

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

Minutes of the 98th RIHSAC Meeting
Wednesday 4 February 2015
Rooms 2 & 3, One Kemble Street, London

Present:

Ian Prosser	Chair, ORR Director of Railway Safety
Dave Bennett	ASLEF
John Cartledge	Co-opted member
Paul Clyndes	RMT
Jill Collis	London Underground
Rob Gifford	London TravelWatch / Passenger Focus
Emma Head	Network Rail
Bill Hillier	Heritage Railway Association
Mike Lunan	Passenger representative
Ian Moreton	RSSB
Mark Prescott	Network Rail
Alastair Young	Transport Scotland
Dilip Sinha	ORR, RIHSAC secretary
John Gillespie	ORR
Ollie Stewart	ORR) item 3
Tracy Phillips	ORR) item 5
John Trippier	ORR) item 9

Item one: Welcome, introductions and apologies for absence

1. Ian Prosser welcomed everyone to the meeting. He explained that the regular chair, Tracey Barlow, was on an interviewing panel for a new Board non-executive director to oversee ORR's new road supervision functions. Tracey sent her apologies, as did Justin McCracken, another non-executive. Justin had hoped to observe this meeting, but he had been called away and would observe the June meeting instead.
2. Ian reported that apologies for absence had been received from Chris Angell of DfT; Colin Dennis of RSSB; David Davies of PACTS; Gary Cooper and Peter Lovegrove of ATOC; Stephen Chamberlain of the Welsh Government; Garry McKenna from Northern Ireland; Susan Murray from Unite; and from the British Transport Police.
3. Ian welcomed Mark Prescott of Network Rail, who would be presenting on trackworker safety, and Ian Moreton of RSSB, standing in for Colin Dennis.

Item two: Chief Inspector's update

4. Ian reported on developments since the last meeting. He said ORR will be taking on an additional role monitoring Highways England's efficiency in managing its strategic roads plan. This would add around 20 staff to ORR.

5. As a result of this new work, government ministers have suggested that the name of the organisation could be changed. Members would be asked to comment at the end of the meeting on some possible names that have been put forward.
6. Ian noted that ORR is seeking views from industry to help inform a review of its economic enforcement policy and penalties statement. It is reviewing the current policy and tools at its disposal to hold Network Rail and the industry to account – such as levying financial penalties.
7. The purpose of the consultation is to provide clarity on the most effective ways to incentivise improvement and best practice within the rail sector – focusing on early, forward-looking and restorative intervention measures. The consultation closes on 6 February.
8. The committee heard that regulation 34A of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended) (ROGS) require that by 26 August 2016 the Secretary of State carries out a review of ROGS; and set out the conclusions of the review in a published report.
9. ORR will carry out the review on behalf of the Secretary of State and make recommendations. In spring 2015 ORR will be asking stakeholders to complete a survey so that we can determine the extent to which the objectives of ROGS are achieved, assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation
10. ORR has completed the analysis of the issues raised in the consultation on the review of the Miscellaneous Provisions regulations. It intends to proceed with a significant change to its approach on the prevention of unauthorised access and other minor changes. Following opposition from agricultural and landowning stakeholders, ORR has decided the current regulation on the prevention of unauthorised access in the Miscellaneous Provisions regulations 1997 should be retained. ORR expects to publish a response to the consultation in February.
11. Ian turned to freight derailments. ORR has called an industry workshop about it, which will take place on 6 March. The regulator has placed its views on the website, in the form of the SRC paper about the subject, and would be happy to offer a further update to the June committee meeting.
12. Finally, Ian reported on the launch of the Platform/Train interface strategy, which he had attended. He was delighted with this collaborative industry effort, involving the Underground, RSSB and leadership from Network Rail. An action plan is now in place, and a media campaign will start.
13. Union representatives commented that they are concerned that the strategy simply meant removal of staff. Ian said he was disappointed to hear that they don't support the industry effort.

Item three: European work programme update

14. Ollie Stewart, Executive, European safety policy & interoperability, gave a short presentation on the latest EU developments on rail. He said he would focus on the Fourth Rail Package (FRP); cooperation arrangements between national safety authorities (NSA) and the European Rail Agency (ERA); revision of the common safety method (CSM) for conformity assessment and CSM supervision; common occurrence reporting; and ERA railway indicators

15. On the FRP, the Latvian presidency is keen on progressing the package – it intends to complete the technical pillar (covering safety, interoperability and ERA regulation directives) by summer. Discussion now focused on the ‘market’ and ‘political’ pillars.
16. Some NSAs have raised the possibility of a graduated introduction of particular aspects of the technical pillar. ORR is working with other NSAs on future cooperation arrangements with ERA.
17. Cooperation arrangements: FRP will require cooperation between NSAs and ERA around on certification/supervision. NSAs have been meeting to discuss and seeing what can be learned from the aviation industry's harmonisation of standards and processes. NSAs are arranging a meeting with representatives of the European Aviation Safety Agency (EASA).
18. CSM revision: the CSMs provide a common approach by NSAs to overseeing duty holders' compliance with their safety certificates/authorisation. ERA wants to simplify and harmonise NSA decision making.
19. The revision of the CSMs is partly to take account of recent legislative changes. The plan is to keep separate CSMs, with most of the work taking place in 2015. The earliest the revision might be completed is early 2017.
20. Common occurrence reporting: A common EU approach to occurrence reporting and analysis has been in place in both the aviation and maritime for several years. ERA is exploring whether a similar system would be possible for railways. The UK has the National Incident Reporting (NIR) system, which fulfils many of ERA's requirements. ERA are also looking into the reporting of suicides, particularly how they are distinguished from accidents involving an unauthorised person/ trespasser.
21. Railway indicators: ERA is developing a series of metrics (railway indicators) to measure industry performance in delivering ERA-related activity. There will be approximately 20 railway indicators divided into four operational activity areas. ORR and RSSB have been working to influence ERA to adopt suitable indicators.
22. Ian thanked Ollie for the presentation, and a discussion followed. Members urged ORR to make sure that the wording of the railway indicators accurately conveyed, their meaning, and ORR undertook to raise this at the next meeting with ERA. They also cautioned that the background to European aviation regulation and safety is very different from that of the railway.

Item four – Partnership with the Health and Safety Laboratory (HSL) on the Management Maturity Model (RM3)

23. John Gillespie opened this presentation, which outlined ORR's plans to spread the use of its RM3 model beyond the railway.
21. RM3 was designed to provide ORR with a tool to measure the effectiveness of the safety management systems of the companies subject to regulation. Those companies have told ORR that they also find it a useful tool to use in their own internal audits of management capability.

22. Currently, ORR provides training from time to time on use of RM3. But the regulator is not resourced to do this in a substantial way, and it would make sense to partner with an experienced safety organisation like HSL to deliver training to a wider range of people. This would also allow RM3 use to spread to sectors other than rail, which is something ORR is keen to see.
23. HSL's national reach will give the RM3 model instant credibility in other rail sectors, and will also help it to spread internationally through training HSL runs for other countries' rail sectors.
24. A brief discussion followed, with John reporting that launch by HSL is imminent. Asked about ORR's intellectual property rights in the model, he said that the regulator chose to make it publicly available, so there is no issue here. He concluded by agreeing with several members who commented that it would be good to see benchmarking results shared across industries, and he was pleased to note that some train operators are working to publish their results.

Item five – Level crossings update

25. Tracy Phillips (Manager, railway safety policy) opened this presentation. She said she would update RIHSAC on level crossing policy issues discussed at the 13 October meeting, and in particular, implementation of the Law Commissions' proposals.
26. The Law Commissions' report (Sept 2013) included 86 specific recommendations. The government responded on 13 October 2014. Members of the original Law Commission Advisory Group were alerted by DfT and next steps explained.
27. The government's response:
 - accepted the case for reform of legislation and procedures
 - gave a firm commitment to produce an action plan by the end of 2014
 - provided a position against each of the 86 recommendations; and
 - made a commitment to consult stakeholders further on some of the detailed proposals
28. DfT, ORR, Law Commissions, Transport Scotland and Network Rail met on 16 December 2014 to review the Department's draft action plan. It focuses on areas/recommendations where the Department believes further thinking and/or stakeholder engagement is required. Key recommendations identified for further exploration are : moving to a HSWA based regime for managing level crossings, closure processes, issues concerning access and rights of way, improved co-operation, disapplying old legislation, and signage.
29. DfT owns the action plan but stakeholders will play a key role in ensuring its delivery. ORR has offered assistance with the governance of the project and with helping prepare discussion papers (safety related recommendations). There will be opportunities for RIHSAC members to get involved in planned stakeholder workshops and through other mechanisms. The aim is to finalise proposals by December 2015 and secure a Parliamentary slot during 2016
30. Points were raised in discussion about whether ORR would wish to receive the suggested ACoP making powers and the impact this might have on a proposed

move to a HSWA based approach and how far devolution issues might impact on consistent implementation of some of the Law Commission recommendations.

31. Tracy also advised members that a Rail Guidance Document has now been published (January 2015), setting out ORR's policy and approach to handling requests for new or re-instated crossings. It provides clarity and transparency for applicants on how ORR's high level policy of "no new level crossings unless exceptional circumstances" will be interpreted and applied. It also ensures a consistent approach across ORR and the mainline and heritage networks.
32. In discussion Tracy confirmed that reinstated level crossings will be covered by the policy and considered as if they were "new".

Item six – Network Rail's Safer Trackside Working Programme

28. Emma Head introduced this presentation. She noted that RIHSAC had been concerned about trackworker safety for some time, and said that Mark Prescott, a member of Network Rail's safety directorate, would take the committee through what the company is doing to address the issue.
29. Mark opened with a historical review. In 1913, there were 102 trackworker fatalities. This decreased to 11 by 1985, and to an average of three in the 2009-14 period. Network Rail's target is now zero fatalities or major injuries.
30. By 2014 NR planned to develop a track work access strategy involving higher integrity systems of work than red and green zones, and to invest in new technology to make a step change in the safety of people who work on the track. In CP5, it will develop and progressively deploy innovative technology such as warning systems integrated with signalling systems. Mark took the committee through the details of the track work access strategy.
31. The presentation gave a detailed explanation of the risks involved in both red and green zone working, and noted work being done in various European countries to introduce new technology to reduce risk, involving signalling system based warnings. Mark noted that NR is investigating the possibility of retro-fitting a system in the UK, which would allow it to use the existing signalling system for the same purpose.
32. Mark noted that no technology would deliver results if staff did not trust it. For that reason, Network Rail has worked closely with the trade unions throughout its programme to develop the new systems, to ensure that they support each development. To date, this process has been very successful.
33. Ian Prosser thanked Mark and Emma for the presentation. In the discussion that followed, members expressed concerns that electronic signalling systems are not always error free, and this could be a risk area. NR would also need to ensure that workers had a clear grasp of English related to the job. Mark accepted this, but said the systems were designed to be simple and require a low competence level.
34. Asked about the budgetary position for the introduction of the technology, Mark noted that ORR has agreed £10m spend. Emma Head said that NR is working on a business case to obtain release of further money. Ian Prosser noted that ORR has an investment framework, and invited Mark to contact him when he is ready to discuss the possibility of releasing further finance.

Item seven – ORR’s health and safety priorities for 2015-16

35. Ian Prosser introduced a short presentation giving details of his directorate’s work priorities for the 2015-16 work year. He noted that ORR wants to see the industry achieving excellence in culture and health safety and asset management. It is about continuous improvement for us and the industry. There is no change to the ORR vision of zero industry caused fatalities.
36. Ian noted that some work areas had been added to priorities as a result of a review. These included train control/protection technologies; long term safety vision; leadership/culture; and safety by design. Ian went on to explain priorities for various teams in his directorate during next year. He concluded by explaining that he had commissioned work to develop a new structure which allowed easy viewing of all of his directorate’s management processes. Doing this made it easy to see them holistically, and to ensure they are regularly reviewed.

Item eight – information on ORR’s enforcement policy as it affects individual workers

37. John Gillespie introduced this presentation. He began by explaining the relevant criminal law, created by the Health and Safety at Work, etc. Act 1974 – section 37 for office holders of a company, and section 7 for individuals (who also have a duty of care).
38. There are a number of factors ORR would take into account when deciding whether to prosecute an individual:
- The gravity of an alleged health and safety offences, taken with the seriousness of any actual or potential harm warrants it
 - Reckless disregard of legal requirements
 - False information has been supplied wilfully, or there has been an intent to deceive in relation to a matter which gives rise to serious risk; or
 - Inspectors have been intentionally obstructed by the duty holder in a way that prevents them from carrying out their lawful duties.
39. Since 1 April 2006, around seven percent of prosecutions taken by ORR for health and safety offences have been against individuals. John illustrated his presentation by referring to a prosecution for manslaughter following the death of a sixteen year old at James Street station in Liverpool. The judge had imposed a five year prison sentence.
40. In discussion, members noted that the point of prosecution is both to punish the offender and deter others. They were also concerned that workers were still covering up failings despite a lot of work on just cultures and behaviour change. John Gillespie confirmed that deterrence was important, but so is punishment. ORR works to strike the right balance when deciding whether or not to prosecute. Ian Prosser noted that some cases can take longer to prosecute than others, although he could see why people may be concerned about differences in timescales for cases.

Item nine – Disabled people’s protection policy – compliance and approvals process

41. John Trippier, competition and consumer executive, opened this presentation. He gave a brief introductory history of disabled persons protection policies, which had

begun at the then ORR in 1994 before moving to the Strategic Rail Authority and the DfT. They returned to ORR in 2013.

42. John set out the help older and disabled passengers can expect to receive in planning a journey, buying tickets and travelling. He explained that these arrangements were backed up in a disabled persons' protection policy, which every TOC has to have. The policy sets out the TOC's strategy, implementation and monitoring arrangements.
43. In the last 18 months ORR has talked to TOCs and representative groups and issued a regulatory statement. It has so far reviewed 50% of TOC policies, and found that policies are not reflecting all obligations of the 2009 Guidance. In addition, management arrangements not convincingly demonstrating policies are embedded, and there is little evidence of active monitoring by operators.
44. John concluded by explaining planned next steps: re-approval of all TOC DPPP's; monitoring of delivery; transparency through publication of monitoring data; and increasing public awareness of the available assistance.
45. Answering questions, John said that ORR does not plan to do a mystery shopper exercise to validate TOC actions, though it would be nice to be able to do so. He accepted that there were also concerns about making sure that TOC data on implementation was robust.

Item ten – meeting review

46. Ian Prosser reviewed agenda suggestions for the next meeting. There will be an item on the new year delays at Finsbury Park, and ORR would invite the TOCs and Network Rail to present as well as giving its own investigation findings. Network Rail will present on the make-up of its safety function, and there will be an item on freight derailments, to which RSSB will be invited to contribute. Members also accepted an RSSB offer of a presentation on work related road driving risk.

Next Meeting

Tuesday 9 June 2015, from 1230-1600 at One Kemble Street.

Dilip Sinha

RIHSAC Secretary

February 2015