

## THE OFFICE OF RAIL AND ROAD

### 197<sup>TH</sup> BOARD MEETING

Tuesday 22 November 2022, 09:00 – 14:00

At ORR, 25 Cabot Square, E14 4QZ and by MS Teams

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

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

**In attendance:** Feras Alshaker (interim Director of Planning and Performance), Will Godfrey (Director of Economics, Finance and Markets), Tess Sanford (Board Secretary) Elizabeth Thornhill (General Counsel), Vinita Hill (Director, Corporate Operations), Russell Grossman (Director of Communications) Stephanie Tobyn (Director, Strategy, Policy and Reform)

*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.
2. Mary Champion (in the room) and Radojka Miljevic (online) from Campbell Tickell would observe the meeting for the board effectiveness review.

#### Item 2 DECLARATIONS OF INTEREST

3. No new interests were declared.

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

4. Tess Sanford reported that Catherine Waller had corrected the reference to her relationship with ITSO as part of the declarations of interest.
5. The board approved the minutes as amended.
6. The board noted the oral update on actions outstanding.
7. The board discussed action 10/01 which was marked as closed. The board discussed who in industry had data which would show the passenger experience of capacity on services and who was thinking about potential revenue growth including the trade-offs between weekend and weekday use. It would also be interesting to analyse what information users wanted in making choices between services and whether it was available to them. The board commissioned two papers setting out 1) work in hand by GBRTT to explore ways of growing revenue and 2) what data was available from TOCs on the overall user experience and how that experience compares between them. Each paper should explore any areas where ORR could add value either by doing more or by bringing transparency to existing work. [Action 11/01]
8. All the other actions were completed or not yet scheduled.

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

9. This was the monthly report. Ian updated the board on current safety enforcement and industrial action handling.
10. He would attend NR's SHE committee this week and planned to raise his concerns about their weather resilience taskforce and particularly funding in some regions. The board noted that parts of the network in Scotland had been closed the previous week when extreme rainfall was anticipated. The board noted the importance of operators responding to RAIB recommendations at pace and within the timeframes set.
11. The board noted that progress on trackworker safety remained good and removed the standing item from the report. Monitoring would continue and any new concerns would be reported as necessary.

#### Item 5 CHIEF EXECUTIVE'S REPORT

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

#### Item 6 HIGHWAYS MONITOR

22. Feras Alshaker reported on continuing work with DfT and HMT on RIS3 advice and the emerging SOFA. The impact of the latest government budget statement on the NH enhancements budget was still being worked out.
23. The board discussed the status of the 10 minute response target and how it was being met currently. NH had moved resources to tackle local issues effectively.
24. The Board discussed the forecasting that NH would not achieve its in-year target for decarbonisation. It was noted that this was partly an effect of factors within the national supply of energy that was outside of the company's control

#### Item 7 ORR PERFORMANCE

*Lucy Doubleday joined for this item*

25. Vinita Hill explained that the report could not be generated in time for the October meeting because of the timing of the board. The board discussed the current and forecast underspend, good performance against service standards, depreciation and L&D by staff. It was reported that delays to the train driver licensing portal were not impacting the industry.

#### Item 8 COMMUNICATIONS

*Jennifer Webber, Kenny Walker and Adele Potter joined on line.*

26. Russell Grossman reported on a good 6 months in dealing with positive stories and defusing potential controversy. The next six months included a number of challenges and there would be a focus on engagement in Parliament and Scotland. The board discussed the importance of 'snackable' content, improving the content around careers, supporting the preferred access routes (mobile, laptop), drawing traffic from other channels. The board discussed options around ORR's social media presence given developments at Twitter.

27. The board noted that regional engagement could be challenging as ORR has little influence on issues that regional authorities were interested in. Where there was a practical reason for engagement channels were in place and well used.

#### Item 9            DECISION: OPEN ACCESS

*Martin Jones, Gareth Clancy and David Reed joined the meeting for this item*

28. Stephanie Tobyn introduced the item. She noted that DfT had responded to the consultation (albeit outside the consultation window) and this was reflected in the paper. As well as a teach in on the processes around open access at the September board meeting, colleagues had provided a drop in session to address technical questions from board members the previous week.
29. Stephanie set out the anticipated passenger impact of the planned services and their scale in relation to GWR services on the same lines. Specifically, in the forecasts on which our assessment of the application was based, GUT is forecast to carry approximately one million passengers per year including approximately 700,000 on weekdays. It was noted by comparison that GWR carries 150 million annual weekday passengers on the route.
30. Liz Thornhill set out the board's role in weighing the ORR duties when determining the application and which of those duties are most relevant to decisions on open access applications. There was no priority order set by legislation between the duties. The NPA test was a means of helping the board to weigh its duties to promote competition and have regard to the Secretary of State's funds. The process needed to be properly followed to ensure a robust decision.
31. The chair confirmed the requirement to consider the Secretary of State's guidance alongside the formal representations from the DfT about the specific application.
32. The board noted the paper set out the case very clearly. The board considered the overall state of finances in the industry, the reliance on modelling in assessing applications and the emerging evidence from previous open access operations.
33. It was noted that under the former franchising model, operators would carry the revenue risk associated with the introduction of competing services. Under current contractual arrangements, the revenue impact would be felt directly by the Secretary of State. However, the Board had also seen evidence that the advent of open access operators elsewhere on the network has resulted in a net economic benefit.
34. The board discussed the simple application of NPA by DfT which resulted in their assertion that the test was not met by this application. The ORR team made necessary adjustments to the base data including gravity models and assessment of fare and ticketing options to reflect price elasticity. This gave a more sophisticated analysis and, past experience demonstrated, more accurate modelling results.
35. The board noted that the team had followed the published process.
36. The introduction of innovation in terms of discounts for standing passengers was noted and welcomed. The applicant had responded pragmatically to feedback on its previous application.

37. The board discussed the importance of setting a robust timeline for the applicant so that any risk of ‘access banking’ or blocking other operators was minimised.
38. It was noted that there were no specific risks of failing to procure rolling stock at this point. The apparent success of the Lumo services on the East Coast Main Line, although still recent, had coincided with industry-leading post-Covid passenger demand recovery from the incumbent intercity services on the route, as well as offering more choice for passengers.
39. The board considered carefully ORR’s duty to have regard to the funds available to the Secretary of State, but on balance gave greater weight to the beneficial aspects of the application as they relate to ORR’s duties.
40. On the basis of the paper provided and following discussion, the board agreed to approve Grand Union Trains’ (GUT) application for access rights with a ten year contract duration to run five return services a day between London and Carmarthen from December 2024.
41. The team described next steps. The Board noted the decision should remain confidential until publication – planned for week commencing 28 November.

#### Item 10      **DECISION: FIRST ANNUAL ASSESSMENT OF SAFETY ON SRN**

*Sneha Patel and Adam Spencer-Bickle joined the meeting*

42. Feras Alshaker introduced this first draft report, noting its potential to be contentious. The board’s view on messaging and handling was being sought as a result.
43. Sneha Patel said staff were planning their monitoring to follow up the report and continue dialogue with the NH senior team.
44. The board discussed the nature of the KSI target, which is not normalised, the priority listing of the commentary, whether the failure of the SVD equipment was a delivery or a commissioning problem and the complexity of the messages. The board also noted the long period between the initial recommendation from the TSC that ORR be commissioned and the delivery of the report.
45. The board agreed that in terms of headline messaging, the overall safety of the SRN system appears to be improving, but ORR will keep it under review. On Smart motorways it was clear that the technology was not yet meeting its specification and NH must take urgent action to address this. ORR’s assessment of NH’s communications plan, their strategy and the approach to public education is that they are aligned with best practice guidelines. Context was important here and an appropriate introduction should be added.
46. The board noted that the report would be signed off by John Larkinson and Feras Alshaker and asked to be sent the final draft press release and the background Q&A as soon as they were available. [Action 11/03]

#### Item 11      **DECISION: PR23 POLICY FRAMEWORK AND**

#### Item 12      **DECISION: PR23 OUTCOME MEASURES FOR CP7**

*Anna Rossington, Lynn Armstrong, Matt Wikeley, Jay Symonds (in the room) and Richard Coates, Daniel Roberts and Paul Travers (on line) joined for these items*

47. Will Godfrey introduced both the agenda items and the team. These were important stepping stones in PR23 and had been discussed previously by the board. There had been minimal refinements in the material, all based on evolution of thinking.
48. The team described engagement with NR and with GBR, which aligned with each other. The board noted that the downgrading of the very progressive 'one planet measure' was supported as long as it remained in the wider suite of measures.
49. The board approved both papers, noting that that the time invested in earlier discussions had made these decisions straightforward.

#### Item 13 DISCUSSION: PR23 UPDATE – HLOS AND SOFA

*Jennifer Genevieve and Carl Hetherington joined the meeting for this item*

*This item is redacted as relating to policy development and future publication in June 2023*

#### Item 14 DISCUSSION: COMPETITION

*Calum Glazier, Ethan Byrne (in person) and Ben Watkins, Loic Laude (on line) joined for this item.*

*This item has been redacted from the published minutes as pending regulatory action which is not yet launched publicly.*

#### Item 15 DISCUSSION: RAIL REFORM/REUL

60. Stephanie Tobyn reported that work continued in the background on rail reform. On REUL, it was possible that there would be an extension of the sunset date beyond 2023, which would be helpful in terms of addressing the workload.

#### Item 16 FEEDBACK FROM COMMITTEES

61. Bob Holland reported on the agenda of the ARC on 4 November, including the usual risk reports and a horizon scanning paper on threats to the wider regulatory environment. He gave a detailed confidential update on issues with ORR's internal controls and Vinita Hill described disciplinary processes and immediate system improvements which were in hand.
62. Anne Heal reported on the Renco agenda including a wide ranging review of organisational development.

#### Item 17 ANY OTHER BUSINESS

63. Declan Collier described recent meetings with the DfT Permanent Secretary, RSSB and Peter Hendy.
64. The board noted the items below the line and agreed to feedback reflections on the strategy day through the CEO.

After the formal meeting concluded, NEDs had a short private meeting.