

Office of Rail Regulation

Minutes of the 87th Board meeting on 18 September 2012

(11:00 – 16:55) in Room 1, ORR offices, One Kemble Street, London

Board present:

Non-executive directors: Anna Walker (chair), Tracey Barlow, Peter Bucks, Mark Fairbairn, Mike Lloyd, Stephen Nelson, Ray O'Toole and Steve Walker.

Executive directors: Richard Price (chief executive), Michael Beswick, Ian Prosser, and Cathryn Ross.

In attendance, all items: John Larkinson (acting director, RPP), Jen Dinmore (legal adviser), Ken Young (director, external affairs – from item 7), Alastair Gilchrist (director of corporate operations), Sam McClelland Hodgson (Board secretary), Gary Taylor (asst. board secretary)

In attendance, specific items: Dan Brown (items 3 and 4), Richard Gusanie (item 5) Paul McMahon (Items 6, 11), Jonathan Hulme (item 6); Ken Young (from item 8), Claire Dickinson (Item 8); John Gillespie (item 8); Nigel Fisher (item 9); David Robertson (item 10); Paul Stone (item 11), Sandra Jenner (Items: 3,4,5 and 12)

Item 1: Welcome and apologies for absence

1. Anna Walker welcomed everyone to the meeting, in particular, Alastair Gilchrist, the new interim director of corporate operations observing the meeting. We noted apologies for absence had been received from Juliet Lazarus; Jen Dinmore was attending on her behalf as legal adviser. We also noted apologies for lateness from Ken Young.

Item 2: Declarations of interest

2. There were no interests declared relevant to the agenda.

Item 3: Strategy vision and next steps

3. Following our recent staff workshops and our strategy discussions on 11 September we discussed our upcoming October awayday where we will establish greater clarity around our short, medium and long term objectives. We recognised the importance of this work as we considered the development of our strategic objectives as key to establishing the building blocks for CP5 and CP6.

4. Dan Brown provided a brief recap of what had already taken place in the process of developing our strategy. Going forward, we noted that we need to look at the following:

- Our current activities and statutory duties;
- Establish a clear set of longer term objectives;
- How the strategy is taken forward by the Business plan in 13-14.
- How best to engage our stakeholders around our business priorities.

5. Following discussion we agreed that it would be important for the Board to have a greater understanding of the building blocks involved and how these link together to build our overall story.

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6. We recognised that we have historically looked at our strategy from the bottom-up. We agreed that going forward we also needed a top down approach to developing our strategy.
7. In terms of next steps, it was confirmed that a Board strategy group meeting was currently being arranged to ensure a further discussion takes place around preparations for the awayday session. We agreed that all non-executive directors be invited to join this meeting by phone if available.
8. We agreed that it would be important for the executive team to provide a clear steer around what the outcomes of the awayday should be. The executive team were tasked with developing a clear set of outcomes and to work up the agenda for awayday from the basis of this discussion.

Board 18.09.2012 Action A: Board strategy group session to take place in early October to discuss preparations for the October awayday event. NEDs to join by conference call (subject to availability).

Board 18.09.2012 Action B: Dan Brown to take Board discussion as a basis to draw up an agenda for the strategy workshop in October.

Board 18.09.2012 Action C: We agreed that the Executive should provide a clear steer on what they want the outcomes of the awayday discussion to be.

Item 4: Outcome of high level meetings with RDG and ATOC and the recent ministerial changes

9. We noted the feedback from the recent high level meetings held with the industry, including a workshop with ATOC, and meetings with RDG.

(Paragraphs 10-12 have been redacted because they contain sensitive information.)

13. Steve Walker confirmed to us that following the discussion around ensuring better safety dialogue between ORR and ATOC, a slot on the December SRC agenda was being developed to invite relevant ATOC members to discuss safety areas in more detail.
14. An introductory meeting with Simon Burns (Minister of State for Transport) took place on 10 September. The main points to note were:
 - Very clear that the new team would take their own decisions, not be bound by their predecessors.
 - Ministers were already apprised of our interest in doing more on passenger experience and performance monitoring
 - Ministers are very keen on progress on the transparency agenda.
15. The Board noted that meetings with the Secretary of State and Simon Burns would take place in the coming month.

Board 18.09.2012 Action D: In relation to the monitoring of TOC performance, we were keen that we take a pragmatic approach to

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ensure that we build credibility and confidence within the industry. The executive agreed to keep the Board updated with developments.

Item 5: PR13 governance and overview of issues and timeline

16. We considered a paper and presentation for PR13 which set out the key issues, timelines and proposals for governance arrangements going forward.

17. We noted and agreed the suggested changes to the PR13 governance arrangements.

18. These included:

- NEDs would cease attending regular programme boards, however bespoke meetings would be arranged as required to get NED input on specific issues/ topics
- PRC membership would now include Steve Walker (ensuring all our Board would now be members of the committee)
- The Board will be convened at the end of regular PRC meetings, as necessary, to expedite necessary decisions from PRC discussions – governance arrangements in accordance with our rules of procedure will be put in place to accommodate this
- Agreement that the test for delegation for Executive to progress PR13 be on the basis of
 - operating within the strategic objectives and policy framework
 - There being no new / significant issues raised by the delegation.

19. We agreed there needed to be further work on our success measures – we expressed concerns over linking ORR's success with industry, more towards reflecting what ORR has done to drive success and how we have added value through PR13. Wider success measures of what the industry should achieve as a result of PR13 were also needed.

20. We noted the current position on the direction of travel. We suggested that we need to have a clearer understanding of direction of travel and our vision for the PR13 determinations. We agreed that it would be useful to produce a slide which sets out a top down picture of the projects and key dates.

21. We discussed the timeline in more detail. We suggested that it would be useful to flesh this out and highlight the key dependencies and timings. The executive agreed that this was important for the Board to have sight of these dependencies. We also agreed that it would be useful to schedule in a further Board or PRC discussion on safety issues.

22. We agreed that it would be useful to establish potential dates for an additional Board meeting in August 2013 for any potential PR13 discussions following the draft determinations. On balance we agreed not to re-issue our PR13 objectives, but use our narrative around the PR13 determination for messaging. We agreed to revisit our PR13 narrative at start of our awayday 'What we want to achieve through PR13' and update this following the outcomes of the October awayday discussions on strategy objectives.

23. We discussed the development of success measures for PR13. We agreed that we would need to consider the impact of having a set of success measures for PR13

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which take into account the lessons learned from CP4. Cathryn agreed to reflect on this and assess the benefits. We suggested that it may be useful for Cathryn to discuss this with the NAO.

Board 18.09.2012 Action E: Agreed governance proposals to be implemented- governance arrangements in accordance with our rules of procedure will be put in place to accommodate this.

Board 18.09.2012 Action F: Further work on fleshing out the timeline, including the dependencies of each project to ensure the Board have clear sight of these – to be circulated in correspondence to Board.

Board 18.09.2012 Action G: Need for clearer understanding of direction of travel and ‘end game’ for PR13 determinations – 1 slide to be produced on top down version of what projects being done and when

Board 18.09.2012 Action H: We agreed that it would be useful to have a discussion included on the PRC/Board agenda which focused on drawing together the PR13 safety issues – Cathryn to also reflect this in the timeline.

Board 18.09.2012 Action I: We noted that as there is no Board meeting in August 2013, it may be wise to have in the diary a meeting which may/may not be necessary to discuss PR13 issues.

Board 18.09.2012 Action J: Anna agreed to provide Cathryn with further specific comments following this meeting, including a short note in reference to understanding where government is going and growth forecasts.

Board 18.09.2012 Action K: Cathryn to look at work on providing better clarity on success measures for PR13. We agreed that it may be useful to discuss this with National Audit Office. Paper to be brought back to the Board at a date to be agreed

Board 18.09.2012 Action L: We agreed that we should consider the lessons learned from CP4 to inform our success measures for CP5. Outcomes of this should be incorporated in Board action above

Item 6: Conclusions on aligning incentives to improve efficiency

24. In considering this paper and the complex issues relating to the proposals we agreed we needed further information and clarity of views on the pros and cons of the propositions to be able to make a decision on Regional Efficiency Benefit Sharing mechanisms (REBS), its interaction with alliances and whether to mandate it or not and our approach to increasing train operators exposure to changes in NR’s track access charges at periodic reviews.

25. We therefore agreed that the executive would provide a further paper and we would endeavour to circulate it for a Board decision in correspondence as soon as possible in October.

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26. The additional information we requested in the paper needed to include:

- Reasons for proposals and recommendations
- answer questions relating to pay outs
- Address questions relating to McNulty figures
- Clarity of the two sets of decisions required
- An executive summary to capture views
- How REBs will work as a scheme

Board 18.09.2012 Action M: Following discussion we agreed that the Board would require a further paper which clearly sets out the pros and cons of the proposition and clearly states the associated legal issues and DfT position. Paper to be cleared by the executive as an agreed view(s) and circulated to NEDs for agreement through correspondence as soon as possible.

Item 7: Monthly Industry Health and Safety report

27. Ian Prosser provided an update on the latest industry health and safety issues.

28. We noted that in period four there were significant increases in weather and water-caused structural and landslip failures resulting in our focused enforcement and investigation of how Network Rail mitigates the consequences of and from such risks. We noted we were investigating a number of these failures, as well as pursuing the wider asset management implications. The key question was how resistant Network Rail's assets were to extreme weather.

29. Ian confirmed that he continued to meet with Carolyn Griffiths, Chief Inspector to discuss RAIB recommendations issues. Richard Price also confirmed that a meeting had been arranged to take forward his liaison with Carolyn in October. RAIB were concerned at what appeared to be repetitions of the same problem. The question was whether the duty holder had done enough to prevent such repetitions.

30. We discussed the recent Olympics and Paralympics and recognised the success of the railways, underground services and DLR to manage during this period this time. We noted the industry was looking at lessons learnt from this experience and how these could be taken forward in their day to day processes.

31. We also discussed the latest trends relating to SPADs and worker fatigue.

Item 8: Occupational Health

32. We considered a paper which set out the progress made to date in relation to our Occupational Health programme.

Paragraphs 33 - 35 have been redacted because they contain sensitive information.

36. Steve Walker confirmed that SRC would continue to have oversight of the programme and any issues that may arise. He reported ATOC's concern at over-intrusiveness in this area and that this would need looking at. We also recognised the need to be mindful of our own Occupational Health processes and assess whether there are areas for improvement.

37. We thanked the team for a thorough and timely update on the progress made in our programme of work. We agreed that it was crucial to explore the use of our economic levers to see where better management of health within the industry can drive greater efficiencies.

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Board 18.09.2012 Action (a): Work should take place to join up our occupational health work to ensure that in CP5 Network Rail was not rewarded for inefficient occupational health management and to close the gaps in their management of health issues.

Board 18.09.2012 Action (b): Timetable a review of our occupational health processes and assess whether there are areas for improvement.

Item 9: Performance update

38. Michael Beswick provided an update around the issues of performance in relation to long distance performance, LSE, freight performance and concerns around Network Rail's planning process.

(Paragraphs 39-44 have been redacted because they contain sensitive information.)

45. We thanked Michael and Nigel for a useful update to the variety of issues around performance.

Board 18.09.2012 Action N: In relation to long distance performance, we agreed that we would need to establish whether David Higgins should meet with Anna and Richard to explain the issues. We agreed that we would need to consider the handling of this along with messaging.

Board 18.09.2012 Action O: Further update to be provided at the next Board meeting on LSE performance.

Board 18.09.2012 Action P: Michael agreed to consider the key messaging around this discussion.

Item 10: Open Access

46. We received an update report on the issues raised around open access. We noted that work was on going to look at our access functions, with Brian Kogan leading a strategic review of our track access functions with a report expected to be discussed at the Board around Christmas.

47. We considered that there may be an issue to consider around perceptions that our policies were inconsistent. We agreed that as part of the review of track access we should consider our approach and evaluate whether we have a robust policy in place which allows open access operators opportunities and promotes competition.

48. We agreed that consideration needed to be given to our long term approach and work for CP5, including the establishment of a proper system operator function, and a definition of capacity with incentives on Network Rail to promote and sell such capacity. It was confirmed that these issues will be picked up as part of the review with all options being considered.

49. We thanked the team for the extremely useful paper and summary of the history of on-rail competition.

Board 18.09.2012 Action Q: Cathryn confirmed that the results of the strategic review of our track access function will be presented to the Board around Christmas time. Exact date to be confirmed.

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Item 11: PR14 – HS1

50. We noted the report which set out the issues associated with our review of PR14. We noted that we had had good engagement with HS1 through a number of workshops.

51. We discussed the resources in place to undertake the review. It was confirmed that at present we have resources in place but suggested that the level of resources required will be kept under review. We recognised there was also the question of whether we had the appropriate expertise as the asset base was 'young' and a key issue would be the rate of degradation.

52. Following discussion we agreed with the proposed scope of PR14 for our initial consultation which will begin in December 2012.

53. We also thought we should consider whether there is anything to learn from benchmarking expenditure to help us with this work.

Board 18.09.2012 Action R: Further paper to be scheduled to the Board in April 2013 on PR14-HS1.

Item 12: Change and internal capability plan

54. We noted the paper which set out progress made against a number of areas which are being reviewed as part of the overall change and internal capability plan.

[Paragraphs 55-59 have been redacted as they contain sensitive material]

60. We thanked Sandra for her paper and supporting annexes and agreed that positive progress had been made to date.

Board 18.09.2012 Action S: We agreed that a further Board discussion was needed to follow up the Capability Review recommendations.

Board 18.09.2012 Action T: We suggested that the change plan should include a review of our core processes.

Board 18.09.2012 Action U: We suggested that it would be useful for Sandra and Alastair (as relatively new to ORR) to provide their initial observations of ORR to the board.

Item 13: Chair's report

61. We noted the feedback provided in the Chairs report this month on Anna's meetings and engagements with the industry and Government over the past month.

62. We noted feedback of recent meetings including with Richard Parry-Jones. We agreed that it was crucial that there was clear coordination around Anna's briefing for these meetings. Ken agreed to take this forward.

63. We agreed that Cathryn Ross would take forward meetings for HS2 and Infrastructure UK as proposed in the Chair's report.

Board 18.09.2012 Action V: Ken Young to take forward co-ordination of briefing of key messages for organisation as part of the programme of Anna & Richard Parry-Jones meetings.

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Board 18.09.2012 Action W: Cathryn Ross to take forward meetings with HS2 and Infrastructure UK on how ORR's work on efficiency and cost reduction fits with their activities

Item 14: Chief executive's overview and monthly data

64. We discussed the Chief Executives overview and monthly data which set out the key issues for ORR in relation to internal and external activities.

65. We agreed that the issues raised in the report had been covered earlier in the agenda. We noted that a paper would be brought to Board this autumn which will highlight our approach to information and TOC relations (and will cover the developing TOC monitoring story).

Item 15: Board forward programme and draft dates 2013

66. We noted the latest Board forward programme would be circulated following updates to the PR13 timeline work.

Item 16: Committee meetings: feedback

67. Steve Walker provided feedback from the last Safety Regulation Committee meeting which took place on 25 July. The topics discussed at the meeting included; maintenance management, change management at Network Rail and the overall role and purpose of SRC and RIAC going forward.

68. We noted the progress of the Board committee review project. We noted the group's last meeting considered comparisons with other regulators committee structures, our committee governance arrangements and our statutory functions and the variety of ways these are undertaken. Anna confirmed that the final report will now be prepared and shared with the Board in the next few months.

Board 18.09.2012 Action X: We agreed that the feedback from SRC should be included under the health and safety update going forward.

Item 17: Approval of minutes of Board meetings of 24 July 2012 2012 for publication

69. The minutes of our formal Board meeting on 24 July 2012 were confirmed subject to revision to paragraph 9. We also noted that the minutes were subject to the Chairs final review, following which they would be signed.

Board 18.09.2012 Action Y: We noted the change to paragraph 9 in the minutes.

Item 18: Matters arising (not taken elsewhere on the agenda)

70. We noted the progress against actions from our previous meetings; we noted we needed to close out Board actions and ensure a more manageable list going forward.

Board 18.09.2012 Action Z: We noted the large number of actions. We agreed that we should review how we use this agenda item for future meetings to ensure that actions are being properly monitored and progressed.

Item 19: Any other business

71. No issues were raised under this item.

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Item 20: Meeting review

72. We agreed that the quality and timeliness of the Board papers was positive. The NED preparation sessions were also useful. Richard confirmed that this enabled the executive team to pick up points in advance of the Board meeting.

73. We agreed that having strategic discussion at the start of the agenda helped the flow of meeting.

74. We suggested that further thought should be given around how to highlight CE's and Chairs information better to inform strategic issues elsewhere on the agenda.

Draft minutes approved by the Board on 22 October 2012

Anna Walker

Chair