

## Office of Rail Regulation

### Minutes of the 85<sup>th</sup> Board meeting on 19 June 2012

**(09:45 – 16.30) 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, Ian Prosser, and Cathryn Ross.

**In attendance, all items:** John Larkinson (acting director, RPP), Juliet Lazarus (legal adviser), Ken Young (director, external affairs), Melvyn Neate, Independent member of ORR Audit Committee, Gary Taylor (asst. board secretary)

**In attendance, specific items:** Carl Hetherington, Head of regulatory finance (items 5 and 10), Annette Egginton, Head of Competition and consumer policy (item 6), David Keay, Head of Inspection, Railway Operations (Item 8), Sandra Jenner, Change Advisor (Items 9 and 14), Paul McMahon, Deputy Director RME (Items 10-12), Gordon Cole, Principal financial analyst (Items 10-12).

#### **Item 1: Welcome and apologies for absence**

1. Anna Walker welcomed everyone to the meeting, in particular, Melvyn Neate, our new independent member of the Audit Committee. Apologies for absence were received from Sam McClelland Hodgson.

#### **Item 2: Declarations of interest**

2. There were no interests declared relevant to the agenda.

#### **Item 3: HLOS update and DfT guidance to ORR**

3. Following the update received at the May Board on the development of the HLOS, John Larkinson provided a further progress report. This included highlighting the linkages between the development of the DfT and Transport Scotland (TS) HLOS, the Secretary of State guidance to ORR and the upcoming outputs framework consultation.

*Paragraphs 4-14 have been redacted as they concern policy development*

15. In conclusion we agreed that the Chief Executive and John would consider a handling strategy to ensure that the messages are relayed to DfT at the highest level.

- **Board 19.06.2012 Action A:** Secretariat to provide Board members with copies of the DfT and TS HLOS.
- **Board 19.06.2012 Action C:** Executive to clarify DfT guidance to ensure there was a common understanding.
- **Board 19.06.12 Action D:** We also agreed that we needed to be clearer on what was meant by “Value for Money” both in relation to the HLOS and DfT Guidance. The executive should bring recommendations back to the Board

#### **Item 4: August consultation on the outputs that NR will be required to deliver**

16. We considered the latest position in relation to our Outputs consultation document. We noted that the document would be published shortly after the publications of the TS and DfT HLOS.

*Paragraphs 17-18 have been redacted as they concern policy development*

19. We agreed that the consultation document would be circulated to Board members for comment. We agreed that if there were significant concerns we may need to return for a further discussion in July.
- **Board 19.06.2012 Action E:** Consultation document to be amended – including:
    - section 5 table to be brought to the front end of the document to add additional context.
    - Issues we were clear we needed to continue to have regulated targets on should be grouped together at the beginning of the document and our reasons for this clearly stated (e.g. on depots, stations and network capability).
  - **Board 19.06.2012 Action F:** Executive team to ensure a step change in all aspects of asset management and achieve whole life cost approach.
  - **Board 19.06.2012 Action G:** Executive to ensure consultation document covers our position on five areas in relation to outputs – Network Rail and suppliers (Mike Lloyd to feed into this), innovation and ROSCOs, environment issues and customer and passenger satisfaction and asset management.

#### **Item 5: Consultation on detailed financial framework issues**

20. We considered an update on the latest position on the upcoming consultation on the detailed financial framework issues.

*Paragraphs 21-25 have been redacted as relating to policy discussion*

26. In terms of process we agreed that the draft consultation document would be circulated to Board members for further comments before being formally signed off by Richard and Anna.
27. We thanked Carl for his helpful slides and for his willingness to brief NEDs on these complex issues.
- **Board 19.06.2012 Action I:** Draft consultation document to be circulated to Board members for further comment and signed off by Richard and Anna.
  - **Board 19.06.2012 Action J:** Carl to arrange briefing sessions with NEDs (on request).

#### **Item 6: Transparency**

28. Ken Young and Annette Egginton presented the latest developments of our transparency work and the upcoming consultation. Ken highlighted that the

consultation and work around TOC benchmarking were key parts of our overall transparency programme.

*Paragraphs 29-32 have been redacted as they concern policy development*

**Board 19.06.2012 Action K:** The Board agreed that the wording was comprehensive and were content for the document to be published at the end of July following sign off from Richard.

**Board 19.06.2012 Action L:** The Board agreed a short consultancy piece of work/external review to look at best practice in transparency in other sectors, what best practice would look like for ORR and to establish what resources are required to achieve best practice. This should be updated in parallel with the consultation.

**Board 19.06.2012 Action M:** A further Board discussion on transparency to be scheduled on Board forward agenda in light of the comments received from the consultation exercise.

**Board 19.06.2012 Action N:** Further discussion to be scheduled at a future Board meeting to discuss third party access to information.

## **Item 7: RDG arrangements**

33. We considered an update on the arrangements for formalising the Rail Delivery Group (RDG). Michael confirmed that the approach to formalising RDG had been discussed with DfT who were keen for the group to be formalised.
34. We were supportive of formalisation but were keen to see RDG's terms of reference to ensure that it was not taking accountability away from licensed operators. Michael confirmed that RDG was clear that it will not be taking over any licenced operator obligations and this will be clearly stated as part of its constitution.
35. We discussed the issues around our role on competition and RDG's role. We agreed that it would be important for the consultation to explain that the creation of the RDG was "without prejudice to anything under competition law".
36. We agreed that it would be useful to invite Tim O'Toole, as chair of RDG, to a future Board session to discuss RDG and its role. As part of this discussion we agreed that it would be useful to have further clarity on how RDG would interact with the RSSB. We noted that the RSSB would shortly begin a strategic review.

**Board 19.06.2012 Action O:** Secretariat to arrange/invite Tim O'Toole to Board session to discuss RDG and its role.

**Board 19.06.2012 Action P:** SRC/Board to hold further discussion on how RDG consider safety related issues and the relationship with RSSB.

## **Item 8: Annual Health and Safety report**

37. We noted the key messages from the Annual Health and Safety report for 2011-12.
38. We considered that on many of the safety measures highlighted through the report, safety on Britain's railways continues to improve. Concerns were raised around a number of areas where improvements are still necessary including, management

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maturity, development of TPWS/ ERTMS and platform train interface. We also noted that ORR's enforcement action remains high.

39. Following discussion, we agreed that consideration needed to be given to the handling of level crossing data given the high profile media coverage of incidents. Ian agreed to consider this.

40. We thanked Ian and his team for producing a comprehensive report. Ian confirmed that the document would be shared with RSSB and RAIB before being signed off by Richard and Anna in advance of being published by the middle of July.

**Board 19.06.2012 Action Q:** Final version of the 11-12 H&S report to be cleared by Richard and Anna – following sense check by EA. Draft report to be shown to RAIB + RSSB before it is published.

### **Item 9: Progress update from Sandra Jenner, Change advisor**

41. We considered an update from Sandra on the work undertaken to date.

*Paragraphs 42-44 have been redacted as they contain sensitive information.*

45. Sandra confirmed that she was currently compiling an action plan with priorities and owners to take the work forward. An update would be provided to the Board in due course.

- **Board 19.06.2012 Action R:** RP and SJ to take action, as discussed, to solve the issues around HR/recruitment and provide update to the Board in July. The Board should get a better flow of management information including on recruitment issues. Further work was needed on analysing our current skills capability and the skills ORR would need for the future given its changing role.
- **Board 19.06.2012 Action S:** Detailed progress update to be provided to Board in September.
- **Board 19.06.2012 Action T:** DG to discuss resourcing in more detail to assess the short, medium and long term resourcing needs of the organisation and provide update in September

### **Item 10: Assessing Network Rail's efficiency**

*This section redacted as it relates to policy development.*

### **Item 11: Network Rail's MIP**

52. We noted the draft letter from Richard to Steve Russell, Chair of Network Rail's Remuneration Committee on the MIP. We confirmed that we were content with the content of the letter.

53. We discussed the arrangements in place for the Network Rail members meeting. We agreed that we would need to have a clear message on progress on the MIP for this. Cathryn confirmed that the letter to Steve Russell would be sent to members in advance of the meeting. We agreed that this would be a useful substantive backdrop to our meeting.

54. Cathryn confirmed that specific proposals for Board consideration were currently being worked up

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- **Board 19.06.2012 Action W:** Briefing to be provided to NEDs in advance of NR members meeting.

**Item 12:** *this item has been redacted as it relates to a commercial issue*

**Item 13: Chair's report**

57. We noted that the Chair's report for mid-May to mid-June would be circulated to Board members through correspondence.

- **Board 19.06.2012 Action Y:** Secretariat to circulate Chair's report to Board members through correspondence.

**Item 14: Chief executive's overview and monthly data pack**

58. We discussed the Chief Executive's overview and monthly data which set out the key issues for ORR in relation to internal and external activities. In particular the executive provided updates on recent safety activities; including data on our enforcement, inspections and our progress against RAIB recommendations.

59. We also received updates provided on our current progress on senior staff recruitment.

60. We noted the safety information included in the overview. No significant issues were raised.

61. We received an update on the response to the *A Greater Role for ORR Regulating Passenger Franchisees in England & Wales* ConDoc. The response to DfT was currently being drafted. We agreed that Anna and Richard could sign off the final response on behalf of the Board.

62. Cathryn Ross provided an update on freight issues. The consultation document relating to the freight variable usage charge had recently been published. Responses to this consultation have been negative, as expected. NEDs were likely to be asked for their views by the freight industry. A Q&A and lines to take has been prepared and will be circulated to NEDs.

63. Ian Prosser provided an update on the arrangements for the Olympics. In summary Ian confirmed that the integrated transport communications system had been successfully tested. Ian confirmed that ORR's internal arrangements are in place should an incident occur during the Olympics. Ken confirmed that an integrated communications programme is in place to handle any media related issues. We noted that the Olympics related risk currently on the High level risk register would need to be updated to reflect the current situation. Ian agreed to update.

64. We noted the proposed response (which had previously been discussed by the Board) to the DfT localism consultation and were content.

65. In relation to the consultation on fares and ticketing, we agreed that a draft response would be circulated to Board members for comments by 22 July 2012.

66. Richard confirmed that an approach to shortening and sharpening the production of Board papers will be put in place for the production of the July Board papers.

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67. In addition, we endorsed Richard's proposed business planning and assurance process and reporting cycle to the Board, which would commence as part of the CE's overview in July.
68. We discussed the Management data pack (MDP). we agreed that it would be useful to include the JPIP targets in the PPM information. We also agreed to include targets dates for when Network Rail will make progress on actions highlighted on the regulatory escalator.
69. We congratulated Ken and Elaine Horton on successfully producing the Annual Report and resource accounts to time.
  - **Board 19.06.2012 Action Z:** Board agreed that they were content for Anna and Richard to sign off the response to the DfT ConDoc.
  - **Board 19.06.2012 Action AA:** High Level Risk Register to be updated following discussion on Olympics.
  - **Board 19.06.2012 Action AB:** MDP for July to be amended in line with discussion to include JPIP targets in the PPM information.

### **Item 15: Board forward programme and draft dates 2013**

70. We noted that the Board forward programme would be updated following the Board awayday and circulated to Board members in correspondence.
  - **Board 19.06.2012 Action AC:** Secretariat to circulate Board forward programme to Board members for comment.

### **Item 16: Approval of minutes of Board meetings of 22 May 2012 for publication**

71. The minutes of formal board meeting on 22 May 2012 would be circulated to Board members for comment through correspondence.
  - **Board 19.06.2012 Action AD:** Minutes from May meeting to be circulated for approval through correspondence

### **Item 17: Matters arising (not taken elsewhere on the agenda)**

72. We noted the progress against actions from our previous meetings; a number of actions had been completed since May and further updates were noted on those still outstanding.

### **Item 18: Committee meetings:**

73. We noted that at the recent RIAC meeting discussions focused on the Strategic Elements Project (StEP) , PR13 related safety issues and the committee's ToR.

### **Item 19: Any other business**

74. Cathryn confirmed that she had prepared the draft Secretary of State paper which had been requested following a recent meeting. The draft would be circulated to Board members for comments by 22 June 2012.

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- **Board 19.06.2012 Action AE:** Cathryn to circulate draft Secretary of State Letter to Board members.

### **Item 20: Meeting review**

75. We agreed that the first half of the meeting had been well managed and produced extremely positive discussions. We agreed that we would need to work on ensuring that this high standard of discussion continues for the entirety of the next meeting in July.

**Anna Walker**

**Chair**

Minutes approved by the Board on 24 July 2012