

THE OFFICE OF RAIL AND ROAD
207th BOARD MEETING
Monday 9 October 2023, 11:00 – 16:00
At ORR, 25 Cabot Square, London, E14 4QZ

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

Executive members: John Larkinson (Chief Executive), Ian Prosser (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), Vinita Hill (Director, Corporate Operations), Graham Richards (Director, TfL Analysis), Elizabeth Thornhill (General Counsel), Stephanie Tobyn (Director, Strategy, Policy and Reform).

Other ORR staff attended as follows:

*Jennifer Genevieve (Deputy Director, Periodic Reviews and Monitoring),
Carl Hetherington (Deputy Director, Regulatory Economics and Finance),
Steve Helfet (Deputy Director, Railway Operations),
Steve Fletcher (Deputy Director, Engineering & AM),
Sarah Shore (Deputy Director, Railway Safety),
Richard Coates (Deputy Director, RPP),
Grace Garner (Head of Regulatory Analysis),
Matt Wikeley (Head of Rail Outcomes Policy),
Will Holman (Head of Incentives and Reform),
Paddy Johnson (Head of Strategy & Policy Projects), and
Robert Carruthers (Head of Charges & Rail Economics, via MS Teams).*

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to the meeting. There were no apologies for absence.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 INTRODUCTORY REMARKS

3. The Chair briefly introduced the meeting, referring to a tabled document which looked back at desired outcomes and principles set at the beginning of the PR23 process. The Board was invited to consider, in making their decisions, whether the desired outcomes would be achieved.

Item 4 INTRODUCE TEAM AND OVERVIEW OF DECISIONS

4. Will Godfrey (WG) briefly introduced the principal themes of the meeting, referring to performance, freight, and Scotland, as well as the momentum and impact of PR23 work, and key messages.

Item 5 LEGAL FRAMEWORK

5. Elizabeth Thornhill (ET) introduced the legal framework included in the agenda pack, specifically highlighting the Section 4 duties incumbent upon the Board (including: duty to promote improvements in railway service performance; to protect the interests of users of railway services, and to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance), and the legal processes around PR23.
6. Routes of potential legal challenge to PR23 were also outlined, such as an objection from Network Rail leading to referral to the Competition and Markets Authority (CMA) and/or judicial review. The Board enquired as to consequences of receiving a judicial review.

The following sentence is redacted as legal advice:

[...]

Item 6 TRAIN PERFORMANCE TRAJECTORIES

7. Feras Alshaker (FA) provided a contextual introduction, with supplementary detail provided by Richard Coates (RC). Reference was made to decisions agreed by the Board at their meeting on the 26 September, regarding the 2+3 model and setting the Scotland train performance measure at 92.5% for each year of CP7. Specific consideration was given to Network Rail's (NR) response to the Draft Determination (DD) on performance forecasts, and network busyness assumptions.
8. The Board discussed pressures on the system, the modelling behind the on-time measure, and assumptions around passenger numbers increasing. It was confirmed that the methodology used had been reviewed. The Board supported the maintained focus on improving performance despite the challenging circumstances, and noted the assessment of the Independent Reporter.

Passenger train performance – On Time and Passenger Cancellations in England & Wales

9. The Board considered the proposed baseline trajectory for 'Passenger train performance – On Time in England & Wales', examining the five-year trajectory and chart, as well as regional variations – noting that of Wales and Western in particular. It was recommended to accept NR's proposed on time trajectories for years 1 and 2 for E&W regions, noting the indicative

trajectories for years 3 to 5 (which would be reset at the end of year 2). It was felt the message of improved performance had been accepted by NR, and increasing ambition demonstrated, with uncertainty recognised by ORR in the 2+3 model.

10. Discussion focussed on activity ahead of the 2+3 reset; accuracy of performance forecasting and levels of uncertainty inherent to modelling; on-time stretch for Train Operating Companies (TOCs); and improvements for customers. It was confirmed that work would be undertaken shortly to define the process for the 2+3 reset and gather relevant evidence.
11. The Board discussed the importance of stakeholder buy-in when setting performance targets and the associated challenges of whole-industry performance targets. It was suggested that these considerations be drawn out in the executive summary accompanying the Final Determination (FD), noting that the ORR did not have oversight of TOCs and their performance targets.
12. The Board considered the proposed baseline trajectory for 'Passenger train performance – Cancellations in England & Wales'. It was noted that the revised trajectories showed improvement from CP6 exit into the first two years of CP7. It was recommended to accept NR's proposed cancellation trajectories for years 1 and 2, noting the indicative trajectories set by ORR for years 3 to 5 (which would be reset at the end of year 2).
13. The Board discussed the options for setting performance baselines, including consideration of pre and post-pandemic performance. It was responded that whilst overall improvement in TOC performance was forecast, it was not to pre-pandemic levels and assumed a level of ongoing impact from industrial relations. The 2+3 model would allow the trajectories for passenger cancellations to be revisited in future, an initiative which was welcomed by the Board.
14. It was suggested that information covering types of cancellations be enhanced in the FD, and the implications of industrial unrest on the performance targets be made clear.

The Board agreed the proposed baseline trajectories for:

- **Passenger train performance – On Time in England & Wales**
- **Passenger train performance – Cancellations in England & Wales**

Passenger train performance – On Time and Passenger Cancellations in Scotland

15. It was recommended to set the On Time baseline trajectory using an updated regression from NR Scotland's train performance measure forecast (91% in year 1 rising to 92.5% in years 4 and 5 of CP7). Reference was made to the analysis undertaken and the accompanying illustrative chart.
16. It was explained that the passenger cancellation trajectory had been maintained from the DD and the trajectory accepted by NR.

The Board agreed the proposed baseline trajectories for:

- **Passenger train performance – On Time in Scotland**
- **Passenger train performance – Cancellations in Scotland**

Freight train performance – Freight Cancellations in England & Wales and Scotland

17. It was recommended to set baseline trajectories based on an average of historic performance, removing the high weighting applied by NR on the first half of the current year which included periods of poorer performance, but no longer including the 5% stretch previously applied in the draft determination.
18. Reference was made to the analysis undertaken and the accompanying illustrative charts. The Board discussed an upward trend on historical cancellations, which was said to have numerous contributing factors, including industrial action and a change in the mix of freight traffic. Consideration was given to the necessary funding to maintain the system and ensure its availability and the impact of more passenger services on freight operations, as well as any barriers to improvement. It was stated that maintaining performance, in light of a busier network and subsequent pressure on freight, reflected a level of stretch.
19. The Board considered whether the performance trajectories would facilitate growth in the freight sector, noting the external drivers, and the role of the regulator in achieving such an objective.

The Board agreed the proposed baseline trajectories for:

- **Freight train performance – Freight Cancellations in England & Wales and Scotland**

Item 7 INCENTIVES: SCHEDULES 4 AND 8

20. WG introduced the section and outlined the decisions required from the Board, underlining that incentive regimes should be expected to produce a payment-neutral outcome and that setting the correct benchmark was critical to this result.

Passenger

21. It was recommended to maintain the DD position and not to adjust TOC benchmarks, noting this to be consistent with a high threshold for adjustments to recalibration data. The Board were reminded that at the start of the PR23 process it was felt that given the context of rail reform, it was not the time for a fundamental review of Schedule 8. It was requested that this context, and the current uncertainty, be made clear in the FD. WG highlighted the opportunity for recalibration under the 2+3 model which had assuaged concerns raised by some respondents.
22. The Board considered the time periods of data informing passenger benchmarks (post-pandemic, reflecting lower service volumes) and freight

benchmarks (including pre-pandemic, without any fundamental shift). The scale of change in the passenger regime was explained to be more significant than in freight, noting the impact of the pandemic and industrial relations. Given the principle of net payment neutrality, this had influenced the selection of a post-pandemic recalibration timeframe (October 2021 to October 2022) for passenger incentives. Stakeholder feedback on the DD, and industry consensus, was also reflected on.

23. It was noted that, at the Board meeting on 26 September, a transition in the reduction to lower payment rates (an average of 45% reduction) under Schedule 8, with a revisiting of the evidence base available at the time of the '2+3 reset', had been agreed.

The Board agreed the calibration of passenger Schedule 8 performance benchmarks.

Freight

24. WG introduced the section and outlined the decisions required from the Board regarding both incentives and charges (Item 8) for freight. The Board considered the full set of proposals for incentives and charges. It also considered the wider context including the sector's long-term ambitions for growth.
25. The Board were reminded by ET that in PR18, a 10-year plan had been set out to achieve cost reflectivity in VUC charges (in the final year of CP7), consistent with legislation. It was recognised that this period could not be open-ended or indefinite and direct costs would need to be recovered.
26. Turning to incentives, WG explained that FOCs received money under the Schedule 8 incentives set in CP6 as they had outperformed their benchmark. As incentive regimes were designed to be financially neutral, it was proposed to reset the regime in CP7. WG referred to feedback received from FOCs, included in the agenda, which expressed strong disagreement with the approach to recalibration. The Board considered an adjustment to the proposal, of a 50% moderation to the change in the benchmark between PR18 and PR23. ET referred the Board to the Section 4 duty to protect the users of railway services, which may support a more cautious approach to the data.
27. The Board considered the evidence and analysis provided, the stakeholder feedback, and their Section 4 duties, and agreed to set the freight operator benchmark midway between the PR18 and PR23 recalibrated levels. This was to reflect uncertainty about whether freight operators will be able to return performance to the levels seen in the recalibration period.

The Board agreed:

The Variable Usage Charge (VUC) capping policy: maintaining a below-cost capping policy for freight and charter operators on the same gradual trajectory to cost reflectivity as set at PR18, which does not include the impact of lagged inflation in CP6; and

The calibration of freight Schedule 8 regime parameters, with a 50% moderation to the change in the benchmark between PR18 and PR23.

The meeting was adjourned from 1.30pm to 1.55pm.

Madeleine Hallward left the meeting.

Item 8 CHARGES

28. Jennifer Genevieve (JG) introduced the item, and referred to the final outstanding freight decision regarding Infrastructure Cost Charges (ICCs). The Board considered the analysis provided and recommendation.

The Board agreed the Freight Infrastructure Cost Charges (ICCs) and to maintain the approach from the Draft Determination for all ICCs for freight, including capping the increase in the Spent Nuclear Fuel (SNF) at the levels proposed (£21.23).

29. JG outlined the remaining decisions regarding charges related to passengers. In particular, the Board considered the establishment of a new market segment for open access services to major airports and setting an ICC of £5 per train mile for these services, and the stakeholder feedback received as to whether consultation had been sufficient. WG said it had been signalled that a consultation was coming in the DD, and that consultation was issued in early August. WG also clarified that the charge would be phased-in for any new entrant operator.
30. The Board also considered whether to confirm the recalibrated Station Long Term Charge (LTC) which would result in an average increase of 20%, with significant increases at some stations. JG explained that the 20% increase was due to an increase in forecast operational property renewals spend, which the Board discussed, and station categorisation was based on station-specific expenditure. JG referred to Highbury & Islington as an example of a station which had seen a significant charge increase. In response to questions, Robert Carruthers (RC) expanded upon the calculations behind the recalibration exercise and that total forecast income from station LTCs was around 20% higher than in CP6.

The Board agreed:

To confirm the existing approach where Passenger VUC rates are fully cost reflective;

The establishment of a new market segment for open access services to major airports and setting an ICC of £5 per train mile for these services; and

To maintain the draft determination approach to setting the Station Long Term Charge (LTC).

Item 9 LEVEL OF SCOTLAND PERFORMANCE FUND AND SCOTTISH MINISTERS' CP7 HLOS REQUIREMENTS

31. Stephanie Tobyn (ST) introduced the section and outlined the decisions required from the Board, related to the targeted performance fund, timetable resource, journey time improvements, and gauge requirements. An update was provided regarding a letter received on 6 October from NR's Managing Director of Scotland's Railway regarding financial change. The letter referred to the decrease in Fixed Track Access income of £71 million, to take account of the lower funding set by Transport Scotland, differences in assumptions regarding input prices due to inflation, and differing views as to the risk fund and train performance fund. The letter also contained the suggestion of an in-year correction mechanism regarding inflation and whilst acknowledging the managing change process, did not see it as designed for that purpose.
32. The Board acknowledged movements in the risk fund and train performance fund since the DD. The late nature of financial clarifications by Transport Scotland would be referred to in the key messages. However, the view was that the train performance fund was affordable and justified, particularly given the HLOS requirement to deliver ambitious performance targets. The governance of the fund had been discussed at the previous meeting of the Board on 26 September.

The Board agreed to:

Maintain the draft determination proposal of a targeted performance fund in Scotland (which could be spent on improvements to track and train which benefit the infrastructure) but to reduce its value to £50m;

Require Network Rail to maintain sufficient dedicated resources available to deliver timetabling activity on the Scottish network, which must be familiar with its geographical, market and operating characteristics, using processes and priorities fully aligned with the Scottish strategic priorities; and

Require that delivery of journey time improvements, for the purposes of the HLOS requirement, must be delivered via OMR (operations, maintenance, and renewals) funding.

33. It was noted that further discussion was required with NR and Transport Scotland regarding gauge requirements.

Item 10 FINANCIAL FRAMEWORK AND NETWORK GRANT

34. Carl Hetherington (CH) introduced the item, and outlined the decisions required from the Board, referring in particular to the proposed network grant and funding arrangements, and affordability of outputs. The Board examined the reconciliation to the Statement of Funds Available (SoFA) provided in the agenda pack. The Board also considered the differences in split in England & Wales and Scotland.

The Board agreed:

That the output requirements in the HLOS can be afforded by the funding available in the SoFA for England & Wales and the FTACs and network grants (as set out in slide 49).

That the output requirements in the HLOS can be afforded by the funding available in the SoFA for Scotland and the FTACs and network grants (as set out in slide 49).

Item 11 SAFETY

35. Sarah Shore (SH) introduced the item, and outlined the decisions required from the Board, referring to issues outlined at the DD. Areas highlighted included spend on renewals (mainly related to earthworks and structures) and the NR safety risk bow tie framework. Since the DD, further evidence had been requested, and received, across a range of areas. This had led to improved confidence in the adequacy of CP7 plans to control risks, but the infrastructure monitoring and electrical safety delivery plans in particular required more detailed work to demonstrate credible delivery.
36. The Board considered the further work required and assurances received regarding improvement and follow-up. Reference was made to targeted assurance reviews, as well as implications around efficiency and performance. The Board suggested that future consideration of intervention plans might be discussed either by the Health and Safety Regulation Committee or Board itself.
37. The Board also referred back to the market-led approach discussed under the DD. SS confirmed that this approach was a tool to decision-making by NR rather than involving any compromise on safety.

The Board agreed that Network Rail's response addressed the issues raised in Draft Determination and has the potential to deliver sustained (and in places improved) safety management and legal compliance.

The Board was content that reliance be placed on improving plans by the start of CP7 and that ORR had committed to considerable continuing scrutiny throughout the control period to hold Network Rail to account for the safe delivery of its plan, particularly: checking future application of its safety risk bow tie framework.

Item 12 E&W PERFORMANCE IMPROVEMENT AND INNOVATION FUND

38. RC introduced the item, and outlined the decision required from the Board. The DD had proposed a Performance Improvement and Innovation Fund (PIIF) of £40 million in England & Wales which built on a similar dedicated fund in CP6. No change was recommended.
39. The Board considered the different drivers behind an improvement and innovation fund in E&W compared to a targeted performance fund in Scotland. It was confirmed that no significant issues had been raised in stakeholder feedback regarding governance or use of the fund in comparison to the Scotland performance fund. Consistent governance principles to the CP6 Performance Innovation Fund (PIF) were therefore recommended for the E&W fund. The Board queried the spending profile across CP7, referring to a previous suggestion that it be frontloaded.

The Board agreed to include a performance improvement and innovation fund for England & Wales of £40 million to send a strong message on performance.

Item 13 MANAGING CHANGE

40. Paddy Johnson (PJ) introduced the item, and outlined the decisions required from the Board highlighting updates since the DD. It was explained that the Managing Change Policy (MCP) had not been extensively called upon across CP6, and was not considered a significant administrative burden when required. Further explanation was given regarding the approach to flexibility in the MCP and the incorporation of risk management principles.
41. The Board welcomed the work undertaken, and in particular, regarding the risk management principles, which it deemed important to have outlined. The evolutionary approach to the policy and benefits of controlled flexibility were recognised.

The Board agreed:

That the approach to flexibility set out in the Managing Change Policy should remain largely the same as the proposal put forward at draft determination, despite pressure from Network Rail to be more flexible.

To incorporate the Risk Management Principles into the Managing Change Policy.

Item 14 STOCK-TAKE AND KEY MESSAGES

42. WG introduced the item and referred to the key messages for external communications, including: improving outcomes for customers with a focus on train performance (passenger and freight); asset and environmental sustainability; effective management and provisioning for risk and continued focus on efficiency. Russell Grossman (RG) continued the introduction, outlining how PR23 could position the ORR as an effective regulator.
43. The Board discussed the importance of whole-industry train performance measures to maintaining and improving satisfaction for those using the railway, whilst also recognising the challenges to setting such targets without whole-industry control. The context of rail reform was also considered.
44. The Chair reviewed the desired outcomes document tabled at the outset of the meeting, which outlined principles set at the beginning of the PR23 process, and considered that these had been met.
45. The Board requested that the updated Executive Summaries to the FD be circulated by correspondence prior to their finalisation [**Action 10/01**]. It was suggested that this might include further mention of the ORR's role in supporting the industry to address the challenges of climate change.

Item 15 TONE AND KEY MESSAGES

46. The Board referred to comments made under the previous item. Further comments were given to refer to customers (rather than users), to further highlight passengers and freight customers throughout, to give greater expression to the flexibility and agility of the '2+3 model', and to set a tone of action and deliverables. It was also suggested that the heading before paragraph 1.7 be renamed from conclusions.

Item 16 SUPPLEMENTARY AND LOW-LEVEL DECISIONS

47. The Chair reordered the agenda to discuss the supplementary and low-level decisions before next steps. WG introduced the item, and drew attention to the Schedule 8 Great British Railways (GBR) 'switch-off' mechanism in particular.
48. The Board raised queries on environmental sustainability (under outcome measures) and the Composite Sustainability Index (CSI) baseline trajectory. Discussion ensued in relation to the delivery of Scope 3 carbon emissions measures, as well as the different requirements between England & Wales and Scotland. The Board requested that further consideration be given to Scope 3 carbon emissions as a measure of environmental sustainability [**Action 10/02**]. Regarding the CSI measure, reassurance was given as to regular meetings with NR asset managers and that this was being monitored closely.

The Board agreed the supplementary and low-level decisions outlined in Document A3.

Item 17 NEXT STEPS

49. The proposed publication date of the FD was noted as 31 October, following discussion as to whether this remained appropriate. Reference was also made to the next steps outlined earlier in the meeting, under the legal framework (item 5).

The Board agreed to delegate sign-off of the Final Determination to the Chief Executive.

Item 18 BELOW THE LINE

50. The Board noted the item below the line, namely the letter received by the Chief Executives from Freightliner, GB Railfreight, and DB Cargo, and found it to be useful context.

Meeting end: 3.46pm

Approved: 28 November 2023