

THE OFFICE OF RAIL AND ROAD

195TH BOARD MEETING

Tuesday 27 September 2022, 09:00 – 12:30

At ORR 25 Cabot Square, London, E14 4QZ
and by MS Teams

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

Executive members: Ian Prosser (Director, Railway Safety)

John Larkinson (Chief Executive) – on line

In attendance: Feras Alshaker (interim Director of Planning and Performance), Will Godfrey (Director of Economics, Finance and Markets) Vinita Hill (Director, Corporate Operations), Tess Sanford (Board Secretary) Elizabeth Thornhill (General Counsel), Stephanie Tobyn (Director, Strategy, Policy and Reform)

Other ORR staff who attended (remotely or in person) are shown in the minutes.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. Russell Grossman (Director of Communications) had sent apologies and Madeleine Hallward had been delayed.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The board approved the minutes of its meeting in July 2022 (subject to one correction of a date).
4. The board noted the update on actions outstanding which showed there were none outstanding.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

5. This was the quarterly report which had been discussed in some detail at HSRC¹ the day before. Ian Prosser briefed the board on Network Rail's management of industrial action on the network and the potential increase in safety risk if the action continued over a long period as a result of management fatigue and distraction. ORR continued to respond to specific concerns raised by the unions about management of safety on strike days.
6. Ian had been invited to sit as an observer on NR's weather risk task force – he noted that the hot dry summer was still having an impact eg on track geometry. The risks of running in hot weather needed to be carefully considered. Difficult choices had been made this summer to close some lines to protect passengers

¹ Health and Safety Regulatory Committee

- from the risk of trains being stranded without power in dangerously hot weather, as well as to mitigate the risk of operating infrastructure outside its design tolerances.
7. He reported that West Coast Railways continued to show no evidence of plans to fit central door locking on the Mark 1 rolling stock they used for running charters on the mainline. Other heritage operators were retro-fitting this, demonstrating that it was a reasonably practicable adjustment. Ian reported on good engagement elsewhere in the heritage sector and that, after early issues with re-opening after Covid, the sector safety statistics were broadly stable. The board noted that heritage rail is a potentially high risk environment making strong volunteer management very important.
 8. Ian reported on work by the team with Alstom to mitigate risk around specific capacitors overheating and to seek a root cause analysis of the issue before authorising the C2C fleet for use on the Elizabeth Line.
 9. Ian reported that following the successful adoption by tram operators of the principle of driver alertness devices, Aslef had accepted the principle of the same devices on trains. Freight operators were particularly keen to move this forward. He drew the board's attention to the table of forthcoming prosecutions and gave verbal updates on some.
 10. The board discussed the detail of some of the charts provided in the report, particularly around the closing of RAIB recommendations, and suggested that the in-house data tool (VIKTORR) be explored to test whether it could identify future weather vulnerabilities on the network.
 11. Ian updated the board on NR's progress with its modernising maintenance programme noting the need for detailed planning and careful delivery of implementation at a regional or local level. This was an area of concern for the unions. ORR continued to observe the safety validation process in relation to this programme. The board noted the relative roles of NR's centre (standard setting, safety validation) and the regions (safe implementation) and the importance of both parts getting it right.

Madeleine Hallward joined the meeting at this point.

Item 5 CHIEF EXECUTIVE'S REPORT

Redact this report from the published version as time-sensitive and covering confidential issues.

Item 6 HIGHWAYS MONITOR

23. Feras Alshaker updated the board on work around National Highways' biodiversity target, the smart motorway response time and progress to respond to the TSC recommendations in December. He outlined some of the challenges emerging for RIS3² in terms of funding agreement: ORR's role in bringing transparency to these challenges would be important. The board noted an apparent increase in incidents of stopped vehicles in live lanes of all lane running motorways and heard that staff were seeking more detail. The board asked to see the Executive Summary of ORR's advice to DfT on RIS3 renewals when it was completed **[Action 04: Feras Alshaker]**
24. The board noted the report.

² Road investment strategy 3

Item 7 MOU FOR APPROVAL

25. Ian Prosser asked the Board to approve a new memorandum of understanding between Health and Safety executive Northern Ireland, the Department for Infrastructure and ORR. This was a timely update of existing agreements. He confirmed there would be no additional resource draw as a result of this agreement.
26. This was part of a programme of reviews and renewals of existing MOUs over the next few months.
27. The board approved the MOU for signature by John Larkinson.

Item 8 RAILWAY OMBUDSMAN SPONSORSHIP

Scott Hamilton, Gayle Webster, Helen Evans and Lucy Doubleday joined the meeting.

28. Stephanie Tobyn introduced the item and Scott Hamilton described how the proposals followed on from the board discussion in May and the successful conclusion of a consultation on a new Ombudsman Operating Model and proposed Licence Modification run over the summer.
29. The board agreed that the paper showed clear responses to stakeholder input and preserved successful aspects of the existing system and, rightly, sought to make changes where areas for improvement had been identified. The board noted that ORR was not taking on additional financial risk with this work. The board discussed whether improvements to the scheme would be possible alongside better efficiency and noted aspects of the design which enabled this. The provision of two advisory panels, one clearly representing users and the other representing industry views was discussed and accepted as positive learning from the current scheme.
30. The board agreed the approach outlined in the paper and delegated John Larkinson to sign the eventual contract upon completion of the tender process.

Item 9 PR23 CHARGES REVIEW

Jennifer Genevieve, Will Chivers and Carl Hetherington joined the meeting with Robert Carruthers on line

31. Will Godfrey introduced the paper which built on the July board discussion and incorporated the results of engagement and further work over the summer with stakeholders. The board was asked to approve publication of a policy conclusions document on the basis set out in the paper – noting there were two issues which remain subject to some further work – indexation of charges, and billing for traction electricity usage.
32. The board asked about the different approach to freight market segments in terms of refreshing market-can-bear evidence for ICCs. This was rooted in the shifts currently happening in the energy sector, and would mean that charges for both biomass and nuclear waste would be reviewed. There was no expectation of the basis for other charges needing to be reviewed in detail at this time.
33. The board agreed that publication of the conclusions document should proceed on this basis.

Item 10 PR23 – INCENTIVES REVIEW – SCHEDULES 4 AND 8

Jennifer Genevieve, Will Chivers and Carl Hetherington remained for this item with Will Holman, Helen Evans, Giulia Gamberale, Joe Quill on line

34. Will Holman introduced the paper which confirmed the changes discussed with the board in July. One decision in the document was to propose better monitoring of possessions – ORR is commissioning consultants and the board asked for more detail on consultant proposals for monitoring [**Action 05: Will Godfrey**]. The proposed approach allowed for GBR TOCs not to pay Schedule 8 if rail reform legislation delivered changes to requirements for a performance scheme, but they would still need to collect and submit data to inform delay attribution. The board discussed the option to undertake a mid-period update, noting that the materiality threshold for such a review should be very high – and it should be only at ORR’s discretion.
35. The board agreed that the publication should proceed on this basis.

Item 11 HS1 - CONSULTATION ON PR24

Debbie Daniels joined the meeting with Howard Taylor on line

36. Feras Alshaker reminded the board of recent work by HS1 Ltd to alter the charges for the current control period. This was not considered to have any implications for the approach to PR24, which had been reviewed alongside advice on PR19.
37. Debbie Daniels described the consultation as launching the PR24 process and offering stakeholders an opportunity to contribute evidence to ORR’s thinking. It would include stations as part of the ORR review for the first time. Areas likely to produce comment were funding models for renewals and the definition of ‘specified upgrades’.
38. The board noted the importance of the consultation in setting the overall picture of our approach to the review.
39. The board agreed that the consultation should proceed on the basis of the paper.

Item 12 RAIL REFORM UPDATE

Anna Rossington joined the meeting for this item

40. Stephanie Tobyn briefed the board on what was known about the new government’s approach to rail reform and shifts in priorities.
41. The board noted the potential for ORR to be involved in the development of legislation on minimum service levels and suggested that staff look at international comparators (US and France) and other industries (airlines) in beginning to think how such levels could be set. Academic sources should also be explored.
42. Government had also announced reform on retained EU law which would include about 75 pieces of rail legislation which had implications for safety, access, charging etc.
43. The Board discussed possible delays to the rail reform legislation, potential impacts on the industry and ORR, and scenarios for how this might evolve over time

Item 13 REPORTS FROM COMMITTEES

44. Madeleine Hallward reported on the Highways Committee meeting the day before, particularly discussion of operation Brock and a visitor from PINS³. The board asked for further information on NH’s recruitment challenge and any intelligence on

³ Planning Inspectorate for England

construction staff availability either in the UK or in Europe **[Action 06: Feras Alshaker]**

45. Justin McCracken reported on HSRC the day before. He highlighted for the board a discussion on NR's weakness around training on identification of asbestos risk. He also reported on an update on safety enforcement in the Channel Tunnel and a very open discussion with Andy Lord and Lili Matson of Transport for London about the financial and other challenges facing the organisation. TfL's presentation should be shared with the board **[Action 07: Secretariat]**
46. Daniel Ruiz reported on two board visits in August to Network Rail sites with challenging earthworks – Folkestone Warren and Slochd. This was in recognition of the significant issues which climate change was bringing to earthworks and the considerable challenge they offer for safe operation. Network Rail hosts had been very helpful and the visits highly informative.

Item 14 ANY OTHER BUSINESS

47. Next board meeting would be in October in York.
48. Quarterly Committee meetings would be held on 4 November in London

Formal Meeting closed at 12.15 pm.

Following the meeting, board members joined two 'teach-in' sessions in relation to:

- *Open Access applications, decision making framework*
- *PR23 – overview of mechanisms and framework.*

These sessions ran from 12:30 to 15:30.