

## **For publication on ORR website**

### **Office of Rail Regulation**

#### **Approved Minutes of the 31<sup>st</sup> ORR Board meeting held on 20 February 2007 (10:00 – 15:35) 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
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
Lynda Rollason	Director Corporate Services (item 10)
Elizabeth Corrin	Head of Finance (item 10)
Stuart Hamill	Management Accountant (item 10)
Margaret Kellett	Business Planning and Risk Manager (item 10)
Paul McMahon	Deputy Director Competition & Regulatory Economics (item 11)
David Robertson	Head of Track Access (item 12)
Sian Lewis	Head of Communications (item 14)

##### **External guests:**

Iain Coucher and Paul Plummer of Network Rail (for item 3)  
Anthony Smith of Passenger Focus (for item 14)  
Kevin McLean of Wardle McLean (for item 15)

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

1. The Chairman welcomed everyone to the meeting.
2. Apologies for absence were received from Jeffrey Jowell and Jane May (non-executive directors).

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

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

### **Item 3: Presentation by Iain Coucher, Chief Executive (designate) Network Rail**

4. The Board received an informative presentation from Iain Coucher, the Deputy Chief Executive (and Chief Executive designate) of Network Rail. The presentation covered three areas:

- Network Rail's aims, use of a balanced scorecard and its action plans to transform it into a world class company;
- Network Rail's approach to safety, including current safety performance trends, progress on its Health, Safety, Quality and Environment plan, and current safety issues; and
- Network Rail's current plans on CP3 outperformance and CP4 efficiency and capacity.

5. Following discussion of the presentation, the Board thanked Mr Coucher for his attendance.

### **Item 4: Appointment of an independent member to the Audit Committee**

6. Following an open recruitment process, the Board supported the recommendations of the appointment panel and formally appointed Jeremy Chittleburgh as the independent member of the Audit Committee for a period of two years from 1 March 2007 on an annual salary of £4,000.

### **Item 5: Approval of minutes of Board meeting of 22 January 2007 for publication**

7. The Board approved the minutes of its 31<sup>st</sup> meeting on 22 January 2007 and authorised the Chairman to sign them. The approved minutes would be published on ORR's website.

### **Item 6: Matters arising (not taken elsewhere on the agenda)**

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

### **Item 7: Chairman's Report**

9. The Board noted the Chairman's activities over the last month, which included:

- Attendance at: the Railway Studies Association reception at the House of Lords on 23 January; speaking at the Rail 100 Breakfast Club on 25 January; a DfT seminar on the future of rail strategy held to inform the strategy White Paper due to be published alongside the

HLOS; and a discussion dinner at the Cass Business School at which Peter Hendy (Transport Commissioner for London) was the speaker.

- Meetings with: a CIPFA team looking at the application of asset management planning principles; Philip Fletcher (Chairman of the Water Services Regulatory Authority); and the ORR Investors in People assessor.
- Chairing the interview panel for the independent member of the Audit Committee; giving evidence to the House of Lords Committee on Regulators on 6 February 2007; and attending regular meetings of the Periodic Review Committee and Safety Regulation Committee.

10. The Chairman had also completed a round of bilaterals with Board non-executives, and held a meeting with the new executive members. In the light of these discussions, Board members would be sent a pro-forma for a formal self-assessment of Board effectiveness and proposed Board objectives for 2007-08. The responses would be considered at the next Board meeting.

## **Item 8: Chief Executive's report**

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

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

- Railway performance in period 10 increased to 86.3%, 2.5% higher than the previous year. MAA rose to 88.3%. Total industry delays for franchised passenger operators fell by 16.7% compared to period 10 in 2005-06 and delay per train km fell by 15%. Based on these figures, Network Rail had forecast that it would miss its year-end stretch target for delay minutes by 2% but beat the regulatory target (10.6m minutes) by 6%. The Board noted that improvement in TOC performance continued to outstrip Network Rail's performance improvements.
- The Period 11 results were likely to show a downturn in performance, which may result in Network Rail being within only 2% of the regulatory target. This was due to the effects of adverse weather conditions in late January and early February. ORR was reviewing Network Rail's response to these issues.
- Period 10 also included major changes to Great Western and c2c timetables which had a negative effect on performance: c2c had since reverted to its original timetable. ORR would review a new joint improvement plan for First Great Western and expected to see robust plans for further performance improvement.
- Network Rail and operators had flagged concerns with DfT about the potential performance impact of the Midlands franchise remapping and subsequent major service changes in December 2008.

- The consultation on ORR's "minded to" decision on referring the market(s) for passenger rolling stock leasing to the Competition Commission closed on 28 February and the Board committee would meet to consider the responses and any proposed industry solutions before a report was submitted to the Board in March 2007.
- Counsel on the E.ON appeal to the Competition Appeals Tribunal to challenge a direction contained in ORR's decision on the EWS competition case had provided further advice. The Judge in the case had indicated that he wanted to progress the matter quickly and planned to hear the case in April 2007. The Board noted potential implications for time and costs, even if the appeal was not upheld.
- ORR issued a determination on 2 February upholding the appeal received from both EWS and FHH on 20 September 2006 against the decision of the timetabling panel of the Access Disputes Committee in respect of its determination under reference number TTP102. ORR was also considering representations to determine an appeal received from First Capital Connect on 15 December 2006 against the decision of the Access Disputes Panel in respect of its determination under reference number ADP 21.
- Grand Central intended to start operating its East Coast main line services at the start of the summer timetable on 20 May 2007. This was subject to it obtaining the necessary authorisations for its rolling stock. ORR had approved contingent rights for GNER's additional Leeds services, which were also intended to start on 20 May 2007.
- ORR was assisting DfT in providing information to the European Commission to enable it to respond to GNER's allegation that the charging regime for open access operators constituted state aid.
- ORR was considering responses to its consultation on the section 17 application from Wrexham, Shropshire, and Marylebone Railway (WSMR) for a new 10-year open access track access contract. WSMR was seeking rights to operate from Wrexham to London Marylebone calling at Ruabon, Chirk, Gobowen, Shrewsbury, Wellington, Telford, Cosford, Wolverhampton and Banbury. However, West Coast Trains held contractual moderation of competition protection preventing Network Rail selling access rights to other operators on the flow between Wolverhampton and London Marylebone. ORR had therefore written to WSMR explaining that it was unable to approve the application as it stood and asking how WSMR wished to proceed.
- ORR had published a consultation on how it proposed to consider future applications for the approval of track access options. The consultation ends on 23 March 2007. ORR was currently considering a section 18 application from TfL and Network Rail for an access option for the East London line. ORR and DfT continued to discuss a proposed application for an access option in relation to the Crossrail project.
- The Board congratulated staff in being successful in retaining Investors in People (IiP) status for the larger combined safety and economic office. It noted that management would take forward the assessor's

recommendations as well as work from the internal Moving Forward workshops and the staff survey.

- ORR staff had initiated disaster recovery procedures following a power-failure in the Holborn area on 12 February 2007 that closed the London office. The Board noted the office response and that staff reported for work as normal on 13 February 2007. An internal audit report on disaster recovery and business continuity had been considered by the Audit Committee in December 2006 and Directors' Group had reviewed progress against the recommendations as well as other issues learnt from the event on 12 February. An update report would be considered by the Audit Committee on 29 March 2007.
- Management summary information for quarter-three included progress against the business plan and budget.

### **Item 9: Chief Inspector's report**

13. 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.

14. 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 10 (early January 2007) 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, and there were no passenger train derailments in the period. A fall in the number of workforce accidents in the last two periods had put Network Rail ahead of its demanding target for the year. The precursor risk on Level Crossing incidents had fallen slightly, as the number of collisions with road vehicles was significantly down on the previous year.

15. London Underground's performance continued to give no obvious cause for concern.

16. There had been no new prosecutions authorised since the last report. One improvement notice had been served, two others were being considered and progress on compliance with two existing notices was noted.

17. During the period, RAIB has published six reports. An industry meeting with the dutyholders was being planned to discuss the recommendations.

18. ORR and RAIB had given evidence to the inquest into the Elsenham Level Crossing double fatality. The inquest had concluded with a verdict of accidental death. The Coroner had written to the Chief Inspector with a recommendation and a response was being prepared.

## **Item 10: 2007-08 business plan and budget**

19. The Board considered business plan priorities and the budget for the second year of ORR's corporate strategy. The executive, supported by the financial and business planning teams, had subjected itself to robust internal challenge on the work it had to do to continue to deliver the corporate strategy and the reasonable level of resources this would take. The Board agreed that the proposals:

- delivered the priorities agreed by the Board and endorsed by stakeholders;
- focussed activity and resources on the priority areas identified by stakeholders;
- included a balanced risk assessment on where ORR could draw back and deliver on the corporate strategy and industry expectations, against the context of a critical year in terms of the periodic review, overseeing the implementation of ROGS; and ORR's further integration as the safety and economic regulator of Britain's railways; and
- significantly out-performed the original expectations for additional economic spend in years two and three of the corporate strategy and ORR's RPI – 2 commitment, without compromising its ability to deliver year two of the corporate strategy.

20. The Board noted the approach to risk that had been adopted (which focused on evolutionary rather than radical change) and the internal controls that would apply during 2007-08.

21. The Board endorsed the business plan priorities and approved a budget of £30.8m split £12.6m for economic regulation (paid for by Network Rail) and £18.2m for health and safety regulation (paid for by a safety levy imposed on all duty holders). This was a decrease of £1.7m (12%) and £1.4m (7%) respectively in real terms against the 2006-07 budget: an overall decrease of 9% in real terms.

22. The Board congratulated the executive on the robust process followed.

## **Item 11: Periodic Review: advice to ministers and framework for setting access charges**

23. The Board had agreed the form and content of the "Advice to Ministers and framework for setting access charges document" (February document) in October 2006 and January 2007.

24. The Board discussed and agreed the key messages from the February document, The February document 'package' would include the main document and a short four page summary documents focused (separately) on England & Wales and Scotland. It would be published on 28 February 2007 alongside the Network Rail Monitor and National Rail Review.

## **Item 12: Channel tunnel: future of the Intergovernmental Commission (IGC)**

25. The Intergovernmental Commission (IGC) was an Anglo French body established under the Treaty of Canterbury in 1986 to supervise all matters concerning the construction and operation of the Channel Tunnel. It was also the regulatory body for the Channel Tunnel under the Channel Tunnel (International Arrangements) Order 2005.

26. Due to issues arising from an ongoing appeal, DfT had discussed the feasibility of transferring some or all of IGC's functions to ORR. While the Board and executive agreed that taking on IGC's regulatory functions was sensible, there were a number of issues of concern. These included: ORR not taking on responsibility for areas where it had no expertise (for example security, border control and customs responsibilities); Secretary of State appointments of ORR representatives to IGC should include the same provisions that guaranteed the independence of ORR Board members from Government; and DfT had to provide clear assurances about funding for IGC activity.

27. DfT was expected to submit a proposition to ORR's Chairman shortly. Once this was received the executive would analyse the proposal and associated risks and discuss them with the Chairman before they were circulated to the Board in correspondence for decision.

## **Item 13: Board committee minutes**

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

### **Periodic Review committee: 8 February 2007**

29. The committee had discussed the content of the Advice to Ministers and framework for setting access charges document.

### **Safety regulation committee: 15 February 2007**

30. The main issues discussed by the committee had been on the effective use of RIAC, and RAIB issues including proposals to measure ORR's performance in handling RAIB recommendations.

## **Item 14: Informal discussion with Anthony Smith, Chief Executive, Passenger Focus**

31. The Board received a useful presentation from Anthony Smith, the Chief Executive of Passenger Focus. The discussion covered:

- Passenger Focus' emphasis on being a research based organisation.
- An assessment of what passengers wanted and their priorities, based on trend data from the national passenger survey and other research.
- How ORR and Passenger Focus could work together to improve information and research to assist industry decision making.

32. Following the discussion, the Board thanked Mr Smith for his attendance.

**Item 15: Developing an external communications strategy for ORR**

33. Kevin McLean gave a short presentation on the results of ORR's stakeholder survey, conducted in October and November 2006 by Wardle McLean. The full survey results that had already been circulated to the Board.

34. The stakeholder survey provided ORR with useful information to help plan future activity. Much of the survey was positive about ORR's performance, with ORR seen as diligent, professional, fair and knowledgeable. However communications had been identified as an area for improvement. Some respondents wanted ORR: to raise its profile, particularly on safety; to be more visible in helping to move the industry forward; and to simplify its communication and engagement with the industry, including a more informal means of engagement with stakeholders at all levels.

35. The Board provided an initial steer on raising ORR's profile, proposed key messages for specific audiences, and how the strategy could be delivered. This would inform the development of a formal communications strategy to be considered by the Board in May 2007. The strategy would support the work of ORR and the implementation of its corporate strategy and business plan.

**Item 16: Any other business**

36. None.

**Item 17: Date of next meeting**

37. The next ordinary meeting of the Board would be held on 19-20 March 2007 in Cardiff. The visit to Wales would include meeting stakeholders, visits to industry facilities and meeting RI staff.

**Chris Bolt**  
**Chairman**

**Minutes approved by the Board on 19 March 2007**