

THE OFFICE OF RAIL AND ROAD
219th BOARD MEETING
Tuesday 23 July 2024, 09:00 – 15:35
At ORR, 25 Cabot Square, London, E14 4QZ

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

Executive members: John Larkinson (Chief Executive), Richard Hines (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 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 Catherine Waller, whilst Graham Richards would join the meeting after lunch.

Item 2 DECLARATIONS OF INTEREST

2. Justin McCracken, Non-Executive Director, would leave the room with regard to Item 14 – Board and Independent Member Appointments.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes of the meetings held on 25 June, 27 June and 8 July 2024 were approved (with minor clarifications to the restricted minutes of 25 June). A brief update was provided on actions arising and completed from previous meetings.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

4. Richard Hines (RH) introduced the report, referring to the themes of the headline summary: an Improvement Notice served on Avanti West Coast (where the Board would be notified were an appeal received); the prosecution case in relation to Margam; and social media videos showing unauthorised train cab access (where the Board was supportive of taking action).
5. The Board discussed a number of current enforcement notice appeals and prosecution cases. Concerns were raised regarding the long delays in obtaining hearing dates (recognising that this is an issue affecting organisations and individuals beyond ORR) – particularly in safety cases where delays in hearing enforcement notice appeals may perpetuate ongoing

risk in the industry. Where appropriate, this would be mitigated by inspections and ongoing engagement. The Board requested that a letter be considered to the Ministry of Justice or Attorney General regarding the delays in the court system, given ORR's role as a prosecuting authority **[Action 07/02]**. It would be considered whether to do so jointly with other regulatory bodies such as HSE.

6. Further update and discussion related to:

- Two separate fatal incidents at Stratford and Canons Park stations where investigations had recently concluded (within the proposed KPI thresholds recently discussed at the Health and Safety Regulation Committee); and
- West Coast Railways Company Limited (WCR), following their application for an exemption from regulation 5 of the Railway Safety Regulations 1999.

Item 5 CHIEF EXECUTIVE'S REPORT

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

Item 6 NATIONAL HIGHWAYS

11. Feras Alshaker (FA) introduced the item, providing an oral update that the annual assessment had received approval to be laid in Parliament. Further reflection was provided on the post-election context and funding scenarios for the third Road Investment Strategy (RIS3).
12. The Board discussed the progress of National Highways in delivering the Emergency Refuge Area (ERA) programme, expressing concerns over pace. It was requested that an additional briefing note be provided on the ERA programme for further assurance, including detail on monitoring, communication with relevant stakeholders, and financial aspects **[Action 07/04]**. The matter had also been added to the regulatory escalator.
13. The Board further discussed:
 - RIS3, and requested that an update be provided, including the impact on new projects and renewals, as well as environmental, planning and sustainability factors **[Action 07/05]**; and
 - The KPI on 'Killed and Seriously Injured', and why action had not been taken earlier in RIS2.

Item 7a INTRODUCTION: EXTERNAL GUEST

14. John Larkinson (JL) briefly introduced the external guest and provided a brief history of the Rail Delivery Group.

Item 7b EXTERNAL GUEST: JACQUELINE STARR, RAIL DELIVERY GROUP (RDG)

15. The Chair welcomed Jacqueline Starr (Chief Executive, RDG) and invited them to present the RDG to the Board.
16. The presentation referred to: an overview of RDG; successes and challenges; risks and opportunities; and RDG Board priorities.
17. Further discussion considered the licensing role of RDG regarding third party retailers; benchmarking and best practice among RDG members; industry and organisational culture, resilience, and retention; and maintaining a customer-focus in rail reform.
18. The Chair thanked the guest for their attendance and presentation.

Item 7c REFLECTION: EXTERNAL GUEST

19. The Board reflected on the guest's contributions with particular regard to the role of ORR.

Item 8 NEXT STEPS ON ACCESS APPLICATIONS

Martin Jones (Deputy Director, Access & International) and Gareth Clancy (Head of Access & Licensing) joined the meeting for Item 8.

The following paragraph [text in square brackets] is partially redacted due to policy in development:

20. Stephanie Tobyn introduced the presentation, providing a brief overview of the post-election context and noting that 82 applications had been received across the three forthcoming timetable changes. Gareth Clancy (GC) also provided an oral update that [...]

The following paragraph [text in square brackets] is partially redacted due to legal privilege:

21. [...] The Board discussed the process and determinants of access applications. Further correspondence - focussing on process (details of which were publicly available) - would take place in the coming week with relevant industry stakeholders.
22. It was confirmed that engagement with NR was ongoing, with particular regard to the timeliness of capacity and performance evidence during the assessment of an access application. A letter had been sent to NR the day prior, setting out views on managing the next three timetable changes and requesting that a timeline on capacity decisions be provided. The Board noted the criticality of NR delivery of analysis and evidence in this process. It was agreed that a target timeline be put forward by ORR in correspondence with industry.
23. The Board also discussed the potential impact of rail reform on access applications, as well as the rail freight growth target.

24. Finally, the provision of rigorous analysis of any access application was underlined by the Board, in order to support a thorough and evidence-based approach to decision-making.

The Board adjourned for lunch from 12.35 - 12.55pm.

Item 9a INTRODUCTION: EXTERNAL GUEST

25. John Larkinson (JL) briefly introduced the external guest, who had been invited to the Board further to the parliamentary drop-in event held earlier in the year.

Item 9b EXTERNAL GUEST: LORD COLIN MOYNIHAN

26. The Chair welcomed Lord Moynihan, accompanied by Danny Gilbert (Strategy Director, Amey), to the Board and invited them to present their industry views to the Board.
27. The presentation referred to: professional experience of health and safety matters; systems-thinking; end-user participation; community engagement; employment, skills and apprenticeships; environmental, social and governance matters; infrastructure management; devolution and rail reform; and, use of artificial intelligence (AI) and data analytics.
28. Further discussion considered the role of the regulator; AI and data analytics use in transportation; environmental and community considerations in construction of new infrastructure; the constrained fiscal environment; and competition for skills. An invitation was extended to the Board to visit the Core Valley Lines.
29. The Chair thanked the guests for their attendance and presentation, suggesting a future invitation in one year's time.

Item 9c REFLECTION: EXTERNAL GUEST

30. The Board reflected on the guests' contributions with particular regard to infrastructure and supply chain matters.

Item 10 QUARTERLY BUSINESS REVIEW – Q1 2024/25

Lucy Doubleday (Associate Director, Finance and Governance) joined the meeting for Item 10.

31. Vinita Hill (VH) introduced the report, providing a brief overview of deliverables (including case management), apprenticeships, and workplace attendance.
32. Lucy Doubleday (LD) provided a financial overview, referring to forecasts against budget, as well as agency and consultancy spend.
33. The Board discussed challenges to recruiting certain skills and the associated budget impact via agency spend, as well as potential apprenticeship pathways (with reference to the corporate people risk).

34. Further discussion ensued with regard to expectations around workplace attendance and action where the requirement was not met (which was confirmed to fall under the disciplinary policy). The Board viewed the attendance expectations as a reasonable instruction and expressed its full support in taking action as appropriate.

Item 11 PR24 DECISIONS FOR DRAFT DETERMINATION – EMERGING THINKING

Howard Taylor (Head of Asset Management), Debbie Daniels (Delivery Manager), Steve Fletcher (Deputy Director, Engineering & Asset Management) and Gordon Cole (Head of Regulatory Finance, via MS Teams) joined the meeting for Item 11.

35. Feras Alshaker (FA) introduced the item, referring in particular to more novel areas for board discussion and steer, ahead of work on the Draft Determination (due before the Board in September). Debbie Daniels (DD) further spoke to the relevant timelines and the proposal of a teach-in session in early September.
36. Howard Taylor (HT) outlined a strategy summary, referring to charges, growth and competition, and addressing stakeholder concerns, mindful of balancing interests. Discussion then considered three areas, seeking the Board's initial feedback on growth weighting in annuity; reallocation of fixed charges from freight; and adjustment of specific CP4 station renewals.
37. Further to questions of clarification, the Board considered:
- Passenger growth and implications for asset management, including renewals, at stations (eg lifts and escalators);
 - Defining fixed freight charges as “common costs” (charged to TOCs) or “freight, avoidable costs”; and
 - Whether to reduce the cost of CP4 station renewals, to correct over-specification to the benefit of shared users, and whether there should be funding contribution from other parties, such as retailers.
38. Overall, the Board was supportive of the emerging thinking and requested that the ongoing analysis should also consider unit cost / yield per passenger (in reference to the growth weighting).

Item 12 HS1 ANNUAL PERFORMANCE: KEY MESSAGES

Howard Taylor (Head of Asset Management), Debbie Daniels (Delivery Manager) and Steve Fletcher (Deputy Director, Engineering & Asset Management) remained in the meeting for Item 12.

39. Feras Alshaker (FA) introduced the item, providing a brief overview of previous annual assessments of HS1 performance and positive results from an ongoing improvement plan. This year's report would be the first indication, to other stakeholders, of asset management concerns ORR aims to address in PR24.

40. The Board suggested that the executive summary might benefit from a matrix comparing performance in previous areas of concern. Minor phrasing comments were also shared.

Item 13 PASSENGER TRAIN PERFORMANCE RESET – PROPOSAL FOR CONSULTATION MEASURES

Steve Helfet (Deputy Director, Railway Operations) joined the meeting for Item 13.

41. Will Godfrey (WG) and Feras Alshaker (FA) introduced the report, outlining a consultation on passenger train performance measures and recalibration of the final incentives regime.
42. The Board gave detailed consideration as to the three proposals for potential changes to the passenger train performance measures for years 3 to 5 of CP7 and enquired how a passenger perspective would be incorporated into consultation. Following discussion and questions of clarification, the Board proposed further research into the passenger perspective, potentially by working with Transport Focus or discussion at the ORR's Consumer Expert Panel. The Board viewed it as important that measures be understood by passengers. WG referred to the constrained nature of the decision-making timeline, to which it was suggested that any passenger research might be conducted in parallel to the consultation.
43. Further discussion referred to the consultation documents and presentation of the options at hand. The Board were of the view that the relevant performance measures be proposed for amendment, suggesting that Options 2 and 3 be presented neutrally.

Item 14 BOARD AND INDEPENDENT MEMBER APPOINTMENTS

Justin McCracken left the room for the duration of Item 14.

44. Fiona Bywaters (FB) introduced the report, providing an overview of the recommendations, whilst the Chair spoke to the impact of calling a general election on the recent NED-appointment process and subsequent discussions with DfT.
45. **The Board resolved that:**
- **Nick Bateson be reappointed as Independent Member of the Audit and Risk Committee, until 30 September 2027.**
 - **Justin McCracken be reappointed as Non-Executive Director to the Board of ORR, until 31 December 2024.**
46. Regarding the reappointment of Justin McCracken (JM), it was explained that the Board was exercising its powers under paragraph 9, schedule 1 of the Railways & Transport Safety Act 2003, and was subject to regularisation by the Secretary of State.

Item 15 REPORTS FROM COMMITTEES

47. Justin McCracken (JM) reported on the meeting of the Railway Industry Health and Safety Advisory Committee held on 8 July. The Committee had considered, among other items:
- A number of annual reports, including those of the Chief Inspector, RAIB, and RSSB;
 - An update on mental health further to discussions the year prior; and
 - A discussion on stranded trains.
48. Anne Heal (AH) reported on the meeting of the Consumer Expert Panel held on 2 July. The Panel had considered, among other items:
- An update on the Wales and Western region from the consumer team;
 - The railway station catering market study;
 - The experience of those with disabilities in consumer complaints processes as well as barriers to accessibility; and
 - Updates on the rail ombudsman, third party retailers and stranded trains,.
49. Bob Holland (BH) reported on the meeting of the Audit and Risk Committee held on 22 July. The Committee had considered, among other items:
- The corporate risks 2024-25 quarter 1 update;
 - An internal audit report on cyber risk assessment, where progress and proportionality were taken into consideration; and
 - Progress on a proposed draft framework agreement between ORR and DfT (for which a final decision was a matter reserved to the board).
50. It was confirmed that the annual report and accounts had now been submitted.

Item 14 ANY OTHER BUSINESS

51. The Chair confirmed that under Procedure Rule 58, he had signed a Cooperation Agreement between ORR and the French Transport Regulatory Authority (ART) for Channel Tunnel economic regulation and Rules of Procedure, following non-material amendments not reserved to the Board.
52. 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 quarterly risk report (Q1); and the 2025 board and committee calendar (noting the proposal of July stakeholder engagement rather than April).
53. Finally the Chair referred to a number of recent and upcoming meetings, including with the respective Chairs of Transport Focus and National Highways, as well as the Rail Minister. The Chair had also participated in an interview for Network Rail's board effectiveness review.

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54. The Board also reflected on a workshop and stakeholder dinner with the Board of National Highways on 22 July, viewing discussions as positive and constructive.

Meeting end: 4.40pm
Approved: 24 September 2024