

THE OFFICE OF RAIL AND ROAD
160th BOARD MEETING
21 MAY 2019, 08:30 – 15:00
Grand Central Hotel, Glasgow, G1 3SF

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

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

In attendance: Daniel Brown (Director Strategy and Policy & Railway Markets and Economics), Russell Grossman (Director of Communications), Tess Sanford (Board Secretary), Freya Guinness (Director Corporate Operations), Liz Thornhill, (Director Legal Services)

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. There were no apologies

Item 2 DECLARATIONS OF INTEREST

2. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

3. The board secretary read out some changes to the minute of the item on board reporting which were accepted. The remainder of the minutes of the previous board meeting were agreed and the Chair would sign an amended version [Action].
4. The Board noted the report on the action points, including that item iii had been closed by the inclusion of the requested graphic in the May board papers

Item 4: HEALTH AND SAFETY MONTHLY REPORT

5. **Ian Prosser** introduced the monthly report and emerging headlines for his annual report on H&S in the industry. He reported on rolling stock, particularly the authorisation of 800s and other issues with authorisations. On Meridian Water, he explained that the DfT needed to supply a derogation to enable the station to be brought into use.
6. Ian had attended NR's SHE committee and discussed their plans to improve trackworker safety by the removal of unassisted lookouts and unplanned red zone working by the end of CP6. Serious near misses continued to be a concern and this would be an area of focus.
7. The board discussed how the long term goal of safety improvement could be tracked without setting a target. The aim of 'continuous improvement' allowed the potential for something currently not ALARP to become feasible as technology or costs changed. The board noted that commentary which would be included in the quarterly report would give more context for trends and developments.

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8. The board discussed the improvement notice served on Eurotunnel and noted the proposed inspection would include culture and leadership capability. IGC's request for additional resources was being discussed with the funder.
9. The board discussed some particular issues for heritage railways including the need for cross-industry standards and shared learning, financial resource risk, challenges for a volunteer workforce and churn among board members, where understanding of legal duties and governance could quickly be eroded. ORR had increased its resource in the sector in the current year.
10. Ian described next steps in producing the Chief Inspector's Annual Report and themes he expected to identify as key messages. More services on the network made maintaining safety even more reliant on good performance – capacity could only be maximised with a strong safety culture. One example was SPADs where numbers were up and the cause was difficult to identify: it was possible that the number of incidents simply reflected the increase in traffic and the limitations of relying on human parts of the system.

Item 5: EXECUTIVE DIRECTORS' HEADLINES AND REGULAR REPORTS

Catherine Williams joined the meeting for this item

11. **Graham Richards** reported that the morning's performance so far after the May timetable change was encouraging – tracking well above last year's figures. He reminded the board that major issues took a few days to emerge in 2018. **Catherine Williams** introduced the report on December change preparations that had been circulated as an annex to the monthly performance report. The PMO would conduct a lessons learned exercise on May '19 promptly including Meridian Water and Class 442 issues. Where DfT needed to act to mitigate a risk for December 2019 this had been made clear to them both by ORR and the PMO. The board asked for a commentary on progress to date set in the context of the Glaister review. It was clear that some progress had been made in delivering straightforward changes, but the scope for success with more ambitious change was unclear. **[Action DB]**
12. On the performance report, the board queried whether performance stats and NR delay minute data could be reconciled and suggested that delay minute trends might also be useful.
13. **Dan Brown** reported that in ensuring that ORR had not held up changes on which the May timetable depended, the authorisations team had worked to unreasonably shortened deadlines because of late submissions by dutyholders. There would be a letter to industry setting out the issue and seeking for it to be addressed. He also reported on progress with the Williams Review, *an open access application*¹, and the commencement of the spending review process in DfT where it appeared that OM funds for NR would be protected but renewals and enhancements would be subject to review.
14. **Russell Grossman** reported on media issues over the past three weeks, including Which's recycling of ORR's statistics without crediting the Office and plans for the suite of annual publications that will be issued in July.
15. **Freya Guinness** reported on that the new lease on Cabot Square had been signed and the impact of delay of final completion. She also reported that HMT had written to begin the CSR process with ORR, setting out the timetable and

¹ Details redacted for commercial confidentiality

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next steps. The work would take place based on the current scope of our functions.

16. **John Larkinson** reported on discussions with NR on *some specific commercial*² risks, and his other meetings. He would continue to robustly respond to public speculation about the implications of Williams Review for ORR.

Item 6 ANNUAL REPORT AND ACCOUNTS

17. Freya Guinness reported that the NAO had issued an unqualified audit opinion, noting one misstatement of £14,000 as not material. The Audit and Risk Committee had scrutinised the accounts and the internal auditors' reports. The board made some small comments on the content of the report and recommended that the Accounting Officer should approve it.

Item 7 GTR PENALTY REPRESENTATIONS

Stephanie Tobyn, Sam McClelland-Hodgson joined the meeting for this item with Ruth Luxford on the phone

Paragraph 18 has been redacted from the published minute as legally privileged

19. The board considered GTR's representations on the costs it had incurred as a result of the timetable failure, including additional compensation and the creation of a passenger fund, and noted that the company continued to argue that it was not in breach of its licence condition on passenger information.
20. The board were content that their original decisions to find GTR in breach was lawful and correct. The Board did not consider that GTR's representations on the contravention called into question the soundness of the contravention decision.
21. The board considered carefully the argument that the costs incurred by GTR and the creation of the passenger fund could be taken as mitigation and result in a reduction of the penalty. The board noted that the fund was subject to consultation and would not necessarily address improvements for passenger information. They noted that compensation had not reached everyone who had been affected. These sums were in relation to the failure to deliver franchise or passenger performance commitments and not to the specific duty imposed by the licence condition. This was an important and legitimate distinction. The board did not wish to blur the boundaries between the different regimes designed to protect passengers.
22. The aim of imposing the penalty was to change the future behaviour of the licensee to better meet its obligations on passenger information. The licensee continued to argue that it had not failed to meet its licence obligations and reducing the penalty at this point would undermine that original purpose.
23. The board considered the other representations made by Transport Focus and DtT but these did not alter the facts on which the original decision was made.
24. The Board carefully considered all of the representations received and took account of all the evidence, ORR's published economic enforcement policy, and its duties set out in section 4 of the Railways Act 1993
25. The Board agreed that it:

² Details redacted for commercial confidentiality

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26. a. remained of the view that the imposition of a penalty is justified and proportionate, in accordance with the Macrory principles; and
27. b. remained of the view that a penalty of £5 million was appropriate in this case. [Action]

Item 8 NR'S 100 DAY PLAN AND DRAFT OPINION UNDER THE MANAGING CHANGE POLICY

Carl Hetherington and Sheona Mackenzie joined the meeting for this item

28. John Larkinson reminded the board of the framework of the managing change policy and the framework for issuing an opinion. This was the first time this had been done. The opinion could be applied to the overall programme and Phase 1 specifically. The board discussed risks associated with change programmes including: management distraction, unplanned cost, loss of stakeholder confidence and engagement. Better financial information was needed in order to assess future financial performance against expectations from PR18. The board particularly noted that the underpinning philosophy of PR18 was rooted in local stakeholder needs and accountability and that issues such as the role, operation and governance of route supervisory boards should be addressed as part of the move from routes to regions.
29. The board noted that the onus was on NR to deliver its programme without affecting its business as usual activity and reiterated its concerns at the lack of transparency around likely costs and benefits expected.
30. The board agreed that the opinion should be issued and delegated sign off to John Larkinson [Action]. The letter would be placed on the website shortly thereafter.

Item 9 RIS2 DRAFT STRATEGIC BUSINESS PLAN AND EFFICIENCY REVIEW

Richard Coates joined the meeting for this item with David Hunt and Adam Spencer Bickle on the phone.

31. David Hunt introduced the item, noting that supplementary information had been circulated with the papers following the board's last discussion. He noted three key issues for the board: embedded efficiencies, measuring and proving that RIS2 is deliverable and savings on inflation.

Paragraphs 32 and 33 have been redacted as relating to documents that were in draft and will be published in future.

34. The board discussed issues around measuring HE's performance including the new passenger satisfaction survey, the importance of better unit cost data, increasing volumes of traffic.
35. The board agreed the general view that the RIS2 SBP was better than RIS1 and reflected lessons learned but that with more cost, complexity and traffic to deal with there were serious risks to deliverability that needed to be recognised and managed. The board delegated final sign off of the advice to John Larkinson and Graham Richards. [Action]

Item 10 PR19

36. At a conference call on 13 May the Board had agreed an approach to a letter before action by Eurostar (ES) and delegated any urgent action to John

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Larkinson. Liz Thornhill now updated the board on steps taken by ES since the board call. They continued to pursue their application for JR despite the court's initial refusal to grant judicial review and refusal to expedite the matter. ORR was continuing to oppose the application, including on the ground that it is premature.. The board noted that ES was continuing to engage with HS1 on their draft 5YAMS.

37. The board discussed the options for recovering costs incurred, including internal costs, noting that costs incurred by HS1 would be borne by their customers. Cost recovery should be pursued at the end of the process.[Action]

Item 11 HIGHWAYS ENGLAND – KEY MESSAGES ON PERFORMANCE

Richard Coates joined the meeting for items 11-13) with Ian Ritchie on the phone for this item only.

38. Richard Coates reported that six out of eight KPIs had been assessed as met, with the 'killed and seriously injured' numbers still to be received and customer satisfaction below the 90% target. There was still scope for improvement but overall the report was positive.
39. The board discussed the objective standard which underpinned the KSI on pavement condition, and user satisfaction and its relationship to delay minutes. Richard Coates reported that HE have a credible plan to improve user satisfaction, but that the regular survey results would take time to reflect any improvement.
40. The board discussed the reduction of c£650m between the initial portfolio of projects for RIS1 and the current plan and were assured that change control had been applied mostly to remove projects which were low priority or did not offer value for money, and to deliver better overall portfolio management. It could be argued that this was a correction from initial over-programming. It would be important to be able to report at the end of RIS1 what had been changed, what deferred and whether the actual spend had been efficient. Transparency around these issues was a key public benefit of ORR's role as Highways Monitor.
41. Overall the board recognised the progress HE had demonstrated in the past year in delivering good performance and that it had credible plans to continue its improvement into the beginning of RP2. The board noted the continuing challenge for HE of improving financial data around unit costs.

ITEM 12 NETWORK RAIL ANNUAL PERFORMANCE REPORT

42. Graham Richards introduced the paper which reported on the final year of CP5. Network Rail performed poorly in a number of areas during CP5, which had been well documented in previous reports. During 2018-19 ORR had taken action on NR's preparations for delivering efficiently and the company's performance planning capability. The report would further evidence these actions and note the introduction of more intrusive monitoring in CP6.
43. The board agreed the broad thrust of the report adding that challenges which persist should be highlighted: understanding and demonstrating financial efficiency, health and safety (planning and delivery of safe working), and capital

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project failures. It was also noted that commentary on poor train performance should refer to operators' contribution.

ITEM 13 COMPARISON OF KEY MESSAGES FOR RAIL AND ROAD PERFORMANCE

44. The paper reflected on the two annual reports of performance and the board welcomed the opportunity to discuss them. It was important to seize opportunities for cross-sectoral learning. The board noted subjects of particular interest where staff were reflecting on similarities and differences: procurement regimes, workforce safety, possession regimes.
45. One key benefit of ORR's role in both regimes was the requirement to bring transparency and to root its decisions and advice to others in evidence.

ITEM 14 WILLIAMS REVIEW

Stephanie Tobyn, Marcus Clements, Scott Hamilton joined the meeting for this item with Robert Cook and Matt Westlake on the phone

46. Dan Brown introduced the discussion. This was an opportunity to contribute evidence to an important policy review and the aim was to identify issues that could be addressed immediately and those which would take longer to solve. Evidence needed to be robust as there were multiple interest groups, which were not aligned.
47. The submission to the Williams Review was due in early June, so it would refer to areas where more work was needed by ORR to develop more definitive advice.

Compensation

48. The board discussed the proposal to create rights and obligations on compensation through a licence condition. The board noted the gap between those entitled to claim and those claiming and the apparent reasons for this gap.
49. The board agreed that introducing a licence condition and code of conduct would incentivise TOCs to deliver punctual services and be an improvement for passengers. The board noted the model of automatic, fixed rate compensation for delay which applies in aviation but agreed that the detail of what should be required of TOCs needed more work. For example questions such as the purpose of compensation and what outcomes it should deliver for passengers would need to be tested. The risk of perverse behaviour (such as 'padding' the timetable to minimise the risk of delay) would also need to be considered. It was important to think about the resources such a system would need – both in TOCs and in the regulator.

Accessibility

50. The draft contained 16 separate policy recommendations with multiple options and built on ORR's work on DPPP and the new accessible travel policy work. There were three recommendations which the team wanted to draw the Board's attention to:
 - Increased staffing at stations where that increase would make a station accessible for more passengers;
 - Better information on access for passengers with limited mobility who are planning travel;

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- A change in the governance of Access for All funding with different criteria and local control for longer term improvements.
51. The board discussed the draft report. While full access was the aspiration, this approach proposed better access to currently inaccessible stations and better information for passengers so they could plan with confidence. The board discussed the staff resource and other financial implications for these proposals, and questions around value for money vs people's legitimate expectations of being able to access the network. There was no universal right of access to the network, but it could be granted. The board favoured national standards on access at stations. Issues with accessible rolling stock would also need to be considered.
 52. More work would be done on possible funding models alongside other evidence gathering as the ATP work continued to develop.
 53. The board discussed the ways that support could be given to passengers and how it might be organised and funded, but were clear that such implementation details were for others to determine once the principle proposed was accepted.
 54. During 2018 the board had seen plans for an app to be developed to help passengers and the need for this continued to be urgent.
 55. The board asked that the final submission be signed off by John Larkinson with the chair.

ITEM 15 FEEDBACK FROM COMMITTEES

56. Bob Holland reported on the ARC special meeting which had considered the annual accounts and reports from the internal and external auditors.
57. Stephen Glaister reported on the Highways Committee meeting which had considered the papers at the board today. He reported on the start of recruitment for the Highways expert panel and work in hand by HE and RAC Foundation to improve the evidence base for all lane running by post implementation reviews.

ITEM 16 REFLECTIONS ON REGIONAL VISIT

58. The Board discussed the key themes they had heard from guests at the stakeholder dinner on 20 May. Such opportunities to discuss local issues and understand how relationships with the executive were going were particularly important in Scotland.
59. Options for a regional visit in the autumn were discussed.

ITEM 17 ANY OTHER BUSINESS

60. The chair reported that the Secretary of State had agreed to the reappointment of three members whose terms otherwise would end this year.
61. Recruitment of additional NEDs had now begun.
62. The Board noted the below the line items.

Meeting closed at 2.55pm