

Office of Rail Regulation

Minutes of the 95th Board meeting on 25 June 2013

(09:00 – 14:30), Hilton Hotel, Glasgow

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), Ian Prosser (Director, Railway Safety), Alan Price (Director, Railway Planning and Performance), and Cathryn Ross (Director of Railway Markets and Economics)

In attendance, all items: Daniel Brown (Director of Strategy), Alasdair Frew (Head of Corporate Communications, External Affairs), Juliet Lazarus (Director, Legal Services), Alastair Gilchrist (Director, Corporate Operations), Tess Sanford (Board Secretary), and Gary Taylor (Assistant Board Secretary).

In attendance, specific items: John Larkinson (PR13 programme Director) (item 3), John Gillespie (Safety Policy and Central Regulation Division), Iain Ferguson (Manager, Industry Risk), Neil Anderson (Inspector), Nigel Fisher (Head of performance, Information and analysis), Jay Lindop (Analysis and research manager), Sam McClelland Hodgson (manager, Licensing and Network regulation), John Holmes (Senior Economist), Annette Egginton (Head of Competition and Consumer policy).

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. Apologies for absence were received from Richard Emmott.

Item 2: Declarations of interest

2. None.

Item 3: PR13 update

3. John Larkinson reported that overall there had been a positive response to the published draft determination. John confirmed that the Board would be provided with a final determination run in plan in July. This will set out the key dates and milestones in the build up towards publishing the final determination on 31 October 2013.

4. The July update would also provide the Board with an update on possible changes to the draft determination since publication. This will include new data and policy issues that looked as though they would emerge from the consultation. John highlighted that there were a number of issues to be discussed with the Board by September 2013. We agreed that these issues should include:

- Network Rail's desire to demonstrate profitability;
- Impacts on customers from schedules 4 and 8;
- Governance of funds including how access for all fund links to our DPPP role
- Climate change resilience;
- Innovation;
- Comparisons to other regulators' calculations of the cost of capital; and

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- Clarity on our CP5 approach to the assessment of efficiency, both for MIP purposes and the annual financial assessment
- 5. We discussed HS2 and agreed that it would be important to schedule a Board discussion on the impact of HS2. The Board Secretary agreed to schedule a discussion to take place in September.
- 6. We thanked John for the update. The Board thanked John and the PR13 team for the considerable and impressive work undertaken by the team to produce the draft determination document.

Board 25.06.2013 Action i: HS2 discussion to be scheduled on the Board agenda for October.

Board 25.06.2013 Action ii: July discussion on European matters should include an update on channel tunnel regulation

Item 4: Monthly Safety report / issues to advise the Board

- 7. Ian Prosser raised the following safety points:
 - Three level crossing fatalities occurred in April 2013. A number of issues have been discussed with Network Rail (NR) around half barrier crossings. Work is ongoing to address these.
 - Improvements has been made on broken rails in the Sussex routes as the result of the deployment of additional resources and improved planning.
 - We discussed the outstanding RAIB recommendations. Ian reported that significant progress had been made in closing a number of these.
 - We noted that DB Schenker had gained access to the Channel Tunnel. We agreed that the July Board discussion on Europe should include an update on Channel Tunnel regulation.

Board 25.06.2013 Action iii: European paper to include a summary of DB Schenker gaining access to the Channel Tunnel and tunnel regulation generally

Item 5: Annual Health and Safety report

- 8. Ian Prosser presented ORR's draft 2012-13 annual health and safety report.
- 9. We agreed that the key messages of the report should reflect the concerns that the Board had discussed during 2012-13. This included workforce safety, workbanks/maintenance, slips and trips, the deteriorating trends in the PIM, earthworks and the impact of climate change, and level crossings. We agreed that we should highlight that we continue to monitor closely where improvements are required. The report also needed to pick up the position of SPADs (signals passed at danger), our view on the safety of pacers and RRVs (road/rail vehicles).
- 10. We asked about the possibility of having disaggregated safety data by route during CP5 as this would enable the matching of maintenance spend to safety performance – which would offer valuable intelligence. Ian confirmed that limited route data was currently available at present on track quality but further information would be available in CP5. Ian suggested that work between NR and Rail Safety and Standards Board (RSSB) had started to disaggregate the safety risk model. We

agreed that we should insist on disaggregated data for CP5. We agreed that we should return to this issue once this work has been completed.

11. We discussed system risk and agreed that we should have a further discussion to ensure all Board members have a clear and consistent understanding of what system risks are in the railway context and what the indicators are in relation to this. We agreed that this should be picked up as part of the upcoming programme of Board health and safety training which will take place later this year.
12. We agreed it was important to be clear that the total of 28 enforcement notices issued should be identified as significant.
13. We agreed that Ian would assess whether there was more proactive inspection work which could be undertaken on heritage railway.
14. Ian thanked everyone for their comments and agreed to update the report accordingly. We agreed that we would share the report with RAIB and RSSB for comments. We also agreed that the Chair, the Chief Executive and Steve Walker (as Chair of SRC) would review the final draft before publication on 17 July.
15. Ian highlighted that the RSSB annual safety report was about to be published. We agreed that Board members would receive the report electronically and in hard copy.

Board 25.06.2013 Action iv: Route specific data to be shared with the Board when available

Board 25.06.2013 Action v: We agreed that the draft ORR annual Health and Safety report should be shared with RSSB and RAIB for comments.

Board 25.06.2013 Action vi: RSSB annual report to be sent to Board members - hard copies and electronically

Board 25.06.2013 Action vii: Final draft of the ORR annual health and safety report to be shared with the Chair, Chief Executive and Steve Walker before publication.

Board 25.06.2013 Action viii: Sources of assurances and how this is taken into account should be picked up as part of the programme of Board health and safety training along with training on railway systems.

Item 6: Safety Assurance – RM3

16. We noted the paper which set out how ORR uses the RM3 model to support the discharge of our regulatory functions.
17. We agreed with the recommendation that there should be a review of the RM3 model. We agreed that the review should be formal, consultative and independent. We agreed that it would also be important to get the views of stakeholders and duty holders. It was agreed that this would also be an opportunity to benchmark the model against international best practice models. As part of the review we also agreed that it was important to assess all of ORR's sources for gathering safety data to understand whether there are any significant gaps.
18. It was agreed that a further discussion around the scope and purpose of the review of RM3 should be taken at the SRC meeting on 22 July. John Gillespie agreed to prepare a paper to focus the discussion.

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Board 25.06.2013 Action ix: Purpose and proposals for the review of RM3 to be further discussed at the July SRC meeting. (To include international benchmarking)

Item 7: Safety considerations arising from the Mid Staffs Public Inquiry report

19. We noted this paper which set out relevant lessons for ORR as a regulator from the Mid Staffs public inquiry report.
20. We discussed the role of the ORR Board and the frequency of safety discussions. We discussed the various methodologies used to identify safety trends and agreed that these should be further discussed as part of the programme of Board level safety training.
21. We discussed the relationship with RAIB and RSSB. We agreed that work was constructive and recognised that further closer working was required to ensure that the needs of passengers are addressed.
22. We discussed regulatory targets for safety performance and whether the pursuit of outputs as set as part of the final determination for CP5 could negatively affect safety performance. We agreed that the published draft determination did consider safety as an integral part of the overall package. We agreed that it would be important for our inspectors to monitor and highlight any areas where the pursuit of outputs has a negative effect on safety performance.

Item 8: Performance – Long Distance and South East recovery plans

23. Alan Price presented this item which set out our investigation of Network Rail's (NR) long distance (LD) and London and South East (LSE) sector performance in 2012-13.
Paragraphs 24-25 have been redacted as they contain regulatory enforcement material
26. As a result we agreed that a case to answer letter should be sent to Robin Gisby at Network Rail. This letter would set out our findings and next steps. In parallel to this we agreed that the Chair would discuss the issues with Richard Parry Jones (NR Chair) to raise our concerns. We would return to this issue at the July Board to hear the outcome of the Chairs' discussion and the response from NR to the case to answer letter

Board 25.06.2013 Action x: Case to answer letter to be sent to NR with a final decision to be taken by the Board in July.

Board 25.06.2013 Action xi: In parallel to the case to answer letter, the Chair agreed to discuss these issues with RPJ over the phone and follow this up with a letter.

Item 9: Update on Competition landscape

27. Cathryn Ross provided an update on the competition landscape and the proposed changes to competition powers.

28. Cathryn reported that the Enterprise and Regulatory Reform Act (ERRA). The ERRA created the Competition and Markets Authority by merging the Office of Fair Trading and the Competition Commission. The CMA will be the body responsible for investigations of anti-competitive behaviour under the Competition Act 1998.
29. We recognised that there are a number of strategic threats and opportunities arising from the changing competition landscape. We were pleased to see that the new framework provides us with a platform to promote the objectives of economic regulation. We would also have the opportunity to engage with CMA and to increase our own internal expertise by closer working with other regulators as part of the enhanced concurrency arrangements.
30. We noted the areas of work which will be brought to the Board over the coming months. This included holding a proposal for a competition Board workshop. It was agreed that this would be a useful exercise to feed into the development of the 2014-15 Business Plan.
31. We noted that David Currie, CMA chair, will be attending our Board meeting in November.

Item 10: Consumers – Follow up from May workshop

32. We noted the paper which presented a draft consumer narrative for Board consideration. The paper also provided an update on work following the Board consumer workshop which took place in May.
33. Cathryn presented the narrative and suggested that it was about addressing barriers that prevent the rail industry responding to consumers and therefore creating a successful and sustainable railway in years to come. It put a lot of emphasis on working with others (TOCs, Passenger Focus etc.) and changing how we worked as an office. It also meant understanding the outcomes experienced by consumers and shaping our role to improve this wherever appropriate. We agreed that the draft narrative was a positive step and provided better clarity around our role in this area. The proposal was to report annually on what we had done for consumers. It was agreed that the narrative should include clear outputs and messages around what we want to be delivered.
34. We noted the programme of work. We agreed that there was a lot of activity to be completed in a short period of time. To enhance our credibility in this area we agreed that it would be beneficial to deliver some early successes. We agreed that further work was required to develop the work programme further to include clear targets with dates and resource levels which highlighted the difference we aimed to make. It was agreed that the programme should also segment customers so that the Board could discuss options on which to concentrate.
35. We discussed the arrangements for resourcing this work during 2013-14. We agreed that it would be crucial to have the right levels of resource both in terms of quantum, but also in terms of skill set and experience. With this in mind we asked the executive team to provide the Board with an update in September on the plan and what resources and expertise will be needed to deliver our plan effectively.

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Board 25.06.2013 Action xii: Consumer work programme to be updated (dates/resources) and brought back to the Board in October

Board 25.06.2013 Action xiii: Consideration of the appropriate level of resources to be discussed by the Board in October.

Item 11: Draft Long Term Regulatory Statement

36. Daniel Brown provided an update on the process for producing the Long Term Regulatory Statement (LTRS).
37. Dan confirmed that a draft had been shared with HM Treasury, DfT and Transport Scotland. Comments have been received and the document is continuing to be updated with these comments. We agreed that it would be useful to set up a conference call with available Board members to provide comments on the draft document.
38. We discussed the communications strategy for the publication of the document. Alastair Frew confirmed that this was currently being developed and would be shared with Board members in advance of the LTRS being published.
39. We noted that an announcement on the Spending Review was taking place shortly. We suggested that this announcement might include references to relevant infrastructure projects and have implications for the LTRS. Dan agreed to monitor the announcement and update the Board if necessary.
40. We thanked Dan for the considerable work undertaken to produce the draft LTRS. We agreed that following the conference call meeting and any other comments from Board members in correspondence, the chair and chief executive would sign off the LTRS for publication.

Board 25.06.2013 Action xiv: One hour telephone discussion to be set up to further discuss LTRS

Board 25.06.2013 Action xv: Short note if any of George Osborne's announcement affects the LTRS

Board 25.06.2013 Action xvi: Communications plan to be developed and circulated to Board members.

Board 25.06.2013 Action xvii: We agreed that the Chair and Chief Executive would sign off the LTRS document.

Item 12: ORR capability and Organisational Development programme

41. Alastair Gilchrist presented this item which provided an update on the organisational development programme.
42. Alastair reported that there had been a positive response from staff to the eight programmes of work with positive levels and engagement demonstrated by the results from the quarterly staff pulse survey.

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43. We discussed the need to address the concerns raised from staff in the annual survey that there was an unclear understanding of the Board's vision. We agreed that this was an important issue to resolve. As a result we suggested that we should have a discussion at the July Board meeting. We also agreed that further thought needed to be given to ensuring ORR had the right commercial skills.

Board 25.06.2013 Action xviii: Discussion on the Board's vision to be scheduled for the July Board meeting.

Item 13: Chair's report

44. No items were raised by the Chair.

Item 14: CE's overview report

45. The Chief Executive's report was noted. We noted the letter from HM Treasury asking ORR, along with other regulators - to agree to a 5% saving in 2015-16 over our 2014-15 baseline budget. Following discussion we agreed with the suggested response which reserved our position as a Board to set a budget which allowed us to meet our statutory responsibilities but acknowledged our intention to work toward a reducing resource envelope.

Board 25.06.2013 Action xix: The Board agreed with the proposed letter to HMT and was content for the letter to be sent.

Item 15: Board forward programme

46. The Board forward programme was noted. No comments were received.

Item 16: Approval of minutes of Board meetings held on 21 May 2013

47. The draft minutes of the meetings held on 21 May 2013 were noted and agreed.

Item 17: Matters arising not taken elsewhere on the agenda

48. The updates on the outstanding Board actions were noted.

Item 18: Any other business

49. No items were raised.

Item 19: Meeting review

50. We agreed that the meeting had been productive. Concerns were raised around the volume of paper work generated for the meeting. We understood that this was driven by the issues discussed; however we agreed that we would look for ways to further reduce paper work for future Board meetings.

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Below the line items

Item 20: Committee review reports

51. We noted the Board committee reports. We agreed that chairs' of each committee would provide a summary of work undertaken in 2012-13 and a forward look at the July Board meeting.

Item 21: SRC forward look

52. We noted the SRC forward look. No comments were raised.

Anna Walker

Chair

Minutes approved by the Board on 23 July 2013