

Office of Rail and Road
Railway Industry Health and Safety Advisory Committee (RIHSAC)

Minutes of the 102nd RIHSAC Meeting
Tuesday 7 June 2016
Room 2, One Kemble Street, London

Present:

Ian Prosser	Chair, ORR, HM Chief Inspector of Railways
Allan Spence	Network Rail
Dave Bennett	ASLEF
Emma Head	High Speed 2
George Bearfield	RSSB
John Cartledge	Passenger representative (Co-opted member)
John Collins	Angel Trains
Jill Collis	TfL
Bill Hillier	Heritage Railway Association
Mike Lunan	Passenger representative (Co-opted member)
Garry McKenna	DRD Northern Ireland
Stephen Chamberlain	Welsh Government
Steve Price	ATOC
Alastair Young	Transport Scotland
Dilip Sinha	ORR, RIHSAC secretary
Johnny Schute	ORR, Deputy Director, Policy and Strategy, Railway Safety
Chris Hemsley	ORR, Deputy Director, Railway Markets and Economics) item 3
Neil Anderson	ORR, HM Inspector, safety management systems) item 5
Anna O'Connor	ORR, HM Principal Inspector, Head of Projects) item 6
Darren Anderson	ORR, HM Principal Inspector, Network Rail)- item 7

Item one: Welcome, introductions and apologies for absence

1. Ian Prosser welcomed everyone to the meeting. He welcomed Allan Spence, Steve Price, Emma Head and Chris Hemsley.
2. Apologies for absence had been received from Justin McCracken, Susan Murray of Unite, David Davies of PACTS, Gary Cooper of ATOC and Lisbeth Fromling from Network Rail.
3. RIHSAC reviewed and accepted the minutes and actions arising from the February 2016 meeting, subject to one amendment in paragraph 31 replacing “reliable” with “comprehensive”.

Item two: Chief Inspector’s update

4. Ian Prosser, HM Chief Inspector of Railways, reported on developments since the last meeting. He reported that he has begun blogging on the ORR website concerning health and safety issues, and also has [a Twitter account](#) members can follow.
5. Ian said that [his blog post](#) reported on health and safety performance in 2015-16. For the first time, there were no worker fatalities in the industry, and it looked likely that there would be no industry-caused passenger fatalities, also a first.

6. There was also the lowest recorded number of level crossing fatalities (four). However, given recent fatal train accidents in Belgium and Germany, the UK cannot afford to become complacent about this successful performance.
7. ORR signed a new collaboration agreement with the European Rail Agency (ERA) on 3 February, setting out how we will work together to prepare for ERA's changed role following the Fourth Railway Package.
8. ERA officials will be invited to "sit in" on some of ORR's safety certification and authorisation work, to gain experience of the processes and competences required. ERA is grateful for our assistance.
9. ORR published its response to the Which? Supercomplaint about ticket selling practices in March. We have recommended a package of measures to deliver results for consumers swiftly, including a co-ordinated, national promotional campaign by the train companies; clearer, plain English forms and website information, and better training to support staff in providing information on compensation
10. Last week, we reported for the first time on how the rail industry is meeting its obligations to provide accurate and timely information, help disabled passengers, manage complaints and comply with consumer law. Our 'Measuring Up' report is based on extensive research, workshops, and engagement with train companies, Network Rail and passenger representatives. Working with the rail industry, ORR is establishing a robust and comprehensive monitoring framework for the industry's consumer obligations.
11. ORR approved applications from Virgin Trains East Coast and FirstGroup for new passenger services for the East Coast Main Line (ECML) on Thursday 12 May.
12. On 23 March, Ian Prosser lifted the Prohibition Notice on the West Coast Railway Company (WCRC). We demanded, and have now received evidence of, assurances that steps have been taken to remedy the issues we identified.
13. Replying to questions raised regarding trespass by trainspotters, Ian said that he had made representations to all parties involved in the WCRC Flying Scotsman train trips. British Transport Police officers are aboard the trains.

Item three: Periodic Review (PR) 18: incorporating health and safety

14. Chris Hemsley, Deputy Director, Markets & Competition, opened this presentation, and talked about the links between PR18 and health and safety. He emphasised that the review is about changing how Network Rail is regulated from an economic perspective, and makes no changes to the safety regime.
15. Chris noted that ORR has published the first major consultation document, preparing for the regulatory settlement for Network Rail. This will cover the five-year period from 1 April 2019. The document looks at how the institutional and operational context has changed since the previous PR, sets out ORR's initial proposals for responding to these changes, and invites comments and ideas from stakeholders.
16. The Periodic Review process sets the outputs (performance, maintenance, asset management and more) that Network Rail must deliver during the control period, and an agreed amount of funding that it needs to do so. It aims to provide

incentives to encourage the company to improve its performance and looks at charges levied for use of the railway network.

17. This review will take place in changed circumstances from the last: the Shaw Report, DfT's review of ORR and other reviews of the industry will create a new landscape by 2019. The consultation document sets out what ORR will prioritise, and focuses on a number of major changes.
18. Chris explained more about the background to the review: continuing passenger growth, Network Rail's debt reclassification, and the need to make the network perform better. He said that ORR would look to follow-up on Network Rail's decision to devolve authority to its routes by looking at route based regulation in this review. ORR hopes that will encourage routes to compete with each other to demonstrate best performance.
19. Not everything is devolved. NR still has an important system operation function to handle cross route issues, and ORR will look to incentivise this team too and set performance measures for it.
20. Concluding, Chris noted that members can [subscribe to ORR's alerts service](#) if they would like to receive regular updates, [visit](#) our website, or [contact the dedicated email address](#) for the Periodic Review team.
21. Ian Prosser thanked Chris for his presentation and discussion followed. In this, it was noted that:
 - ORR had accepted several Network Rail suggested improvements last time, including those on level crossing closures and safer electrical isolations
 - Following reclassification, DfT now takes a more active day-to-day role in overseeing NR's business. This is not a surprise to ORR. However, the regulator's statutory role remains unchanged, and it remains interested in largely the same issues
 - There are still difficulties in aligning the incentives to train operators with those of NR through the track access charging regime. NR is working to understand its costs base better
 - Network Rail initiated the changes towards route-based devolution, and ORR is not seeking to run the company's business. Nonetheless, we will take advantage of the change to ensure that we can regulate more effectively
 - Chris Hemsley accepted that the introduction of the digital railway is very important. The next decisions on its introduction are for NR and its funders.

Item four – Regulation and reviews

22. Johnny Schute introduced this presentation. He said that members would be well aware that there had been a series of reviews of the railway sector by the Government recently. Now was the right time to provide an update on progress.
23. The Shaw Report had provided strong endorsement of ORR's planned approach to the PR18 review. It made welcome statements on the need for independent regulation in rail, and called for significantly deeper route devolution, although not separate companies. Johnny detailed its other recommendations and their

implications. Despite prior media speculation, there was no move towards privatisation, except possibly in relation to the commercial development of NR-owned sites.

24. There is a new Memorandum of Understanding being drafted between ORR and DfT, to demarcate their relationship better. It outlines the broad principles of how both organisations work together, and each other's priorities. It also discusses the equitable division of workload on joint projects, and there is a discrete section on health, safety, standards and Europe. ORR is hoping for completion at the end of June.
25. Still on DfT, Johnny said its report on its review of ORR was 'brief and low key'. It supports strong independent regulation that puts customers at the heart of rail, and identifies the need for greater clarity in ORR's statutory duties and updated statutory guidance. It also calls for an enhanced working relationship with Transport Focus.
26. Turning next to ORR's current review of RSSB, Johnny set out the background. Previous reviews took place in 2004 and 2010, and the changing landscape makes it right to do a review now. RSSB has invited ORR to conduct the review, which will
 - examine and analyse progress in addressing recommendations of the previous review
 - appraise RSSB's new strategic priorities
 - publish a report with recommendations covering both the priority objectives on which RSSB should focus and how it should organise to deliver them.
27. Johnny explained the timescales, key milestones and governance of the review.
28. Another review involves ORR, the British Transport Police and the Rail Accident Investigation Branch. All three parties agree that it is timely to review the Memorandum of Understanding they signed in 2006. An initial working group has been set up, and the aim is to complete the review by end-March 2017.
29. Ian Prosser thanked Johnny for the presentation and discussion followed:
 - Johnny was sympathetic to a concern raised by Allan Spence about repeated interviewing of witnesses after safety incidents. It is a difficult problem due to the different agendas each organisation has, but needs solving
 - The RSSB review will consult other stakeholders: a number of bodies will meet on 29 June
 - ORR accepts that heritage railways are served by local police forces, not BTP, and will ensure this is taken into account.
 - The MOU with DfT will spell out the parties' roles on European issues
30. Concluding, Ian Prosser invited members to participate in the reviews, and thanked those who responded to the DfT consultation on the role of ORR.

Action: all members

Item five: Railway Management Maturity Model (RM3): update

31. Neil Anderson, HM Inspector, safety management systems opened this presentation. He said he would provide a brief refresher on the system, talk about where it is now, and explain how ORR will be developing and further embedding it.
32. Neil showed an infographic of the RM3 system. He explained it was created from ORR's 2009 to 2014 vision, which called for excellence in health and safety management. RM3 is a tool to help show what that looks like in practice, and is based on HSE's model and Carnegie Mellon's Maturity Index.
33. The system looks at five main categories, split into 26 elements demonstrating five possible levels of maturity/competence. At present, ORR works in collaboration with HSL on a Governance Board. An independent evaluation of the model in 2014 rated it positively, and ORR/HSL aim to spread good practice into other high-hazard industries. This included a workshop on 20 May, with 72 attendees from all parts of the railway industry.
34. Looking forward, ORR will continue to support HSL delivery of training, and work to revitalise the criteria to make the model more tiered, so companies can see what to do to reach the top level. There will also be enabler sets of criteria, for example to meet British Standards on collaboration or ERA's Safety Management Capability Model.
35. Ian Prosser thanked Neil for the presentation. Bill Hillier and Neil Anderson agreed to discuss issues concerning heritage railways outside the meeting, and Ian Prosser pointed out that the model is already being used internationally. For example, ORR is providing assistance in Dubai, and there is interest from north America and Korea.

Item six – Strategic risk chapter two (competence)

36. Anna O'Connor, Head of Projects in Railway Safety, opened discussion on this item. A paper had been circulated to members last week for review.
37. Anna stressed that this draft is not final. Some sections are still incomplete, including those for the dutyholders and heritage railways. She said that the paper sought to explain what competence is and why it matters. It explains where ORR thinks the industry currently is.
38. The paper looks at issues of human fallibility, which has replaced technical failure as the leading source of risk. It also looks at risk precursors and the legal background to competence assurance. Finally, it sets out a vision for the next steps the regulator wants the industry to take.
39. Ian Prosser thanked Anna for the presentation, and noted that ORR will send an updated paper to members for review in due course. In the discussion that followed:
 - Members made several suggestions for changes to drafting which would enhance the document. Anna welcomed these.
 - It was noted that website links can quickly become inactive, and were not necessarily the best means to provide access to documents. There was also some uncertainty about any risks that moving away from prescriptive standards may create.
 - Anna agreed to send a redrafted version of the heritage section to Bill Hillier.

- Anna noted that there is a separate chapter on safety culture, which is why it is not mentioned in this one. That is expected in October.
- Allan Spence wondered if the document was too low level. He felt it should not read like another version of the Network Rail Monitor.
- The secretariat agreed to send members a list of the strategic risk chapters.

**Actions: Anna O'Connor to review drafting suggestions
Anna to send heritage suggested text to Secretariat
Secretariat to circulate list of strategic risk chapters**

Item seven – Railway Safety’s enforcement policy: summary of changes

40. Darren Anderson, HM Principal Inspector, Network Rail opened this presentation. He said the policy brought to RIHSAC for discussion in October 2015 was now complete and published
41. There are no differences in ORR policy, but there is a change of emphasis away from formal enforcement alone to “compliance and enforcement”, and the document is easier to read with less legal jargon
42. The principles behind the policy remain the same, but it is now linked to RSD’s Strategic Objectives, and specifically the drive for a safer railway. It reflects the broad range of interventions available to ORR.
43. Darren explained the ‘triangle of compliance’, which showed regulatory activity to encourage compliance as the most important aspect. Enforcement, though vital, formed the lower parts of the pyramid.
44. There are a number of changes between the 2013 and 2016 versions. They include the investigation process now being separate; a duty holders’ reaction post incident identified as relevant; enforcement publicity is not included as part of the policy; and it reflects victims’ rights including a review of decisions not to prosecute.
45. Closing, Darren showed an analysis of a sample of 36 prosecution cases ORR has brought over a period of four or five years. No single sector dominates, but track worker issues, level crossings and electrical safety lead the list.
46. Ian Prosser thanked Darren for the presentation. He said, in response to a question, that ORR does not expect the growth duty now placed on ORR by law to make a significant difference to its safety-related decisions.

Item eight – Working as a virtual regulator

47. Ian Prosser opened this presentation. He explained that the initiative has come from the Government, which is keen to see regulators taking a united approach to the HS2 project and similar large infrastructure projects.
48. Following the last triennial review of HSE, ORR has signed an agency agreement with it that allows us to act as its enforcing authority for greenfield sites, such as Crossrail 2, the Northern Line Extension and HS2.

49. ORR is keen to focus on safety by design issues, ensuring that dutyholders understand the requirements of the Construction, Design and Management Regulations.
50. ORR is now part of a new health and safety regulators' network. It first met last August, and there were meetings in October and May. Terms of reference have been agreed: the Secretariat will circulate these. Ian Prosser is chairing the body for the first two years of its existence.
51. The network will look at areas of good practice, including how to increase transparency; measuring success of regulatory interventions; and looking to understand their various competency frameworks. The network should help develop the unified approach that the Government would like to see towards projects such as HS2.

Action: Secretariat to circulate terms of reference

Item nine - Meeting review

52. Johnny Schute said that ORR will consult RIHSAC on an update to the former Railway Safety Principles and Guidance publication. We plan to send this out shortly. The idea is to have a clear framework of goal setting principles. Members will be asked to comment in correspondence – the Secretariat will arrange this.

Action: Secretariat to circulate document

53. Ian Prosser asked members whether they thought the agenda had been appropriate. They were satisfied, and the circulation of the draft Strategic Risk Chapter in advance was especially welcomed. Ian invited them to put forward agenda items for consideration.

Action: all members

54. Dilip Sinha noted that in addition to the next meeting date (4 October), dates for the move to quarterly meetings have now been agreed. The first will be on Tuesday 10 January 2017, followed by Tuesday 11 April.

Next Meeting

Tuesday 4 October 2016, from 1330-1600 at One Kemble Street.
Dilip Sinha
RIHSAC Secretary
June 2016