

## **For publication on ORR website**

### **Office of Rail Regulation**

#### **Approved Minutes of the 33<sup>rd</sup> ORR Board meeting held on 17 April 2007 (10:00 – 13:20) 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
Bill Emery	Chief Executive
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 (from item 8)
Linda Williams	Chief Inspector of Railways

##### **In attendance:**

Shamus Kenny	Board Secretary
Juliet Lazarus	Director Legal Services
Samantha McClelland-Hodgson	Assistant Board Secretary
Tim Griffiths	Senior Economist, Transport Economics (for item 8)
Richard Gusanie	Track Access Executive (for item 8)
David Robertson	Head of Track Access (for item 8)
Jessica Walters	Deputy Director Legal Services (for item 8)
David Chapman	Head of Human Resources (for item 9)
Lynda Rollason	Director Corporate Services (for items 9 & 10)
Andy Burgess	Head of Network Regulation (item 11)

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

1. The Chairman welcomed everyone to the meeting. Apologies for absence had been received from Richard Goldson. Apologies for lateness had been received from John Thomas.

##### **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 8).

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

### **Item 3: Approval of minutes of Board meeting of 19 March 2007 for publication**

4. The Board approved the minutes of its 32<sup>nd</sup> meeting on 19 March 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)**

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

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

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

- Meetings with David Begg (Chairman, Tube Lines); Moir Lockhead (Chief Executive, First Group) and attending the Transport Times dinner with Rod Eddington.
- Accompanying two rail inspectors on an inspection of track works on the Northern Line.
- Giving a CRI lecture on "Regulating by contract and licence: the relationship between regulatory form and its effectiveness".
- Regular meetings of Periodic Review and Safety Regulation Committees, and chairing a meeting of the Review of Markets – Passenger Rolling Stock Leasing Committee.

7. The Board noted his planned activities for the following month, which included preparation for an informal meeting with the chairmen of other regulatory boards.

8. The Chairman was discussing the arrangements for a review of the effectiveness of each main Board committee with the relevant chairman.

9. The Board noted the work in progress on a forward diary to include proposed arrangements for awaydays, 'out of London' events and opportunities to meet stakeholders and ORR staff.

10. Having agreed its own objectives for 2007-08 in correspondence, the Board agreed objectives for the Chairman for 2007-08.

### **Item 6: 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 discussed the executive's progress in taking forward actions from the November 2006 Board and executive discussion on developing a

longer-term strategy, including the development of ORR's relations with the industry's key stakeholders. The Chief Executive would update the Board in May 2007 on the timetable for Board discussions on the main themes.

13. The Board noted that ORR was currently within the scope of the draft Regulatory Enforcement and Sanctions Bill. The Bill would implement relevant recommendations contained within Professor Macrory's report to the Better Regulation Executive on the system of regulatory sanctions. The Board would be updated on the potential implications once ORR knew more about the proposed contents of the Bill.

14. While ORR was excluded from part 2 of the Legislative and Regulatory Reform Act, it intended to consider its approach to regulatory enforcement in light of the draft Regulators Compliance Code when it became available. The implementation of the draft Regulatory Enforcement and Sanctions Bill was intended to run parallel to the development of the code so that the two were complementary.

15. The Board was updated on progress in resolving and agreeing with DfT a number of issues the ORR had identified before it formally accepted the DfT proposition that in the short term some or all of the IGC's regulatory and appeal functions relating to the Channel Tunnel should be transferred to ORR.

16. The Board was updated on progress with an internal review of ORR's safety and economic regulatory role in assuring effective management of switches and crossings (points) on the mainline railway from 2002 to date. The conclusions of the review would be reported to the Board in May or June 2007. Progress on the wider Grayrigg investigations was covered under the Chief Inspector's report (see item 7 below).

17. Statutory guidance to ORR from Scottish Ministers had been received. The guidance from the Secretary of State for Transport was expected shortly. Once received, both sets of guidance would be published on ORR's website and this would be drawn to the attention of key stakeholders.

18. 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 Network Rail's 2007 business plan.

19. Railway performance remained ahead of the target trajectory for PPM. PPM in Period 12 was 88.8%. However, figures for the last two periods were worse than a year ago, which had resulted in the MAA falling back to 88.0% in period 12. For period 12 2006-07, compared to 2005-06: total delay minutes for passenger trains were 11.5% higher; Network Rail delay minutes were 20% higher. Network Rail had again revised its forecast for delay minutes at the year end, which was now just 1.1% below the regulatory target and 6.9% above its own stretch target.

20. The Board noted details of Network Code disputes and to the process for handling appeals to the timetable and access dispute panels. Most cases were resolved before the appeal took place. Progress on all current appeals to ORR was noted. This included the first appeal under the Railway Infrastructure (Access and Management) Regulations 2005 from GB Railfreight Limited (GBRf) to access Freightliner Limited's terminals at Southampton Maritime and Millbrook.

21. ORR was considering the material comments made in response to its consultation on proposed track access option policy. ORR aimed to issue conclusions by the end of May 2007. The East London Line track access option was the subject of a separate paper on the Board's agenda (see item 8 below). ORR was considering a pre-application version of the proposed draft access option for the Crossrail project.

22. On 30 March 2007 ORR made an order modifying the licences of 50 operators (excluding Network Rail), to reflect the conclusions of last year's licensing review. The changes reflected ORR's commitment to the better regulation agenda, and included removing several redundant licence conditions and shortening others. ORR had also introduced the new general approval for public liability insurance, which replaced the very detailed individual approval process inherited from the SRA in July 2005.

23. ORR expected to issue a final decision on a section 17 application from First ScotRail for access to Glasgow Prestwick International Airport Station shortly.

24. In consultation with the industry, ORR had developed an improved contractual framework for station access based on the establishment of a new Stations Code. The new Stations Code Framework Agreement became effective on 23 March 2007, with Network Rail and around 70% of Train Operating Companies signing up. This was a significant development that would streamline the contractual framework for access to stations.

25. The Board noted progress on Grand Central's applications for access to stations and depots. These were expected to be resolved in advance of its planned operating date.

26. ORR would make a public statement on the status of its investigation into Western performance issues in late May 2007. The Board would be notified on whether the executive considered that Network Rail had been in breach of its licence, and on lessons learned from the extended investigation. ORR was also considering whether to treat Network Rail's treatment of the Portsmouth resignalling project and the subsequent blockade as a licence breach.

27. The Board noted a summary of the draft outturn for 2006-07. The figures were subject to identification of additional accruals. Overall, the outturn was £29.4m, which was an underspend of £3.3m (10%) on the original budget.

28. ORR had published its business plan for 2007-08 on 29 March 2007. The Director's Group would review progress on the plan each month and report by exception to the Board. Director's Group would also review each month the updated strategic and operational risk registers. The Board noted that risk relating to the proposal to take on responsibility for the Intergovernmental Commission would be included on the registers once final details of the arrangements had been agreed with DfT.

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

29. 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.

30. The Board noted the highlights from Network Rail's internal Safety & Environment Accident Report for Period 12 (4 Feb to 3 March). This included two derailments (including the serious Grayrigg incident), continuing the slightly rising trend of the last year and a slight improvement in significant infrastructure failures. There had been no Network Rail or contractor fatalities in this year and the accident frequency rate remained ahead of its target. There was one high risk SPAD in the period, and the trend was slightly upwards from 18 months ago.

31. The Board noted details of safety certificates / authorisations that had been issued since the last meeting and those being considered. ORR was arranging meetings with Network Rail and ATOC (and would seek legal advice where necessary) to discuss differences of opinion on the duty of co-operation and route acceptance, and on Network Rail's view that it was required to check the detailed verification done by TOCs and others prior to putting new or altered vehicles into service.

32. ORR was considering a request from West Coast Railway (an operator of heritage trains) for an exemption from regulation 5 of the Railway Safety Regulations 1999 in respect of Mark I rolling stock. It was also considering the responses from its consultation on Network Rail's application for an exemption from the requirement of the Railway Safety Regulations 1999 to allow the removal of Train Protection and Warning System (TPWS) at specified Permanent Speed Restrictions (PSRs), where it had been demonstrated that TPWS provided no safety benefit in mitigating over-speed risk.

33. Inspectors were preparing summary reports on their work under the Network Rail and National Train and Freight Delivery Plans for 2006-07. These would identify areas of improvement as well as issues that required attention. The Board noted progress on inspection work to test Network Rail's response to the Grayrigg derailment (separate from ORR's investigation of the incident). London Metro team Inspectors were currently finalising work on the delivery plan for 2006-07 and were preparing a work plan for 2007-08 in the light of LUL's ROGS submission.

34. The Board was updated on RAIB activity. RAIB had published 34 reports. Of the 207 recommendations, 186 were 'live' and 21 had been closed. The third quarterly report to RAIB would be issued shortly. It also noted RAIB's investigation remit, with 25 workstreams, into the Grayrigg derailment. ORR's investigation would focus on how the points got into the condition they were in immediately prior to the derailment, and whether there were any associated breaches of health and safety law. Initially ORR's investigation would look at the inspection and maintenance regimes and whether these were being followed in practice. It would also look at training, competence and supervision issues and later whether the design and integrity of the stretcher bar arrangement was suitable for its intended use.

35. Network Rail had been fined £4m for the breaches in health and safety legislation connected with the 1999 Paddington rail crash. Within the last month, ORR had served one Prohibition Notice on Network Rail. Further

inspection work was being carried out to determine if any enforcement action was necessary in respect of Network Rail's management of the competence of signalling maintenance staff whilst its new competence management system was being implemented.

36. The Board noted details of significant meetings held over the previous month, including the half yearly meeting with trades union general secretaries. The Board agreed to invite the general secretaries to make a presentation to it later in the 2007. It noted progress on the ROGS transition project and details from a report from the rail industry's confidential reporting system, CIRAS, reviewing incidents of non-compliance with rules across the industry.

37. Cross-office work was ongoing. However, resources required to support the Grayrigg investigation was currently affecting railway inspectorate input into Periodic Review 2008 projects. This was being discussed with the programme manager.

### **Item 8: East London Line track access option**

38. The Board 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.

39. ORR had reviewed the application in accordance with its statutory duties and published policies. Long term track access options were not approved without good reason and strong justification. A substantial amount of work had gone into addressing whether the case for an option had been made and its appropriate term. The Board was satisfied that an access option was appropriate on the basis of its current criteria, but there were issues about the length of the option.

40. The Board concluded, after discussion, that further work was required 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. The executive was instructed to consider further the most appropriate duration of the option balanced against ORR's section 4 duties and to make a firm recommendation to the Board. If the recommendation was less than 30 years, as sought by the parties, the reasons would be clearly set out. The executive would circulate a further paper to the Board for decision via correspondence.

### **Item 9: Human Resources Strategy**

41. The Board noted the status report on the good progress being made in a wide range of current HR initiatives and the areas identified for further work. It commended the HR team for its work in the last year, in particular in relation to the integration of staff into the new expanded ORR through a significant change programme.

42. The Board noted the strategic aims and objectives for human resources (HR) in ORR. It agreed that this was appropriate to support ORR's corporate

strategy and business plan in the medium term. They would also provide a solid foundation for any of the various options for the future structure of ORR as a combined safety and economic regulator being developed by the executive (see minute 12 above). The Board expected greater clarity on the future proposals by summer 2007 to allow this to be reflected in 2008-09 and beyond work plans.

### **Item 10: Draft of Annual Report 2006-07**

43. The Board discussed and made recommendations on the structure of the draft annual report for 2006-07. The Board would be asked to sign off the final report on 22 May 2007.

### **Item 11: Board update on Network Rail**

44. The Board discussed the executive's assessment of Network Rail's behaviour and performance over the previous six months and its prospects for 2007-08.

45. The Board reaffirmed its support for the current ORR approach to regulating Network Rail. The approach was intended to maximise benefits to the railway industry, users and funders. ORR sought to provide a sound incentive framework and clear expectations / targets, and then to intervene as little as possible provided that these expectations were being met. ORR had developed coherent monitoring frameworks. On the 'economic' side it was using its 'regulatory escalator' concept as a guide to implementing the enforcement policy. This would be developed further in the light of experience.

46. Where intervention was necessary ORR would seek to resolve matters in private where this was appropriate, registering concern or dissatisfaction publicly in the Network Rail Monitor and, if of sufficient significance, the National Rail Review. Higher up the 'regulatory escalator' ORR would formally consider and reach conclusions on licence breach and formal enforcement action. The Board and executive recognised that, while this approach had been effective, ORR had to communicate more clearly to stakeholders what action it was taking so that they knew issues were being addressed. This would be addressed in future editions of the Network Rail Monitor and National Rail Review as well as in ORR's bilateral meetings with owner groups and other stakeholders. ORR also had to encourage industry stakeholders, such as different groups of train operating companies, to work together to hold Network Rail to account.

47. The Board was meeting Network Rail's Board on 15 May 2007 and would address major issues of concern, in particular how it was prioritising its action plans to turn Network Rail around and problems with recent signalling schemes. Bill Emery would also report ORR's view on the current performance of Network Rail when he addressed the company's members on 5 July 2007, in advance of its AGM.

## **Item 12: Board committee minutes**

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

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

49. The Board noted the draft minutes of the meeting, which had been orally reported to the last Board meeting.

### **Periodic Review Committee: 27 March 2007**

50. The committee had discussed an AMCL study on asset management and updated the overall project programme.

### **Audit Committee: 29 March 2007**

51. The main issues considered by the committee had been progress on and the interim audit of ORR's resource accounts 2006-07, the development of whistle-blowing and anti-fraud policies, the internal audit plan and internal audit reports on ORR's corporate governance arrangements, role in the production of rail industry statistics, and approach to reviewing markets.

52. The committee had also received progress reports on the development of performance indicators and business continuity and disaster recovery. It also considered how effectively it ran its meetings and its forward agenda.

## **Item 13: Any other business**

53. None.

## **Item 14: Date of next meeting**

54. The next ordinary meeting of the Board would be held on 22 May 2007 in London.

**Chris Bolt**

**Chairman**

**Minutes approved by the Board on 22 May 2007**