

**THE OFFICE OF RAIL AND ROAD
163rd BOARD MEETING**

24 September 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 chair welcomed everyone to the meeting. There were no apologies.

Item 2 DECLARATIONS OF INTEREST

2. No new relevant interests were declared. Stephen Glaister informed the board that, with the agreement of the Chair, he had accepted an invitation to sit (in a personal capacity) on the Advisory panel for the review of HS2. This had been commissioned by the government to report in the autumn.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The Board noted a minor correction to the minutes. The Chair would sign an amended version.
4. The board secretary reported some updates on the action list. It was noted that the outstanding delegation approved in November 2018 in relation to the Memorandum of Cooperation with IRG-Rail could only be exercised when this was ratified - after the UK's departure from the EU.

Item 4 HEALTH AND SAFETY MONTHLY REPORT

5. Ian Prosser reported on current understanding of a tragic incident at Waterloo resulting in the death of a cleaning contractor. Investigations were continuing alongside the BTP. It was noted that, since this was not an incident directly relating to trains, HSE might have relevant experience that RSD could draw on.
6. Ian also reported that BTP had handed over primacy on Margam to the ORR and described a recent meeting with the families of those who died in the incident. This was in line with ORR's usual approach to

- investigating fatalities or major injuries. He understood that NR's CEO would be meeting the families in London.
7. In relation to the improvement notices on trackworker safety, he had been told by NR that they would be withdrawing their appeal against the notices and would write setting out their plans to comply with a three year programme and an annual report on progress. Some routes were moving more quickly to deliver improvements. Ian stressed the importance of the trade unions engaging with this initiative. Justin McCracken reported that HSRC had discussed the emerging findings of the internal review of handling on the notices and the board would receive the final report at its October meeting **[forward programme]**. The committee were content that the review was being done thoroughly and robustly. The board agreed that the chair and CEO should meet their NR counterparts to discuss the review after that meeting. **[Action]**
 8. On trams, DfT had announced publicly that funding was secure for the LSRB for 2021. The board noted with dismay that the CPS were still considering BTPs submission on whether prosecutions should be brought in relation to the Croydon tram fatalities in 2016. However as BTP has primacy at this point there was nothing that ORR can do to unblock this logjam. Ian said that his team were ready to go if the case was handed over.
 9. Ian reported on *[this content redacted as it is potentially commercially sensitive]*. The board asked for clarification on the ORR's role in approving disposals – which was acknowledged to be narrow, and any assurance taken in this case that the access rights were appropriately secured **[Action]**
 10. Finally, Ian reminded the board that 5 October this year would be the 20th anniversary of the Ladbroke Grove train crash. He expected a level of media and public interest.
 11. The board asked about the impact of the power blackout at the end of August. In safety terms, the response had been managed reasonably well and the rolling stock had all failed safe. But the impact on customers and the time taken to re-establish the service were very serious. The industry was still working through the issues and the board asked for a report on current understanding of what the issues remaining to be addressed are and particularly whether the rolling stock had behaved as expected by the TOCs **[Action]**. John Larkinson reported that there had been helpful contact from Ofgem in advance of the National Grid report being public.

Item 5 BOARD INFORMATION PACK

12. The board asked that the presentation of performance by TOC should give a better sense of performance over time and comparisons between operator, noting that over time regional differences might also be informative **[Action]**.
13. The board discussed emerging public concern around the safety of all lane running and **smart motorways**, which had been explored

thoroughly at the Highways Committee the day before. ORR's role in safety on the network was limited to reporting on HE's performance and management, but staff had already started work to assure the robustness of HE's evidence base underpinning the policy, as well as emerging evidence from actual operation. Work to review the quality of HE's regular post-opening project evaluation was also in hand. In addition, staff were working with HE to understand how it applied safety considerations and statistics in prioritising its plans for network development. The board welcomed this work. It noted that the upgrade to smart motorways had been underway for some time and that further upgrades were planned in RIS2 as part of expanding capacity at a lower cost. Policy considerations would include not only safety but also issues such as sustainability, future-proofing and efficiency. Motorways continued to be significantly safer than the rest of the road network and evidence on the impact of smart motorways on safety will take time to build, but it was important that any emerging picture of a decrease in actual safety performance was recognised and addressed urgently. Given the level of existing and planned investment in smart motorways it was important that there was transparency around judgements by government and HE on the benefits and the balance of risks in relation to these changes. To this end ORR should satisfy itself that HE is taking all reasonably practicable steps to gather and analyse the safety impact of converting motorways to all lane running, on either a full or part time basis. It was important to public confidence that such evidence should be made public without delay. ORR needed to be prepared to explain its role and its assessment of HE's underlying assurance.
[Action/Forward programme – report in October].

Item 6 CHIEF EXECUTIVE'S REPORT

14. John Larkinson reported to the board on meetings with the new Secretary of State and the Rail Minister. He described the relationship between Transport Scotland, Abellio and Network Rail Scotland and resulting financial issues and pressures. He planned to write to the NR CEO highlighting his concern on its potential to disrupt the wider regulatory settlement.
15. John also assured the board that the senior team had increased vigilance around business-as-usual decisions that had the potential to provoke negative stakeholder reactions so that they could engage and mitigate such reactions.

Item 7 OTHER EXECUTIVE REPORTS

16. **Graham Richards** reported on positive meetings with the Road Haulage Association, the Association of Consulting Engineers (commercial directors) and with the network of sub-national transport bodies. The latter group had been particularly interested in any support ORR could give them in understanding and developing their new roles as project clients and members of route supervisory boards for NR.

17. **Dan Brown** noted that Williams and NR efficiency were items already on the agenda. He highlighted two other areas: customers and open access. He updated the board on the legal challenge around rail replacement bus services and ORR's response. A paper on research on passenger information from earlier in the year would be brought in October [**forward programme**]. He was continuing to increase resource in the consumer team in advance of next year's business planning.
18. Dan reported a high level of activity around open access, including forthcoming approval of increased services London/Sunderland and a group of potentially competing bids on the West Coast Mainline. The board asked for a simple analysis of what open access applications were in hand and what had been approved over recent years as well as how successful they had been commercially and for passengers.
[Action]
19. **Russell Grossman** updated the board on good coverage on the recent change to on-time performance statistics and Q1 SPAD figures. Today's annual safety statistics would show the highest number of public fatalities in many years and an emerging picture of LUL's declining performance. The board said that it was important that ORR's statistical releases were supported with comment and interpretation that aided public understanding of risk. The board also discussed further incidents of exaggerated costings being wrongly ascribed by interested parties to ORR's safety interventions. John Larkinson was considering how best to address this misinformation. **[Action]**
20. Russell also reported on other media and social media activity and the beginning of work to map key influencers.
21. **Freya Guinness** reported that practical completion on the fit out of Cabot Square had been completed on schedule. She also gave updates on the three remaining major risks (connectivity, facilities management procurement and leaks). The programme remained on track for move dates around mid-October: agreements were in place for the payment to staff of increased travel and carer costs. The exit agreement from OKS was in place.
22. **Juliet Lazarus** reported on progress with the employment tribunal where (following ORR's application for strike out) the court had required the complainant to make a deposit in order to proceed. The court service could not yet tell us whether the associated deadline had been met.

Item 8 HS1 – PR19 - PERIODIC REVIEW –

Most of this item (paras 27-37) has been redacted from the published version as potentially commercially sensitive

Steve Fletcher, Carl Hetherington, Laura Majithia, Debbie Daniels, Joe Quill joined the meeting for this item

23. The board confirmed that they were being asked to approve the Executive's recommendations after exercise of appropriate scrutiny of them.
24. Graham Richards introduced the item, reminding the board that ORR's appraisal of the HS1 5YAMS for the purpose of PR19 was in the context of HS1's delivery of the general duty which requires the company "*to secure in respect of the HS1 Railway Infrastructure: its operation and maintenance; its renewal and replacement; and the planning and carrying out of any Specified Upgrades and other upgrades, in each case:*
- *in accordance with Best Practice;*
 - *in a timely, efficient and economical manner; and*
 - *save in the case of the EdF Assets, as if HS1 Ltd were responsible for the stewardship of the HS1 Ltd Railway Infrastructure for the period of 40 years following the date that any such activities are planned or carried out,*
subject to:
 - *the Safety Authorisation for HS1; and*
 - *the Capability Requirements."*
25. The board was reminded of which areas of income were regulated by ORR for HS1: it could not take into account the unregulated income or the investment recovery charge. There was no other funding mechanism to address any shortfall in charges, so with the exception of Southeastern, (which was held harmless to changes to charges during its franchise period,) the TOC and FOC charges had to meet HS1's costs including the annuity charge to deliver the right level of increase in the escrow account to maintain asset condition. The recommendations on PR19 are therefore judgements – albeit based on significant levels of analysis and the most robust available evidence.
26. Carl Hetherington explained that considerations about the right level of escrow funding include the required condition of assets on completion, intergenerational equity so that current users pay a fair proportion of lifetime costs, impact on operators, and affordability. There was an evidence based assessment of the cost of the asset investment required. In PR14 the evidence base had not been as robust (because there was less experience operating the assets) and ORR had taken slightly more regard to affordability for operators than long term investment. The proposals for PR19 were based on stronger evidence and were more balanced between current affordability and long term need.
[redaction here]
38. John Larkinson summed up that the proposed outcome was a good one which weighted all the various interests reasonably.
39. The board delegated the sign off of the final draft determination to John Larkinson. The final determination would be discussed at the board meeting scheduled for 10 December **[forward programme]**.

Item 9 HIGHWAYS

Sarah Robinson and Richard Coates attended for this item

40. Richard explained the proposed approach to review the Monitoring and Enforcement policy for Highways and that it would be subject to consultation before the Board was asked to adopt it formally.
Paragraphs 41-44 have been redacted from the published version as relating to policy development.
45. The board supported the approach to reviewing the policy.

Lunch

Item 10 NETWORK RAIL: UPDATE ON CP6 EFFICIENCY

Carl Hetherington and Gordon Cole joined the meeting for this item.

46. Carl Hetherington reported that as a result of increased pressure from ORR over a long period, NR had tightened its focus on efficiency from the start of CP6. This appeared to be delivering good progress against plan, but there was still a significant challenge ahead, particularly in later years of the control period.
47. John Larkinson described a vigorous and intensive internal debate around the issue because staff had applied an appropriate level of scepticism to the available reports which had showed encouraging delivery against their year 1 plan. It was noted that NR tended to use precise figures where a range would be more realistic, but they were also showing a degree of caution in their plans. There remained significant challenges for the rest of the period.
48. The board noted the report and asked that NR's executive be invited to attend the board meeting in January 2020 when more evidence on progress would be available [forward programme].

Item 11 CARDIFF – CORE VALLEY LINES

Catherine Williams and David Reed attended the meeting for this item

49. Catherine Williams introduced the paper and gave an update on progress since circulation including a provisional revised transfer date. She expected to be asked formally to report on the cost assessment in relation to CP6 avoided costs which would add valuable assurance to the parties and give a baseline for future financial performance reporting. TFW were considering how to meet HMT's requirement of long run cost validation and ORR staff were helping them identify what they would need and how it might be met. The board sought assurance that there was adequate resource available for the current work, noting that those staff might also be involved in PR19. It was also important that the process did not set precedents with stakeholders which led to resource pressures in future.

Item 12 CENTRAL SPENDING ROUND

50. Freya Guinness reported that she had now received verbal assurance from HMT that the non-discretionary pressures set out in ORR's funding submission would be met. Business planning for 2020-21 would begin on the basis of what was expected, but with clear choices built in so that if the settlement did not meet our needs, plans could be constrained.

Item 13 WILLIAMS REVIEW

Rob Cook was on the phone for this item

51. John Larkinson updated the board on recent meetings with DfT officials, the Secretary of State and others around the Williams proposals. ORR continued to offer support and information, and were now included in the working group on implementation. As the proposals were developed it was clear that ORR would need to move to a more active role, making concrete observations and recommendations on how any new structures could be independently assured and reported on. The discussions continued to be highly sensitive for people employed in all the bodies involved and potentially commercially sensitive.

Item 14 FEEDBACK FROM COMMITTEES AND PANELS

Health and Safety Regulatory Committee

52. Justin McCracken reported on a good meeting noting that the committee had approved the new crowding policy statement.

Highways Committee

53. Stephen Glaister reported on discussions on RIS2 where the advice to DfT had been well received. He noted that RIS2 still had funding gaps around the VAT and PFI changes.

Consumer Panel

54. Anne Heal reported that the panel had contributed on the crowding policy and also discussed communicating risk and uncertainty to the wider public.

Renco

55. Michael Luger reported that he would attend Staff Council as an observer and Renco would meet them after the results of the staff survey were available in January.

Item 16 ANY OTHER BUSINESS

56. The board asked whether it had any powers to intervene on the quality of service on a given TOC where social media reports suggested there was a significant issue. The Executive advised that it was looking at safety questions on this TOC, but that addressing the quality of service on a TOC was the responsibility of the franchising authority and not for ORR.

Next meeting: the next meeting would be on 30 October 2019 in Bristol.