

Office of Rail Regulation

Minutes of the 91st Board meeting on 26 February 2013

(10:00 – 16:00) 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 (Director, Rail Policy), Ian Prosser (Director, Railway Safety), and Alan Price (Director, Railway Planning and Performance)

In attendance, all items: Dan Brown (Director, Strategy), Richard Emmott (Interim Director, External Affairs), Juliet Lazarus (Director, Legal Services), Carl Hetherington (Deputy Director, Railway Markets and Economics), Tess Sanford (Board Secretary), and Gary Taylor (Assistant Board Secretary).

In attendance, specific items: John Larkinson (PR13 programme Director) items 5 and 6, Gordon Cole (Principal financial analyst) item 4, Chris Fieldsend (industry planning manager), item 6, Annette Egginton (Head of Competition and Consumer policy) item 7, Alasdair Frew (Head of Corporate Communications) item 8.

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting. Apologies were received from Cathryn Ross, Director of railway markets and economics.

Item 2: Declarations of interest

2. There were no interests declared.

Item 3: Monthly Safety Report/issues to advise the Board

3. Ian Prosser's written update was included in the CE's report at item 11. Ian highlighted the following points:
4. A significant concern had been the recent high risk incidents of rail-end breaks on the London and North East (LNE) route along with similar incidents in Sussex. Ian reported that the cause of the rail breaks had been attributed to adverse weather conditions, with concerns raised with Network Rail over fault finding and management arrangements. Further work was being undertaken by Network Rail to establish whether there are any other causes for breakages. There were concerns that the cause of the breakage was not solely bad weather and that they were occurring within Network Rail's agreed tolerance period.
5. Ian confirmed that we are monitoring the situation closely. Dialogue with Network Rail will continue as we want to establish how Network Rail will resolve these problems. It was noted that following the LNE incident, ORR made a public statement alongside concerns raised through the Q3 Network Rail monitor. We agreed that the Board should be updated following further investigation by Network Rail.
6. Mike Lloyd said that he would discuss the relevant technical issues around broken rails further with Ian Prosser following this meeting.

For publication

7. We recognised the need to ensure that the right safety information and subsequent discussions were had at the Board. We agreed that the Chair, Chief Executive and Board Secretary would discuss further. As part of this work it was suggested that we should consider the relevant issues and lessons learned arising from the report on Mid Staffs NHS Foundation Trust which had recently been published. We recognised that there were important points in relation to safety regulation which the ORR Board should note when considering its safety duties.
 8. The Chief Executive and Steve Walker highlighted the recent meeting with Carolyn Griffiths of the Rail Accident Investigation Branch. Steve reported that the meeting had proved useful in understanding some of Carolyn's concerns, particularly the closing of RAIB recommendations by ORR and understanding the time taken to do this. The Chair reported that a 1:1 meeting between herself and Carolyn was planned for 12 March 2013. The Chair agreed to provide the Chief Executive with feedback following the upcoming meeting.
 9. System safety was raised. We noted that a discussion was scheduled to take place at the next Safety Regulation Committee on 18 March 2013. Steve Walker agreed to provide an oral update to the Board on 19 March 2013.
- **Board 26.02.2013 Action i:** The Chair, Chief Executive and Board Secretary to consider how to ensure the right flow of topics and safety information and appropriate discussion time is taken at Board meetings.
 - **Board 26.02.2013 Action ii:** Mike Lloyd to discuss technical issues around broken rails with Ian Prosser in more detail following the meeting
 - **Board 26.02.2013 Action iii:** Issue of broken rails to be brought back to Board at appropriate time following results of further Network Rail investigation.
 - **Board 26.02.2013 Action iv:** Chair to provide feedback to the Chief Executive following the scheduled 1:1 meeting with Carolyn Griffiths on 12 March.
 - **Board 26.02.2013 Action v:** Schedule board discussion on safety issues reflecting concerns from Francis report on Mid Staffs (timing: summer, subject to any more pressing concerns raised by staff during consideration of the issues).
 - **Board 26.02.2013 Action vi:** Board to receive oral update on system safety discussion at SRC on 18 March.

Item 4: Our assessment of Network Rail's financial performance in 2012-13

This section and its actions has been redacted as it relates to policy development

Item 5: Emerging issues on the Strategic Business Plan

23. We discussed the emerging themes arising from the recent consultation and stakeholder events to discuss Network Rail's proposed Strategic Business Plan.
24. John confirmed that there had been positive engagement from a significant number of industry stakeholders who had raised constructive points for consideration.
25. We noted that there were consistent themes emerging from the responses received from the consultation. This included:

For publication

- Omissions, such as the lack of detail around depots, TOC concerns with maintenance and management;
 - Inconsistency between the routes and central plans, treatment of rolling stock and timetabling;
 - A lack of scope and timings for major projects; and
 - The most disappointing and noticeable gap was around asset management.
26. Network Rail had provided further information following discussion of the key themes arising from responses. This had been most evident with a detailed response on the concerns raised in relation to asset management. Work would continue with Network Rail through the programme of challenge meetings.

The rest of this section has been redacted as relating to policy development.

Item 6: Outputs – emerging thinking

30. John Larkinson presented a set of slides which set out the significant issues relating to the outputs framework for CP5. John confirmed that this session was to provide the Board with the opportunity to consider the main issues and discuss any gaps in the information which will need to be addressed in advance of decisions at the Board meeting in March 2013.

The rest of this section has been redacted as it relates to policy development.

Item 7: Transparency - update

47. Richard Emmott and Annette Egginton presented an update on our approach to transparency.
48. The work carried out by the consultancy firm SKM had highlighted a number of areas for consideration which would inform our approach going forward. Annette agreed to provide the Chair with a copy of their report.
49. We suggested that it would be useful to understand how the information that was currently published across the industry fitted together and what gaps there were. We asked staff to consider how these can be addressed and what role (if any) ORR could play. This would be useful to include as part of our transparency policy statement. Transparency was a means to an end. ORR needed to be clear on the purposes and value of any intervention it made.
50. Transparency is a key priority for the organisation and acts as an enabler for our five strategic objectives. Given this importance the Board needs to have ownership of key policy decisions.
51. We discussed the development of our transparency policy statement. Annette confirmed that the draft statement focuses on ensuring greater transparency of financial industry data and the consumer data held in our data portal. Making our own data more open was also seen as a key objective.
52. A key strand of our work should be to ensure that we communicate to the industry our stance on transparency and why we believe in the benefits of this work.
53. Richard Emmott confirmed that the governance arrangements around the transparency programme were currently being reviewed. The links and potential overlaps between the transparency and consumer programmes of work were currently being considered to assess whether a revised approach could be taken to draw together the two programmes.

For publication

54. We agreed that the policy statement should return to the Board in due course. It was agreed that consideration should be given to our strategic approach and that the Board should be sighted on:
- Ambition of our transparency work;
 - the ability to deliver; and
 - external handling.
- **Board 26.02.2013 Action xvi:** Annette to provide the Chair with the SKM report
 - **Board 26.02.2013 Action xvii:** Ensure clarity around strategic aims for transparency programme and deliverables for 13/14 and consider whether resources are adequate.
 - **Board 26.02.2013 Action xviii:** Transparency policy statement to be approved at Board meeting. Date to be scheduled.
 - **Board 26.02.2013 Action xix:** Any proposed change in governance of the transparency programme to be considered by the Board alongside the transparency policy statement.
 - **Board 26.02.2013 Action xx:** Executive to produce for the board a map of the landscape of what is published by the industry and passenger groups and identify any gaps where ORR could look to add value. To be included in the transparency policy statement item at the Board.

Item 8: Communications Strategy

55. Richard Emmott presented a new communications strategy for ORR. The approach had been developed by the External Affairs team.

The rest of this section to be redacted in full as it relates to policy approach.

Item 9: Business planning 2013-14

62. As discussed on 25 February, we agreed with the proposed financial envelope for 2013-14. Dan confirmed that the 2013-14 Business Plan would be amended in line with that discussion and brought back for sign off at the March 2013 Board meeting.

Board 26.02.2013 Action T: Financial envelope agreed. Business Plan to be discussed and signed off at March Board meeting.

Item 10: ORR's Capability plan

63. Following discussion at the Board session on the previous day, we agreed with the approach for the Executive team to provide a quarterly update on their work on capability development, which would be part of a wider organisational development programme.

Board 26.02.2013 Action S: Agreed to include quarterly updates in the forward programme on the work the Executive is doing around organisational development.

Item 11: Chief executive's overview and monthly data pack

For publication

64. On Europe, Board members would receive a briefing on the fourth package, recast of the first package and IRG chairmanship. We agreed that an update on Europe would need to be scheduled on the Board forward programme and that our approach should be more proactive and visible.
65. We noted that the Railway Safety Directorate had centralised its investigations for prosecution into a small team. Ian confirmed that the team focus on evidence gathering and preparing prosecutions. This was seen as a positive move in ensuring greater efficiency in the prosecutions process and developing specialist skills. Juliet confirmed that this was seen as a positive move from the legal team.
66. Ian reported that a sentencing hearing was taking place on 28 February for ORR's prosecution of London Underground Ltd, Tube Lines Ltd and Schweerbau GmbH. The prosecution was brought following breaches of health and safety law which led to an engineering train running out of control for nearly four miles on the London Underground's Northern Line on 13 August 2010. All three companies have pleaded guilty to charges brought in connection with the incident.

Item 12: Board forward programme

67. The Board forward programme was noted. There was some confusion on Board dates for October and November. The Board Secretary agreed to circulate a list of Board meetings and associated events for the remainder of 2013.

Board 26.02.2013 Action W: Board Secretariat to circulate comprehensive list of Board and committee dates for the remainder of 2013.

Item 13: Approval of minutes of Board meeting held on 15 January 2013

68. The draft minutes of the meeting held on 15 January 2013 was noted. We agreed that the record of the Network Rail Strategic Business Planning item should be amended to include the comment by David Higgins about the concerns he had around civils and the work to remedy those concerns. The Board Secretary would amend accordingly.

Board 26.02.2013 Action X: January Board minutes be amended.

Item 14: Matters arising not taken elsewhere on the agenda

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

Item 15: Any other business

70. Mike Lloyd highlighted that there had been no ATOC representative present at the past two Railway Industry Health and Safety Advisory Committee in spite of their insistence that only they could represent the TOCs. The Chair and Chief Executive agreed to raise this at their next meeting with Tom Smith, Chair of ATOC.

For publication

Board 26.02.2013 Action Y: Chair and Chief Executive to raise issue of ATOC's non-attendance at recent RIHSAC meetings at the next meeting with Tom Smith.

Item 16: Meeting review

71. We agreed that the discussion on Outputs had been well structured and provided a high quality discussion.

Below the line items

Item 17: Network Rail governance paper

72. The recommendation to take no action was agreed. The paper highlighted a number of significant issues which would be picked up at the Board when the MIP is discussed.

Item 18: Passengers at the heart of our activities

73. The significant points of this paper were discussed at the Business planning session on the previous day.

Item 19: Risk based regulation

74. Risk based regulation was recognised as a significant strategic issue which the Board need to discuss but this paper was only part of the wider work that was going on to clarify and review our decision making processes. A discussion would be scheduled when the wider work was further advanced.

Anna Walker

Chair

Minutes approved by the Board 19 March 2013