

THE OFFICE OF RAIL AND ROAD
224th BOARD MEETING
Wednesday 11 December 2024, 11:30 – 13:00
Via MS Teams

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

Executive members: John Larkinson (Chief Executive), Richard Hines (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), Elizabeth Thornhill (General Counsel).

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 and Ian Dobbs. The meeting was confirmed as quorate.

Item 2 DECLARATIONS OF INTEREST

2. There were no declarations of interest from those present. Ian Dobbs had recused himself from the meeting in accordance with Board Procedure Rule B11.

Item 3 PR24: APPROVAL OF FINAL DETERMINATION

Howard Taylor (Head of Asset Management), Debbie Daniels (Delivery Manager), Carl Hetherington (Deputy Director, Regulatory Economics and Finance) and Gordon Cole (Head of Regulatory Finance) joined the meeting for item 3.

3. Feras Alshaker (FA) briefly introduced the item and provided an oral update of recent correspondence, including from Eurostar and from the Chief Financial Officer of Network Rail Infrastructure Ltd (regarding efficiencies).

The following paragraph [text in square brackets] is partially redacted due to legal privilege:

4. Elizabeth Thornhill (ET) outlined the legal framework of the decision at hand. Counsel's advice had been sought in advance of the meeting, [...]
5. Howard Taylor (HT) guided the Board through the individual decisions outlined in the report and accompanying slides (which had previously been circulated for a board teach-in earlier in December). An overview of annual charges was provided, as well as decisions in the Draft Determination with which HS1 Ltd and stakeholders had agreed.

6. **The following proposals were approved for inclusion in the Final Determination:**
 - a) **Annuity modelling, including the removal of an ‘underfunding factor’ in the annuity model applied at PR19;**
 - b) **Weighting the stations renewals annuity to reflect forecast traffic growth;**
 - c) **Reallocation of freight charges through clarification of fixed and variable costs;**
 - d) **Deliverability reprofiling of five-year route renewals in CP4;**
 - e) **Five-year station asset management improvements in CP4;**
 - f) **Challenging operational improvements;**
 - g) **Focus on “safety by design”;**
 - h) **Challenging alignment between HS1’s environmental strategies and plans;**
 - i) **Research and development governance, for consultation of affected stakeholders;**
 - j) **Approach to station cost allocation; and**
 - k) **Clarity of specified upgrades for signalling on the network, with detailed funding arrangements for the ERTMS-specified upgrade out of scope of PR24.**
7. HT provided a brief overview of areas where HS1 Ltd had disagreed with the Draft Determination. The Board would be guided through matters to be determined; areas of proposed agreement; and access terms.

Matters to be Determined

F1) Asset Management Maturity
8. HT reminded the Board of the Draft Determination position and the view that greater opportunities exist for efficiency in specific, less mature asset groups. HS1 Ltd and Network Rail High Speed (NRHS) disagreed with this conclusion, referring back to asset strategies and examples of which ORR was already aware. The wording in the Final Determination would reflect the prioritisation and urgency required, rather than a critique of asset management strategies and plans. Evidence of the Draft Determination conclusion was outlined to the board, which included examples such as the Thames Tunnel flooding in 2023 demonstrating a low maturity of drainage system understanding. After considering the evidence provided, the Board agreed to maintain the conclusion from the Draft Determination.
9. **The proposal regarding maturity of asset management, which would impact the efficiency challenge specified under decisions F2 and F3, was approved for inclusion in the Final Determination.**

F2) Operations & Maintenance – Efficiencies in CP4
10. HT reminded the Board of the Draft Determination position where an assessment of efficiency and best practice had indicated the efficient cost at

which HS1 may charge operators for Operations & Maintenance was approximately £3m/year lower than HS1's plan.

11. Initial responses of HS1 Ltd and NRHS contained no further efficiencies, however NRIL subsequently contacted ORR suggesting NRHS could achieve 3% greater efficiency by the end of CP4 (the proposal was unclear, but ORR estimated this to be the equivalent of £1.0-1.7m/year). The evidence provided had been extensively considered, with the recommendation subsequently amended to propose £2.3m/year of efficiencies – which was seen as stretching but achievable.
12. The Board discussed the differences in position between £1.7m and £2.3m/year of efficiencies. The ORR position was reconfirmed as based on a bottom-up evaluation of the evidence provided, and had also been considered holistically in light of other financial developments, such as the increased National Insurance Contributions for employers.
13. The Board also raised questions with regard to the letter received from the Chief Financial Officer of Network Rail Infrastructure Ltd and whether it provided further evidence of the asserted efficiency levels. It was confirmed that no specific evidence was provided via the correspondence as to why ORR's proposed efficiencies were unachievable.
14. Further discussion considered objections from NRHS and its parent company – Network Rail Infrastructure Limited (NRIL) which had remarked on a lack of phasing. It was clarified that the matter of phasing would be for HS1 Ltd and NRHS to determine.
15. The Board would return to the matter for determination later in the meeting.

F3) Efficiency of the route and stations 40-year renewals plans

16. HT reminded the Board of the Draft Determination position where it was noted that HS1 had applied a new methodology to estimate 40-year risks and opportunities. The new methodology had been recognised as logical but the Draft Determination had suggested that further efficiencies could be made. Based on the evidence, the proposal remained unchanged from the Draft Determination: to reduce renewals costs by 9%, over years 6-40, in the less mature asset groups (representing 3% of total renewals for Route; 4.5% for Stations) and to reduce renewals costs by 4% for all assets, over years 6-40, to reflect a lack of good-quality base costs for HS1.
17. **The proposal regarding an efficiency challenge on 40-year renewal estimating was approved for inclusion in the Final Determination.**

Adjustments

F4) Escrow Investments Assumptions

18. Gordon Cole (GC) introduced the proposal, which had been amended since the Draft Determination (which assumed a rate of 4.3%). Further to consultation, the proposal was to follow the explicit advice from DfT and HS1 Ltd in the consultation and rely on HS1 Ltd's new assumption, of an increased rate of 3.45% in CP4, increasing to 3.7% from CP5.
19. **The proposal that escrow investment assumptions be set at 3.45% in CP4 was approved for inclusion in the Final Determination.**

F5) Scope challenge on specific stations renewals in the five-year workbank

20. HT reminded the Board of the Draft Determination position and the proposal to adjust specific CP4 stations renewals via a 5% efficiency challenge. It was now proposed, based on evidence provided by HS1 Limited, to remove the 5% efficiency challenge from the Final Determination. The Board noted that this concerned £150k, spread over the 40 year renewals portfolio, which would not materially alter the charges. The requirement for transparent reporting on all projects was recognised as important.

21. **The proposal to remove the 5% efficiency challenge (on three specific stations renewals projects) from the Final Determination was agreed**

F6) An adjustment between fixed and variable costs

22. HT reminded the Board of the Draft Determination position, and that in consultation, HS1 Ltd had agreed in three out of five areas, with disagreement in terms of embankments and contact wire. Further evidence and justification had been provided to support the assertions, and the proposal was to accept the revised splits of fixed and variable costs.

23. **The proposal regarding a revised adjustment between route fixed and variable costs was approved for inclusion in the Final Determination.**

F7) Increase in HS1 Ltd's Costs

24. GC explained that evidence of increased costs had been received from HS1 Ltd since the Draft Determination, due to an increase in employers' National Insurance Contributions. Given the evidence provided, the recommendation was to agree with the revised costs asserted by HS1 Ltd. However, it was suggested that proposed increases in costs to achieve HS1 Ltd's proposed changes to access terms would be scrutinised, and only accepted where considered reasonable above business as usual.

25. **The increase to HS1 and NR(HS)'s costs resulting from rising National Insurance Contributions for employers, was accepted for recognition in the Final Determination.**

Implementation decisions (access terms changes)

26. HT reminded the Board of the Draft Determination position, where HS1 Ltd and operators had proposed a list of changes to the Access Terms, which had subsequently been reviewed by ORR for a preliminary assessment of whether they would be approved. The assessment, and ORR's position, had been included in the Draft Determination for consultation.

F8) Inflation Floor

27. HT reminded the Board of the Draft Determination position, where ORR was minded to remove the inflation floor in the PAT. HS1 Ltd had since provided additional evidence in relation to unforeseen consequences for its financing arrangements, and the proposed decision was now to retain the inflation floor in the PATs, but suggest that HS1 Ltd and parties to the access terms further consider how charges are indexed. If this were not addressed, it would be returned to at the subsequent Periodic Review.

The following paragraph is redacted due to legal privilege:

28. [...]
29. **The proposal to retain the inflation floor in the PATs was approved for inclusion in the Final Determination.**
- F9) Fixed Cost Wash-up*
30. HT reminded the Board of the Draft Determination position, which had proposed an annual wash-up to allocate fixed costs on actual train volumes, with no trigger level based on deviation percentage. HS1 Ltd had raised concerns towards the approach and the incurrence of administrative costs. The proposal was to maintain the Draft Determination position of a fixed cost wash-up, whilst the Board were invited to consider whether to approve additional HS1 Ltd costs associated with the new wash-up.
31. **The proposal for a fixed cost wash-up and approval of administrative costs for HS1 Ltd associated with the new wash-up was approved for inclusion in the Final Determination.**
- F10) Delay Attribution Body as Dispute Resolution Body*
32. HT reminded the Board of the Draft Determination position, which was that ORR did not have a strong view as to a Delay Attribution Board to be used as the relevant dispute resolution body for delay attribution. However, the Draft Determination reflected that if this were to go ahead, that it should be agreed by the system and taken forward by HS1 Ltd. The proposal for Final Determination remained unchanged.
33. In response to questions it was confirmed that in the absence of a Delay Attribution Board, recourse was directly to ORR. The Board requested that the existing means of recourse be communicated within the decision.
34. **The proposal to not force a Delay Attribution Board into the system remained unchanged for inclusion in the Final Determination, whilst highlighting the existing means of recourse to ORR.**
- F2) Operations & Maintenance – Efficiencies in CP4*
35. The Board resumed its discussions from earlier in the meeting, and the difference in efficiency assessments of £0.7m, considering the evidence outlined. The Board remained minded to be guided by the evidence and the efficiency proposal assessed at £2.3mn. It was confirmed that the matter would be consulted on and further evidence may be provided to support the asserted difference.
36. **The proposal to determine a smaller reduction [£2.3m/yr compared to £3m/yr at Draft Determination] in Operations & Maintenance charges, reflecting evidence provided in response to the Draft Determination, was approved for inclusion in the Final Determination.**
37. Before concluding, the Board further reflected on the reallocation of freight charges through clarification of fixed and variable costs, including the detailed review of fixed costs which had been undertaken. The importance of this proposal was noted to facilitate the future of the freight industry.

38. Finally, **the Board agreed that authority be delegated to the Director of Planning and Performance to approve the Final Determination documents for publication by 6 January 2025.**
39. HT provided an overview of next steps, including the commencement of consultation the next day based on the decisions taken. The consultation would close on the 19 December at noon. Responses would be reviewed by the team, with a meeting of the Board on 27 December to agree the final decisions in light of the consultation. The Final Determination would then be published on 6 January 2025.
40. The Chair thanked the officers for their work throughout the Periodic Review process and their evidence-based approach.

Item 4 ANY OTHER BUSINESS

41. At the Chair's invitation, John Larkinson (JL) provided brief reflections on a recent private briefing with the Transport Select Committee. An update was also provided by FA regarding funding of the Highways team, which had now been secured.
42. The Board noted the dates of the next meetings and item below the line, namely the Board forward programme.

Meeting end: 12.45pm
Approved: 21 January 2025