



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

Minutes of the 104th RIHSAC Meeting  
Tuesday 10 January 2017

Room 2, One Kemble Street, London

### Present:

Justin McCracken	Chair, ORR non-executive director
Dave Bennett	ASLEF
John Cartledge	Passenger representative (Co-opted member)
Paul Clyndes	RMT
Steve Coe	TSSA
Bryan Donnelly	Rail Delivery Group
Lisbeth Fromling	Network Rail
Bill Hillier	Heritage Railway Association
Mick Holder	ASLEF
Mike Lunan	Passenger representative (Co-opted member)
Garry McKenna	Department for Infrastructure, Northern Ireland
Susan Murray	Unite
Steven Van Niekerk	Rail Safety and Standards Board
Alastair Young	Transport Scotland
Dilip Sinha	ORR, RIHSAC secretary
Johnny Schute	HM Deputy Chief Inspector of Railways
John Gillespie	ORR, Deputy Director policy, strategy and planning
Sharon Mawhood	ORR, HM Inspector of Railways, occupational health) item 3
Paul Hooper	ORR, Head of Interoperability and Standards) item 4
Ian Raxton	ORR, HM Principal Inspector of Railways) items 5 and 10
Ian Prosser	ORR, HM Chief Inspector of Railways ) part of the meeting

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

1. Justin McCracken welcomed everyone to the meeting. He explained that this was Dave Bennett's final meeting with us, so there was a short slot on the agenda for Dave to share his views on what's good and what needs to improve around the railway.
2. Justin explained that ORR has appointed John Cartledge as a co-opted member of the committee for another three years. His appointment was due to end on 31/12/16 but now runs until the end of December 2019.
3. Apologies for absence had been received from George Bearfield of RSSB; Mark Norton of DfT; Jill Collis of LUL; Gary Cooper of ATOC, David Davies of PACTS and John Collins of Angel Trains.
4. RIHSAC reviewed and accepted the minutes and actions arising from the October 2016 meeting.

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

5. Ian Prosser reported on developments since the last meeting. He said that he gave evidence to the Transport Select Committee's Rail Safety Inquiry on 14 November. Simon French, RAIB's Chief Inspector, gave evidence at the same session.
6. In a session of over an hour's evidence taking, the Committee asked Ian about a range of safety topics including the Croydon tram incident and ORR's relationship with RAIB. It has asked some follow-up questions since then, and ORR is currently answering them.
7. Turning to the Croydon tram incident, Ian said that there was no real news to pass on. RAIB was continuing its investigation and BTP still had primacy in the criminal investigation lead.
8. On 5 January, ORR published a report setting out its findings following a review and inspections of GTR-Southern introducing DOO on new routes. It has concluded that with suitable equipment, procedures and competent staff in place, the proposed form of train dispatch intended by GTR-Southern fully meets legal requirements for safe operation.
9. The ORR Board hosted a dinner at the Jurys Inn hotel in Glasgow for Scottish stakeholders last October. The guest list included the Scotrail MD and Transport Scotland's Director of Rail.
10. ORR [began a consultation](#) on 28 October on how ORR regulates obligations relating to Disabled People's Protections Policies and Complaints Handling Procedures. It was seeking views of consultees on how to keep station holders within the scope of the regulation, while adopting a more proportionate approach to approvals and monitoring.

11. ORR was also considering removing charter operators from the scope of the regulation. Members had until 20 January to respond to the consultation if they wished to do so.
12. ORR published updated guidance on developing and maintaining staff competence for use in the railway industry on 3 November. The updated guidance highlights the importance of organisations having arrangements in place to ensure their staff have the non-technical skills necessary for safe, effective operations.
13. We published the half-year assessment of Network Rail's performance in England and Wales and Scotland in the Network Rail Monitors on 24 November. The report identifies steady performance in the overall management of safety and Network Rail's assets, as well as an improving picture of delivery against its updated enhancements programme. However, it also shows that significant challenges remain.
14. Ian concluded with an update on recent enforcement. He noted that Network Rail had been fined £800,000 in the Crown Court at Guildford following a prosecution for an incident in June 2014, where a track worker sustained multiple serious and life-changing injuries while performing rail maintenance work near Redhill in Surrey.
15. London Underground was also fined £500,000 on 2 December in the Crown Court at Blackfriars for breaches of health and safety law after a maintenance worker was injured in a disused station at South Kentish Town.
16. A short discussion followed, in which the points below were made:
  - Answering a question about the Scotland Board meeting, Justin McCracken said he would ask the ORR Board Secretary for an update on how stakeholders were kept informed about the meetings.

**Action: Justin McCracken**

- In responding to observations that fining offenders simply removed money from the railway Ian Prosser noted that ORR was not responsible for the structure of the criminal law, and the system operates in that way currently. He noted that ORR was not responsible for the content of the relevant criminal law (in this case, the Health & Safety at Work etc Act 1974), and the courts had no discretion regarding the range (as distinct from the level) of sanctions available to them. However, he also noted that fines provided closure and some satisfaction to relatives and other people affected, and it was important to bear them in mind.
- RIHSAC noted ASLEF did not accept the findings of ORR's report into driver only operation at GTR-Southern. Asked how ORR would go forward with enforcing its suggestions in the report, Ian Prosser said that it would continue with active monitoring by ORR inspectors.
- This would include cab rides and joint inspections with trade union safety reps, and ORR will not hesitate to use any of its formal enforcement powers if this was necessary.

### **Item three: Managing risk from hand-arm vibration among contingent labour workers**

17. Sharon Mawhood opened this presentation. It summarised current work under ORR's occupational health programme to improve health surveillance arrangements for hand arm vibration syndrome (HAVS) among contingent labour workers in particular. Best estimates were that labour suppliers had around 50,000 rail agency workers under Sentinel sponsorship under a range of contractual arrangements including zero hours contracts, umbrella companies, and nominal self-employment.
18. ORR had reviewed current arrangements for HAVS health surveillance and RIDDOR reporting by mainline contractors and labour suppliers in June 2016. Although HAVS health surveillance arrangements were in place, they fell short of established good practice particularly for contingent labour workers supplied by labour agencies.
19. There were significant gaps in the necessary exchange of information on HAV exposures and fitness for work with vibrating tools between the users and suppliers of contingent labour. A common theme was a lack of clarity on who the employer is for agency workers.
20. ORR wrote to Network Rail and its contractors/suppliers with its conclusions, challenging them to show leadership and work collaboratively to achieve clarity and consistency on 'who does what' in the supply chain, and agree a fair and workable solution on HAVS health surveillance for all workers that all can sign up to. ORR was clear that this needed to be owned and led by the industry but offered support to steer the work.
21. There has been good engagement so far, with a Working Group of the Rail Infrastructure Assurance Group (RIAG) created to take this forward. As the legal requirements for health surveillance apply to employees (rather than all workers) ORR has shared current thinking on legal considerations around employment status, and offered good practice principles on managing HAV risk for suppliers and users of contingent labour.
22. The Working Group is currently developing some of the detail including how better exchange of information on HAV risk management between the users and suppliers of contingent labour can be achieved in practice.
23. Better awareness and understanding of HAV risk management among front line workers is also needed to encourage honesty in disclosing any existing HAVS symptoms and cumulative HAV exposures particularly among contingent labour. The RIAG Working Group is planning a co-ordinated education and awareness programme using a range of excellent existing Network Rail resources on symptoms and risk controls.
24. Closing, Sharon noted that there was a lot of work still to be done but there was a clear commitment within the mainline industry to deliver. The Working Group has

identified that this issue extends beyond the mainline and has invited London Underground and HS2 to participate.

25. A brief discussion followed:

- RMT asked where the 50,000 agency worker figure had come from. Sharon said that the figure was the best estimate provided by NR's key labour suppliers. It has not been further verified, though.
- Rail unions have concerns about the scale of bogus self-employment and the possible impact on health and safety protection for workers. ORR suggested that any industry agreement resulting from this work on HAVS health surveillance for contingent labour might be applied more widely to other health and safety risks.
- ORR confirmed that its recent work had not found evidence of systemic under-reporting of HAVS by contractors under RIDDOR. However the gaps found in HAVS health surveillance through the supply chain could mean that some HAVS diagnoses were being missed, which would feed through to the numbers subsequently reported under RIDDOR.

#### **Item four – Interoperability authorisation process consultation**

26. Paul Hooper opened this presentation. He explained that ORR believes it is inefficient for infrastructure managers to seek authorisation in real time for many individual work packages which are part of a larger programme (eg Thameslink)

27. ORR's aim is to make the authorisation process for programmes to upgrade existing infrastructure more efficient. We think there are potential benefits from this approach in reducing assessment costs for the applicant - particularly for programs such as GWML and ETCS trackside fitment.

28. ORR's consultation suggests that infrastructure managers will be able to propose grouping authorisation applications together into larger packages and submitting these for authorisation at a later date against an agreed plan. Authorisations will be required before the larger packages of works or the entire project will be put fully into use.

29. Applicants will have to produce an authorisation plan and comply with relevant criteria. The applicant will still have to employ Conformity Assessment Bodies and obtain Interim Statements of Verification.

30. Paul explained the next steps. ORR is conducting a consultation during January and February. The consultation closes on Friday 3 March.

31. ORR will meet with stakeholders during this period to discuss the approach, and publish a policy statement by the end of March 2017.

#### **Item five – Strategic Chapter: Management of change**

32. Ian Raxton explained that the on-going review of strategic chapters was necessary as they underpin ORR's health and safety strategy. He noted that members had received two other papers before Christmas, and asked if there was any feedback on the chapter on management of change.
33. ORR was grateful for all the comments that members had submitted on previous draft papers, and they are being considered and incorporated as appropriate. TfL had raised a concern that the papers appeared to get into detail and were therefore not strategic – however, ORR saw the detail as examples of what ORR was finding in inspections, which supported the more strategic parts of the papers and helped to set the context for ORR inspection and intervention policy in the short to medium term.
34. In the discussion, Mike Lunan agreed to share his concerns about the civils paper with the Secretariat to be forwarded to ORR's RSD team reviewing the paper. In response to a comment, ORR agreed that the papers often appeared to be written in different styles. However, this was due to different expert staff authoring the documents, and whilst efforts are made to maintain reasonable consistency, ORR would not seek uniformity.

**Action: Mike Lunan to share comments on paper**

35. Concluding, Johnny Schute said that ORR would circulate the overarching text setting out the rationale for the strategic chapters, and include it at the front of all future strategic chapters.

**Action: Secretariat**

## **Item six – Recommendations from the review of RSSB**

36. Johnny Schute opened this presentation. He explained that he has now moved to the role of Deputy Chief Inspector and is no longer Head of Policy: that is now John Gillespie. However, Johnny had conducted the review in his former role and thought members would value an update on ORR's findings and recommendations.
37. The review began in May 2016, and ORR sent out over 1200 questionnaires to stakeholders. It received over 200 back, and Johnny conducted a series of interviews and workshops around the country.
38. The review concluded that there is definitely a continuing role for RSSB to play. However, it should reach what ORR describes as a "new settlement with members": the regulator believes this would bring benefits for both sides. There is, in particular, a role it can play in 'thought leadership': looking for future opportunities and threats.
39. Johnny explained the recommendations ORR has made in detail, and that it is for the RSSB Board to decide whether to take some or all of them forward. However, that company has welcomed the report already and made clear that the recommendations will be implemented. He concluded by noting that members

could [download electronic copies from the website](#): they were handed hard copies of a summary of the report at the meeting.

40. In the ensuing discussion, John Cartledge welcomed a recommendation that more formal provision should be made for consultation at a strategic policy level with rail industry stakeholders which are not eligible for RSSB membership, e.g. passenger groups, trade unions and national or regional transport authorities. This problem had been highlighted in response to earlier reviews of RSSB, and stemmed from the discontinuance of its former Safety Advisory Board.

### **Item seven – Horizon scanning: follow-up discussion**

41. John Gillespie opened this presentation. He explained that Robert Cook (who briefed members on ORR's Strategy Unit's on-going work on twelve topical issues at the last meeting) was not able to attend. However, John wanted to report how things were going.

42. John said the project was designed to identify issues for further work and commission future internal projects, to ensure that ORR will remain an effective regulator over time.

43. The very useful input members have provided is being used to add items to the project pipeline (eg supply chain capacity across the sector) or to improve the scope and context of projects in the work pipeline.

44. To keep members updated, John reported that the Strategy Unit has received feedback in a range of areas since the presentation. He asked if there were three particular areas members thought ORR should focus on.

45. Areas members have commented on include:

- User demand and ageing population
- Supply chain capacity and skills
- Technology developments, and the implications for people
- Brexit.
- Funding for future investment
- HS2 and Crossrail.
- Resilience, including climate change
- Political and operational devolution
- Major safety or security incidents.

46. Members agreed that it was important to build sustainability into everything on the railway, and that was one area to look at. After further discussion, they also agreed that the changing customer base due to diversity (eg would more staffing be needed needed if there are more elderly customers in future?) and technological improvements could be promising areas.

## Item eight – A new policy on asbestos?

47. Paul Clyndes of RMT opened this presentation, which he had been unable to give at the last meeting due to illness. By way of background, he noted that according to official figures, 5,000 people in Britain are likely to die prematurely this year as a result of asbestos exposure.
48. This is around three times the number of road accident deaths. On the railway, deaths are still occurring and will continue to occur as a result of the historical legacy of construction. RMT regularly secures compensation payments for at least six-figure sums in cases it supports.
49. RMT has joined the TUC's campaign to look afresh at asbestos management in UK industry and now seeks removal of all asbestos rather than simply managing it. It believes there should be an industry enquiry and a cross-industry group set up to look at the long-term implications of such a change.
50. Paul concluded, saying that RMT believes ORR should lead this group, which would examine and report on steps the rail industry could take to remove asbestos from the railway.
51. Responding, Chief Inspector Ian Prosser noted that there were certainly problems with asbestos management and enforcement. But he was interested in the RMT's proposed solution, as this was a departure from the current view that unless circumstances made it impracticable, asbestos was best left undisturbed.
52. It would need to be a long term project, and could be funded in a similar way to Periodic Review projects, and with the involvement of big players like NR and LUL. However, he would certainly like ORR to take the lead in considering the proposals.
53. Concluding, Justin McCracken asked if RMT had any additional background evidence gathered it could make available to ORR. That would be useful. In response, Paul Clyndes agreed to make suitable information available.

**Action:** Paul Clyndes to identify suitable evidence

**Action:** Ian Prosser to begin work on considering the proposal as proposed

## Item nine - Dave Bennett: valedictory

54. Justin McCracken explained that this would be Dave's final meeting as a member, and said members would be interested in hearing his views on "the good, the bad and the ugly" on the railway, and where change may usefully come from.
55. Dave took the floor and gave a wide-ranging review, touching on occupational health improvements, TPWS, the trade unions and – very important – the need to look forward to make sure that the railway was always relevant as technology evolved.



56. At the end of the presentation, Dave was applauded by the Committee, thanked for his contribution over the last 23 years, and wished all the very best for the future.

#### **Item ten - Safety by design: engagement with major projects**

57. Ian Raxton opened this presentation. He noted that ORR had updated RIHSAC on activity in this area following a new agency agreement with HSE in March 2016 which gives us health and safety enforcement functions at the design stage of railway infrastructure projects (supported by a new Annex to our MOU with HSE). Members have also had sight of the new Strategic Risk Chapter on Health & Safety by Design.

58. Ian explained the work RSD has done over the last year and talked about next steps, These include:

- updating guidance to refer more clearly to cyber security issue
- Better guidance for inspectors on what a 'good' design process might look like

59. Ian gave members details of a substantive improvement Merseyrail is making in its trains and stations. ORR has been involved in the project from a very early stage, paying particular attention to the platform train interface issue the company is addressing. By a forward-looking tender process and using a progressive train design solution, Merseyrail can almost certainly expect a lower number of PTI problems on its system in the medium to long term.

#### **Item eleven – Meeting review**

60. Justin McCracken asked if members had been satisfied with the meeting and its agenda. They were. Members agreed to take an updated presentation on level crossings in April and the Strategy Unit's work on the changing customer base noted in paragraph 45.

**Action: Secretariat**

#### **Next Meeting**

Tuesday 11 April 2017, from 1330-1600 at One Kemble Street.

Dilip Sinha

RIHSAC Secretary

January 2017