

THE OFFICE OF RAIL AND ROAD
171st BOARD MEETING
19 May 2020, 09:00 – 13:30
By Skype for Business

Non-executive members: Declan Collier (Chair), Stephen Glaister, Madeleine Hallward, 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, Economics, Markets and Strategy), Russell Grossman (Director of Communications), Freya Guinness (Director, Corporate Operations), Juliet Lazarus (General Counsel), Richard Gusanie (Private Secretary).

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The chair welcomed everyone to this third video-conference meeting of the ORR Board.

Item 2 DECLARATIONS OF INTEREST

2. No new relevant interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the April meeting were agreed.
4. A request was made for future board agendas to include page references for those NEDs that print out board papers.
5. The board noted the updated action list.
6. In respect of the actions from previous meetings, it was noted that while Transport Focus had had to suspend its usual transport user surveys, it had introduced a weekly survey of 2,000 people to track user attitudes during the pandemic. John Larkinson would circulate the latest update on this to the board for information. [ACTION: JLk]

Item 4 COVID-19 UPDATE

7. John Larkinson referred to his observations relating to Covid-19 at the board strategy session the previous day and provided an update on recent issues.
 - A step up in services had taken place on 18 May. This had not been uniform across Great Britain, with Scotland and Wales taking a different approach. The industry seemed to have done a good job in planning this. ORR had facilitated a joined up approach between TOCs and trades unions.
 - Regarding the work going on to support the freight industry during the crisis, ORR had last week hosted a workshop with freight operators to discuss what would be required to justify applications for approval of extensions to track

access contracts. This had received positive feedback. It was now for freight operators to consider putting in their proposals.

- In respect of HS1 and Eurostar, ORR had continued to work with the parties and government regarding relief arrangements. ORR had done all it considered it was able to do in this area, though it was noted that there was the potential for us to receive an application to re-open the PR19 determination. The parties were currently considering their positions and next steps.
- DfT had approached ORR on Friday of the previous week advising that the UK Government planned to put an obligation on train operators using the Channel Tunnel to inform passengers of the rules in England regarding Covid-19 and social distancing. DfT had asked whether ORR would be willing to take on a monitoring and enforcement role in respect of this. John Larkinson said he had responded that in principle ORR would be willing to do this, subject to receiving further details. The board noted that this responsibility aligned with existing ORR responsibilities regarding passenger information and safety of the Channel Tunnel. The board agreed that it would be important that there is a very clear understanding of what the expectations would be on ORR in terms of enforcement. The next step was for DfT to provide further details ahead of the obligation taking effect in June.
- The board was updated on the numbers of staff who had caught Covid-19 and those that were shielding. Staff had been surveyed to understand both their ability to work at home (e.g. where they had caring responsibilities) and how they were coping, to enable a better understanding of wellbeing issues.
- It was noted that preparations were being made to ensure we were ready for a return to the office, once government advice changes. This included how to ensure a safe working environment and facilities, as well as protocols for how people work together.
- Reflecting the ramp-up in train services, it was noted that ORR safety inspectors would be stepping up inspection work on the network. Risk assessments for these staff were in production and would be shared with them.

Item 5 CHIEF INSPECTOR'S MONTHLY REPORT

8. Ian Prosser reported on the following.
 - He noted the work that his directorate had been doing to support the ramp-up in services. In particular, this involved facilitating agreement between senior industry representatives and trade unions on the principles for ensuring passengers and staff would be safe when more people use the railway. The safety directorate had produced a set of principles on this and developed these with stakeholders, chairing a number of industry meetings. This had led to the trade unions confirming they were content with the arrangements earlier this month.
 - On the new timetable, he reported that this seemed to have bedded-in well, but there were some pinch points on the network that would need monitoring in terms of numbers of people. He noted that he and the CEO would be going out on the railway on Friday to see how things were working. On this, the board thanked Ian for the excellent work he and his directorate had done to

provide leadership on health and safety, without which the ramp-up would have been much more difficult to achieve.

- Ian Prosser updated on two new pieces of work. The existing guidance on ORR's website would be updated shortly to include face coverings. RSD would also be running a session with industry and union officials to help facilitate in-cab driver training resuming. This would be important to support any future increase in services, given that some operators had new rolling stock.
- Ian Prosser noted the work to produce revised principles for driver controlled operation (DCO). Different DCO arrangements across the network had caused misunderstandings and the revised principles were intended to address this. Ian reported that DfT was now content with the principles. There were further discussions with industry later that day and the next step would be to get buy-in from RMT before formal consultation on the principles.
- The board asked about the data on safety regarding guard dispatch. Ian advised that RSSB had published data in 2017 and ORR had asked it to update this and publish it.
- *[bullet redacted as under investigation]*
- The board noted that the London Assembly's Transport Committee had put publication of its report on tram safety on indefinite hold. While ORR had originally not been asked to input into this, ORR had now made a submission to the Assembly. It was agreed that ORR should seek to build a stronger relationship with the secretariat of the committee, including offering to provide an overview of our role to support its future work. [ACTION: RGr]
- The board asked about the sickness rates from Covid-19 within Network Rail. It was noted that the anticipated high levels of sickness had not arisen, and sickness levels were improving. Separately, the board noted that Highways England's sickness levels were also low. ORR received weekly internal reports from both organisations on their analysis of Covid-19 impacts.
- Ian Prosser noted that he had raised the high level of SPADs at the recent RSSB board. The board asked for an update on what ORR was doing on SPADs to be included in next month's Health & Safety report. [ACTION: IP]

Item 6 CHIEF EXECUTIVE'S REPORT AND BOARD INFORMATION PACK

9. John Larkinson introduced his report, updating on recent developments. He noted that Highways England still remained without a chair, following Colin Matthews stepping down. *[the remainder of this paragraph redacted as potentially sensitive]*
10. John Larkinson mentioned that 2019-20 was the first year when financial flexibility rules have applied to Network Rail. He noted that the company had advised ORR that it has lost around £100m from its CP6 funding (which would go back to government) in connection with the rules, due to fluctuations from Network Rail's plans. These rules were a complex area and ORR would be reporting Network Rail's performance against them to provide transparency.

11. The board raised what would happen when the industry's extended exemption from Public Service Vehicle Accessibility Regulations (PSVAR) for rail replacement services expired at the end of December. It was noted that the longer term issue of supply of accessible buses had not been resolved. The board would be considering in due course a proposed update to ORR's Accessible Travel Policy Guidance in respect of PSVAR, following consultation.
12. Freya Guinness advised the board that the pay guidance for this year had now been received from the Cabinet Office.
13. The board noted that a report on the first year of the Rail Ombudsman would be discussed at its next meeting. Alongside this, it was agreed the board should be provided with information on what the ombudsman had been doing over the year and how it had been performing. [ACTION: DB]
14. It was agreed the future versions of the chart in the Board Information Pack on road user data should include Highways England's targets on the bars to enable performance to be put into context, with the time period notation moved to the top. [ACTION: GR]

Item 7 ANNUAL REPORT AND ACCOUNTS

15. Freya Guinness introduced the item, noting that she was seeking feedback from the board on the Annual Report and Accounts and for it to endorse the recommendation that the Accounting Officer sign them off, subject to the conclusion of remaining issues.
16. She noted that the Audit & Risk Committee (ARC) had reviewed the document last week with the National Audit Office (NAO) in attendance. The NAO planned to provide an unqualified audit opinion. Freya reported on progress in closing out the remaining issues, with just two matters now outstanding in addition to reflecting the minor drafting comments received from NEDs.
17. Bob Holland, as chair of ARC, confirmed that he was happy for the board to endorse the recommendation. He also noted the positive feedback from NAO and Mazars on the process that the team had undertaken.
18. The board approved the recommendation.

Item 8 NETWORK RAIL PERFORMANCE

Richard Coates joined the meeting for this item

19. Richard Coates introduced the item, noting a different approach from last year. This included separate messages by region and separate chapters for the System Operator (SO) and FNPO. The board was asked to agree the key messages and to provide a sense check, including on tone, to inform the further development of the document.
20. The board discussed the draft document and noted the main messages, including the fact that Network Rail had met its efficiency target for the year and that ORR had had to investigate North West & Central performance.
21. While the board welcomed the regional focus of the report, it asked that the regional comparisons be sharpened up, noting that only two regions had met their performance targets.
22. The board asked that the key messages on safety be made more balanced and less stark, and clear references to the separate Chief Inspector's Annual

Report included so that readers were aware safety was covered more fully elsewhere. The summary should also cover safety.

23. The board asked that the timetable changes section be sharpened up. It should also provide more balance in terms of the role of the SO/PMO, noting what could have gone better in May 2019 and the lessons from this.
24. The board agreed to delegate authority to sign-off the document to John Larkinson and Graham Richards.

Item 9 HIGHWAYS ENGLAND PERFORMANCE

Feras Alshaker and Iain Ritchie joined the meeting for this item

25. Feras Alshaker introduced the item on the draft assessment of Highways England's performance in 2019-20 and across Road Period 1 (RP1). This had been discussed at the Highways Committee last week. Feras noted that the safety key messages had been discussed at the previous board meeting. Since then, general messages had been added, including on general performance and financial efficiency. The Roads Expert Panel had commented on the draft assessment, and the key points had been circulated to the board as an addendum to the paper.
26. The board commented on the report. It was noted that a foreword from the CEO would be included to put the five year assessment into context, which would include the positive impact of the changes to the framework for highways introduced from 2015. This included the improvements made by Highway England and note ORR's role in supporting these.
27. The board agreed to delegate authority for sign-off of the assessment document and annual performance letter to John Larkinson and Graham Richards.

Item 10 CONSUMERS (PROPOSAL TO CONSULT ON NEW LICENCE CONDITION)

Marcus Clements, Matt Westlake, Stephanie Tobyn and Tom Cole joined the meeting for this item

28. Matt Westlake introduced the item, which proposed that ORR consult on introducing a new licence condition for passenger train operators regarding delay compensation. This condition would require adherence to a new code of practice on compensation, setting a baseline for all operators to meet. It would also require operators to accept claims from Third Party Intermediary (TPI) companies that meet the requirements of a separate TPI code of conduct. The proposed consultation would inform the statutory consultation that ORR would have to conduct to introduce the condition.
29. The board noted that the team's development work had including liaising with other regulators on similar conditions, including Ofgem and the FCA, to benefit from their experience of TPIs in their industries. It also noted that there was consumer demand for permitting TPIs to enter the market and that there would be benefits in terms of driving innovation and competition.

30. The board discussed the safeguards that would be in place to prevent abuse by TPI companies and that TPIs would take a cut of the compensation where passengers used their services. The team advised that TPIs would be required to make very clear that passengers could obtain compensation from train operators without paying a fee.
31. The board asked about the potential resource implications for ORR, given ORR would be taking on an adjudication role in the event that a train operator refused to accept claims from a TPI. The team confirmed that there would be some resource implications, but that the proposed approach had sought to minimise this while providing enough protection to stop rogue TPI operators.
32. The board agreed the proposal to consult, noting that the team would return following this for a decision on whether to proceed to statutory consultation.

Item 11 UPDATED DfT/ORR MEMORANDUM OF UNDERSTANDING AND STATUTORY GUIDANCE

Adam Spencer-Bickle attended for this item

33. Adam Spencer-Bickle introduced the item, noting proposed revisions to the DfT/ORR memorandum of understanding and statutory guidance. The board was asked to approve the changes to the MoU.
34. Stephen Glaister, chair of the Highways Committee, confirmed that the committee reviewed the paper the previous week and was content with the proposed changes.
35. The board discussed the change that would provide for Highways England to self-certify its compliance with its delegated expenditure controls via a statement in monitoring reports to ORR (rather than ORR assessing this directly, as at present). Adam advised that the team had looked at Highways England's governance and practice during RP1 and had been assured that this was sufficiently good to warrant this change.
36. The board agreed the changes to the MoU.

Item 12 RAIL/ROAD OVERVIEW

Iain Ritchie and Harry Garnham attended for this item

37. Graham Richards introduced the item, noting the purpose was to look at the key messages from our 2019-20 assessments of Network Rail and Highways England side by side to provide an overall sense check.
38. The board discussed the paper and noted the progress made with making comparisons within Network Rail and the value of these. It agreed that there was also value in doing the same for roads and noted that there were plans to do this. It was agreed that the foreword to the roads assessment should refer to this, noting what had been done for Network Rail. [Action: GR]
39. The board discussed the degree of coordination between Network Rail and Highways England on capital work and noted where ORR had looked at this previously during PR18. While it did not seem to be an issue at present, the Board was mindful that failures in this area could have a significant impact on users. It was agreed that the forewords to the annual assessments

should note the importance of both organisations continuing to coordinate on schemes and that we would look to measure this in future. [Action: GR]

Item 13 HOLDING TOCS TO ACCOUNT

Stephanie Tobyn and Marcus Clements attended for this item

40. Stephanie Tobyn introduced the paper, which sought the board's comments on the proposed approach to holding train operators to account during the Covid-19 pandemic. She noted that a letter from John Larkinson would be sent to TOCs on how ORR would be monitoring them during the pandemic.
41. Stephanie reported on what ORR had been doing to protect passengers' interests during the current period. As part of this, she noted her team had scored train operator websites on the information they were providing in connection with the ramp-up of services. The scoring had been shared with operators, who then responded quickly to address shortcomings.
42. She also noted areas that had been impacted by the pandemic, including accessibility and processing of season ticket refunds. The team had good working relationships with train operators and was meeting regularly with them to understand their challenges as well as to get issues resolved quickly.
43. The board discussed the challenges for train operators in managing Covid-19 impacts and issues for consumers. It noted some of the innovative work that was underway in response, including an app to advise passengers of crowding in stations.
44. The board noted that two train operators had just switched to requiring all passengers to have seat reservations as a way of managing social distancing on trains. It was reported that there had been an issue with the communication of this change to passengers, but this had been resolved following action from the team. Separately, the board noted that while the 'reservation only' arrangement had benefits in terms of managing social distancing during the pandemic, there would be disadvantages to passengers if it were to become a permanent arrangement.
45. The board thanked the team for their work in this area and asked that it produce a blog on consumer issues during Covid-19. [ACTION: ST]

Item 14 RIS2 UPDATE

Adam Spencer-Bickle, Feras Alshaker and Harry Garnham attended for this item

46. The purpose of this paper was to advise the board on how DfT had taken account of ORR's advice on RIS2 and to update it on how Covid-19 had affected the end of RP1. It also set out ORR's approach for monitoring Highways England during Covid-19 and ORR would be writing to Jim O'Sullivan on this.
47. The board queried how the recent Court of Appeal judgment on Heathrow expansion would affect RIS2. Adam Spencer-Bickle reported that DfT had received the early stages of a judicial review regarding RIS2. However, this was unlikely to impact RIS2 as a whole, but there was the potential for some of its flagship schemes to be challenged and there had been some delays to approval of planning consent for some projects connected with this.

48. The board discussed the wider financial pressures arising from Covid-19 and the potential implications for Highways England.
49. The Board discussed ORR's role in providing advice to DfT, and noted that it had been well received by DfT.

Item 15 REFLECTION ON 18 MAY HORIZON SCANNING SESSION

Paragraphs 50-53 have been redacted as policy under development

Item 16 ORAL UPDATES FROM ADVISORY PANELS, AND FEEDBACK FROM BOARD COMMITTEES

54. It was noted that updates on the business of ARC and Highways Committee had been covered during the course of the board meeting. Stephen Glaister reported on an item of AOB from the Highways Committee, which noted Highways England's completion of the A14 improvements had been delivered both within budget and somewhat ahead of time. It was agreed that this positive outcome should be recognised in an email from John Larkinson to Jim O'Sullivan, inviting Jim's thoughts on what the lessons were from this for future projects. [ACTION: Jlk]

55.

Item 17 ANY OTHER BUSINESS

56. There was no other business.

Item 18 NON EXECUTIVE DISCUSSION

57. As agreed following the board effectiveness review, the non-executive members of the board held a private discussion to reflect on the meeting and other items of interest.

Approved by the Board – 23 June 2020