Annual report and accounts 2022 to 2023

Strategic objective 1: A safer railway

ORR is the health and safety regulator for all of Britain's rail industry. Our strategic objective is to enforce the law and ensure that the industry delivers continuous improvement in the health and safety of passengers, the workforce and public, by achieving excellence in health and safety culture, management and risk control.

Our business plan for 2022-23 set out a number of priority areas and deliverables throughout the year. These included ensuring effective change management during planning for the major transformation of the mainline railway; overseeing industry's management of extreme weather risk; promoting safety by design; prevention of trespass and suicide; reducing risk at the platform-train interface (PTI); competence of control room staff; preparing for the opening of the Elizabeth Line; monitoring safety in the tram sector; and supporting delivery of standards in the heritage railway sector.

We also planned for the expected implementation of new Channel Tunnel bi-national regulations, and undertook policy projects such as reviewing the Train Driving Licences and Certificates Regulations 2010. On workforce health, safety and wellbeing, our focus was on Network Rail's track worker safety compliance and supporting industry wellbeing initiatives. We set out plans to improve our own internal processes, including design of a new Train Driving Licence Portal, and to continue our core proactive and reactive work of inspections, investigations, enforcements and statutory activity.

Progress against these, along with other areas of work and priorities that emerged during the year, are set out below.

Network Rail and mainline operators

In a year beset by industrial action, our key focus was to work with unions and operators to ensure that safety was a priority during strike action.

A core piece of work has also been around the planned transformation of the mainline railway in Britain, working with all parties including the Government, Network Rail, the Railway Safety and Standards Board (RSSB) and the Train Operating Companies (TOCs) to ensure effective change management. We seconded several members of staff to the Great British Railways (GBR) Transition Team during the year to lay the foundations for the transition to GBR. This included someone focusing on embedding safety by design into the new organisation. Arrangements were also established to provide us with assurance of the design of the sector model through the provision of (non-statutory) advice to the Department for Transport (DfT).

We also ramped up our involvement in Network Rail's modernisation plans, to provide third party oversight and scrutiny. We monitored progress on workforce modernisation to ensure safe delivery is not compromised. We also worked to identify any gaps in its framework implementation plan for modernising maintenance when it was presented to us. Targeted inspection works are planned in the coming year to test the implementation of the plan and we will continue to engage with Network Rail to ensure it is managing the impact on corporate knowledge retention.

Oversight of the occupational health, safety and wellbeing of the railway industry's workforce has remained a high priority for us. All improvement notices issued to Network Rail in 2019 in relation to track worker safety were complied with by the July 2022 deadline and we are pleased to report that Network Rail, through its Safety Taskforce and other work programmes, fully implemented all recommended preventive and protective measures and achieved excellent progress. Reliance on unassisted human lookout warnings has now been significantly reduced to approximately 1-1.5% of all hours worked across the country. The focus now will be on ensuring Network Rail maintains the protective measures in place, with plans to conduct a follow-up check in July 2023.

Climate change adaptation and weather resilience rose further up the agenda during the year, and we continued to address the management of extreme weather and flood risk with industry, to identify high hazard areas and put mitigations in place. We monitored Network Rail's activities to address risks, attending their Weather Risk Task Force to ensure we were regularly informed. In particular, we want to ensure the company adequately resources the necessary activities it has identified and continues to work to map and manage all of its drainage assets in every region.

Following publication of the Rail Accident Investigation Branch (RAIB) report into the 2020 Carmont derailment, when a passenger train collided with debris washed onto the track, we followed up the recommendations placed upon Network Rail and RSSB and reported back to RAIB on progress in March 2023, reporting two out of the eighteen recommendations as closed.

As part of our key theme of managing for the future, we continued to promote health and safety by design, including encouraging use of the Better Rail Value Toolkit during new line development and engaging particularly with schemes in the DfT Restoring Your Railways programme. We continued to engage with HS2, strengthening our relationship with the project team and the DfT team responsible for delivery, and engaged with other major projects, like the TransPennine upgrade.

With trespass and suicide remaining significant issues, we continued to focus on security, carrying out a new programme of proactive depot inspections. We worked to influence industry, encouraging Network Rail and the TOCs to continue their positive work on preventive measures and seeking improvements through enforcement notices where necessary.

We maintained oversight of TOCs' activities to reduce the risk to passengers at the platform-train interface (PTI), which has been a focus for ORR since the occurrence of a number of fatalities. We have participated in various risk working groups within the industry and monitored progress of plans to replace existing paving with tactile paving.

In anticipation of the close of the national priority asbestos programme on 31 March 2023, we worked to support an effective transition to business-as-usual management by Network Rail's regions and a comprehensive framework is now in place. We tracked progress by regions in completing the agreed sample surveys and challenged the Technical Authority to demonstrate how Network Rail's asbestos management system delivers legal compliance. Urgent asbestos awareness briefings were delivered to employees in higher risk roles and work is on track to deliver the required improvements to Network Rail's mandatory training and compliance training by July 2023. We planned for mitigation of risks that might arise from the close of the programme, including new KPIs for monitoring performance and a post-implementation review of the asbestos management standard in 2023. In response to our sustained focus on compliance, an occupational hygiene specialist joined Network Rail's corporate health and safety team in April 2023.

We met regularly with Network Rail's Technical Authority to discuss the refinement of their Fatigue Management Policy. There have been significant efforts to implement compliant rosters, but some concerns remain around the levels of control being adopted within the standard. We will

support industry efforts to conclude important research on fatigue factors, which will form the basis of a refresh of our own guidance on this important topic.

Non-mainline operators

This year saw the safe opening of the Elizabeth Line and we worked closely with Transport for London (TfL) to support successful delivery of the original part-opening in May and the full end-to-end opening in November. We also contributed significant work to the auto-reverse arrangements, and this will continue into next year.

A substantial area of unplanned, but necessary, work this year has been assessing TfL's major four-lines modernisation (4LM) signalling upgrade project, which will continue into next year. In December we served an Improvement Notice on London Underground Limited due to their failure to ensure a safe system of work for track patrol workers on the Metropolitan Line between Rickmansworth and Amersham following a serious incident investigation.

Safety in the tram sector remained a priority. We monitored and supported implementation of the recommendations from our review of the Light Rail Safety and Standards Board (LRSSB). The LRSSB provided a formal report to ORR's Health and Safety Regulation Committee in December, showing positive progress against all the recommendations, and the Committee was satisfied with the level of improvement. We will continue to monitor this next year.

We conducted inspections of five of the seven tram operators as part of a programme to review safety management arrangements on Signals Passed at Stop (SPAS), and the remaining two will be completed in 2023-24. We also completed an inspection project on the maintenance of tram switches and crossings and took targeted enforcement action to address a loss of risk control across the sector. This included serving Improvement Notices on Blackpool Transport Services in relation to inadequate Control of Substances Hazardous to Health (COSHH) arrangements and on Transport for Greater Manchester for failing to implement effective arrangements for tram overspeed and driver vigilance risks within acceptable timescales; and Prohibition Notices to the Tramway Museum Society regarding the dangerous condition of overhead line equipment.

We have focused significant resources on improving health and safety in the heritage sector this year, continuing to encourage leadership, succession and better operator capability, and collaborating with the Heritage Railway Association on the delivery of common good practice standards. We delivered five workshop events, focusing on the benefits of using our Risk Maturity

Model (RM3) to encourage greater uptake by duty holders. We also continued to facilitate constructive discussions between the HRA and key stakeholders to drive the creation of a dedicated sector safety standards body, for a consistent approach.

Channel Tunnel

The timescales for implementation of new Channel Tunnel bi-national regulatory arrangements remain subject to UK parliamentary processes and National Safety Authority (NSA) responsibilities for the UK half of the Channel Tunnel have not yet been transferred to ORR. However, we worked to strengthen relationships with our colleagues at the French railway national safety authority, Établissement Public de Sécurité Ferroviaire (EPSF), and consolidated governance arrangements around NSA responsibilities and ways of working.

In August, we served Improvement Notices on Channel Tunnel Group Limited and France Manche SA in relation to their change management capability. This was due to their lack of effective arrangements to ensure a review of risk assessments is undertaken when there is reason to suspect that they are no longer valid or where there has been a significant change in the matters to which they relate; and to ensure the effective control, monitoring and review of any changes to protective and preventive measures necessary to ensure safe operation.

Policy and strategy

Policy work continued throughout the year and we carried out two post-implementation reviews (PIRs) of government legislation on behalf of DfT. Our conclusions following evidence gathered for the PIR of the Train Driving Licences and Certificates Regulations 2010 were that there should be a detailed review of the regulations, involving all the relevant stakeholders, with a view to developing proposals to amend the legislation, in particular removing or amending some of the prescriptive requirements. The PIR of the legislation that clarifies the respective responsibilities of ORR and HSE for the enforcement of health and safety law concluded, based on evidence provided, that the legislation continued to meet its objectives and work effectively. DfT published both reports in May.

In September we agreed and signed a revised tripartite Memorandum of Understanding (MOU) relating to railway safety in Northern Ireland. This facilitates effective working between three bodies – ORR, the Department for Infrastructure (Northern Ireland) and HSE NI – and streamlines

several different agreements into one, simpler and more principle-based approach.

Significant time and resources were directed this year to analysing the Retained EU Law (Revocation and Reform) Bill. We worked hard to understand the scope of the Bill and any potential impacts on rail health and safety legislation to help determine next steps, liaising closely with ORR colleagues, DfT and HSE. We expect a programme of stakeholder engagement to commence in Q2 of 2023-24.

Risks at level crossings remained a priority in 2022-23, with levels of footpath level crossing use remaining higher than pre-pandemic levels, suggesting a long-term trend. In April 2022 we published new guidance on the level crossing order process along with clearer and less prescriptive order templates and updated letter templates to reflect our move to a digital-first approach for the submission of orders.

We continued to inspect and enforce compliance with the law on health risks, issuing notices associated with the control of substances hazardous to health and provision of welfare facilities, amongst others. We were pleased to support the industry Rail Wellbeing Alliance (RWA) in the work they do to champion and improve a range of industry health topics, in particular occupational hygiene, health service provision and fatigue. We sponsored the hugely successful event Rail Wellbeing Live in November and remain vocal supporters of initiatives on workforce mental health and wellbeing including the Rail Mental Health Charter, and the Samaritans Million Hours Challenge and Small Talk Saves Lives initiatives.

We are ourselves actively participating in better health data collection and reporting (through the RWA health data dashboard project), to demonstrate leadership in this area.

Regulation and certification

ORR grants a range of health and safety permissions and approvals, and in some cases we have statutory deadlines to meet for processing requests and issuing our decisions. Our permissioning and approvals work is important because it helps provide an effective framework for railway safety and, in the case of train drivers, establishes a common regime for licensing. Volumes vary each year, depending on demand, and in 2022-23 all deadlines were met. We:

- Issued 1,263 new train driving licences, a decrease of 171 compared to 1,434 in 2021-22.
- Processed 72 train driving licence renewals. Last year was the first year of renewals

coming around and we now expect these to ramp up each year.

- Recognised a further 6 doctors and 6 psychologists and added them to our registers as required under the Train Driving Licences and Certificates Regulations.
- Delivered 11 Level Crossing Orders, 4 Variation Orders, 4 Directions, 1 Authorisation for Traffic Signs. This was lower than 2021-22, reflecting delays in level crossing works and that ORR does not yet have responsibility for authorising private crossing signs.
- Issued 35 mainline safety certificates and safety authorisations and 8 non-mainline safety certificates and safety authorisations.
- Processed one application to exempt a non-mainline duty holder from the requirement to hold a safety certificate and safety authorisation whilst operations were being carried out above 25mph.
- Received a high number of applications for further exemptions from Regulations 4 and 5 of RSR1999, ahead of their expiry on 31 March 2023. We issued 6 exemptions from Regulation 4 and 4 exemptions from Regulation 5 to enable, respectively, Mark I rolling stock and rolling stock fitted with hinged doors to continue operating from 1 April.
- Reported to RAIB on a total of 98 recommendations. Using our simplified status definitions (implemented 1 January), 50 were reported as closed, 1 superseded, 42 open, 3 insufficient response and 2 other public body.

Investigation and enforcement

During the year we issued 4 Prohibition Notices and 12 Improvement Notices and, where appropriate, prosecuted duty holders in the courts to ensure compliance with the law. As prevention is always better than addressing issues after an incident has occurred, the Prohibition Notices stopped activities that posed a risk of serious personal injury and the Improvement Notices identified serious breaches of the law that required changes to be made.

The first court hearing for ORR's prosecution relating to the 2016 Croydon tram crash took place in June 2022 when pleas were entered. TfL and FirstGroup-owned Tram Operations Limited (TOL) will be sentenced on 27 July 2023 for health and safety failings after seven passengers died and 51 were injured. TfL and TOL pleaded guilty. Driver Alfred Dorris was also prosecuted but was acquitted at the conclusion of his trial in May and June 2023.

We successfully concluded a number of prosecutions:

- In May 2022, Network Rail were fined £1.4 million for breaching Section 2(1) of the Health &

Safety at Work etc. Act 1974 following an incident in which a worker was crushed between a 25-tonne ballast distributor conveyor and people carrier whilst undertaking track maintenance. Network Rail was found guilty of failing to provide the necessary information, instruction, training and supervision to ensure the health and safety of its employees.

- Also in May 2022, VolkerRail Limited was convicted of an offence under section 33(1)(c) of the same Act for contravening Regulation 31 of the Construction (Design & Management) Regulations 2007 and fined £550,000. The court found the company failed to take reasonable steps to prevent danger to workers undertaking excavation work, after a trench wall collapsed outside Stafford Station, burying and seriously injuring a worker.
- In January 2023 train driver Mr Mark Andrew Hubble was sentenced to 8 months' imprisonment, suspended for 18 months, following an incident in which he failed to control the speed of the locomotive he was driving, while using a mobile phone. The locomotive, owned and operated by DB Cargo (UK) Limited, ran through buffer stops, causing it to derail onto the adjacent running line, where it was struck by a passing CrossCountry passenger train. No-one was injured, but there was extensive damage to the locomotive and the passenger train. Mr Hubble was also ordered to undertake 120 hours of unpaid work and pay £600 compensation to the passenger train driver.
- In February 2023, Siemens PLC was fined £1.4 million for breaching Section 3(1) of the Health & Safety at Work etc. Act 1974. It followed an incident in 2017 in which a 650kg traction motor fell on a self-employed contractor working at Siemens Old Oak Common depot, causing fatal crush injuries. Our investigation revealed defects in task planning, including the failure to carry out an appropriate task-specific risk assessment and a lack of clear allocation of supervision responsibility.

We continued to drive improvements in our own internal processes and performance. We established more meaningful and practical risk profiling processes to make better use of available data on health and safety risk as part of our annual planning. Our Regulatory Training Programme received NEBOSH accreditation and we developed and delivered a full suite of in-house training to ORR staff.

Development and testing of the new Train Driving Licence Portal continued in 2022-23. Whilst we had planned to implement this in the year, technical issues identified during testing delayed the project. The portal is now expected to go live in 2023-24. As part of an organisation-wide drive to improve cybersecurity we also developed a toolkit for inspectors and an inspection protocol, to ensure alignment with our existing RM3 tool.

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