

THE OFFICE OF RAIL REGULATION
MINUTES OF THE 113TH BOARD MEETING
09:00-15:30, TUESDAY 24 MARCH 2015
ONE KEMBLE STREET, LONDON, WC2B 4AN

Present:

Non-executive directors: Anna Walker (chair), Tracey Barlow, Mark Fairbairn, Bob Holland, Michael Luger, Justin McCracken, Ray O'Toole

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

In attendance, all items: Peter Antolik (Highways Director), Gill Bull (Assistant Board Secretary), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), Tom Taylor (Director of Corporation Operations), Andrew Winstone (Associate Director of Communications),

ORR staff in attendance, specific items:

ITEM 1 APOLOGIES FOR ABSENCE

1 John Larkinson was on leave, Dan Brown was attending a meeting at DfT, Alan Price would be leaving around lunchtime for a meeting with the Secretary of State.

2 Anna Walker welcomed Peter Antolik, the new Highways Director, to the meeting.

ITEM 2 DECLARATIONS OF INTEREST

3 There were no declarations of interest by staff or board members.

ITEM 3 APPROVAL OF DRAFT MINUTES

4 There had been some corrections to the various notes and minutes by staff following circulation. Amended versions would be provided to the chair for comment/approval.

5 The board had no comments on the minutes as circulated: 4, 23 and 24 February.

ITEM 4 ACTIONS OUTSTANDING NOT TAKEN ELSEWHERE ON THE AGENDA.

6 The report was noted.

ITEM 5 MONTHLY SAFETY REPORT

7 Ian Prosser drew out some headlines from his report.

8 We noted with great concern the SPAD¹ incident on the West Coast Mainline where a charter train had overshot a signal, putting it at risk of a high speed, head-on collision. A high priority safety investigation had been launched and Ian would keep the board informed as the evidence emerged. There were issues as to how embedded a safety culture was in charter operators.

¹ Signal passed at danger

- 9 A recent ORR led industry seminar on the issue of freight derailments at
crossovers as a result of track twist faults and loading had led to the
introduction of new monitoring equipment on some trains.
- 10 Ian noted a welcome strengthening of Network Rail's (NR) approach to
worker fatigue by the inclusion of road driving (ie travel to and from jobs) as
part of their monitoring and reporting.
- 11 Ian and the team were closely monitoring the situation at London Bridge.
One of the issues had been a lack of communication and coordination
between the platform, concourse and control room teams (who all had
different employers). This had been addressed effectively and the overall
situation had improved. He thought it unlikely that a safety breach would be
found, but his team were working closely with the RME² team to identify
whether there had been a licence breach around passenger information.
- 12 Ian commented that the low number of adhesion incidents in the autumn
might indicate that the work to control vegetation had already begun to pay
off. We also noted that the winter had been benign.
- 13 We noted that although the relationship with RAIB³ was going well, there
were a number of recommendations which NR had accepted which were very
old and had not yet been completed. Ian said that NR was sometimes slow to
deliver, but explained that some of these were very substantial programmes
of work and took time to deliver. His team were working with NR to
encourage quicker progress. A programme of tripartite meetings which
looked at key issues was going well: level crossings, track and track worker
safety had already been covered successfully.
- 14 We asked whether LUL⁴ was sufficiently alert to the safety risks of their
proposed move to 24 hour working on some tube lines for some days. Ian
thought broadly that they were, but his team were monitoring this carefully.
He reminded us that the unions were also very alert to safety issues and their
health and safety officers were watchful over this change, which was
contentious for them.
- 15 Looking at the issue reported around third rail extension, we asked whether
NR had a long term plan to address significant structural safety risks – for
example moving away from DC to AC current. Ian said that there was some
evidence that there were economic as well as safety benefits to a move away
from DC and a project had been planned by NR to discover whether that was
sufficient to justify the major investment required. He acknowledged that the
cost would be very substantial to remove all 3rd rail supply from the classic
network, but he felt the existing risk to members of the public was also very
real.
- 16 We talked about the benefits of a planned longer-term approach to
technological improvements on the network with the twin aims of improved
efficiency and better safety, noting that the cost of reducing a specific safety
risk might be disproportionate. We also noted the pace of technological

² ORRs Railway Markets and Economics directorate

³ Railway Accident Investigation Branch

⁴ London Underground Limited

change might make new solutions available. A paper was already planned for May on these issues.

17 We asked whether the increase in suicides on the network was matched by increases in other places. Ian reminded us of the work that NR was doing with Samaritans which had been very positive. He thought they had been successful in keeping the overall number down.

18 Secretariat would circulate the NR period report on suicides **[Action: Secretariat]**. We also asked them to invite the Samaritans chief executive to speak to the SRC⁵. **[Action: Secretariat]**

19 Ian reported that ORR had been invited to sit on a federal board of inquiry in the USA which was looking into the Washington derailment. The invitation cited ORR's position as 'world leaders in safety regulation'. The board congratulated him and the team on this recognition.

ITEM 6 HEALTH AND SAFETY STRATEGY WORKING GROUP – UPDATE

20 Ian updated the board on progress against the four actions agreed by the working group.

21 The Safety strategy document was now available on the website and would be promoted by external affairs.

22 The six monthly report template would be updated, agreed by the working group and circulated to board members for comment before being used for the report to the board due in June.

23 SRC's plan of reviews of key risk areas would be discussed and agreed at July's SRC. Melvyn Neate would be asked to help plan the review of our safety processes and to identify those reviews that would be better suited to consideration at the audit and risk committee. **[Action: Ian Prosser]**

24 Work continued to determine what more ORR could publish about its safety work. There were a number of legal and other constraints which needed to be considered. We should also take into account other safety regulators' approach. A report setting out a proposal in this context would be included in board papers in July **[action: Secretariat to programme]**.

ITEM 7 NR'S CP5 DELIVERY PLAN UPDATE

25 Richard Price reminded the board of their discussion on 12 March. At that discussion it had been agreed that ORR would not take precipitate action in response to NR's failure to deliver their business plan on time. We had recognised the management information problem which made NR's business planning problematic for NR at the moment. We agreed that NR must find a way to improve the situation and that while that would take time, it could not be allowed to drag on. NR needed to have a convincing plan in place within a few weeks. NR should be working towards a coherent plan being in place in time for the anticipated spending review in the summer.

26 We had asked the NR Chair, Richard Parry Jones to attend our April meeting with a group of his board members to assure us, as the regulator, whether the

⁵ ORR's Safety Regulatory Committee

CP5⁶ five year settlement they had signed up to was deliverable and how it was to be achieved.

- 27 The chair had briefed colleagues on her conversation with the NR chair. We were waiting to hear who he proposed to bring to the board in April. We discussed the significance of this meeting and who should attend it. We needed to put our concerns formally on the record with NR's board so we needed meaningful non-executive representation.

Paragraphs 28-32 have been redacted as relating to policy

- 33 We agreed it would be important for the board to prepare properly for our meeting with the NR board in April. The executive would advise in the next fortnight. **[Action: Secretariat].**
- 34 We agreed that it would be inappropriate to change our expectations of CP5 delivery (including volumes) at the end of only year 1 of the settlement. It was important that NR's board and executive understood that they had to resolve its problems and find a way to deliver the settlement they had signed up to. Any reduction in volumes had to be justified by NR.

ITEM 8 NR PERFORMANCE IN CP5

- 35 Alan Price introduced the report which covered the period up to the end of January (period 12 data had been received the day before). As the winter drew to a close we could see it had overall been a benign season. Given how bad the disruption by weather had been at the same period twelve months earlier, the team had expected to see a significant improvement in year on year performance: instead performance was worse.
- 36 There had been two significant incidents (Thamelink tunnel and Watford tunnel) which had contributed significantly to delay minutes. Neither were entirely NRs fault.
- 37 NR had made some changes to timetabling to address the London Bridge issue. Although the morning timetable was more stable, the evening one remained very fragile.

Paragraphs 37 – 40 have been redacted as relating to current regulatory processes. To be reinstated after those processes are complete.

Year end train performance investigation

Technical authorisations and planning for Easter

- 41 Alan reported that for the first time ORR had declined a technical authorisation for new rolling stock to begin operations on a given date. This was NW Electrification phase 2A which should have been open for electric trains from Christmas and had been eventually deferred by NR to February. Our service standard for authorisations is 28 days, but increasingly our staff had been working to shorter and shorter deadlines (including overnight and weekend working) to assess whether new kit met relevant technical and safety specifications before it came into operation. On this occasion, ORR had agreed a five day turnaround to assess the technical files, but finally had

⁶ Control Period 5 (2014-2019)

to decline the authorisation as some risks had not been closed. This had not been well received by either DfT or NR. The risks had now been addressed and the authorisation given.

42 This was the latest example of a systemic problem. Phase 2 of the same project was now underway. NR had promised to deliver the files the previous week but they had arrived that morning (Tuesday) and needed to be turned around by Friday (4 days). This was complex, technical and painstaking work, often requiring discussion and correction with the submitting team from NR. The team needed time to do the work properly.

43 Alan updated us with his views on the existing enhancement programme and timetable.

44 Although planning seemed to be a systemic issue, there was reason for cautious optimism that NR's plans for the Easter programme of major closures were sound. Their board committee was reviewing plans and contingency arrangements. In the context of wider risks some work had been deferred. We were told that NRs planning processes were sound on paper, but the implementation had become complacent before the Finsbury Park incident.

Paragraphs 45 – 47 have been redacted as relating to current regulatory processes. To be reinstated after those processes are complete.

NR's planning and delivery of enhancements

Handling issues

48 We agreed that these various investigations were about separate areas of the NR business systems and its effectiveness in different areas. They reflected the various regulatory responsibilities that we hold. We would need to be aware of all of them as each was reported – handling would be particularly sensitive until the business plan issues were resolved.

49 A further handling issue was the planned publication of our correspondence with NR on the question of the efficient cost of specific enhancement projects. Once a project had completed ECAM, ORR writes to NR setting the efficient cost. These letters are commercially sensitive until the construction contracts have been let. We had undertaken to review all letters on a six monthly basis and release them as commercial sensitivity fell away. The first batch of letters was now ready for publication and staff were seeking agreement to the principles to be considered and the process to be applied before each was released.

50 We discussed the proposal and agreed that it seemed sensible. We asked for more than two days to be given to NR to comment on any remaining commercial issues before publication and for the DfT to be informed of what we planned to publish. Letters would not be published during purdah.

ITEM 9 FINALISING THE FINANCIAL PERFORMANCE FRAMEWORK FOR CP5

- 51 Carl Hetherington reminded us of the background to the financial performance measure and the discussions we had had around the PR13 determination about pre-determining the value of adjustments.
- 52 The measure was important in calculating any payments under the route efficiency based scheme (REBS) which aimed to reward TOCs where their actions contributed to savings for NR.
- 53 Carl told us that NR's current underperformance was about £1 billion. That made the discussion of adjustments largely academic for NR. Calculations of bonuses to NR senior management also rely on this measure, but the significant changes to the remuneration system and the decrease in numbers of individuals affected combined to make this a much less significant issue.
- 54 Staff recommendations were a practical way forward.
- 55 We discussed the way this mechanism had been affected by the reclassification of NR and the consequences for NR of breaching its loan agreement.
- 56 We agreed the executive proposal to use the PR13 requirements as the baseline for PPM and CaSL. We were content with the proposals for the value of all the adjustments.

ITEM 10 OPTIONS FOR USING INTERNAL COMPARISONS TO REGULATE NR

This item has been redacted as relating to policy development

ITEM 11 ON RAIL COMPETITION AND THE CMA

- 64 Chris Hemsley explained that the team continued to work closely with the CMA to support their study on on-rail competition. The CMA favoured competition in principle but the study was an unusual one for CMA because of the consideration of the interests of the taxpayer – which was not normally something they had to look at.

Paragraphs 65-68 have been redacted as relating to policy development/CMA's review

- 69 We agreed that a separate meeting would be held between interested NEDs (Bob and Justin) and the RME team liaising with CMA. **[Action: RME]**
- 70 Thinking on these issues would continue in time for consultation at the end of the calendar year. We checked that the team had sufficient resources and agreed their plan.

ITEM 13 ROLLING STOCK CONSULTATION

- 71 Joanna reminded us that the £1.3bn annually of rolling stock costs amounted to 1/3 of the annual cost of running the rail industry. It was therefore an area of significant interest as one where a small percentage reduction in costs would have a massive impact on the industry.

72 A competition commission investigation in 2009 had made a number of radical recommendations which had not been implemented by DfT. One recommendation had been for ORR to review the transparency of the rolling stock companies pricing in line with a code of conduct. This exercise had taken some time but was now complete and staff proposed to publish findings and close the review.

Paragraphs 73-75 have been redacted as relating to policy development

ITEM 14 TERMS OF REFERENCE FOR HIGHWAYS COMMITTEE

76 Anna Walker explained current thinking about who would be members of the highways committee. We agreed to the proposal to include two independent members to enable ORR to draw regularly on specific experience and skills, at least during this development stage.

77 There would be a paper in April setting out the background of the highways programme. Peter Antolik said that he had been encouraged by the good will evident at Highways England (HE) and DfT to make the new arrangements effective.

78 We noted the additional workload that the new responsibilities might bring to the board and asked for sight of a workplan with the April paper.

79 We agreed the terms of reference.

ITEM 15 2015-16 BUSINESS PLAN

80 Tom Taylor introduced the paper. The plan had been amended to reflect the board's previous discussion including more resources in RME, and de-risking the highways recharge by reducing the sum anticipated. He hoped to secure sign off at this meeting.

81 We suggested that the language around customers could be more positive. Although this would be a benchmark year, we should commit to taking action wherever appropriate. We had agreed to find and promote good practice among TOCs for example. We wanted to see more emphasis on the new functions and the consultation on our highways strategic objective.

82 We checked that there was a mechanism in place to ensure line of sight between the business plan and individual objectives and were assured that this was achieved through the business management system.

83 We agreed the business plan.

ITEM 16 PERFORMANCE REWARD: ORGANISATIONAL AND TEAM REWARD

84 David Chapman explained the changes to reward arrangements for non-SCS⁷ staff in ORR. the executive team would continue to determine individual performance levels, including outstanding performers (who would be limited to 10% of staff). The paper set out how additional, modest rewards would be calculated on the basis of team and organisational performance – the levels of which would be determined by the board based on delivery of the business plan. The Board noted however that rewards would need to reflect

⁷ Non-Senior civil service, ie all staff except Directors and deputy directors

the impact of ORR's activities as much of the business plan involved primarily process measures.

85 There had been no Treasury announcement yet on pay for the year, ORR had budgeted 1% for consolidated increases and 2.6% was permitted for non-consolidated performance rewards. This change to the system made it likely that more people would receive an award, but the amounts would be significantly reduced.

86 Tracey Barlow reported that the NAO had noted the board's decision last year which had breached the Cabinet office guidelines on the percentage of individuals in the SCS who received a performance award. At the time we had been very clear about the exceptional nature of the year. It would be important to meet the guidelines in what should be a more normal year.

ITEM 17 CHIEF EXECUTIVE'S REPORT

87 The report was noted.

ITEM 18 CHAIR'S REPORT

88 The report was noted.

ITEM 19 AUDIT AND RISK COMMITTEE

89 There was nothing of substance beyond what had already been reported.

ITEM 20 SAFETY REGULATORY COMMITTEE

90 There was nothing of substance beyond what had already been reported.

ANY OTHER BUSINESS

91 The volume of papers circulated to the board continued to be an issue and the executive undertook to review the templates and exert more pressure to keep papers short.

92 The date for the board development day should be set urgently [subsequently agreed as 29/30 June].

[ends]

