

THE OFFICE OF RAIL REGULATION
MINUTES OF THE 117TH BOARD MEETING
SESSION 3, 09:00-15:30, TUESDAY 21ST JULY 2015
ONE KEMBLE STREET, LONDON, WC2B 4AN

Present: Non executive: Anna Walker (Chair) Tracey Barlow, Mark Fairbairn, Stephen Glaister, Bob Holland, Michael Luger, Justin McCracken, Ray O'Toole

Executive members: Richard Price, Alan Price, Ian Prosser, Joanna Whittington

Attendees: Tess Sanford, Juliet Lazarus

ITEM 1 APOLOGIES FOR ABSENCE

1 There were no apologies for absence.

ITEM 2 DECLARATIONS OF INTEREST

2 Bob Holland had previously declared a relevant interest for the West Coast mainline open access application and had excluded himself until after this item had been completed.

ITEM 3 APPROVAL OF DRAFT MINUTES

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

4 The board had no comments on the June minutes as circulated

ITEM 4 ACTIONS OUTSTANDING NOT ON THE AGENDA.

5 The report was noted.

ITEM 5 WEST COAST MAINLINE ACCESS APPLICATION

John Larkinson and Rob Plaskitt attended this item.

6 The paper had set out a clear recommendation from the executive team based on the evidence. Among our statutory duties was a requirement to consider the impact on the Secretary of State's funds and, since there would be a significant impact, John proposed that the discussion began with points of clarification, reflected on the new letters and then discussed the application.

7 John reported that in addition to the letter from the Minister copied to board members (which had arrived after the paper had been issued), an additional letter had been received from Virgin, the franchise operator on the West coast mainline (WCML). The applicant (Alliance) had responded to the letter from the Minister and Network Rail had responded to Virgin in the last few hours. John proposed to talk the board through these letters.

paragraphs 8-30 have been redacted from the published version as policy discussion

- 31 John explained next steps. The Chair would respond to the Minister's letter. The applicant, NR and the department would receive a draft decision letter at the same time. There would be a draft press release and full Q&A developed during the next few days and a decision letter should be drafted by early next week. We agreed that the Chair and Chief Executive should approve the decision letter before it was issued.

Bob Holland joined the meeting

ITEM 6 MONTHLY HEALTH AND SAFETY REPORT

- 32 Ian Prosser highlighted an application from NR to vary train protection to enable new Crossrail services to begin before the ECTS train protection is in place on the Paddington line. The application was being considered but he was concerned that it would reduce the level of safety on that part of the route.
- 33 He had wider concerns about the capability of NR to deliver ERTMS and thought that cyber security would become an increasing issue. RSSB were developing a strategy for cyber security.
- 34 The driver involved in the SPAD on Great Western had pleaded guilty to the charges – we awaited the court's verdict.
- 35 RSD inspectors had been active during the strike on First Great Western and had intervened in a few places. We had received complaints from the LUL unions that the company had been using non-qualified staff during strikes and this was being investigated.
- 36 We noted the increasing number of bridge strikes by large road vehicles.
- 37 Ian briefed the board on how RSD would celebrate the 175th anniversary of the railway inspectorate.

ITEM 7 PR13 SCHEDULE 8 ERROR

John Larkinson, Deren Olgun and Jake Brown attended this item.

- 38 John explained that the staff had explored a wide range of options to address this acknowledged error. These had gradually been reduced to the two least-bad options. The first option (4b in the paper) forced a retrospective change and the second (3a) made a prospective change which was not forced. He stressed that there was no option which was perfect and each option created different winners and losers in different amounts. The executive was mostly in favour of 3a, but some felt that 4b was fairer in correcting the past.
- 39 The issue before the board required a balance of judgement.

paragraphs 40-50 have been redacted from the published version as relating to policy development

- 51 We agreed that on the basis of what we had heard and the case laid out in the paper, we preferred option 3a, a prospective change. We asked John to write to TOCs on that basis but making it clear that this was one of many options ORR had considered and that there was no right option. We agreed

that the chair and chief executive should approve the letter before it was issued. **[Action A: Jlk to draft letter to TOCs]**

52 We noted that TOCs might need to report this issue in their mid-year accounts and we needed to be alert to that need in managing our final decision.

53 We wanted to know what responses the letter had generated before taking a final decision. We were content to do that by teleconference if appropriate.

paragraph 54 and 55 have been redacted as relating to policy development

56 Finally, we asked our Audit and Risk Committee to review this incident to consider whether there was anything we needed to learn about how ORR uses consultants. **[Action C: ARC to review how ORR uses consultants]**

ITEM 8 PR18 SYSTEM OPERATOR

Chris Hemsley attended this item and the next

57 Chris explained that the changes announced in the budget (the Shaw review and further devolution to routes) were both aligned with the work ORR had in hand over improved mechanisms for system operation.

paragraphs 58-62 to be redacted as relating to policy development

ITEM 9 PR18 NETWORK RAIL AND COMPETITION

Paragraphs 63-67 have been redacted as relating to policy development

68 We still needed to consider how this work would fit with the wider regulatory network. And we recognised that it generated a broader question about where the risks within the final settlement are dealt with.

69 We were encouraged by the acceleration in this work – which matched the pace of change in the wider environment.

70 We noted the work in hand and recognised the challenges in delivering it. We would return to this issue in the autumn. **[Action D: to return to PR18 system operator issues in the autumn]**

ITEM 10 EUROPE IGC DELEGATION

71 We noted the comprehensive paper from staff and agreed to advise the Secretary of State to reappoint the current post-holder (Christopher Irwin) for a further three years. **[Action E: for the Chair to advise the SoS to reappoint the current post-holder]**

ITEM 11 REFORM OF NETWORK RAIL STATIONS MANAGEMENT

72 We noted the paper and update from Dan Brown. Under the CE's report, Dan reminded us that he had highlighted a possible initiative around stations in June. The dynamic between the various Whitehall departments involved was complex and we had no part in the political discussion – although ORR had

- put in advice which set out our powers and duties to regulate stations. This regulatory role would continue to apply regardless of where ownership lay.
- 73 It was important that we continued to protect fair, safe provisions for access for TOCs and passengers. The three most important policy strands were that the assets are regulated by ORR, that their use cannot be deleterious to the (safe) operation of the railways and that there would be an income impact on NR. We identified the development of car parks into residential property as an example of an area where we might need to defend existing user benefits.

ITEM 12 COMMUNICATIONS STRATEGY INTERIM UPDATE

- 74 We deferred this discussion, and asked non-executive members to send their comments directly to Andrew Winstone.

ITEM 13 COMPETITION UPDATE

- 75 We noted the paper. Juliet Lazarus reminded us that we had previously agreed to appoint an appropriately qualified ad hoc committee to deal with decision making on competition issues. She explained how she had tried to identify whether other regulators had panels on which we could draw, and explored the available options. Juliet described in particular the Ofgem panel and how that could be drawn on. However, there were issues with all the options – largely around competition competence and independence so her current advice was that we should convene our own panel when we knew that one was likely to be needed.
- 76 We agreed that if we did not need to spend money establishing or retaining a permanent panel, then we should not. We agreed that using the Ofgem panel raised potential concerns for ORR.
- 77 We discussed the recently published CMA open access consultation which they had talked to us about in May. As discussed at that meeting, ORR would be carrying out an impact assessment on the possibilities for transition alongside that consultation.

ITEM 14 Q1 REPORT AGAINST THE BUSINESS PLAN

Tom Taylor attended for this item

- 78 Richard introduced the report. It set out some deviations from spend, showed good progress on roads, and identified very significant unplanned work on NR's business plan, including altering their capability, the schedule 8 error, and the affordability and deliverability of the enhancement programme.
- 79 It was likely that the team would need to re-prioritise work following decisions taken at the board. This would be identified and reported to the board in the next quarterly report.
- 80 Tom highlighted the request for the board to reflect on whether the report covered the right performance information in the right way. Generally, the view was that it was a very clear pack that covered the right information.

- 81 We did ask for the addition of year end forecasts to the financial information to help understand whether current over/underspends were expected to be resolved by the year end.
- 82 We noted the ongoing challenge around recruitment and the vacancy rate. We asked the team to think about whether there was anything we could do differently to keep resource levels up, to bring in staff on development trajectories or to strengthen the offer to retain them. Richard said that where it was possible to over-recruit or to succession plan, then directors were able to, but in small specialist teams, it was not possible. Joanna talked about using PR18 as a development opportunity and offering part time academic study as an incentive. Tom said that career families should help address some issues around recognition and retention.
- 83 Tracey suggested that the quarterly report should have a change control element to show changes to the baseline particularly to show new and reprioritisation work. This would be helpful even if it showed no change.
- 84 Ian asked us to note that ORR's delivery of the driver licensing standard had been badly affected by the Holborn fire disruption and the standard had been missed in Q1, but the position has now been recovered.
- 85 We noted that the outputs discussed in the report are again very focused on process, and we were concerned that we would find ourselves struggling to differentiate between the 'what' and the 'how well' questions around organisational performance at the year end. In the light of ministerial views in 2015 this was an important point. The executive agreed to consider how we solve this problem [**Action: Executive Team**].

ITEM 15 BOARD FORWARD PROGRAMME

- 86 The forward programme was noted.

ITEM 16 CHAIR'S REPORT

- 87 The report was noted.

ITEM 17 CHIEF EXECUTIVE'S REPORT

Dan Brown attended for this item

- 88 Dan drew our attention to the delay in beginning our role as economic regulator of the channel tunnel as a result of delays to its implementation for ARAF in France. The change in France required a French parliamentary procedure which was unlikely to be completed before the end of this calendar year. This might impact on the process need in January 2016 on the production of the network statement. ORR continued to work with IGC in the interim. This would generate a small administrative overhead which needed to be funded, but generally the relationship was working well.
- 89 Dan also updated us on stations (see item 11).

ITEM 18 COMMITTEE FEEDBACK

Health and Safety Regulation Committee

- 90 Justin McCracken had taken over as chair of this committee. He reported on a good meeting and highlighted three issues the committee had discussed.
- 91 A paper on whether and how we could publish more H&S information had led to a proposal to set out a clear framework in the context of improving safety through better information and increased transparency to respond to public interest.
- 92 A paper (asked for at the June Board) had looked at what had been done to improve the relationship between ORR and RAIB following the RAIB Chief Inspector's final report.
- 93 The committee had also talked about its approach to reviewing the major risk areas where there would be a shift away from the current mechanical scheduling to an annual consideration of whether risk priorities had changed. Each review would also include more and earlier stakeholder engagement.

Staff engagement session

- 94 Bob and Tracey said they had enjoyed the session with a combined group of eighteen. The process of considering the strategic objectives had proved a good place to start, but they had run out of time.
- 95 The two main issues raised by staff were the pay and reward package (in the context of the budget announcement of continuing public pay constraint). Tracey had described what ORR had done to be a more attractive employer and staff had acknowledged the effort to make things better generally. The second issue was everything to do with IT: usability, flexibility, relatively outdated, unreliability and a great deal of dissatisfaction. Bob had volunteered to take a lead for the board as chair of the ARC on this issue. He would discuss this with Richard. It was important that expectations were managed about what could be done and when, but staff needed evidence of more real progress.
- 96 Bob understood that a fundamental review was already planned, but was keen to find out how urgently it was being pursued. We agreed that we would be prepared to consider spending on short term fixes if that would materially improve the situation in advance of the review.

ITEM 19 ANY OTHER BUSINESS

- 97 There was no other business and the meeting was closed.