



## Railway Industry Health and Safety Advisory Committee (RIHSAC)

Minutes of the 103rd RIHSAC Meeting  
Tuesday 4 October 2016

Room 2, One Kemble Street, London

### Present:

Justin McCracken	Chair, ORR non-executive director
Dave Bennett	ASLEF
John Cartledge	Passenger representative (Co-opted member)
David Davies	Parliamentary Advisory Council for Transport Safety
Euan Smith	Angel Trains
Lisbeth Fromling	Network Rail
Mark Norton	Department for Transport
Mike Lunan	Passenger representative (Co-opted member)
Robert Fisher	Transport Scotland
Dilip Sinha	ORR, RIHSAC secretary
John Gillespie	ORR, HM Assistant Chief Inspector, Transport for London, Safety by Design and Channel Tunnel
Tracy Phillips	ORR, (Safety Regulation Manager) item 5
Ben Shirley	ORR, (Health and Safety Risk Specialist) item 6
Martin Jones	ORR, (Head of Railway Safety Policy) item 7
Robert Cook	ORR, (Head of Strategic and Policy Projects) item 8
Claire Dickinson	ORR, (Occupational Health Programme Manager) item 9

### Item one: Welcome, introductions and apologies for absence

1. Justin McCracken welcomed everyone to the meeting. He welcomed specially Mark Norton, Euan Smith and Robert Fisher.

2. Apologies for absence had been received from Susan Murray of Unite; Alastair Young of Transport Scotland; Ian Prosser and Johnny Schute from ORR (who were abroad at a conference); George Bearfield and Ian Moreton of RSSB; Garry McKenna of DRD Northern Ireland; Stephen Chamberlain of the Welsh Government; Bill Hillier of HRA; Gary Cooper of ATOC and John Collins of Angel Trains.
3. RIHSAC reviewed and accepted the minutes and actions arising from the June 2016 meeting.

### **Item two: Chief Inspector's update**

4. In Ian Prosser's absence John Gillespie reported on developments since the last meeting. He said that inspectors from ORR's Transport for London team went out on the Victoria and Central lines inspecting progress before launch of the 'Night Tube' and went out again on launch night.
5. They spent the night visiting various stations with interchanges to non-operating lines to ensure that those areas had been properly and securely segregated with barriers and that contractors were not leaving access points open and unattended. Results were satisfactory, but there will be continuing periodic inspections.
6. Turning next to ORR enforcement action, John noted that Network Rail had recently been fined twice by the courts. On 5 August, it was fined £70,000 for failing to comply with an Improvement Notice, which required electrical cabinets on the railway to be made safe, reducing the risk of passengers and other members of the public being exposed to live 650V electrical equipment.
7. Network Rail was also fined £4million on 21 September for breaches of health and safety law which led to a fatality at Gypsy Lane pedestrian level crossing near Needham Market, Suffolk, in 2011.
8. On 20 June, ORR's new Train Driving Licence application system went live for industry use. Under the 'Train Driving Licences and Certificates Regulations 2010 (TDLCR)' all train drivers on the mainline network are required to be licensed by 29 October 2018. ORR is responsible for issuing those licences.
9. ORR has processed in excess of 5,000 licence applications, but is expecting around 10,000 more to be made by the deadline. In order to ensure that ORR can continue to meet its statutory obligation to issue licences within one month of an application being made and ensure that the industry is ready for the 2018 deadline, a new system has been introduced to allow train operators to enter their own data onto our register of drivers, leaving RSD to focus on authorising licences for issue. Dave Bennett of ASLEF suggested that TOCs should be encouraged to submit in batches at certain planned times.
10. The Secretary of State has reappointed Stephen Glaister as ORR Chair until December 2017. He has also recently appointed three new non-executive directors to the Board of ORR: details are available on our website.
11. John then turned to recent publications. HSE is currently reviewing the regulations on the control of hazardous substances in the workplace, with the aim of making

them more simple and straightforward without reducing the level of protection. ORR is contributing to this review.

12. HSE is seeking information from all industries on their experience with complying with these Regulations. A survey is live on their web site until Tuesday 18 October, but you can still share evidence or views after this date by emailing the review team direct. The survey link ([www.surveymonkey.co.uk/r/hazardsub](http://www.surveymonkey.co.uk/r/hazardsub)) and email address ([chemicalsOHSreview@hse.gov.uk](mailto:chemicalsOHSreview@hse.gov.uk)) will in the RIHSAC minutes.

**Action: Secretariat to circulate link to members**

13. ORR published its annual report on Network Rail's performance in July. Network Rail had a good year on safety in 2015-16. There has been good progress in improving its infrastructure, but this cost more than expected and has yet to deliver improvements in performance across the network as a whole.

14. ORR also launched the Annual Health and Safety Report 2015-16 at a breakfast briefing for industry stakeholders on 19 July. The report notes that while Britain's railways are the safest they have ever been, there is still room for improvement. Members were provided with copies at the meeting, and discussion of the report followed under the next agenda item.

15. A short discussion followed, in which the points below were made:

- It may be a good idea to have a rolling programme of train driver licensing deadlines for each TOC, to avoid a last 24 hours rush. John Gillespie agreed to pass this idea to the team working on the system
- John Gillespie was not aware of the deadline for dealing with the issue of electrical cabinets under the Notice, but promised to come back to Mark Norton with information
- Some members felt that fining Network Rail may not be the best way to achieve improvements in safety, but noted it was an issue for the courts. Fines are the only penalties for which the Health & Safety at Work etc Act provides, in the case of corporate offences. ORR has in the past insisted on improvements rather than a fine as part of its economic regulatory work
- ORR will be passing on learning from railway safety management maturity practices to Highways England as part of its roads monitoring role

**Actions: John Gillespie to contact Mark Norton  
John Gillespie to speak with ORR train driver licensing team**

### **Item three: Lessons from ORR's annual health and safety report**

16. John Gillespie opened this presentation. Britain's railways are the safest they have ever been, but there is still room for improvement. That is the key message from ORR's [annual report on railway health and safety](#), published in July.
17. Pages eight and nine contained the main messages Ian Prosser would like the committee to bear in mind:

- the on-going challenge of managing growth and change: the growth in passenger numbers and managing massive transformative railway construction projects puts additional pressure on the industry
- translating strategic intent into practical delivery on the ground
- there are wider benefits from a thriving health management culture and while some progress has been made, there remains more for the industry to do to improve the sectors' management of occupational health

18. A brief discussion followed:

- John Cartledge believed the report was interesting and informative, and that the series had improved over time. He noted while there were a lot of statistics about the mainline railway, there were fewer for the Underground and tramways, and almost none for heritage railways, making it difficult to gain a consistent view of the relative performance of each sector. Could ORR set a basic industry norm for safety statistics collection to enable easier comparisons?
- John Gillespie noted that ERA is working on data commonality and common safety indicators. However, it can be tricky to find commonality. ORR did not want to ask operators to collect statistics without good reason. However, ORR will review the report to see if various sectors can be better reflected statistically next year
- David Davies noted that the report had less than a page on suicides on the railway, on page 53. He asked that this issue be treated more on a par with other safety issues, and that future reports give more attention to it, in light of the scale of the tragedy (252 deaths in 2015-16) and the good work undertaken by the industry. Suicides on railways had declined last year whilst the number nationally had gone up. Members recalled that the Chief Executive of Samaritans had given a very good presentation here a while ago.
- Network Rail's partnership with BTP and the Samaritans recently won an award for its good work. Members agreed that there was no benefit in continuing to be reluctant to publicise the strategy for suicide prevention (as distinct from the details of individual cases) – they wanted to see it given a higher profile in next year's report.

#### **Item four – A new policy for asbestos?**

19. Paul Clyndes of RMT had asked to give this presentation, but was not at the meeting. Members agreed to ask him to bring a full presentation to the next meeting in January, as he had already indicated he planned to do so.

*Secretariat note: ORR received an email apology from Paul after the meeting for non-attendance due to illness. His mobile phone had failed to send this in time for the meeting. Paul confirmed he would give a presentation in January.*

**Action: Paul Clyndes to present on January 10**

## **Item five: PR18 and route level devolution in Network Rail: ORR's health and safety aspirations**

20. Tracy Phillips opened this presentation. She said she would: update RIHSAC on where the PR18 process has got to; outline the approach being taken in relation to health and safety; and provide a flavour of the proposed key health and safety messages and themes for PR18 (the periodic review being the principal mechanism ORR will use to hold NR to account in Control Period 6).

21. ORR's aim is that PR18 will "support a more efficient, safer and better used railway, delivering value for passengers, freight customers and taxpayers in CP6 and beyond". It issued an initial consultation document in May 2016 setting out its proposed approach to the review.

22. Between June and August 2016, ORR published working papers on route level regulation, system operation, enhancements and outputs framework. Some of these are still open for comments and members are encouraged to do so. The conclusions arising from all the consultations will be available in November, along with the first key milestone - issuing draft guidance to Network Rail for production of its Strategic Business Plan (SBP) and route plans

**Action: all members to review working papers if appropriate to them**

23. There will be no discrete health and safety project (a lesson learnt from PR13). So it will be essential that health and safety is embedded across all workstreams and projects.

24. Safety teams have considered the core health and safety messages to run through PR18; these will be articulated in guidance on the SBP. They will be consistent with the themes and opportunities to improve set out in ORR annual health and safety report and the railway industry's own strategy.

25. These include Network Rail continuing to implement its Control Period 5 commitments around culture, rules and competence, innovation and assurance; a maintained focus on core maintenance, renewal and operational activity; compliance with all relevant legal health and safety obligations (taking account of greater route devolution); managing growth and change; embedding of health and safety by design; realising safety benefits afforded potentially by the Digital Railway and the unified industry health and safety strategy; embedding/promoting a thriving health management culture; improved RM3 evaluations; and management of specific risk areas for example level crossings..

26. A brief discussion followed the presentation, in which:

- Network Rail noted that it is working on over 1000 different projects, within a national programme. The company is keen that ORR has clear sight of its national programme of projects which are designed to maximise benefit
- Tracy Phillips agreed that greater devolution gives the opportunity for some benchmarking between NR routes, driven by the TOCs and FOCs (as they are the route customers)

- Justin McCracken answered a question re comparative regulation, saying that he expected it to happen particularly on the economic side. It is used in other regulated industries and helps to incentivise improvement.
- It was agreed it would be helpful for RIHSAC to have another discussion on PR18 in six to 12 months.

### **Item six – Strategic risk chapter: safety management systems**

27. Ben Shirley opened discussion on this item. A paper had been circulated to members for review, along with a) workforce safety and b) leadership and culture.
28. The strategic risk chapters are designed to be a process for risk based assessment of their area of relevance. They are aligned to ERA's CSM on supervision. The paper on safety management systems (SMS) before the committee set out activities by ORR, along with action it would like to see from others.
29. The paper was first published in 2012, and has been reformatted to be consistent with the other risk chapters. It has also been revised and shortened, being currently nine pages (previously twelve). It is published on ORR's website, and members could see that the first page was designed to provide a background to the issue for the lay public.
30. Ben took the committee through each of the areas in turn, asking if they had any comments on that section. They had few, but Ben agreed to obtain more background on the 'TfL dutyholders' and see if the section could be better written to distinguish more clearly between references to TfL-sponsored services as a whole and those applying individually to the separate rail sectors in which it was present, i.e. mainline, metros, light rail and tramways.
31. Closing, Ben briefly asked if members had any observations on the other papers that had been circulated. They did not.

### **Item seven – Fitness for work guidance**

32. Claire Dickinson opened this presentation. It was designed to explain ORR's current consultation about its draft fitness for work guidance.
33. It was timely to review the issue, in the light of:
- Recent incidents
  - An increase in the number of telephone enquiries about fitness for work issues
34. Claire explained the legal background. There were duties on the employer arising from European regulations, and national requirements mirrored in railway group standards. In some instances the requirements were set down in company standards.

35. A company needs to be confident that it will be able to detect a sick or unfit employee who poses a risk to public safety. Effective management needs to be in place to manage this risk and the individual has to be treated fairly and proportionately.

36. The consultation seeks views on a number of questions:

- Should the publication be guidance, a briefing note or something else?
- What should be the lines to take on balancing fitness and risk?
- Is fitness decision making – fair?
- Is there a means of resolving challenge?
- Is there appropriate collaboration of the right people in decision making?
- Sufficient understanding of rail environment?
- Variable conditions – how fit is fit enough?
- Are those with a specific decision making role clear on the standard, their responsibilities, governance?
- Is there sufficient clarity on how the system fits together to ensure a safe railway

37. Claire asked members to review these questions, and thanked those who have already been in touch or said they will be. She would welcome any further response by 1 November.

**Action: members to respond to Claire if desired**

38. In the discussion that followed, several points emerged:

- Dave Bennett noted that ASLEF wants to get involved, and asked if there was any legal difference between different types of guidance. Claire said it was just restating the current legal position but it holds the legal standing of ORR guidance
- Members noted that there needed to be an appeal system, and that it was not always the case that doctors did assessments. They were often done by nurses who were overseen by doctors
- Claire noted that there are a number of issues that are best addressed via RSSB's Health and Wellbeing Professions Committee. The ARIOPS competency framework for responsible doctors is currently being revised. RSSB is in a good place to get the wide range of organisations and professions involved co-ordinating together to clarify respective roles and responsibilities'
- The Driver and Vehicle Licensing Agency is now asking doctors who tell workers not to drive to also inform DVLA. This seems to override patient confidentiality (see page nine, item 4 of [a publication on the gov.uk website](#))
- Members asked about guidance on managing age-related and long-term health conditions.

## **Item eight – Brexit and rail safety regulation**

39. Martin Jones opened this presentation. He explained that it would be a high level consideration of different types of railway health and safety regime that might exist in

UK after we have left the EU. He would focus on different scenarios and their advantages and disadvantages.

40. The presentation would not cover the Channel Tunnel, changes to general health and safety legislation or the detailed legal implementation of possible solutions.
41. At present, the UK is a full member of the EU and remains involved in all its activities. Martin explained what might happen in scenarios where the UK moved to not having a deal with the EU in place after Brexit, what would happen under EEA member conditions, and what a bespoke deal might look like.
42. We have certain objectives we would like our regulatory regime to deliver, including:
  - supporting continuous improvement in safety performance / assurance
  - securing market access to / from EU
  - achieving better regulation objectives
  - minimising change and implementation costs for industry (sunk and future)
  - optimising the regime for different duty holders (e.g. train operators vs. infrastructure providers; international vs domestic; mainline vs. non-mainline)
43. To achieve this, there are some basic building blocks we rely on. These include application of general health and safety legislation to the railway; a permission to operate regime supervised by the independent regulator; joint responsibility of the infrastructure and operating companies for system safety; and an independent accident investigation body.
44. We would need to consider whether to keep, replace or repeal various EU related elements which supplement these, however. These include the single safety certificate; train driver licensing; common safety methods placing obligations on the industry or the regulator; and safety indicators / data collection.
45. It will be important to make decisions based on evidence so that they can be defended. Martin explained the evidence base currently available, and noted that it will need to be developed further.
46. Martin explained that next steps will include continuing to work to influence EU directives and regulations, while talking to stakeholders about other options for the future. ORR is a member of a DfT chaired cross-industry group which is working on issues around the Fourth Railway Package and possible EU exit scenarios in parallel.
47. Closing, Martin undertook to keep RIHSAC informed as the situation develops. In the discussion which followed, points made included these:
  - Collection of the evidence base
  - Railway health and safety legislation has been challenged in the Red Tape Challenge and was generally found fit for purpose
  - The UK has regularly influenced the EU's decisions on what bodies and processes to introduce



- Much safety standard-setting for road vehicles took place under the auspices of the UN Economic Commission for Europe (UNECE), whose membership included all European countries rather than the sub-set which form the EU. UNECE's transport remit also extended to rail, so might this be a more appropriate agency for (e.g.) setting Technical Standards for Interoperability?

### **Item nine - Horizon scanning**

48. Robert Cook introduced this presentation. He explained that he worked in ORR's strategy and policy unit, which has recently been looking at emerging issues which may arise across the railway industry. ORR's concern was particularly on those which would affect it as a regulator.

49. Members were given a copy of the document listing a number of issues, and Robert asked them to email their views on any of these to him after the session via the Secretariat. He said he would be happy to have follow-up discussions on request.

**Action: Secretariat to circulate electronic document  
All members to respond via Secretariat**

### **Item ten – Meeting review**

50. Justin McCracken asked if members had been satisfied with the meeting and its agenda. They were. Members agreed to take the presentation from RMT on asbestos in January.

51. Dave Bennett explained that he may be accompanied by Mick Holder from ASLEF at the January meeting, as he prepared for retirement. Members agreed to mark the meeting in some way, and Dave agreed to give thought to a presentation on issues he felt deserved RIHSAC's attention going forward.

**Action: Secretariat  
Dave Bennett**

### **Next Meeting**

Tuesday 10 January 2017, from 1330-1600 at One Kemble Street.

Dilip Sinha

RIHSAC Secretary

October 2016