

## **For publication on ORR website**

### **Office of Rail Regulation**

#### **Approved Minutes of the 27<sup>th</sup> ORR Board meeting held on 18 September 2006 (10:00 – 14:25) at ORR's Head Office, 1 Kemble Street, London, WC2B 4AN**

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

Chris Bolt	Chairman
Michael Beswick	Director Rail Policy
Peter Bucks	
Bill Emery	Chief Executive
Jeffrey Jowell	
Jane May	
Jim O'Sullivan	

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

Shamus Kenny	Board Secretary
Juliet Lazarus	Director Legal Services
Michael Lee	Director Industry Monitoring & Analysis
Lynda Rollason	Director Corporate Services
Sarah Straight	Director Rail Markets Passengers & Freight
John Thomas	Director Regulatory Economics
Linda Williams	Chief Inspector
Bob Chauhan	Head of Policy Unit (items 9-11)

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

1. The Chairman welcomed everyone to the meeting. Apologies for absence were received from Richard Goldson, who had planned to attend as an observer before formally joining the Board on 2 October 2006.

##### **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 2006 for publication**

3. The Board approved the minutes of its 26<sup>th</sup> meeting on 17 July 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)**

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

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

5. The Board noted the Chairman's activities over the past month, which included:

- A meeting with the Secretary of State and Derek Twigg (who was Minister for Transport at the time). The agenda included ORR's work to get First and Network Rail to deliver an agreed plan to improve Great Western performance, stations.
- A meeting with members of the Commission for Integrated Transport. Chris Bolt had subsequently been invited to join the Steering Group for their work on transport subsidies.
- Meetings with Brian Cooke (Chairman of London TravelWatch), Lord Bradshaw, Bernadette Kelly (No 10's adviser on transport), Ian McAllister (Chairman, of Network Rail), Tom Parry (utility adviser to Macquarie), Nigel Harris (Rail Magazine) and Lord Tunnicliffe, Chairman of RSSB.
- A farewell and handover meeting with Tim Head, who had served as the chairman of ORR's Audit Committee for two years.
- A meeting with the Water Industry Commission for Scotland and the Guernsey Office of Utility Regulation on the regulation of publicly owned companies to share better practice.
- Attending Safety Regulation Committee and regular G5 meetings.

6. The Board agreed that Richard Goldson would be appointed to the Periodic Review Committee, from 2 October 2006, when he took up his appointment to the ORR Board.

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

7. The Board noted updates on industry safety developments including industry preparations and RSSB organised seminars on the ROGS requirements (which would come into force on 1 October 2006).

8. The Board would consider a paper in October 2006 on the underlying philosophy and rationale for the proposed prioritisation of safety related activities in 2007-08.

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

- Railway performance in period 5 had recovered from the weather-related period 4 dip to reach 89.3% PPM in the period, lifting the MAA a further 0.1% to 87.3%.
- Progress on the Periodic Review project, including: progress on the initial strategic business plan and expenditure assessment, preparation of the options and issues paper to be published at the end of September 2006, discussions with DfT and Transport Scotland on the development of their high level output specifications and statements of available public funds, incentive framework issues, and work on the structure of charges to meet our commitment to publishing decisions on

freight access charges in CP4 in February 2007. The Board would consider a full report on the Periodic Review in October 2006.

- The progress in ORR's review of the market(s) in passenger rolling stock leasing. Subject to unforeseen events or requests for further time from one or more of the ROSCOs, the Board would consider the draft conclusions in November 2006. Emerging issues would be discussed at the Board committee on 21 September 2006.
- DfT was expected to announce the successful bidder for the South West Trains franchise by the end of September 2006.
- DfT had consulted ORR on the list of potential bidders for the three Midlands franchises. Network Rail was expected to provide details of the timetabling work for these franchises before the end of September 2006. Stakeholders had been asked to submit details of any additional services they may propose to operate on the network affected by franchise remapping. This would enable ORR to assess the capacity and the likely availability of access rights for freight bidders against the potential for competition. While acknowledging the advantages for bidders in having more regulatory certainty on likely access rights, the Board did not want this approach to close off options for open access. The Board would discuss this issue further at its October 2006 meeting.
- The Board's decision on the ECML applications had required Network Rail to carry out further timetabling work to establish whether there was also sufficient capacity for GNER's proposed additional Leeds services. This work has demonstrated that there was, subject to the satisfactory completion of safety assessments. We had informed the parties of our intention to approve contingent rights for GNER, subject to the safety caveats and GNER confirming its anticipated date for starting the new services. Grand Central remained committed to starting its operations in December 2006.
- Arising from ORR's investigation of poor operational performance on Western, we had requested and received a revised Joint Performance Improvement Plan (JPIP) from Network Rail and First Great Western. While the actions in the JPIP were appropriate we would not approve the plan until a more ambitious PPM trajectory, for the high-speed services in particular, was submitted.
- ORR was continuing to monitor compliance with T-12, particularly in relation to the Christmas period. The main risk area was with some Virgin services on the West Coast route that were being affected by short notice possessions linked to the Sandbach-Wilmslow signalling issues.
- The Board noted the finance, business planning and human resources reports. Discussions were ongoing with existing staff representative forums on the negotiating structure for the new organisation.
- The Board congratulated John Larkinson on his appointment as Deputy Director Industry Monitoring & Analysis.

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

10. 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, industry progress reports, update on RAIB reports and recommendations, RSSB formal inquiry reports; and joint working with other ORR colleagues.

11. The Board would be updated on procedures to respond to and monitor progress against RAIB recommendations in October 2006.

## **Item 8: EWS competition case**

12. The Board noted the current position on the EWS competition case, the issues it raised and the legal advice received and endorsed the proposals for proceeding to close this case.

13. A Board Committee of Chris Bolt, Bill Emery and Jeffrey Jowell would consider and sign off the final decision. This membership was the same as the Board Committee appointed on 13 December 2005 to discuss the content of the earlier supplementary notice in this case.

## **Item 9: Better regulation and ORR**

14. ORR was committed to ensuring that regulatory action was taken for the benefit of the industry, and contributed to the achievements of ORR's vision for the railway. The Board noted examples of ORR's existing activity, which was already aligned with the better regulation agenda and the five principles of good regulation (proportionality, accountability, consistency, transparency and targeting). While the Board and executive supported the principles of better regulation, it would only apply initiatives that were appropriate to the railway.

15. ORR's approach to focused and effective regulation balanced the desire to reduce the level of intervention with the reality of the ability and structure of the industry to take on greater responsibility, in a timely manner, to resolve its own problems. Giving and making the industry take on greater responsibility would be a priority. The Board was prepared to take risks to assist this process and would develop a clear statement on its approach to risk. Generally, risks would be assessed on a case-by-case basis with more risk being taken on issues that had implications limited to the industry, and less risk on issues that had safety or wider implications. The ability of the industry and the amount of risk ORR took would determine how far and how fast changes were made. ORR was undertaking a continuous process of reviewing and improving its policy development framework, placing a greater emphasis on the identification, assessment and delivery of value-enhancing improvements.

16. As part of the process for setting the 2007-08 business planning priorities, ORR would set out its approach to better regulation (for example the way it had developed clear procedures for Network Rail and TOCs to address the timetabling issues on the ECML following the Board's decision to agree access for Grand Central's routes). The industry would be consulted on this approach and what more ORR could do.

## **Item 10: Corporate Strategy review and Business Plan process / priorities**

17. Further to its discussion on better regulation (see item 9 above) the Board reviewed ORR's progress against the first year of the 2006-09 corporate strategy. As performance to date and the examination of anticipated trends in the industry suggested that the strategy remained robust, the Board agreed that it did not need to be reviewed or updated.

18. The Board considered and supported the suggested priorities for the 2007-08 business plan, in particular work to ensure the delivery of the Periodic Review. It would consider a paper on regulating safety on Britain's railways and health and safety specific business plan priorities in October 2006 (that meeting would also consider progress on the Periodic Review project and an update on the information network).

19. The Board supported the proposals to engage stakeholders in the process of determining priorities. A consultation document would be issued in October 2006 and would also set out and seek views on ORR's approach to and priorities for focussed and effective regulation. A separate stakeholder survey would also feed into the priority setting process. Board members would be invited to attend stakeholder events in January 2007 before considering a further paper in February 2007. Publication of the 2007-08 business plan summary, incorporating ORR's approach to focussed and effective regulation, was planned for March 2007.

## **Item 11: Proposed statutory guidance from the Secretary of State and Scottish Ministers to ORR**

20. The Railways Act 1993 enabled both the Secretary of State and Scottish Ministers to provide guidance to ORR. ORR had a duty when exercising its non-safety functions under the Railway Acts 1993 and 2005 to have regard to any guidance issued to it and to balance this against its other section 4 duties. The current guidance from the Secretary of State, issued in 2002, was out of date.

21. The Board discussed the proposed new guidance from the Secretary of State for Transport, following consultation with the National Assembly for Wales, and similar guidance proposed by Scottish Ministers. Officers did not believe that the guidance would have changed any decisions that ORR had previously made, but would have provided some helpful clarity of DfT's position. Subject to a few issues still to be addressed, the Board had no objections to the proposed guidance.

## **Item 12: Network Rail update**

22. The Board considered the key conclusions of the annual assessment of Network Rail 2005-06, which would be published in late September 2006. The overall assessment of Network Rail's performance for the period was that it had built on its previous achievements and had continued to make good progress in the way in which it managed the network. It was well on its way to achieving the targets set in the access charges review 2003. However, there were still a number of areas that required continued management focus.

23. The Board also considered an update on Network Rail's behaviour and performance over the first six months of 2006-07.

24. ORR would be clear and consistent about its priorities for network Rail and would seek to ensure that incentives and targets were intelligently chosen to focus effort in the right areas and directions.

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

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

#### **Safety Regulation Committee: 31 August 2006**

26. The committee had discussed: the development of a regulatory (safety) strategy (to be considered by the Board in October 2006), a review of the forthcoming RIAC agenda, HLOS / strategic safety options, emerging European policy, ORR's relationships with HSC/E and DfT, RAIB recommendations, the outcomes from HMRI's work with Network Rail in 2005-06, and the standing reports on incidents / fatalities and safety reports from RSSB and LUL (Q1).

#### **Audit Committee: 13 September 2006**

27. The committee had discussed: a positive NAO management letter, the proposed NAO audit strategy and dates for 2007-08, internal audit progress and reports (including the Network Rail monitor and a follow up on safety transition, which both had substantial assurance), HMT draft revised audit committee handbook, a review of the committee's terms of reference and proposals for a review of the committee's effectiveness, and the launch of revised internal health and safety manual. The committee was also reviewing whether ORR was putting adequate resources into internal audit.

28. The main focus of the committee continued to be risk management. It discussed ORR's strategic and operational risk registers and received presentations from the Chief Inspector and from Safety Policy on their directorate level risk registers. Other directors would present their registers on a rolling basis. Peter Bucks and Jane May would meet with directors to clarify and develop a common approach to risk management.

#### **Periodic Review Committee: 14 September 2006**

29. The committee had received a presentation from DfT on its future strategy. It also discussed: the October Board paper, proposals for safety options, and the content of the options and issues September 2006 consultation letter.

### **Item 14: Any other business**

30. None.

### **Item 15: Date of next meeting**

31. The next ordinary meeting of the Board would be held at the HSE office in Glasgow, Scotland on 12 & 13 October 2006. In addition to the Board meeting, the visit would include: meeting HMRI staff, an informal discussion with Transport Scotland, a Board dinner with industry stakeholders and a visit to some railway facilities.

32. The Board agreed the following dates for meetings in 2007 and 2008:

**2007:** 16 January, 20 February, 20 March, 17 April, 22 May, 19 June, 17 July, 18 September, 16 October and 20 November.

**2008:** 22 January, 19 February, 18 March, 22 April, 20 May, 17 June, 22 July, 23 September, 21 October and 18 November.

**Chris Bolt**  
**Chairman**

**Minutes approved by the Board on 12 October 2006**