. The board discussed the relative costs of different engineering solutions, the numbers of crossings and whether there were other areas where investment would make greater impact on risk reduction. It was noted that the risks around level

crossings usually related to pedestrians and road users rather than passengers or rail staff and that crossings were often sources of local community concerns.

**Item 11 ORAL UPDATES FROM ADVISORY PANELS, AND FEEDBACK FROM BOARD COMMITTEES**

46. Stephen Glaister reported on the special meeting of the Highways Committee in November at which the HE Executive Director Operations and Regional Director South East had discussed their plans for dealing with traffic flow issues around the end of the Brexit transition period. The subsequent exchange of letters between the CEO's had been circulated.

**Item 14 ANY OTHER BUSINESS**

47. The board noted the draft forward programme for 2021.

*All executive attendees except the Board Secretary left the meeting*

**Item 15 NON EXECUTIVE DISCUSSION**

48. The non-executive members met privately to review the meeting and the previous day's discussion.

[ends]