

Office of Rail Regulation

Minutes of the 90th Board meeting on 15 January 2013

(08:45 – 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), Alan Price (Director, Railway Planning and Performance) and Cathryn Ross (Director, Railway Markets and Economics).

In attendance, all items: Dan Brown (Director, Strategy), Richard Emmott (Interim Director, External Affairs), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), Gary Taylor (Asst. Board Secretary).

In attendance, specific items: Richard Parry-Jones (Chairman, Network Rail), David Higgins (Chief Executive, Network Rail), Paul Plummer (Group Strategy Director, Network Rail), Robin Gisby (Managing Director – Network Operations, Network Rail), Simon Kirby (Managing Director, Infrastructure projects) and Patrick Butcher (Group Finance Director, Network Rail) (all Item 3)

John Larkinson (PR13 programme Director) item 3, Carl Hetherington (Deputy Director, Railway Markets and Economics) item 3, Brian Kogan (Deputy Director, Railway Markets and Economics), Agnes Bonnet (Head of European Policy), Alan Bell (Head of Railway Safety Policy), Paul Hooper (Head of Interoperability) - all item 8, Alastair Gilchrist (Director, Corporate Operations) – item 9, Sandra Jenner, (Change Advisor) - items 9-11) Elaine Horton (Associate Director, Finance) Item 9.

Item 1: Welcome and apologies for absence

1. Anna Walker welcomed Richard Emmott, the new Interim Director of External Affairs.

Item 2: Declarations of interest

2. There were no interests declared.

Item 3: Network Rail (NR) - presentation and discussion on the Strategic Business Plan (SBP)

3. The Chair welcomed the NR team and set out areas that the ORR Board had already identified as being of interest. NR would appreciate that it was too soon for any substantive response by ORR to the SBP and this meeting was about receiving information to set the context for later detailed discussion. A great deal of analysis needed to be done by staff before a rounded view of the SBP could be taken.

4. The questions which the Board had already identified around the SBP included:

- How the efficiency figure had been reached;
- What was meant when NR talked about 'trade-offs'
- Whether 'whole life' asset management was included
- How sustainable the business was
- What was meant by expecting something 'different' from the regulator
- What the sector would need to do differently if NR were to deliver the SBP

5. NR presented the key areas of the Strategic Business Plan. Richard Parry Jones introduced the presentation and noted that the state of structures and earthworks across the network was a matter for concern which was being addressed.
6. David Higgins explained how the SBP had been developed in a 'bottom up'/top down process. RDG (the Rail Delivery Group) had reviewed the plan and were generally supportive.
7. NR reported progress in a number of key areas during CP4 including:
 - Significant improvements at dealing with Level Crossing risks with the use of better data and a comprehensive action plan through positive collaboration between Network Rail and ORR. By the end of CP4 there should be a 25% reduction in level crossing risks.
 - Inspection process for structures now in place, though it needs to be developed further to reduce risks and enable a significant impact in CP5.
 - A national operating strategy in place including projects such as ORBIS to deliver technological improvements. One result of this would be to reduce staffing from 5,000 signallers to 1,000 track managers. NR did not anticipate significant industrial unrest as job losses would be balanced by other benefits.
8. However, David Higgins made clear that he and his team had very serious concerns about the state of some of the assets and civils on the network and that these were the issues that 'kept him awake at night'. Network Rail were doing everything they could to improve matters through targeted maintenance and close management.
9. A strategic vision for Network Rail had been developed which aligned to a set of strategic outcomes and key enablers. Network Rail's activity and expenditure plans for CP5 supported these. In summary the plans were:
 - The plan requires £37.5b of expenditure;
 - Network Rail plan to deliver efficiency savings of 18% during CP5;
 - Operating costs to continue to fall whilst investment in the network takes place;
 - Network Rail's asset policies have matured and align with route plans
 - Network Rail will need to raise debt of £23b, whilst industry subsidy falls in CP5.
10. Stretch targets had been placed on Network Rail's teams to find efficiencies throughout CP5. Work had already begun in a number of areas to find these, though not all the required savings had been identified. Effective engagement with contractors would support further efficiencies. There were no efficiencies included in the plan related to new alliances.
11. There was a significant sum planned to be spent on Enhancements in CP5. NR said this was a substantial investment to improve mid-long term performance and to meet passenger demand. A number of projects had not yet been scoped so figures were provisional.
12. NR said there were no long-term planning assumptions for enhancements in CP7. We said we would find it useful to see NR's longer term high level projections to understand the profile of planned investment into CP7 or beyond.
13. We said that the additional spend on safety should be supported by statements of benefits expected. NR said the additional resources would be focused on enhancements to two areas – substantial improvements to the use of road rail

vehicles on adjacent line openings and automatic isolation. Further information would be provided to ORR through full business cases as these were developed.

14. The meeting discussed :

- whether localism could drive efficiencies;
- the role of the central system operator in setting central asset policies so that route managers could deliver best practice at regional level;
- assumptions in the plan for improving access;
- the need to reconcile the savings proposed against McNulty's proposals and the assumptions of savings arising from the work in hand by RDG sub groups;
- the sustainability of NR's asset management and the quality of the data it uses to inform asset policies. (Independent research would report on data quality in April 2013);
- outputs and incentive settings in the context of unobtrusive regulation and the motivational approach which Network Rail are keen for ORR to adopt. (Meetings between ORR and Network Rail will discuss outputs and the motivational model in more detail.)

15. We thanked Network Rail for an informative presentation. A comprehensive series of challenge discussions had been scheduled to discuss the SBP in more detail. A further informal Board to Board meeting would take place in April.

Post presentation discussion

16. Board members and executives shared comments which would feed into the challenge process. These included:

- no detail on sustainability in asset management where internal opinion was very different to Network Rail's;
- need a clear articulation of the trade-off question
- how can efficiency be incentivised through a motivational model;
- financial information showing RAB growth and depreciation numbers would be essential
- more detail to underpin the figures that sit behind activities.

Item 4: European policy – key priorities and IRG rail

17. Brian Kogan and Agnès Bonnet were seeking Board comment on ORR's objectives for European activity for 2013-14 and beyond, and ORR's approach to the upcoming chairmanship of IRG rail.

18. We asked for a set of outputs and outcomes for 2013-14 to be developed and highlighted in our business plan.

19. The Fourth Package in Europe was likely to introduce a number of ambitious proposals, it would be important to ensure that the GB regulatory regime is not compromised. IRG's paper on the Fourth Package and how it relates to each country would be circulated to Board members.

20. Anna Walker would be chair of IRG rail during 2013 and we agreed the objectives set out to take advantage of this opportunity. It was important to build IRG's credibility if we were to avoid changes in the European regulation framework.

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21. We agreed the objectives set out for our European work and added:

- spread of technology and working practice innovation to ensure GB benefits from best practice.
- state funded operators not to have unfair advantage in competing in the UK market.

Paragraph 22 has been redacted as it relates to policy development

23. We discussed investing more resources in our European work in 2013-14. The current plan included increased complement to support the chair in IRG work. We suggested staff explore taking a more active approach in areas such as interoperability. We noted that the information provided under paragraph L (breakdown of resources for 2013-14) of the paper did not align with the Business planning information elsewhere in the papers and asked that this be corrected.

Board 15.01.2013 Action A: Agnès would circulate the recent IRG rail paper on initial views on the fourth package to Board members.

Board 15.01.2013 Action B: DfT involvement on Europe should be raised by Richard and Anna when they meet with Phillip Rutman and Claire Moriarty on 21 January.

Board 15.01.2013 Action C: European team to align Business plan against table L to reflect planned resources for 2013-14

Board 15.01.2013 Action D: ORR's 2013-14 Business plan to include clear reference to our planned European work

Board 15.01.2013 Action E: Set out the outcomes for our work in Europe to cover the next 12 months and longer term.

24. **Item 5: Monthly Safety report / issues to advise the Board**

25. Ian Prosser's update was included in the CE's report. Ian highlighted the following points:

- Higher risk SPAD incidents have increased in the last quarter. Staff will continue to monitor closely the industry's Operational Focus Group plan which is facilitated by the Rail Safety and Standards Board.
- ORR's technical safety specialists will hold a series of meetings with NR to assess NR's capability to deliver its health and safety responsibilities as set out in the SBP.

26. We discussed the relationship between ORR and RAIB, and the process for closing out RAIB recommendations, some of which were now very old. Significant progress had been made in closing out a high proportion of RAIB recommendations; but more was needed. It was important to maintain a positive dialogue between ourselves and Carolyn Griffiths and to respond constructively to any concerns. We agreed that Ian and Richard Price should meet with Carolyn and that Steve Walker might be invited to attend the next meeting (or in his absence, another NED).

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27. We asked that in future the presentation of this agenda item highlighted the key systemic or strategic points for Board consideration by setting the important individual cases in a more strategic context.

Board 15.01.2013 Action F: We agreed that Steve Walker would be invited to the next scheduled meeting between Richard, Ian and Carolyn Griffiths of RAIB.

Item 6: 6 Monthly industry Health & Safety report

28. We considered the 6 monthly health and safety report and noted the five key points set out by Ian Prosser:
- The Passenger Indicator Model performance has been consistently good for the last three years; the balance of risks associated with the different indicator groups has changed;
 - A significant increase in landslips and structural failures due to heavy rainfall and flooding has shown that some asset assessments need to be revisited because they did not identify precursors;
 - Failure of Network Rail to deliver planned maintenance (as opposed to reactive maintenance) at some depots;
 - The notable decrease in SPAD risk, although there has been an increase in the last quarter; and
 - The indicator for public behaviour at level crossings is at an all-time low (positive outcome).
29. In the context of NR's delivery of planned maintenance, we noted that language around 'on track' and 'off track' issues can be inconsistent between NR and ORR and asked for a short note to clarify ORR's use of the terms and explain how performance against the plan was measured as well as whether the plan itself was adequate.
30. We asked about the recent increase in landslips following severe weather conditions and whether better flood prevention would help. We did not know whether NR were taking a broad view of innovative long term solutions to some environmental issues. We queried whether it was possible to incentivise improved environmental sustainability.
31. We noted the focus on workforce safety in plans for RSD's work in 2013-14.
- Board 15.01.2013 Action G:** Ian to produce a short note clarifying the language around track and off track areas.
- Board 15.01.2013 Action H:** options around eco-systems for flood prevention to be picked up as part of CP5 work and discussed at a PRC meeting.

Item 7: Report back from December SRC meeting

32. Steve Walker reported on the Safety Regulation Committee on 12 December 2012.
- The committee had discussed driverless trains in deep tube lines and would receive a further update in the summer.

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- Following agreement between ORR and ATOC for further dialogue on safety issues, Charles Horton (ATOC) and Gary Cooper (ATOC) attended the meeting to discuss health and safety challenges, particularly around rolling stock and the rapid obsolescence of electrical equipment.

33. The next SRC meeting will take place on 18 March 2013.

Item 8: Strategic environment

34. Dan Brown presented a paper summarising recent external reports and the implications for ORR's work:

- Laidlaw enquiry – published on 6 December 2012;
- Brown Review into rail franchising process – published 10 January 2013; and
- The Transport Select Committee's "Rail 2020" report – published January 2013.

35. We discussed the three reports. The reports included differing levels of detail around the future role of regulation. Neither the Laidlaw nor Brown reviews explicitly address the role of regulation; although both had consequences for ORR's working relationship with DfT. DfT's immediate focus is to develop a new franchise process but we should be careful that our relationship is maintained.

36. The "Rail 2020" report was broadly consistent with our direction of travel but it will be important to respond to the challenges for us in the report, particularly around transparency and demonstrating our capability.

37. It was important that our stakeholder engagement on these issues went beyond NR, DfT and ATOC.

38. We discussed our dialogue with both Network Rail and ATOC which should include discussion about the development of a motivational model. Work to develop a motivational approach was at an initial stage and it will be important for NEDs to be kept informed of this work as part of developing our thinking around outputs and implementing the incentives framework.

39. The relationship with ATOC had improved, with dialogue continuing after the joint Board session in September 2012. A further joint Board session was due to take place in the spring.

40. We believed that ATOC's concern had been around regulatory creep in our functions and the implications of moving towards a regulatory model, when they had a contractual relationship with DfT. Dan would review the areas around where there has been a shift to a regulatory model and highlight the key points of the transition that might generate tension. In the long term we believed there was significant alignment of our aims with ATOC's interests.

Board 15.01.2013 Action I: As part of continued dialogue with ATOC Dan should highlight the areas of transition where there have been moves towards a regulatory model so that we understand the wider story.

Item 9: Business planning 2013-14

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41. Alastair Gilchrist presented an update on the development of the 2013-14 Business plan including the current draft slides for the consultation event, taking place on 7 February 2013.
42. Significant work had taken place since the last Board discussion in December. The new business management system contained a defined list of activities and milestones but not all underpinning detail was complete and the business plan could not yet be drafted.
43. We recognised that significant work had taken place and were encouraged that there was a line of sight from the work on the strategy through to the business plan.
44. We would receive a further update in February with greater detail on resources. It was important for the plan to highlight the areas where our inputs will deliver real difference. Board members would provide detailed comments on the document to Alastair.
45. We noted the draft slides for the consultation event. The document was thorough and provided sufficient detail to generate significant comments from our stakeholders. One key message was that we planned to deliver more impact for less funding and this should be clear from the beginning of the presentation.

Board 15.01.2013 Action J: Further update to be provided to the Board in February to include feedback from the consultation event on 7 February and the resource figures in more detail.

Board 15.01.2013 Action K: NEDs to provide Alastair with any specific comments following the meeting.

Board 15.01.2013 Action L: Business Plan needs to ensure clearer objective setting / performance management and success measures.

Board 15.01.2013 Action M: Business Plan needs to take account of and be clear what we are going to do in the following areas:

- passengers;
- transparency; and
- Europe.

Item 10: ORR's Capability plan

46. Sandra Jenner presented an update on the work already completed and that planned in the next few months to develop ORR's capability.
Paragraphs 47-51 have been redacted as they contain sensitive information.
52. We discussed the need to ensure effective internal communication around the positive changes which have happened to date, which would be taken forward by Richard Emmott and the executive team.
53. The executive would look at the balance between 'business as usual' and 'stretch' or new activity planned for next year. Dan Brown would lead on a piece of work to

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review our capability over the longer term against our strategy to ensure that we are capable to deliver.

54. A paper on our response to the Capability Review would be discussed by the Board in February.

Board 15.01.2013 Action N: Internal communications plan should allow us to recognise what changes have been achieved over the past twelve months and set out the agenda for the next period.

Board 15.01.2013 Action O: *has been redacted as it relates to sensitive information*

Board 15.01.2013 Action P: Dan to look at the longer term capability requirements in accordance with our strategy.

Board 15.01.2013 Action Q: Follow up to the Capability Review to be discussed by the Board in February.

Item 11: CE's Assurance & accountability report – quarter 3

55. The Chief Executive's assurance report covered quarter three:

- The RAG rating for the PR13 programme was now rated as red. This was due to a number of slippages to key milestones in the work plan. We noted that the milestone dates for the remainder of the project were extremely tight and there was no further room for slippage so that any one significant issue could cause problems to the delivery of the project on schedule. We recognised that significant pressures had been placed on staff colleagues in recent weeks and agreed that this was not acceptable and should be avoided. We talked about the need for clear alerts from directors of staff who were unable to meet Board demands.
- A detailed PR13 project run-in plan had been developed and agreed by the Chair and CE. This set out in meticulous detail the key dates for the project, including NED meeting dates. This would be circulated to Board members and we each agreed to check it against our own diaries and raise any significant comments direct with staff.
- The Transparency conference held on 10 December had been extremely successful and the media coverage suggests that we have made real progress in this area. Richard Emmott was taking over the role as SRO for our transparency programme of work. Further work will take place to assess the resources currently available to take this forward.
- Alan Price confirmed that we have written to Network Rail on issues on operational performance over Christmas and the New Year. He explained that he had encouraged them to use reports that would be produced for internal audiences as a way of reducing the reporting burden. A written report would be provided to the Board in February.

Board 15.01.2013 Action R: PR13 'run in' plan to be circulated to NEDs for information and to raise any significant comments.

Item 12: Timescales for the ORR Annual report 2012-13

- 56. We agreed the process for producing the 2012-13 Annual Report and resource accounts and noted the list of significant areas of work which had been completed during 2012-13. Richard Emmott confirmed that the draft report would highlight the organisation's key achievements at the appropriate level of detail.
- 57. We asked for enough time to review the detail of the draft report and Richard agreed to provide Board members with the draft at least a week in advance of any discussion which is scheduled to take place at the March Board meeting.

Board 15.01.2013 Action S: Richard Emmott to circulate first draft of the annual report and resource accounts to Board members a week in advance of the March Board meeting.

Item 13: Audit Committee report

- 58. The report summarised key items discussed at the last Audit Committee meeting on 12 December 2012.
- 59. The committee had discussed assurance around our financial models in light of the franchising issues at DfT. The committee were encouraged by the current QA process and felt that this provided positive assurance.
- 60. We discussed the way in which our safety team and the industry use the Railway Management Maturity Model (RM3). We asked for a note on the technical assurance status of RM3, and how it was being used.
- 61. The committee also discussed the process for completing our annual resource accounts. No issues were raised, or anticipated, by the National Audit Office.

Board 15.01.2013 Action T: Ian to provide the Board with a report around the assurance that the RM3 model provides and how we use the model.

Item 14: Chair's report

- 62. The Chair's report gave details of the Chair's recent meetings with Government, industry and stakeholders over the past month.
- 63. We discussed issues which had become apparent around the recent Network Rail rebate payment to Transport Scotland. We agreed that there were a number of lessons to be drawn from this process and feedback will be provided to the Board in due course.
- 64. We confirmed that we would want to review question of rebates as part of a discussion of the overall approach to efficiency savings in CP5/PR13.

Item 15: Chief executive's overview and monthly data pack

Competition powers

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65. The Chief Executive drew to our attention a current issue around regulatory competition powers. We noted that the government had introduced an amendment to the Enterprise and Regulatory reform bill which provides power to the Secretary of State to take competition powers from regulators in certain circumstances but without consultation. Following discussion we agreed that as part of our business planning process we should look at how we use our competition powers and make sure that we are active in using them.

Team success

66. We noted and congratulated colleagues for the considerable effort it had taken to successfully handle the late flurry of licence submissions for the introduction of the GSMR.

Open Access

Paragraphs 67 and 68 have been redacted as potentially commercially sensitive

Finance

69. We noted an increase in consultancy spend this month which meant that end year projections for the budget were improving. We asked for assurance that the executive was comfortable with the process around these procurements. The contracts had been awarded in line with government guidelines.

Board 15.01.2013 Action U: Cathryn to bring open access back to the board before further decisions were made.

Board 15.01.2013 Action V: Discussion to be held at board before decision is made on competition powers.

Board 15.01.2013 Action W: Update to be provided in advance of a decision on the Alliance open access application.

Item 16: Board forward programme

70. The Board forward programme had been amended and now included the forward programmes for Board committees, and information about which executive committee was responsible for quality assuring papers and rehearsing any issues. No comments were raised.

Item 17: Approval of minutes of Board meetings of 27th and 28th November 2012

71. The draft minutes of the meetings held on 27th and 28th November were noted.

Item 18: Matters arising not taken elsewhere on the agenda

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

Item 19: Any other business

73. No items were raised.

For publication

Anna Walker

Chair

Draft minutes approved by the Board on 26 February 2013