

## **For publication on ORR website**

### **Office of Rail Regulation**

#### **Approved Minutes of the 30<sup>th</sup> ORR Board meeting held on 22 January 2007 (10:00 – 15:10) at ORR's Head Office, 1 Kemble Street, London, WC2B 4AN**

##### **Board Present:**

Chris Bolt	Chairman
Michael Beswick	Director Safety & Economic Policy Development
Peter Bucks	Non-Executive Director
Bill Emery	Chief Executive
Richard Goldson	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
Paul McMahon	Deputy Director Competition & Regulatory Economics (for item 10)
Michael Haizelden	Manager Strategic Options, Safety Strategy (for item 11)
David Morris	Deputy Chief Inspector of Railways (for items 11 & 12)
Bob Chauhan	Head of Policy Unit (for item 14)

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

1. The Chairman welcomed everyone to the meeting. He and the non-executive directors congratulated John Thomas, Michael Lee and Linda Williams on their appointment to the Board by the Secretary of State for Transport.
2. Apologies for absence were received from Jeffrey Jowell (non-executive director).

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

3. John Thomas informed the Board that his father worked for Network Rail (signalling and telecommunications maintenance in Doncaster) and his sister worked in human resources for GNER. This information would be recorded in his register of Board interests. The Board noted these interests and agreed that they did not represent a conflict for any items on the agenda.
4. There were no other interests for Board members to declare relevant to the agenda.

### **Item 3: Approval of minutes of Board meeting of 20 November 2006 for publication**

5. The Board approved the minutes of its 29<sup>th</sup> meeting on 20 November 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)**

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

### **Item 5: Chairman's Report**

7. The Board noted the Chairman's activities over since the October 2006 Board meeting, which included:

- meetings with Tom Harris, the new Rail Minister, Ian McAllister (Chairman, Network Rail), David Rowlands (Permanent Secretary DfT), Richard Bowker (Chief Executive, National Express), EIB, Nigel Harris (Rail Magazine), Stephen Joseph (Transport 2000), and London Travel Watch;
- attending a dinner with the ATOC Board, with ORR executives, which focussed on strategic issues relating to the Periodic Review and TOC aspirations for the future. A separate meeting was held with David Franks of National Express who had been unable to attend the ATOC dinner;
- chairing the Beesley lecture given by Chris Nash;
- attending an informal meeting with CAA Board members, including Sir Roy McNulty, on their future governance;
- attending a meeting with Postcomm, CAA and NAO on the regulation of publicly owned companies, following the earlier discussion with the Water Industry Commission for Scotland. It was intended that further meetings would be held to identify some principles that could be applied to regulation;
- attending a CRY Policy Dinner on 'Managing political risk'. Dame Deidre Hutton (Chair of the Food Standards Agency) would be invited to meet the Board informally to discuss public attitudes to risk;
- attending: an Indepen forum on Better Regulation, chaired by Sir David Varney, a KPMG breakfast meeting hosted by Lord Blackwell with Douglas Alexander as a speaker, the steering group for the Commission for Integrated Transport's subsidy project; and

- attending meetings of Periodic Review Committee and Safety Regulation Committee, the first Moving Forward workshop and sifting for the independent member of the Audit Committee;

## **Item 6: Chief Executive's report**

8. The Chief Executive's report provided an update on industry and ORR activity over the previous month.

9. The Board discussed and agreed the key messages to be included in ORR's written evidence to the House of Lords Select Committee on economic regulators. Chris Bolt and Michael Beswick would give oral evidence to the Committee on 6 February 2007.

10. The Board agreed to implement the recommendations in the insurance review, subject to no major new issues arising from further responses to the consultation, which was to close that same day.

11. ORR expected to receive a formal request from Network Rail, supported by DfT, to switch the balance of income it received from grants and track access charges to enable DfT to comply with Government accounting procedures. The Board agreed to approve an additional £600 million in grants from DfT to Network Rail for 2007-08 and for 2008-09. Network Rail would rebate track access charges of the same amount to train operators (which would in turn be paid to DfT). The Board reiterated the importance of having a constant regime in CP4 and the Director of Competition and Regulatory Economics was meeting with DfT officials to find a solution from the beginning of CP4.

12. The Board noted updates on industry safety developments. Lord Tunnicliffe had written on future RSSB governance and ORR's executive would be considering further issues around industry safety leadership. ORR was assisting the Coroner with preparations for the Potters Bar inquest, which would formally resume on 16 April 2007 and was expected to last for approximately six to eight weeks. The Chief Inspector of Railways would take a decision on any legal action after the inquest had been completed.

13. ORR was also developing a robust monitoring and evaluation project to assess the impact of ROGS, this was due to start in February 2007. An external contractor would be commissioned to gather data to provide evidence of the effectiveness of ROGS and ORR's approach to their implementation. This would enable ORR to provide targeted guidance/inspection (if a need was identified), to share good practice among duty holders, and to determine if ROGS had led to cost savings for the industry.

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

- Railway performance in period 9 fell slightly to 80.5%, though this was still a minor improvement on the 2005-06 comparative figure, which raised the MAA to 88.2%. Network Rail forecast that it would miss its year-end stretch target for delay minutes by 2.7% but beat the regulatory target (10.6m minutes) by 5%. However the rate of

improvement had levelled off since April 2006 and further effort would be needed to ensure achievement of the regulatory targets for 2007-08 (9.8m minutes) and 2008-09 (9.1m minutes). The Board also noted details of the best and worse performing Network Rail routes and TOCs and the scope for improvement. ORR's executive would check that a robust decision making process had been followed when Network Rail introduced a number of temporary speed restrictions on 18 January 2006 due to adverse weather conditions.

- Following the positive ERTMS Strategy Group 'Red Diamond' review, Network Rail had indicated that it was in favour of ERTMS in principle, but had yet to decide on its preferred timing for rollout. Although most expenditure on ERTMS would take place in CP5 or later, it was likely to have implications for signalling renewal activity during CP4 and therefore ORR would not be able to issue draft Periodic Review conclusions for signalling in February 2007, as previously planned.
- ORR had issued in September 2006 a draft decision on a section 17 application from Scotrail for access to Glasgow Prestwick International Airport Station. Following the draft decision, the owners, GPA, had started to discuss with Transport Scotland and the Scottish Minister for Transport the future ownership of the station. ORR had delayed finalising its decision while negotiations were taking place but expected to make a final decision by the end of January 2007.
- Following the publications of ORR's "minded to" decision on referring the market(s) for passenger rolling stock leasing to the Competition Commission, a number of working level and high level meetings were being held between interested industry parties. These meetings would help ORR to have a better understanding of the deliverability and impact of potential remedies and of the scope for an industry solution, as well as enabling ORR to refine the analysis in its report.
- E.ON had appealed to the Competition Appeals Tribunal to challenge a direction contained in ORR's decision on the EWS competition case. The Board noted that the appeal process was lengthy but that the other directions would be implemented without delay.
- A short internal review of ORR's role in the Route Utilisation Strategies (RUS) process had been completed. It concluded that overall the RUS process was going well and commanded considerable stakeholder support. Network Rail was doing a good job but there was room for improvement in particular around having a more developed draft RUS for consultation. ORR did not need to revise its guidelines but would "raise the bar" in terms of getting Network Rail to adhere to them.
- Network Rail submitted a report in December 2006 that it had met the milestone on verifying route availability for priority routes in its network capability recovery plan. However there was an issue about the next milestone being met. Officers were reviewing the report and would report back to the Board if missing that deadline would prejudicing the delivery of the overall recovery plan on time.

- The new ORR directorate structure had been implemented on 2 January 2007 and good progress was being made on internal integration initiatives and action planning from the staff survey.
- Initial figures for the 2007-08 business plan were discussed ahead of a fuller paper to the February 2007 Board meeting. The Board agreed that a budget committee made up of non-executive members might meet to consider the figures in detail before the budget was signed off. Progress against the 2006-07 budget and business plan was noted, in particular the increase and reclassification of costs relating to the Wide Area Network project to link RI offices to the London HQ, which was an essential part of the integration programme.
- A summary of the recent stakeholder survey was noted. A fuller report including the development of a stakeholder strategy would be considered at the February 2007 meeting.

## **Item 7: Chief Inspector's report**

15. 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.

16. On current trends, network Rail was predicted to show a broadly improving trend in safety performance over the year. Its internal SEAR report to Period 8 (mid-November) showed no workforce or contractor fatalities for the year to date. Infrastructure wrong side failures continued to show a long-term improvement trend and significant train accidents continued to be on a level trend, despite two passenger train derailments in the period. The Board and Rail Inspectorate continued to be concerned about workforce accidents which continued to show a poor trend (although better than last year) and level crossing incidents where precursors risk continued to rise even though the number of collisions with road vehicles was significantly down on last year.

17. London Underground's (LUL) performance continued to give no obvious cause for concern. Metronet's performance continued to be closely monitored, in particular its management of track maintenance on the LUL network.

18. Three prosecutions had been approved and one improvement notice and one prohibition notice had been served.

19. During the period, RAIB has published six reports, including Elsenham. ORR had considered all of the reports and passed them onto duty holders.

20. The Board recognised the range and depth of the work of its inspectorate staff and the desire of both safety and economic staff to understand and input into each other's work. It also found the safety information provided in the report by RSSB and LUL to be of real value.

## **Item 8: Freedom of Information Act 2000 request**

21. The Board considered a Freedom of Information Act request for an attendance note made by the former Rail Regulator of a meeting with a senior Treasury official in June 2003. The note had been the subject of similar requests by journalists and these had all been declined. After careful deliberation, the Board agreed not to disclose the information, as the previous reasons for not disclosing the information remained valid. The reasons would be set out in full in the letter to the applicant.

## **Item 9: Rules of Procedure: committee terms of reference and membership**

22. Following the changes to its rules of procedure agreed in November 2006, the Board agreed amendments to the terms of reference and membership of its committees.

23. The Audit Committee's terms of reference were amended to reflect HM Treasury's model terms. An independent member of the committee was due to be appointed in late January 2007.

24. Richard Goldson was appointed as a member of the Remuneration Committee.

25. The terms of reference of the Periodic Review and Safety Regulation Committee were amended to reflect changes in ORR's internal structure. Jeffrey Jowell stood down from the Safety Regulation Committee due to time commitments and was replaced by the Deputy Chief Inspector of Railways. The Director of Competition and Regulatory Economics and Director of Legal Services were appointed to the Periodic Review Committee.

## **Item 10: Periodic Review 2008: advice to Ministers and framework for setting access charges**

26. The Board noted progress on the Periodic Review (PR08) project since its last report on 20 October 2006. A significant amount of work had taken place on the project across the office and overall the project was on target against the milestones set for the review to date. The Board noted the forward timetable for the review.

27. The Audit Committee had considered an internal audit report on the project on 4 December 2006. The audit recommendations were being implemented to make the project more robust.

28. ORR's approach to the review was that Network Rail was expected to undertake the work to develop robust plans for its efficient level of revenue requirement. It was also expected to take a whole industry perspective, working closely with its industry partners. Officers considered that Network Rail had made a reasonable start but there remained a significant amount for it to do. ORR had assessed and consulted the industry on Network Rail's initial strategic business plan (ISBP) to determine what further guidance was required to produce a robust plan to submit to ORR in October 2007. The

Board noted details of ongoing discussions with DfT and Transport Scotland on their high level output specifications (HLOS) and statements of funds available (SoFAs) and on ORR's proposals for an incentives and financial framework. Good progress had been made on arrangement for internal, external and international benchmarking. ORR had also consulted stakeholders on the structure of charges.

29. The Periodic Review Committee and other non-executive director attendees had a preliminary discussion on 14 December 2006 on the main issues to be covered in the preliminary advice to Ministers due to be issued in February 2007.

30. The Board agreed to start the formal phase of PR08 by giving notice to the Secretary of State, Scottish Ministers and other interested parties under Schedule 4A of the Railways Act 1993 of ORR's intention to undertake a review of access charges. The notice would say that the review would relate to 1 April 2009 to 31 March 2014 and that information from the Secretary of State and Scottish Ministers on desired outputs and finances (HLOSs and SoFAs) was 31 July 2007.

31. The Board discussed and agreed the principles to be covered in the February 2007 advice to the Secretary of State and Scottish Ministers. The advice would:

- start the formal phase of PR08;
- clarify ORR's processes for dealing with the HLOSs and SoFAs;
- provide ORR's full assessment of the ISBP and set out the updated ranges for Network Rail's revenue requirements in England & Wales and Scotland;
- provide guidance to Network Rail on what it needed to do to improve its plans ahead of its full strategic business plan submission in October 2007; and
- confirm and or provide an update on key strategic issues re the framework for setting access charges.

32. The Board agreed in October 2006 the high-level approach to Network Rail's financial framework for CP4, subject to a full value for money assessment. The assessment had been conducted, which necessarily involved a number of assumptions and a degree of judgement. Its results suggested that even within CP4, Network Rail raising a significant tranche of risk capital would provide value for money.

33. The Board agreed that the advice document would be clear on what issues ORR had taken into account in reaching its conclusions and decisions. It would also set out what issues would be determined later in the PR08 process.

34. The Board agreed that the Periodic Review Committee would sign off the February 2007 advice, which would include a four-page summary.

## **Item 11: Level crossing policy statement**

35. As part of its 2006-07 business plan commitment to develop policy positions on key safety risks, a policy statement on level crossings had been prepared. Level crossings were, for the mainline rail network, the greatest source of risk of train accidents and across all rail systems posed a significant source of risk not only of train accidents but all also of fatalities and injuries to road vehicle occupants and pedestrians. Accidents at level crossings were almost overwhelmingly the result of misuse (intentional or un-intentional) by road vehicle operators and pedestrians. Network Rail, working with a number of agencies involved with road transport, had been very active in pursuing a number of initiatives to improve safety at level crossings on the mainline network. The new Road Safety Bill also included powers for level crossing orders to impose obligations on highways authorities.

36. The policy statement was a high level document which set out the principles that applied to the safe installation and operation of level crossings and what ORR expected of, and how ORR would support, those involved in the installation and operation of level crossings to improve safety. It did not contain anything fundamentally new in policy terms but articulated clearly a number of key points and reflected ORR's role as combined safety and economic regulator. It had been the subject of informal consultation with key stakeholders.

37. Subject to a few minor amendments, the Board agreed the policy, which would be published with a press statement as part of the February 2007 National Rail Review press release. If possible, the policy statement would be Crystal Marked before publication.

38. The development of the policy statement formed one part of an overall programme of policy work on level crossings. ORR had also approached the Law Commission to encourage it to absorb a review of level crossing legislation in the 10<sup>th</sup> programme of law reform. In parallel with the work of the Law Commission, the existing guidance on level crossings would be updated and presented in a manner that would bring together in one place all relevant guidance and statutory provisions.

## **Item 12: Rail Accident Investigation Branch reports and recommendations**

39. The Rail Accident Investigation Branch (RAIB) became operational in October 2005. On the basis of current outputs was expected to produce around 50 reports a year, with between 280 and 300 recommendations.

40. There was a formal memorandum of understanding (MoU) between ORR, RAIB, British Transport Police (BTP) and the Association of Chief Police Officers (ACPO), which focused mainly on how inspectors worked together on investigations. These arrangements were working well and RAIB investigation reports were proving to be a useful source of information about the risks on the railway, and how they were controlled (though the range of incidents investigated made it difficult to draw out any strategic issues).

41. ORR was keen to develop the MoU in respect of recommendation handling and reporting back to RAIB to clarify a number of issues including the interpretation of the regulatory structure.

42. ORR, as the National Safety Authority, had legal duties under the Railway (Accident Investigation and Reporting) Regulations 2005 in relation to dealing with RAIB recommendations, which were always addressed to ORR. The Board noted the internal recommendations handling procedure, how this was working and the different levels of regular working level contact between ORR and RAIB. The Board agreed that in addition to the monthly oral updates on RAIB work, its Safety Regulation Committee would receive reports when RAIB reports raised strategic issues or strategically significant recommendations.

43. The Board asked officers to start developing management information on RAIB recommendations, for example the number of recommendations received, how quickly ORR dealt with them, how many were closed out by the industry and an assessment of what value they were adding.

### **Item 13: Consideration of applications for track access rights relating to the East Midlands, West Midlands and Cross Country Franchises – capacity assessment**

44. ORR had initiated an industry wide consultation exercise in July 2006 aimed at identifying any operators with aspirations to operate services on any part of the network affected by the Midlands refranchising programme. The purpose was to get a better understanding of the likely conflicting requirements for capacity, and the potential trade-offs, earlier in the process. This would reduce the level of uncertainty for franchise bidders and provide open access and other aspiring operators with an understanding of the likely conflicting requirements for capacity.

45. ORR then asked Network Rail to carry out an assessment of the available capacity in the area affected by DfT's current refranchising programme, having regard to the timetable planning work already carried out to reflect DfT's franchise specifications and freight requirements. The Board noted the results of Network Rail's assessment, which had been published in mid-January 2007. ORR had written to DfT on the known possible open access applications for track access.

46. DfT, franchise bidders and the industry generally had welcomed ORR's efforts to clarify the level of uncertainty and conflicting requirements. It also showed ORR working with government and the industry for the benefit of the whole industry. ORR would continue to work with all parties to get a consistent and whole industry approach to the franchise remapping programme and the capacity allocation underlying it. It would also continue to keep the availability of capacity under review in the light of the evolving picture.

47. ORR expected to make a decision on an application from Wrexham, Shropshire and Marylebone Railway (WSMR) in early April 2007, which would be just before DfT and Network Rail submit the applications for the new franchise contracts. The Board noted that part of WSMR's proposed route, the flow between Wolverhampton and Marylebone, was protected by the

Moderation of Competition provision in the West Coast Trains 10<sup>th</sup> Supplemental Agreement (PUG2) and that this may have implications for the viability of the application.

#### **Item 14: Eddington transport study**

48. The Eddington transport study looked at the long-term links between transport and the UK's economic productivity, growth and stability. It concluded that transport's key role was to provide links between markets to allow the interchange of goods and services and that demand for transport was driven by (and lags behind) economic growth. It also concluded that the country was well connected by UK's transport network (weakening the case for new links) and noted that with rising incomes and population growth transport demand was set to grow. The key challenges that lay ahead were how to improve capacity and reliability within the existing network before new links were added and, where to invest in order to reap the greatest rewards.

49. The Board noted a summary of the report and that the study's two key messages about the efficient use of networks and the targeting of investments were consistent with ORR's corporate strategy and with the aims and objectives of ORR's regulatory policy. There were, however, a few issues that would have implications at a specific policy level relating to devolution of decision making, balancing freight and passenger traffic, environmental impact and the effect of all of these on Network Rail's role. These would be drawn out in the 2007-08 business plan.

#### **Item 15: Board committee minutes**

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

##### **Safety regulation committee: 30 November 2006**

51. The committee had discussed: the developing level crossing strategy, Network Rail's work on workforce health management, the development of the ROGS related inspection programme, visions for the future, a review of the forthcoming RIAC agenda, RAIB recommendation handling, an update on infraction proceedings and RSSB's safety report.

##### **Audit committee: 4 December 2006**

52. The committee had discussed: the timetable for the 2007-08 resource accounts, review of actions in response to the NAO management letter, the internal audit strategy and workplan, internal audit reports (including the Periodic Review programme and information systems business continuity), risk management, a review of its terms of reference and effectiveness, and the Treasury financial management review.

53. The Board noted that a number of high quality candidates had applied to be the independent member of the committee and an appointment was expected by the end of January 2007.

**Periodic Review committee: 14 December 2006**

54. The committee had discussed the financial framework and the PR08 audit.

**Item 16: Any other business**

55. None.

**Item 17: Date of next meeting**

56. The next ordinary meeting of the Board would be held on 20 February 2007 at ORR's head office at One Kemble Street, London.

**Chris Bolt  
Chairman**

**Minutes approved by the Board on 20 February 2007**