

For publication on ORR website

Office of Rail Regulation

Approved Minutes of the 34th ORR Board meeting held on 22 May 2007 (10:00 – 14:20) at ORR's Head Office, 1 Kemble Street, London, WC2B 4AN

Board Present:

Chris Bolt	Chairman
Michael Beswick	Director Rail Policy
Peter Bucks	Non-Executive Director
Richard Goldson	Non-Executive Director
Jeffrey Jowell	Non-Executive Director
Michael Lee	Director Access, Planning & Performance
Jane May	Non-Executive Director
Jim O'Sullivan	Non-Executive Director
John Thomas	Director Competition & Regulatory Economics
Linda Williams	Chief Inspector of Railways

In attendance:

Shamus Kenny	Board Secretary
Juliet Lazarus	Director Legal Services
Samantha McClelland-Hodgson	Assistant Board Secretary
Andy Burgess	Head of Network Regulation (item 11)
Andy Lewis	Corporate Governance and Business Planning Manager (item 13)
Lynda Rollason	Director Corporate Services (items 13-15)
Sian Lewis	Head of Communications (item 15)

Item 1: Welcome and apologies for absence

1. The Chairman welcomed everyone to the meeting. Apologies for absence had been received from Bill Emery, Chief Executive.

Item 2: Declarations of interest

2. Michael Lee's brother worked for Transport for London, though he had no connection with the work involving the East London Line track access application. The Board agreed that Michael Lee would be able to take part and vote in the discussion on the East London Line track access option (item 10).

3. Jim O'Sullivan had been appointed Infrastructure Services Director (designate) at Central Networks, part of the Eon group. His entry on the register of interests would be updated to reflect this. The Board agreed that there were no items on the agenda that would require him to withdraw from the meeting.

4. There were no other interests for Board members to declare relevant to the agenda.

Item 3: Approval of minutes of Board meeting of 17 April 2007 for publication

5. The Board approved the minutes of its 33rd meeting on 17 April 2007 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)

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

Item 5: Board decisions taken in correspondence: Senior Civil Service (SCS) pay strategy

7. On 24 April 2007, the Remuneration Committee agreed to recommend to the Board a pay strategy for ORR's SCS staff in 2007. This was sent to non-executive members of the Board on 27 April 2007 who approved the strategy on 1 May 2007. The strategy was then circulated to SCS staff.

8. The Remuneration Committee would meet again on 22 May 2007 (after the Board meeting) to consider the individual pay and bonus awards for SCS staff. It would then recommend these for approval in correspondence by non-executive members of the Board.

Item 6: Chairman's Report

9. The Board noted the Chairman's activities since the last Board meeting, which included:

- meeting with Sir David Rowlands (DfT Permanent Secretary);
- attending: a CRI lecture by Ian Byatt on the regulation of publicly owned companies, an Indepen seminar on the pros and cons of combining economic and safety regulation, a PTS training course, attending the joint ORR and Network Rail Board dinner, and speaking at the Transport Group quarterly meeting;
- briefing journalists on 26 April on ORR's decision to refer the passenger rolling stock leasing market to the Competition Commission;
- visiting Liverpool with members of the Executive, to meet Network Rail, Merseyrail and Merseytravel.
- giving a 'Team Talk' to about 50 members of the DfT Rail Group; and

- attending regular meetings of PRC and SRC, and also attending the Remuneration Committee meeting on 24 April 2007.

10. The Board noted his planned activities for the following month and progress with the internal review of the effectiveness of each main Board committee.

Item 7: Chief Executive's report

11. The Chief Executive's report provided an update on industry and ORR activity over the previous month, including a year-end management summary report.

12. The Board noted progress on joint DfT/ORR discussions on the practicalities and issues relating to ORR carrying out regulatory and appeal functions on behalf of the Intergovernmental Commission (IGC). A draft memorandum of understanding relating issues including to the appointment of members to be nominated by ORR and funding arrangements was being reviewed.

13. Statutory guidance from the Secretary of State had now been received. This would be published on ORR's website alongside the guidance received from Scottish Ministers and drawn to the attention of ORR's key stakeholders.

14. The Board noted progress on discussions with the Better Regulation Executive to explore more fully the implications of the draft Regulatory Enforcement and Sanctions Bill, which would implement some of the alternative regulatory penalties recommended by Professor Macrory in his recent report. Formal consultation on the draft Bill and the draft Compliance Code commenced on 15 May. The Board would discuss ORR's response in July ahead of the 15 August 2007 deadline for responses. A general information paper on better regulation covering the various BRE driven reviews and Codes, and the simplification agenda was being developed for internal use.

15. The Board noted updates on key policy and office activities over the previous month, progress on the Periodic Review 2008 work programme and ORR's ongoing assessment of Network Rail's 2007 business plan.

16. The PPM outcome for 2006-07 was 88.1%, 1.7% up on the previous year. It remained at this level after period 1, 2007-08. PPM for the period itself was high (91.3%), which matched an equally good result for the same period in 2006-07.

17. Network Rail delays (passenger and freight) during 2006-07 were static compared with the previous year coming just within the ACR03 regulatory target. Delays caused by passenger operators fell by 7% during the year, leading to an overall performance improvement. Network Rail had reported that delays that it considered to be 'under its control' (for example asset failures and operational errors) continued to fall, but performance issues had arisen due to issues where it had less control (for example weather and external factors). ORR was assessing this view but expected Network Rail to accept full responsibility for managing the performance risk from these sources. One notable achievement had been the reduction in the number of

temporary speed restrictions to around 350, the lowest level for at least 7 years.

18. Most, but not all, of the 2007-08 Joint Performance Improvement Plans had been signed off. Period 1 delay figures showed a continuation of the recent trend, with TOC delays better than target almost everywhere (except GNER) but Network Rail missing its target this period largely due to asset-related failures.

19. ORR had referred the leasing of rolling stock for franchised passenger services to the Competition Commission (CC) on 26 April 2007. The CC was required by statute to publish its final decision by 25 April 2009. The Board noted the appointment of inquiry members and that the CC had called for all interested parties to register with it. To date it had not published its draft timetable. ORR had provided all the documents it had received during its investigation and attended some meetings with the CC.

20. ORR had received a high volume of complaints following recent decisions by both Arriva Trains Wales and South Western Trains to increase the prices of certain categories of unregulated saver fares. Passenger Focus and the Transport Salaried Staffs' Association had argued that the rises were abuses under competition law. ORR assessed each case on its merits but to date had found no evidence to support opening an investigation. ORR was assessing the tests and evidence it required to successfully conclude an investigation on excessive prices under the Competition Act. It would then issue a public statement empathising with the concerns of passengers, referring to the role of DfT in setting fares policy, and setting out what ORR could and could not do under competition policy, including the evidence hurdle required to pursue fare increase issues under the Competition Act.

21. The Board noted progress on appeals to ORR. ORR had decided to rehear First Capital Connect's case for compensation for possessions to renew overhead electrification equipment after it became clear that the parties had raised various arguments not addressed fully by the Access Disputes Panel.

22. The Board noted details of the assessment by Network Rail and First Great Western on the western main line performance outcome 2006-07, and their plans for improvements in 2007-08 including a 16% reduction in delay minutes compared with the 2006-07 outturn. ORR would establish regular monitoring arrangements. The Board would receive a report in June 2007 on an assessment of whether Network Rail had breached its licence in relation to western main line performance and report on 'lessons learned'.

23. Network Rail was due to announce its 2006-07 interim results on 24 May 2007, including its senior staff bonus payments. Its Remuneration Committee had confirmed that the bonus payments had been substantially reduced due to the company missing reliability and financial targets and to account for corporate responsibility for the Grayrigg derailment.

24. The Board noted the management summary information for quarter-four of 2006-07 and the full year figures. These included performance against business plan and budget.

Item 8: Chief Inspector's report

25. 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, RI outputs, and industry progress reports and current issues. There had been no RSSB formal inquiry reports in this period.

26. The Board noted the highlights from Network Rail's internal Safety & Environment Accident Report for Period 13 (4-30 March 2007). The 2006-07 work year ended with no Network Rail or contractor fatalities occurring. There had, however, been a track worker fatality in the current period, which Network Rail was investigating at a high level. The accident frequency rate for the year had declined, despite 6 major and 17 minor injury RIDDOR reports in the period. There were two derailments (without injury). There had been 20 broken rails in the period (compared with 39 in Period 13 in 2005-06) amounting to 190 broken rails during the 2006-07 reporting year, a 40% improvement on 2005-06 and the lowest number on record.

27. The Board noted details of safety certificates / authorisations that had been issued since the last meeting and those being considered. ORR had been facilitating discussions between Network Rail and ATOC to resolve differences of opinion on the duty of co-operation and route acceptance: ORR would authorise Network Rail's Safety Management System but insist on further action if the issues had not been satisfactorily resolved.

28. Having reviewed consultation responses, ORR had agreed to Network Rail's request to remove Train Protection and Warning System (TPWS) at specified Permanent Speed Restrictions where it had been demonstrated that TPWS provided no safety benefit in mitigating over-speed risk. ORR would consult in June 2007 on the evaluation of The Railway Safety Regulations 1999 and was currently considering a number of applications for exemptions from parts of those regulations.

29. Rail Accident Investigation Branch (RAIB) had published four reports in April 2007. ORR's third quarterly progress report covering the three months to 31 December 2006 had been sent to RAIB.

30. The Board noted details of incidents and investigations and formal enforcement action being taken or considered. This included Kier Construction Ltd pleading guilty to an HSW offence and being fined £5,000 plus costs: the offence related to an incident on 10 October 2006 at Manor Park, London where its actions exposed a gang to severe risk from a train and where there was a risk that the train could have derailed.

31. Progress on issues arising from the Railways and Other Guided Transport Systems Regulations (ROGS) transition project was noted.

Item 9: ORR's strategic risks

32. ORR used a three-tier risk management system comprising: a strategic risk register (SRR), an operational level risk register (OLRR), and directorate risk registers (DRRs). The SRR and OLRR were reviewed by the Audit Committee four times a year and by Directors' Group each month.

33. The Audit Committee would submit its annual report to the Board in June 2007. This would comment on the good progress being made by ORR in addressing risk and incorporating it into its decision-making processes.

34. The Board reviewed the SRR and noted the significant changes made since its last review on 20 November 2007. It confirmed that the register covered the strategic risks faced by ORR and noted the process for managing and mitigating them.

Item 10: East London Line track access option

35. On 17 April 2007 (see minutes for item 8 of that meeting), the Board had considered a joint application from Network Rail and Transport for London (TfL), under section 18 of the Railways Act, for a 30-year track access option to reserve a quantum of access rights for TfL's planned East London Line services (ELL). It had been satisfied that an access option was appropriate on the basis of ORR's current criteria, but requested further work by the executive to determine the appropriate duration of the option, to achieve the appropriate balance between the expected benefits of the option and the opportunity costs of pre-allocating some network capacity for many years to come.

36. As part of the further work, the executive had discussed wider track access option issues, including how the different circumstances, constraints and funding issues of applicants were considered against the set criteria. In addition to the issues addressed in ORR's recent track access consultation document, it had identified, and the Board supported, the need to develop a buy-back option to apply to any track access option longer than ten-years: this would provide an applicant with some security on its investment, while maintaining the ability to free up parts of the network if a more beneficial use was later identified. The industry would be consulted on this proposal. Any further material changes to the original consultation proposals would be subject to Board approval.

37. The Board discussed the ELL track access option application. Following a thorough review, including consideration of the issues associated with the long term allocation of capacity, it was minded to approve a track access option of 30 years containing a 'buy-back' provision that would become applicable ten years after first operation of the services. This provision would provide for Network Rail to buy back access rights from TfL subject to the payment of suitable compensation.

38. As no buy-back provision currently existed. ORR would work with TfL and Network Rail to develop an acceptable provision for the ELL track access option. Bearing in mind the complex issues that this was likely to raise, ORR would aim to reach agreement in about six months. However, given the

particular circumstances surrounding the project, if it was not possible to develop an acceptable buy-back provision for the ELL access option within a reasonable period, ORR would be minded to approve a track access option of 20 years duration without a buy-back provision.

39. The applicants would be advised of the decision, which would include an access charges re-opener consistent with the current model track access contract. ORR would be in a position to issue directions once it was content with the drafting of the contract and a number of outstanding issues had been resolved.

Item 11: Portsmouth resignalling – potential breach of network licence by Network Rail

40. The Board considered a potential licence breach by Network Rail in relation to a signalling renewal project in the Portsmouth area. In addition to the paper circulated with the agenda it had also received copies of meeting notes and correspondence between ORR and Network Rail.

41. Network Rail had undertaken a major programme of various resignalling projects to be carried out over the next few years. Following difficulties at Sandbach-Wilmslow in relation to one of the projects, ORR instructed Network Rail to take adequate account of the effect of the risks on third parties and to apply lessons learnt to future projects. However, ORR emphasised that it did not want Network Rail to be risk averse and encouraged it to consider innovative approaches to maintaining and renewing the network.

42. In relation to resignalling work to be carried out on the Fratton to Portsmouth line, Network Rail contracted Siemens to carry out the work. A series of published dates for completion of the work have overrun significantly and since February a reduced service has been operating on the line. A completion date for the work has not yet been agreed with train operators and the completion date was not expected to be before September 2007.

43. ORR was concerned about the robustness of the series of decisions that Network Rail took between September and December 2006 to proceed with the work. In particular ORR believed that it had not adequately assessed the different levels and impacts of the risks involved, discussed these with train operators or developed adequate contingency plans to mitigate the risks. The Board requested further information before reaching a decision on whether there was a breach of condition 7. of Network Rail's network licence. The further information would be submitted in correspondence for the Board to make a decision on whether Network Rail was in breach, and any corresponding penalty.

44. The Board agreed that once difficulties with the project had come to light in early February 2007, Network Rail had generally achieved the standard of a best practice operator in seeking to resolve the difficulties and to complete the project. Network Rail was taking all reasonable steps to complete the work and was working with operators to agree the timing of possessions to complete the work. The Board was therefore minded to conclude that there was not a continuing breach; subject to written confirmation from Network Rail

of the milestones in the project plan going forward, of the date that full services between Fratton and Portsmouth would be restored, and of the action it was taking to apply the lessons of Portsmouth.

Item 12: Network grants and track access charges in CP4

45. The Board discussed ORR's proposed policy on network grants and track access charges in CP4. It agreed to allow DfT and Transport Scotland to continue to pay network grants to Network Rail in CP4, which would replace an equal amount of Network Rail's income that would otherwise be paid by fixed track access charges. The level of the grants would continue to be constrained by the Government's investment and market body tests and the grant schedule would be set out ex ante and be fixed for the duration of CP4.

46. ORR would now have further discussions with, and write to, DfT and Transport Scotland to explain and confirm its policy. ORR would not be able to agree the specific grant payments until later in PR08, when it made its determinations on Network Rail's CP4 revenue requirement and had formed a view on the efficient level of expenditure and income. ORR would consult on this issue as part of a wider PR08 consultation during summer 2007. If the detail of the proposals caused serious problems for either DfT or Transport Scotland, the Board would give the policy further consideration.

Item 13: Draft of Annual Report 2006-07

47. The Board noted the draft annual report and agreed to submit any comments in writing. The report was due to be sent to DfT on 4 June to be laid before Parliament and published on 6 June 2007.

Item 14: Developing ORR's strategy as an integrated safety and economic regulator

48. The Board was broadly content with the executive's proposed approach to the development of an integrated strategy for the discharge of ORR's safety and economic regulation responsibilities. The proposals would feed into ORR's future corporate strategy and into the Rail Inspectorate's business plan for 2008-09.

49. The key issues to be addressed were: the type of regulator ORR wanted to be, possible implications for ORR's organisation in the long term, and ORR's priorities. The executive would hold bi-lateral discussions with non-executive directors, as well as discussions at Safety Regulation Committee, to discuss these issues and narrow down options before a full discussion at a half day special meeting on the afternoon of 17 July, the day of the July 2007 Board meeting.

Item 15: External communications strategy 2007-09

50. A two-year external communications strategy had been developed following input from the Board in February 2007 on ORR's profile, relationships with rail users, key messages and target audiences. The Board agreed the strategy subject to some suggested amendments. The strategy would include ORR listening to its stakeholders as well as communicating ORR's position to targeted audiences. The Board would receive updates on progress against the strategy as part of the regular reporting in the office report.

Item 16: Board committee minutes

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

Remuneration Committee: 24 April 2007

52. The non-executive members of the Board noted the draft minutes of the Remuneration Committee, which had considered and recommended a Senior Civil Service pay strategy to the Board (see item 5 above). The next meeting of the Committee was on 22 May 2007, immediately after the Board meeting.

Safety Regulation Committee: 26 April and 17 May 2007

53. The Board noted the draft minutes of the meeting on 26 April and was orally updated on the issues covered on 17 May 2007.

Item 17: Any other business

54. None.

Item 18: Date of next meeting

55. The next ordinary meeting of the Board would be held on 19 June 2007 in London.

Chris Bolt
Chairman

Minutes approved by the Board on 19 June 2007