

THE OFFICE OF RAIL AND ROAD
151st BOARD MEETING
10:30-16:30 TUESDAY 4 SEPTEMBER 2018
ONE KEMBLE STREET, LONDON WC2B 4AN

Non-executive members: Stephen Glaister (Chair), Tracey Barlow, Anne Heal, Graham Mather, Bob Holland

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

In attendance: Dan Brown (Director Strategy and Policy), Freya Guinness (Director Corporate Operations and Organisational Development), Russell Grossman (Director of Communications), Juliet Lazarus (Director Legal Services and Competition), Tess Sanford (Board Secretary)

Declan Collier, ORR's new chair designate, attended as an observer.

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 and thanked them for making time for this session which was additional to the normal programme. He particularly welcomed Declan Collier, who would take over as Chair of the ORR in January.
2. Justin McCracken and Michael Luger had sent apologies for this meeting as they were on holiday.
3. The Chair noted Joanna Whittington's resignation and pending move to BEIS. She would attend the next two scheduled board meetings before finishing at ORR.

Item 2 DECLARATIONS OF INTEREST

4. No new external interests were declared.
5. Graham Richards would recuse himself from discussion of the Timetable Inquiry to avoid any perceived conflict of interest on that item.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

6. The meetings were accepted as accurate and signed.

Item 4 COMPETITION: MARKET STUDY INTO AUTOMATIC TICKET GATES (ATGs) AND TICKET VENDING MACHINES (TVMs)

Tom Cole, Lisa Thurston and Steve Armitage joined the meeting for this item.

7. The team presented to the board on the methodology and governance of the market study, the theories of harm and their mapping, and potential remedies before setting out the relative merits of making a Market Investigation referral to the Competition and Markets Authority. On balance, although the legal threshold was met for a referral, the team believed that a more proportionate and equally effective course of action was for ORR to pursue potential remedies. These would be particularly focused on opening the market to new entrants with additional work with TfL and RDG to improve access to information and reduce the burden of accreditation processes.

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8. The board discussed the recommendation, reflecting that the use of investigatory powers was welcome and the potential remedies were well thought through.
9. ORR's existing relationships with TfL and RDG should support continued positive engagement. Referral to the CMA would incur delay and would not necessarily improve outcomes: if it became necessary a referral could be made in future. The board was particularly keen that there should be room for innovation in the market by making data more accessible and noted the high level of effort going into the issue of ticketing across the industry.
10. The board agreed the recommendation.

Item 5 TIMETABLING INQUIRY

Claire Simpson joined the meeting for this item. Graham Richards left the meeting.

11. Stephen Glaister began by congratulating the team on the work they had done so far in delivering the current draft. Dan Brown acknowledged the magnificent effort and diligence of the team members who were delivering a product he was very proud of. He invited comments on the draft off-line to enable the meeting to focus Board discussions on whether the ToR of the Inquiry was being met, that the emerging findings were consistent with the evidence and that the publication date of 20 September was achievable.
12. The board commented on the overall shape of the draft and identified areas that needed further work including embedding the findings of the prior role review into the main document. They noted that findings were clearly referenced back to specific evidence.
13. Dan Brown set out the findings structured around infrastructure, timetabling process, TOC preparedness and systemic issues. The individual findings were discussed and the board tested the interpretation of events as set out. The board noted cultural issues in the industry of misplaced confidence - that heroic efforts would deliver the necessary outcome - was based on previous experience and not on a current assessment of the risks.
14. It was noted that the evidence showed that impact on passengers was not always the first consideration when the industry was wrestling with timetabling, construction and rolling stock issues. The board asked that this be made clear in the report (because the absence of thinking about passenger impact was in itself noteworthy).
15. The board also discussed the governance and responsibilities of the various cross organisational bodies involved, the contractual complexity which inhibited swift decision making, fragmentation across the system and different understanding of roles and responsibilities. There were very few points where all the necessary information was available to one group of people to identify and resolve system wide issues.
16. The board noted that poor information for passengers during disruption was an area for further regulatory consideration.
17. Ian Prosser described his approach to the prior role review and the board discussed the draft table of findings. It was essential that ORR's involvement was clearly set out in the main report in the same objective terms as the other parties or the overall report would not be complete or credible. ORR staff directly involved should be offered the same opportunity to fact-check the text that other parties had.

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18. The question of what ORR should do differently in future should be discussed internally as part of the second phase of the Inquiry.
19. The PRR findings should be published alongside the main report to demonstrate that the two were consistent.
20. The board agreed that the main report was moving in the right direction and that fact-checking with stakeholders should go ahead. Drafting would continue to ensure consistency, remove duplication and improve readability. The executive summary and foreword should highlight the information which would be new to readers.
21. The Advisory Panel would receive a draft of the report on 5 September and meet on 17 September to discuss planning for Phase 2 of the Inquiry.
22. The board was reminded that the Inquiry report was confidential and potentially market sensitive.

Item 7 LONDON ACCOMMODATION PROJECT¹

Graham Richards returned to the meeting

23. Freya Guinness introduced the item, setting out the latest situation. The board were asked to agree the criteria used to make a recommendation on next steps, to delegate final decisions on detail to the Accounting Officer and to note the current risks to a successful outcome.
24. The board discussed the amenities and environment which might be offered by a new property in comparison to One Kemble Street. They considered analysis of the impact on travel time for existing staff of the two options being closely explored, including any impact of Crossrail. They noted the current position of the landlord at OKS. The board supported the executive's view that admitting additional options at this stage in the process would be unlikely to deliver a better result.
25. The board noted the executive's plans to review the overall risks associated with the project to ensure that the best commercial outcome was reached without unnecessarily prolonging uncertainty for staff. Work was also in hand to pave the way for HMT authorisation for any necessary budget uplifts in 2019-20.
26. The board approved Exco's recommendation in the paper and delegated final decisions on the property and the financial business case to the Accounting Officer. The board noted the commercial and personnel sensitivities in relation to this issue.

Item 8 PR18 NETWORK RAIL RESPONSE TO THE DRAFT DETERMINATION

27. John Larkinson briefed the board on work done to gather stakeholder views on the draft determination and highlighted areas where those views varied or were consistent. He highlighted: performance trajectories, open access charges and R&D funding as key areas of difference. Stakeholders had also begun to think about what the settlement would mean in detail and raised questions accordingly. John described the challenge for the staff of meeting the timetable for the final determination.
28. As well as this session with NR's senior leadership, ORR would also meet the individual route directors to understand any differences in confidence about their ability to meet efficiency targets and deliver their plans.

¹ Due to the commercial sensitivity of this item, and potential handling issues for staff, the minute refers to the recommendations in the paper and not explicitly to the properties discussed.

Sir Peter Hendy, Mark Carne, Andrew Haines and Jeremy Westlake of Network Rail joined the meeting.

29. After welcomes and introductions Mark Carne opened the presentation. CP5 had seen the foundations put in place for a more successful CP6 and the initial SBP had been developed from the ground up to engender local ownership and, ultimately, be more deliverable. ORR's challenge on the SBP had focused on asset sustainability, efficiency and R&D and NR had addressed each of these in their response to the draft determination.
30. MC set out analysis showing how targeted planned spend in CP6 could improve asset sustainability and reduce long term costs. He argued that the right investment in R&D to develop digital solutions to signalling could significantly reduce the future costs of the high level of signalling renewals which would otherwise be necessary in CP7 and CP8. Modelling had been revised to take into account future efficiency and technology gains and models now showed a business plan which was sustainable in the long term.
31. In setting out NR's revised approach to R&D MC referred to historical gains from new technology and the savings which could be attributed. He explained the life cycle from research to deployment and showed an example of the anticipated impact of improvements on track technology. Overall, NR argued that more careful investment in R&D could deliver direct long term savings.
32. On efficiency, NR had accepted the challenge in the Draft Determination. They showed that individual routes had reviewed their 'headwinds' and committed to additional savings, but commented that these were now judged to be the highest tolerable level of stretch. In particular it was stressed that not all the savings were identified at this stage so the figures were not as robust as those in the original SBP.
33. NR presented a revised set of funding numbers which they argued would still achieve the outcomes sought by ORR in the draft determination.
34. NR had looked at the drivers of the current decline in train performance speculating that TSRs, passenger numbers, complex service patterns, franchise commitments, train crew management and the railway upgrade plan were outweighing the improvements seen in fleet and asset reliability, time to fix and more benign weather. They argued that these complex inter-relationships were poorly understood and led to over-optimistic plans, and that assumptions for CP6 were tougher than for CP5.
35. It would be important for TOCs and routes to work together and there should be no mismatch between performance targets. Route MDs would be more clearly accountable as a result of scorecards. However it was clear that CP5 exit would be materially worse than anticipated in the SBP and that the CRM-P needed to be updated. The uncertainty about future levels of performance had led NR to request that there should be a reopener of Schedule 8 benchmarks at TOC level.
36. NR summarised that the new SBP would include increased investment to maintain asset sustainability, an NR-focused R&D plan to deliver sustainable benefits, that CRM-P needed to be updated but that planning on efficiency and performance delivery was still ongoing.
37. Finally MC shared a risk assessment on readiness by route for CP6 and contrasted that favourably with the national readiness for CP5 – particularly in relation to contract readiness.

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38. The board then discussed with NR:
- the likely change in CSI over CP6,
 - the robustness of NR's forecasting techniques,
 - changes in organisation around NR's R&D capability and the associated governance,
 - the impact of technological advances in assessing assets for renewal and how work is prioritised,
 - the robustness of revised efficiency forecasts and the degree of commitment from routes to delivering them,
 - likely performance figures at CP5 exit and CP6 readiness;
 - the difference between franchise commitments and proposed performance targets;
 - the potential for piloting a change in regulatory approach e.g. 'switching off' schedule 8 in some parts of the country;
 - Issues remaining in Scotland.
39. The board particularly sought Andrew Haines' view (as incoming CEO) on the deliverability of the plan: he was content that the route MDs believed they could deliver their own plans – although that would clearly be easier in some places than others. He had not yet had time to review the overall plan closely enough to form his own judgement.
40. Stephen Glaister thanked the NR team for coming and for a very helpful discussion. He thanked Mark Carne for the positive change he had driven in the industry while in his role as CEO of NR and wished him well.

Peter Hendy, Mark Carne, Jeremy Westlake and Andrew Haines left the meeting.

41. After the guests had departed, the board reflected on the session including the degree of ambition shown and the countervailing challenges described by NR including those around readiness. It was important that ORR was assured that the new Chief Executive had bought into the plan for CP6 and was committed to deliver it. The board discussed the funding regime for NR and the cash controls within which it now had to manage – this was relevant to the request for a reopener of Schedule 8. It would be important in communicating the final determination to make the settlement relevant to the individual customer and apply the 'passenger lens' to the overall story.

Item 9 ANY OTHER BUSINESS

42. The board noted the withdrawal of the previously approved independent member of the Audit and Risk Committee and approved the appointment of Rodney Norman to the role from 1 October 2018.

Next meeting: 24 September 2018