

**THE OFFICE OF RAIL AND ROAD**

**127th BOARD MEETING**

**09:00-15:00, TUESDAY 26 JULY 2016**

**ONE KEMBLE STREET, LONDON WC2B 4AN**

**Non-executive members:** Stephen Glaister (Chair), Tracey Barlow, Bob Holland, Michael Luger, Justin McCracken

**Executive members:** Joanna Whittington (Chief Executive), Ian Prosser (Director Railway Safety)

**Executive Directors:** John Larkinson (Director Railway Markets and Economics); Graham Richards (Director Railway Planning and Performance),

**In attendance, all items:** Dan Brown (Director Strategy and Policy), Russell Grossman (Director Communications), Juliet Lazarus (Director Legal Services and Competition), Tess Sanford (Board Secretary)

Peter Antolik, (Director Highways Monitor) item 1-4 and 12-14.

**Other ORR staff in attendance are shown in the text.**

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. There were no apologies from members.

**Item 2 DECLARATIONS OF INTEREST**

2. There were no relevant declarations of interest.

**Item 3 APPROVAL OF PREVIOUS MINUTES**

3. The Board agreed the June minutes subject to any minor corrections by the Chief Executive and noted the updates on board actions.

**Item 4: MONTHLY HEADLINES**

4. Ian Prosser reported on:
  - The successful launch of the annual rail safety report;
  - Some follow up work which included cross-industry working level meetings on issues around dispatch;
  - Earthworks failure risk and NR's mitigation processes;
  - BTP's prosecution of a guard following a platform interface incident;
  - A meeting with the new MD of London Underground who was keen to meet HSRC;
5. Graham Richards reported on:
  - The five projects in the enhancements review in Scotland;
  - Progress on London Bridge redevelopment.
6. John Larkinson highlighted:
  - The appeal by TfL against HAL's access arrangements;
  - Early reactions to PR18 consultation issues (which would come to the Board for discussion in the autumn) [forward programme]

- The forthcoming publication of the annual efficiency and finance assessment for NR (which would be the last of ORR's summer publications).
7. Joanna Whittington reported on:
- Her meetings with: the new rail minister, Paul Maynard MP; RDG and Transport Focus;
  - Activity in the Highways team, including publication of ORR's first annual assessment as Monitor; and consideration of the impact of recent queues at Dover port on performance metrics.

#### **Item 5        REGULAR REPORTS**

8. The Board discussed monthly reports on rail safety and the NR CP5 Tracker.

#### **SAFETY**

9. Ian Prosser reported on progress with the RSSB review. An early draft of the report would be discussed with the Board at their September meeting.  
[forward programme]

#### **CP5 TRACKER**

10. GR noted that work had begun on the 2018 changes to the Thameslink timetable.

#### **Q1 REPORT AGAINST THE BUSINESS PLAN**

*Lucy Doubleday joined the meeting for this item*

11. Lucy Doubleday reported a steady start to the year with changes in management's approach to planning proving effective in managing resources closely: a small underspend was forecast for the end of 2016-17.
12. The board welcomed the new narrative piece on the risk environment.

#### **ITEM 6        ASSESSMENT OF ORR PERFORMANCE IN 2015-16**

*Jo Napper joined the meeting for this item.*

13. The board discussed the executive's assessment of organisational performance against each strategic objective – which had informed the recommendations on team performance awards for last year. The board accepted the recommendations and agreed the allocation of awards.
14. The board noted that for the current performance year, team awards would be awarded under the in-year award system. This would enable the executive to respond more flexibly and quickly to good team performance on particular issues.

#### **ITEM 7        DfT ORR MEMORANDUM OF UNDERSTANDING**

*Robert Cook joined the meeting for this item*

15. Dan Brown reminded the board of the areas of the document discussed at the last meeting: clarity around responsibilities relating to CP5 enhancements and passengers. These had now been largely resolved, but were pending final confirmation from DfT teams.
16. The board discussed the importance of also securing clarity around CP6 enhancements in order to meet the spirit of the Bowe review for the next period and asked the executive to embed this in the next draft.
17. The board noted that the process of discussing and agreeing the text had been helpful in improving mutual understanding between the two organisations.
18. The board agreed the draft MOU subject to minor drafting changes, and delegated agreement of the final text to the Chair and chief executive. The chief executive should sign the final document. [Action]

#### **ITEM 8 HAL CHARGING**

19. Juliet Lazarus reported to the board on a letter before action received from HAL under the Pre-Action Protocol for judicial review in relation to ORR's decision on HAL's charges and the work in hand to prepare a response.

*Paragraph 20 has been redacted as legally privileged*

#### **ITEM 9 CONSUMERS – UPDATE ON THE SUPER COMPLAINT**

*Stephanie Tobyn joined the meeting for this item*

21. Stephanie Tobyn updated the board on:
  - a. TOCs' plans for a national promotional campaign in relation to compensation for delays;
  - b. Likely publication of DfT's response to the supercomplaint;
  - c. Progress by TOCs on changes to the national conditions of carriage designed to meet their obligations under the Consumer Rights Act. This was currently a matter for DfT, but ORR will become the enforcing authority in October this year.
  - d. Plans for publishing an ORR update report in December.
22. The board noted the report.

#### **ITEM 10 COMPETITION: EAST COAST LESSONS LEARNED AND MEDIUM TERM CHARGING DEVELOPMENTS**

*Rob Plaskitt, Mary Davies and Alex Bobocica joined the meeting for this item*

23. John Larkinson introduced the ECML lessons learned paper.
24. The board discussed the options set out in the paper, particularly observations around the process and the demands it placed on Network Rail and their capacity to meet those demands. The board also discussed the degree to which available data might now be able to show the actual impact of open access operations on incumbent franchises and any associated impacts for passengers. The board agreed that all such evidence was helpful in informing future decisions.

25. John explained that the PR18 review of the structure of charges was being done in the context of the parallel exploration by DfT of a PSO levy – but any levy was a matter for DfT. The board discussed the options set out for charging and noted that it would be desirable to continue to explore a wide range of options at this stage.
26. The board noted the reports.

#### **ITEM 11 REGULATORY POLICY (PUBLIC SECTOR REGULATORY TOOLKIT)**

*Peter Antolik and Robert Cook joined the meeting for this item*

27. Dan Brown introduced the item. DfT had asked whether there were any legislative changes the ORR would find helpful in fulfilling its role – as there might be an opportunity in the Modern Transport Bill to include some changes. The paper proposed the need for ORR to be able to grant a licence to a system operator (whether or not that was NR). The Board debated this issue which was not contentious and the Board agreed that Dan Brown should write to DfT regarding the licencing of a system operator. The timetable for the drafting of the bill was likely to be short and the executive should keep the board up to date with any proposals. [Action]
28. The paper also asked the Board’s strategic appetite on wider aspects of our regulatory toolkit in light of Network Rail’s reclassification. The board debated what ultimate sanctions might be most effective. An option of public hearings question depended on views of the efficacy of reputational incentives, and the board did not have a shared view at this time. The board debated other models of intervention, including improvement notices before enforcement – which ultimately also relies on the threat of fines through the courts system. Some interventions might carry implications for the shareholder’s powers to direct management change but blurring of that responsibility was to be avoided. The Board recognised the complexity of choices around ORR’s regulatory toolkit and requested a fuller discussion on at the next Board meeting [Action].

*Robert Cook left the meeting*

#### **ITEM 12 FUNDING AND FINANCING CP6 AND RIS2**

29. Dan Brown briefed the board on the need to ensure that HMT and DfT were alert to the statutory timetable on CP6, and government’s responsibilities in relation to the HLOS and SOFA. Similar issues would arise on RIS2.
30. John briefed the board on the processes for developing industry initial advice in Scotland and England & Wales. The board noted the report.

#### **ITEM 13 DEPARTMENT FOR TRANSPORT, YEAR 1 REVIEW OF HIGHWAYS MONITOR**

*Tricia Hayes, DG for Roads, Devolution and Motoring Group, DfT joined the meeting*

31. The chair welcomed Tricia Hayes to the meeting. Ms Hayes gave a short assessment of the first year of Highways England and the Highways Monitor, particularly highlighting ORR's preparatory work on RIS2 and the very useful work on benchmarking. The meeting discussed a number of strategic issues including:
- a. the differences between safety responsibilities on the 'open' road system and the 'closed' rail network, in particular in relation to understanding of risk and investigation of incidents.
  - b. The possible implications of regional devolution for transport planning and funding;
  - c. The challenge of efficient delivery and cost controls of major projects;
  - d. Delivery challenges around the capital programme in RIS1;
  - e. The contribution that good information can make to the user experience and effective operation of the network.
32. The meeting agreed that there was real potential for learning across the rail and road sectors which should be made easier by ORR's combined role.
33. The chair thanked Ms Hayes for attending.

*Tricia Hayes and Peter Antolik left the meeting*

#### **ITEM 14 ANNUAL REPORTS FROM BOARD COMMITTEES**

34. The board noted the report which had been circulated and accepted it as the annual report of each committee.

#### **ITEM 15 REPORTS FROM THE COMMITTEES**

35. Justin McCracken reported on the HSRC meeting the day before. The committee had considered:
- a. The annual report on NR's Health and Safety performance;
  - b. The strategic risk chapter on staff competence and human failure;
  - c. A presentation by the Samaritans on their 6 year programme with the rail industry to intervene and prevent suicides on the rail network. This had showed that intervention and support can make suicide preventable and had clear read across to highways where the numbers of deaths each year was much higher.

#### **ITEM 16 ANY OTHER BUSINESS**

36. There was no other business. The next meeting would be in September and would include external visitors, a major session on PR18 and a stakeholder breakfast.

*Meeting closed 3.00 pm*

<b>ACTIONS AGREED:</b>	Update for the September meeting
<b>MOU with DfT</b> The board agreed the draft MOU subject to minor drafting changes, and delegated agreement of the final text to the Chair and chief executive. The chief executive should sign the final document.	
<b>Regulatory Toolkit</b> The need for ORR to be able to grant a licence to a system operator (whether or not that was NR)... ...was not contentious and the Board agreed that Dan Brown should write to DfT regarding the licencing of a system operator.	Completed following the meeting
<b>Forward programme provisions</b>	
<b>PR18</b> consultation responses would come to the Board for discussion in the autumn	Currently programmed for September
<b>RSSB Review</b> An early draft of the report would be discussed with the Board at their September meeting.	Currently programmed for September