

**Office of Rail Regulation**  
**Minutes of the 107<sup>th</sup> Board meeting**  
**On Tuesday, 22 July 2014**  
**(09:30-15:30), ORR offices, One Kemble Street, London, WC2B 4AN**

**Present:**

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

**Observing:** Michael Luger, Justin McCracken (pending NED appointees)

**Executive directors:** 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), Richard Emmott (Director of Communications) John Larkinson (Director of Economic Regulation), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), Tom Taylor (Director of Corporation Operations) Gill Bull (Assistant Board Secretary)

**In attendance, specific items:**

Items 6: Amanda Clarke (Interim Senior Financial Analyst) and Mark Morris (Deputy Director, Engineering and Asset management).

Items 8-11: Annette Egginton (Head of competition & consumer policy), Graham Richards (Deputy director RPP), Nick Wortley (Competition and consumer policy manager), Siobhán Carty (Project Co-ordinator & Engagement Strategist)

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

1. The Chair welcomed everyone to the meeting, particularly our two new NED appointees who were attending as observers.
2. Richard Price (Chief Executive) was on leave and had sent his apologies

**Item 2: DECLARATIONS OF INTEREST**

3. There were no declarations of interest.

**Item 3: MONTHLY HEALTH AND SAFETY REPORT**

4. Ian Prosser gave us some of the highlights of his report. He was sorry to have to report a second track worker fatality in as many months. Early reports from the incidents suggested that prosecution was likely in both cases. Workforce electrical safety was continuing to cause concern at this particular TOC, and the team would be keeping a close eye on, and discussing issues with, the company as it began operating a new franchise.
5. The Annual Health and Safety report had been published that day. RSSB's annual report had also been published and the links would be sent to board members [**Action A: Secretariat to email links**]. The Board thanked everyone in the team from RSD and EA who had contributed to this very important piece of work.
6. Ian reported on a very successful visit in the north east with Louise Ellman MP, Chair of the Transport Select Committee. The aim was to show and explain the different types of level crossings and the risks associated with each – in particular

- to discuss issues around user worked crossings. Tina Hughes MBE had joined the visit.
7. Ian explained to the Board that work to replace three existing sets of regulations with a single new set (the Railways Safety (Train Operations etc) Regulations, was progressing well. Modernising the regulations was important if they were to match the changing legal framework and safety approach.
  8. The workshop with RAIB was now arranged for September and Carolyn Griffiths had indicated that she would be updating her guidance.
  9. We asked whether the repeat track twist faults, which had been highlighted as an indicator of poor maintenance and delayed renewals, were continuing to cause concern. Ian said that the current assessment was that NR were meeting the 'reasonably practicable' test in addressing the issue and the backlog – but inspectors remained alert to the risk.
  10. We asked whether there had been any hiatus at the beginning of CP5 in terms of renewals work and were told that the process had been well managed by NR with no apparent loss of momentum between control periods. There was a maintenance backlog caused primarily by the bad winter weather, but this had stabilised and should now begin to reduce.
  11. We asked whether there was anything that the Board should do to add weight to the drive for improvements on worker safety. Ian would be speaking to the RDG at their next meeting, and we understood that this was an area of particular focus for Mark Carne, the NR chief executive. We also understood that most TOCs behaved responsibly but that there were outliers whose practice was noticeably less good. Ian agreed to report back to the Board on those issues and whether there was anything further the Board could or should do **[Action B: Ian Prosser to revert to the Board]**

#### **Item 5 SAFETY REGULATION COMMITTEE: ORAL UPDATE**

12. Mark Fairbairn reported to the Board as chair of the SRC on their meeting the previous day. The agenda had included a review of broad themes of our safety approach following which the committee had agreed to draw out the risks around growth on the network and to address statistical issues. They had also agreed that the cultural leadership approach was important and we should support Mark Carne's agenda on this wherever it was helpful.
13. We asked how robust the over-crowding data was and we understood that NR had accurate data on a station-by-station basis: Waverly and Leeds, for example, were the two worst.
14. The SRC had also considered an external review of ORR's RM3 tool. There had been some recommendations for action to improve the active use of the tool and these had been accepted and would be acted on, but overall the report had been very positive. The committee had been reassured that the tool remained robust and fit for purpose. A programme for reviewing other safety methodologies would also be put in place. **[Action C: Ian Prosser]**
15. The new chief executive of the RSSB (Rail Safety Standards Board) had made a presentation setting out key themes for their work, which closely aligned with our own:
  - ERTMS and the risks of any uncoordinated introduction of this or other new technology;

- The importance of data being disaggregated by route – accepting that this might eventually lead to some routes being acknowledged as carrying more safety risk than others;
  - Piloting for the Wessex Alliance – which NR were keen to see progressed quickly to align with their improved asset management.
16. The Committee had reviewed its terms of reference and proposed clarifying the relationship with the Board. The Board would then be asked to agree any revisions. **[Action D: Secretariat to update the TOR].**
17. The Committee proposed that the board of RSSB should be invited to meet the ORR Board informally, perhaps at a dinner. This was an important stakeholder for us as safety regulator and it was critical that the good understanding between the two organisations continued. This proposal was agreed and a date would be set. **[Action E: Secretariat to arrange for the autumn.]**
18. The RSD team would be offering a bite-sized seminar for the Board on its risk models and the ORR strategy for health and safety regulation would be brought to the board for discussion in the autumn. **[Action F: forward programme amendments]**

#### **Item 6 CP4 – NR ANNUAL EFFICIENCY AND FINANCE ASSESSMENT**

*Amanda Clark, (Interim Senior Financial Analyst) and Mark Morris (Deputy Director, Engineering and Asset Management) joined the meeting for this item*

19. John Larkinson explained the purpose and history of this annual assessment. For this year's assessment, there were still significant gaps in the available information so this discussion was about establishing the tone the board wanted the report to convey and discussing handling issues. Work would continue over the summer with a view to publication (after the Scottish referendum purdah) in September. Board members would receive a further iteration of the executive summary for comment as part of finalising the report. John emphasised that the approach taken this year had been to balance the 'number crunching' with an engineering assessment of network performance and sustainability.
20. The team had continued to apply the adjustments used in previous years, to ensure consistency in our own assessment, but it was a very complex data set and not one which was felt to be robust. The figures involved were large and rounding judgements also tended to be significant. The team felt that we should not claim a degree of accuracy which was spurious.
21. The draft summary document, which had been circulated, was shorter than previous years, and this should make handling easier. It was important to keep it simple and clear and to avoid too much commentary. The relationship between growth in the RAB and the new debt ceiling needed to be explained because it would be a material constraint on NR going forward.

*Paragraphs 22-28 have been redacted as relating to policy development*

29. Much of our discussion on this subject was about the limitations of our assessment created by the poor quality and late supply of NR's data. The team told the Board that this was a matter of serious concern, and the question of data quality had been put on the regulatory escalator so that we could consider whether to use our regulatory tools to secure improvement. This action put ORR's concerns on the public record and had been notified to DfT and NR. The

team did not know whether the NR Board was specifically aware of the issue. We agreed that our concerns should be raised clearly in a letter to the NR Board which should accompany the final draft assessment. **[Action H: Board members to see a copy of the letter to NR when issued.]**

30. We noted that the quality of data meant that depending on the analysis needed to be done with considerable caution.
31. We discussed with Richard Emmott the various challenges around handling of this assessment. He said that the team were working hard to trail the complex issues to relevant stakeholders (Select Committee, DfT, trade press). His aim was to produce a document that was dispassionate, credible and forward looking and to publish it alongside the first Monitor of CP5 (which we all hoped would contain some encouraging news about performance) although he anticipated that neither would make a major story.
32. We supported the overall approach by the team to the assessment itself and to the handling issues. We asked to see the summary again in correspondence **[Action I: Board members would receive a further iteration of the executive summary for comment as part of finalising the report].**

#### **Item 7        ORR TO TAKE ON ECONOMIC REGULATION OF NORTHERN IRELAND'S RAILWAYS**

33. Dan Brown explained that the proposed European recast directive was likely to require ORR to become the economic regulator for Northern Ireland's railways. He undertook to bring to the board a paper setting out the new requirements and mapping out this regime against the various other regulatory regimes that we would then be responsible for (including HS1, NR, Channel Tunnel, etc). This paper would include a map of the NI network and services on the system. **[Action J: forward programme update]**
34. We asked John to establish what opportunity we would have to input into the design of the NI regulatory regime – which we felt should be aligned with our other regimes if at all possible to help ensure coherent arrangements for the UK. **[Action K: John Larkinson]**

#### **Item 8        UPDATE ON THE CONSUMER PROGRAMME**

*Graham Richards, Annette Egginton, Nick Wortley, Siobhán Carty attended for items 8-11*

35. John Larkinson gave an update on progress with the consumer programme to give some context for the next three papers. There had been some delay to the overall programme because the learning curve in some areas had been steep. Some consultation periods had also been extended to ensure that we got a comprehensive understanding of issues.
36. Overall – weighed against the success criteria agreed for this stage of the programme, John thought the programme was progressing well. He reported that our legitimacy was being built as we demonstrated better handling and clear underpinning evidence for our initiatives, our in-house expertise was developing and there was evidence that our role was better understood and accepted.
37. TOCs continued to worry about whether they were exposed to double jeopardy by our programme, but overall our relationships were improving. There were clear links to our transparency programme and an update on that would be

- brought to the Board in the autumn, including an update on the impact of the open data (Darwin) arrangements that RDG had introduced. **[Action L: forward programme].**
38. We asked for some briefing on the areas where TOCs were investing in their customers, so that we could have the wider picture and understand best practice. John agreed, explaining that some companies were investing significant effort and resources into the proposed CHP/DPPP mechanisms which would be put out for consultation in September. **[Action M: John Larkinson]** We understood that a forthcoming RDG agenda would include a discussion on TOCs approach to customers.
39. We acknowledged that TOCs wanted to respond to their customers in order to keep their custom, but as TOCs were often monopoly suppliers the normal market mechanisms could not be relied on to do the whole job of protecting the customer.
40. Mark Fairbairn observed that in some business models, companies would look to maximise the profit from their most profitable customers and ignore the needs of the least profitable 10%. It could be argued that since TOCs could be counted on to look after most of their customers, ORR's role should be primarily to protect the least well served users of the railway.
41. We noted our collective sense that there was underlying discontent among passengers. We asked the team to think about ways of reaching more consumers for their views. We also recognised that we needed to understand whether TOCs were maximising profits, ridership or economic surplus.
42. John tabled two new slides articulating the principles behind our approach to the consumer programme and the interventions that were currently in hand. It was agreed that our approach should be to look to the TOCs to act in the first place, for our consultations to make it clear what we thought good looked like, what KPIs/information we would use to monitor progress, when we would assess progress, and that the regulator would act if improvement did not occur. The Board agreed we should also look five years ahead and ask ourselves what regulation could achieve for consumers over that period.
43. John Larkinson reminded us that these areas were largely dominated by the contractual terms in the TOC franchises and we therefore had more limited levers to drive change.

## **Item 9 PIDD NEXT STEPS**

44. Alan Price explained that although TOCs had not initially taken on board the licence condition on PIDD which was introduced in 2012 they had now understood it and engaged. They had commissioned Passenger Focus to undertake research on people's real experiences and had developed proposals to respond to the issues that the research had identified.
45. Graham Richards explained that the research had included real-time reporting from the survey group through a tailored app, which had given high quality robust data about the passengers' experience as it happened. The TOCs had now committed to repeat the research each year.
46. The action list against which ORR would regulate had been agreed in principle by TOCs. This now needed to be converted into a plan with delivery milestones and allocated responsibilities against which we could then monitor progress. The research and TOC commitments for improvements would be published on our

website in the autumn. ORR would consider action under the licence condition if agreed actions were not implemented.

#### **Item 10 RETAIL INFORMATION CODE OF PRACTICE**

47. Annette Egginton said that the next two papers covered complementary pieces of work which were about promoting competition or protecting consumers from monopolies or promoting transparency to empower consumers. Alongside these was the 'business as usual' activity around competition issues and flexible ticketing, among other issues. She was keen that the Board understood that the industry was not 'doing nothing' or waiting for ORR to do something. We needed to be careful to strike a balance in our presentation of what the industry was doing so as to continue to engage them positively with our initiatives.
48. Nick Wortley explained this piece of work. ORR had been asked by government to promote best consumer practice and oversee a code of conduct. It was clear that there were many layers of guidance, regulation and law around these issues and passengers (and to some extent TOCs) were unclear about the relevant status of each and were unable to make good decisions because they did not have access to simple advice.
49. The team had reviewed the current guidance and regulations and pulled together a single list which was currently out for consultation. The TOCs had welcomed this as a helpful contribution to understanding a complex landscape. The aim in clarifying their responsibilities was that this would make them more likely to meet them: if they did not do so, then we might need to impose a code on them. The list of obligations would be enforceable and we expected the new clarity to lead to a step-change in implementation. ORR and the TOCs were working on a series of KPIs so progress could be measured.
50. The Chair summarised by saying that progress had been good so far. It was possible that the increasing political focus on meeting passengers' increasing expectations would put pressure on TOCs. We would need to be ready to enforce a licence violation if progress was not noticeable and we needed to find ways to measure progress in a robust way.

#### **Item 11 REVIEW OF TICKET RETAILING**

51. Siobhan Carty explained what the study would be looking at and how it fit into the consumer programme. There had been good stakeholder engagement to date and the consultation (which was very much a first order review) was taking shape. It should be published in September.
52. We discussed other markets (such as air tickets and hotels) where comparison websites had changed purchasing and pricing behaviours. We noted that rail services had to offer 'turn up and go' options as well as longer term planned journeys, and that intermodal competition was also a challenge. Most routes had no alternative provider so the variables on pricing could only be speed or time of travel. The team explained that data was now available and accessible, and apps were beginning to appear but that there was still some way to go. The review would be looking at potential barriers to innovation on behalf of the passengers in this market.
53. We noted the plans for the review and looked forward to hearing the outcome of the various consultations. **[Action N: board discussion on forward programme]**

54. The Chair thanked the team for all their reports and congratulated them on the progress of the programme.

**Item 12 QUARTER 1 REPORT AGAINST THE BUSINESS PLAN**

55. Tom Taylor introduced the report. He explained the data report and picked out key headlines where four out of eight of the Q1 deliverables had not been met. He explained some of the background on these.
56. He referred us to Richard Price's commentary and John Larkinson reported the unexpected withdrawal of the person we had identified to undertake the PR13 review and the difficulty of finding someone of the right calibre, who was not also conflicted, to replace them. We had now secured Penny Boys to do this piece of work: this was very positive and we hoped it would be delivered to the original timescale. The freight customer panel had been delayed partly due to resources but again, a way forward had been identified and would be discussed with the Board.
57. We commented on the report which represented a step change in both quality and information over what we had seen previously. We made some suggestions for improvement. We particularly mentioned the page on risk – which demonstrated the need for the work in hand to refresh our approach to take advantage of better bottom-up information on business risks and to ensure Board ownership of the identified risks. Appropriate discussions were in the Board forward agenda.
58. We asked whether the next quarterly report could include:
- a. some indication of whether line items that did not yet fall due were on track or not i.e. some forecasting ahead as well as assessments of progress achieved.
  - b. identified changes to the business plan (such as resourcing priorities)
  - c. whether NR was on its critical path to deliver CP5
  - d. progress overall on our strategic objectives.
59. We also asked whether there would be value in having a monthly report (possibly by exception) on key issues emerging. Tom undertook to look at these suggestions for the six month report. **[Action O: Tom Taylor]**  
*Current issues*
60. Alan Price had updated NEDs on the way that the ECAMs process was working in a session with his team the previous day. Tom Taylor now explained that the overall cost of the major projects in the HLOS had continued to grow and that DfT were now seeing this as an issue – our team had understood that following reclassification, the limits on changes to the RAB and the borrowing limit might be problematic for the overall investment profile. The team were working closely with DfT and NR to understand and address the issues.
61. Juliet Lazarus updated us on progress made in the investigation of a complaint about anti-competitive behaviour in the industry and possible next steps. We noted the implications for the consultancy budget and wider resourcing.
62. The Chair thanked Tom and everyone involved for the work put in to achieve this very noticeable improvement in business plan reporting. It would help support the Board in their work to hold the executive to account and was very welcome.

### **Item 13      ORR/BOARD TRANSPARENCY**

63. Richard Emmott introduced the proposals which aimed to move us closer to practising what we were preaching to the industry and incidentally to close a persistent gap in staff's understanding of the Board's function and activities. Some of the suggestions were about increasing public information and ensuring its timely availability, others were about physical access to Board debates by staff or members of the public.
64. While safety regulators tended to hold board meetings in public, economic regulators did not. As we all believed that the two functions needed to be joined up, we would need to think very carefully about whether we could or should separate the two strands of business in that way.
65. The Board agreed that if it had access to significant information about safety it needed to publish this. We thought it important that current safety information was available to the public and we agreed to look at options for improvement that might include publishing Ian Prosser's monthly report (or part of it), public meetings of the SRC<sup>1</sup> or similar. We were reminded that the RIHSAC<sup>2</sup> meetings include all major stakeholders including trades unions and that the RSD<sup>3</sup> team runs an annual event for H&S reps from the industry.
66. On balance we did not think that we could invite the public to observe the economic regulatory business of the board. This was not just because of the commercial confidentiality issues but also the need for us to make fine balanced judgements about whether, when and how to enforce. If the debates leading up to those judgements became public, there was a high risk that the regulated parties would start to 'game' us.
67. We discussed the pros and cons of having staff observers at the board. We noted that the organisation has a very high standard of confidentiality and that this was not an issue for the ORR. While opening the meetings would send a message about openness and help spread positive messages, it would also add to an already crowded meeting room, could distort the dynamic and might also reduce the significance of being 'in the room' for those staff who were presenting to the board.
68. We thought on balance that there were more effective ways of achieving openness than having a few staff spend all day in a board meeting and we were open to trying different approaches. Suggestions included:
  - a. Pre-briefing sessions on the board agenda
  - b. Informal dinner with groups of 30-40 staff
  - c. Piloting staff attendance at the SRC
  - d. More involvement of board members at the staff conference.
69. We agreed the proposals to improve timely publication of information to include:
  - a. Board minutes
  - b. Forward agendas
  - c. Expenses

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<sup>1</sup> Safety Regulation Committee (ORR)

<sup>2</sup> Railway Industry Health and Safety Committee

<sup>3</sup> Railway Safety Directorate

70. We agreed we should:
- a. seek ways to make more safety information available on a regular basis;
  - b. increase our efforts on staff understanding of what the board does, its approach and discussions; and
  - c. support wider team attendance at board meetings for relevant items;
  - d. pilot staff attendance at SRC, particularly as part of an individual's professional development;
  - e. consider the suggestions in para 68 (above) further;
  - f. give further thought as to whether and, if so, what meetings we should open to the public.
71. Richard Emmott would continue to work up these proposals with colleagues.  
**[Action P: RE to implement the agreed changes and bring a further set of proposals to the Board in October]**

**Item 14 CHAIR'S REPORT**

72. The Chair congratulated the team on the preparation and planning for the NR penalty announcement which had gone very smoothly.
73. She proposed a discussion in September on the implications of potential European legislation on the issues of competition and market opening **[Action Q: DB to prepare paper for September]**.
74. She asked for a strategy paper on disaggregation of information by route and its political, financial and regulatory implications. We had made a commitment to push for disaggregated data and this would be increasingly important going forward. **[Action R: DB to prepare for November strategy/planning discussion]**.

**Item 15 CE's REPORT**

75. Tom Taylor said that there was nothing further that needed to be drawn out of the monthly report for the board's attention.

**Item 16: BOARD MINUTES AND FORWARD PROGRAMME**

76. The Board minutes for June were approved, subject to corrections, along with the note of our policy discussion the day before. The forward programme would be re-cast over the summer to include all the business we hoped to cover in the monthly two-day window and to roll forward for at least a 12 month period **[Action: Tess Sanford]**

**Item 17: MATTERS ARISING**

77. We noted the log of actions. The Chair noted that we needed to improve our discipline in ensuring that the agreed actions were delivered.

**Item 18: ANY OTHER BUSINESS**

78. We asked whether there were any issues (other than the CP4 financial assessment discussed earlier) that were likely to need our attention over the summer break and were told that nothing was currently anticipated.
79. We asked whether any particular preparations were in hand to prepare for the party conference season, when we expected railways to be a live issue and

manifestos for next year's election would start to emerge. Dan Brown reassured us that appropriate relationships were being built so that people could contact us for information if they wished. We needed to be careful of our own independence and credibility during this period and did not attend party conferences. Richard Emmott reported that the RDG was investing significant effort in their approach to the conference season.

80. Alan Price offered his apologies for the next board meeting in September.
81. The Chair reminded us that we were travelling to DfT's offices to meet their senior team as part of the September meeting.

**Item 19: MEETING REVIEW**

82. We agreed that we had had two days of successful meetings and discussions
83. We thanked the teams for the papers which had supported a strategic level debate.
84. Starting at 9.30 and finishing just after 3pm had also kept energy levels high.

