

Office of Rail Regulation

Minutes of the 84th Board meeting on 22 May 2012

10.00 – 16.30 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, Ian Prosser, and Cathryn Ross.

In attendance, all items: John Larkinson (acting director, RPP), Juliet Lazarus (legal adviser), Ken Young (director, external affairs), Sam McClelland Hodgson (board secretary), Gary Taylor (asst. board secretary)

In attendance, specific items: Item 3 – Caroline Wake, John Gillespie, (RSD); Item 4- Abigail Grenfell, Nigel Fisher, Paul Hadley (RPP) and Chris Simms (LS), Item 6 – Alasdair Frew, Rachael Durrett, Andrew Winstone (EA), Item 7- Annette Egginton,(RME) and Rachael Durrett (EA); Item 9 – David Chapman (CS).

Item 1: Welcome and apologies for absence

1. Anna Walker welcomed everyone to the meeting, in particular, Sandra Jenner, our new change adviser. No apologies for absence were received.

Item 2: Declarations of interest

2. The executive members and attendees declared an interest in item 9, the SCS pay policy. The non-executive members approve this policy and they agreed that the executive members could remain in the room for this item.

3. There were no other interests declared relevant to the agenda.

Item 3: Health and Safety strategy (StEP) & Safety and assurance

4. We considered a paper and presentation which provided the Board with the results of the project that had reviewed our strategy for health and safety regulation. The strategic elements project (StEP) and the draft document described how we regulate railway health and safety and included information on the legal framework; how we identify the key risks; our strategy for achieving our vision and how we deliver it.

5. The presentation set out the outcomes of the 'strategic elements' project (StEP project); how we identify, prioritise, and regulate the key health and safety risks to ensure compliance; and how we challenge to drive improvement the document that describes our 'strategy for health and safety risks'; these included the 'scorecard' showing how we ranked the risk priorities; the list of industry risks ranked in order of priority and showing how they link to our 2012/13 business plan; a copy of ORR's 'core message' summarising our responsibilities as health and safety regulator; how we allocate our resources; a description of ORR's role in respect of system safety; as well as a report of an independent assessment of the adequacy of the industry's risk models.

6. In addition to this we also considered the work done following our March meeting's health and safety discussions. The Board had raised a number of points in relation to our safety work and assurance process, information and visibility of issues

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at Board level. We noted a response paper from Richard Price and Ian Prosser setting out the work being done to ensure there was a more effective analytical based information flow to the Board and the new systems being developed around an internal assurance and accountability framework.

7. There had been revisions made to the Chief Executive's monthly report to ensure safety updates and data was provided on a monthly basis, as well as the regular cycle of industry Health and Safety reports. We also agreed the need to ensure effective forward planning to protect time for H&S issues on our Board agenda. It was important that we managed effectively the potential disconnect between data, analysis and expectations. The issue was not additional information but ensuring the information provided was put in an appropriate analytical framework highlighting any underlying concerns. We also noted the work programme considered by our Safety Regulation Committee and the role it had played in reviewing safety risks.

8. The current committee review work would also provide an opportunity to consider how the roles of the Board committees could help to address some of the issues around information flow and assurance.

9. We discussed how the Safety Strategy document fitted with the wider strategic narrative work; we agreed this longer term vision needed to be recognised and reflect the timelines (2020-30) and have synergy with ORR's other strategic work, including the Periodic Review 2013 programme and its objectives. We agreed the document should include an additional chapter covering this wider context ahead of being published.

Board 22.05.2012 Action A: Assurance framework to be worked up by RS and Board to ensure that the safety information provided by the executive met the expectations and needs of the Board. It was agreed that we would involve two NEDS in this exercise.

Board 22.05.2012 Action B: Board forward agenda should continue to be planned with enough time for the right safety discussions

Board 22.05.2012 Action C: Provision of an additional chapter in the strategy document with a long term safety strategy timeline (up to 2030) – ensuring that this is in line with the work on the strategy and PR13).

Board 22.05.2012 Action D: Agreed document should be published (with additional chapter), following due diligence on opinions set out in the document.

Board 22.05.2012 Action E: Discussion needs to take place to discuss the safety aspects of PR13 including TPWS/ ERTMS.

Item 4: Enforcement order – long distance

10. We considered the latest position in relation to long distance performance and the recommendations set out in the paper presented by our executive on whether to take further enforcement action related to Network Rails long distance performance for 2012-13 and 2013-14.

11. We noted the feedback from recent meetings held with the industry, including a workshop and meetings with TOC and NR representatives.

12. We recognised that Network Rail had achieved a lot in the current control period. Performance and passenger satisfaction had improved alongside accommodating extra trains on the network, tighter timetables and growth in the number of passengers. However, its plan submitted on 30 March stated that Network Rail will not achieve the output for long distance sector PPM (91.5%) in 2012-13 and that there is a very low probability (10%) that it would meet the relevant target in 2013-14 (92%). On reviewing the reasons why performance is currently below target we had concluded that this was at least partly due to shortcomings on Network Rails part that a best practice operator could, and should, have identified sooner and acted upon more promptly.

13. We considered the evidence and our executive team's recommendations based on the analysis of whether the plan is adequate.

14. Having considered the issues in detail and received clarification on our points raised, we were broadly content to conclude that Network Rail was not currently in breach of its licence in respect of 2012-13 performance but that this was critically dependent on the delivery of the joint performance improvement plan commitments it had made, and on doing the work to deliver further improvement. We accepted that, although Network Rail would not meet its commitment, it was planning to do all that is reasonably practicable in 2012/13, given the circumstances, to improve performance. We therefore concluded that Network Rail had met the requirements of the enforcement order and were no longer likely to be in breach of that licence in 2012/13. However it was agreed that ORR would continue to monitor delivery very closely throughout the year, supported by independent reporters and quarterly reports from Network Rail on progress against the planned initiatives. If we considered that Network Rail were not delivering the initiatives or they are not having the impact planned, and particularly if it looks like Network Rail are unlikely to deliver their JPIP commitments to TOCs, we would consider further enforcement action.

Paragraphs 15-18 inclusive have been redacted as relating to policy development

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19. We agreed to highlight to Network Rail a number of points in our decision letter, including that:
 - We expected Network Rail to continue to follow its safety management and assurance processes to ensure that the initiatives in the plan do not create additional safety risks.
 - As part of our monitoring we will seek feedback from the operators and Passenger Focus about the impact of the initiatives in the plan on them and their customers. We would also expect Network Rail to continue to do all it could to accommodate its customers' future requirements.
 - Performance is a whole industry issue and JPIPs include actions for the operators to improve their performance. We will expect the TOCs to keep their side of the agreement, as well as using the JPIP process to keep the pressure on Network Rail's delivery.
20. We recognised that Network Rail was funded in Control Period 4 to meet its PPM target including on long distance, as well as the agreed efficiency targets. If the long distance PPM target is not met, we agreed we would need to consider what adjustment this requires to Network Rail's calculation of efficiency over the control period.
21. We were supportive of our approach to FVA issues and costs being considered separately as part of the starting point for PR13. Under-achievements in CP4 on targets or efficiency would have implications for draft determinations and targets for CP5.
22. We also agreed a communication process with a proposed publication date of 29 May 2012, following our final resolution on the penalty starting point and due diligence in correspondence.

Board 22.05.2012 Action F: Team to take on comments and carry out further due diligence testing on possible amount for penalties. Short supporting note and further worked up proposal to be circulated by correspondence to all NEDs for comment.

Board 22.05.2012 Action G: Decision Letter (reasons document) to be cleared by Anna and Richard

Board 22.05.2012 Action H: Clear handling strategy to be set up including Anna to contact R H & RP to contact DH in advance of announcement of decision on Tuesday 29 May.

Item 5: Valuing the ORR – progress update and discussion

23. We considered a paper setting out details of initial work being done on how ORR should assess the value of its own interventions and discussed our views on how the project should progress.
24. We noted this work was additionally motivated by the recommendations of the PAC reports on the Care Quality Commission and Ofcom, which highlighted the

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importance of regulators assessing the value and impact of their work, and of the Capability Review, which highlighted the need for the Board to spend more time considering the organisation's impact. This was an area being discussed with other regulators, but as yet no significant progress had been made by any regulators.

25. Most evaluation carried out within the public sector is carried out at a 'micro' level and only the OFT seeks to put a value on the contribution the organisation makes to the UK economy. Even this estimate is based on a 'bottom-up' approach rather than a 'top down' approach.

26. We noted that the key issue with all evaluations (both ex-post and ex-ante) was the development of a credible counterfactual to the policy options being considered (i.e. what would have happened if the policy had not been implemented). We would need to address this if we were to develop a credible ex-post evaluation framework for the ORR. From the work that RME directorate had carried out so far, we noted a number of draft objectives had been identified to date. We were supportive of the proposed small number of evaluation pilots taking place in late summer/autumn 2012 and for these to be reported back to the Board when available. We were also supportive of the learning points from these evaluations being incorporated into data requirements for PIDs going into the business planning process.

27. We were generally supportive of our work in this area; though acknowledged that progress of the work would need to be made around the higher priorities of the PR13 programme. It was important to get the right balance of how much work should be carried out to provide the value / benefit we sought and our ongoing work.

Board 22.05.2012 Action I: Cathryn to come back to Board when further work is complete. This was recognised as important but not time critical.

Item 6: Communications strategy and relations with key stakeholders

28. Ken Young presented on the development of our communication and stakeholder strategy. Whilst we acknowledged there was significant work which lay under this high level plan, we considered there was further work required to bring the plan forward from strategy and theory to working practice.

29. In particular, we considered there was a need for more work around the role of our Board non-executive directors (NEDs) and stakeholder engagement. This was an area we had raised as part of our strategy and capability review discussions over the past six months and a more detailed plan on this element of communications was required, and effective lines to take to support wider NED engagement with our stakeholders. It was important to ensure we had the right level of engagement to build credibility with our stakeholders and of our Board and we saw this being achieved through more pro-active messaging and planning around 'set pieces', and playing a role in thought leadership; all of which would be particularly important to communicate and drive forward issues and debate building on the Government's Command Paper.

30. We recognised that we needed to be able to tell ORR's story more effectively. This was an office-wide responsibility of our staff, given the multiple levels of

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engagement our staff had throughout Government and the industry in carrying out our functions.

31. We also thought it was important to be pro-active and ensure we were considering our communications approach as an integral part of our decision-making processes; we proposed that we look to have communication / stakeholder handling as an standing section on our Board papers template.

32. It was important to recognise the importance of internal, as well as external engagement, noting the proposed Strategy narrative workshops in all our offices planned with staff in July. These events would be supported by our NEDs.

33. We agreed to consider a further developed plan, particularly in relation to our NED engagement at our meeting in July 2012.

Board 22.05.2012 Action J: Further work to be done to develop the strategy, including Ken to work with NEDs to establish the correct approach to NED engagement with stakeholders, processes to support 'set pieces'. This includes ensuring the correct channels are in place for NEDs to receive key messages and build on our work in thought leadership.

Item 7: Consumer engagement

34. We considered a presentation on our work on consumer engagement and agreed in principle to support a number of new initiatives relating to our consumer work, including

- Refresh our consumer expert forum to make better, more visible use of it in line with our other new expert panel arrangements
- Refresh our policy process, to build in consumer considerations more explicitly
- Undertake more joint work with consumer groups (eg Passenger Focus and Citizens Advice)
- Improve our presentation of consumer-oriented work – including through more thought leadership

35. We agreed it was important to win the “hearts and minds” of staff informally if we were to deliver more effectively on consumer issues. We also agreed an expanded consumer programme would need more contact with consumer groups.

36. We concluded that we needed a further discussion at our June Board meeting to clarify / establish a collective view on what an extended role for ORR will look like and the effect this has on our engagement with customers, This would also need to include health and safety and passenger information.

Board 22.05.2012 Action K: Further discussion to take place at June meeting to clarify/establish a collective view on what an extended role for ORR will look like and the effect this has on our engagement with consumers (including safety and PIDD).

Board 22.05.2012 Action L: Further proposals (and discussion) for direct contact with passengers to take place at the June Board. Levels of resources in this area should also be discussed

Item 8: Annual committee effectiveness review progress update

37. Following a questionnaire process, we noted the report and analysis of the initial feedback on the effectiveness of our committees. The responses and other recent discussions at board and committee level supported further work being carried out and we agreed to set up Board review group to support and carry out more detailed review (AW as Chair, TB, PB and RP plus two nominated executives). We recognised it was important to move forward with this work as it had a direct impact through PRC and the Board on our PR13 programming.

38. We also noted the annual chairs of committee reports to the Board which set out the business carried out in the past year. We noted this information was the basis of some of the assurance provided in the Annual Governance Statement, which formed part of our annual accounts.

39. We agreed SRC should continue as planned with the annual review of its work in July to feed into this wider Review work.

40. Mike Lloyd provided us with an update on Railway Industry Advisory Committee (RIAC) and its review of its role over the past year. It was noted that the committee would be considering changes to its terms of reference at its next meeting and we were supportive of the proposals for RIAC to change its name to reflect its health remit. We also agreed that we should clarify the status of RIAC in relation to the ORR Board and that there should be stronger links between RIAC and the SRC.. We also agreed that work should be taken forward on RIAC as part of the Board review group.

Board 22.05.2012 Action M: Richard to discuss and nominate two Executive Directors to be involved on the Board committee effectiveness sub group.

Board 22.05.2012 Action N: The work and findings of the Board sub-group to be discussed at post summer Board meeting (September).

Board 22.05.2012 Action O: Secretariat to circulate the ToR for each committee to help form collective view on the roles and responsibilities of the committees.

Board 22.05.2012 Action P: Discussion to be had as part of the review group to establish the role of RIHSAC and its relationship to the ORR Board.

Board 22.05.2012 Action Q: More time to be scheduled at future Board meetings to provide feedback from Board

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committee meetings ensuring that committees provide greater assurance to Board.

Item 9: SCS pay policy 2012

41. The non-executive members considered and agreed the recommendation from our remuneration committee on our overall approach to our SCS pay policy 2012, which had been developed in accordance with the Cabinet Offices guidance.

42. We also noted the proposed assessment and moderation process for individual SCS staff for 2011-12 performance assessments. The recommendations of the Remuneration Committee on non-consolidated awards and the individual assessments would be provided to the Board (non-executive members only) for consideration in June 2012.

Item 10: Annual report and accounts 2011-12 – final sign off

43. Following previous discussions of drafts of the Annual Report by the Board and the review of the Accounts and associated Governance Statement at our May Audit Committee meeting; we considered the final document. We noted that since the Audit Committee meeting on 10 May there had been two updates required to two tables in the accounts; this was primarily a presentational revision following further feedback from the National Audit Office (NAO).

44. We noted the Governance Statement which replaced the previous 'Statement of internal Control' provided by our Chief Executive.

45. It was confirmed that there were no issues to report on the Accounts for 11-12 and we therefore approved the document which would be signed by our Chief Executive and provided to the NAO for sign off this week prior to publication and laying before Parliament on 11 June 2012.

46. The Board thanked all those involved for all their hard work in producing the document and accounts and we felt the Board review process had worked well.

Item 11: Chair's report

47. We noted the feedback provided in the Chair's report on meetings and engagements with the industry and Government over the past month. We also noted the final draft of the Board objectives following our discussion on an earlier draft in April.

Board 22.05.2012 Action S: Board objectives to be signed off in correspondence

Item 12: Chief executive's overview and monthly data

48. We discussed the Chief Executive's overview and monthly data which set out the key issues for ORR in relation to internal and external activities. In particular the executive provided updates on recent safety activities; including data on our enforcement, inspections and our progress against RAIB recommendations.

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49. We also received updates provided on our current progress on senior staff recruitment.

50. Sandra Jenner, our change adviser, who joined in May, provided an overview of her initial first impressions and her work going forward to support Richard in assessing our current change capability and priorities for action over the coming year in response to the Capability Review and our delivery of the business plan 2012-13. Sandra would provide a further update at our June Board.

51. We also noted that Dan Brown had also joined us in May as our interim Strategy director ahead of appointment of a permanent director.

52. In addition, we endorsed Richard's proposed business planning and assurance process and reporting cycle to the Board, which would commence as part of the CE's overview in July.

Paragraph 53 has been redacted as it contains sensitive information

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54. Michael provided us with a short update presentation on the work and discussions being held on institutionalising the Rail Delivery Group (RDG) through licence conditions; we would consider a paper and recommendations on this issue at our next Board meeting.

55. We noted the latest position in relation to Network Rail's work on its Management Incentive Plan (MIP); Richard Price and Cathryn Ross had met with Steve Russell and Graham Eccles of Network Rail's remuneration committee to discuss its process and proposals. We would continue with our dialogue and ensure that their plan were in line with our agreed principles.

56. Further to the Remuneration committees recommendation on non-SCS performance rewards for 2012 detailed in the CE's report, we agreed to consider the proposed matrix in correspondence.

Board 22.05.2012 Action T: Board to see proposed MIP in June ahead of being discussed at NR's AGM in July.

Board 22.05.2012 Action U: Paper on RDG to be scheduled for June Board

Board 22.05.2012 Action V: Letter from Anna to Justine Greening cc to Treasury and No10 to be drafted in response ConDoc response due on 11 June.

Item 13: Board forward programme and draft dates 2013

57. We noted the latest Board forward programme and provided feedback on the proposed dates for 2013 Board activities.

Board 22.05.2012 Action X: Plan to be changed to amend inaccuracy of June date

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Board 22.05.2012 Action Y: Secretariat to establish additional date for January 2013 meeting / session.

Item 14: Approval of minutes of Board meetings of 27 March 2012 for publication

58. The minutes of our formal board meeting on 27 March 2012 were confirmed subject to Chairs final review, following which they would be signed. The notes of the Board session held on 26 March 2012 were also noted.

Item 15: Matters arising (not taken elsewhere on the agenda)

59. We noted the progress against actions from our previous meetings; a number of actions had been completed since March and further updates were noted on those still outstanding.

Item 16: Committee meetings: feedback

60. We agreed not to provide any separate committee updates (SRC and Audit Committee) as these had been incorporated in other areas of the agenda on this occasion.

Item 17: Any other business

61. No issues were raised under this item.

Item 18: Meeting review

62. May paper dispatch: We raised concerns over volume of paper provided for this month's meeting and agreed that Stephen Nelson would work with Richard to consider how to manage this better, recognising of course the importance for the Board to be provided with a sufficient level of information and papers in order for it to make effective decisions including on enforcement issues.

Board 22.05.2012 Action Z: Stephen Nelson to discuss with Richard a strategy for ensuring the volume of Board papers is reduced for future meetings.

Anna Walker

Chair

Draft minutes approved by the Board in 24 July 2012