

THE OFFICE OF RAIL AND ROAD
206th BOARD MEETING
Tuesday 26 September 2023, 09:00 – 15:00
At ORR, 25 Cabot Square, London, E14 4QZ

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

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

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

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. Apologies for absence were received on behalf of Xavier Brice.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the 25 July 2023 meeting were approved. A brief update was provided on actions arising and completed from previous meetings.
4. It was reported that since the last meeting, there had been one decision by correspondence regarding consolidated and non-consolidated end of year performance pay, further to the Remuneration and Nominations Committee meeting on 10 August 2023.

Item 4 CHIEF INSPECTOR'S QUARTERLY REPORT

5. Ian Prosser (IP) introduced the report, which had been discussed at the Health and Safety Regulation Committee (HSRC) the day prior.
6. Issues highlighted included: impact of sector uncertainty on the rail transformation programme; a slight increase in SPADs and related work looking at drivers trained during the pandemic; incidences of trespass and staff assaults; the Weather Risk Task Force and progress on drainage works; the first phase of Network Rail's (NR) modernising maintenance programme; and regulation of London Underground's Four Line Modernisation (4LM) project.

7. An update was provided regarding paragraphs 32 to 33 of the report on Meerkat, the development of which was now on-hold. Two clarifications had also been made at HSRC regarding paragraph 64 (Margam East Inquest: to confirm it was the coroner's decision to suspend the inquest) and paragraph 60 (for greater nuance regarding the future working relationship with Crown Office and Procurator Fiscal Service (COPFS) in Scotland). It was reported that the Chair of HSRC had requested a report on level crossings be presented to that committee in Spring 2024, and that a report on the Norfolk Ruling was already included on the forward programme.
8. Further to discussion on the 4LM project and drivers trained during the pandemic, the Board requested that:
 - a briefing on the Four Lines Modernisation (4LM) Programme be provided **[Action 09/01]**; and
 - confirmation of any analysis undertaken regarding the performance of signallers (in the context of SPADs and industrial action) be provided **[Action 09/02]**.
9. Members also explored progress on fatigue management and received reassurance on the progress of drainage works, noting the use of contractors by NR. The common theme of technology throughout the report was noted, and the Board sought assurance as to the adequacy of NR's CP7 plans on delays to the Traction Power Centralised Management System (TPCMS) **[Action 09/03]**.
10. Finally, the Board discussed communications around the West Coast Railway Company (WCR), and ROGS Safety Certificates in the context of the Core Valley Lines.

Item 5 CHIEF EXECUTIVE'S REPORT

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

Item 6 NATIONAL HIGHWAYS

17. Feras Alshaker (FA) introduced the report, noting that Highways Committee had discussed the report the day before, and addressed the four key themes: smart motorways - TSC recommendation 1 on an independent health and safety role for ORR; development of the third Road Investment Strategy (RIS3); smart motorways Stopped Vehicle Detection (SVD); and Reinforced Autoclaved Aerated Concrete (RAAC). It was updated that the National Highways' (NH) third year smart motorway progress report would no longer be published that week (and rather, was expected later in the year).
18. The Board examined the KPIs, and that relating to road user satisfaction, noting the downward trajectory in some areas. The ability of the strategic road network to handle additional traffic was also considered, including any potential localised impact were freight to shift from rail to road. It was emphasised that strategic conclusions needed to be drawn from the KPIs and issues be raised where applicable.

19. The Board further considered the challenges outlined in the report regarding RIS2 and RIS3, including the timeline of the Efficiency Review, as well as the position regarding smart motorways. Regarding the latter, JL referred to the upcoming annual assessment of safety on the strategic road network, where the Board would have opportunity to consider key messages. The Board requested that information on the emerging conclusions for the second annual safety report be included in the next NH report [October] **[Action 09/05]**.

Item 7 **REPORTS FROM COMMITTEES**

20. Madeleine Hallward (MH) reported on the meeting of the Highways Committee on 25 September. The Committee had considered, among other items:
- The National Highways (NH) report (Item 6 at Board);
 - Road safety, with external guest speaker Dr Suzy Charman (Road Safety Foundation), for which slides would be shared with all Board Members. This concerned the high level of ambition around delivering vision zero versus the funds available, as well as what more ORR could do around safety, such as challenging NH earlier in the project planning cycle on impact on Killed or Seriously Injured (KSI) indicators;
 - Development of the RIS3;
 - The upcoming annual assessment of safety on the strategic road network, to which the next committee meeting on 1 November would be dedicated, with a commitment to publish in December; and
 - SVD and unverified results.
21. Justin McCracken (JM) reported on the meeting of the Health and Safety Regulation Committee on 25 September. The Committee had considered, among other items:
- The quarterly health and safety report (Item 4 at Board), including a request to explore compliance on asbestos in future inspection plans;
 - Eurotunnel with external guests: Yann Leriche (CEO), Steven Moore (Chief Investment Officer) and Guillaume Rault (Chief Operating Officer), with reference to their commitment to managing health and safety, the complex regulatory environment, and the positive relationships which had developed with the ORR;
 - Enforcement Management Model Reviews;
 - Proposed enforcement and investigation KPIs; and
 - Cyber security and high integrity software based systems, with a newly-advertised role of Head of Digital Safety.
22. Further to the quarterly health and safety report, the Board requested an update on the potential reduction in risk control associated with the replacement of Avanti's Super-Voyager fleet with Hitachi class 805 trains at the next meeting [October] **[Action 09/06]**.

Item 8 NEW MEMORANDUM OF UNDERSTANDING WITH LRSSB

Richard Hines (Deputy Director, Non-Mainline Railways and CTSA) joined the meeting for this item.

23. Richard Hines (RH) introduced the report, inviting comments from the Board.
24. The Board discussed the references to data and reporting in the proposed Memorandum of Understanding (MoU), and whether the commitment to keep under review the best sources of data was adequately reflected, to which RH provided reassurance. JM, as the Chair of HSRC, referred to an upcoming report to that committee, 'Trams Data Update', which would offer an opportunity for further scrutiny.
25. The Board noted the liaison arrangements outlined in the proposed MoU, with RH confirming that a record would be produced of the annual meeting between Chief Executives and the Director of Railway Safety. It was also confirmed that a relationship would be maintained with UKTram.
26. Adequate governance arrangements around the review of MoUs was raised by the Board, with specific reference to that with the Rail Safety and Standards Board (RSSB) which was seemingly overdue. The Board requested confirmation that all scheduled reviews of ORR MoUs had taken place in a timely manner **[Action 09/07]**.
27. Resolved that:
 - a. The new ORR/LRSSB MoU attached at Annex A of the report be noted;
 - b. It be agreed for ORR to enter into the revised MoU;
 - c. It be agreed for ORR to close and withdraw the ORR/UKTram MoU when the ORR/LRSSB MoU is issued; and
 - d. Authority be delegated to the Chief Executive to agree any non-material amendments for the purpose of finalising the MoU (as per arrangements outlined at paragraph 21 of the report).

Item 9 ORR'S DATA STRATEGY

Richard Coates (Deputy Director, Railway Planning and Performance, via MStTeams), Vikas Dhawan (Head of Data Strategy Development) and Lyndsey Melbourne (Head of Analysis and Statistics) joined the meeting for this item.

28. Richard Coates (RC) introduced the report, referring to its ambitious nature, the One Big Thing initiative (data upskilling for all civil servants), and the formulation of a genuinely deliverable implementation plan (which would include a formalised review process).
29. Catherine Waller (CW) welcomed the early engagement offered to herself and Daniel Ruiz (DR) recognising the focus on mobilisation, communication and upskilling, as well as the push to deliver the strategy earlier following a request from the Board.
30. The Board queried the level of external scrutiny and engagement within the strategy, whether this would include NH as well as NR or extend to academia

and experts, for which confirmation was provided. It was added that there was strong engagement in best practice networks across government and other regulators. CW reminded that an offer had been extended by a Director at Unilever, to talk to colleagues.

31. Consideration was given to the level of resourcing required for the strategy. JL underlined that for the strategy to be deliverable in its entirety would require a reprioritisation of resources, inviting the view of the Board and suggesting an inwards focus. The Board debated the level of resource required against delivery timelines, and whether automation of certain tasks would reduce the burden. Reference was made to the advertised role of Head of Digital Safety, but it was clarified that this post fell under the Rail Safety Directorate rather than delivery of the strategy.
32. In response to further questions, it was confirmed that a single point of contact within the strategy was recommended by the external agency who undertook the data maturity assessment; that the strategy was designed for those within the ORR to drive cultural change, encourage ownership of data and deliver better outcomes; and that a short guide to the strategy would be produced.
33. In conclusion, the Chair of the Board recognised the challenge of resource prioritisation, supporting an internal focus at first, and encouraging demonstration of the strategy's delivery power, for example regarding highways or rail performance statistics, to build further support.

Item 10 PR23 – INTRODUCTION TO CONSULTATION RESPONSES (ALL STAKEHOLDERS) & NETWORK RAIL PRESENTATION & LEGAL FRAMEWORK FOR PR23 DECISION-MAKING

Jennifer Genevieve (Deputy Director, Periodic Reviews and Monitoring), Grace Garner (Head of Regulatory Analysis), Carl Hetherington (Deputy Director, Regulatory Economics and Finance), Matt Wikeley (Head of Rail Outcomes Policy), Steve Helfet (Deputy Director, Railway Operations), Steve Fletcher (Deputy Director, Engineering & AM), and Sarah Shore (Deputy Director, Railway Safety) joined the meeting for this item.

34. Will Godfrey (WG) introduced the item, providing an overview of consultation responses to the Draft Determination (DD) across different stakeholders. Key areas highlighted included: the response of train operators to Schedule 8 payment rates; the targeted performance fund applicable in Scotland and implications for the risk fund; and the response of freight operators regarding increases in charges and recalibration of the Schedule 8 regime.
35. Reference was made by WG to Document B – namely the Network Rail consultation response and presentation – suggesting that areas of likely discussion were: performance; inflationary pressures; and calls for flexibility. Areas of agreement included: challenges to efficiency; a focus on core renewals; and adequate risk funding. The purpose of the session was to allow the external guests from NR to provide an overview of their consultation response, after which the Board had a period to reflect before considering the FD on the 9 October.

36. WG outlined the challenge of developing whole-industry performance benchmarks but referred to the '2+3 model' of mid-control reset in performance trajectories as an important step by the ORR towards recognising the uncertainty facing the industry and Network Rail at present.
37. The Board reflected on principles previously-established: improvement on passenger performance; a structured change management process; and areas of focus for expenditure – such as those parts of the network impacted by climate change risk – and guidance provided regarding inflation and risk.
38. The Board considered NR's role and responsibilities in being held to account under whole-industry performance measures, with the principle of higher performance in CP7 than at the outset of CP6 remaining the ambition. Targets should be stretching yet achievable regarding NR's contribution.
39. The Board discussed the process of Train Operating Companies' (TOCs) targets being determined by the Department for Transport (DfT) on a shorter time scale and the influence of industrial action on performance. While these targets remained undetermined, it presented a greater challenge to assessing the credibility of whole-industry targets. The use of Consistent Route Measure - Performance (CRM-P) as a reflection of actual Network Rail performance was also considered. It was felt important that the evidence supporting the proposed performance targets was made clear as part of the FD decision.
40. Finally, the Board discussed the management of risks regarding inflation and cost, as well as the feedback from TOCs and depth of evidence on the appropriate level of incentive payment rates in Schedule 8, as likely areas of discussion with NR.

The meeting was adjourned from 12.38pm to 1.00pm.

Item 11 DRAFT DETERMINATION RESPONSE – NETWORK RAIL

41. The Chair of the Board welcomed the NR guests to the meeting, namely: Peter Hendy CBE (PH, Chair), Andrew Haines (AH, Chief Executive), Jeremy Westlake (JW, Chief Financial Officer) and Paul McMahon (PM, Director – Planning and Regulation). Each guest gave a brief introduction, referring to the presentation provided in advance and the key issues: challenges for the industry, including the scale of economic and industry change; ensuring sufficient flexibility of the regulatory framework; targets based on robust evidence and within NR's control; uncertainty around the '5Ps' of price, precipitation, performance, patronage, and politics; inflation and risk; investment in asset maintenance and renewals; and risk funding in Scotland.
42. The guest introduction then focussed on train performance targets, citing numerous contextual difficulties to delivery. The progress of the '2+3 model' was recognised, but three areas were put forward to challenge the current position of the ORR: the principal of no year-on-year dips in performance; a challenging passenger cancellation target which was not perceived as achievable; and freight cancellation targets not recognising spikes caused by one-off events. As currently stated, it was felt these targets could not be met.
43. A further focus of introduction was Schedule 8 payment rates, where the reduction to 45% was not supported by NR given their view that 75% was the

more appropriate reduction to payment rates based on industry evidence. Finally, PH summarised the main concerns as outcome trajectories at realistic levels and within the control of NR; flexibility within the FD; and proportional monitoring and reporting which would be agile under a change of circumstances.

44. The Board stated the need to see demonstrated improvement on areas such as performance and invited NR to provide their evidenced view as to what would be considered genuinely stretching and demonstrate improvement for users of the railway. AH responded that less weight should be attributed to on-time measures, which made numerous assumptions and were unclear, in favour of considering service failures, responses to incidents and the management of external risks. AH also noted the likely impact on service of the Old Oak Common station building project, the largest such project in a century. PH cited DfT's management of TOCs as material to a combined measure, preferring to have a target against which NR could solely be held accountable and influence.
45. The Board drew attention to the managing change section of NR's presentation, and the relatively minor nature of the historic examples provided compared to NR's objections in this area. AH responded that the intention had been to illustrate the low use of the policy to date but that it would be more cumbersome if usage increased in CP7.
46. Finally, the Board considered targets in Scotland and NR's view that it would not be possible to deliver 92.5% PPM (adjusted version of the ScotRail Public Performance Measure) in the early years of CP7, as well as NR's concerns about the targeted performance fund. NR stated that their risk position in Scotland was dependent on decisions about the scale of the performance fund, the impact of inflation risk, and how the fund could be spent.
47. The Chair thanked the guests for their contributions.

Item 12 PR23 PROPOSALS ON STRATEGIC DECISIONS

48. The Board reflected on the guest contributions, considering the evidence and rationale to support proposed whole-system performance targets; the principle of year-on-year improvement; and Schedule 8 payment rates.

Anne Heal left the meeting.

Jennifer Genevieve (Deputy Director, Periodic Reviews and Monitoring), Grace Garner (Head of Regulatory Analysis), Carl Hetherington (Deputy Director, Regulatory Economics and Finance), Matt Wikeley (Head of Rail Outcomes Policy), Steve Helfet (Deputy Director, Railway Operations), Steve Fletcher (Deputy Director, Engineering & AM), and Sarah Shore (Deputy Director, Railway Safety) joined the meeting for the remainder of the item.

49. The Board considered the following areas, referring to the papers provided at Item 12 of the agenda pack:

Incentive Rates

50. The Board discussed NR's view that 75% was the appropriate reduction to payment rates under Schedule 8. It was noted that there was some

uncertainty around the methodology used within the industry evidence and the impact of implementing a full reduction on incentives. Rather, an incentive effect would be retained by moderating the reduction to 45%, which would then be reassessed under the '2+3 model'. ET reminded the Board of their section 4 duties, including to protect users of railway services and to plan the future of their business with a reasonable degree of assurance, when considering flexible measures and the Board reflected that the reasoning in support of a reduction of 45% was consistent with the relative weight they wished to place on these duties.

51. The Board were content to **agree** a moderated 45% reduction to payment rates under Schedule 8, with a '2+3 reset', whilst emphasising the need for the team to develop a supporting narrative.

Scotland: Train Performance Measure trajectory and Train Performance Fund

52. The Board **agreed** to set the Scotland train performance measure at 92.5% for each year of CP7, as it was explained this was no change from the position at draft determination and aligned with the Scottish Ministers' HLOS.
53. The Board considered the train performance fund in Scotland and how parameters could be outlined regarding any expenditure. It was explained that ORR had set a position of what the performance fund could be spent on to provide that clarification. The Board **agreed** to maintain the DD proposal of a targeted performance fund in Scotland, with the limitations on use identified, and were open to a fund of less than £100m if the evidence supported it and agreed it would go down if there was pressure on risk funding. It was suggested to compare risk funding as a proportion of overall spend with England & Wales.

Inflation, Risk and Efficiency

54. The Board were content with the outlined efficiency targets, including some reduction to ring-fenced risk funding (from £2.15bn to circa £1.5bn for England & Wales) and discussed the impact of inflation and input prices. The Board **agreed** to:
- maintain the efficiency challenge for England and Wales (of at least £3.2 billion in CP7) but slightly reduce the efficiency challenge in Scotland by £19 million (as Network Rail Scotland had moved £19 million of its efficiency stretch to income);
 - increase the input price inflation assumption by £100-300 million for England & Wales compared with the draft determination (£10-30 million for Scotland), noting that this would remain £700-900 million lower than Network Rail's view for England & Wales (£70 - 90 million for Scotland) and remained a significant challenge to Network Rail; and
 - some reduction to ring-fenced risk funding, noting that this included the balance between funding risk and the flexibility and options proposed for Network Rail to fund this. Principles would also be in place for using the risk fund.
55. This included agreeing the approach to the balance of funding risk and the train performance fund in Scotland, which needed to be considered together.

It was said both may need to be reduced subject to pressure on funding. The Board **agreed**, subject to final figures, that a range of £225-175mn for ring-fenced risk funding in Scotland may be acceptable.

Funding Core Asset Renewals

56. The Board considered there to be areas of agreement with NR regarding the funding of core asset renewals, and that proposals took into account a focus on the impact of climate change. The Board **agreed** that the proposed additional £585mn of expenditure network-wide on additional core renewals in Great Britain sufficiently addressed DD concerns regarding asset performance and sustainability. It was **agreed** that NR should set out in its delivery plan the additional expenditure to fund core renewals, subject to key principles such as expecting no funding to be sourced from core asset renewals or maintenance, and no decline in outcome measures.

Train Performance Trajectories

57. The Board were content to **agree** a '2+3 reset' for passenger train performance baseline trajectories, emphasising the need for a clear process and that the proposal was in response to uncertainty and consultation feedback. It was clarified that indicative values for years 3 to 5 would be established from the outset.
58. The Board considered whether to accept the regional performance trajectories put forward by NR, subject to demonstration of continuous improvement and at a starting point higher than CP6 exit. The exception of Wales and Western was noted, and the Board reflected on whether a less challenging trajectory would be acceptable (considering the feedback raised about the impact of the HS2 building project at Old Oak Common). Further analysis was requested on whole-industry performance targets, as well as those without a stretch performance target attributed to TOCs and against which NR could solely be held to account, to assess the figures relative to CP6 exit. This would further inform any decision made when considering the FD.

Item 13 ANY OTHER BUSINESS

59. The Board noted the items below the line.
60. The Chair also updated the Board on recent meetings he had attended, including: Nigel Stevens (Chair of Transport Focus); the UK Regulator Network meeting of Chairs; the Director General Rail Strategy and Services Group, DfT; and the Permanent Secretary, DfT (who had been invited to a Board meeting in early 2024 [**Action 09/08**]).

Meeting end: 3.12pm

Approved: 24 October 2023