

Office of Rail Regulation

Minutes of the 93rd Board meeting on 30 April 2013

(09:00 – 17:00) 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 (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: Dan Brown (Director, Strategy), 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 4 and 5, Sue Johnston (Deputy Director, Railway Safety), Graham Richards (Deputy Director, RPP), Nigel Fisher (Head of performance, information and analysis), Andrew Wallace (Head of Planning and Operations), Chris Fieldsend (Industry Planning manager), Carl Hetherington (Deputy Director, RME), Jonathan Hulme (Financial analyst) Richard Fitter (Financial Analyst),

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting.

Item 2: Declarations of interest

2. Mike Lloyd confirmed that due to other commitments he will be standing down as an ORR Non-Executive Director at the end of October. On behalf of the Board the Chair thanked Mike for his considerable contribution to the work of the Board during his term and particularly for agreeing to see the PR13 process through.

Item 3: Monthly Safety report / issues to advise the Board

3. Ian Prosser raised the following safety points:
 - Following the update in March, Ian reported that track quality and broken rails in the Sussex area remained a concern. Ian confirmed that ORR's inspectors continued to monitor this issue closely.
 - Despite the continuation in improvements to workforce safety Ian reported that improvement notices had recently been issued in relation to incidents involving road rail vehicle operation and adjacent line working. Network Rail has confirmed that initiatives are ongoing to make the necessary improvements.
 - Statistics have shown that level crossing fatalities have risen over the last 12 months; however this was the first time none of these fatalities had been attributed to industry failings.
 - Work had been completed in carrying out the RM3 assessment of Network Rail.
 - The proposed extensions to Manchester Metro Link had recently been approved by ORR.
4. Following discussion it was agreed that it was crucial to capture the key safety issues in our annual performance letter to Network Rail. Safety performance had

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continued to improve but the overall level of safety risk remained high with a number of areas requiring improvement. We agreed that this links to the overall package of decisions for PR13 and that the messages included in the annual performance letter should set the scene for our Draft Determination (DD) and prefigure our position on the shaping of expenditure for areas such as maintenance, enhancement and renewals.

5. We agreed that the Chief Executive and Ian Prosser, with input from Steve Walker, would look at ensuring that the annual performance letter was balanced but raised the concerns we have, particularly in the areas of asset management, asset knowledge, renewals and maintenance.

Board 30.04.13 Action i: Tell safety story clearly in annual assessment, including the areas where there has been a real improvement. The Chief Executive would work with Ian Prosser, with input from Steve Walker.

Items 4 and 5: PR13 policy Decisions

6. John Larkinson presented this item which set out a suite of recommendations for Board decision as part of the overall package of PR13 policy decisions - to be included as part of the published DD document.
7. We considered the importance of remembering our legal framework and our relevant section 4 duties when looking at the overall package of decisions. For each topic John would provide the Board with a summary of the relevant section 4 duties for consideration.

Paragraphs 8-49 and related action points have been redacted from the published minute as they relate to policy development.

50. We agreed that that further analysis was required in two key areas.
 - We asked for work to be carried out to assess where we are on achieving the published McNulty savings. As part of this we agreed that it would be important to make clear responsibilities for each area for achieving these savings.
 - It was agreed that it would be useful to understand where there was scope for NR outperformance and those areas which were considered to be particularly challenging.
51. John agreed to produce these additional areas of clarification for Board understanding. It was agreed that these would be circulated to the Board through correspondence.
52. ***We agreed that the determination offers an appropriate balanced package for Network Rail.***
53. In conclusion we thanked John and the PR13 team for the comprehensive and informative discussion.

Item 6: Draft Determination Handling Strategy

54. Richard Emmott prepared a draft handling strategy for the publication of the Draft Determination.

55. Following the discussions around the overall package for the DD, Richard agreed to revise the handling strategy to pick up many of the points raised on the key messages we need to tell. Following these revisions, Richard would circulate to all Board members for comments.

Board 30.04.13 Action vii: Richard Emmott to circulate revised Handling strategy to Board members for comment

Item 7: Update on Freight

56. We noted the presentation which set out the issues on freight, passenger franchises and open access and the associated charges. Cathryn confirmed that the presentation covered two key areas – firstly to provide background briefing on the latest issues. Secondly the slides provide a skeleton of the May Periodic Review Committee paper which will be discussed on 9 May 2013.

Briefing points

57. We noted that discussions around freight and charges were still taking place. Cathryn assured the Board that the team were handling these issues and will provide a comprehensive update at the PRC meeting.
58. We noted that the Rail Freight Operators Association (RFOA) had provided analysis of the charges and had placed significant emphasis around the capacity charge. We discussed the calculation of charges. Cathryn confirmed that NR has responsibility for calculating charges. We noted that RFOA had raised a concern that they had not had enough time to prepare a response to NR's consultation but that staff did not feel this was justified as they had been involved in many of the discussions and meetings.
59. We asked whether the capacity charge should be included as CDI charges (Costs Directly Incurred) Cathryn confirmed that this issue would be picked up at the May PRC meeting. *Some text has been redacted as it may relate to legal professional privilege []*

PRC slides – skeleton for 9 May meeting

60. Cathryn confirmed that it would be important to consider the legal framework as well as to discuss our position on our statutory duties and guidance. We also agreed that it would be important to consider the overall PR13 package and overall impact on freight. Ensuring consistency of approach between freight, passenger and open access traffic would be important to meet the legal obligation to avoid discrimination.
61. We agreed with the suggested outline of the slide pack. As part of the analysis, we agreed that it would be important to pick up the following additional pieces of information:
- analysis on the impact of proposed changes on the Scottish coal industry and the overall freight sector.
 - the impact on the profitability of freight operators and shift to road haulage to assess any modal shifts.

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62. Handling will be an important area for consideration. Cathryn confirmed that this will be included in discussions around handling for the recommendations and the other options available for decision.

63. We agreed that a draft of the slide pack would be shared with the Chair as soon as possible and in advance of circulation to PRC members.

Board 30.04.13 Action viii: Impact analysis on Scottish Coal industry to be provided as part of May PRC paper

Board 30.04.13 Action ix: Draft paper to be provided to Chair for comments as soon as possible.

Item 8: Network Rail performance

64. [discussed at dinner on 29 April and included in the note of that meeting]

Board 30.04.13 Action x: Final letter to be circulated to Board members

Item 9: CE's Assurance and accountability report – Quarter 4

65. Due to time constraints we agreed to defer this item to the May Board meeting.

Board 30.04.13 Action xi: CE's accountability report to be included on May Board agenda.

Item 10: SCS pay policy

66. At this point, the SCS members present asked whether it was appropriate to remain in the meeting for this discussion. The Chair and non-executives agreed that they could stay.

67. We noted the proposed SCS pay policy which had been discussed and agreed by the Remuneration Committee on 22 April 2013. Following consideration we agreed with the suggested approach.

Item 11: Chair's report

68. The Chair highlighted the following:

69. Following a recent meeting, Transport Scotland explained that after the independence vote, Scotland hopes to repatriate network regulation to Scotland and combine all regulators in a single organisation. They are keen for ORR to help them in thinking through the issues with factual information. We agreed with the recommendation provided that discussions are factual.

70. David Currie (new Chair Competition and Market Authority) had been present at the recent Regulatory Chairs meeting. Following discussion we agreed that we should schedule a discussion on ORR's competition powers at our July meeting.

71. Following a number of high level European meetings, we agreed that we should schedule a discussion at the July Board meeting to discuss progress and challenges to our European objectives.

72. We noted the Board objectives for 2013-14. We agreed that the objectives should be sharper and focus on key success measures. The Board Secretary agreed to revise and circulate to Board members.

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Board 30.04.13 Action xii: Strategic discussion on Europe to be included on Board forward programme

Board 30.04.13 Action xiii: Discussion on ORR's use of competition powers to be included on Board forward programme

Board 30.04.13 Action xiv: Board objectives to be redrafted and circulated for comments.

Item 12: CE's overview report

73. The Chief Executive highlighted the following:
74. Positive meeting had recently taken place with Paul Deighton (Commercial Secretary, HM Treasury) and a programme of engagement with HM Treasury is currently being developed.
75. The final budget figures for 2012-13 showed an overall underspend of 3%. The consultancy budget had been used effectively during the period.

Item 13: Board forward programme

76. The Board forward programme was noted. No comments were received.

Item 14: Approval of minutes of Board meeting held on 19 March 2013

77. The draft minutes of the meeting held on 26 February 2013 were noted and agreed subject to one further redaction.

Board 30.04.13 Action xv: finalise redaction.

Item 15: Matters arising not taken elsewhere on the agenda

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

Item 16: Any other business

79. No items were raised.

Item 17: Meeting review

80. We agreed that the discussion on the package of PR13 decisions had been productive with a significant number of decisions. We congratulated the team for the careful preparation work and very creditable performances when handling scrutiny and testing questions which had enabled us to take decisions with a high degree of confidence in the options before us.

Anna Walker

Chair

Minutes approved by the Board on 21 May 2013