

THE OFFICE OF RAIL REGULATION
MINUTES OF THE 114TH BOARD MEETING
09:00-15:30, TUESDAY 28 APRIL 2015
ONE KEMBLE STREET, LONDON, WC2B 4AN

Present:

Non-executive directors: Anna Walker (chair), Tracey Barlow, Mark Fairbairn, Bob Holland, Michael Luger, Justin McCracken, Stephen Glaister

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), Rachael Durrett (External Affairs), Dan Brown (Director, Strategy & Policy), John Larkinson (Director, Economic Regulation)

ORR staff in attendance, specific items: Item 7: Nigel Fisher and Andy Lewis; Item 8: Annette Eggington, Stephanie Tobyn, Siobhán Carty and Scott Hamilton; Item 9: Gordon Cole; Item 10: Rob Plaskitt, Ian Williams, David Reed, Joe Quill and Alan Scarlett; Item 11: Nigel Fisher and Gary Taylor; Item 12: Lucy Doubleday.

ITEM 1 APOLOGIES FOR ABSENCE

- 1 Ray O'Toole had sent apologies. Andrew Winstone (Associate Director of Communications) was on leave.
- 2 Anna Walker said that the new NED member, Stephen Glaister, (who had attended the previous day's sessions) would be joining the meeting at 10am.

ITEM 2 DECLARATIONS OF INTEREST

- 3 Bob Holland reminded the Board that he had previously been Managing Director at UK Rail at Arriva, which was part of the same group as Alliance Rail Holdings. Alliance have a current application for open access rights on the east coast mainline (ECML) which is being assessed by ORR staff before being put before the Board for determination. There was a general update and discussion on today's agenda.
- 4 The Board noted this interest was relevant to the discussion which was on the agenda. They agreed that they wished to take advantage of Bob's wide experience and understanding of the rail industry in discussing the broader issues around the competing applications – noting that the interest had been known before his appointment was made.
- 5 Staff explained that the single page confidential annex (which contained the only information not currently known to the applicants) had not been included in Bob's original Board pack. The Board noted that this information had been widely quoted in the media that day and agreed that Bob should see the annex.
- 6 The Board discussed briefly their preference that they should have the benefit of Bob's input in all discussions about the various applications up to the final decision, accepting that Bob should not participate in the final decision. However, internal legal advice was that there was a risk this might make any

decision unsafe and the Board agreed that ORR should take counsel's advice to ensure that the Board understood any risk before deciding how far to include Bob in its deliberations on the ECML decisions.

- 7 Staff should not include Bob in circulation of any decision papers until this advice had been received and considered.

ITEM 3 APPROVAL OF DRAFT MINUTES

- 8 The version of the minutes of the last Board meeting which had been circulated electronically were not complete and a full version would be re-circulated for comment.

- 9 The Board had no comments on the other minutes as circulated.

ITEM 4 ACTIONS OUTSTANDING NOT TAKEN ELSEWHERE ON THE AGENDA

- 10 The report was noted.

ITEM 5 MONTHLY SAFETY REPORT

- 11 Ian Prosser drew out some headlines from his report. He noted with regret the death of a rail worker killed on duty. He reported that NR were paying more attention to the issue of road safety of workers travelling to and on duty.
- 12 Overall the level of enforcement in the year was up, with a significant increase for London Underground. However, the PIM (passenger indicator model) was lower than ever after a 10% decrease due to a declining risk on earthworks. This was the result of better management and mitigation action by NR. We asked whether this was simply the result of a more benign winter but it did seem to be the result of active management of the risk by NR. Ian reminded us that no passenger train had been derailed in six years.
- 13 He reported on the latest NR SHE¹ committee. He thought their work on civils structures and their inspection was improving and the committee was taking a close interest. They also recognised the significance of the increased number of issues on electrical safety and NR's failure to meet the statutory standard. Action was being taken on this. Ian said he had been impressed at an animation prepared for use across the company to explain and avoid the chain of events that had led to a specific incident of a runaway trolley. There were encouraging moves under way which he thought would lead to a better culture. The NR Committee had also closely examined all the outstanding ORR enforcement notices, the first time we thought this had been done in detail.
- 14 Ian explained to the Board the current situation with West Coast Railways and the steps he was taking to ensure that when they resumed operations they did so under close observation and with proper attention to safety. His inspectors had identified governance and management issues and these had been discussed with the senior leadership of the company. They would be granted a time-limited safety certificate and as well as the immediate improvements there would need to be evidence of adequate sustained improvement in the company's culture and practice. We discussed the

¹ Safety and Health Executive committee.

- checks that would be undertaken and persistent issues with ease of access to the brake system that Ian wanted to see addressed.
- 15 We asked whether there were any lessons for us on driver licencing, but the driver in question was a very experienced individual. Our role in licencing is only for new drivers and so was not at issue here.
- 16 Ian highlighted some further points: early results from some new research on how drivers react to red signals might help the industry better understand the causes of SPADs; the issue of maintaining minor assets such as signalposts, and station canopies had arisen and NR had responded with an inspection plan. At this point there was no enforcement planned.
- 17 The Chair had asked Ian to consider whether the recent German air crash apparently as a result of suicide by the pilot, had any lessons for the rail industry. He was still considering whether current safeguards were adequate.
- 18 Finally Ian reported that the safety investigation into the handling of passengers during disruption at London Bridge had concluded that there was no breach of safety law, although the handling of passenger information during that disruption could have been improved. The report would be published after the election.

ITEM 6 CP5 MONITORING MONTHLY PACK AND UPDATE ON NR BUSINESS PLAN

- 19 Alan introduced the report. He said that the MMA² graph showed some improvement in PPM. The team had corrected for a benign winter, and it still showed that the deterioration had halted and there was a slight improvement. He also reported that ECML's very good performance seemed to be the result of 3-4 years of consistent focus on correcting small problems. He thought that this message was getting through to the other NR routes.
- 20 Most of the TOCs had now responded on the level of performance received. As well as specific problem routes, it was clear that major projects were having a bad impact for passengers when lines were closed. On the other hand unplanned TSRs³ were continuing to decline. Accountability of individual depots was increasing and this was part of a slightly improving picture.
- 21 Alan showed that if the trains that were currently two minutes late could be brought in on time, then the overall impact on the PPM figure would be to bring them to well above target, so focusing on those 'near misses' would pay dividends. He also described how some infrastructure improvements were not yet being used to the maximum benefit.
- 22 Overall, he thought there were signs that management of NR's operations in most areas had either stopped getting worse, or had started to shift towards getting better.

Paragraph 23 Redacted as relevant to current regulatory processes

² Moving monthly average

³ Temporary speed restrictions

- 24 We asked whether the tracker template could be amended to reflect progress on all CP5 obligations: for example more information on delivery against the maintenance and renewals programme and progress on efficiency targets.
- 25 We understood that efficiency is not a formal regulated output but agreed we needed to understand what progress Network Rail was making in this important area.
- 26 Action: Richard and team to consider those points and ensure they were reflected in the CP5 tracker including the monthly overview.

ITEM 7 LETTER TO NR REMCO ON 2014-15 PERFORMANCE

- 27 This was the formal letter from ORR to NR's Remco which informed the committee's deliberation of their management incentive plan (MIP). Although the size and number of senior executive bonuses would be significantly decreased this year, it was still a very useful vehicle for us to be clear with NR about our current concerns. There was also a wider set of management performance incentives covering the lower tiers of management. Our letter will form part of a suite of documents that needed to be aligned in terms of messaging.
- 28 We discussed the drafting of the letter highlighting our desire to see delivery of the CP5 outputs assessed. We also noted that NR's apparent inability to plan or forecast properly should be highlighted as a management concern. The letter would be made public and needed to be balanced and objective as the letter forms a very useful source of information for members and attendees.
- 29 The Chair would sign the letter when all our drafting points had been taken into account.

ITEM 8a CONSUMER PROGRAMME: CONSUMER POLICY COMPLIANCE FRAMEWORK

- 30 John Larkinson introduced this paper and the next two agenda items. There were clear themes running through each of the three papers including ticketing, data sharing and transparency.
- 31 He asked for comments on the compliance paper first. Stephanie Toby, explained how the team hoped to share best practice and drive improvements that way, while accepting that we could use the licence conditions and consumer law if necessary.
- 32 Richard Price said that TOCs tended to focus on the conditions of their franchise but they also had licence and legal obligations which they had been slower to respond to. We welcomed the commitment and engagement we heard from the team. We discussed resourcing and planning for the team.
- 33 Annette Egginton explained the resistance the team had experienced from TOCs and RDG on some aspects of DPPPs There was more common ground than sometimes seemed apparent but areas of real disagreement.
- 34 We talked about the importance of consistent messaging and behaviour on these issues. John Larkinson explained the work going on to keep DfT and Transport Scotland informed and to take soundings from RDG to avoid

surprises. We were clear however that we would not tie industry progress to the pace of the slowest TOC.

35 We noted that in a properly competitive market, TOCs would be anticipating their customers' needs and responding to them without regulatory intervention.

36 We asked the team to include in their next update a clearer timetable of key actions and events. **[Action A: John Larkinson]** We supported the emphasis of the Spring 2016 annual consumer report celebrating good practice and successes as well as reporting on compliance. TOCs were likely to welcome opportunities to quote good feedback.

ITEM 8b CONSUMER PROGRAMME: RETAIL MARKET REVIEW

37 Siobhàn Carty introduced the paper. This was a complex area that was not well known even in parts of the industry. We had sought to give a clear explanation of how the system works and its advantages and disadvantages. Although parts of the system offered benefits to passengers there was a limited choice of retailers and some evidence of slow innovation. Governance processes were very industry centric with limited inputs from third parties and passenger bodies.

38 John explained that the consultation would be a carefully balanced one weighing up the pros and cons of different approaches. Many of the short term proposals would be about making the systems work better and more transparently and it was hoped would attract wide support. The longer term more radical option around different prices for different tickets would require more work

39 We talked about the areas that would be covered in the consultation including new technological solutions, the way that other travel ticket markets had changed to respond to new opportunities, barriers to entry and the way that different types of consumers found it more or less difficult to purchase the best ticket for them (eg ticket machines not offering the full choice of tickets).

40 We agreed that a consultation was a positive way forward and would look forward to hearing the results of this.

ITEM 8c CONSUMER PROGRAMME: UPDATE ON TRANSPARENCY

41 John Larkinson introduced the paper in Andrew Winstone's absence.

42 He focused particularly on the question of access to the TOC Darwin database by third party app providers and briefed the Board on progress in making this information more widely available. He thought that a great deal of improvement had been achieved in making the information more widely available and cheaper. However arguments persisted in some areas particularly on whether a predictive approach should be permitted.

43 The team was continuing to work with RDG to encourage a proactive response to continuing concerns rather than waiting for a competition complaint to be lodged.

44 We agreed that this seemed to be a sensible approach, other data (we mentioned TfL and weather information) seemed to be used predictively with different outcomes for consumers.

- 45 We noted the report and agreed the proposal that the Chair should write to RDG on the issue [Action].

ITEM 9 HIGHWAYS MONITOR UPDATE

- 46 The Chair welcomed Stephen Glaister to his first Board meeting. Peter Antolik introduced the discussion.
- 47 Peter reported on the changes that were underway at Highways England (HE) as they got to grips with their new statutory form and with being monitored.

Paragraphs 48-56 have been redacted as they relate to the formulation of policy

- 57 Stephen suggested that ORR also needed to think about how it would react in the event of a major highways infrastructure failure (such as the M1 fire a few years earlier). We also talked about the difficult distinction between road and rail where on the highways, where we have no safety role, many users are killed each year.
- 58 Finally we acknowledged the wider strategic questions that ORR would face around the opposition to road building, the cost/effectiveness balance on technological solutions, the pressures for environmental improvements and the fact that 80% of the network was due to be resurfaced.
- 59 The requirement which we had insisted on, that all our advice to the Secretary of State should be public, meant that we needed to think about how such advice might help drive positive change in the sector.

ITEM 10 UPDATE ON OPEN ACCESS APPLICATIONS

This is the item on which Bob Holland declared an interest which the Board accepted as relevant but not requiring his exclusion.

This whole item (paragraphs 60-69) have been redacted as part of current regulatory processes

ITEM 11 UPDATE ON REVIEW OF ECONOMIC ENFORCEMENT POLICY

- 70 The chair had asked for this to be brought above the line because DfT's response to our consultation had suggested a different approach was needed for enforcement in public companies. We would need to consider the issues carefully when the policy was before us for approval. Justin argued that ORR should not take the pressure off any body that had crown immunity – the regulator needed to keep a full armoury.
- 71 We noted that the revised policy would be presented in July. **[Action C: Alan Price]**

ITEM 12 QUARTER 4 REPORT AGAINST BUSINESS PLAN

- 72 This report would form the backdrop for a discussion on organisational and team performance next month. Remco had discussed a draft paper the previous day.
- 73 Tom Taylor said that the report showed good performance against a stretching business plan. The Board had discussed changes to the plan

- during the year. It included a report against our first set of service standards, where performance was good, but there was room for improvement.
- 74 Next month's report would include a qualitative appraisal in the context of non-SCS pay.
- 75 Justin commented that the risk summary page did not feel right. At first glance it looked like an organisation in real difficulties, but that was not his view of where ORR was. Richard explained that the risk management and reporting system was under review by ARC and a new system was nearly ready for launch.
- 76 Tom said that in May we would be asked to rate (out of ten) the organisation's performance against last year's five strategic objectives – that would drive team reward. There was also a smaller organisational reward where the Board would want to reflect on ORR's overall performance and impact.
- 77 The chair commented that ORR should be confident in assessing its own performance and not unduly influenced by the poor performance of NR. However, she thought the Board should be alive to stakeholder views of ORR and the need to apply the 'public opinion' test when making judgements about our performance. Judgements also needed to reflect ORR's impact, not just the delivery of processes.
- 78 Whatever the Board decides will need to be approved by the Secretary of State.

ITEM 13 BOARD FORWARD PROGRAMME

- 79 The report was noted.

ITEM 14 CHAIR'S REPORT

- 80 The report was noted.

ITEM 15 CHIEF EXECUTIVE'S REPORT

- 81 A very early draft of the CMA report on on-rail competition had been received and was under review. Emerging thinking would be included in briefing for May's Board meeting with the CMA.
- 82 Richard Price reported that a recent stakeholder survey in Europe had identified ORR as a leading influencer across Europe. He said that Anna Walker's period as chair of IRG Rail had significantly improved both perceptions and the impact of that group.
- 83 Ian reported that RSSB and NR were in dispute over the innovation fund (part of the CP5 settlement). It was possible that ORR would be asked to help resolve the issue. The chair suggested that, if that occurred we would need to refer to the ministerial guidance on vfm for CP5 special funds.

Schedule 8 error

- 84 John Larkinson updated the Board on work in hand to resolve the issue of the Schedule 8 error that consultants had made in the CP5 final determination. This was proving to be a complex issue which also had interfaces to DfT and TS via franchise provisions for franchised TOCs. We were commissioning further work to ensure there were no further linked errors and discussing with

DfT/TS. TOCs were understandably frustrated that we could not tell them more details about the error and we had contacted all TOCs to explain the planned work

Paragraph 85 has been redacted as subject to legal professional privilege

ITEM 16 REMUNERATION COMMITTEE FEEDBACK

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

ANY OTHER BUSINESS

87 There was no other business.

[ends]