

**THE OFFICE OF RAIL AND ROAD**  
**168<sup>th</sup> BOARD MEETING**  
**25 FEBRUARY 2020, 08:30 – 14:30**  
**Hotel du Vin, Church Street, Birmingham, B3 2NR**

**Non-executive members:** Declan Collier (Chair), Stephen Glaister, Anne Heal, Bob Holland, Michael Luger, Justin McCracken, Graham Mather

**Executive members:** John Larkinson (Chief Executive), Graham Richards (Director Planning and Performance); Ian Prosser (Director Railway Safety).

**In attendance:** Dan Brown (Director, RME and Strategy), Russell Grossman (Director Communications), Freya Guinness (Director Corporate Operations), Juliet Lazarus (General Counsel), Tess Sanford (Board Secretary).

**Other ORR staff in attendance are shown in the text.**

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. The chair welcomed everyone to the meeting. There were no apologies.
2. The board noted the successful dinner with stakeholders held the night before.

**Item 2 DECLARATIONS OF INTEREST**

3. No new relevant interests were declared.

**Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING**

4. The minutes of the meeting on 28 January were agreed.
5. A number of the actions and matters arising were addressed in the agenda. John Larkinson reported that Patricia Hayes had moved on from her role as DG Roads at DfT and he would arrange to meet any new appointee once they were in post. This would be reported to the board in the usual way. The board asked John to pass on its best wishes to Ms Hayes for her next post. This closed the action.
6. In relation to the action he had taken on deciding how to encourage the PMO to take a more active ownership of risk appraisal, John was pleased to report that the PMO had written to the industry and made clear their intent to take a more proactive approach to risk appraisal rather than rely on what others were telling them. The next regular high level meeting with NR would focus on the role of the system operator. This action could be closed.

**Item 4 HEALTH AND SAFETY MONTHLY REPORT**

7. **Ian Prosser** reported on continuing work to ensure that the differing methods of train dispatch being proposed were safe, and also that any performance and cost implications were understood. Discussions continued with operators and trades unions. RSSB were also involved in supporting the development of consistently safe practice.

8. Ian updated the board on discussions with the French delegation to the IGC about expert advice and progress on the Eleclink risk assessment.
9. On Sandilands, a recent meeting with RAIB had enabled the status of the industry wide recommendations to be updated for their annual report. Progress remained good. The Inquest was scheduled to begin in September. There was still work to be done to secure future funding for the LRSSB.
10. The trial of an employer in relation to the two traffic fatalities at Newark had begun. This was a landmark case as ORR had been permitted to bring it under railway H&S legislation when the deaths had occurred on a highway and not on rail.
11. The board heard positive reports of meetings with London Underground's new CEO and TfL's senior safety team. The board noted the forthcoming appeal at DfT against the suspension of a driver's licence.
12. The board noted the report of an extension of a safety exemption at Crossrail which should allow more trains to be run at either end of the system pending full opening.

#### **Item 5 BOARD INFORMATION PACK**

13. This month's board information pack had a new structure and was not yet fully populated. It gave an overall picture and three separate sections to enable the board to hold to account Network Rail, Highways England and TOCs, with a combination of dashboard summaries and underlying detail. The board welcomed the new layout and noted it was still in development.
14. The board discussed the levels of public satisfaction reported on retail pricing at motorway service stations and feeling safe on motorways.
15. Graham reported that HE was very likely to meet its efficiency targets in RIS1 and pressure was continuing to ensure that they did.
16. The board discussed how the frequent use of short-formation trains enabled at least one TOC to meet their timetable commitments but impacted severely on the passenger experience by increasing crowding and making reservations impossible. ORR had no locus to address this as it could only be addressed through the franchise/contract relationship. It was not clear how much the issue stemmed from reliability issues with new rolling stock. John Larkinson would raise the question with the DfT DGs Rail and then write [Action]. It was noted that passenger information did not appear to be an issue with this TOC.
17. The board noted the report of a 'soft' (ie not statutory) competition intervention which appeared to have delivered a good result swiftly. It also noted the determination of an appeal under the Network Code.
18. The board discussed how regional performance in preparedness for year 2 of the control period would be assessed and addressed with NR's centre and its regional leaders. Staff understand that the formal 'escalator' is seen by the NR board and was followed up at both CEO and/or regional MD level as appropriate. The board discussed how the

ORR executive were developing better understanding of leading indicators and welcomed the move to more forward looking assessment. Where there was sufficient experience to consider formalising trigger levels, this should be considered. It was important to have a disciplined approach to assessment as this was likely to drive rigour in the regulatee's behaviour. [Action]

19. The board discussed the analytical work that was needed to enable the publication of station usage statistics and the delay this year caused by the general election purdah. This information was used widely by local authorities in their planning and is the most popular ORR statistical product. Graham Richards would circulate a link to the underpinning data and offered a teach-in for board members [Action].

## **Item 6 CHIEF EXECUTIVE'S REPORT**

20. John Larkinson updated the board on his senior meetings. The CEO of the EHRC who had told him they planned to fund legal challenges on consumer rights in the rail industry as part of a strategy to drive improvements. He had met the CMA CEO to discuss current casework and resourcing. A senior official at HMT had praised the relentless work ORR had done to drive efficiency in NR and discussed the white paper proposals. The Rail Freight Group had sought assurance that ORR would continue to protect existing freight access rights after Williams and he had confirmed this.
21. Stephen Glaister had been part of the Oakervee Review challenge panel and reported on the recent announcement that HS2 would go ahead following that review. Significant risks remained around the impact on funding the classic network and highways, interaction with the classic network, the frequency of services, engineering standards, disruption to the classic network at junctions and particularly at Euston. Further work would be done by government to review HS2 Ltd's resourcing, and a major review of the rail network north of Birmingham had been commissioned from the National Infrastructure Commission (NIC). It was important that the NIC understood ORR's role and expertise and John Larkinson would seek an early meeting [Action]

## **Item 7 OTHER EXECUTIVE REPORTS**

22. Graham Richards reported that HS1 had formally accepted the PR19 final determination.
23. Dan Brown reported that he had implemented temporary changes to the structure of his directorates while both John Larkinson and himself were in their acting roles, and work on the evolving regulation programme continued. The work on reviewing charges and incentives had now been initiated as part of that programme: board members could be interviewed as part of that review if they wish [Action – to let DB know]

24. The PMO had written to DfT setting out issues on design assumptions and contracts which DfT needed to determine in relation to the December 2020 timetable change. Risks under scrutiny included: rolling stock, driver availability, Kings Cross possessions. This exercise had demonstrated the continuing lack of clear accountability in the current structure.
25. Freya Guinness reported on progress with the Diversity and Inclusion Strategy, Pay and Reward strategy and the introduction of the new HR and finance system. She noted a recent sophisticated phishing attack which had needed urgent action to address. Overall IS systems in the office were steadily improving.
26. Russell Grossman reported on engagement with parliamentarians including researchers and select committee clerks, plans for post-White Paper engagement, and the start of fieldwork for the stakeholder survey. There had been good planned media work to rebut accusations of safety ‘gold-plating’ and good coverage on NR’s performance and the Bescot yard prosecution. The stock photo library had been refreshed. The biannual all staff conference would take place on 27<sup>th</sup> February.

#### **Item 8 ORR BUDGET 2020-21**

27. Freya Guinness reported that the overall budget settlement had been agreed with HMT, although DfT had not yet agreed the Highways budget. Ring fencing of the Eurotunnel budget should be agreed after the government’s budget announcement. Any additional funding for work on Williams implementation was still to be agreed. Compared to the current year, running costs for Cabot Square would be higher and additional staff to work on consumer issues would be added. Overall the business planning process had gone well.
28. The board discussed the importance of flexibility in staffing and the high volume of work that could be foreseen in a year of change which might require additional resources quickly.
29. The board approved the 2020-21 indicative figures and would be asked to approve the final budget allocations in March.

#### **Item 9 and 10 HIGHWAYS ENGLAND**

*Adam Spencer-Bickle attended for this item and the next.*

30. Adam Spencer-Bickle reported on changes to the HE/DfT timetables on governance documents which would now be staggered over a longer period and might also be impacted by local election purdah in the spring. The RIS2 package would be announced as part of the budget announcements in March. ORR would continue to develop its monitoring framework and enforcement policy independently.
31. The board discussed the likely size of the RIS2 settlement, the scale of major projects within it and the impact of government’s priorities,

particularly in rebalancing the economy away from the south east. The board also discussed the potential financial impact of changes to the management and implementation of smart motorways and particularly the need to identify any impact on the efficiency target.

32. The board discussed the briefing they had received on the next session with Highways England.

## **ITEM 10 HIGHWAYS ENGLAND**

*Jim O’Sullivan, CEO and Elliot Shaw, Director Strategy of Highways England joined the meeting.*

*This item (paragraphs 33-38) to be redacted until after the publication of the DfT ‘stocktake’*

## **Item 12 BOARD GOVERNANCE: RENCO TOR**

39. Michael Luger explained the reasons for the proposal to amend the RENCO terms of reference slightly.
40. The board agreed the changes in the paper and these should be incorporated in the board procedures from 1 April 2020. [Action]

## **Item 13 CONSUMERS: ACCESSIBILITY**

*Stephanie Tobyn joined the meeting for this item*

41. Stephanie Tobyn had circulated a short update presentation on recent developments and notable responses to ORR’s consultation on our Accessible Travel Policy guidance.
42. The consultation questions had been framed within the current practical constraints and responses had mostly recognised these constraints. Over fifty responses had been received. Broadly these welcomed the pragmatic proposals to improve the current situation. Some, including EHRC, DPTAC and some others wanted us to do more. RDG had committed to producing a ‘pathway to compliance’ and begun information gathering to support that. Next steps would be to publish all the responses with a high level comment with more to follow once RDG’s plan could be assessed.
43. The board discussed the likely impact of this piece of work on resources and noted that no single body could solve the issue: ORR’s role would be to continue to provoke the industry-wide discussion and encourage improvements. There were cost implications for operators. A lack of case law on the interpretation of ‘reasonable adjustments’ under the Equalities Act made it difficult for them to assess risk.
44. The board noted the report.

*Lunch*

## **Item 14 NETWORK ACCESS**

*Catherine Williams and Pedro Abrantes joined the meeting for this item.*

*Paragraphs 45-48 have been redacted from the published version pending completion of the application process.*

## **Item 15      WHITE PAPER UPDATE**

*This section (paragraphs 49-51) to be redacted from the published version as policy under development*

## **Item 16      FEEDBACK FROM BOARD COMMITTEES**

52. Justin McCracken reported on the most recent RIHSAC meeting which had discussed the main themes in RAIB's forthcoming annual report, a presentation from Phil Barrett of RDG on stranded trains and passenger evacuation, ORR's new draft Strategic Risk chapter on track risk, and ORR business planning as well as PACT interest in level crossing legislation.
53. Anne Heal reported that RENCO members had attended a Staff Council meeting. The agenda had covered the work on D&I and Reward and the new HR system along with the people survey results. There had been a good dialogue and the meeting was useful.

## **Item 16      ANY OTHER BUSINESS**

54. The report from the Board Effectiveness review had been received by the board and a summary version for wider dissemination would be prepared. A short note of headlines had been drafted following the previous day's workshop and any comments on this should be passed to the board secretary.
55. The Chair also gave updates on NED recruitment (following interviews in September 2019), and meetings with other UK regulators' chairs. He had enjoyed two days in North Yorkshire with Jill Moore and John McGrellis looking at structures and observing works. He encouraged the non-executive board members to do similar visits as he found them very informative.
56. The board reflected on the appearance by Highways England. While it was encouraging to hear of the constructive relationship between ORR and HE it was important to test that an appropriate distance was also maintained. The board was content that at this time the relationship reflected the positive response HE had made to ORR interventions and their overall improved performance. The Board also noted areas where there had been significant challenge from HE to ORR's positions. On the specific topic of smart motorways, the board noted that the presentation was compelling and that the public communications challenge was formidable. It would be useful for ORR to be able to test the underlying data to enable it to support HE's work in shifting behaviours and culture as this would remain an issue of public concern for some time. [Action: John Larkinson to write to HE on public confidence and access to underlying data]

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[ends]