

**THE OFFICE OF RAIL AND ROAD
165th BOARD MEETING**

26 November 2019, 09:00 – 15:15

ORR London Office, 10th floor, 25 Cabot Square, London E14 4QZ

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: Russell Grossman (Director of Communications), Freya Guinness (Director Corporate Operations), Dan Brown (Director, RME and Strategy), Tess Sanford (Board Secretary).

Observers: Radojka Miljevic, Rosie Chapman of Campbell Tickell

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The chair welcomed everyone to the first meeting in ORR's new London office. He introduced Radojka Miljevic and Rosie Chapman who were observing the meeting as part of Campbell Tickell's review of board effectiveness.
2. Juliet Lazarus (General Counsel) had sent apologies for most of the meeting (she attended the competition items).

Item 2 DECLARATIONS OF INTEREST

3. No new relevant interests were declared. During the meeting, Anne Heal reminded members of her (previously declared) role at Elexon. It was agreed that this was not a relevant interest for the purposes of the meeting.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

4. There was a mismatch between the minutes and the action list and this would be checked and corrected before the Chair was asked to sign the minutes. The board approved the minutes subject to that change.
5. It had not been possible to arrange for the HE Chief Executive to attend this board, or the December meeting. The board asked that, in the light of this, the executive should write formally setting out the board's concerns and questions around smart motorway safety and seeking assurance on the HE board's engagement on this issue [Action] Declan Collier and Colin Matthews (HE's chair) had a regular meeting scheduled soon at which this would be raised.
6. The board noted the report on ORR's powers to recover costs and levy charges for work (which responded to an action point from an earlier meeting). Decisions on whether to charge for advice were made by the executive on a case by case basis taking into account (among others) the type of requestor, the public interest and the novelty or uniqueness of the situation. The board asked that governance on this be described in the note. Broadly they accepted that where cost recovery was possible and appropriate, it was done.

Item 4 HEALTH AND SAFETY MONTHLY REPORT

7. Ian Prosser updated the board on Margam, including the news that the families had asked CPS to review their decision not to prosecute. This would probably add delay to the ORR investigation. The board was made aware of an FOI request from the families relating to the case and told that material was being gathered for a response.

Paragraph 8 has been redacted as containing legal advice.

9. On track worker safety more widely, it had been confirmed that NR would not appeal the safety notices and their task force had already started work.
10. The board asked about non-yellow train fronts and safety during RMT strikes. Issues with lithium battery use and transport in the Channel Tunnel and a coroner's recommendation to consider installing defibrillators on trains were mentioned. It also discussed work by the industry to respond to RSSB's SPAD strategy. The board noted that HSRC would hear from the TOC rep on the working group, Steve Murphy, at its December meeting.
11. The board noted that if a new government proposed significant rail legislation then there might be an opportunity to address known issues with existing legislation in a new bill. Level Crossings was one area where there was agreement that the framework was unwieldy and improvements were currently difficult to achieve. HSRC was asked to consider ORR's policy position on the Law Commission's level crossing proposals [Action]. The executive would reflect on whether there were other areas where legislation could be changed to reduce the regulatory burden or to simplify or clarify statutory requirements. [Action]

Item 5 BOARD INFORMATION PACK

12. Graham Richards presented the board information pack indicating some changes to the content. The board discussed the way that NR route targets had been set in PR18 to reflect a combination of challenges including initial asset quality, funding available etc. The new presentation of achievement against target and against absolute brought out differences between those challenges. The challenge for the team remained to produce a report which captured the passenger experience alongside the core reporting against the PR18 settlement.
13. The board discussed the satisfaction numbers for road and rail and the different surveys underpinning them. The board asked for a one page report on rail user satisfaction (this could only be updated every six months) [Action]. It was noted that there was no easy way to replicate the 'worst 5 incidents' on rail for the strategic road network, although the examples that this highlighted were very useful in understanding the issues.
14. The board asked about the underlying reasons for user satisfaction on road and rail and Graham would circulate this information from Transport Focus [Action]. The board noted that there was no regular survey of non-user members of the

public to explore general attitudes to travel and the underlying reasons for modal choice or decisions not to travel at all. This was felt to be potentially useful information and the board asked the exec to explore with Transport Focus and DfT whether the existing transport user surveys could be expanded to explore some of these questions. [Action]

15. John reminded the board that at the end of year 1 of CP6 NR would be subject to end of year public sector financial flexibility rules for the first time. At the moment, it was expected that about £480m would be unspent at the end of the year and rolled forward. Of that, £350m was enhancement spend that would be added to future years' plans – making already stretching delivery plans harder to achieve. The board noted the differences between financial performance (where eg NR could do less than planned and spend more) and the amount of money transferred between years. The board welcomed the update on financial performance and the commentary in the board information pack and the commitment to put this information in the public domain.

Item 6 CHIEF EXECUTIVE'S REPORT

16. John Larkinson reported to the board on his meetings and recent speeches which had focused on NR's efficiency and asset sustainability. He had attended RDG's board and had asked for a meeting with DfT to address their examples of 'gold plated safety'.

Item 7 OTHER EXECUTIVE REPORTS

17. **Graham Richards** reported on the work of the Network Performance Board, and the start of two reviews by ORR of productivity in possessions and NR's procurement rules. The first of these would be particularly helpful to illuminate some of the long running conflicts around possessions as well as their impact on passengers and resulting financial penalties.
18. **Dan Brown** reported on NR efficiency, and progress on the PPF (putting passengers first) programme. The transfer of assets for the Core Valley Lines was on track for January. On ATPs, all the TOC submissions had been received and were being reviewed, but accessible buses for rail replacement services continued to generate significant work. There would be a number of open access cases for the board to consider in the new year – probably February - and he outlined some of the issues here. [forward programme]
19. **Russell Grossman** updated the board on activity during the purdah period. ONS advice was that we should continue to publish official statistics, but there could be no commentary on them. Work on website and photo library overhauls had begun.
20. **Freya Guinness** reported on the move to Cabot Square and detailed a few areas of remaining issues with the technology and the new landlord. The board congratulated and thanked Freya and the team for a successful outcome for a very challenging project.

Item 8 NETWORK OPERATION: REPORT ON THE POWER OUTAGE IN AUGUST 2019

21. The board welcomed the report. It noted that the trains had failed safe in the first instance, but that it was not safe for passengers to have trains on the network that could not be restarted by the driver. In continuing the investigation, it would be important to understand how much the operators had known about the impact of the decisions on software taken by Siemens which were intended to mitigate risk of driver behaviour (repeated reset) damaging the rolling stock.
22. Separately the board asked that all the industry safety lessons should be compiled in a report with a particular view on stranding and passenger welfare risks. [Action] There may also considerations around cyber security and security of power supply, as well as issues for network operation and recovery in the event of an incident.

Item 9 COMPETITION – ROSCO TRANSPARENCY ORDER

Juliet Lazarus attended for the next two items with Tom Cole, Lisa Thurston, Steve Armitage and Ian Maxwell

Both item 9 and 10 are commercially sensitive and these paragraphs will not be published until after the outcome of the discussion has been made public.

23. Tom Cole introduced the item. The transparency order had been imposed by the Competition Commission and the team had reviewed it after ten years to consider whether it was still serving a useful purpose.
24. Steve Armitage explained the history of the market for rolling stock and the competition issues around procurement and re-use of rolling stock which was usually designed to be route specific.
25. Recently there had been more new rolling stock, but issues remained with the historic stock. The paper set out that there were some benefits in the market from the transparency order and the recommendation that it would not be proportionate to recommend a wider review at this time. It was and remained a light-touch remedy for a major issue. A new government was likely to make changes to the industry and these, alongside public opinion on climate change, cost of borrowing etc might, in turn drive change in this area.
26. The board accepted the recommendation not to recommend a review.

Item 10 COMPETITION – MARKET STUDY LAUNCH

This item is commercially sensitive until the study is announced.

27. Tom Cole introduced the proposal that ORR launch a market study into the UK signalling market. This would be a significant intervention and would have to be completed within statutory time scales. The study would build on what was learnt in the work to prevent the merger between

- Alstom and Siemens and explore the concerns which were expressed informally by stakeholders during that process.
28. The question rested on the potential abuse of a dominant position in that the two companies had proprietary technology (interlocking) without which new entrants could not enter the UK market. Allegedly, they had set the cost of access to this technology at uncommercial levels. A market study would test these allegations.
 29. It was likely that the market would not change (without an intervention) for at least another ten years because of the slowness of technological development. The board discussed the risks associated with the proposed market study and the degree to which it was an appropriate intervention in the situation. This was a high value market with no immediate sign of a competitor technology, such as a European system, working in the UK. NR had previously failed in initiatives to open the market and were looking to ORR as the competition authority to consider whether action was appropriate. The market study would give the information necessary to determine whether abuse of a dominant position had happened.
 30. The board noted the high commercial sensitivity of this decision and the likelihood that it would not be made public until January. They agreed to launch a market study.

Item 11 HS1

Feras Alshaker, Laura Majithia, Debbie Daniels and Carl Hetherington attended for this item

31. Feras Alshaker briefed the board on responses so far to the draft determination, and the team's understanding of the likely content of the revised 5YAMS which was due later that week. He highlighted the areas where there was expected to be disagreement between the parties including charging, efficiency challenge, etc. The board discussed the importance of a rationale to underpin the efficiency challenge set by ORR and their wish to see legal advice around the recommendation on charging structures [Action].
32. The decisions on the final determination would be taken by the board at their meeting on 10 December.

Item 12 WILLIAMS REVIEW/WHITE PAPER

33. John Larkinson updated the board on progress with the drafting of the white paper which might form government policy after the election. John had responded to DfT on specific issues affecting the ORR and had offered views on wider issues, being clear that ORR had no view on the overall policy direction as that was a matter for government. The executive would continue to prepare to contribute to implementation planning, where they felt that the size of the challenge was not yet understood by all the parties. John and Dan Brown

reported on constructive discussions around areas where ORR would remain well placed to give objective advice as more information about the underlying thinking and plans was shared. The board agreed that the work remained high priority for the foreseeable future and noted the potential for disruption to other planned work.

34. The board agreed that the executive should not hesitate to escalate issues if it appeared that board level intervention was needed. It was noted that Treasury's views would be important to understand once proposals were public.
35. The board discussed the current election campaign and noted the slides on manifesto commitments for transport from the major parties.

Item 13 NETWORK RAIL SYSTEM OPERATOR

Catherine Williams and Esther Sumner attended for this item

36. Catherine Williams reported on a recent meeting with Paul McMahon, who now headed up the system operator for NR. They had discussed NR's plans to improve capacity and capability and looked at forthcoming timetable bids and changes. Catherine had stressed the importance to ORR of monitoring the capital investment process. It had been clear that NR was anticipating a high level of leadership from the SO in future. The board asked about the planning on IT investment, where a substantial amount of funding had been allocated and the future effectiveness of the entire system was dependent on a high quality product as the outcome. As the end of year 1 of the settlement approached, the board was keen to understand the overall plan and timescale for this vital work.
37. The board also discussed the SO's stakeholder engagement work, governance structure and how the establishment of Event Steering Groups was supporting timetable change implementation. The board reflected on the reported risks around the December 2019 and May 2020 timetable changes, and the level of late notice possessions. Overall, although there was likely to be some local disruption, despite the mitigations in place, there was no reason to expect major impacts.
38. The board discussed the degree to which ORR could give an opinion on whether the timetable would be successful in delivering anticipated benefits for passengers. It was noted that the current situation had demonstrated that the lessons of the Glaister review had already been addressed by the new industry structures.

ITEM 14 TOCS/DFT

Lisa O'Brien, Stephanie Tobyn and Giles Turner attended for this item.

39. From 1 January 2020 the law will require that all trains will be accessible for passengers with reduced mobility (PRM). Largely because of changes to rolling stock introductions, this deadline will be missed and DfT will issue temporary dispensations for about 850 vehicles to continue in service for some time.
40. Tabled slides set out ORR's role in relation to PRM and our plans to respond to the change in the law. This would include writing to all TOCs on their obligation to provide information and additional research to check whether they have

complied. ORR would continue to follow its own enforcement approach but had worked closely with DfT to share information. The aim was to have a pragmatic and proportionate response ready to address the issue as it crystallised.

Item 15 FEEDBACK FROM COMMITTEES AND PANELS

Highways Panel

41. Graham Richards reported on a successful first meeting of the Highways Panel.

Item 16 ANY OTHER BUSINESS

42. Next meeting: the next meeting would be on Tuesday 10 December at Cabot Square. There would be oral updates and a single major item on HS1/PR19
43. The board noted the items below the line including the draft gender pay gap report.

APPROVED BY THE BOARD ON 10 DECEMBER 2019