

**THE OFFICE OF RAIL AND ROAD
155th BOARD MEETING
09:00-14:15 TUESDAY 27 NOVEMBER 2018
ONE KEMBLE STREET, LONDON WC2B 4AN**

Non-executive members: Stephen Glaister (Chair), Tracey Barlow, Declan Collier, Anne Heal, Bob Holland, Michael Luger, Justin McCracken, Graham Mather

Executive members: John Larkinson (Chief Executive), Graham Richards (Director Railway Planning and Performance); Ian Prosser (Director Railway Safety).

In attendance: Dan Brown (Director Strategy and Policy), Russell Grossman (Director of Communications), Freya Guinness (Director Corporate Operations and Organisational Development – to item 4), Juliet Lazarus (Director Legal Services and Competition), Tess Sanford (Board Secretary), Catherine Williams (Deputy Director Railway Markets and Economics)

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The chair welcomed everyone to the meeting, noting that it was Declan Collier's first meeting as a member of the board. There were no apologies.

Item 2 DECLARATIONS OF INTEREST

2. No new external interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The minutes were approved and the chair would sign them.
4. Ian Prosser reported on the action for staff to draw to the attention of the IGC and the DfT ORR's concerns about Eurotunnel's safety management capability. The Channel Tunnel's safety authorisation was due for renewal in April 2019 and would require a safety strategy to be in place. There appeared to be good alignment of views on safety between the new Heads of delegation for the UK and France.
5. Stephen Glaister had agreed with Sir Peter Hendy that occasional attendance by chair and CEO at the other's board meeting was the best way to deliver board to board contact between NR and ORR. Sir Peter had also offered to talk to the Board about NR's challenges and this would be arranged informally. [Action: Secretariat]

Item 4: HEADLINES AND REGULAR REPORTS

6. **Ian Prosser** updated the Board on: ongoing issues around trackworker safety including the first fatality for six years - which was under investigation. He also discussed the Sandilands investigations and funding for the new light rail safety body, substantial issues around new rolling stock, and the recent industry Health and Safety meeting where he had talked about SPADs, TPWS, PTI, trespass and the introduction of new rolling stock.
7. The board discussed disruption to the network apparently caused by the introduction of new rolling stock without sufficient testing. This was inefficient as it introduced unknown risk into the system. The board agreed that John

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- Larkinson should write to the Department for Transport to set out concerns about passenger impact and cost to the system if the introduction of new rolling stock was not properly planned and managed. [Action: John Larkinson]
8. The board also noted issues re fire safety compliance at St Pancras and the delay to funding for the LRSSB.
 9. **Graham Richards** reported that the Chancellor's budget announcement had included £25.3bn for the strategic roads network/Highways England. The implications of the withdrawal of PFI as the funding mechanism for the Lower Thames Crossing and the A303 were not yet clear. On rail he reported on the over-running engineering works at Waterloo the previous week, preparations for Christmas engineering works and related risks for the May 2019 timetable change. The board noted the impact of fleet issues on ECML performance.
 10. **Catherine Williams** reported on publication of the consultation on DPPP, the successful launch of the Railway Ombudsman and work towards its inclusion in licences from 2019, PR18 implementation and preparations for CP6, work to increase our pace on open access applications.
 11. **John Larkinson** reported on work in Europe to prepare for Brexit including the signing of the MOU with DfT that the board had approved at the last meeting. He also gave updates on: the market review of third party ticket retailers, progress on London accommodation, headlines from the people survey and the financial position of the office. He had continued to meet key stakeholders, ministers and MSPs as well as officials from DfT and Treasury. He also reported on a successful meeting with freight customers.

Item 5 TIMETABLING INQUIRY FINAL REPORT

Claire Simpson and Stephanie Tobyn joined the meeting.

12. Stephen Glaister noted the high quality of work that had been done under extreme time pressure to deliver the inquiry report and the work that remained to complete it.
13. Dan Brown described how stakeholders had been consulted on the findings in phase 1 to lead to the emerging recommendations in phase 2. The recommendations included solving known problems within the existing structures (such as broadening the scope of programme management boards to include system risks and dependencies) but also offered thinking about what could be different in future (such as building on the successful parts of the model of the Thameslink readiness board).
14. The different roles and authority of sponsor/funder, system operator, programme management office and programme management boards and the need for appropriate executive support and adequate information were discussed. The board discussed the importance of clarity of accountability and transparency around where specific decisions were taken in any future system. It was particularly important that go/no-go decisions were made transparently and on the basis of strong understanding of system risks, including risks of current customer impact. In addition, all parties had a responsibility to meet the deadlines that industry systems relied on to deliver change effectively and the expectation might then be that missed deadlines defaulted to cancellation.
15. The board suggested that a diagram of the process which could show facilitators and enablers and clearly indicated go/no-go points would be helpful.

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16. Key recommendations would propose the development of industry capability which would draw on best practice in programme management to align programmes across the industry and advise sponsors openly on change control to manage programme risks and explain the impact of failure. This would require the development of a high degree of trust between sponsors and programme boards. The report would not set out how the industry capability should be structured, as this was with remit for the Williams review, but it would set out the areas of capability that needed to be addressed.
17. The board asked to see the revised recommendations and these would be circulated, key parties would also see them in advance of publication which was scheduled for the following week. [Action: Dan Brown]

Item 6 NR TIMETABLING – LICENCE BREACH

18. Catherine Williams introduced the paper which set out the final order on the licence breach investigation. It was a largely tactical response to immediate issues in relation to the May 2019 timetable change. Risks in relation to the December 2018 change were reported to be low. The board was satisfied that NR was still in breach and that a final order as set out was appropriate. The board noted that the PMO would remain in place at least until the May 2019 change.
19. The board approved the draft final order for consultation. [Action: Catherine Williams]

Claire Simpson left the meeting

**Item 7 UPDATE ON LICENCE INVESTIGATIONS OF ARRIVA RAIL
NORTH (NORTHERN) AND GTR REGARDING THE MAY 2018
TIMETABLE CHANGES**

Samantha McClelland Hodgson, Marcus Clements joined the meeting

20. Stephanie Tobyn introduced the item. The relevant licence condition for the investigation was whether everything had been done which was reasonably practicable under all the circumstances to inform passengers during disruption. The team articulated this as ‘did the TOCs share everything available that would be helpful, did they respond to feedback, and during service recovery were they thinking about information for passengers?’ The evidence base was still being gathered. Decisions on whether there was a case to answer in both cases would be taken during December. The board asked about the responses of the TOCs involved and recognised the novel nature of the process and the sensitivity of the parties’ positions.

Marcus Clements left the meeting

**Item 8 NETWORK RAIL’S DELIVERY OF PERFORMANCE TO DATE AND
CAPABILITY ISSUES**

Samantha McClelland Hodgson, Dave Chewter, Jay Symonds and Ruth Luxford joined the meeting.

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Paragraph 21 to be redacted until the conclusion of this enforcement (provisionally July 2019)

22. The board agreed to the issue of a provisional order. [Action: Graham Richards]

Stephanie Tobyn, Samantha McClelland Hodgson, Dave Chewter, Jay Symonds and Ruth Luxford left the meeting

Item 9 NOVEMBER AND DECEMBER ANNOUNCEMENTS

23. Russell Grossman introduced the paper which set out the timetable of announcements and publications over the next few months. He described the key audiences and channels which would be targeted. The board stressed the importance of messaging which drew on past statements and commitments and showed how current action built on that and was targeted at future improvements. Consistency of tone was important. The board discussed the paper and asked for a regular quarterly 'look forward' for major publications. [Action: Russell Grossman]

Item 10 NR LICENCE PROJECT

Claire Simpson, Chris Warburton and Robert Cook joined the meeting for this item

24. The board had discussed the proposed licence changes several times: this was the final stage of statutory consultation. It was important to have the revised licence in place by the beginning of April to offer some structural support to the CP6 settlement, particularly around the management of change. Discussions with NR had been ongoing and it did not seem likely that they would object to the new licence. Juliet Lazarus explained the process choices which would follow any rejection by them.
25. The board approved the draft and delegated final sign off of the licence to Juliet Lazarus. [Action] The board noted the delivery of the new licence as a significant achievement.

ITEM 11 OPEN ACCESS

Carl Hetherington, Liz Thornhill, Beth Tasker, Nathasha Frawley and Pedro Abrantes joined the meeting for this item

26. Catherine Williams set out the context for the three pieces of work before the board. The series would begin with a broad positioning piece on the benefits of open access and include commitments to reviewing the impact of existing OA operations, looking at the market for OA, a desktop study of the barriers to access and a review of ORR's internal processes. The board would consider emerging views on some of these in February and a full timetable would follow. [forward programme]
27. The board discussed issues around calculation of abstraction, time taken for the process, the delay to the PSO levy promised by government, historic uptake of OA rights granted, current applications, potential for gaming the current system and the capability necessary within NR to deliver analysis and technical advice on applications.

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28. The ICC had been set in the final determination at £4 per train mile, phased in over CP6 and applicable to open access operators running longer distance trips between large population centres. Analysis showed that this charge should not make the open-access model unviable. The board reviewed the development of the charge and noted that payment would be made to NR, encouraging them to value OAOs more as customers. The charge would not therefore remove DfT's concerns about impact on the Secretary of State's funds. There was no mechanism to vary the charge between peak and off peak services. The board noted the reliance on NR's timetabling capability to respond to applications.
29. The board agreed to the publication of the consultation on implementation of the ICC. **[Action: Carl Hetherington]**
30. The board discussed the note on the intended approach to the economic equilibrium test required by European legislation. The intent of the legislation was pro-competition and to make it difficult to prevent open access to the network in favour of publicly subsidised services. The executive view was that existing processes, including NPAT, met the need to balance the beneficial impact of new services and any impact on existing services so the EET would only be undertaken where requested.
31. The board noted the intention to consult on the implementation of the EET.
32. The board asked for ex-post analysis to assess the historic revenue generated by open access operations against the revenue allegedly lost by the incumbent service. **[Action: Catherine Williams]**

ITEM 12 REFLECTIONS ON BOARD STRATEGY DAY

33. The board asked for the following items to be added to the forward programme:
- Preparing and agreeing input to the Williams review
 - NR's 100 day plan
 - Review of open access

ITEM 13 ANY OTHER BUSINESS

34. The board noted the items circulated below the line.
35. Justin McCracken noted that this was Stephen Glaister's last board as Chair and thanked him for the way he had enabled individual members to make their own contributions – and to ask awkward questions when they wanted to. John Larkinson added the thanks of the executive for Stephen's willingness to give a fair hearing and straight answers outside the board meetings as well.
36. Stephen Glaister thanked the board and staff for their support – and the consistently high quality of their work.