

**Office of Rail Regulation**  
**Minutes of the 108<sup>th</sup> Board meeting**  
**On Tuesday, 23 September 2014**  
**(09:30-14:15), ORR offices, One Kemble Street, London, WC2B 4AN**

**Present:**

**Non-executive directors:** Anna Walker (Chair), Tracey Barlow, Mark Fairbairn, Michael Luger, Justin McCracken, Stephen Nelson, Ray O'Toole,

**Executive directors:** Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Joanna Whittington (Director Railway Markets and Economics),

**In attendance, all items:** Dan Brown (Director of Strategy), Richard Emmott (Director of Communications) John Larkinson (Director of Economic Regulation), Juliet Lazarus (Director, Legal Services), Tess Sanford (Board Secretary), Tom Taylor (Director of Corporation Operations) Gill Bull (Assistant Board Secretary)

**In attendance, specific items:**

Item 3 and 4 - Colin Greenslade, (Head of Strategy, Planning and Regulatory Management)

Item 5: Graham Richards (Deputy Director RPP), Nigel Fisher, Peter Moran, Gordon Cole, Sneha Patel

Item 6: Rob Plaskitt, Ian Williams, David Reed

**Item 1 WELCOME AND APOLOGIES FOR ABSENCE**

1. The Chair welcomed everyone to the meeting.
2. Alan Price (Director of Railway Planning and Performance) was on leave and had sent his apologies.

**Item 2 DECLARATIONS OF INTEREST**

3. There were no declarations of interest.

**Item 3 STRATEGIC HEALTH AND SAFETY RISK PRIORITIES UPDATE**

4. Ian Prosser gave an update on the ongoing review of ORR's health and safety strategy and the discussion at the last meeting of the SRC. The Committee had recognised that there were some changes needed to the document to respond to the changing landscape.
5. Ian's presentation covered: ORR's roles and goals, our legal framework, how RSD keeps risks continuously under review, how RSD targets resources and builds the business plan, and the techniques ORR uses to monitor the industry.
6. He highlighted the new areas of risk and their work programmes.
7. He set out for the board its responsibilities as the health and safety regulator. Finally he looked briefly at areas where the strategy had delivered improvements.
8. SRC had recognised the significant safety challenges as a result of the growth in the use of the network. In addition a specific new risk area identified on

train control/protection technologies, and the enablers that had been added to the strategy were long term: H&S vision, leadership and culture, and safety by design. Management of change was also likely to be a significant issue in over the next few years. The changes in NR's approach to safety management on site, designed to deliver improvements, would inevitably involve some risk but should lead to significant improvements.

9. Ian assured us RSD was always on the road to continuous improvement – but that there was no room for complacency. He thought the integration of safety had improved in his time at ORR and particularly during the development of PR13 which had resulted in additional funding for three key areas of focus in safety.
10. Richard Price welcomed the presentation and proposed that there should be some additional Board strategic thinking about the Board's role in relation to industry safety and ORR's regulation of it. The RSD regime was well regarded across the world. The question was to continuously improve the information the Board gets to exercise its responsibilities and drive continuous improvement in us and the industry. He had circulated a draft proposal on reporting arrangements which would enable the Board to get a biennial overview of changes to the risk and maturity environments. His aim was to draw out key changes, consider how those might impact on ORR's strategic approach to safety, and whether interventions were working well – or whether there were alternatives. He thought we should review how the Board reviews the allocation of safety resources. He would be aiming for a mid-year discussion - in advance of business planning and underpinned by a programme of processes– reviewing the strategy and, over time, carrying out a review of ORR's various safety methodologies, en route to an enhanced discussion by the board.
11. Anna and Richard suggested that a subgroup of Board members review and consider the proposal on the paper which had been tabled by the CE and Chair based on information drawn from the systems described by Ian in his presentation.
12. Justin McCracken said that, as a new NED, he was genuinely impressed with the professionalism and rigour with which ORR addressed its safety regulation. He was not surprised that we had a good international reputation. However, it was very important that we hold ourselves to account and he therefore supported the proposals in the Chair/CE's paper. He thought we should develop a succinct statement of regulatory strategy. The Board should own the strategy. He thought we wanted to stimulate duty-holders to achieve excellence. Mark Fairbairn supported this approach – he reminded us that the safety vision had been formulated six years ago – the toolkit seemed to be good, but there was a gap in ORR's story: how do we know the toolkit is still effective and how do we describe it?
13. Tracey Barlow suggested we should be clear with the outside world what our role is – we had grappled with getting our understanding to the right place, which had not been intuitive. She thought that some dutyholders were still rules based and relied on the regulator.
14. Stephen Nelson asked given that the duties (of dutyholders) are clear and output targets clear in CP5, what was the biggest challenge for safety? Ian said it almost always involved people. We needed to support NR to get its

- workforce in a better place. Our own recruitment was producing good candidates for RSD with a good level of diversity.
15. The Board agreed the working group should go ahead, with a ‘task and finish’ approach and a small membership to keep it focused. **[Action A: Board Secretariat]**
  16. Joanna suggested that, given that NR were embedding their safety reporting in their corporate reporting, ORR should look at doing more to combine the two so that we can be closer in thinking during CP5 and ready for CP6. **[Action B: Exec to look at ways of doing that].**
  17. The Board talked about the desirability of having disaggregated information by route for safety, as for our other functions. It recognised that much of this information would be gathered by NR, so it would be useful for the Board to have it.
  18. Ian said he was pushing hard to obtain the data, and it was coming through on some routes – and on some route-sections – but there was still some resistance. The Board recognised that it would need to consider when it might insist on the publication of this information.
  19. The Chair thanked Ian for his presentation and for his commitment to work with board colleagues to help develop the Board’s role with greater clarity.

#### **Item 4            MONTHLY HEALTH AND SAFETY REPORT**

20. Ian Prosser drew out some of the highlights of his report.
21. NR had started to address the vacancies in its maintenance teams, which should mean that the growing workbanks should start to reduce. There was welcome leadership commitment to driving this forward.
22. The European Rail Agency is developing a new tool, drawing on RM3, with which to assess the maturity of national safety regimes. This would give ORR helpful international comparators. The Board should consider inviting ERA to a Board meeting or to the SRC. **[Action C – IP to advise]**
23. ORR had served three prohibition notices (two concerning electrocution risks and one on ballast dust) and one improvement notice since the July report. Ian noted that some TOCs were quite litigious and he would be meeting them to discuss the issues. He had made some changes to resourcing to address the award of a single very large franchise to Govia which covered Thameslink, Southern and Great Northern. The previous record of the franchisee on safety had been mixed and so close attention would be paid to ensure that standards were maintained or improved.
24. There had not yet been any industry-caused passenger fatalities this year.
25. The Board noted two fatalities at a single level crossing. Ian said that sadly sometimes level crossing incidents generated copycat incidents and this seemed likely to be the situation. NR were ahead of the CP5 plan to reduce level crossing risk, but he noted that crossings are becoming more difficult to close – all the easy closures have been achieved. The team was investing significant resource into the Long Rock Public inquiry in Cornwall.
26. The rising number of SPADs was generating concern across the industry and work was going on to understand what was driving the increase. The industry was seeking better tools for risk measurement at signals and slowly putting upgraded TPWS equipment on more trains. He noted that driver

- management was an important area of risk around franchise changes, and the increasing introduction of new drivers into the industry.
27. Driver management was key to reducing SPADs – Ian’s view was that training was usually good enough, but there was risk around ongoing management of the drivers after training.
  28. Ian told the Board he had asked for a meeting with Nexus to explain our concerns about safety in their operations. RSD was stressing to Network Rail their responsibility for managing their contractors effectively.
  29. Ian drew our attention to the final report into the Canadian runaway freight train derailment which had criticised a weak and reactive safety culture. Ian paraphrased that risks in the new industry (transport of fracked gases) had not been properly assessed and those responsible for safety management had not known enough about an area of enormous growth. Most of the causal factors would not occur in the UK because the technology did not allow them. The cultural and de-regulation issues might have some lessons for us in a changing environment.
  30. Ian praised the team who had worked on the Balfour Beatty prosecution. He regretted that the defendant had spent five days listening to our evidence before pleading guilty. He thought that Mark Carne’s leadership on safety would mean that his management would be driving improved contractor behaviours – and would expect to have a significant impact.
  31. Michael Luger asked what avenues we had for whistleblowers? Ian explained that the team considered every complaint – some of which met the definition of whistleblowing. He worked to maintain a good relationship with unions through regular meetings and an annual workshop with Health and Safety Union Reps in the industry. ORR received about 300+ complaints each year. Dan explained that there was a BIS consultation out at the moment which proposed requiring some regulators to report the number of whistleblowers each year and this might affect us.
  32. Stephen Nelson asked for an update on fishplates, which had been a cause of concern last year. Ian said that number of incidents had gone down and there were also fewer buckled rails. Ian said that concerted work to control vegetation was part of a big push by NR to improve safety and tidiness on the network.
  33. Mark Carne had spoken to ORR staff about his priorities and there were a number of areas where we are very happy to see his intent to improve behaviours. Neither he nor we underestimated the difficulty of this.
  34. Mark Fairbairn asked whether a review of the worker permit system would be timely and Ian agreed we should programme it in. **[Action D: SRC to look at worker permits (add to forward programme)]**
  35. The Board noted that the running total of enforcement activity looked higher than last year. Ian thought that last year had been a six year low and this year’s numbers look normal however he undertook to check this, look at any trends and come back to the Board on this **[Action E - analysis of trends reporting back to Board or SRC]**.

## Item 5 NR: CP5 MONITORING AND REPORTING ARRANGEMENTS

36. John Larkinson introduced the item. As requested, the team had been working on three strands of reporting on NR's delivery of CP5, which all drew on the same data set (so as to avoid duplication of effort and conflicting conclusions). The three strands were: reporting to the ORR Board, reporting to the public, and data to be shared with DfT.

**Reporting to the Board** (*paragraphs 37 to 42 have been redacted from the published version as they concern the formulation of policy*)

**[Action F: team to review the reporting pack and present a revised version at next Board meeting taking account of the Board's comments]**

43. **Public reporting** would continue to be done through quarterly data releases and there would be a six monthly 'Monitor' publication which would include commentary on what the statistics showed. The aim was to deliver more impactful reports which were credible and professional and included more on safety and financial reporting as well as something on what future performance might look like

44. The challenge was to find a report format that was useful both to an informed audience and to a lay one. It was agreed that reporting on the enhancement programme would highlight the major projects and what they would achieve for railway users. The November issue of the Monitor would be circulated to the Board in advance. **[Action G: Board to receive the Monitor before publication]**

45. John reported that discussions continued with the aim of identifying a sensible and appropriate tripartite structure for **reporting to DfT**. The team was being particularly careful to protect ORR's position, needs and role in discussions about sharing information. Once the model of the ORR reporting pack for the Board had been agreed, it would be used as the basis for sharing information for both organisations. The team would report back to the Board on the arrangements agreed with the DfT **[Action H]**

## Item 6 UPDATE ON OPEN ACCESS CASEWORK

*Paragraphs 46-49 have been redacted from the published version as relating to current regulatory processes.*

50. The Board noted the outcome of the process on Virgin's application for services from Shrewsbury and Blackpool, where access rights had been granted.

## Item 7 UNSCHEDULED BUSINESS

### ANNUAL EFFICIENCY AND FINANCE ASSESSMENT

51. The draft executive summary of the Annual Efficiency and Finance Assessment (AEFA) of NR had been circulated for comment.

*Paragraphs 52-54 have been redacted from the published version as relating to current regulatory process*

55. John explained the nature of the EBSM calculation in the AEFA assessment including adjustments and it was agreed there was no basis for any further adjustments.

56. The board was content for the AEFA to proceed on that basis.

## **PREPARATION FOR MEETING WITH DEPARTMENT FOR TRANSPORT**

57. The Board discussed the agenda and our approach for the meeting with the Department for Transport that afternoon. We would share our emerging PR18 thinking and hoped to take the opportunity to explore the implications of the new framework agreement for our relationship with the Department.

## **Item 8 GOVERNANCE UPDATE**

58. Tess introduced her report on the initiatives taken forward during the summer and explained that the paper drew together the recommendations and plans into one place.
59. **ORR Induction:** She asked us to note that Michael Luger and Justin McCracken, the new NEDs had attended an induction day on 22 September; both agreed the day had been very helpful. Board member safety training had been arranged for Thursday 25 September and would include Joanna Whittington and Bob Holland (NED designate – whose pre-appointment ‘cooling off’ period was not relevant in this area).
60. Tess said that the **board paper framework** was still being developed and that she would welcome any comments on this or on the draft meeting behaviours. **[Action I: all]**
61. **Board effectiveness review** - Anna endorsed the report, which included no major surprises and identified a number of areas where progress was in hand. Tracey agreed that the Board had matured as a team through the PR13 experience and since. The staff’s learned approach of ‘warming up’ the board (taking them through an early discussion of issues before a specific decision is required), had paid dividends in terms of board accountability and understanding and should be continued. There could also be value in summarising agreed action decisions at the end of a meeting.
62. Richard added that it was important to help the board root its debates in their previous consideration of any issue. He endorsed the proposal that papers should include sufficient reference to what had been decided before. He also suggested that we should re-order the agenda to put the minutes and agreed follow up actions at the top of the agenda so progress could be assessed. This would also help ground us in what had previously been discussed. We agreed to try this, remembering that minutes and actions only needed discussing on an exception basis. **[Action J: Secretariat].**
63. The Board noted that another board effectiveness review would take place in March/April 2015. We noted the report and agree the proposed action plan which would now be embedded in the Board actions list. **[Action K: Secretariat]**
64. The Board asked whether executive board members felt able to express their personal view on matters where the agreed ‘Exco’ view was being put forward. Richard said that when the executive members did not agree on any issue, this was made clear at the Board meeting. Joanna agreed and added that the key thing for her was that she should not be surprised by an executive colleague’s position by hearing it for the first time in a meeting. It was

important that disagreement was acknowledged in advance so people were ready for a measured debate at the meeting itself.

#### **Item 9 BOARD ACTIONS OUTSTANDING**

65. Tess Sanford drew our attention to the list of outstanding and completed Board actions, which the executive had updated this month. As the Board had previously agreed, this would be brought to the front of the agenda with the minutes at the next meeting.

#### **Item 10 BOARD FORWARD PROGRAMME**

66. The forward programme had been re-cast and would be populated in line with the remaining business plan milestones for 2014/15. The Chair asked executive directors to ensure that the programme was populated accurately. **[Action L: Exco]**

#### **Item 11 CHAIR'S REPORT**

67. The Chair highlighted her and Richard's meeting with the Secretary of State at which they had explained the various strands of our consumer programme.

#### **Item 12 CHIEF EXECUTIVE'S REPORT**

68. **Strategic Road Network Monitor** John Larkinson told us that more data was beginning to come through from the Highways Agency and a draft performance specification from DfT to HA. This was helping clarify the issues and develop a shared understanding. Morale in the team was improving now there was more substance to the issues.
69. It had been agreed that our role should include powers to fine and the necessary intermediate steps in enforcement. There would also be a set of duties and guidance on the size of any penalties with grounds for their imposition. The Bill would require government amendments.

*Paragraph 70 to has been redacted as concerning policy development*

71. It was agreed that the Board would take an update paper before Christmas on the new Roads functions covering long term funding, progress on recruitment including expert advisors, and internal governance arrangements. **[Action M]**
72. On recruitment, John reported that DfT had authorised the process to recruit a roads director and this would include candidates outside the Civil service and the Chair and Chief Executive would be involved in the recruitment.
73. **NR MIP** – John reminded the Board that revised objectives had been issued for the NR MIP in CP5.
74. We had asked NR to reconcile its MIP with the regulated outputs. They had recently written attempting to do this reconciliation and their letter was being assessed. It was agreed that the team would report back to the Board on the outcome of their reconciliation. **[Action N]**. We noted that the new NR internal scorecard we had seen looked promising in terms of monitoring the right things.
75. Richard reported that DfT have invited ORR to make a recommendation for appointment of a member of the **Channel Tunnel Intergovernmental**

**Commission.** The Board agreed the executive proposal that Brian Kogan should be recommended for reappointment. **[Action O: Richard Price to write to SoS]**

**Item 13      AUDIT AND RISK COMMITTEE (ARC)**

- 76. Tracey Barlow reported from the ARC that there were no issues of concern to raise with the Board.
- 77. The Committee had reviewed progress on a new risk identification and management system which would align with the business planning and reporting system and would continue this at the next meeting. They had also agreed a review of business processes – beginning with considering what those processes are.
- 78. The board risk workshop, which had previously been discussed, would be part of the November board strategy and planning day.

**Item 14      BOARD MINUTES AND FORWARD PROGRAMME**

- 79. The Board minutes for July were approved along with the note of our policy discussion the day before.

**Item 15:      ANY OTHER BUSINESS**

- 80. The Board noted the items below the line.
- 81. There was no other business

**Item 19:      MEETING REVIEW**

- 82. We agreed that we had a successful meeting covered a great deal of ground at a good pace.