

**THE OFFICE OF RAIL AND ROAD
192ND BOARD MEETING**

Tuesday 24 May 2022, 09:00 – 14:00

**At The Studio, 67 Hope Street Glasgow G2 6AE
and by MS Teams**

Non-executive members: Declan Collier (Chair), Madeleine Hallward, Bob Holland, Justin McCracken, Anne Heal, Catherine Waller, Daniel Ruiz, Xavier Brice

Executive members: John Larkinson (Chief Executive) Ian Prosser (Director, Railway Safety)

In attendance: Stephanie Tobyn (interim Director, Economics, Markets and Strategy), Russell Grossman (Director of Communications), Vinita Hill (Director, Corporate Operations) Tess Sanford (Board Secretary) Elizabeth Thornhill (General Counsel),

Feras Alshaker (interim Director of Planning and Performance) on line

Other ORR staff who attended (remotely or in person) are shown in the minutes.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. There were no apologies.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared as relevant.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The board approved the minutes of its meeting in April 2022.
4. The board received an update on actions outstanding.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

5. This was a new format monthly report. Ian Prosser reported that the Elizabeth Line had opened and Eleclink gone live today. The board asked about learning from other international tunnel operators and heard that ORR staff continued to draw on their experience. Ian reported on continuing work to support operators as they plan for safe contingent arrangements during industrial action. Network Rail had not identified any further support needed at this time. Inspections of ROC preparations had been conducted and the ORR's response to any industrial action will depend on circumstances but could include follow up visits if necessary. There was likely to be some regional variation in impact of action.
6. Considering impact on customers, the board noted the challenge of providing accurate and current information for customers particularly those who were not comfortable using digital information sources.
7. Ian reported on continuing legal correspondence with a heritage railway on the imposition of central door locking and the Court of Appeal's refusal to hear an appeal by WH Malcolm against their £6.5m fine. The board discussed Eurotunnel's asset management and asked for a timescale for a permanent solution to the London Fire Brigade's Crossrail communications issue. Both would be followed up next month.
[Action 5/01– IP] The board discussed the RSSB project to improve understanding of

health in the industry and noted the intent to write to dutyholders about the interim report and opportunities for further development.

8. The board was pleased to note that LRSSB had now secured funding for three years.

Item 5 CHIEF EXECUTIVE'S REPORT

This report is redacted from the published version as time-sensitive and covering confidential issues.

Item 6 HIGHWAYS MONITOR

18. Feras Alshaker updated the board on the 10 minute target response time, where current response averaged 11m 6s. Times were under 10 minutes in most regions, but not in South East. Staff expected that when operation Brock was lifted in June, the target response time would be met.
19. The board asked to see regional figures (including numbers of officers and number of incidents). **[Action 5/04 – Feras Alshaker]**.
20. Feras reported that since DfT had agreed funding, new ORR staff had begun to take forward the Transport Select Committee's recommendation on road safety design. Discussions on terms of reference should be completed this week.
21. A second DCO had been approved (M25/A3), but was likely to be contentious.
22. There had been a Treasury suggestion that the five year funding periods for road and rail should be aligned to allow major infrastructure funding to be considered as aligned packages.
23. The board discussed the report, querying an apparent drop in network availability, and the continuing absence of a full user satisfaction survey on the strategic roads network. While it recognised the issues around volatility of data in setting a meaningful target, the board felt that some information, even if flawed, would be preferable to the current vacuum. The decision to restart the survey rested with DfT.

Item 7 ORR ANNUAL REPORT AND ACCOUNTS

24. Vinita Hill introduced the item. Board approval of the annual report and accounts was sought. She described scrutiny of the annual report by ExCo and ARC and how comments had been addressed including from the independent ARC member.
25. The audit fieldwork was largely complete with nothing significant arising since the 12 May ARC meeting. NAO had confirmed there would not be a regularity qualification in relation to our learning and development spend control breach (reported to ARC in April) so the opinion on the regularity of our financial statements will be unqualified. More controls have been implemented to prevent a repeat of the spend control breach. *[post meeting note: the breach was retrospectively approved on 25 May, and references to it removed from the draft report.]*
26. The aim is to publish on 22nd June, subject to no substantive changes being identified which required further board discussion. This is later than planned due to resourcing constraints at the NAO.
27. The board approved the annual report and accounts for signature by the CEO subject to any minor corrections.

Item 8 NETWORK RAIL PERFORMANCE – ANNUAL ASSESSMENT

Liz McLeod joined the meeting with Richard Coates and Livia Di Simone on line

28. Feras Alshaker introduced the draft summary report which set out a factual account of Network Rail's delivery in the year, risks and scope for improvement in the current

year and an account of ORR's impact when it intervened. The full report would include significant levels of underpinning evidence and detail.

29. The board considered whether there was any evidence of regulatory capture and whether the report was challenging enough in its tone and language. The board discussed whether targets were stretching and what mitigations could be accepted where they had not been met. The board discussed the right balance of positive and critical messages including for example around efficiency which broadly showed good gains against tough targets, and train performance which after good results during the pandemic, had (as expected) fallen back this year and where the regional picture was mixed. The meeting discussed the tone of each of the key messages and their order, regional variation and improvement over time. The board asked for concerns around potential safety issues to be more strongly expressed. They reflected on how best to fairly represent the performance and the context of challenge and opportunity both in the reported year and in the current one.
30. ORR continued to look at performance across all the regions but it was not clear how effectively Network Rail regions learnt from each other. This was an issue of culture and leadership which could be improved.
31. The board discussion would be reflected in a re-draft and the final version signed off by Feras Alshaker.

Item 9 NATIONAL HIGHWAYS PERFORMANCE – ANNUAL ASSESSMENT

Harry Garnham and Louise Butcher joined the meeting with Sneha Patel on line.

32. The board noted that an earlier draft of this report had been discussed by the Highways Committee and that discussion was reflected in this draft.
33. The board discussed some areas where information was not always easy to obtain from National Highways and noted the importance of better assurance around the delivery of plans and that NH's strategy was resulting in the right interventions at the right time. While there was more information and data being supplied it was not always sufficient at first time of asking to meet the requirement. While it did not appear to be intentionally obstructive, NH's reluctance to provide data was an unnecessary resource drain and would be raised at board level by the Chair later in the week.
34. The board discussed the key messages and the right tone, particularly where there was a challenging gap between target and performance. It was also important that NH found ways to engage meaningfully with their users, particularly around matters of public concern and safety.
35. The board discussion would be reflected in a re-draft and the final version signed off by Feras Alshaker.

Item 10 PR23 OVERALL FRAMEWORK

Lynn Armstrong and Matt Wikeley joined the meeting with Daniel Roberts and Arik Mordoh on line.

36. Lynn Armstrong introduced the paper, which trailed a more detailed decision paper in June. The context of rail reform meant that PR23 was having to be planned to allow sufficient flexibility for GBR to take over, but with a firm framework to ensure that what was needed was delivered, whoever was in charge.
37. The board discussed the importance of NR having: good understanding of its stakeholders' needs and concerns, transparent comparison between regions to drive improvement, and a strong leadership culture of improvement. It would be important to find ways for customers to have a voice in decisions affecting them. The board noted the strong focus on asset sustainability and that conversations were in hand with key stakeholders to agree measures.

38. The board noted that clear priorities could be applied across the system (by NR or GBR) and change controls should ensure that datasets were not interrupted and that internal governance was strong so that holding to account was not undermined through change. It was important to capture and apply the lessons learned from PR18's scorecards and change management processes.
39. The board noted the paper.

Item 11 PR23 ADVICE TO SCOTTISH MINISTERS

Carl Hetherington, Sheona Mackenzie and Jennifer Cullen joined the meeting with Anna Rossington, Steve Fletcher, Steven Dennis, Antony March and Siobhan Carty on line.

40. The board discussed the paper, noting the challenging circumstances which formed the backdrop for the Scottish HLOS and SOFA. The board discussed the areas where ORR's advice to Ministers needed to be particularly clear and well-evidenced. Explaining how the current financial situation had been reached would be part of that. The board discussed: risk funding, inflation uncertainty, the impact of recommendations following Carmont, the allocation of central costs (whole GB), the delay between central costs incurred and regional benefit realised, differing political priorities around decarbonisation and other regional geographic challenges.
41. The letter and advice would be revised following the discussion and circulated to the board for information [**Action 5/05 – Stephanie Tobyn**].

Item 12 CONSUMERS – TOCS COMPLAINTS CODE OF PRACTICE

Sarah Robinson, Harry Garnham and Scott Hamilton joined the meeting with Jacqui Russell on line.

42. The board noted the intent following consultation to introduce a new Complaints code of practice for TOCs to support a culture of continuous improvement and learning from complaints. The board discussed whether ORR was able to extend protections to customers who were not passengers (eg freight and commercial customers). This would be explored in the context of a GBR licence draft. Given the old guidance was out of date, change should be pursued now and improvements structured so that they could be easily shifted across to a new contractual framework.
43. The board noted that without adding firm new requirements, the direction of travel was toward 10 day response times and the use of social media as a channel for complaints since both represented improvements for customers. It would be important for TOCs to be clear about what was required.
44. The board discussed the importance of an easy to use classification system for complaints to deliver useful data and learning as public concerns and performance changed.

Item 13 SYNERGY ACROSS ORR'S FUNCTIONS

Liz McLeod, Louise Butcher and Garry Stimpson joined the meeting

45. Feras Alshaker introduced the report which reflected on the three main reports on annual performance. It was not intended for publication but for internal learning. The board asked about the use of international comparators, how ORR draws on best practice across rail and road and from other industries and regulators. It was noted that at Director level comparisons between NH and NR were more easily visible and could be used judiciously with each organisation to highlight opportunities for learning.
46. The board noted ORR's responsibility to bring transparency to both industries as part of its overall role and one of the key benefits it provides.

Item 14 OVERSIGHT OF THE RAIL OMBUDSMAN

Scott Hamilton and Sarah Robinson joined the meeting

47. Stephanie Tobyn introduced the paper which set out progress so far and ORR's plan to procure and sponsor the rail ombudsman service when the current service contract ends. This was a high value procurement and would require a significant contract management resource. The board noted the short term risk of the loss of ombudsman accreditation for the current scheme but felt this was manageable.
48. The board discussed how a funding model could drive different behaviours, eg incentivising self resolution over referral to the Ombudsman. The potential for contractual changes to deliver a better service for lower cost was also noted. Overall the drive to learn more from complaints to drive a better service was very welcome.
49. The next steps were noted.

Item 15 RAIL REFORM

Rob Cook and Anna Rossington joined the meeting online

Redact from the published version as policy under development.

50. Rob Cook reported that while the publication of the condoc had been delayed for unrelated policy reasons, he understood the text was not being contested. The content of the paper was therefore not yet in the public domain. The board agreed that when the consultation is published it would be appropriate to respond publicly and the board would consider that response.

Item 16 REFLECTIONS FROM VISITS AND DINNER

51. Board members exchanged reflections on two DfT receptions, the visits the previous day to Cowlairs and the Glasgow stations and on what they had heard from stakeholders at the dinner. They agreed that holding meetings and stakeholder engagement in different parts of the country were a very valuable part of the annual board programme. The next visit would be in the north east of England in October.
52. The board thanked the team for all the work to deliver a successful visit.

Item 17 REPORTS FROM COMMITTEES

53. Madeleine Hallward reported on discussions with Transport Focus at the last Highways Committee.

Item 18 ANY OTHER BUSINESS

54. The chair reported on his recent stakeholder meetings and activity as part of the Secretary of State's Advisory Group on rail reform implementation.
55. The board noted the Items below the line.
56. Next meeting in London, 27/28 June.

Meeting closed at 2.15 pm.