

THE OFFICE OF RAIL AND ROAD

212th BOARD MEETING

Tuesday 27 February 2024, 09:00 – 12:00

At Peterborough West - Holiday Inn, Thorpe Wood, Peterborough, PE3 6SG

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

Executive members: John Larkinson (Chief Executive)

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), Richard Hines (Acting Director of Railway Safety), 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 Ian Prosser (Director of Railway Safety).

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 meeting held on 23 January 2024 were approved, subject to an amendment under paragraph 43 to read: "Catherine Waller referred to a narrative DfT was working up around transport and growth. NEDs who had attended DfT's engagement event last year had been invited to contribute their perspective further [...]".
4. A brief update was provided on actions arising and completed from the previous meeting.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

5. Richard Hines (RH) introduced the report, highlighting: progress related to Colton Junction (for which further update would be provided in future); detail on the Avanti West Coast risk assessment concerning Tilt Authorisation and Speed Supervision (TASS) system (in response to board action 01/06); ongoing enforcement action; and the Eurotunnel safety authorisation (as well as changes to UK first line of response (FLOR) arrangements).
6. In reference to the report, the Board requested that embankment failure be further explored (as well as the relevance of subcontracted work), following the recent incident at Bicester and given concerns that it may be a repeat

issue **[Action 02/01]**. It was further requested that assurance be provided as to whether the April 2024 milestone regarding Network Rail's (NR) response to drainage works would be met, and to consider the response where it is not **[Action 02/02]**.

7. Further discussion related to:
 - Data on collisions between trams and road vehicles (in response to board action 01/04);
 - Planned activities in the coming year;
 - Update to the ORR guidance "Managing Rail Staff Fatigue" and the time taken to develop, as well as work planned later in the year (on which an update would be provided);
 - Control of crowding risks at Euston Station;
 - An improvement notice in the heritage rail sector; and
 - A Transport Select Committee inquiry on the future of transport data.
8. Finally, the board examined the management of enforcement action and relevant Key Performance Indicators (KPIs). It was suggested that future iterations of the report contain an overview of data relevant to enforcement (such as number of actions and time taken, with contextual narrative), noting discussions that had been held at the Health and Safety Regulation Committee (HSRC).

Item 5 CHIEF EXECUTIVE'S REPORT

This report is redacted as time-sensitive and covering confidential issues.

9. [...].

Item 6 NATIONAL HIGHWAYS

13. Feras Alshaker (FA) introduced the report, and referred to the recent appointment of Sir Gareth Rhys Williams as the Chair of National Highways (NH), as well as a judicial review decision regarding the A303 Stonehenge scheme.
14. An update was provided regarding the investigation into NH performance, initiated on 14 February, and subsequent stakeholder relationships. The board discussed the reception of the investigation, noting the obligation of NH to raise any performance issues with ORR, and information provided to them via the regulatory escalator.

Item 7 PR23: DELIVERY PLAN

Jennifer Genevieve (Deputy Director, Periodic Reviews and Monitoring) and Carl Hetherington (Deputy Director, Regulatory Economics and Finance) joined the meeting for the item via MSTeams, with Steve Fletcher (Deputy Director, Engineering & AM) in person.

15. Will Godfrey (WG) introduced the report and outlined the purpose of the delivery plan. It was explained that in most areas, NR's draft delivery plan was considered consistent with the Final Determination – however, a few areas of concern remained in relation to freight, asset management and Scotland.
16. The board requested that the letters to DfT and Transport Scotland be clear on any residual areas of concern. Further suggestions for inclusion comprised: the importance of resilient assets (with reference to recent incidents and climate change); implication for spend in future control periods; the importance of an effective maintenance function and implementation of modernising maintenance; performance implications (noting the 2+3 reset for England and Wales); and reference to the key principles on which the Final Determination was based.
17. It was further suggested that the language of 'overlay' be reconsidered, to clearly refer to a funding gap. The board's view was that the funding gap should not be closed through a reduction in renewals and rather, NR should close the gap through additional efficiencies. NR would be provided with a period of 6 months to resolve the funding gap, or ORR would call for an efficiency stretch.
18. The board also reflected on life-expired assets and the distinction from asset failure, as well as the differences in inflation assumptions. The item concluded with reference to next steps.

Item 8 GRAND UNION TRAINS LONDON-STIRLING ACCESS DECISION

David Reed (Senior Case Officer) and Gareth Clancy (Head of Access & Licensing) joined the meeting in person for the item, accompanied by Martin Jones (Deputy Director, Access & International) via MSTeams.

19. Stephanie Tobyn (ST) introduced the report, referring to the decision required from the board and which was recommended for approval. Elizabeth Thornhill (ET) outlined the statutory duties which the board was required to take into account in making their decision.
20. The board explored the factors contributing to the recommendation, and their appropriate weighting, including: operational viability, capacity and performance; the economic assessment (including the 'Not Primarily Abstractive' (NPA) test); passenger benefits; and sustainability. The proposal would, if successful, be the first open access competition on the West Coast Main Line.
21. The board further considered the NPA test assessment, with reference to table 3 of the report (open access results and decisions, December 2014 onwards). Discussion ensued as to passenger demand and journey time from the areas proposed to be served; length of access contracts; and modal shift. The use of diesel rolling stock, given climate change awareness and sustainability context, was also deliberated but did not form part of the decision.
22. **The board approved the Grand Union Trains' track access application under section 17 of the Railways Act 1993.**

23. Having taken its decision, the Board moved onto a broader discussion of open access matters. It was suggested that future work on open access explore the assessment of economic conditions; environmental measures; financial capability of applicants; rolling stock availability; and modal shift.

Item 9 ANNUAL BOARD EFFECTIVENESS REVIEW: PROGRESS AGAINST RECOMMENDATIONS

24. Fiona Bywaters introduced the report, referring to progress against recommendations made under the external board effectiveness review (agreed by the board in February 2023). The board noted the content and assessment of the report, reflecting on risk appetite in particular.

Item 10 REFLECTIONS ON STRATEGY DAY

25. The Chair introduced the item, outlining reflections from the board strategy day and dinner. These included considerations on resources, structures, and skills for the future, as well as further deliberation on strategic risks (following the item at the January board meeting).

Item 11 ANY OTHER BUSINESS

26. The Chair referred to recent meetings, as well as the Parliamentary drop-in event and attendance at the Bradshaw Address. The board was reminded that the advert to recruit up to three Non-Executive Directors was due to close on 8 March, noting the concerns of other regulators at the extended length of public appointment processes. Reference was also made to upcoming external speakers invited to the board.
27. The Board noted the items below the line, namely: minutes approved by committees since the last meeting and the board forward programme. The draft minutes of the Remuneration and Nominations Committee were approved by the Board (noting that the previous meeting was not quorate and held on an informal basis). Finally, further to discussions regarding reviews of the board procedures and committee terms of reference, the Board also agreed that the committee should be renamed as the People Committee.

Meeting end: 12.18 pm
Approved: 26 March 2024