

**Office of Rail Regulation**  
**Minutes of the 104<sup>th</sup> Board meeting**  
**on 29 April 2014**

**(09:00-15:30), ORR offices, Piccadilly Gate, Manchester, M1 2WD**

**Present:**

**Non-executive directors:** Anna Walker (Chair), Tracey Barlow, Peter Bucks, Mark Fairbairn, Stephen Nelson, Ray O'Toole.

**Executive directors:** Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance), Joanna Whittington (Director Railway Markets and Economics)

**In attendance, all items:** Dan Brown (Director of Strategy) Juliet Lazarus (Director, Legal Services), Richard Emmott (Director of Communications) Tess Sanford (Board Secretary), John Larkinson (Director of Economic Regulation), Peter Walley (Executive Office assistant)

**In attendance, specific items:**

Items 6, 7: Nigel Fisher (Head of operations and network regulation), Jay Lindop, (Head of information and analysis). Item 12: Richard Gusanie (Policy manager), John Holmes (Senior Economist), John Trippier (Competition and consumer executive)

**Item 1: WELCOME AND APOLOGIES FOR ABSENCE**

1. The Chair welcomed everyone to the meeting which was the Board's annual meeting outside London.

**Item 2: DECLARATIONS OF INTEREST**

2. There were no declarations of interest.

**Item 3: MONTHLY SAFETY REPORT**

3. Ian Prosser picked out highlights from his report.
4. Version 8 of the Safety Risk Model (SRM) was issued in April and showed a reduction in workforce risk in the industry of 18.7%. Passenger risk was down by 3%. There were fewer potentially high risk incidents but the mainline railway fatality and weighted injury risk (FWI) had increased 0.6% across CP4. These figures mean that DfT's CP4 HLOS safety metrics had been met.
5. The PIM new model had been run on data going back to 2010 so that indicators could continue to be tracked over time. There was a slight improvement in March 14, but insufficient to counter the overall risk increase over 13/14. The new model included more Network Rail information and would therefore be more volatile.
6. The number of prosecutions, improvement notices and prohibition notices all reduced in 2013-14 against the numbers from 2012-13.
7. Our Annual health and safety report will come to the board next month and will consider whether this reflects a generally improving picture, what the key risk areas are, and inform our six monthly detailed look at safety. We asked that the report include as much disaggregated data as was available including safety information. [Action: A].
8. Our 2014-19 Occupational Health Programme had been published. RSSB had also launched its health and well being programme.

**Item 4: STRATEGIC ENVIRONMENT UPDATE**

9. To begin we reflected on a useful set of discussions with stakeholders the evening before. Key issues raised with us were:
- HS2 – the importance of early engagement with government and HS2 Ltd on the impact of HS2 on the classic network’s capacity, and the design of its regulatory regime;
  - The unease among those present about the apparent lack of a longer term rolling stock strategy, and whether it was joined up with investment in infrastructure and operational issues around cost, quality and availability of stock and the impact on passengers;
  - The need for us as a Board to find more opportunities to hear from the rail community (users and operators) including freight.
  - The perception that our publication of financial information was being used without context to support a specific strategy (eg ECML vs a privately owned franchise).
10. We asked for an update on the new arrangements for the Passenger Transport Executives. [Action B] We also wanted to know whether our work on passenger information during disruption had had a positive impact for passengers. [Action C].  
*Paragraph 11-16 have been redacted as relating to policy development*
17. We re-stated our belief that the use of markets balanced by independent regulation offered the best chance of delivering a thriving railway. Any return to short-termism in the industry should be vigorously resisted – based on the evidence of performance (including safety performance) under the previous regime.
18. We asked for discussions to be scheduled for the Board to look at:
- a. What support we could/should offer to DfT as the new shareholder and where our natural alliances lay among other stakeholders;
  - b. What value ORR adds now and what it will offer under the new regime, including any new contribution. [Action D]
19. Following these discussions we would conduct further stakeholder discussions and review the LTRS in advance of the 2015 election. [Action E].

**Item 5: NEW MOU WITH COMPETITION AND MARKETS AUTHORITY**

20. Juliet Lazarus explained that these memorandums of understanding (MOUs) were products of changes to the competition regime and would set the framework for our interactions. Approval of such MOUs is a matter reserved to the Board. There were some further non-substantive changes to the text which had been circulated and she suggested that if they were content with the text before them, the Board delegated the approval and signature of the MOU to the Chief Executive. We agreed to this suggestion.
21. We asked for a six monthly update on competition issues to be included in the forward programme. [Action F] We were particularly interested in understanding the CMA’s position on competition in national infrastructures. We noted that Joanna Whittington proposed to bring a paper on how to use competition more effectively as a driver for change to our meeting in June.

**Item 6: INITIAL FINDINGS ON NETWORK RAIL CP4 PERFORMANCE**

22. Alan Price gave an overview of the work going on to review CP4 performance.  
*Paragraphs 23 – 33 have been redacted as relating to regulatory action*
34. We would return to these issues at our May meeting and would hold an additional meeting on 3 June if the right information was available to make a decision at that time.

**Item 7: NETWORK RAIL CP5 PERFORMANCE PLAN**

35. Nigel Fisher reported that a revised CP5 performance plan had been received. This was an important document which we would refer to when assessing whether NR had done everything practicable to deliver its performance targets in years 1 and 2 of CP5 when all recognised they would need to recover from their CP4 performance.
36. It was a good, succinct plan with clear governance embedded and it would be easier for ORR to monitor inputs. The team recommended that the plan was accepted. They would report on progress by NR in autumn 2014.
37. We discussed NR's stated confidence level of 65% that the plan would deliver the end CP5 targets – a significant increase on the SBP figure and a figure we would expect to rise steadily over the period of the plan. On balance we were content to accept this, but we stressed to the executive the importance of alerting us as early as possible if any potential problems emerged.
38. We noted the reliance on external parties (such as TOCs and DfT) to deliver the plan and the importance to NR of developing and maintaining strong working relationships. We recognised that action by others needed defining more clearly. We asked the executive to ensure this happened [Action H – definition of others' responsibilities].
39. We agreed that it was important that we should receive regular assurance from the NR Board that delivery was on track. We needed to hold them to account for NR performance and suggested six monthly meetings. [Action I]

**Item 8: NETWORK RAIL CP4 PERFORMANCE – REMCO LETTER**

40. Each year ORR writes to NR's REMCO with an assessment of the performance of the company which they must take into account when considering decisions under their MIP and LTIP.
41. We considered the draft letter and annex. Overall we wanted the letter to be precise and consistent with our other messages to their Board. In particular, the letter had to be balanced. They had met some, but not all of the targets. They had performed well to recover from extreme weather, but we wanted to see better resilience and preparation built into their approach so that extreme weather was less disruptive.
42. We agreed that the Chair and Chief Executive should approve the final version of the letter which needed to be issued that week. [Action J].

**Item 9: NETWORK RAIL CP5 MANAGEMENT INCENTIVE PLAN (MIP)**

43. NR is redesigning its management reward scheme for CP5. Under the network licence it must abide by the criteria in the licence and take into account ORR's objectives set out in our March 2011 letter. NR's Chair had discussed their emerging thinking with us at our March meeting.

44. The paper set out proposals for changes to the objectives ORR had set for CP4 and included a draft letter.
45. We noted the explicit inclusion of safety in Network Rail's delivery objective and the requirement that penalties (regulatory and legal) should be taken into account as well.
46. We discussed the level of discretion which remained to the NR Remco but recognised that our input related only to considerations about the corporate objectives, not to the personal objectives for each individual. It was clear that under the new scheme both the percentages and the actual figures for individual bonuses would be substantially lower than under the existing scheme. We remained concerned to see a clear 'line of sight' between NR's MIP and the regulatory targets agreed for CP5. The letter would make that clear.
47. We agreed the draft letter subject to final sign off by the Chair.

**Item 10: UPDATE ON HIGHWAYS AGENCY ROLE**

48. John Larkinson reported that he expected the Secretary of State to announce our new role the next day. After that, staff would be able to engage with the Highways Agency. This would be vital in developing our understanding of HA and what our own role would be. By mid June staff should be able to develop a more accurate plan for ORR's role.
49. John planned to staff the work through a combination of existing ORR staff and DfT appointed consultants – some of whom had already been identified – and some interim staff. The Board was concerned that the impact on our other work should be mitigated. Until the legislation was passed we had no formal authority to work on highways issues. We asked that the Q1 report against business plan should expose the extent of any displacement of resources as a result of the roads work. [Action K]
50. We would need to reach agreement with DfT on how we funded our roads activity prior to the enactment of the legislation.
51. We asked for a stakeholder engagement programme to be drawn up for senior staff and the chair to include all key parties involved in highways issues. [Action L] We needed to understand their concerns when developing our approach to the role.
52. We thanked John and his team (Richard Coates, Gordon Cole and Jonathan Hulme) warmly for their work to reach this point – and particularly for their work in safeguarding ORR's governance.

**Item 11: HS1 FINAL DETERMINATION**

53. In February we had agreed for publication a draft of the PR14 determination which would approve HS1 Ltd's Five Year Asset Management Statement (5YAMS). There had since been a five week public consultation period including two stakeholder workshops. The paper set out the responses to the consultation. As none of these were substantive, the team proposed that the determination now be published as final.
54. We discussed the differences between the charging regimes which applied to freight on HS1, Eurotunnel and on the mainline. Juliet Lazarus explained that the pricing regimes were grounded in different funding models and therefore significantly different. The European Commission would drive the charging regimes closer together (a process which was already underway) when it published draft

legislation clarifying the definition of 'costs directly incurred' but until then the executive believed it had done as much as it could to encourage alignment.

55. We approved HS1 Ltd's 5YAMS and delegated to Alan Price sign off of the approval document and associated notices.

**Item 12:        **APPROACH TO COMPLAINTS HANDLING PROCEDURES AND  
DISABLED PEOPLE'S PROTECTION POLICIES****

56. John Larkinson introduced the team and explained that the papers reflected the previous discussions with the Board, stakeholder consultation and the commitments made in the 2014/15 business plan. These were two different duties on operators and although they were managed in the ORR same team, they should not be conflated.
57. Richard Gusanie said that no-one had comprehensive information about how the systems were working and so there was no clear evidence of a problem. Anecdotally we knew some operators took both duties very seriously and recognised the potential for learning from complaints to improve their customer service. Others applied fewer and poor quality resources to the issue.
58. ORR's aim was to encourage all TOCs to adopt proper schemes and to demonstrate good management of schemes by reporting against a set of KPIs. This would deliver consistent evidence on which to build a view of any issues over time, but should not add inappropriate burdens to operators. ORR would consult on new guidance before applying it, but the team were still reflecting on an appropriate set of KPIs for the DPPP so this would be included in the consultation.
59. Concerns were expressed that ORR's approach should be more ambitious. Complaint handling did not always go well in the sector where it was treated as a process and not recognised as part of the customer experience. It was argued that we should identify what good would look like and how to get the licensees to that position, rather than aiming for incremental moves from the existing state. NEDs agreed that we wanted to be more robust in using reputation as a lever for improvement in operators. We should be very clear with operators about what we would publish and how frequently. We also wanted to know when enforcement action would be triggered. Finally real concerns were expressed about the level of resourcing allocated by the executive. The NEDs did not think that the resource allocation matched the ambition that had been set as a priority to the executive or that it would deliver the shift in cultures that was needed. As a regulator, we needed to treat this as a market issue where consumer choice was very limited and then give the issue due weight. We noted that the regulators in both the water and electricity sectors were proactive in developing measures to support and empower consumers.
60. The team explained that the approach was to begin by engaging with operators and at the same time to start building an evidence base against which to measure relative performance objectively. Meaningful comparisons between TOCs were virtually impossible at this time. The approach had been developed through extensive consultation in the industry and with our consumer panel. The resources had been set in the context of business planning priorities and at the board discussion on the programme in November 2013, where we had also noted that the appointment of a deputy director would enable a change of gear in the autumn of 2014.

61. If the board wished to invest more resources now, the executive would have to consider how that might be done and what could sensibly be delivered in the current year.
62. The Board agreed that consultation on the current documents should begin, but we also asked the team to look again at how to move the issues forward much faster. This should be brought back to the Board no later than the Q1 report against the business plan. [Action M]

**Item 11: CHAIR'S REPORT**

63. The Chair reported on her recent meetings of note, highlighting a useful discussion on transparency and the development of new apps for the rail user with David Brown of RDG/ATOC and Steve Gooding, Chair of DfT's Transparency Board.

**Item 12: CHIEF EXECUTIVE'S REPORT**

64. Richard Price highlighted the 13/14 financial outturn, where the budget was underspent by 4%, made up primarily of underspends against staffing and consultancy budgets.
65. Richard said that the UK Regulatory Network (UKRN) had been announced as expected without imposition by government of a formal duty to cooperate. A programme of work was now underway.
66. An error check on PR13 had identified that funding on the £44bn programme had been mis-estimated by about £1m, which demonstrates a very high level of accuracy.
67. Richard reported that there was now absolute clarity with Alliance about the process around its application and they were in discussion with NR.
68. DfT had issued an Invitation to Tender document for the East Coast Mainline franchise. We were discussing with DfT the work we would undertake as part of this process.  
*Paragraph 69 has been redacted as commercially sensitive.*

**Item 13: BOARD MINUTES AND FORWARD PROGRAMME**

70. The Board minutes for 29 March were approved, subject to corrections.

**Item 14: MATTERS ARISING**

71. We noted the log of actions. There were no matters arising.

**Item 15: ANY OTHER BUSINESS**

72. We noted the European team's update report which had been circulated with the papers and which showed that the team were making excellent progress in a very complex environment. Dan Brown, who has recently taken over responsibility for the European policy team, said that he had been startled to discover how frequently ORR was the only UK organisation in the room when matters of national interest in European policy were being discussed. We were broadly in step with the European agenda but a close eye was needed on the developing detail.
73. We asked for a discussion about the broader European agenda at one of our meetings in the autumn. We had also agreed to consider more closely the 2015 changes in the regulatory regime for the Channel Tunnel and our new role. [Action N]
74. There was no other business.

