

**THE OFFICE OF RAIL AND ROAD
179th BOARD MEETING**

23 February 2021, 09:00 – 13:00

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)

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to this eleventh 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 made one clarification to para 23 the minutes of the January meeting and approved them¹.
5. The board noted the updated action list.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

6. Ian Prosser updated the board on the death of a track worker at Surbiton since the last meeting. He referred to similarities with other incidents in relation to red zone working and the work in hand by Network Rail's taskforce to improve trackworker safety. Significant cultural change was needed but could only be delivered with more visible leadership at a local level.
7. Ian reported on issues around the Class 800s recently authorised for service and specifically on work to introduce software speed limiters (which had not been installed originally) and to review the loudness of their horns.
8. He reported on discussions with Eurotunnel both on Eleclink and other local safety concerns around emergency preparations, which they needed to address quickly. The Eleclink timetable, which Eurotunnel proposed shortening significantly, would be discussed at the IGC meeting later that week.
9. He highlighted other issues including: progress on our level crossing consultation, a fatality at an automatic half barrier crossing – the second this

¹ Post meeting note – a further correction was agreed in correspondence on 24/2 to address a transcription error

- year, progress on the investigation on Carmont, work to improve tactile strips on platforms following a fatal accident involving a partially sighted passenger, improvements to extreme weather management response.
10. He expected to report in March on preparations for the start of operations on Crossrail.
 11. The board noted the sobering report, particularly the high number of lives lost so far this year. They discussed potential themes across the incidents. They welcomed news on improved weather forecasting to allow better targeted local responses to extreme weather events.
 12. The board discussed the ongoing and historic challenge that Network Rail faced in addressing poor safety culture at its local depots. The challenge seemed to be well understood at a senior level and there had been an appropriate response to ORR's safety notices, which addressed the issue strategically. While one view was that a lack of visible leadership in local depots contributed to poor safety culture, the board noted that a good culture could not rely only on visits from senior managers to police local practices. Engaging front line teams and the local workforce to embed safe practice must be an important part of building better behaviours to improve track worker safety.
 13. The board asked about the level of reported incidents in depots. Local TOC depots would be on the RSD inspection schedule as an area of increasing focus for the next year.
 14. The board noted the report on Eurotunnel and discussed the need for urgent intervention when necessary.
 15. Given the overall picture of decreased activity on the network and increasing numbers of serious or fatal incidents to trackworkers, the board asked Ian Prosser to consider whether it would be possible to push the system to respond more quickly to emerging concerns [Action 02/01: IP to discuss with RSD]
 16. Ian would discuss with Justin McCracken the terms of reference for the forthcoming Review of LRSSB [Action 02/02: IP].
 17. The board was assured that measures were in place to support arrangements for train driver testing and health testing and licencing during the pandemic and additional support had been given to operators who encountered issues with these.
 18. The board welcomed the new table in the report which showed the progress of current prosecutions. This highlighted the length of time that prosecutions could take and this continued to be an area of concern for the board, even though it was understood that most of the time taken was not in relation to ORR's activity.

Item 5 CHIEF EXECUTIVE'S REPORT

19. John Larkinson described the changes to the regular reports and the board welcomed the new format and the improved focus it brought.

Redact this report from the published version as time-sensitive and covering confidential issues.

Item 6 HIGHWAYS UPDATE

29. Graham Richards noted the revised layout of the monthly report. He clarified that HE's 22 step smart motorway programme was on plan. 8 steps had already been delivered as programmed and the remaining 14 were due across the next few years.
30. The board discussed the appropriate response on HE's failure to meet its air quality KPI and legal air quality standards, noting that enforcement of legal limits was not part of ORR's remit.
31. The board noted the continuing risk of disruption at ports as a result of planned changes in movement and customs regulations on 1 April and 1 July.

Item 7 VISITOR: DIRECTOR GENERAL RAIL, DEPARTMENT FOR TRANSPORT

Polly Payne joined the meeting for this item.

32. Polly Payne, one of the two Directors General Rail at DfT, had been invited to share her observations with the Board in their last week in post.
33. In her introduction, Polly Payne thanked ORR for the work it had done on the Glaister Review at the start of her tenure, and explained how that had started the rail review process with its strong emphasis on the need for a central 'guiding mind' on the railway. She reminded the Board how events including Covid had led to a significant delay in delivering plans for rail reform and the expected date of publication for the white paper.
34. Polly described the relationship between ORR and DfT positively, saying that the inevitable professional disagreements between the two bodies were handled well. The importance of ORR's independence was understood on both sides and the work that ORR had done to support the industry response during the pandemic was particularly commended.
35. The Board discussed rail reform, the importance of reducing rail costs, and the Department's work on developing new rail contracts, the wider economic challenge of post-covid recovery and the resulting fiscal pressure.
36. The board thanked Polly Payne for her time and would invite her successor to attend in due course.

Item 8 CONSUMER POWERS – ENFORCEMENT POLICY ON COVID-19

Stephanie Tobyn, Ruth Luxford and Nick Layt joined the meeting for this item

37. Stephanie Tobyn briefed the board on some of the practical obstacles the team was encountering in developing the enforcement policy and process around the new powers to enforce Covid regulations on cross-channel rail operators. The system relied on paper records, completed by hand by Border Force officials, being transmitted to ORR. These regulations, along with other pandemic controls, were being introduced at high speed. All the bodies involved were working together for their proper enforcement, but often with limited time to prepare or brief front line staff.
38. This was an entirely novel process for ORR, different to economic enforcement due to the relatively limited scope for discretion if an offence was reported. The two relevant operators had been kept informed and would meet the team shortly to work through the process. Their reported

concerns were with the overall framework and not with ORR’s approach to implementation.

39. The board discussed the various risks and challenges associated with this new work and noted the work in hand to move to implementation.
40. The board approved the proposed enforcement policy and made the following delegations for its implementation and execution:
 - A) Fixed penalty notices (FPNs) - to a dedicated Review Group for decision making regarding the issuing of FPNs;
 - B) Prosecutions – to a dedicated Review Group for decision making regarding recommending a prosecution, with the SCS Director of Legal conducting an independent review of the recommendation;
 - C) Authorised signatory for ORR – to a SCS Deputy Director of EMS.

Item 9 INFORMATION AND ANALYSIS – RAIL INDUSTRY FINANCIALS

Lyndsey Melbourne, Gordon Cole, Richard Connor and Tom Leveson Gower joined the meeting for this item.

41. Graham Richards introduced the item to demonstrate how the ORR data portal made information on rail financials more accessible to the public and the industry. Tom Leveson Gower demonstrated how the data could be interrogated in the interactive dashboard.
42. The board asked questions around data accuracy and periodicity, and underlying assumptions. They discussed the importance of timely updates.
43. They welcomed the transparency offered by making this information publicly available and noted the importance of ORR’s role to provide good information for decision makers. Alongside the base data, it was noted that ORR added analysis and comment to help others make sense of it in its reporting².

Item 10 RAIL REFORM

44. Dan Brown, John Larkinson and Declan Collier briefed the board on various discussions around rail reform and the forthcoming white paper.
45. The Chair expected ORR would need to be more publicly vocal about its interpretation of the evidence it gathered in its oversight and assurance functions.

Declan Collier left the meeting at this point.

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

46. Justin McCracken briefed the board on two presentations at RIHSAC from Simon French, RAIB CEO, and Nick Millington, who was leading NR’s trackworker safety taskforce. RAIB’s annual report would highlight themes that were aligned with the ORR’s current concerns. Nick Millington clearly understood the scale of the challenge facing NR. Justin asked for a

² [see the full report on our website here.](#)

discussion at HSRC to consider what ORR could do to support or encourage NR to work more quickly to address the human factors and challenges around safety culture at the local level. [Action 02/04: IP]

Item 12 ANY OTHER BUSINESS

47. The board secretary reported that, as notified by the Chair to the non-executives and to the directors by John Larkinson, the final approvals had been received the day before to permit the completion of John's appointment as permanent CEO.
48. This was the culmination of an external recruitment exercise, regulated by the Civil Service Commission, completed in December 2020. Statutory approval was secured from HM Treasury on terms and conditions to be offered, and the Secretary of State was consulted on the preferred candidate. The Cabinet Secretary, Chief Secretary to the Treasury and the Prime Minister's agreement was secured to the appointment of the preferred candidate at SCS3, which approval was received on 22 February 2021.

There was no further business and the Deputy Chair closed the meeting.