

**THE OFFICE OF RAIL AND ROAD**  
**202<sup>nd</sup> BOARD MEETING**  
**Monday 15 May 2023, 11:00 – 15:00**  
**At ORR, 25 Cabot Square, London E14 4QZ**

**Non-executive members:** Declan Collier (Chair), Xavier Brice, Madeleine Hallward, Anne Heal (part), Bob Holland, Daniel Ruiz

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

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

Team members in the room included: Jennifer Genevieve, Richard Coates, Steve Fletcher, Carl Hetherington, Will Chivers, Lisa O'Brien, Sarah Shore.

Fiona Bywaters (new Board Secretary)

*Other ORR staff who attended are shown in the minutes.*

Item 1            WELCOME AND APOLOGIES FOR ABSENCE

1.     The Chair welcomed everyone to the meeting, noting that it had been rearranged to accommodate the Coronation bank holiday. As a result, Justin McCracken had had to send apologies and Anne Heal would be joining the meeting late. Both had been present at the run through of policy issues on 17 April. Justin had supplied detailed written comments to the Chair.
2.     Catherine Waller attempted to join the meeting remotely, but the technology in 25 Cabot Square failed. Her written comments were supplied to the team.
3.     There were no new interests declared.
4.     The minutes of the 18 April 2023 meeting would be circulated for approval at the main May meeting on 23 May 2023.
5.     The chair complimented the team on a very good pack of papers with significant evidence pack included, which he anticipated would make the decision process manageable in the time planned.

## Item 2 INTRODUCTIONS AND OVERVIEW OF THE SESSION

6. Will Godfrey introduced the session, which was a major milestone in a long programme of work. The policy discussion on 17 April had been very useful in calibrating the recommendations before the board today. The settlement would be made in a constrained fiscal environment with high inflation. The board wanted to set stretching targets but recognised the importance of realism given the wider industry and economic context.
7. Will said there were areas where Network Rail and the ORR had quite different views, for example around assumptions on input price inflation and risk management, and he highlighted funders' desire to see better performance.
8. The HLOS and SOFAs from both funders had been provided later than ideal and work would continue throughout the summer to refine NR's strategic business plan, and review its detailed plans. That meant that some of the recommendations were based on evidence that was still being scrutinised or even still being prepared. The board's steer at the April policy discussion had been to set stretching targets in the draft determination, in the expectation that at final determination it would have the benefit of more detailed evidence to inform its decisions. The consultation period allowed all stakeholders to share their views and to explain the likely impact of the draft determination.

## Item 3 LEGAL FRAMEWORK

9. Liz Thornhill reminded the board of the decision making framework and the underpinning legal requirements. She also reminded the board of the approach ORR had committed to in undertaking the review, including the four objectives of (at least) sustained safety, and improved performance, asset sustainability and efficiency. The board should carefully consider its obligations and duties as it took each component decision as well as reflecting on the overall package. The board was required to determine whether the overall funds available (SOFA) were sufficient to meet the funders' requirements (HLOS) and although there were trade-offs to be made, the advice from the executive was that there were sufficient funds overall but some trade offs and re-prioritising were needed.
10. While the board had heard previously from NR's CEO of the importance he placed on flexibility in the settlement, it should also be alert to the need for some certainty for the wider industry to allow for proper planning and management.
11. The board noted that it should have regard to the latest guidance from the Secretary of State (2017) and that from the Scottish government (2018) and that these were two duties in a long list which could be weighed against each other. The board also noted the requirements of HSWA and the Equality Act.
12. The board would look to General Counsel to advise as they took decisions to ensure that they considered all appropriate issues.

## Item 4 DECISIONS

### Performance for E&W and Scotland

#### *Passenger train performance (on time)*

13. For England & Wales, the evidence had been carefully analysed and the proposed trajectories would be stretching for NR but better performance would also require whole-industry cooperation and engagement – particularly from the passenger operators. Pressures from inflation would continue to grow throughout the control period and lower levels of renewals would build up risk of future disruption. NR were also concerned about the risk that a badly-set trajectory could cause cash outflows in Schedule 8 payments. The team had set out the underlying assumptions that had informed their recommendation and this offered some comfort that flexibility could be shown where those assumptions proved wrong or changed during the period.
14. The board discussed how the trajectories had been set and noted the intention to keep them under review so that emerging issues could be identified and addressed in period. The board noted that the proposed trajectories were set to reach either the top or beyond NR's proposed ranges. They discussed the slope of trajectories on different routes, the impact that new rolling stock would have (noting that there was often a period of teething trouble on routes with new fleets) and the expected disruption from HS2 construction, particularly at Old Oak Common. The board noted that on-time performance measurement at every station was more accurate and less forgiving than previous measures and this change meant that comparisons across periods would need to be clearly explained.
15. The board discussed the current level of train performance (punctuality) which was poor and considered what the proposed trajectories would mean for passengers over the early years of CP7. They did not wish to set trajectories which allowed performance to continue to decline into CP7 and not recover until the later years of the period and the whole industry should be engaged in avoiding this. The board noted that its duties to promote improvements in train service and protect the interests of users were particularly relevant here.
16. The board agreed that performance trajectories should start no lower than CP6 exit, only increase, and should reach the top of the trajectory by the end of year 3 of CP7. The board noted that public communications on this issue needed to be clear – this was an area that rail users cared most about.

#### *Passenger train performance (cancellations)*

17. Richard Coates noted that NR had not offered any evidence to underpin their ranges for targets on cancellations and the team proposed more stretching targets based on their existing evidence. The board discussed the contribution of TOCs to cancellation performance, the benefits of being able to compare regional performances, and the importance of having a standard for the whole system.

18. The board agreed with the recommendation of applying more stretching targets on passenger cancellations, with these to be further developed by the team.

*Freight train performance (Cancellations)*

19. The board noted that the target was set at the challenging end of NR's proposal and heard that adjustments had been made to the balance between cancellations and delays following discussion with FOCs. They noted that if more freight used the network then targets would be challenging.
20. The board agreed the proposal.

*Decision on performance improvement and innovation fund*

21. The board heard that the proposal was supported by stakeholders and that even a relatively small sum could be effective as long as it was targeted at issues which catalysed performance improvements. Allowing the fund would signal that improving performance continued to be a priority even in a constrained environment. Although the sum involved was relatively small the board was keen to see that the funds were actively used as early as possible and sharply focused on innovation. The board agreed the proposal for a £40m performance and innovation fund in England and Wales. A different approach in Scotland was also agreed.

*Freight growth (Freight moved)*

22. The board had discussed the methodology and recommendations for setting freight growth targets at their policy discussion in April and the levels of growth set were reasonable. It was noted that Southern was a legitimate outlier here. The board agreed the targets as being consistent with funders' aspirations and FOC input.

*Asset Sustainability*

23. The board noted the proposals to increase spending in core renewals by reallocating funding from elsewhere. It heard that there remained elements of unjustified optimism in NR's expectation of what could be delivered in what time frame.
24. The board considered the table showing RAG ratings and noted that the proposed reallocation would remove all red rated risks and mitigate many of the ambers. The board discussed the basis of the unit rates applied, the desire of NR to retain Project Reach and the importance of longer-term sustainability. The board was assured that NR had systems in place to manage its earthworks risks, but that did not mean that nothing would go wrong in future. Better maintenance planning would be needed to mitigate the reduction in renewals activity.
25. The board heard that Scope 3 emissions would be a supporting measure monitored by NR and reported on in public across CP7 which would deliver a baseline for future targets.

26. The board approved the proposals on asset and environmental sustainability.

#### Health and Safety

27. Sarah Shore presented the main issues, setting out concerns around changing risk and safety controls because NR had not provided evidence on how it would safely manage the shift away from renewals to maintenance or how they would prioritise spend. The overall approach would increase reliance on maintenance which was dependent on the successful implementation of Modernising Maintenance. The board had previously heard about concerns over the pace and local oversight of that implementation. Further information had just been received and work would continue over the summer to review this and monitor progress.
28. NR had described their approach on asset investment as 'market-led' (supporting revenue generating areas of the network). More assurance was needed on this. Finally, NR had not indicated how it would meet its own aims or, in some places, comply with legislation in some tactical areas such as fatigue and occupational health.
29. The board discussed why NR was still providing new information at this stage in the process (partly as a result of the late HLOS) and heard that proposals were still being worked through. The draft determination would make clear where work was continuing.
30. The board noted that it would need assurance that there would be no risk off-setting from the NR board. It noted the lack of clarity around what 'market led' meant for risk assessments and priorities, and the potential for muddled decision making as a result. There was no evidence so far that NR had the right processes in place to identify where spending was needed to maintain safety levels and this was troubling at this stage in the planning cycle. The board noted that further work would be needed to demonstrate that NR's plans for CP7 would deliver the same or better levels of safety on the network.

#### Efficiency, headwinds, tailwinds, input prices

31. Carl Hetherington described how the recommendations had been reached, explaining that the difficult overall environment (inflation, pay etc) led the team to assess the targets as challenging but achievable. There were some parts of the total efficiency in England and Wales which would be easy to deliver and others that would be much harder. The Scottish SOFA had been less tight than anticipated but their HLOS would still be challenging to deliver. The size of the sums involved in Scotland made it harder to make significant savings and there was no significant risk funding in the settlement.
32. The board discussed inflation forecasts, input costs, and the importance of collaboration across the industry in delivering efficiencies, particularly in E&W.
33. The board accepted the proposals in relation to efficiency.

Risk and financial flexibility

34. The board noted the proposals in relation to risk and agreed the importance of holding some risk funding to deal with emerging challenges through CP7.
35. The board noted that it was HMT's role to determine what financial flexibility was allowed to NR. It was important that HMT continued to have access to ORR's knowledge and understanding around industry finances when making those decisions.

Item 5 VUC RATES

36. The board discussed the scale of charge increases proposed and its potential impact, particularly on freight operators. It was not clear from the papers what the net impact would be and the board asked for the proposal to be re-presented to show that.
37. The board noted that the move to cost reflective charging was required by regulations. It recognised that the proposed changes had been trailed over the previous control period so that the industry had had time to plan. However, the board reflected that the pandemic and the current rate of inflation meant it wanted to be very clear on the likely impact of any change before agreeing rates. The team would address the board's questions and urgently re-submit the proposal with information to address these [Action 05/01].

Item 6 REMARKS ON DECISIONS AND NEXT STEPS

38. Will Godfrey summarised decisions so far and described the next steps to deliver a package of documents that would meet the deadline for publishing the draft determination.
39. It was important that the package was holistic and coherent. There would be a focus on performance – recognising the other pressures on budgets such as inflation and more assurance needed on safety.

Item 7 MANAGING CHANGE CONSULTATION

40. This paper would be re-circulated below the line for the May board meeting on 23 May.

Item 8 APPROACH TO COMMUNICATIONS AND ENGAGEMENT

41. The board heard plans to ensure that communications around the draft determination represented it as a pragmatic response to challenges caused by the wider circumstances. It would be made clear that ORR aimed to make a settlement in the best interests of passengers and freight users and taxpayers – and to maintain pressure on safety.
42. The board discussed the proposals and commented on plans for Wales and the Transport Select Committee. The key messages discussed in April would be recirculated. It was important that the executive summaries and press notices aligned with each other and with the key messages. The role

of the regulator and our intent in making a settlement which set different priorities from NR's would be part of the wider story.

43. The draft summaries and press releases would be circulated for comment as they emerged.
44. Publication was aiming for 15th June 2023.

Item 9 ANY OTHER BUSINESS

45. The board noted the items below the line.
46. Approved by the board: 27 June 2023.