

For publication on ORR website

Office of Rail Regulation

**Approved Minutes of the 28th ORR Board meeting held on
12 October 2006 (10:00 – 15:10) at ORR's Glasgow Office,
375 West George Street, Glasgow, G2 4LW**

Board Present:

Chris Bolt	Chairman
Michael Beswick	Director Rail Policy
Peter Bucks	
Bill Emery	Chief Executive
Jane May	
Jim O'Sullivan	
Richard Goldson	

In attendance:

Rob Andrews	Director Rail Safety Policy (items 1-9)
Shamus Kenny	Board Secretary
Juliet Lazarus	Director Legal Services
Michael Lee	Director Industry Monitoring & Analysis
Lynda Rollason	Director Corporate Services
Sarah Straight	Director Rail Markets Passengers & Freight
John Thomas	Director Regulatory Economics
Linda Williams	Chief Inspector
Paul McMahan	Deputy Director Regulatory Economics (item 8)

Item 1: Welcome and apologies for absence

1. The Chairman welcomed everyone to the Board's first meeting in Scotland, in particular Richard Goldson who was attending his first meeting since joining the Board as a non-executive director on 2 October 2006.
2. Apologies for absence were received from Jeffrey Jowell, who was engaged with work for the Venice Commission.
3. A useful meeting had been held with Rail Inspectorate colleagues ahead of the meeting. While in Scotland, the Board would meet informally with Transport Scotland and a host a dinner with industry stakeholders on 12 October, before visiting railway facilities in Glasgow and Edinburgh on 13 October 2006.

Item 2: Declarations of interest

4. The Chairman, as the Public Private Partnership Arbiter, had an interest in some of the safety issues relating to London Underground Limited contained in the Chief Inspector's report but there were no issues of conflict.
5. There were no other interests for Board members to declare relevant to the agenda.

Item 3: Approval of minutes of Board meeting of 18 September 2006 for publication

6. The Board approved the minutes of its 27th meeting on 18 September 2006 and authorised the Chairman to sign them. The approved minutes would be published on ORR's website.

Item 4: Matters arising (not taken elsewhere on the agenda)

7. The Board noted progress on actions agreed at previous meetings and updated the table.

Item 5: Chairman's Report

8. The Board noted the Chairman's activities over the past month, which included:

- Meetings with Nigel Harris (Rail Magazine) and the Deputy Premier of Western Australia.
- A G5 meeting. The Chief Executive likely to represent ORR at future meetings.
- Giving a keynote speech at the 'Economists in Regulation and Competition' conference, speaking at the annual dinner of the OXERA Rail Policy Group, and attending a CRI lecture by Jon Stern on 'Evaluating Infrastructure Regulators.'
- ORR events including chairing the Board committee on the review of market(s) for passenger rolling stock leasing, attending the periodic review and safety regulation committee meetings, and having a day on the railway with a rail inspector, joined by Board colleagues.

9. A joint Board and executive discussion on ORR's long-term vision for the railway would be held on 27 November 2006.

Item 6: Chief Executive's report

10. The Board noted updates on industry safety developments including industry preparations for ROGS (most of which came into force on 1 October 2006); progress on RSSB governance discussions; and work to develop a position statement on level crossings.

11. The RAIB recommendations handling process had come under critical scrutiny from industry. A senior level meeting with industry representatives would be held to ensure that all issues of concern were raised so that they could be addressed. Following a high level liaison meeting with RAIB, it has also been agreed that the respective legal teams would meet to discuss the legal issues. Depending upon progress, the November 2006 Board would either receive a progress report or substantive proposals to consider.

12. The Board noted the other updates on key policy and office activities over the previous month. These included:

- Railway performance in period 6 was reasonable, with PPM held below 90% by high levels of points and signal failures and a large number of lightning strikes (a low-cost way of reducing the impact of these has been found and is being implemented). The annual MAA rose again by 0.1% to reach 87.4%.
- Good progress had been made in taking forward the information network conclusions. The aim of the work was to improve industry decision-making through better quality all industry data.
- Good progress was being made in ORR's review of the market(s) in passenger rolling stock leasing. The Board committee would meet on 25 October to agree recommendations to put to the Board in November 2006.
- ORR had granted contingent rights to GNER for 5 additional services to Leeds on the east coast main line subject to resolution of the two safety caveats and confirmation from GNER when it intended to start running the services. An application for firm rights to run the services from May 2007 is in due course.
- Grand Central still aimed to commence its services on the East Coast Main Line on 10 December 2006, though this was dependent on a number of issues being resolved including rolling stock availability. Although these were not believed to raise any competition or regulatory issues, the Board asked that the position should be kept under review and appropriate action taken if required.
- ORR's annual assessment of Network Rail was published on 29 September. The results of an independent assessment of the recovery trajectory proposed in the joint performance Improvement plan for the great western mainline would report in mid-November 2006. The full timetable for the Sandbach-Wilmslow section of the line would not now be reinstated by 10 December 2006 due outstanding testing and data problems with the new signalling system. Network Rail could not commit to a specific date but expected commissioning of the system to be staged over a series of weekends between December and Spring 2007, when full functionality (over and above that required for the December timetable) would be introduced.
- The overall T-12 picture was noted. All TOCs that offered passenger bookings should be able to meet the informed traveller requirements to open bookings at T-9 (except for Virgin weekend services affected by the Sandbach-Wilmslow signalling upgrade). Special measures had been triggered that were expected to achieve full T-9 compliance, including the Virgin TOCs, for the two weeks around Christmas 2006. Network Rail was planning in the future to upload information at T-14 to improve resilience in the process.
- A stakeholder survey had been commissioned and the results would be reported back to the Board after January 2007.

- The Board noted the communications, integration, finance, business planning and human resources reports.

13. The Board noted that Network Rail had erroneously disposed of land at East Grinstead in June 2006 without first seeking ORR's consent. ORR had refused disposal of the land two-years previously because there was an alternate rail-related use. Network Rail had wrongly considered that it could dispose of the land for rail-related use to the Bluebell Railway without making a further submission. The Board agreed that while this did represent a licence breach, it would not take any enforcement action or levy a penalty as: further investigations by Network Rail had confirmed that it was a one-off incident, Network Rail had not profited from the sale, and the request would have been granted if it had been properly submitted. As this was a past breach the issuing of a section 55(6) notice was not required.

14. ORR had been considering reducing the regulatory burden on Network Rail in relation to land disposal issues. However, before Network Rail was given any more responsibility in this area it would need to demonstrate the effectiveness of its internal compliance procedures. Reporters would be used to audit the processes more frequently and report back to ORR.

15. A key issue in the recent East Coast Main Line access considerations had been that franchise commitments had been entered into before the franchisee knew if capacity was available or would be approved by ORR. ORR had since discussed proposals with DfT and Network Rail to try and give more information about the availability of capacity at an early stage in the franchising process to potential franchisees, before they made their bids, and to open access operators, who would be able to take forward their plans with a greater degree of certainty. At its September meeting (minute 9) the Board had acknowledged the advantages of identifying potential issues and risks at an early stage but it did not want the approach to close off options for open access operators.

16. ORR had written to the industry requesting information from anyone with aspirations or intentions to apply for track access rights on network affected by the midlands franchises remapping. A number of responses had been received, including four potential open access routes. The responses were being analysed, working with Network Rail and DfT, to ensure a shared understanding of capacity. Once this initial analysis was completed it would be reported to the Board. ORR would then write to the industry to set out the process for considering capacity availability and reaching any preliminary conclusions. This work did not preclude an application by any potential operator at a later stage, which would have to be looked at on its merits. The Board agreed that consideration should be given to including things in the franchise process that would encourage bidders to think about safety issues.

Item 7: Chief Inspector's report

17. The Board noted the Chief Inspector's report. This provided information on: overall health and safety performance, HMRI work activities for 2006-07 to support its priorities, statutory duties, formal enforcement, significant meetings, industry progress reports, update on RAIB reports and

recommendations, RSSB formal inquiry reports; and joint working with other ORR colleagues.

18. The Board noted that:

- Network Rail was sustaining its safety performance at a level likely to show a broadly improving trend over the year, though with variations in different risk areas. A half-year review in October 2006 would identify any emerging trends that required attention.
- LUL's performance was noted, with no significant incidents on the LU network in the period and health and safety performance trends remained stable. Subjective analysis of the LUL precursor figures for the previous 10 years would be used against the next quarterly report to identify trends and provide context to the figures.
- HMRI would meet with the infrastructure maintainer and tram operating companies to address some concerns on the Croydon Tramlink.
- HMRI was in discussion with each ROSCO to discuss how they discharged their Section 6 duties under the Health and Safety at Work Act and in particular the procedures they had in place to ensure that safety related modifications were implemented. The meetings had been prompted following discussions with TOCs and ROSCOs to address a long-standing problem. The Board wanted the problem to be resolved quickly.

Item 8: Periodic Review

19. The Board discussed the paper and presentation on progress of the Periodic Review 2008 (PR08) project. A fully audited formal programme management approach was being taken to the delivery of PR08. The Audit Committee in December 2006 would consider the first internal audit report on the project including the management response to the medium and low-level recommendations being made.

20. The Board noted the key dates for its engagement in PR08 decisions and agreed that non-executive directors would be invited to attend the periodic review committee meetings that went through the technical details.

21. The Board noted the overview of the overall PR08 programme and progress against ORR's aims and objectives. The overall aim of PR08 was "to ensure an outcome to the review which secures value for money for users and taxpayers, by determining the level of network Rail access charges and outputs in a way that balances the interests of all parties".

22. ORR's long term vision for the mainline railway, as set out in its corporate strategy was "a successful partnership of Network Rail, operators, suppliers and funders working together to meet the needs of passengers and freight customers and deliver a safe, high performing, efficient and developing railway". A series of specific objectives covering access charges, outputs and improving incentives were also agreed for PR08.

23. The Board supported the outline perspective on how Network Rail, working with its partners, should look and behave in 2013 as a result of its general progress and the changes brought about by PR08.

24. The Board agreed the broad form of, and process for signing-off, ORR's preliminary advice to DfT and Transport Scotland in November 2006. The uncertainties in the ranges would be made explicit in the advice given.

25. The proposed approach to encouraging Network Rail to raise risk capital and for concluding on other aspects of Network Rail's financial framework was discussed and agreed.

26. The Board agreed the proposed form and content of ORR's advice to Ministers and framework for setting access charges publication for February 2007 and the proposed approach to passenger open access charging, which was a continuation of the current approach.

27. The Board agreed to a further consultation on a reservation charge and to the likely deferral of a decision on this charge until later in PR08 pending further internal work and the outcome of the consultation.

28. The Board supported the approach being taken for freight charges. The Board was meeting freight industry representatives on 20 November 2006 to hear their views on industry issues, including charges and their approach to safety. The periodic review committee would agree the final content of the freight charges consultation, which would be published after the November 2006 Board meeting.

29. The Board was pleased with the progress being made on the PR08 project but recognised the scale of work still to be undertaken.

Item 9: Safety regulation strategy / priorities ORR

30. The Board discussed and supported the proposed principles and thinking that would underpin the development of ORR's health and safety work plans for 2007-08. ORR would seek to ensure no detriment to existing safety standards while the industry dealt with major changes such as the implementation of ROGS.

31. The approach to ORR's health and safety responsibilities built on previous practice. It focussed efforts on the most serious risks, areas where ORR could exert the greatest influence and areas with the biggest scope for improvement. It supported ORR's commitment to focussed and effective regulation based on evidence, being proactive, and encouraging industry to take risk-based decisions within the context of a robust safety management system. The focus was on what was reasonably practicable in the context of encouraging continuous improvement in health and safety performance with an awareness of cost.

32. The key inspectorate priorities for 2007-08 included the effective implementation of ROGS by duty-holders to achieved satisfactory safety standards in practice, responding to the increasing number and significance of RAIB recommendations and refining ORR's handling process. It would also

follow up the most important aspects of Network Rail's, TOC / FOC and LUL inspection plans, and ORR's statutory work.

33. Two other workstreams were being developed that related to this work. The first was the development of a cross-office project, initially contributing to the periodic review, to determine how ORR could best contribute to ensuring value for money from the main line industry, while ensuring that any necessary revision to standards or approach did not lead to safety detriment: an example would be considering how station design and enhancements like the type and location of ticketing machines took into account growth and affected customer flow and crowding. The second was to consider the overall structure of ORR and identify where duplication could be avoided. These work-streams could have an eventual bearing on the detailed health and safety related work plans for 2007-08.

34. The Board considered further work to develop a longer-term health and safety strategy from which future work plans would be drawn up to be a priority for 2007-08. The strategy would be informed by the Board's discussion on its long-term vision for the industry, which would include safety implications. A series of policy discussions would then identify the key issues to be addressed and the most appropriate regulatory approach to take to secure that vision and deliver the best outcomes for the railway.

Item 10: Stations Policy

35. ORR had produced a stations code and an investments framework to encourage and facilitate the industry to work together to address structural issues at stations, and to look at opportunities for station improvements and developments. It was also developing with Network Rail new condition measures that covered all key assets at a station, including those for which Network Rail is directly responsible.

36. The Board noted progress on the development of a policy framework for stations going forward to the Periodic Review (PR08). The key elements of this were:

- to continue to favour an industry-led, bottom-up, locally-determined approach to station improvements. This would encourage local variations to suit particular circumstances that best meet the needs of passengers and leave planning and business cases for enhancements to be considered at a local level. ORR would specify clear outputs across the whole station estate as part of the CP4 determination in late 2008.
- to assume for CP4 that there would not be major changes in the funding / responsibility structure for stations;
- to press Network Rail to develop a more coherent asset management approach to the whole of its station estate;
- to encourage Network Rail and TOCs to work together toward a more asset management / market driven policy developing the concept of joint station improvement plans for each route / franchise.

Item 11: Board committee minutes

37. The Board noted the minutes of its committees that had met since the last Board meeting.

Review of Market(s) Passenger Rolling Stock Leasing: 21 September 2006

38. The Board noted the issues considered by the committee. The committee would meet again on 25 October 2006 before recommendations were submitted to the November 2006 Board.

Safety Regulation Committee: 1 October 2006

39. The committee had discussed: the development of a regulatory (safety) strategy (see item 9 above), the discharge of ORR's duties in relation to safety research, an update on Network Rail's workforce health management, RAIB recommendation handling process, its forward agenda, and the standing reports on incidents / fatalities and safety report from RSSB.

Item 12: Any other business

40. None.

Item 13: Date of next meeting

41. The next ordinary meeting of the Board would be held on 20 November 2006 at ORR's head office at One Kemble Street, London.

Chris Bolt
Chairman

Minutes approved by the Board on 20 November 2006