

Office of Rail Regulation

Minutes of the 92nd Board meeting on 19 March 2013

(10:00 – 16:00) in Room 1, ORR offices, One Kemble Street, London

Board present:

Non-executive directors: Anna Walker (Chair) (items 1-6), Tracey Barlow, Peter Bucks, Mark Fairbairn, Mike Lloyd, Ray O'Toole, and Steve Walker.

Executive directors: Richard Price (Chief Executive), Michael Beswick (Director, Rail Policy), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance), and Cathryn Ross (Director of Railway Markets and Economics)

In attendance, all items: Richard Emmott (Interim Director, External Affairs), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), and Gary Taylor (Assistant Board Secretary).

In attendance, specific items: John Larkinson (PR13 programme Director) items 3, 4 and 5, Nigel Fisher (Head of performance, information and analysis), Paul Hadley (Head of Operations), Andrew Wallace (Head of Planning and Operations), Colin Greenslade (Head of Strategy, Planning and System Safety), Chris Fieldsend (Industry Planning manager), Mervyn Carter (Senior engineer), Carl Hetherington (Deputy Director, RME), Jonathan Hulme (Financial analyst), Rob Mills (Senior Economist), Joe Quill (Competition Economist), and Dan Brown (Director, Strategy)

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. Apologies were received from Stephen Nelson (non-executive director). The Chair confirmed that she would need to leave the meeting at 13:00. Tracey Barlow would chair the remainder of the meeting.

Item 2: Declarations of interest

2. Peter Bucks declared that he was undertaking some financial consultancy for CAA, but this was not thought to be relevant to the matters in hand.

Item 3: Outputs

3. John Larkinson presented this item which set out a suite of recommendations for Board decision as part of the overall package of outputs for CP5.
4. The decisions made against individual recommendations and the additional work required where a decision has not finally been made are set out in an annex to these minutes (*attached to the record but not for publication as it relates to work which is in hand and will be captured in the published document*).
5. It was recognized that we need to be aware of our legal framework and our relevant section 4 duties when looking at the overall package. John confirmed that this will be an important consideration and the balance between the duties that has been assumed in reaching the executive recommendations will be highlighted as part of the overall package discussion scheduled at the April Board meeting.
6. In order to regulate Network Rail (NR) the regime for CP5 includes outputs, enablers and indicators. Failure to deliver outputs will usually be a licence breach. 'Enablers' and 'indicators' have the same status as each other although they tell us about different types of things – enablers are about NR's improving capability in key "transformational" areas in order to achieve the desired outcomes, and indicators are

about tracking underlying risk. We agreed that we need to have a clear expectation of how we would react should an indicator or enabler go off trajectory. We agreed that we need to ensure that we are clear on:

- what will we measure;
- our expectations for each measure;
- actions if performance is off track; and
the incentives we will attach to each.

[The rest of this section has been redacted from the published minutes as it relates to policy development]

Item 4: Efficiency reporting in CP5

26. Carl Hetherington presented this item, which set out the proposed approach to assessing financial performance in CP5. Carl confirmed that a consultation exercise would take place to seek views in advance of a decision being made in October 2013. Carl also stressed that this item was about measuring Network Rail's financial outperformance and not about how the measure is used to make decisions, e.g. for route-level efficiency benefit sharing (REBS) or the MIP.
27. Cathryn Ross emphasised that this work was important for a number of reasons, including:
- The need to simplify the current arrangements for efficiency monitoring;
 - Building on the lessons from CP4;
 - Establishing the linkages between outputs and financial performance; and
 - The close link to our strategic objectives.

[paragraphs 28-32 have been redacted from the published minutes as they relate to policy development]

33. We thanked Carl for the informative discussion. We agreed that the issues discussed were now in a position to be highlighted through the consultation.

Board 19.03.2013 Action vii: Carl to speak to Stephen Nelson to discuss points raised in advance of the Board meeting, Peter Bucks to discuss debt indexation and the Chair to gain any other views.

Board 19.03.2013 Action viii: The Board agreed to consult on measuring Network Rail's total financial performance in CP5. Board to return to the issue of how it measures financial performance for REBs and the MIP as part of decisions on the CP5 package. Both actions: Carl Hetherington.

Item 5: Decisions on the performance and possessions regimes CP5 (schedules 4 & 8)

34. John Larkinson and Rob Mills presented this item which set out recommendations in relation to the schedules 4 and 8 possessions and performance regimes.

[The rest of this section has been redacted from published minutes as it relates to policy development]

Item 6: Preparations for upcoming Board sessions – Network Rail and ATOC

39. The Chief Executive highlighted the draft agendas for the upcoming joint Board sessions with ATOC and Network Rail.

ATOC 10 April 2013

40. The session would be used to recap on the safety issues raised at the last joint Board session and to discuss the future regulatory approach using a bespoke version of the Long Term, Regulatory Statement (LTRS) as a starting point for discussion. We agreed that this version of the LTRS would be shared with Board members as part of the briefing for the meeting. We also agreed that we should have a pre-meeting.

Network Rail dinner: 11 April 2013

[Some text has been redacted from this section as it relates to policy development]

41. This session would focus on the following:

- *Long term vision for Network Rail and regulation. []*
- *What will be different in CP5 and CP6. []*

42. We discussed the arrangements for the meeting. It was agreed that a round table discussion would be beneficial in ensuring a better quality of conversation.

Board 19.03.2013 Action xi: ATOC agenda timings to be revised to reflect shorter discussion on safety.

Board 19.03.2013 Action xii: LTRS (ATOC meeting version) to be sent to Board members for initial views

Board 19.03.2013 Action xiii: Board members to be provided with briefing for both NR and ATOC meetings.

Board 19.03.2013 Action xiv: Pre meeting session to be scheduled in advance of ATOC and NR meetings.

Item 7: Monthly Safety report / issues to advise the Board

43. Ian Prosser raised the following safety points:

Earthworks

44. A number of failures relating to structures and earthworks have been picked up on the Precursor Indicator Model in Q2. Ian confirmed that he had produced a report on earthworks related issues which would be circulated to all Board members. Ian highlighted that there was recognition by Network Rail that these issues need to be addressed and they have developed work banks for first 2 years of CP5. Work with Network Rail and ORR's inspectors will continue through a detailed inspection programme over the next 12 months.

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Broken rails

45. In response to issues on London North East, Ian confirmed that Network Rail have put in place a resourced delivery plan which ORR's inspectors will continue to review on a monthly basis.
46. Similarly, issues affecting broken rails on the Sussex route have resulted in Network Rail placing additional resources to inspect and maintain rails. Ian will continue to keep the Board informed.

Train/platform interface

47. Ian confirmed that a workshop in conjunction with RSSBB on the industry wide best practice approach to platform train interface is taking place shortly.

Board 19.03.2013 Action xv: IP to circulate his report on earthworks to the Board

Board 19.03.2013 Action xvi: IP to update the Board on the effectiveness of NR's response to broken rails.

.Item 8: Business plan 2013-14 – Sign off

48. Dan Brown presented the draft 2013-14 Business Plan document for sign off by the Board.
49. We agreed that the document was well presented and comprehensive. It was noted that we need to have a clearer understanding around the use of our broader competition act powers and demonstrate where we have used them previously and where we will use them in 2013-14. Cathryn confirmed that this can be captured and will be shared with the Board when completed.
50. We discussed the likely resource challenges facing the organisation during 2013-14. Cathryn confirmed that there were significant challenges in the areas of consumer policy and the work to prepare for PR18 which would begin during 2013. We agreed that the Board should be aware of these issues and programme discussion when appropriate.
51. The Board were content to sign off the 2013-14 Business plan and congratulated Dan and the team for producing a quality document. Dan agreed to contact those Board members not present to establish whether they have any significant comments.

Board 19.03.2013 Action xvii: ORR's competition activity needs to be highlighted and demonstrate how and when we use these powers. (Relevant to ORR's broader competition powers). To be shared with the Board in due course.

Board 19.03.2013 Action xviii: Cathryn highlighted the challenges in 13-14 around consumer policy and starting the work on PR18. We agreed that these issues should be factored on to the Board forward agenda for discussion.

Board 19.03.2013 Action xix: Dan to contact those NEDs who were not in attendance to seek any outstanding comments on the draft Business Plan.

Item 9: Annual report and resource accounts – update

52. Richard Emmott provided a brief progress report on the production of the Annual Report and Resource accounts. We noted the timescales and welcomed the progress made to date.
53. The potential for the Report to trigger a hearing with the Transport Select Committee was identified. This is a statutory accountability document and its treatment should reflect that importance, although it will be issued at a time when most attention will be focused on the draft determination. It must set out ORR's achievements during 2012-13 alongside the financial content.

Item 10: Report back from the March Audit Committee

54. Tracey Barlow (chair of ORR's Audit Committee) provided a summary of the discussions held on 7 March 2013:
 - The committee welcomed the report from John Larkinson which looked at how ORR gains assurance from its financial models. The committee felt that it would be useful for the Board to have sight of the report. The Chief Executive would speak to the Chair to establish how best to do this.
 - The committee discussed risk management and how this links to ORR's new business management system. A report will be discussed at the May Audit Committee meeting.
55. We noted that the Board had not received an update from recent Remuneration Committee meetings. We agreed that this should be discussed with the RemCo chair and considered for future meetings.

Board 19.03.2013 Action xx: Consider providing a RemCo report to the Board

Item 11: Report back from March Safety Regulation Committee meeting of 18 March 2013

56. Steve Walker (Chair of SRC) provided a brief summary of the discussions held at the SRC meeting on 18 March:
 - Len Porter (Chief Executive, RSSB), and Anson Jack (Deputy Chief Executive, RSSB) attended to discuss RSSB's strategic review.
 - Following a discussion on system safety the committee reviewed the relevant section of the Health and Safety Strategy. It was agreed that some revisions should be made. Steve confirmed that as part of the six monthly Board review of health and safety (due to be discussed in June) a revised executive summary of the strategy would be provided. It was agreed that the use of a traffic light scorecard for each strand would help to understand progress. It would be important for the Board to discuss system safety at that six monthly session.
 - Approach and progress to date on our work on risk based regulation.
 - A suggested programme of health and safety training for Board members was discussed. The Board supported the initiative.
57. We agreed to Steve's suggestion that the Board should see the SRC forward programme paper taken at each meeting.

Board 19.03.2013 Action xxi: Health and Safety training for Board members to be scheduled.

Board 19.03.2013 Action xxii: As part of future SRC reports to the Board, we agreed that the SRC forward programme paper should be circulated to Board members.

Board 19.03.2013 Action xxiii: include system safety on the agenda for June Board meeting.

Item 12: Chair's report

58. We noted the Chair's report. The report included the Board objectives for 2012-13. Concerns were raised that many of the objectives were being carried forward to 2013-14 without suitable actions to address these. The Board Secretary confirmed that the 2013-14 Board objectives were currently being drafted and will include actions to ensure completion where possible.

59. We agreed that any specific comments on the report would be provided to the Board Secretariat or directly to the Chair.

Board 19.03.2013 Action xxiv: Comments on Chair's report to be provided to Tess or directly to the Chair after the Board meeting.

Board 19.03.2013 Action xxv: Board Secretary to draft and circulate Board objectives for 2013-14.

Item 13: CE's overview report

[This section has been redacted from the published minutes as it contains sensitive information about regulatory and enforcement matters.]

Item 14: Board forward programme

62. The Board forward programme was noted. We briefly discussed arrangements for the June Board visit to Glasgow and suggested that there could be an optional site visit for the morning of 24 June. The Board Secretariat agreed to discuss the arrangements in more detail with the Chair and provide the Board with an outline of the schedule of events as soon as possible.

Board 19.03.2013 Action xxvii: Suggestions for June visit to Scotland to be considered and discussed with the Chair and schedule circulated to Board members.

Item 15: Approval of minutes of Board meeting held on 26 February 2013

63. The draft minutes of the meeting held on 26 February 2013 were noted. No comments were raised on the content, however it was noted that the minutes were very detailed.

Item 16: Matters arising not taken elsewhere on the agenda

64. The updates on the outstanding Board actions were noted.

Item 17: Any other business

65. We discussed the latest position on freight. The Chief Executive confirmed that we are continuing dialogue over a number of issues including the freight specific charge, Network Rail consultation on charges and the current biomass consultation.
66. We noted that we had received a letter from Keith Brown (Scottish Transport Minister) who had requested assurance that ORR had considered the Transport Scotland guidance when making decisions in relation to freight. We agreed that the response to this letter would be shared with Board members. We noted again the importance of understanding the overall picture around freight and what the likely impact of our decisions would be on the sector before finalising the complete package for CP5.
67. Invitations to an ATOC open day had been sent to NEDs and some Directors. We agreed that the Board Secretariat team should coordinate a response to the invitation.

Board 19.03.2013 Action xxviii: Coordination of ATOC open day invitations and responses to be provided by Board Secretariat team.

Board 19.03.2013 Action xxix: Keith Brown letter to be circulated to Board members.

Item 18: Meeting review

68. We agreed that the discussion on Outputs had been productive with a significant number of decisions although it had run over time.

Below the line items

Item 19: RM3 assurance paper

69. The paper was noted and we agreed that it would be important to have a further Board discussion. Ian suggested that this could be picked up as part of the six monthly review of health and safety.

Board 19.03.2013 Action xxx: RM3 discussion to be scheduled on Board forward programme.

Item 20: Staff observers at Board meetings

70. The proposal to invite staff observers to future Board meetings was discussed. We noted the Chair's comments about the importance of improving our own transparency if we were to promote it across the industry. We suggested that the proposal could be revisited as part of the wider transparency agenda, but given the volume and complexity of board business to be dealt with on PR13 it was not sensible to begin this initiative now. The Board Secretary agreed to schedule further consideration at an appropriate time.

Board 19.03.2013 Action xxxi: Further discussion on the proposal for staff observers at Board meetings to be scheduled.

For publication

Anna Walker

Chair

Minutes approved by the Board on 30 April 2013