

For publication on ORR website

Office of Rail Regulation

**Approved Minutes of the 37th ORR Board meeting held on 18
September 2007 (10:00 – 15:05) at ORR's Head Office, 1
Kemble Street, London, WC2B 4AN**

Board Present:

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| Chris Bolt | Chairman |
| Michael Beswick | Director Rail Policy |
| Peter Bucks | Non-Executive Director |
| Chris Elliott | 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:

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| Shamus Kenny | Board Secretary |
| Juliet Lazarus | Director Legal Services |
| Sam McClelland-Hodgson | Assistant Board Secretary |
| Andy Burgess | Head of Network Regulation (item 8) |
| Chris O'Doherty | Information and Intelligence Manager, HMRI Policy (item 9) |
| Gill Dixie | Head of Information and Delivery, HMRI Policy (item 9) |
| Paul McMahon | Deputy Director Competition & Regulatory Economics (item 10) |
| Iain Morgan | Senior Economist (item 10) |
| Chris Littlewood | Senior Analyst (item 10) |

Item 1: Welcome and apologies for absence

1. The Chairman welcomed everyone to the meeting. There were no apologies for absence.

Item 2: Declarations of interest

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

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

3. The Board approved the minutes of its 36th meeting on 17 July 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)

4. The Board noted progress on actions agreed at the previous meeting.

Item 5: Board decisions taken in correspondence: Portsmouth Resignalling licence breach penalty

5. The Board had concluded on 5 June 2007 that Network Rail had breached condition 7 of its network licence in respect of the Portsmouth resignalling project (formally noted at its meeting on 19 June 2007, minutes 7-10 for item 5). At its meeting on 17 July 2007 (minutes 17-19 for item 7) it agreed that a penalty of £6m, reduced by 60% to £2.4m after taking account of mitigating factors, was appropriate and justified. Following Board comments on a draft, a notice under section 57C of the Railways Act 1993 was issued on 30 July, with a closing date for objections or representations of 20 August. The only response was from Network Rail, received on 13 August 2007 and copied to the Board on 14 August 2007.

6. On 24 August the Board was informed that no other responses had been received. The Board noted the issues that Network Rail had raised in its response. It considered that no new information had been provided that would cause it to review or change its decision. It had already taken account of the mitigation measures that Network Rail had put in place when deciding that the breach was not ongoing and when reducing the penalty. It had also taken great care to be clear that the breach and penalty did not relate to the level of risk assumed but to Network Rail's failure to understand what level of risk was being assumed. The breach and penalty therefore related to the quality of the ex-ante risk controls and mitigation plans.

7. The Board confirmed the penalty of £2.4m on 27 August 2007. A final notice was issued under section 57C of the Railways Act, alongside a covering letter to Iain Coucher, on 6 September 2007. The covering letter and press notice addressed the issues raised by Network Rail on risk. The Chief Executive had requested a meeting with Network Rail's Chief Executive to further discuss the points it had raised on risk.

Item 6: Chairman's Report

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

- first meetings with Ruth Kelly (Secretary of State for Transport), Robert Devereux (DfT Permanent Secretary) and Teresa Villiers (Conservative Party Shadow Transport spokesperson);
- meetings with Ian McAllister (Chairman, Network Rail), Keith Ludeman (Chief Executive, Go Ahead), franchise owners, Passenger Focus, and Geoffrey Norris (No. 10) and a visit to Bombardier in Derby; and

- attendance at Periodic Review and Safety Regulation Committee meetings and at a meeting on external communications.
9. The Board noted the Chairman's planned activities for the following month, including the joint ORR and ATOC Boards dinner on 26 September 2007.

Item 7: Chief Executive's overview and office report

10. The Board discussed the Chief Executive's overview and office report. This provided an update on industry and ORR activity over the previous month and highlighted forthcoming issues.

11. The Board noted the summary of the confidential rail industry formal investigation report into the Grayrigg derailment. (See also item 11 below.)

12. The Board noted the progress being made to get Network Rail to address continuing performance issues on the western mainline. This included high-level engagement with Network Rail's chief executive and performance director. Network Rail was undertaking a number of initiatives to tackle and resolve some of the underlying issues relating to the reliability of key assets and to identify and spread best practice to ensure that the December 2007 timetable was as resilient as possible. ORR would assess progress and decide if any further action was required once the Period 7 results were available.

13. The Board noted feedback from a positive joint ORR and Network Rail directors' away day on 11 & 12 September 2007.

Item 8: Review of economic enforcement process and penalties statement

14. Following the experience of finding a breach in relation to the Portsmouth resignalling project, the executive had reviewed ORR's economic enforcement process. In addition to internal views, the executive had discussed process issues with other economic regulators to ensure consistency where appropriate, and had taken advice from Counsel on human rights issues. The Board agreed certain changes to its economic enforcement process to ensure that they continued to reflect best practice. It agreed that ORR would produce for publication a high level external descriptor of the different stages of its enforcement process.

15. The Board had also requested a review of ORR's penalty statement given the experience gained in using it for the Portsmouth resignalling breach and the recent successful appeal by Royal Mail against a penalty decision by Postcomm. The penalty statement was considered generally fit for purpose, however, the Board agreed that there were areas where it could be enhanced and these should be consulted on in October 2007.

Item 9: First National Safety Authority annual report to the European Rail Agency (ERA)

16. Article 18 of the European Safety Directive (2004/49/EC) required national safety authorities to publish an annual report about its activities in respect of mainline operations in the preceding year. The first report was due to be published and sent to ERA on 30 September 2007.

17. As ORR's annual report had to represent all of the UK, it had been split into part A covering Great Britain, and part B covering Northern Ireland, supplied by the Department for Regional Development in Northern Ireland.

18. The Board agreed the annual report, which followed the ERA template. This would be formatted into house-style and then published and issued to ERA by 30 September 2007. ORR would be alert to any information or findings issued by ERA from the data it was gathering from across Europe.

19. For future reports the Board would want a section on key messages included. It would be consulted on these messages prior to the executive signing off future reports.

Item 10: Periodic review 2008 (PR08) update

20. The Board was updated on progress on the PR08 programme, which was broadly on target against its main milestones. It noted and discussed updates on the following workstreams: high level output specifications (HLOS), outputs framework, increments and decrements, the performance regime, and the possessions regime. The executive had reviewed its resources and had arrangements in hand to cope with peaks in the programme.

Item 11: Grayrigg internal report – executive response and action plan

21. On 19 March 2007 (minute 37) the Board discussed the terms of reference for an internal review of ORR's safety and economic regulatory role in assuring effective management of points on the mainline railway from 2002 to date. The scope of the review was limited to ORR's actions with a focus on learning any lessons for ORR's safety management regime going forward. The final report had been sent to the Chairman on 31 July 2007. The executive had produced a response to the report reflecting on the topics discussed and accepting them as areas for further improvement. It had identified areas of work that would address these topics and recognised the opportunities of making broader use of the data that it gathered across the combined safety and economic functions to convert it into useful intelligence. Most of the work areas were already in progress, principally as part of the integrated regulation and periodic review programmes. However, the current work plan would be reprioritised to free up resources for some additional tasks identified.

22. The Board had seen the summary of the rail industry's formal investigation into the Grayrigg derailment. It supported the open and honest approach that

senior management at Network Rail had taken to investigate and identify the underlying causes and contributory factors to the derailment. It noted the recommendations of the report and Network Rail's progress against the action plans. However, ORR would continue to work with Network Rail to press it to identify any systemic failings, and to address wider safety management issues and culture to ensure that policies were implemented correctly on the ground. Network Rail was now learning from the best safety management, engineering and asset maintenance practice in other industries such as construction and oil. ORR would encourage it to continue to benchmark itself against the best organisations.

23. The executive would consider the best way to keep the Board informed in a systematic way of the progress Network Rail was making on safety and maintenance issues. It would also receive an update on progress against the action plan in April 2008.

Item 12: Presentation on developments in rail freight

24. The Board received an informative presentation on rail freight issues and developments.

Item 13: Board committee minutes

25. The Board noted the activities of its committees that had met since the last Board meeting.

Safety Regulation Committee: 19 July 2007

26. The Board noted the draft minutes of the meeting on 19 July 2007.

Periodic Review Committee: 24 July 2007

27. The Board noted a summary note of the meeting on 24 July 2007.

Item 14: Any other business

28. None.

Item 15: Date of next meeting

29. The next ordinary meeting of the Board would be held on 15-16 October 2007 in Manchester. The visit to Manchester would include a dinner with North West stakeholders and a separate meeting with ORR staff based in the North West.

Chris Bolt

Chairman

Minutes approved by the Board on 16 October 2007