



Department  
for Transport

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House of Commons

From the Secretary of State  
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### Pre-appointment hearing: Chair of the Office of Rail and Road

Thank you for your letter of 24 September informing me that the Transport Select Committee will be conducting its pre-appointment hearing with my preferred candidate for the Office of Rail and Road Chair, Declan Collier, on 5 November.

At the outset, I would emphasise that, following the open and fair competition for this role, I consider that Declan Collier is an exceptional candidate for this very important role. His skills, experience and proven track record, in my assessment, enable him to play a critical role in steering the ORR's Board to maximise the ORR's contribution to delivering a better functioning railway and roads for its users, taxpayers and communities.

You asked for my response to a number of questions to help inform the Committee's consideration. My responses are set out below.

#### 1. For how long do you plan to appoint the candidate, and why?

I intend to appoint Declan Collier as Chair of the ORR for five years - from 1 January 2019 - 31 December 2023. I consider that a full five year term is appropriate to ensure stability and enable the new Chair to develop a deep understanding of the regulatory system as well as a sufficient tenure to ensure the Chair is in place to oversee the Control Period 6 delivery plans (which cover the period 2019-2024), aimed at improving the performance of the railways. He would also see through the delivery of the current Roads Investment Strategy (RIS1) and the majority of ORR's work with the Department on development of the next Roads Investment Strategy (RIS2 2020-2025). Moreover, I consider appointment to a full five year term important to the independence of the ORR, by ensuring that the Chair has a sufficient tenure to oversee Board decisions over a several year period.

Declan Collier will take up the role of Chair at the same time as ORR appoints a new Chief Executive (the recruitment process for the new CEO will commence shortly and is expected to conclude early next year). In addition, during his first two years as Chair the terms of five of the Board's seven non-executive directors will come to an end (although some of them will be eligible for reappointment). It will be an important part of the new Chair's role to consider the skill set of the Board going forward and to work with any new Board members who are appointed to ensure continuity and stability for the organisation.

A full five year term will also enable the Chair to take a longer term, strategic view of the needs of the Board and the organisation, taking into account the priorities that emerge from implementation of ORR's important decisions regarding CP6 and the second Roads Period post-2020.

**2. What salary will the candidate be paid and, if the Department used the negotiating flexibility it had to pay £90k per annum to an exceptional candidate, why the Department regarded the candidate to be exceptional?**

Declan Collier will be paid an annual salary of £85K for a time commitment of two days per week. There is no pension entitlement or other financial benefits associated with the role, although he will be entitled to travel and subsistence and other expenses necessarily incurred on business in accordance with the arrangements applying to staff of the ORR.

There was some limited flexibility available on pay. This was not used by the Department. I consider that Declan Collier is an exceptional candidate on the basis of his record and the skills, experience and capability he demonstrated during the recruitment process. Reflecting his interest and commitment to the role, Declan did not seek to negotiate to the maximum of the remuneration scale.

**3. What lessons did the Department learn from previous, unsuccessful, recruitment campaigns and how were these applied to the most recent campaign?**

The Lesson Learned Report (a copy of which is attached for ease of reference) made the following recommendations. I have set out below each one the key actions that the Department took in the 2018 campaign in response:

- 1) *There would be considerable merit in a more direct dialogue with the SoS at the outset of the process to ensure we understood both his formal requirements for the successful candidates and his preferences as to the most appropriate type or person for the role.*

Officials were diligent in seeking my early and clear views on what I wanted to achieve from this campaign and on the type of candidate I was seeking to appoint to this important role. I had an early meeting with officials and a meeting with the Senior Independent Panel Member (who was external to the Department and the ORR, and whom I asked to chair the advisory assessment panel) to discuss my aims. This enabled the Department to ensure that the advertisement and person specification for the role was clear and targeted towards achieving my aims, and that the advisory assessment panel had the clarity needed about their brief and were able to consider candidates against criteria that were fully consistent with my aims.

2) *When the competition is restarted, the published advert and candidate pack should:*

a. *convey a stronger message around the importance of ORR's role to Government's strategy for the railway, conveying more confidence in the organisation and its important independent role.*

b. *be clearer about the balance between 'essential' and 'desirable' criteria, with the view of attracting candidates with a wider range of backgrounds, personalities and skills.*

c. *more clearly emphasise the non-executive nature of the role, to emphasise that the 2 days per week expectation is realistic.*

The advertisement and candidate pack, particularly my foreword to the pack, set out very clearly my view on the importance of effective regulation in helping the Government to achieve its current and future ambitions for rail and road, supporting economic growth and bringing communities together, illustrating my confidence in the organisation and its independent role.

With regard to the essential and desirable criteria, the advertisement and candidate pack set out very clearly the type of applicant I was seeking – essentially someone with the capability and skills to ensure that ORR maximises its role in improving outcomes for passengers, freight users and the taxpayer. I considered that this would best be achieved by someone with an understanding of complex organisations, and with a strong ability to understand the customer perspective and put it at the heart of Board discussions. They were also clear about the importance of effective regulation in helping the Government to achieve its current and future ambitions for rail and road, supporting economic growth and bringing communities together.

The only criterion that was advertised as essential was that applicants had previous non-executive experience. This requirement reflected the importance of having relevant experience to build on as Chair, whilst, coupled

with the two days per week time commitment, also clearly emphasising the non-executive nature of the role.

I was very clear with officials that, whilst having a firm view as to the type of person I was looking for, their professional background was of less importance than the skills, experiences and capabilities they brought to the role. What was very important was that they could grasp the complexity of the ORR's role and would have the necessary skills to steer the Board in what is a complex industry, with major impacts on passengers, freight users, taxpayers and communities.

- 3) *In light of value for money considerations and the results of the previous campaign (where recruitment consultants were used), recruitment consultancy support should not be used for the next recruitment process, but rather more extensive use should be made of the professional networks of senior individuals within:*
- a. *DfT;*
  - b. *HM Treasury;*
  - c. *Shareholder Executive; and*
  - d. *Infrastructure and Projects Authority.*

In line with this recommendation the Department did not engage recruitment consultants for this campaign. Instead officials engaged with the external bodies above as well as others which it considered were well placed to identify potential candidates, including the UK regulators network, Which? and the Airport Operators Association. Within DfT, officials sought the views of the Ministerial team, the Department's Board and the senior DfT executive to identify potential candidates. This enabled the Department to draw up a list of names from which officials directly approached a number of individuals who were considered to be a potentially good fit to provide them with information about the role. This list included Declan Collier.

- 4) *While increasing the advertised salary is unlikely to fundamentally change the pool of applicants, it is low compared with equivalent time-commitment roles in the private sector and critically most other comparable public sector regulators. It would be desirable to be able to reflect the experience and skills required for this role, by increasing the remuneration to £100k (previously advertised at £80k), with the flexibility to increase it to £120k (current ORR Chair remuneration) for an exceptional candidate. This will be subject to discussions and agreement with HM Treasury*

The Department discussed with HM Treasury the merits of increasing the advertised salary to £100k. On the basis of those discussions, a salary of £85 was agreed, with some flexibility.

**4. What efforts did the Department make to elicit applications from as diverse a range of people as possible, and how could this be improved in the future?**

The Department took extensive steps to bring the advertisement for the role to the attention of suitable candidates. The role was advertised on the following websites: Cabinet Office Public Appointments; ORR; Vercida (focussed on increasing diversity); NEDs on Boards; Women on Boards; Financial Times executive appointments; Times/Sunday Times online; and Non-Executive Directors.com. The Department's direct approaches also included eight women.

The overall diversity of the field of applicants was not as broad as we would have liked, with few female, ethnic minority and disabled applicants, despite the efforts undertaken. The Department will consider carefully what it can do to encourage a more diverse field of applicants in future, consistent with the objectives of the Centre for Public Appointments' Public Appointments Diversity Action Plan. The Department's centralised Public Appointments Team are in the process of developing a strategy to increase the diversity of candidates across the Department's family of Non-Executives, as well as developing a candidate pool/pipeline of candidates for forthcoming roles, with an emphasis and focus on increasing diversity. In addition, we will draw on the experience of initiatives such as my Department's Transport Infrastructure Skills Strategy and Network Rail's drive to increase the number of women in its business by 50% by the end of the Control Period 6.

**5. The Department has said that you plan to appoint Declan Collier as a non-executive member of the board for a brief period before he takes up the role of Chair. When are you planning to do this?**

Subject to the outcome of the Committee's pre-appointment scrutiny, my plan is to appoint Mr Collier to the ORR's Board as a non-executive member in mid-November. This will provide a period of approximately six weeks in which he can fully engage with the Board and the wider organisation and its work before taking over as Chair on 1 January 2019. As important preparation for taking up the role, subject to the Transport Select Committee process, Mr Collier is already attending the ORR Board in an observer role.

Thank you again for your letter. My officials stand ready to assist the Committee throughout the process.



**Rt Hon Chris Grayling MP**

**SECRETARY OF STATE FOR TRANSPORT**

# ORR Chair Recruitment Lessons Learned Report January 2018

## Objective of the 2017 campaign

To appoint a Chair for the Office of Rail and Road (ORR) by 31 December 2017.

## Recruitment Strategy

The Department of specified the key qualities required. Recruitment consultants, Saxton Bampfylde, who have extensive experience of competitions of this kind, were then contacted and given a brief to identify and engage suitable candidates to join the board of ORR as Non-Executive Chair. They conducted a targeted and comprehensive search contacting over 200 individuals to reach a broad range of candidates from diverse backgrounds.

They attempted to identify potential candidates who:

- were experienced operators at board-level of major private or public-sector bodies;
- had demonstrated the requisite leadership, strategic, and stakeholder-engagement skills necessary to steer the ORR in the coming years;
- had the gravitas and insight to provide constructive challenge and effective scrutiny; possessed a breadth of relevant commercial experience and knowledge;
- combined with an understanding of relevant areas of public policy.

Their priority was to target those with high profile board experience, ideally in both public and private sectors, and particularly in regulators, or industries which are regulated or which interact closely with government, e.g. infrastructure.

We were particularly keen to identify candidates with a range of relevant commercial skills (not necessarily within transport), who could be particularly robust in ensuring effective regulatory oversight of Network Rail. To this extent, Saxton explored the private sector for potential candidates who could bring a depth of senior leadership experience through having run major (ideally publicly-listed) businesses. As such, former Chief Executive Officers and executives of relevant private sector firms, who were subsequently developing a non-executive portfolio were targeted. They also considered, to a lesser extent, current or recently stepped down Chief Executive Officers and senior executives, who were beginning to build a non-executive portfolio career.

Saxton's found that this core demographic was hard to persuade (many of those approached simply did not see themselves as 'regulators').

The search was broadened to look at other candidates who may have non-executive experience of regulators or regulated industries, but whose earlier career might not have been in industry.

The search focused on the following industries: railways, road, transportation and more broadly, infrastructure, and civil engineering. Regulated industries of relevance, such as utilities, energy, and nuclear; and industries which work very closely with government, where health and safety is a major concern, such as heavy engineering and defence sectors were explored for potential candidates.

Alongside the direct targeting of individuals an advert was placed in The Sunday Times online, Saxton Bampfylde's website, Vercida (formerly known as Diversity Jobs), the public appointments website and the ORR website. The role was advertised from 14 July to 6 September 2017 (7.5 weeks), a longer than normal period to counterbalance the advert being placed during the summer period.

A total of 26 applications were received. This was towards the lower end of our expectations. Most of the applicants' characteristics were broadly in line with what would be expected for a role of this nature, albeit with a slightly increased representation for former political figures. There were few instances of candidates genuinely outside of the expected sphere (though this may reflect the particular challenges of the role as discussed below).

The Assessment Panel reviewed all 26 applicants, based on the basic criteria in the role specifications, their CVs and covering letters. The Panel agreed that 12 candidates would be long-listed. Saxton Bampfylde, conducted face to face meetings with the candidates prior to the shortlist meeting. These interviews addressed concerns or issues raised by the Panel at the longlist meeting e.g. perceived conflicts of interest with current or previous roles.

The outcomes of these interviews assisted the Panel in selecting candidates to be interviewed. The Panel selected four candidates and the Secretary of State (SoS) requested two other candidates be included in the interview process.

Following the Panel interviews, two candidates were deemed appointable. Due to the importance of this role the SoS met both appointable candidates. After careful consideration, including consultation with the Permanent Secretary, he decided that he could not appoint either candidate to the role. The SoS considered that they would not bring the personal qualities required to achieve the necessary profile and pace for such an important role at such a significant time.

## Issues

There are a number of determinants that may have influenced the number and quality of applicants applying for the role, the reasons below have been drawn up following discussions with the recruitment consultants, Assessment Panel, ORR and candidate questions.

### 1. ORR

ORR's reputation, perceived and factual, may be a deterrent for potential candidates applying for the role.

#### a. Complexity of the work undertaken by ORR

The ORR's Chair is presented with a complex set of challenges:

- the organisation plays a crucial role in a vitally important and rapidly evolving industry;
- the work it does is high profile and deeply political;
- the organisation, although small, is composed of several teams doing a diverse range of work; and
- there is a substantial stakeholder engagement role with a range of organisations and individuals.

Compared to other regulators, the ORR's role necessitates a large degree of managing very high levels of uncertainty in a highly political environment. Traditional regulatory tools are often of limited value in the rail sector, which frequently requires more bespoke approaches.

#### b. Perceived lack of independence

- The ORR is highly unusual compared to other regulators in that they regulate a public body and is answerable to the SoS, this had perceived political tensions.

- The ORR's health and safety remit is relatively straightforward, but candidates found it hard to understand the ORR's room for manoeuvre in terms of its regulatory oversight of Network Rail.
- It was sometimes seen to be a very political chair role, more so than those of other independent regulators. It was generally felt that the chair would have to be particularly adept at dealing with DfT, HMT, and the private sector.

#### **c. Perceived uncertainty over the ORR's future**

- The ORR has been the subject of significant criticism in recent years, particularly following problems with Network Rail's cost control and delivery timetables for enhancement projects during the previous Control Period. These were widely perceived as a factor in the departure of the previous Chief Executive.
- Industry press coverage is often highly critical of the ORR. Recent editorials in major trade publications have raised questions such as "what is the point of the ORR?"
- Recent Government publications have emphasised the Government's strong commitment to independent economic and safety regulation for the rail regulator. We also noted that stakeholders had more confidence in the ORR's role arising from its recent work and in particular its current leadership. However, these messages have not yet been universally picked up.

#### **d. Conflicts of interest**

Potential candidates with sector experience and knowledge of the ORR may have conflicts of interest due to having worked for organisations regulated by ORR during their recent career history (and may in many cases, still hold shares or pension rights from those organisations).

## **2. Remuneration and time commitment**

### **a. Remuneration**

Current Chair receives £120k, this was reduced to £80k in light of current constraints.

- While the remuneration is high against the backdrop of the public sector averages, it was low compared with equivalent time-commitment roles in the private sector and critically most other comparable public sector regulators. This did not seem to be major factor for those candidates who did apply, but it almost certainly shaped the field, particularly in light of the highly desirable and transferable skill set required.

### **b. Time commitment**

Time commitment of the Chair was reduced from 2.5-3 days to 2 days.

- Overwhelmingly, those candidates who declined to pursue the role further did so because they perceived the time commitment would be simply too much in practice.
- Candidates preferred a 2 rather than 3 day role, only if it was genuine reduction, but most were unconvinced.
- ORR itself preferred a lower time commitment, on the grounds that it was clear it was preferable to have a genuinely non-executive Chair, rather than a Chair who saw their role as overlapping with that of the Chief Executive (this has been an issue for the ORR in the past).

## **3. Recruitment process**

### **a. Guidance**

The panel were provided with clear guidance on the Secretary of State's requirements as they were understood at the time. With hindsight, it may have been advisable to speak more extensively with the Secretary of State about the role,

understanding not just his formal requirements, but also his more general steers as to the kind of person he was seeking.

**b. Timings and delays**

- The recruitment process was delayed several times. The main source of delay: that resulting from the 2017 General Election, was unavoidable and could not reasonably have been predicted. The delay resulted in the advert being published during the summer period. This may have impacted on potential applicants seeing the advert or applying.
- A further result of this delay was that the latter stages of the process were compressed beyond what would normally be desirable.

**4. Person specification**

**a. Requirements for the role**

The published requirements for the role were in line with what would normally be expected of the Chair of an independent regulator. It is possible, however, that the expression of these requirements was overly rigid and that a different balance between “essential” and “desirable” skills may have resulted in a more diverse field.

**b. Expectations of the role**

In light of the clear desire for a non-executive Chair, rather than a role which overlapped heavily with that of the Chief Executive, it may have been better to emphasise more clearly in the application pack the non-executive nature of the role. This may have given additional credibility to the reduced time commitment and may have attracted a broader pool of candidates.

## Recommendations

The post of ORR Chair is a critically important one for the Department, particularly given the important role the ORR plays in reforming Network Rail. The current Interim Chair, Professor Stephen Glaister, has now been the subject of two interim appointments and while he is very highly regarded, we do not expect to be able to extend his term further. It is therefore critical that a successful recruitment process is conducted over the course of 2018, to appoint a new permanent Chair by the end of the year. On the basis of the lessons learned exercise, we would make the following recommendations:

- 1) There would be considerable merit in a more direct dialogue with the SoS at the outset of the process to ensure we understood both his formal requirements for the successful candidates and his preferences as to the most appropriate type or person for the role.
- 2) That, when the competition is restarted, the published advert and candidate pack should:
  - a. convey a stronger message around the importance of ORR's role to Government's strategy for the railway, conveying more confidence in the organisation and its important independent role.
  - b. be clearer about the balance between 'essential' and 'desirable' criteria, with the view of attracting candidates with a wider range of backgrounds, personalities and skills.
  - c. more clearly emphasise the non-executive nature of the role, to emphasise that the 2 days per week expectation is realistic.
- 3) That in light of value for money considerations and the results of the previous campaign (where recruitment consultants were used), recruitment consultancy support should not be used for the next recruitment process, but rather more extensive use should be made of the professional networks of senior individuals within:
  - a. DfT;
  - b. HM Treasury;
  - c. Shareholder Executive; and
  - d. Infrastructure and Projects Authority.
- 4) That while increasing the advertised salary is unlikely to fundamentally change the pool of applicants, it is low compared with equivalent time-commitment roles in the private sector and critically most other comparable public sector regulators. It would be desirable to be able to reflect the experience and skills required for this role, by increasing the remuneration to £100k (previously advertised at £80k), with the flexibility to increase it to £120k (current ORR Chair remuneration) for an exceptional candidate. This will be subject to discussions and agreement with HM Treasury

## ANNEX A - Background

Following the departure of the previous ORR Chair (Anna Walker) in 2015 the SoS, at the time, suspended a competition to appoint a new Chair. This was due to reviews of Network Rail causing uncertainty about the role of the ORR. The competition was suspended again in 2016, following the resignation of the ORR's Chief Executive and loss of an executive Director and two non-executive board members.

During this two year period, Professor Stephen Glaister was appointed as interim Chair. Stephen Glaister's one year interim contract has now been extended twice and will run for a third year. The Commissioner for Public Appointments was only persuaded to extend the appointment because, unlike previous years, we had completed the recruitment process and was unsuccessful in recruiting a suitable candidate. The Chair for the Transport Select Committee (Lillian Greenwood) has written to the SoS about her dismay that parliamentary scrutiny has been avoided for a third time.

The recruitment process was conducted in accordance with the Governance Code and with the Principles of Public Appointments. The Advisory Assessment Panel consisted of:

Panel chair:	Rosemary Varley OBE, Senior Independent Panel Member
Members:	Dame Deirdre Hutton, Chair of the Civil Aviation Authority Nick Joyce, Acting Director General of DfT Rail Group