

THE OFFICE OF RAIL AND ROAD
181st BOARD MEETING
Thursday 29 April 2021, 09:00 – 13:00
By MS Teams

Non-executive members: Declan Collier (Chair), Stephen Glaister, Madeleine Hallward, Anne Heal, Bob Holland, Michael Luger, Justin McCracken, Graham Mather

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

In attendance: Dan Brown (Director, Economics, Markets and Strategy), Russell Grossman (Director of Communications and interim Director, Corporate Operations), Juliet Lazarus (General Counsel), Tess Sanford (Board Secretary)

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The Chair welcomed everyone to this thirteenth video-conference meeting of the ORR Board
2. There were no apologies.

Item 2 DECLARATIONS OF INTEREST

3. No new interests were declared.

Item 3 APPROVAL OF PREVIOUS MINUTES AND MATTERS ARISING

4. The board approved the minutes of the meeting.
5. The board noted updates on the two outstanding actions.

Item 4 CHIEF INSPECTOR'S MONTHLY REPORT

6. Ian Prosser highlighted these issues in his report: discussions with NR on their response to ORR's initial findings on Carmont; Eurotunnel's slow progress in meeting conditions on the Eleclink project. *[item redacted pending completion of report]*. He reported that most COVID-19-related issues in the industry were being resolved; there remained a potential risk around driver numbers in relation to their willingness to undertake necessary training. He highlighted the challenge of managing passenger numbers safely as more returned to the network given existing social distancing guidance. Ian also updated progress on prosecutions, the overall system risk situation and the watching brief on the potential safety issues that could follow resource constraint on the networks, particularly the London Underground.
7. The board discussed *[item redacted pending completion of report]* and reviewed all aspects of ORR's regulatory relationship with the company, including public health regulations enforcement at the Tunnel, non-payment of fines on these and the safety levy. John Larkinson would meet their Chief Executive next week and would make clear the significant concerns of the Board. The company was likely to be named in the Chief Inspector's Annual Report (CIAR) in July. The UK delegation to the IGC had received a CTSA

paper clearly setting out the safety concerns and appeared to be aligned with ORR's position.

8. The board also discussed: the apparent high number of incidents on one tram network [**Action 04/01: IP to revert on any systemic issue on that network**], progress on disputes around driver controlled operations; the ongoing situation with passenger/train interface safety on the London Underground; prosecutions; mixed but generally good progress on improving track worker safety across the NR regions; high levels of compliance on mask wearing among passengers and the encouraging reports on the impact of new cleaning regimes in preventing transmission of the virus. The board discussed what projections might be available for passenger numbers returning toward pre-pandemic levels, noting that a preference shift to other transport modes such as buses and cycling would have an impact. The board noted the long term challenge of operating safe rail and underground networks in a fiscally constrained environment. ORR was continuing work to look at asset sustainability, management and maintenance of the London Underground.
9. Understanding and evidencing the cost of maintaining safe networks (and the risk of unthinking cost cutting) would be important for the operators (particularly LUL and NR) in their negotiations with government over future funding packages.

Item 5 CHIEF EXECUTIVE'S REPORT

10. John Larkinson updated the board on recent developments and took questions on the written report.

This report is redacted from the published version as time-sensitive and covering confidential issues.

Item 6 HIGHWAYS UPDATE

15. Graham Richards reported on the re-start of road user satisfaction surveys, and the positive response from Highways England on ORR's challenge on their capital delivery programme. The board were updated on meetings with the new Chair and interim CEO and what was known about CEO recruitment.
16. The board discussed the important policy development area of road funding and vehicle related taxes where shifts toward electric vehicles were reducing tax income so a change in approach was needed. After discussion, the executive agreed to scope the areas where ORR might be able to add to the evidence base or otherwise help frame the debate in this important area – possibly in the context of the funding package for RIS3. [**Action 04/03 – Graham Richards**]
17. The board noted that an oral report on progress of the All Lane Running Review appeared later on the agenda. In parallel with that work, the team were undertaking a deep dive to understand how HE judged effectiveness of technology in place for managing the network, what metrics they relied on and how it was managed and maintained. That report had been promised to the TSC as part of our evidence and would be published in due course.

Item 7 QUARTERLY BUSINESS REPORT

Lucy Doubleday joined the meeting for this item.

18. Lucy Doubleday introduced the item. The overall underspend for the year was 12% against budget of which up to 5% was not obviously related to the impact of the pandemic. The executive committed to re-focus on budget targets in the current year to get closer to a 2% maximum underspend. The board noted the level of vacancies, the reasons for delayed or cancelled consultancy spend and the relatively low level of training spend. The board considered whether ORR's ability to run with a high level of vacancies (circa 30) reflected an over-generous headcount. The executive described some areas of activity where there was significant pressure on key people and ORR had to make difficult choices about where best to deploy those skills. There was a general commitment to focus on filling vacancies as quickly as possible and to keeping resources under close review.

Item 8 GOVERNANCE – RECRUITMENT OF AN INDEPENDENT MEMBER FOR THE AUDIT AND RISK COMMITTEE

19. The board approved the process of recruitment as proposed. **[Action 04/04]**

Item 9 COMPETITION

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

20. The team introduced the paper which set out the issues in the market for signalling projects in the UK. The paper included a recommendation not to make a market investigation reference to CMA because, on balance, ORR would be better placed to take forward work to improve competition in the market. Remedies would involve balancing short term cost and performance risk, against longer term promoting of competition.
21. The board discussed the proposal noting the size of the market and the potential cost to Network Rail of the duopoly continuing as the digital railway developed. The board particularly tested whether ORR's intervention would make a sufficient difference over time compared to a CMA investigation and the option of a future referral if new information came to light. The board noted related issues in the maintenance market and the (current) limited involvement of third parties.
22. The board noted the importance of clarity in announcing the decision and follow up actions, given this was a high value market with entrenched problems.
23. The board endorsed the proposal not to make a Market Investigation Referral.
24. The board noted the significance of the cost of signalling in the context of NR's wider funding and asked for an overview of NR's strategy to help them understand the risks associated with the future programme. **[Action 04/05 – to be included in the assessment of NR's base plan for CP7]**

Item 10 PR23 STRATEGY

*Catherine Williams joined the meeting for the next three items
The detail of PR23 items is redacted from the published minutes as policy in development*

Item 11 PR23 – PLANS FOR LAUNCH

Siobhán Carty and Matt Foster joined the meeting for this agenda item.

27. Siobhán Carty introduced the paper and highlighted the three key messages for the launch letter: the importance of PR23 in an uncertain environment, the continuity between CP6 and CP7, the importance of clarity for key accountabilities on investments.
28. The board noted the opportunity to include underlying messages on: the importance of sustainability; how the review would support the twin objectives of improving the passenger experience and achieving overall value for money; the way that a flexible process would enable a sensible response to industry change and uncertainty and allow flex during CP7.
29. The board noted the proposals for the launch.

Item 12 PR23 – REVIEW OF ACCESS CHARGES

Carl Hetherington, Will Chivers and Pedro Abrantes joined the meeting for this item.

30. Following on from the discussion around Schedule 8 in March, the paper set out plans for an initial consultation on ORR's PR23 review of access charges in July. This consultation would include proposals for some incremental reforms to some aspects of the existing charging framework, where our initial work suggests there is potential scope to improve their effectiveness. It would not propose any major changes to the charging framework for CP7, or proposals to introduce new charges. This work has been informed by early engagement with industry during the first half of 2021, including through workshops with passenger and freight operators.
31. The board noted the proposal and approved publication of the initial consultation in July, subject to sign-off by the Executive Committee. The Board discussed the risk that charges would be seen as irrelevant under some proposed industry models. Catherine Williams agreed that any proposed changes to the charging framework needed to be proportionate and applicable in any industry structure, and that the consultation will need to demonstrate the ongoing relevance of charges. The board asked for a Q&A of potential issues to be shared prior to publication of the launch letter.
[Action 04/06 – Catherine Williams]
32. The Chair and Chief Executive briefed the board on the latest situation in relation to the draft white paper and minor issues with the text which had emerged since the previous draft. Overall they were broadly content with the current version, although there were still some changes needed. There was no shared plan on what would happen following publication – although legislation was not expected to be passed until 2023. ORR continued to advise where it could. The work done by the ORR team to help new senior staff in DfT understand the PR23 process and other aspects of the industry framework had been very well received. This understanding would be very important to frame discussions over the next few months.

Item 13 NETWORK RAIL ENHANCEMENTS

Matt Wikeley joined the meeting for this item.

33. The paper updated the board on how the CP6 enhancement budget is being spent and the current issues being debated – as wider context for PR23 and rail reform. The paper provided an overview of the DfT and Transport Scotland funded enhancement portfolios including governance, significant projects, spend profile and current issues. It described the linkages with other rail projects outside the enhancement portfolios, such as HS2.
34. The board noted that DfT planned to publish a summary of schemes in development in May. It was clear that wider policy priorities such as decarbonisation and levelling up would also have implications for decisions on enhancement spending.

Item 14 HIGHWAYS – UPDATE ON ALL LANE RUNNING REVIEW

Feras Alshaker joined the meeting for this item.

This item to be redacted from the published version of the minutes as relating to the development of a report for future publication.

Item 14 ORAL UPDATES FROM ADVISORY PANELS, AND FEEDBACK FROM BOARD COMMITTEES

39. Anne Heal briefed the board on useful discussions at the recent Consumer Panel meeting, the first with a refreshed membership. The report on the ‘smarter information programme’ promised as a board action in December would not be available until 2023, so a summary of the current situation would be circulated **[to complete Action 12/03]**.
40. Bob Holland reported on the Audit and Risk Committee’s meeting on Monday and very good discussions on the 6 monthly horizon scanning and quarterly risk reports.

Item 15 ANY OTHER BUSINESS

41. The board noted the items below the line including the forward programme quarterly risk report (as seen by the ARC), and the quarterly progress report against ORR’s Diversity and Inclusion Strategy.
42. The next meeting would be in May and would be held in Cabot Square, as long as there was no delay to the gradual lifting of lockdown.
43. The chair asked board members to look at a video for the campaign ‘*think before you link*’ which had been circulated in the CEO’s report to help inform people about an increased threat level from state sponsored hackers.

The non-executive directors held a short review of the meeting privately.