

## For publication on ORR website

### Office of Rail Regulation

#### Approved Minutes of the 39<sup>th</sup> ORR Board meeting held on 20 November 2007 (10:00 – 16:00) 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                      |
| 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:

|                        |   |
|------------------------|---|
| Shamus Kenny           | Board Secretary   |
| Juliet Lazarus         | Director Legal Services (items 1-12)                          |
| Sam McClelland-Hodgson | Assistant Board Secretary                                     |
| Paul McMahon           | Deputy Director Competition & Regulatory Economics (item 8)   |
| John Larkinson         | Deputy Director Access, Planning & Performance (item 8)       |
| Alan Bell              | Manager European Legislative Development (item 9)             |
| Anna Pollard           | European Policy Executive (item 9)                            |
| Brian Kogan            | Deputy Director Access, Planning & Performance (item 10 & 11) |
| Annette Egginton       | Head of Competition Policy (item 11)                          |

##### 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: Presentation by trade unions**

3. The Board received an informative presentation from Mick Cash (RMT), Paul Clynes (RMT), Dave Bennett (ASLEF) & Bob Rixham (Unite the Union) Apologies for absence were received from Gerry Doherty (TSSA). The Board recognised the issues raised by the unions and found it useful to hear it from their perspective.
4. The Board thanked the attendees for their presentation.

### **Item 4: Approval of minutes of Board meeting of 16 October 2007 for publication**

5. The Board approved the minutes of its 38<sup>th</sup> meeting on 16 October 2007 and authorised the Chairman to sign them. The approved minutes would be published on ORR's website.

### **Item 5: Matters arising (not taken elsewhere on the agenda)**

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

### **Item 6: Chairman's Report**

7. The Board noted the Chairman's activities since the last Board meeting, which included:
  - Speaking at Railway Industry Association AGM (26 October 2007);
  - Meetings with: David Morgan (Chairman of Heritage Railways Association) & Nigel Harris (journalist), John Kay (Journalist), and Neville Chamberlain (Chairman, Northern Way);
  - Attendance at the Royal opening of St Pancras station, and the Institute of Asset Management Annual lecture and dinner; and
  - attendance at Periodic Review and Safety Regulation Committee meetings.
8. The Chairman had also written to Sir Brian Bender (Permanent Secretary, Department for Business, Enterprise and Regulatory Reform) expressing concerns with some of the provisions of the Regulatory Enforcement and Sanctions Bill.
9. The Board noted the Chairman's planned activities for the following two months and forthcoming Board meetings and events.

### **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. ORR continued to deliver broadly in accordance with its business plan and budget. Staff had agreed to the implementation from December 2007 of new integrated pay, terms and conditions and further workstreams in this area were due to be concluded by 1 April 2008. The assimilation costs would be met from within the current budget and ongoing costs and savings would be met within the RPI-2% budget commitment. The Board would be updated on a project to review existing accommodation in March 2008.

12. Progress on Grayrigg investigation matters was noted. This included RAIB proposals for informal consultation on its draft recommendation ahead of the publication of its final report, due mid-April 2008. ORR was actively inspecting a number of issues present in the local (Lancashire & Cumbria) area immediately before the derailment that also affected other parts of the network and considering appropriate action.

13. The Board noted progress and outstanding action required by Grand Central Railway before the operation of its open access passenger services. ORR would scrutinise its performance during non-passenger test runs to ensure its safety management system worked in practice and that it had in place appropriate control measures before passenger services started.

14. The Board was updated on performance issues on the Great Western Main Line. During period 6 both Network Rail and First Great Western (FGW) had changed their senior managers responsible for the route. ORR had reviewed Network Rail's performance against the Joint Performance Improvement Plan (JPIP) at the end of period 7. While Network Rail delays were reducing in line with its latest projections, this was not feeding through fully to improvements in PPM. No immediate move to consider enforcement action would be taken at this stage. A further review, involving the TOC and key stakeholders, would be held in period 9 to see if it had improved under the new management teams put in place in the area by Network Rail and FGW.

15. Network Rail had completed the final commissioning of the Portsmouth resignalling scheme on schedule on 29 October. The project had been the subject of a licence breach and associated penalty.

16. The Board noted that the coroner at the inquest into the fatalities at Ufton level crossing had commented that health and safety on the railway was "in safe hands" with ORR.

## **Item 8: Revisions to the Safety Regulation Committee terms of reference**

17. Following an internal review of its effectiveness, the Safety Regulation Committee recommended to the Board some minor changes to its terms of reference. The Board agreed the changes and appointed Chris Elliott as a full member of the committee.

## **Item 9: Periodic review 2008 (PR08) update**

18. The Board was updated on progress on the PR08 programme, which was broadly on target against its main milestones. An update on the PR08 implementation project was also noted.

19. Network Rail had expressed strong views about achievable efficiencies and performance but ORR would be thorough and rigorous in its assessment of the plan and in reaching its determinations.

20. The executive's initial views on Network Rail's strategic business plan, published on 1 November 2007, and the initial assessment of whether the High Level Output Specifications (HLOSs) and Statements of Funds Available (SoFAs) matched were noted. Letters to the Secretary of State and to Scottish Ministers setting out the emerging issues would be published on 20 December 2007.

21. The Board noted and provided initial views on the content and issues to be covered in ORR's "Strategic business plan assessment and update on the framework for setting access charges" document, to be published in February 2008. The Board would sign the policy content of the document off at its January 2008 meeting.

## **Item 10: European policy: current issues**

22. The Board noted an update on the key European policy issues that ORR was currently considering.

23. As an economic regulatory body the key issues related to independent regulation, where ORR and DfT sought to ensure that the Commission's proposals for the development of rail freight did not cause major problems for the UK.

24. The key issues for ORR as a National Safety Authority arose from the work of the European Rail Agency (ERA) and the Commission's proposals for changes to the interoperability and safety directives. ERA had a wide-ranging programme of work to promote the creation of an integrated rail area. The main issues for ORR included its work on common safety targets, common safety methods, and safety certification and authorisation.

25. The Board supported the strong engagement of ORR, working with DfT and the industry, to speak with one voice in Europe to influence change and safeguard the interests of the UK rail industry.

26. The Board agreed key messages for the Chief Executive's visit to the European Commission and ERA on 26 November 2007 including the importance of preserving flexibility to determine the capacity allocation between freight and passengers in a way that best suited the UK.

## **Item 11: Crossrail track access option**

27. In July 2007, ORR received an agreed application from Network Rail and DfT (on behalf of the Secretary of State) for approval, under section 18 of the Railways Act 1993, of a 50 year track access option (TAO) to reserve access rights for DfT's planned Crossrail services. The rights sought were in respect of Network Rail's network only and excluded the new central tunnel section, which would be covered by an application for a complementary TAO or amendments to the Crossrail TAO.

28. The Board agreed in principle that a TAO remained the right approach and noted that a hearing would probably be required. It also noted the mismatch between the timescales for ORR's decision making process and the Parliamentary process. The Board remained concerned about some of the provisions in the Crossrail Bill; these would be detailed in a letter to the Secretary of State for Transport requesting that they be removed.

29. The Board noted the issues, particularly in relation to the duration of any option and the relative merits of a shorter option against a longer one. The Board agreed in principle that TAOs should be as short as possible to allow the required investment, with an appropriate buy-back option developed.

30. An update would be provided to the January 2008 Board. If a hearing were required it would take place in late January / early February. The earliest date for Board approval of the TAO would be at its February 2008 meeting or at a special meeting.

## **Item 12: Passenger priorities: value for money**

31. The Board discussed research on passenger priorities, the role played by ORR in addressing the main priorities, and areas where ORR could explore taking a wider or more active role on 19 June 2007 (minutes 28-29).

32. The executive had developed the options and made recommendations based on issues where ORR ought to act under its statutory duties and where it could choose to act. The Board noted what ORR was doing consistent with its statutory duties and responsibilities and supported the exploration of areas consistent with its broader responsibilities under sector specific and competition legislation where it may be able to add additional value. A clear case would be required for ORR to take on more, with a prerequisite that ORR was doing its current role to a high standard.

33. ORR would shortly publish a Crystal Marked document on the application of competition law to franchised passenger services.

## **Item 13: Network Rail mid year update**

34. The Board discussed the executive's assessment of Network Rail's behaviour and performance over the first half of 2007-08. This focussed on a broad overview of the company, its performance, planning and investment and its capability. The information reflected the contents of the quarter one

and quarter two Network Rail Monitors and some of the issues raised by the trade unions in their presentation to the Board.

35. The Board noted continuing concerns about the depth of competence and capacity of the company, in particular its ability to deliver the scale of works required by the HLOSs and safety. Network Rail was investing heavily in management and technical training but ORR would consider whether a review of safety competence could usefully be broadened to cover wider competencies.

36. Generally the executive's relationship with Network Rail at a high level was good, though there were still occasional difficulties getting information and engagement at working level. ORR and Network Rail were working together to improve working relations.

37. The Board also noted some key developments in the industry including possible consequences of the major franchise changes on 11 November 2007 and changes at the top of the Association of Train Operating Companies. From April 2008 the six-monthly reports would cover the wider industry in more detail.

#### **Item 14: ORR's Strategic risks**

38. 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). Internal audit and the National Audit Office at the Audit Committee commended ORR's system for managing risks. The committee reviewed the registers four times a year and Directors' Group reviewed an updated the SRR and OLRR each month.

39. The Board reviewed the SRR and noted the significant changes made since its last review. It agreed that the SRR covered the strategic risks faced by ORR and noted the process for managing and mitigating them.

40. A workshop was being held in January 2008 to do a zero-based assessment of ORR's risks to ensure that its risk registers were fit for purpose. An update on the outcomes of the workshop would be included in the February 2008 Chief Executive's overview report to the Board.

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

41. The Board noted the activities and draft minutes of its Periodic Review Committee meeting on 23 October 2007.

#### **Item 16: Any other business**

42. None.

**Item 17: Date of next meeting**

43. The next ordinary meeting of the Board would be held on 22 January 2008.

**Chris Bolt  
Chairman**

**Minutes approved by the Board on 22 January 2008**