

**THE OFFICE OF RAIL AND ROAD**  
**208<sup>th</sup> BOARD MEETING**  
**Tuesday 24 October 2023, 09:00 – 12:10**  
**At ORR, 25 Cabot Square, London, E14 4QZ**

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

**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), 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 Russell Grossman.

**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 26 September 2023 meeting were approved, subject to comment on the word 'ambitious' as a prefix. A brief update was provided on actions arising and completed from previous meetings.

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

4. Ian Prosser (IP) introduced the report, referring to the headline summary regarding the closing out of a level crossings improvement notice, the issue of a one-year safety certificate to West Coast Railways (WCR), and liaison with RAIB further to a slow speed collision of the Flying Scotsman. An update was provided that Network Rail (NR) had been issued with an improvement notice for Euston Station, concerning measures to reduce risks to passengers and others during instances of surges and overcrowding. Other topics highlighted included a safety update on Eurotunnel and repair work required on the Plessey Viaduct.
5. Further to action 09/06, IP referred to the update provided in the report on the potential reduction in risk control associated with the replacement of Avanti's Super-Voyager fleet with Hitachi class 805 trains. The Board queried the legal

requirements associated with introducing new trains and ORR's role in the process. IP confirmed that the ORR had to be satisfied with the risk assessment undertaken and that adequate controls were in place, whilst a further update would be provided within the report at the next meeting.

6. Further to action 09/02, IP referred to the update provided in the report on SPAD incident factors, noting that incidents rarely have a single cause.
7. Subsequent Board discussion focused on the consideration of community impact in the level crossings work undertaken, and safety in the context of water ingress, following recent heavy rain downfalls. IP confirmed that local factors were considered in level crossing risk assessments and confirmed that evidence existed to support a view that water ingress was well-managed. Further reference was made to the work of NR's Weather Risk Task Force.

#### **Item 5 CHIEF EXECUTIVE'S REPORT**

*This report is redacted as it contains time-sensitive and covers confidential issues.*

8. [...]

#### **Item 6 TRANSPORT FOR LONDON**

16. Graham Richards provided an oral update on recent work related to Transport for London (TfL) which had recently been shared with the Board. Reference was made to the process undertaken, next steps, and future opportunities for the ORR to add further value. The Board welcomed the work and report (suggesting it was conventional to list those who had been interviewed within the process), as well as considering aspects of risk and innovation within TfL's culture.

#### **Item 7 NATIONAL HIGHWAYS**

17. Feras Alshaker (FA) introduced the report, and provided an update on recent recruitment to the Deputy Director – Highways role, as well as timelines associated with National Highways' (NH) Draft Strategic Business Plan (SBP) and the subsequent efficiency review. Papers for the upcoming Highways Committee (1 November), which would focus on key safety messages, were due out shortly. The Board would be provided with an opportunity to input via correspondence.
18. The Board expressed their concern at the risk of continued funding for schemes which may not take place, and whether the ORR had taken all possible action within its remit. JL confirmed that ORR's view on nugatory spend had been passed to DfT at director level and would likely be discussed at a proposed upcoming meeting with the Parliamentary Under Secretary of State at DfT.
19. The Board also considered the methodology for calculating stopped vehicle detection (SVD) performance referred to in the report. The performance of safety systems on smart motorways was confirmed as a key message in the upcoming safety assessment. FA reported satisfaction that the change in methodology was reasonable, but more needed to be done regarding the

performance of the SVD technology. The Board noted the sensitivity of performance in this area and considered the adequacy of relevant technology.

20. Other areas of discussion included traffic officer response times, and the impact of an anticipated election on highways work.

## **Item 8            QUARTER 2 REPORT: BUSINESS PLAN**

*Lucy Doubleday (Associate Director, Finance and Governance) joined the meeting for this item.*

21. Lucy Doubleday (LD) and Vinita Hill (VH) introduced the item, drawing attention to the financial position year end forecast and progress against business plan commitments, highlighting from the report those commitments which had been reforecasted. Reference was also made to the Director of Railway Safety recruitment, for which the application period had closed the day prior.
22. The Board sought clarification on the component areas of the ORR budget which was provided by LD in relation to the split of roads and rail allocations. Consideration was also given to consultancy projects and the potential redeployment of funds within the business, as well as financial risks associated with the upcoming WCR judicial review.
23. Questions were raised regarding the completion of the commitment for full adoption of a new case management system and the associated resource requirement. Collaboration between business teams and the contractor was seen as essential to support data quality and validation.
24. Finally, reference was made to an update on cyber security at the Audit and Risk Committee the day prior, and the Board welcomed the positive achievements of this work which should be reflected in future reports.

## **Item 9            BIENNIAL REVIEW OF BOARD PROCEDURES**

25. Fiona Bywaters (FB) introduced the report, outlining the decisions required and referring to the annexes containing a summary of changes, a tracked changes version of the Board Procedure Rules, and a flowchart reflecting current operation of delegated decisions from the Board to the Chief Executive and the Director of Railway Safety.
26. The Board considered Board Procedure Rule 40 (55) concerning its delegation to the Director of Railway Safety on matters of enforcement under the Health and Safety at Work Act (HSWA) 1974. It discussed whether additional wording should be inserted regarding the exercise of this delegation where its performance was considered novel, contentious or of reputational impact, akin to that in Board Procedure Rule 44 (54) regarding delegations from the Board to the Chief Executive. The purpose was to ensure that the Chief Executive be made aware, by the Director of Railway Safety, of enforcement decisions which may have an organisational impact, so that the Chief Executive might then inform the Chair, and Board, as appropriate. These were explained to be few in number, perhaps 3 or 4 times a year.

27. The Board queried the use of the word 'contentious' and whether the proposed wording overall had any effect of slowing down an enforcement decision, which would be undesirable. Elizabeth Thornhill (ET) clarified that the wording reflected the status quo and would not require different behaviour from Inspectors, whilst JL reinforced that the intent was a codification of existing practice rather than a process change. It was further explained that the delegation would continue to reflect a legislative position: that enforcement decisions relevant to ORR under HSWA are inspector decisions, delegated to the Director of Railway Safety (as HM Chief Inspector) and further sub-delegated to each warranted Inspector. These points were considered important in any subsequent communication of the proposed amendment, which was agreed.
28. The Board also welcomed the flowchart included in Annex 3 to the report and suggested that it be updated further to any changes agreed **[Action 10/05]**. Case studies might also be seen as helpful in explaining the operation of delegations, particularly those to the Director of Railway Safety.
29. FB further outlined references in the report referring to the insertion of an inquorate meeting provision; the amendment of the casting vote provision; and amendments to the reserved matters at Annex A (for clarification and to include matters pertaining to the ORR's highway functions), all of which were agreed. Regarding the delegation of authority to appoint Road Expert Panel Members, the Board proposed a condition that this be in consultation with the Chair of the Highways Committee, which was agreed.
30. FB referred to outstanding feedback received from Board Members in advance of the meeting, and suggested action in response. For Board Procedure Rule 31 (39), referring to the expedited decisions process, it had been suggested that there was a role for the Deputy Chair in circumstances where the Chair was not available. This amendment was accepted, with the following wording to be added at the end of the rule: "or in their absence, the deputy chair, under the same conditions".
31. Feedback had also been received regarding the reserved matters and whether it should include ORR values and culture (under A1). Further to research conducted by FB, it was proposed that oversight of culture be delegated to the Remuneration and Nominations Committee (with their revised terms of reference due to the Board in January 2024 for decision), which was agreed. It was also noted that committee effectiveness reviews would follow in Spring 2024. The Board further agreed that ORR values be added to reserved matter A1.
32. The suggestion received to amend quorum from five to four (to reflect the minimum number of Board Members mentioned under Board Procedure Rule 4 (6)) was rejected. In response to a comment regarding degendered language, it was confirmed that this would be checked throughout the document prior to publication of the revised Board Procedure Rules on the ORR website.
33. Finally, it was proposed that a delegation of authority be granted to the Chief Executive for non-substantive consequential changes to the Board Procedure

Rules, without restriction for further sub-delegation. This would cover for example, changed to job titles, without requiring a board decision.

34. Resolved that:

- a) The revised Board Procedure Rules be agreed for adoption from 1 November 2023, including the option outlined at Paragraphs 8 and 14 of the report regarding Procedure Rule 40 (55).
- b) The upcoming reviews of the committee terms of reference (annexes D-G to the Board Procedure Rules) for future Board agreement as a reserved matter, be noted.
- c) Authority for the appointment of Road Expert Panel members be delegated to the Chief Executive, without restriction for further sub-delegation.
- d) Authority for non-substantive consequential amendments to the Board Procedure Rules be delegated to the Chief Executive, without restriction for further sub-delegation.

#### **Item 10      INDUSTRY DATA MANAGEMENT: THE RAIL DATA MARKETPLACE**

*Kate Barnes (Senior Policy Manager) and Lyndsey Melbourne (Head of Analysis and Statistics) joined the meeting for this item.*

35. Stephanie Tobyn (ST) introduced the item, as a generative report for discussion, and referred to a recent letter from DfT regarding the "open by default" approach. Connections were drawn to the ongoing work related to the data strategy, and recent Board discussions which had agreed an internal focus initially. The Board welcomed the report and the work undertaken.
36. Consideration was given to the need for a data marketplace and ORR's potential contribution, the funding model presented, how other regulators – such as the CAA – approached this area, the relationship with Train Operating Companies (TOCs) and the potential for accessible data to benefit ORR as well as the wider industry. The Board recognised the data already available via the ORR data portal, which could be further promoted.

#### **Item 11      ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

*Dan Roberts (Senior Policy Manager), Lynn Armstrong (Head of Regulatory Policy) and Anna Rossington (Deputy Director, Regulatory Strategy & Reform) joined the meeting for this item.*

37. ST introduced the report, which had arisen from Board action 05/01 further to stakeholder views on the ORR's role in improving sustainability. The Board welcomed the report, the interpretation of stakeholder survey results, and the subsequent work undertaken at the Board's request.
38. Consideration was given to expanding the visibility of environmental work (and the Board welcomed the suggestion of environmental blogs on highways, further to those written on rail), the sector's move towards a circular economy, and carbon emission metrics (as discussed at Item 5). The Board

noted the role of the ORR to effectively hold licenced entities to account against government requirements on the environment and sustainability, which for Network Rail comprised the measures and incentives established under the periodic review.

39. It was suggested that future work could also include gap analysis of current activity with a view to sustained improvement of environmental measures.

## **Item 12      REPORTS FROM COMMITTEES**

40. Anne Heal (AH) reported on the meeting of the Consumer Expert Panel on 29 September, which, in addition to discussing BTPF, had also heard from NR regarding visits to vulnerable groups.

41. AH also reported on the meeting of the Remuneration and Nominations Committee on 10 October. The Committee had considered, among other items:

- A deep dive into the Railway Safety Directorate (RSD), which covered succession planning, talent management, specialist recruitment, pay, use of consultancy, and culture, as well as the knowledge transfer of those entering partial retirement;
- The people dashboard, expressing concerns over some instances of excess hours;
- Recruitment of a Director of Railway Safety, as well as Non-Executive Directors;
- An update on the refresh of the diversity and inclusion strategy; and
- The committee's terms of reference, with recommendations for any amendments to be made to the Board in January 2024.

42. Assurance was provided to the Board regarding the insights into RSD; alert was given regarding the request for more recent data relating to goal and objective-setting in ORR; and advice related to the long-term use of contractors, with potential IR35 implications.

43. Justin McCracken (JM) reported on the meeting of the Railway Industry Health and Safety Advisory Committee (RIHSAC) on 13 October, which had seen positive engagement regarding health in the industry, and evidence of good cooperation between stakeholders.

44. Bob Holland (BH) reported on the meeting of the Audit and Risk Committee on 23 October. The Committee had considered, among other items:

- Risks: including those relating to the FD, the WCR judicial review, changes in government policy and the review of regulators;
- Horizon scanning: which would come to the Board in January as part of a report on strategic risks;
- Internal audit reports related to risk management and public commitments, to which a definition of public commitments would be key;

- Updates on cyber security and learning and development spend controls, where good progress had been made.

**Item 13      ANY OTHER BUSINESS**

45. The Board noted the items below the line.
46. The Chair referred to recent meetings with Network Rail and the Chairs of UK Safety Regulators, as well as the Chair of Transport Focus who would attend a meeting of the Board in January 2024.

Meeting end: 12.37pm

Approved: 28 November 2023