

**THE OFFICE OF RAIL AND ROAD  
150<sup>th</sup> BOARD MEETING  
09:00-15:30 TUESDAY 24 JULY 2018  
ONE KEMBLE STREET, LONDON WC2B 4AN**

**Non-executive members:** Stephen Glaister (Chair), Tracey Barlow, Anne Heal, Justin McCracken, Michael Luger, Graham Mather, Bob Holland

**Executive members:** Joanna Whittington (Chief Executive), John Larkinson (Director Railway Markets and Economics), Graham Richards (Director Railway Planning and Performance); Ian Prosser (Director Railway Safety).

**In attendance:** Dan Brown (Director Strategy and Policy), Freya Guinness (Director Corporate Operations and Organisational Development) – to item 4, Russell Grossman (Director of Communications), Juliet Lazarus (Director Legal Services and Competition), Tess Sanford (Board Secretary)

**Other ORR staff in attendance are shown in the text.**

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. The chair welcomed everyone to the meeting. Michael Luger would arrive a little late (10:15) and two members needed to leave shortly before the scheduled end of business.

**Item 2 DECLARATIONS OF INTEREST**

2. No new external interests were declared.
3. Graham Richards would recuse himself from discussion of the Timetable Inquiry to avoid any perceived conflict of interest on that item.

**Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING**

4. Slight corrections to the circulated minutes were noted to the two sets of minutes (149<sup>th</sup> meeting and supplemental). The chair would sign updated minutes.

**Item 4: HEADLINES AND REGULAR REPORTS**

5. **Ian Prosser** updated the Board on: progress on investigations into the Sandilands tram incident and funding for the new tram safety standards body; monitoring and action on safety for passengers around the recent timetable disruption; launch of the Chief Inspector's Annual H&S report; analysis of the recent spike in SPADs reported which would be included in the next report [Action]; and channel tunnel safety issues in relation to the Eleclink project.
6. The board discussed the possible causes of the SPAD spike and the level of anger and concern among passengers as the result of timetable disruption including possible risks with overcrowding in stations.
7. **Graham Richards** reported on the delay in publication of the Roads SoFA and the associated risk to the timetable and HE's planning.
8. On rail he highlighted the monthly regulated milestones tracker in the report, which showed where NR had met, change controlled or missed enhancement milestones. He described how this was reflected in NR's scorecards and how the ORR process added transparency. The board commented on the age of

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- some items on the regulatory escalator and asked if the report could include a picture of the progress of issues over time. [Action]
9. **Freya Guinness** set out the Q1 business plan report and updated the board on current budget pressures, including resource and project re-planning needed as a result of the Timetable Inquiry. ARC had discussed budget pressures the day before and were content with management's approach to budget risks.
  10. **Joanna Whittington** reported on: engagement with Ministers, elected officials and other stakeholders (including in the regions) in relation to the draft determination (DD) and the various annual reports (NR Monitors, Measuring up, etc). She also talked about organisational matters including handling of the London accommodation project and the forthcoming roll out of new mobile devices.
  11. **John Larkinson** reported on a submission from Heathrow Southern Railway to DfT on how a non-NR line could be delivered: this was an example of how ORR was supporting the development of fresh thinking by third party investors looking at rail opportunities. He also reported on lower levels of asset sales achieved by NR than forecast at the time of the Hendy Review (as reported in the AEFA<sup>1</sup>) and progress by TOCs working with Trainline agreeing the ORR requirement to improve passenger information at point of sale.
  12. On **PR18**, John gave a broad picture of responses received so far to the DD and the team's approach to moving toward a final determination. He described the complex relationship between the sums set out by ORR in the determination and the mechanics of DfT and Treasury planning to deliver actual funding. NR was working on the issues identified in the DD – particularly performance trajectories and asset sustainability – which ORR would then need to review. Work to develop new trajectories continued and would be reported at the September board [Action – forward programme] – certain measures which informed Schedule 8 benchmarks needed to be resolved in the final determination though others need not be finally settled until CP6 starts on 1 April 2019.

**Item 5 TIMETABLING – NR LICENCE BREACH AND ENFORCEMENT**

13. An investigation into NR's failure to meet the T-12 industry standard had begun in February. The Board had been minded to find NR in breach of their licence in a discussion on 13 July. The executive had been working up options for enforcement action based on that discussion.
14. John Larkinson set out the immediate context of the issue.
15. ORR had already contributed to de-risking the December 2018 timetable process and this was now NR's main priority (along with the May 2019 timetable change). It was important not to distract NR from this priority, or to pre-judge or otherwise fetter the outcome of the ORR's Timetabling Inquiry (TTI). There were some areas for change where ORR could require additional transparency or add urgency to NR's plans.
16. The proposed areas of intervention/monitoring and resultant reporting covered short, medium and long term improvements and were:
  - a) NR's process to deliver the December 18 and May 19 timetables must be fair and transparent for operators. ORR would monitor operators' experience of the process.

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<sup>1</sup> Annual efficiency and finance assessment

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- b) ORR had already included a 90% increase in resources to improve the System Operator (SO) capability in CP6 but this now needed to start sooner and happen faster. NR should produce an updated accelerated plan and ORR would monitor progress against this.
  - c) NR need to develop a new plan to return to T-12 as the industry standard and ORR would monitor against the plan.
  - d) NR would be required to report publicly on who was requiring late changes to the timetable and why – this would add useful transparency.
  - e) NR had recognised that the interfaces between different parts of its organisation – particularly the system operator, infrastructure projects and routes – were not effective enough: they needed to accelerate work to address these issues urgently.
  - f) The existing timetabling architecture should be reviewed for immediate improvements.
  - g) A fundamental review of how timetables are constructed was expected to be undertaken by NR in the medium term, and should take into account recent experience and any recommendations from the TTI.
17. The board recognised the different nature of this statutory process from that of the TTI and discussed the inevitable overlaps of evidence and analysis and their timetables. The TTI was an opportunity to develop a more comprehensive picture of the industry context of NR's failure, including others' contributory actions, and had scope for wider ranging recommendations, but the question before the board today was about the specific licence breach.
18. It was clear that NR were already addressing the headline issues but that there was more that ORR felt could be done, and more quickly, by NR to put things right.
19. The board noted the context of ORR's enforcement policy and penalties statement. Enforcement action should be taken to ensure delivery and secure compliance with public interest obligations and should drive any necessary changes in behaviour of the license holder. Action should be proportionate.
20. The board debated at length the various mechanisms available to it for enforcement and their likely efficacy in securing the desired outcomes. It considered the degree to which it was possible to specify actions now that would secure those outcomes in the future. It discussed what parts of NR needed to be influenced, the level of impact that different types of order might have and at what speed. The board noted that reparations had not been offered by NR in this case. In all cases the board considered the risk that action by ORR could be ineffective or counter-productive. It reflected on its own experience of the effectiveness of existing regulatory tools in enforcing against NR for previous licence breaches.
21. **The board agreed** to find NR in current breach of conditions 1.23 and 2.7 of its network licence in relation to running of an efficient and effective process, reflecting best practice, for establishing a timetable and any changes to it.
22. **The board agreed** the list of issues to be addressed by NR proposed by the executive (briefly set out above in paragraph 16).
23. After a vote (10 for, 1 against<sup>2</sup>) **the board agreed** to issue a Final Order later in the year which could draw on the TTI findings to specify effective measures to address this breach.

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<sup>2</sup> The options offered were either Final Order now or Final Order later to be developed in the light of the Timetable Inquiry findings and recommendations.

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24. The board also considered whether to issue a Provisional Order immediately and agreed, after a vote (3 for, 8 against) not to do so.
25. The board debated at length the option of imposing a financial penalty. In considering the potential scale of any penalty it considered its penalties statement noting that the level of harm caused by the failure could support an argument for a penalty at the high end. In line with the policy, the board discussed whether any financial penalty would be effective in adding urgency to the response from NR or in making clearer to the company the seriousness of the regulatory breach. Executive advice was that NR were already taking this issue very seriously.
26. **The board agreed** by vote (9 for, 2 against<sup>3</sup>) not to impose a financial penalty.
27. The board discussed the handling and timing of the decisions it had taken today and agreed they should be notified and made public as soon as practicable.
28. The board noted the relevance of their discussions on effective penalties to the later agenda item on incentives and penalties in CP6 which would inform consultations over the summer.

**Item 6 HIGHWAYS MONITOR – RIS2 ADVICE TO THE SECRETARY OF STATE**

*Richard Coates and Simon Chapman joined the meeting for this item*

29. Richard Coates reported that the publication of the SoFA had been delayed and a revised publication date was not yet confirmed: the document was expected to be high level with most of the detail set out in HE's strategic business plan. The draft advice had been reviewed by the Highways Committee the day before. The forward programme included another review of this issue by the board in September and the board noted this, asking that it be sufficiently high up the agenda to receive proper attention. [Action: Secretariat]. The board noted that a significant proportion of RIS2 would involve the completion of schemes started at the end of RIS1.

**Item 7 HIGHWAYS MONITOR GOVERNANCE**

*Richard Coates remained for this item.*

30. The paper recognised ORR's increasing maturity in its executive resource as Highways Monitor and proposed bringing the board sub-committee into line with the other sub committees. This was also part of succession planning for NEDs. Two additional NEDs would be added to add resilience in advance of Tracy Barlow's end of term in April 2019.
31. The board noted the need to start considering NED recruitment for 2019 [Action: Secretariat]
32. The board approved the proposal and the Chair would discuss with NED members who might take this role on.

**Item 8 COMMUNICATIONS STRATEGY**

33. Russell Grossman introduced the revised strategy in the context of a good past year and a tricky year ahead: he had spoken to board members individually in developing the strategy and thanked them for their contributions.

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<sup>3</sup> The vote was on the proposal that there should be no penalty.

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34. The board discussed the document and the relative prioritisation of audiences. It would be helpful to make sure that MPs understood ORR provides public information about the performance of local rail services and operators.
35. The board agreed the Strategy and particularly the increased focus on parliamentary audiences.

**Item 9 IMPACT OF BREXIT – INTEROPERABILITY AND STANDARDS**

*Agnès Bonnet, Paul Hooper and Gary Taylor joined the meeting for this item*

36. The board noted the report which identified key relationships where a post-brexite position needed to be resolved in order to allow cross border services. Risks around different Brexit outcomes were discussed and the volume of parliamentary business in relation to the necessary Statutory Instruments was noted.
37. The board discussed the degree to which ORR's authorisations process delivered better, safer outcomes for the operators and contractors and noted the case studies which illustrated the value added by the process. It would be important that the new arrangements did not take away the opportunity for ORR intervention at an early stage in the process.
38. The board endorsed the approach being proposed and noted the useful update.

**Item 10 COMPETITION - TVMS AND GATES**

39. Juliet Lazarus reported on progress on this market investigation. The board would receive a fuller report on the actions proposed at their meeting on 4 September which would enable a decision to be made on CMA referral or ORR actions within the requisite timeframe.

**Item 11 NR – MONITORING AND ENFORCEMENT POLICY (PR18)**

*Liz McLeod joined the meeting for this item.*

40. Dan Brown introduced the item which sought Board views to feed into a developing consultation on this issue: he drew out key issues from the earlier debate around NR's current licence breach. The board discussed the three areas of: financial penalties, regulatory enforcement penalties and ORR hearings. The board welcomed this approach which built on earlier discussion and supported improved incentives for regulatees, reflected the public sector nature of NR, supported route devolution and led to credible alternative penalty and enforcement choices that were compliant with the existing statutory framework.
41. The board discussed the issues and agreed the importance of consulting as part of developing our approach. They discussed the various levers available and their likely efficacy, reflecting on the earlier discussion about financial penalties and options here for penalties which impacted management or staff bonus pots. Changes to management and board members was a matter for the Shareholder, but it might be desirable to have a specific channel through which to propose change to him. Concerns about accurate targeting of financial penalties and other challenges were discussed. The Board noted that careful consideration would need to be given to the imposition of regulatory enforcement penalties as that would impact the financial bonuses of all NR staff. The board suggested an additional sanction of 'public censure' could be considered, as adopted by HSE.

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The board noted the proposal that reparations should no longer form part of the policy and suggested that staff check that other public sector regulators had not been able to use them effectively before they were removed from the toolkit.

*lunch*

**Item 12 TIMETABLE INQUIRY (TTI)**

*Graham Richards left the room for this item*

*Marcus Clements and Claire Simpson joined the meeting for this item*

42. Dan Brown introduced the slides and described progress to date including changes to staffing and resource planning which had resulted from the TTI.
43. Written evidence was still being received although the deadline had now passed. He noted that DfT had been particularly prompt and helpful in their submission. The volume of evidence was such that careful prioritisation would be needed to focus on key decision points. Dan set out the approach to stakeholder evidence, timetable for the findings report and current thinking on the recommendations piece. At the moment he anticipated identifying single points of failure for specific actors and systemic weaknesses/aggravating factors that made it worse. It would be important to be clear about what each organisation's legitimate responsibilities were. The board stressed the importance of understanding what went right in those areas where change had not resulted in passenger disruption.
44. Marcus Clements described the work being done to inform workstream 1 (passenger impact/harm)
45. At the board's request, Ian Prosser described progress with the prior involvement review which was stretching back to 2010. No urgent matters had been identified that related to ORR's role or needed to be brought to the Board's attention.

*Graham Mather left the meeting.*

**Item 13 HS1 ANNUAL REPORT**

*Feras Alshaker joined the meeting for this item*

46. Feras Alshaker introduced the report which showed a reduction in asset performance the reasons for which were currently unclear. The board also noted a failure to undertake as many renewals as planned. The implications of all these issues would be considered as part of developing PR19.
47. The board noted the report.

**ITEM 14 PASSENGER IMPACT MODEL**

*Marcus Clements and Nick Layt joined the meeting for this item*

48. The report showed the model used to assess the impact of service disruption and other incidents on passengers. ORR applied the model to determine what level of intervention it should pursue with the train operating company involved.
49. This reflected the need to target the limited resource available to address these issues with the operators.
50. The board noted the report.

*Anne Heal left the meeting.*

## **ITEM 15 TRANSPORT SELECT COMMITTEE REPORT**

51. Graham Richards reported on a number of select committee inquiries and reports into railways which were being conducted by the Transport Select Committee. The executive would write to the TSC to respond to their suggestion that ORR should review DfT's capability to assess capital projects.

## **ITEM 16 JOINT REPORTING**

*This item was deferred to September 25*

## **ITEM 17 FEEDBACK FROM COMMITTEES**

52. Bob Holland reported on the Internal auditors' (Mazars) first reports and approach and a full assurance rating for a report on the Board Procedures. The committee had been assured that work on resolving our London accommodation was progressing well. The new independent member had observed the meeting and the Committee had recorded their thanks to Melvyn Neate after six years' service as the independent member.
53. Stephen Glaister noted that the HC issues had been covered on the main agenda. The committee had endorsed the creation of an expert Highways Panel.

## **Item 17 ANY OTHER BUSINESS**

54. The board noted the quarterly risk report circulated below the line and the board forward programme for the rest of 2018.