

THE OFFICE OF RAIL AND ROAD
162nd BOARD MEETING
23 JULY 2019, 09:00 – 15:00
One Kemble Street, London WC2B 4AN

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

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

In attendance: Daniel Brown (Director Strategy and Policy & Railway Markets and Economics), Russell Grossman (Director of Communications), Freya Guinness (Director Corporate Operations), Juliet Lazarus (General Counsel), Tess Sanford (Board Secretary)

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Deputy chair welcomed everyone to the meeting as the Chair had been slightly delayed on public transport. There were no apologies.
2. The Board noted that the order of reports¹ would be changed to accommodate presenting colleagues who were also delayed.

Item 2 DECLARATIONS OF INTEREST

3. No new relevant interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

4. The Board noted a correction to the minutes. The Chair would sign an amended version. On the action points it was noted that the ECML performance report had been put into the public domain on Monday 22nd July.

Item 7 CHIEF EXECUTIVE'S REPORT

5. John Larkinson reported on recent Parliamentary engagement including invitations to talk to the Lib Dem peers and the APPG Chair. These meetings were a welcome chance to correct misunderstandings, share evidence and demonstrate expert knowledge. The Chair of the TSC had attended the launch of the Chief Inspector's Annual Report. The board discussed the importance of maintaining and strengthening parliamentary networks as part of our accountability framework.
6. John also reported on meetings with HMT and DfT. He had been challenged at both to justify the perceived additional costs to passengers driven by safety standards on rail. While he had addressed

¹ The item numbers in the minutes are those from the original agenda.

- the immediate challenge, it was clear that this perception would continue to need rebuttal. The board discussed how this perception might have arisen and discussed ways to counter it. Ian Prosser said that ORR's practice was that its notices recommended the lowest cost, most effective way to minimise the risk so far as reasonably practicable, without specifying a particular solution. The board noted that there remained a live debate about the personal responsibility of an individual for their own safety and the cost of preventing people putting themselves at risk, but the legal requirement was for a safer railway. There was a clear legal precedent that children should be protected from entering dangerous environments (like depots).
7. The board discussed the different levels of risk which the public accepted between road and rail users – most road deaths did not occur on the Strategic Road Network - and whether the ambition for zero industry caused fatalities was setting the industry up to fail. They also commented on the importance of including technical standards and safety considerations when commissioning rolling stock and infrastructure. John Larkinson clarified ORR had not received costings in relation to the Hitachi fleet alterations and he did not recognise the £25m figure mentioned by the DfT in relation to this. He would raise with the Directors General the importance of factual accuracy in relation to safety standards and costs, particularly, given the likely arrival of new ministers with a new Prime Minister [Action].
 8. John Larkinson also reported on a programme of meetings with each of the Regional MDs of NR at which he had made clear ORR's expectations around financial efficiency. He would bring a report on how ORR would be monitoring the Regions to the September board. **[Forward Programme]**.
 9. John updated the board on ongoing work with TfW and Keolis/Amey on the Welsh CVL. Although this was well appreciated by stakeholders, there were significant challenges to be overcome before the handover could occur, particularly around the financial risk to freight companies.
 10. NR continued to cascade its reorganisation and this would take some months to complete.

Item 4 HEALTH AND SAFETY

11. The board had been notified of the tragic incident at Port Talbot and noted this with regret.
12. Ian Prosser updated the board on three areas: enforcement, LUL, Balham
13. **Enforcement:** Ian Prosser described for the board the history of his interaction with NR on track worker safety, including with its SHE committee (6 November 2018) and its board (May 2019) which had preceded the improvement notices issued in July this year on track worker safety. He noted that there had been 15 RAIB investigations into track worker incidents over the past 7 years.

Paragraphs 14 to 16 to be redacted as relating to policy development.

For publication

17. The board noted that PR13 had included funds to develop technology and plan for new, more efficient systems which did not rely on red-zone working. It was not clear what these funds had delivered in spite of support from ORR for NR's development work. The board considered NR's slow progress and asked the executive to consider whether escalation should have been quicker. In this context, the board asked for a regular update to give them better oversight of issues which might lead to safety enforcement and over what period they had been considered. This would also enable board-to-board communication of issues of concern but must not impinge on the independence of inspectors **[Action]**.
18. The chair summarised that ORR's notices had been evidence based, citing the rising level of risk to track workers and the number of near misses. The issue had been raised directly by the Chief Inspector with the NR board in May. ORR expected NR to protect workers and reduce the risk and the ORR board would support work to make sure that this was done in a timely way. The board wanted to see NR work actively to address an issue which had seen an ongoing significant level of risk when it could have been lower.

Prosecutions

19. Ian Prosser reported on other enforcement including the successful prosecution of GTR following the death of a passenger leaning out of a droplight window. GTR had not had a risk assessment around its rolling stock and received a £1m fine. He also mentioned the long delay in a CPS decision around prosecutions on Sandilands, which the board agreed put additional stress on parties and the families of those involved.
20. The board discussed the picture of poor adherence to process and on-track discipline suggested by issues in the quarterly report including SPADs, the Balham near miss, red zone working etc. They also discussed the level of reliance on human intervention, the question of whether earlier enforcement would drive improved behaviours and the growing evidence that fatigue was an increasing problem.
21. IP updated the board on concerns with LUL's internal assurance. He was attending a meeting there on 8 August to discuss the safety management system and overall the executive understanding and management of risk was more mature than on the mainline railway. He noted the complete absence of red zone working and that LUL's last track worker fatality was more than 25 years ago. The role unions could play in educating members about safety was noted.

Item 5 BOARD INFORMATION PACK

22. Graham Richards updated the board on: costs agreed and paid by Eurostar on their abortive judicial review and Highways England's new

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- safety campaign aimed at drivers – particularly safety on smart motorways.
23. The board asked for more analysis on the NR scorecard comparison charts. Having more data by region would allow more complex and nuanced discussion in CP6 but the executive were still exploring what this data could tell us so this report would continue to evolve.
 24. The Chair reported on a meeting of the Wales Route Supervisory Board which had been well run, had good attendance and where the members were engaged in devolved issues and planning for the December 2019 timetable. This could not be taken as typical of meetings as there was no consistency of membership or administration across the routes.
 25. The board discussed ORR's relationship with the RSBs which currently included SROs meeting. The board suggested that RSB chairs could meet annually with the ORR board or ORR NEDs could attend regional meetings. Graham agreed to consider how this could be incorporated into the new arrangements [**Action**]

Timetable changes:

26. The board noted an anecdotal report of an issue on GWR fleet resilience. This would be picked up with Catherine Williams later in the meeting. The board also noted that LNE was showing a red risk which was not reflected in the December timetable register. This was because it was not seen as relevant to December 2019.

Item 6 QUARTERLY BUSINESS REVIEW

27. Freya Guinness reported on a current 10% underspend, mostly as a result of vacancies (16% underspent on pay) and work in hand by directors to consider how best to address this. In addition, the late signing of the lease on Cabot Square meant that there would be a windfall sum available which might also be **increased** by the ending of a provision on dilapidations on Kemble Street (total up to £600,000). Investments for the future such as a staff conference, integrated HR and finance system, consumer agenda consultancy, managing market sensitive information were some of the ideas under discussion. The senior leadership group would discuss ideas and Exco would set priorities later this week.
28. She also reported that ORR had met 10/10 service standards in the first quarter, though there were also some delays on business plan deliverables.
29. The board agreed that a staff conference toward the end of the financial year would be timely and looked forward to hearing the executive's plans on the rest.

Item 8 OTHER EXECUTIVE REPORTS

For publication

30. **Juliet Lazarus** reported on progress with the employment tribunal and updated the board on the outcome of an action at the Competition Appeals Tribunal against NR. NR had changed their safety assurance requirements to have a single assurance provider and the previous supplier had challenged the anti-competitive nature of the stipulation. Importantly, the Tribunal had accepted that there could be a legitimate case for special treatment around safety assurance, but they had found that case was not sufficiently made in this situation. Damages had yet to be awarded against NR. Ian Prosser had given evidence in support of NR and noted that NR would have to update its SMS and that there would be a revenue impact on RSSB.
31. **Graham Richards** reported on successful completion of recruitment to all eight new posts in the current business plan (four Route lead, two asset management and two information and analysis posts).
32. Graham updated the board on the work in hand to review delay attribution (agreed as part of PR18), including a major meeting with the industry to sort out technical details. The aim was to drive better behaviours in the TOCs and NR.
33. Graham notified the board of an approach by Heathrow airport for some assurance work. They are considering whether to contribute funding to an NR scheme on western access to the airport, but were unclear how they could get assurance on efficient cost now that DfT has a direct role. This is a role that ORR does in Scotland and the board agreed that this was in line with ORR's role in providing support to parties wishing to invest in the sector, but noted that such advice would be commercially valuable and would draw resources from business as usual. On this understanding the board suggested the work could be provided on a 'paid for' basis and asked to be told how such charges would be set.
[Action]
34. **Dan Brown** reported on activity this month on the Williams Review noting that ORR's public position had received a very positive reception and reflected a major step change in passenger rights. The directorate would draw down on consultancy resource to take the next steps forward.
35. He also updated the board on current open access applications, of which Grand Central was working toward the December 2019 timetable.
36. On Brexit, Dan reported that DfT were again ramping up preparations for the UK to leave the EU in October.
37. **Russell Grossman** updated the board on the rescheduled publications and plans to promote our work over the summer. The CIAR launch was now a major annual event and had gone very well. Other publications had been positively received.
38. **Freya Guinness** reported to the board on the three key risks to London Accommodation reported in June. The leaks had apparently been fixed, key wayleaves were now signed (one had been done overnight) and facilities management providers were confident that a service could be in place for the move. Moves were now likely to be in the first half of October but there was an option to stay in OKS until January if it

became necessary to delay the move. The OKS landlord had agreed not to require dilapidations so this provision could now be released.

Item 9 NR – LICENCE BREACH

Catherine Williams and Davie Reed joined the meeting for this item

39. In April, the board had considered NR's response to the Final Order issued in respect of the breach of its licence to run an efficient and effective timetable process, and asked for further evidence that the PMO process had become properly embedded. Catherine Williams reported that it was possible to see the cultural change happening in the relationships around the PMO and the executive were content that the final order had been complied with.
40. The board welcomed the report and agreed that the Final Order had been complied with.
41. On Timetabling risk (as reported in the board information pack and see para 27 above) the board asked Catherine about the potential fleet resilience risk on GWR's introduction of IEPs in the December 2019 timetable. T-12 for December would occur before the next board meeting.
42. Catherine reported that the PMOs latest report to the Secretary of State did not suggest that the operation of IEPs would be a problem and also that fitment of filters was not highlighted as a risk. She would check and follow this up **[Action]**. John Larkinson was attending the First Group executive meeting on 24/7 and would also raise this². **[Action]**

Item 10 CONSUMERS

David Kimball Marcus Clements and Stephanie Toba attended for this item

43. David Kimball presented the report. New guidance on assisted travel policies would require measures to improve reliability, better staff training, shorter notice periods and redress for failure to provide service. Consultation responses (some of which had been challenging) had helped refine the guidance in draft.
44. The guidance was challenging for operators but did not go as far as some passengers and passenger groups wanted.
45. The board discussed the aspiration for a 2 hour notice period for all travellers. This was recognised as a significant challenge for operators, particularly for example on long distance routes where trains might already have set out before a request was submitted. The balance needed to be struck in order to set a period that was challenging but also reasonably achievable. The board also noted the other practical challenges for operators around the number of available wheelchair spaces, getting passengers with reduced mobility onto crowded trains, the fit of mobility scooters into rolling stock and so on. There were

² Post meeting note – this meeting subsequently moved to 9 October.

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particular challenges around unscheduled rail replacement bus services. The board noted that TOCs would have the opportunity when talking to someone requesting assisted travel to suggest alternative, less crowded services.

46. Operators needed to set out what they would commit to and what could be delivered in their policy. The clarity around what was actually being offered would bring helpful transparency to the different approaches of operators. There had been no evidence offered by operators around additional costs. There would be additional costs imposed by this requirement and this should be acknowledged.
47. The board reiterated its aim to drive significant improvements through this work, and noted the compromises which had been struck and the remaining risks to successful implementation. Communication with operators around this would need to be sensitively handled.
48. The board noted that this was continuing to build on the passenger experience research conducted last year and would also push operators closer to compliance with the Equalities Act.
49. Board approved the publication of the guidance.

Item 11 HIGHWAYS PANEL

50. Stephen Glaister reported that the process had yielded a strong panel of applicants with ambition. Several had strong technical knowledge and active links in the industry.
51. The board endorsed the outcome of the recruitment process. The Board asked for ideas on how it could have some engagement with the panel – and with the other expert panels on which ORR relied. **[Action]**

Item 12 RIS2 QUARTERLY UPDATE

This item to be redacted until publication of RIS2 as policy development

52. Graham Richards reported on a meeting of the DfT BICC which he had attended with David Hunt when the committee considered the RIS2 advice. He had been reassured that DfT decision makers were receiving ORR's advice clearly and without modification. He had reiterated the advice that identified cost savings should be held by HE to mitigate risks. DfT would now work with HMT to agree the level of investment.
53. The Board noted external feedback on the relatively low additional efficiency ORR had identified (0.5%) over HE's original proposal of 8%. Graham responded by acknowledging that this is feedback he had also received but pointed out that efficiency was only one part of our advice and in total we had identified £660m of potential cost reduction (about 2.5% of expenditure). He also reported that the IPA had recently scrutinised our work and he understood that they had not proposed any further reductions. He also restated that we had recommended that

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- these reductions should be recycled within HE in the context of major risks to the portfolio (quantified as P50).
54. There were two outstanding issues for government in terms of RIS2 funding: HMT needed to agree treatment of VAT (worth £800m) and the alternative to PFI/PPP for major project finance had not yet been announced. The Roads programme was not protected from the main spending review as Rail funding was.
 55. The board also noted that while priorities for the RIS would be set by government, resultant removal of projects from the programme would be governed by the change control process and would therefore be transparent through ORRs reporting. This would also be important in bringing clarity on where risks had crystallised.

Item 14 HS1 ANNUAL PERFORMANCE REPORT

Steve Dennis and Debbie Daniels attended for this item

56. The board discussed the report, particularly the likely level of renewals where discussions continued about exactly what would be included and the possible funding of advance works for CP3. The report would be published by 31 July.
57. The board noted the level of unregulated income reported and asked for further detail on turnover **[Action]**.
58. The board noted that while HS1 had been well maintained the natural ageing of the asset and the future demands on the network require a shift from maintenance to renewals and agreed that this should be brought out more prominently in the report.
59. Graham reported that the AEFA report showed underperformance on efficient enhancement delivery since the Hendy realignment and the removal of ORR from the assurance processes.

ITEM 13 ORR COMMUNICATIONS

Charlie Haddon, Simon Belgard, Jo Randell joined the meeting for this item.

60. Russell Grossman summarised the stakeholder survey results.

Paragraphs 61-64 have been redacted as policy development

65. Overall the board agreed that ORR should continue to be more confident in sharing our evidence and analysis, including broadening the evidence base around whole industry. Continual assertion and demonstration of independence was important and clarity around our roles and those of our regulatees would eventually build better understanding of the real contribution ORR made in applying independent assurance to a public good.
66. The board discussed the evidence that personal contact led to improved stakeholder perceptions of the organisation. It agreed that more effort should be made to build even better relationships with key stakeholders,

particularly in Parliament and government, drawing on NEDs as appropriate. Recent experience was that new ministers and advisors needed targeted briefing to understand the complex roles ORR filled, and the wider evidence base that it had access to which could enable us to become even more relevant as an expert and authoritative body.

67. The board asked for a further conversation in the autumn about where to focus communications efforts after the result of Williams is known. **[forward programme]**

Item 16 WILLIAMS REVIEW

68. ORR's advice to the William's Review setting out short, medium and long term improvements on issues regarding passenger accessibility and redress had been well received and our position as a source of expert and technical advice established through the publication of that advice alongside Keith Williams' speech.
69. Dan Brown updated the board on the latest thinking of the Williams review team. The board discussed issues around the creation of a new rail body, particularly in terms of how such a body would be held to account for its delivery to customers.
70. Dan reported on the wide range of ideas still being explored by the team and by the department. He noted that some of the ideas reported last month had been discarded. The challenges for reform of the industry were formidable and the ORR team had been working hard to help identify them as well as explore solutions. Much would depend on the views of the (potentially new) Secretary of State.
71. It was encouraging that ORR was involved in these important conversations and the board endorsed the approach of supporting the department to think through all the implications of its ideas. Early understanding of the challenges of implementation would be critical in designing a deliverable framework.
72. Dan undertook to keep the board informed of developments across the summer break. **[Action]**

Item 17 FEEDBACK FROM COMMITTEES AND PANELS

Audit and Risk Committee

73. Bob Holland reported on a good meeting, noting that the latest internal audit report on an IT project gave far better assurance than previous IT project reports. There had been a comprehensive progress report on the accommodation project. The quarterly risk report had been circulated with the board papers: the system was working well and the discussion on risk management had been positive.
74. He mentioned that ARC had asked Exco to think about how Strategic objectives could be measured and consider discussing with the board at the strategy day in November **[Forward programme]**. The chair agreed that reporting on achievement of strategic objectives was important.

Consumer Panel -

For publication

75. Anne Heal reported on a visit to HE to hear from customer service leadership team about how they were taking a more strategic approach to customers, and noted an increased focus on customer satisfaction.

ANY OTHER BUSINESS

76. The Chair reported on meetings with Lilian Greenwood, the CIAR launch, and a Felixstowe port visit (Freightliner) including cab rides. He had attended the Wales Route Stakeholder Board and with John met Andrew Jones rail minister.
77. Over 60 applications had been received for board positions. 11 had been long listed for interview and interviews would be held after the September board.
78. The board noted the forward programme and risk report circulated below the line.