

For publication on ORR website

Office of Rail Regulation

Approved Minutes of the 24th ORR Board meeting held on 22 May 2006 (10:15 – 12:15) at ORR's London 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	
Chris Stokes	

In attendance:

Rob Andrews	Director Rail Safety Policy
Shamus Kenny	Board Secretary
Juliet Lazarus	Head of 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
Andy Burgess	Deputy Director Industry Monitoring & Analysis (item 9)
Nigel Fisher	Head of Monitoring (item 9)
Colin Greenslade	Head of Network Code Policy (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. Chris Stokes was a Director of Superlink Ltd and currently undertaking consultancy work for the Greater Manchester Passenger Transport Executive and franchise bidding consultancy for National Express. These had been notified in advance to the Chairman, in accordance with the Rules of Procedure. The Board considered his interests in relation to the items on the agenda. It agreed that there were no items where he would be required to withdraw from the meeting.

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

Item 3: Approval of minutes of the 23rd Board meeting on 20 April 2006

4. The Board approved the minutes of its 23rd meeting on 20 April 2006, subject to one minor change, 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 over the past month, which included:

- Meeting Alistair Darling (Secretary of State for Transport) and Derek Twigg (Parliamentary Under Secretary). Alistair Darling was subsequently replaced by Douglas Alexander as Secretary of State for Transport following a cabinet reshuffle.
- Meetings with RSSB, its Chairman and Chief Executive to discuss its role and governance issues, following a formal review of its role in 2004. Further discussions were planned.
- Meetings with Ian McAllister, Chairman of Network Rail; Tony Berkeley, Chairman of Rail Freight Group; the Commission for Integrated Transport; and G5.

7. The Board agreed to appoint Peter Bucks as the Chairman of its Audit Committee from 5 July 2006, when Tim Head's term of office as Chairman expired. Peter Bucks had also been appointed Chairman of Ofwat's Audit Committee.

Item 6: Chief Executive's report

8. The Board noted the report. The Board had agreed in correspondence that ORR should intervene in the Potters Bar Judicial Review and an application had now been made.

9. Network Rail had appealed to ORR against one aspect of an Access Disputes Panel determination (ADP14). The Board endorsed the appointment of the Director of Industry, Monitoring and Analysis to lead on hearing the appeal and determining its outcome.

10. The terms of reference of the Periodic Review and Safety Regulation Committees had been reviewed. The Board agreed a change to the Safety Regulation Committee's terms of reference to make it explicit that its remit covered health as well as safety.

11. The Board noted updates on industry safety developments including: the outcome of an RSSB seminar on "valuing safety", which supported ORR's commitment to consult the industry on the interpretation of "as low as reasonably practicable" by around the end of 2006; ORR / RSSB joint funded

work on strategic safety options for the HLOS beyond incremental changes; the first Rail Industry Advisory Committee under the auspices of ORR on 18 May 2006; and the development of a strategy for future involvement in Europe on railway health and safety issues.

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

- Progress on preparation for the Periodic Review 2008, progress on the development of the rail industry information network and progress on East Coast main line timetabling issues.
- Continued improvements in industry performance (April 2006 PPM at 91% and MAA increased to 86.6%).
- Initial feedback on DfT's closures guidance consultation. The Board reaffirmed its view that it was for the funder to make the case for closures, including assessment of non-quantifiable costs and benefits, in accordance with any guidance issued. ORR's role should be limited to a compliance check and if the funder had not followed the guidance then ORR could not confirm the closure.
- Office updates on integration arrangements and issues for the new ORR, including development of proposals for common terms and conditions, though not necessarily a single pay structure; expenditure (including indications of the costs of a potential judicial review of ORR's decision to award track access rights to Grand Central on the East Coast main line); staff turnover and recruitment; and progress against the business plan.

13. ORR's annual report would be laid before Parliament in the week commencing 22 May 2006 and a media briefing held on 31 May 2006.

Item 7: Chief Inspector's report

14. The Board noted the first Chief Inspector's Board report, and proposals for its future content. It provided information on the work of HMRI during April 2006 and covered overall health and safety performance, incident investigations, formal enforcement, significant meetings, industry progress reports, an update on RAIB reports and recommendations, and RSSB formal inquiry reports. The Board noted and welcomed the range of initiatives to encourage joint working between HMRI and other ORR colleagues.

15. The Board supported the proposals for quarterly reports on HMRI outputs. It agreed that for future meetings it would receive the safety incidents and fatalities report submitted to SRC with an oral update on any major incidents. It would also be informed of live RAIB recommendations.

Item 8: Regulatory strategy for Network Rail

16. The current drafts of the quarter-four Network Rail Monitor and the Scottish companion edition were laid round at the meeting. These would be published with ORR's annual report on 31 May 2006.

17. The Board noted the assessment of Network Rail's current performance: This generally reflected Network Rail's success at meeting its high level outputs and specific targets such as PPM, asset stewardship and track

renewal (though there were still concerns about performance in specific areas). Although it had secured real improvements in safety, performance and efficiency there was still a long way to go in each of these areas and softer customer measures revealed underlying issues that Network Rail had committed to address.

18. The Board discussed the key issues facing Network Rail going forward. It recognised the limitations in the current industry structure but accepted that there was little appetite at present to move to more conventional financing arrangements that would allow corporate financial incentives to drive the industry forward. Working within the existing industry structure, the Board discussed how its regulatory strategy could support Network Rail going beyond HLOS delivery to address its wider industry role, and realise its potential for making the railway more efficient and customer responsive. This included addressing financial incentives and greater alignment of incentives with the public interest.

19. Key areas to address in the strategy would be supporting partnership / joint venture working between Network Rail and TOCs and to review the balance of power between Network Rail and TOCs to enforce regulatory incentives and encourage a longer term view of the industry. The Chairman and Chief Executive would discuss emerging thinking on the regulatory strategy further. The Board would consider a paper in June 2006 on industry incentives ahead of a proposed consultation document.

Item 9: Approach to monitoring Network Rail, assessing its performance and compliance with the Network Licence

20. Following the establishment of a specialist monitoring team in January 2006, ORR had conducted a thorough review of the way that it monitored Network Rail's operational and financial performance against best practice. This had identified actions to enhance the robustness, effectiveness and resilience of the approach. The Board supported the proposed actions, including revisions to the Monitor and Annual Assessment, greater consideration of geographically disaggregated indicators and the establishment of a specific internal forum to oversee monitoring activity. A number of actions would be implemented immediately while others required further work, including whether further disaggregation of data would be of benefit.

21. An analysis of how ORR currently monitored Network Rail's compliance with its licence, condition by condition, had also been completed. This had also identified areas where immediate action could be taken to improve effectiveness and those where further work was needed. The Board supported the criteria and processes proposed for ensuring ORR's assessment of compliance was robust and in line with best practice, including development of a structured and documented process, a review of monitoring KPIs and a 'regulatory escalator' leading to enforcement action if necessary.

22. The Board also supported a review of some of the licence conditions to ensure that they were fit for purpose. Relatively straightforward changes would be made to the network licence within the near future, while more

complex modifications would feed into an overall licence review to form part of the Periodic Review 2008.

23. The Board noted the background to the overrun of the Sandbach – Wimslow blockade for the introduction of new signalling, and what Network Rail was doing to find a solution and mitigate the effects on passengers. As part of the new monitoring arrangements, consideration would be given as to how abnormal risks or comparable emerging problems could be identified and followed up earlier by ORR in the future.

Item 10: Sustainable development

24. Comparative environmental indicators demonstrated that rail was an environmentally friendly mode of transport. However, progress being made by other transport modes to reduce environmental impact, and the wider emphasis on sustainable development issues, meant that rail could not rely on maintaining that advantage unless some action was taken.

25. Following its discussion on 20 February 2006, the Board noted the UK's position and wider government actions on sustainable development. It also noted current industry workstreams on sustainable development and ORR's involvement in the Rail Sustainable Development Group's work to identify a number of initiatives aimed at creating a long-term sustainable development strategy for the rail industry - known as "the Route Map". These initiatives would feed into the development of the HLOS and DfT's long term rail strategy (all due to be published in mid 2007). As part of this work RSSB was commissioning reports on identifying and developing metrics and benchmarking for sustainable development; and a review of research on sustainable development for the railway for September 2006.

26. Given its statutory duties, the Board agreed that ORR should take a more active role in challenging the industry on sustainable development issues and encouraging improved performance. It agreed that the focus in DEFRA's definition of sustainable development on economic, social and environmental impacts should be at the heart of everything ORR did. It supported the proposals to consolidate existing actions and proposed new activities and approach, working with Government and industry, into a coherent policy. It agreed the proposed issues to be covered in the policy including a review of ORR's corporate activities and policies to ensure that it led by example. ORR would also expose trade-off issues in policy decisions.

27. Within ORR a sustainable development policy steering group had been established and a Sustainable Development Officer appointed to take forward the work in this area, including the development of a consultation document that would be issued later in 2006.

28. In addition, in order to better understand the issues with respect to sustainable development ORR would undertake a short study with external expert advice that would enable it to identify areas of rail industry activity that ORR should address and where it could make a difference outside the areas being investigated by the industry group. ORR would also need to be aware of the implications for the railways of policy decisions beyond its influence, such as road pricing and emissions trading.

Item 11: Board committee minutes

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

Remuneration Committee: 20 April 2006

30. The committee discussed the Senior Civil Service Pay Strategy, in line with Cabinet Office guidelines. It would meet again on 22 May 2006 to agree recommendations for pay and bonus awards for Senior Civil Service staff. The Board would consider the recommendations in correspondence before final recommendations were submitted to the Cabinet Office.

Safety Regulation Committee: 4 May 2006

31. The committee had discussed progress on developing a strategy on level crossing safety, Board visibility on safety issues, RSSB's role, the Eurostar incident on 3 April 2006, and industry safety reports.

Periodic Review Committee: 18 May 2006

32. The draft minutes of the committee would be circulated to the Board shortly. The meeting had discussed the programme, and the current position on HLOS, SOFA, structure of costs and charges, and incentives.

Item 12: Any other business

33. There were no additional items of business.

Item 13: Date of next meeting

34. The next ordinary meeting of the Board was 19 June 2006 from 10:15. Items for the agenda included: progress and review of incentives, contracts, markets, franchising & competition issues and issues on funding devolution.

Chris Bolt
Chairman

Minutes approved by the Board on 19 June 2006.