

THE OFFICE OF RAIL AND ROAD

215th BOARD MEETING

Tuesday 21 May 2024, 09:00 – 14:30

At Leonardo Royal Hotel, 80 Jamaica Street, Glasgow, G1 4QG

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

Executive members: John Larkinson (Chief Executive), Ian Prosser (Director of Railway Safety)

In attendance: Fiona Bywaters (Board Secretary), Will Godfrey (Director of Economics, Finance and Markets), Russell Grossman (Director of Communications), Vinita Hill (Director, Corporate Operations), Richard Hines (Acting Director of Railway Safety), Graham Richards (Director, TfL Analysis), Elizabeth Thornhill (General Counsel), Stephanie Tobyn (Director, Strategy, Policy and Reform).

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 Bob Holland, Daniel Ruiz, and Feras Alshaker.

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the meeting held on 23 April 2024 were approved.
4. A brief update was provided on actions arising and completed from the previous meeting.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

5. Richard Hines (RH) introduced the report, referring to: West Coast Railways' (WCR) application for an exemption from Regulation 5 of the Railway Safety Regulations 1999 and arrangements for any related inspection; the Northwich railway station roof collapse (2021) and SCS review of the investigation, as well as engagement with Mike Amesbury MP further to procedural delays; Network Rail's (NR) Southern Region assurance arrangements following weaknesses found in the monitoring of compliance of structural assets; and management of welding fume risk.
6. In relation to Northwich station, Justin McCracken (JM), as Chair of the Health and Safety Regulation Committee (HSRC), noted the recent internal audit on investigation processes for which the case should be an input. Under a future item at HSRC, he would be seeking appropriate management assurance and controls. Vinita Hill (VH) added that the Audit and Risk Committee would also

consider interim feedback on the same internal audit report. The procedural delays incurred in what was essentially a criminal investigation concerned the Board.

The following paragraph [text in square brackets] is partially redacted from the published version as time-sensitive and covering confidential legal issues.

7. [...] Following a request of the Chair, RH agreed to provide the board with a 'top ten' list of items for action by NR, and any way in which the ORR Board may be of assistance **[Action 05/01]**. RH reminded the Board that guests from NR would attend the next meeting of HSRC, and that the relevant briefing would likely take forward the action.
8. Further update and discussion related to:
 - Adequacy of the final Avanti West Coast risk assessment relating to the 'reasonable practicability' of fitting a speed supervision system on the new Hitachi class 80X trains, to replace their fleet of Super-Voyagers. RH would be meeting with the Managing Director the next day;
 - The Four Lines Modernisation (4LM) project;
 - Initial enquiries into a fatal accident at Canons Park; and
 - An unplanned audit from the National Examination Board in Occupational Safety and Health (NEBOSH) regarding an in-house post-graduate diploma (for which detail would follow in the next report).

Item 5 CHIEF EXECUTIVE'S REPORT

This report is redacted from the published version as time-sensitive and covering confidential issues.

9. [...]

Item 6 NATIONAL HIGHWAYS

Rachel Gittens (Deputy Director, Strategic Road Network) joined the meeting in person for item 6.

12. Rachel Gittens (RG) introduced the item, referring to the coinciding pressures falling on the highways team at present and the timeline of board engagement. Further references to the report included:
 - The current investigation into NH and any executive decision concerning a case to answer letter;
 - Progress of NH under the Emergency Area Retrofit programme; and
 - An upcoming television programme regarding smart motorways (believed to focus on government policy).

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13. [...]

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14. The board asked when information on any case to answer would be shared, given the separation of decision-making between executive and board. JL agreed to circulate any case to answer letter regarding the National Highways' investigation **[Action 05/02]**. ET confirmed that the board's decision on enforcement was separate to executive decisions to investigate and determine whether there was a case to answer. [...] JL explained how NH would be informed of any decision.
15. The Chair informed the board of an upcoming meeting with the newly-appointed Chair of NH, confirming that the substance of the investigation would not be discussed.
16. The board further discussed a 5th line quality assurance review of NH's fourth-year smart motorway report, with consideration of relevant safety metrics and public perception.

Item 7 WALES AND WESTERN REGULATORY INVESTIGATION

Richard Coates (Deputy Director, RPP), Steve Helfet (Deputy Director, Railway Operations) and Siân Jefferies (Senior Legal Advisor) joined the meeting in person for Item 7. Patrick Crowley (Senior Regulation Manager) and Samantha McClelland-Hodgson (Manager, Network Regulation) joined via MSTeams.

17. Elizabeth Thornhill (ET) introduced the report, highlighting both the recommendations and the Board's section 4 duties, whilst noting that Network Rail (NR) had raised issues of process and substance from their perspective. The process was viewed as fair by ORR but the Board was reminded to independently consider the investigation based on the evidence and representations provided, in accordance with ORR's holding to account policies, and in consideration of their section 4 duties.
18. The Board noted the investigation findings and Network Rail's representations received in response to the case to answer letter, its factual accuracy checks of the evidence report, and ORR's views on these.
19. The Board first considered whether the investigation evidence demonstrated that Network Rail was in contravention of its network licence (section E of the report). Richard Coates (RC) confirmed that the report recommended the finding of a current breach (which encompassed both past performance and ongoing breach) of condition 1 of the network licence. ET clarified that the network licence spanned CP6 and CP7, and that there were no material differences between the holding to account policies applicable to those periods.
20. The Board discussed the recommendation and investigation report, determining whether relevant conditions were met for a past or present breach. Deliberations considered levels of performance (past and present); the development and breadth of Project Brunel; and existing initiatives to improve performance and their impact (including the performance recovery

plan). Actions in the performance recovery plan were perceived to be of a tactical rather than strategic nature, which had contributed to a failure to meet performance criteria. It was recognised however, that some action had been taken with regard to leadership concerns.

21. The Board considered Network Rail's response to the evidence report and factual accuracy checks, and whether sufficient time had been permitted. It was explained that NR had three weeks to respond to the case to answer letter, and four working days for the factual accuracy checks (then extended to five), which was viewed as appropriate. The Chair drew attention to paragraph 48 of the report (on points of process), accepting that the investigation had been conducted in line with policy.

22. The Board explored the latest performance position, provided in paragraphs 50 to 53 of the report, and in the context of a moving annual average (which remained well below target). Concerns were raised regarding the sustainability of performance over time.

The following paragraph is redacted from the published version due to legal privilege:

23. [...]

24. The Board gave further consideration to any shortcomings in the action taken, such as the need for further development of Project Brunel and its geographical scope, and the ongoing need to make governance improvements in the region, as well as areas of improved performance. A past breach was viewed as clear, based on the evidence, and that although NR had engaged with tactical initiatives to improve performance, these initiatives could not yet be viewed as sustained and performance still fell below target (noting also the lower targets of the Wales and Western region in PR23, in comparison to others). It was confirmed that the region's performance also remained on the regulatory escalator, whilst Annex D of the report demonstrated that it was possible for NR to take further actions. The Board viewed this as supporting a current breach, based on the evidence provided.

25. **The Board agreed that Network Rail be found in contravention of condition 1 of its network licence, finding a current breach.**

26. Having found a current breach, the board then considered options for enforcement and whether a final order should be issued. It was explained that in the case of a current breach, a final order would be issued unless exceptions were found to apply. RC explained that the recommendation of the executive was that no exception applied and therefore a final order should be issued (as per Section E and Annex D of the report). The Board suggested that the decision letter capture what further action could be taken by NR to improve performance, particularly around governance, asset management and operations. RC explained that the draft final order included in the agenda would be further refined, alongside an accompanying letter which would set out the reasoning and rationale underpinning the final order.

27. **The Board agreed that no exception applied to the issuing of a final order in response to finding a current breach of the network licence.**

28. RC referred to paragraphs 91 and 92 of the report, for the Board to consider whether it wished to delay any penalty decision or agree with the recommendation not to defer.
29. **The Board agreed not to delay any penalty decision.**
The following paragraph [text in square brackets] is partially redacted from the published version due to legal privilege:
30. RC invited the Board to consider whether a penalty, sanction, or reasonable sum was appropriate in this instance. The recommendation was in favour of a reasonable sum. The Board considered the Macrory report six penalty principles outlined in paragraph 94 of the report, agreeing a reasonable sum to be appropriate. [...] The Board also considered the impact of a reasonable sum on changing behaviour and the impact of the penalty on railway users and funders, as well as the scaling of penalty to performance-related pay.
31. The paper proposed a reasonable sum to be in the £1-2 million range (after mitigation) as consistent with section 4 duties, in particular to protect the interests of users of railway services and to promote the use of the railway network. The Board deliberated as to whether the proposed sum was reasonable and appropriate, and whether the mitigations were well-reflected, as well as considering performance-related pay at NR. The Board was of the view that mitigations were not sufficient to find a penalty of £1 million. After further deliberation:
32. **The Board agreed the imposition of a reasonable sum of £5 million, mitigated by £2 million – and therefore a reasonable sum of £3 million.**
33. In terms of next steps, Russell Grossman referred to an announcement the following week. It was agreed that this be circulated to the Board once finalised [**Action 05/03**]. A suggestion was made that the announcement make clear responsibility for whole-industry initiatives.

Item 8 NETWORK RAIL ANNUAL ASSESSMENT: KEY MESSAGES

Steve Helfet (Deputy Director, Railway Operations) joined the meeting in person for item 8 with Andy Lewis (Manager, Network Regulation) via MSTeams.

34. Richard Coates (RC) introduced the report. The Board explored levels of train performance, with Steve Helfet (SH) pointing to weather as a factor on network resilience.
35. The Board suggested the approach of an overarching narrative, akin to the National Highways assessment elsewhere in the agenda, which would consider performance across a breadth of indicators in a balanced way. Reference to freight was also encouraged. It was noted that this was the final assessment of the Control Period.
36. The Board also reflected on the impact of a constrained funding environment on performance, as well as the pandemic, inflation, industrial action and other factors. This was considered in light of the efficiencies achieved by NR.

Catherine Waller left the meeting.

Item 11A INTRODUCTION: EXTERNAL GUESTS

37. The Chair agreed to take Item 11 next, due to the invitation of external speakers.
38. Stephanie Tobyn (ST) introduced the item, providing an overview of engagement with Transport Scotland and referring to this issue of new 'Statutory Guidance from the Scottish Ministers to the Office of Rail and Road 2024.'

Item 11B EXTERNAL GUESTS: TRANSPORT SCOTLAND

Anna Rossington (Deputy Director , Regulatory Strategy & Reform, and Senior Responsible Officer for Scotland) joined the meeting for the remainder of Item 11, via MSTeams.

39. The Chair welcomed the Cabinet Secretary for Transport, Fiona Hyslop MSP, to the meeting (via Teams). Also present were: Bill Reeve (Director of Rail, Transport Scotland (TS), via MSTeams); Damian Briody (Head of Rail Projects and Technical Services, TS); Lee Shedden (Director of Finance, TS); and Kieran McLachlan (Senior Rail Regulation Manager).
40. The Cabinet Secretary provided an overview of priorities for rail in Scotland, with particular reference to PR23 and Scottish Ministers' High Level Output Specification (HLOS). The Chair referred to safety and performance, noting the impact of climate change on both, as well as ORR's presence in Scotland to fully understand its specific context.
41. Further areas discussed included asset management; whole-industry performance; and opportunities from targeted performance funds.
42. The Chair thanked the Cabinet Secretary for her contributions and welcomed the engagement. It was suggested that a further meeting take place in due course.

Item 11C REFLECTION: EXTERNAL GUESTS

43. The Board briefly reflected on the matters discussed.

Item 9 NATIONAL HIGHWAYS ANNUAL ASSESSMENT

Rachel Gittens (Deputy Director, Strategic Road Network) joined the meeting in person for items 9 and 10.

44. The Chair noted the item had been discussed by the Highways Committee at its meeting on 9 May and amendments incorporated. No further comments were raised.

Item 10 RIS3 EFFICIENCY REVIEW – EMERGING FINDINGS

45. Rachel Gittens (RG) introduced the report, outlining that the third Road Investment Strategy (RIS3) was on indefinite hold and referring to a recent report on funding by the National Infrastructure Commission (NIC).

46. John Larkinson (JL) referred to the ongoing uncertainty surrounding specific schemes, whilst meetings were due to take place to discuss the impact of no new investment strategy by the end of the current road period. RG explained that were no new strategy laid (by March 2025), this would require the relevant Minister to provide explanation in Parliament. The impact of such uncertainty on NH was acknowledged by the board.

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47. In the context of the draft RIS, reference was made to the performance investigation underway and the potential areas of contravention. [...]. Discussion ensued as to prospective timelines.

Item 12 2023-24 STAKEHOLDER SURVEY

Jennifer Webber (Head of External Engagement) joined the meeting for item 12 via MSTeams.

48. The Chair welcomed James Rentoul (JR) (Savanta) to the meeting (via MSTeams). JR presented slides of the results of the 2023-24 stakeholder survey.
49. In particular, the Board discussed perceptions of holding to account and requested that it be explored whether further disaggregation of the data regarding critical opinions of ORR among stakeholder groups was possible in order to provide additional learnings (noting the need to maintain anonymity) **[Action 05/04]**.
50. The Chair summarised the overall results, noting the reflections on stakeholder engagement by ORR and success of the recent public affairs programme.

Item 13 COMMUNICATIONS DASHBOARD: Q3 AND Q4

Jennifer Webber (Head of External Engagement), Adele Potter (Head of Internal Communications and Engagement) and Lisa O'Brien (Head of Media Relations, Campaigns and Digital Comms) joined the meeting for item 12 via MSTeams.

51. Russell Grossman (RG) introduced the dashboard, highlighting the coverage received, including on topics such as customer service, West Coast Railways, and station authorisations.
52. The Chair thanked the team for their work in organising the parliamentary drop-in session earlier in the year.
53. The Board raised questions regarding:
- The data on most-visited web pages, suggesting the data portal be included in future dashboards;
 - The volume and origin of Freedom of Information Act requests, suggesting the board be provided with further information on how requests are handled;

- The complaints data, clarifying that these were complaints received about 'others' (and reported to ORR).

Item 14 LABOUR'S PLAN FOR OUR RAILWAYS

Anna Rossington (Deputy Director , Regulatory Strategy & Reform) joined the meeting for item 14, via MSTeams.

54. Stephanie Tobyn introduced the item, referring to the recent publication of Labour's plan for rail and stakeholder engagement. The Board welcomed the reflections on the document for consideration.
55. The Board discussed:
 - The presentation of ORR's role to external stakeholders and how this might be concisely conveyed;
 - Proposed industry structure and holding to account in economic responsibilities;
 - The role of the proposed Passenger Standards Authority, and the implications for the ORR's consumer role;
 - The scope for a whole-industry approach under the proposal and implications of nationalisation; and
 - The contributions of ORR to industry transparency through its reporting role.

Item 15 REPORTS FROM COMMITTEES & STAKEHOLDER DINNER

56. Madeleine Hallward (MH) reported on the meeting of the Highways Committee held on 9 May 2024. The Committee had considered:
 - Deputy Director's Update (as per board agenda item 6);
 - National Highways Annual Assessment (as per board agenda item 9);
 - RIS3 Efficiency Review (as per board agenda item 15); and
 - Regulatory Framework for RIS3, seen as an opportunity to reinforce ORR's role.
57. The coinciding pressures on the highways team were recognised.
58. Due to the apologies of Daniel Ruiz, Elizabeth Thornhill (ET) provided a brief update on the work of the Bi-National Committee and an upcoming stakeholder conference on 18 June.
59. The Board reflected on the visit to Strathclyde Partnership for Transport (Glasgow Subway), and stakeholder dinner, the day prior. Particular consideration was given to stakeholder views on freight, supply chain, sustainability, and managing fatigue. It was suggested that the opportunity to contribute to the development of an app which utilises ORR's managing fatigue guidance be explored.

Item 16 ANY OTHER BUSINESS

60. The Board noted the dates of the next meetings and items below the line, namely: the Board forward programme; committee minutes approved since the last meeting; the railway station catering market study; and the ORR diversity and inclusion strategy. The Chair thanked Anne Heal (AH), as Chair of the People Committee, for her contributions to the diversity and inclusion strategy.
61. The Chair informed the Board that interviews to appoint new Non-Executive Directors were due to take place in the coming days, and referred to upcoming meetings.

Meeting end: 2.31pm

Approved: 25 June 2024