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Ms Carolyn Griffiths
Chief Inspector of Rail Accidents
Cullen House
Berkshire Copse Rd
Aldershot
Hampshire GU11 2HP

Dear Carolyn,

RAIB Report: Fatal accident involving a track worker at Saxilby, 4 December 2012

I write to report¹ on the consideration given and action taken in respect of the recommendations addressed to ORR in the above report, published on 29 October 2013.

The annex to this letter provides details of the consideration given / action taken in respect of each recommendation:

- The status of recommendations 1 and 2 is 'Implementation on-going'. ORR will advise RAIB when actions to address this recommendation have been completed.
- The status of recommendation 3 is 'Implemented'
- The status of recommendation 4 is 'In-progress'. Network Rail has not provided any evidence that it has addressed the training aspect of the recommendation.

ORR will advise RAIB when actions to address these recommendations have been completed.

We will publish this response on the ORR website on 31 October 2014.

Yours Sincerely,

Chris O'Doherty

¹ In accordance with Regulation 12(2)(b) of the Railways (Accident Investigation and Reporting) Regulations 2005

Initial Consideration by ORR

1. All 4 recommendations contained in the report were addressed to ORR when RAIB published its report on 29 October 2013.
2. After considering the report / recommendations, on 25 November 2013, ORR passed:
 - Recommendations 1, 2 and 4 to Network Rail; and
 - Recommendation 3 to Carillion.

Asking them to consider and; where appropriate, act upon them.

3. Details of consideration given and any action taken, in respect of these recommendations are provided below.
4. ORR also brought this report to the attention of London Underground Limited as it was concluded that there were equally important lessons for it.

Recommendation 1

The intent of this recommendation is for Network Rail to control the risk arising from the use of agency staff in safety leadership roles.

Taking account of the findings of this investigation (particularly in respect of the actions of the COSS on site and the absence of any effective performance review applied to the COSS), Network Rail should identify and then implement, suitable controls to assure the adequate performance of agency staff in safety leadership roles and/or take steps to reduce its dependence on such staff.

Details of steps taken or being taken to implement the recommendation

5. Network Rail, in its initial response to ORR on 18 February 2014, stated that:

From 6 January 2014, the new Sentinel Scheme Rules developed during 2013 have established the requirement for a single accountable Primary Sponsor for every trackside worker. Through a contract of sponsorship, the rules clarify the responsibility for competence management (and for investigation and remedial action following safety incidents) regardless of employment status.

The Roles and Responsibilities project will reduce Network Rail's dependence on agency staff in safety leadership roles by introducing a new role of Safe Work Supervisor. The Safety, Health & Environment (SHE) Committee approved the following proposal in September 2013:

- *Network Rail will have a core of permanent full-time, regularly used, Safe Work Supervisors.*
- *The Safe Work Supervisor must ALWAYS be an employee of Network Rail or a Principal Contractor.*

The project aims to deliver on these points by 31 December 2014, subject to consultation. Network Rail will also introduce a revised skills development framework to support the new role.

Investment in non-technical skills development has been targeted at those workers more likely to meet the criteria as a Safe Works Supervisor.

Timescale: 31 December 2014

6. On 25 March ORR wrote to Network Rail requesting an update on progress being made. On 8 August 2014, Network Rail stated that:

The Roles and Responsibilities work – stream has been combined with the Control of Work element of the 10 point plan into the Planning and Delivering of Safe Work Programme [SWP].

The commitment remains:

- *Network Rail will have a core of permanent full-time, regularly used, Safe Work Leaders.*
- *The Safe Work Supervisor must ALWAYS be an employee of Network Rail OR a Principal Contractor or holder of a Railway Contractors Certificate.*

The project aims to deliver on these points by January 2015, subject to consultation and validation. To minimise risk, implementation of use of formal SWL competence will be on a single agreed date for Network Rail and contractors. This date requires Go-Live criteria to be met, including adequate numbers trained. The Non-Technical Skills programme will be part of the SWL assessment of competency. Safe Work Leader has now been approved by TOMSC [Train Operations & Management Standards Committee] for inclusion in the December 2014 Rule Book.

7. On 7 October 2014, Network Rail advised a revised timescale for the SWL programme:

The SWL will now not go live until June 2015. This date has changed as the volume of training needs has been clarified.

ORR Decision

8. After reviewing information received ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, Network Rail;

- has taken the recommendation into consideration and
- is taking action to implement it by 31 December 2014

Status: Implementation on-going. *ORR will advise RAIB when actions to address this recommendation have been completed.*

Recommendation 2

The intent of this recommendation is to address the safety risk arising from the management of agency staff in all roles involving work on and around the track.

Network Rail, in consultation with all Sentinel sponsor organisations, should develop and implement arrangements to more effectively manage the risk arising from the use of agency staff undertaking work on and around the track. In developing the arrangements, Network Rail should, as a minimum, define improvements in respect of the following issues:

- a) The requirement for the performance, attitudes and behaviour of agency staff to be regularly monitored;
- b) The actions to be taken when deficiencies are identified, in particular the possible mechanisms to remedy the deficiency, reasonable timescales within which the deficiencies should be addressed, and the interim measures that can be applied pending resolution;
- c) The process for temporary suspension of the relevant certification within the Sentinel system and for the prompt reinstatement (to include guidance to contractors and agencies on their responsibilities for updating the status of affected agency staff) on Sentinel; and
- d) The arrangements for employers to share information in respect of the individuals involved in multiple investigations.

Details of steps taken or being taken to implement the recommendation

9. Network Rail, in its initial response to ORR on 18 February 2014, stated that:

This recommendation has been addressed through the development and implementation of the Sentinel database, cards and associated scheme rules.

From 6 January 2014, the new Sentinel Scheme Rules have established the requirement for a single accountable Primary Sponsor for every trackside worker. Through a contract of sponsorship, the rules clarify the responsibility for competence management (and for investigation and remedial action following safety incidents) regardless of employment status.

A new Skills Assessment Scheme has been developed. This will include a requirement for Line Managers to undertake an Annual Capability Conversation (ACC) where a person's competence and capabilities are reviewed to confirm that they meet with the requirements of the role. This specifically includes consideration of behaviours and attitudes to safety.

The scheme is being implemented on a phased programme, with the aim to have all track safety competencies for Network Rail's directly employed staff included by June 2014 subject to consultation and allocation of resources. Rollout to the wider industry will draw on that internal learning and be completed by March 2015. However, in the interim, labour agency sponsors who wish to be considered for work under the contingent labour supply contract starting in October 2014 will be expected to demonstrate they have effective competence and behavioural management processes in place as part of the Code of Conduct being developed.

The new Sentinel database now enables Sponsors to temporarily take down (suspend) one or more of an individual's competences for up to 3 months, to facilitate investigation and remedial actions. A reminder facility will prompt Sponsors to close remedial actions in a timely fashion within the 3 month period.

The new Sentinel Scheme Rules require effective investigation by the Primary Sponsor of any reported safety event, removing the scope to de-sponsor a worker without stating a reason. Primary Sponsors are responsible for keeping records of investigations. The database includes the facility for Sponsors to include notes on an individual's record in the database and a requirement to provide a reason for de-sponsoring. This information will be visible to any new sponsor. The new Sentinel Scheme Rules have also introduced criteria for Network Rail to formally review investigations resulting in suspension of an individual's Sentinel Card.

Timescale 31 March 2015

10. On 25 March ORR wrote to Network Rail requesting an update on progress being made. On 8 August 2014, Network Rail stated that:

The Skills Assessment Scheme implementation date has now been pushed out to 1 December 2014. The reason for the delay is that safety validation has not been concluded for either Business Critical Rules (BCR) or SAS, both of which need to happen before we can introduce the changes. We also need to conclude the TU consultation process and implement the people changes to support this; these are predominantly role changes within the DU [Delivery Unit] organisation.

The new Network Rail contingent labour contracts will go live in November 2014 with the Code of Conduct included as part of the contract. An agreement has been reached with the industry for the Code of Conduct to be adopted by all labour suppliers.

11. On 7 October 2014, Network Rail advised a revised timescale for the Contingent Labour Contracts:

Contingent Labour Contracts will be let by November 2014, but there will be a novation period with full compliance by April 2015.

ORR Decision

12. After reviewing information received ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, Network Rail;

- has taken the recommendation into consideration and
- is taking action to implement it.

Status: Implementation on-going. Review April 2015. ORR will advise RAIB when actions to address this recommendation have been completed.

Recommendation 3

The intent of this recommendation is for Carillion, in conjunction with SkyBlue, to validate, and where necessary improve, the way it manages the performance of agency staff.

Carillion in conjunction with Sky Blue should commission an independent review of the changes they have made to their safety management arrangements following this accident, with the aim of confirming that they have delivered the necessary improvements.

The review should include specific consideration of whether the measures taken in respect of managing the performance of agency staff, and following-up accidents and incidents involving them, have been effective in controlling the risk identified in this report. The review should be completed by March 2014.

Details of steps taken or being taken to implement the recommendation

13. Carillion, in its initial response to ORR on 13 December 2013, stated that:

Carillion has engaged Deloitte LLP to undertake this review. Deloitte will provide the following services to undertake this review:

- *The review of work risk assessment forms by managers and the associated training programme;*
- *The establishment, terms of reference and governance of the Competency, Compliance & Rail Training unit;*
- *The training and briefing of Carillion managers relating to the management of agency staff supplied by Carillion Rail Resourcing (formerly Sky Blue);*
- *The on-site safety critical observational assessments, mentoring and developing of agency staff and its implementation of safety training and initiatives in conjunction with Carillion's customers;*
- *The use of the incident database to provide information relating to rail accidents and incidents involving external contractors;*
- *Identification of the nominated senior management team member as the responsible lead in the event of an incident, responsible for communications with the parties involved and deciding the course of action to be taken;*
- *the process established if an agency worker is involved in a safety critical incident in relation to limiting the worker's certification; and*
- *Formal reviews, undertaken by a designated manager, of any findings from incident investigations to record appropriate actions.*

Carillion will carry out our review of the actions listed above to confirm that they have been implemented by conducting interviews with relevant management and staff, and obtaining and reading relevant policies, procedures and supporting documentation. This review will be completed by March 2014 as required.

14. On 1 May 2014 Carillion provided a copy of the independent review report prepared by Deloitte. Carillion stated that:

The Deloitte review centred largely on the processes managed by Carillion's newly created Carillion Rail Resourcing business (CRR). This was created in 2013 when Carillion took the decision to separate the elements of Sky Blue which had traditionally supported the rail industry, and created C.R.R. as a completely new function sitting within Carillion Rail. This allowed us to bring all the elements of the rail function into one management structure and gain further by bringing our safety critical workers 'in-house', thus allowing closer

competence management, improved ability to influence behaviour and a more direct link to creating and spreading best practice.

In addition to Deloitte's report we enclose an update report of our own which shows the progress being made by those items which were not fully concluded at the same time as Deloitte's commission. You have our assurance that these matters are progressing and we will closely manage and monitor their progress, at the highest levels of the business, until we are confident that they are fully embedded within the business.

15. The Deloitte's 'Observation Summary' concluded that: *The Carillion project team has driven progress against each of the RAIB actions included within the RAIB report. In some cases, our work indicated that Carillion has completed the design and implementation of a RAIB action and that the new process has been operating effectively for a period of at least three months. In other cases, our work indicated that while progress had been made against a RAIB action, further progress or evidence was required in order to demonstrate the changes had been fully embedded into the organisation and to demonstrate their operating effectiveness.*

16. Carillion also provided a status report for the actions identified. All actions are expected to be completed by 1 June 2014.

ORR Decision

17. After reviewing information received ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, Carillion has:

- taken the recommendation into consideration; and
- has taken action to implement it.

Status: *Implemented*

Recommendation 4

The intent of this recommendation is to enhance the welfare of witnesses attending industry investigations into serious incidents and accidents.

Network Rail, in consultation with other industry partners as appropriate, should review its processes and examine ways of improving their practices for interviewing witnesses who have been involved in serious incidents and accidents. Taking account of best practice from specialists in this area, it should develop guidance on planning for interviews and techniques for dealing with such witnesses. Training should be provided for individuals who are involved in industry investigation panels or conduct interviews as part of an investigation.

Details of steps taken or being taken to implement the recommendation

18. Network Rail, in its initial response to ORR on 18 February 2014, stated that:

Network Rail will initiate a dialogue initially with RAIB and then incorporating other agencies to establish what options there are for minimising the stress caused to witnesses where multiple agencies wish to interview them, including

the advice that may be given to witnesses on what action they may be able to take to minimise repeat interviews.

Following this dialogue, amendments will be made to the Network Rail guidance explaining the role of each agency to make this more usable for investigators and include practical guidance on what can be done to minimise the stress caused to witnesses.

Guidance will be developed on who Network Rail consider to be vulnerable witnesses and what measures should be taken when managing interviews undertaken as part of the Network Rail investigation.

Consideration will be given to the practicability of training a core of specialised interview leads that would be able to manage the interviews of vulnerable witnesses; Network Rail will implement any actions resulting from this consideration.

A review will be undertaken following a suitable investigation where revised processes are in place to determine effectiveness.

Timescale: 30 April 2014

19. On 25 March ORR wrote to Network Rail requesting details of the outcome of its review. On 13 May 2014, Network Rail stated that:

Network Rail has undertaken a review of its processes for interviewing witnesses who have been involved in serious incidents and accidents and has entered into discussions with RAIB concerning the output from this review.

The review concluded that the processes defined in NR/L3/INV/3001/RIM205 is suitable for managing the investigation process when applied to take suitable account of witnesses who have been involved in serious incidents and accidents.

All incidents and accidents that involve witnesses who have been involved in or directly witnessed an event that is likely to have resulted in shock are deemed a 'serious accident'. This includes:

- fatality to any person in a train accident (other than suspected suicide or trespass), i.e. workforce (e.g. train crew) or public (e.g. passenger, level crossing user);*
- collision between trains on a running line where there is injury to at least one person or significant damage (i.e. greater than €2 million) to the infrastructure or the train;*
- the derailment of an 'in service' passenger train, except where the derailment occurs at low speed (i.e. less than 20mph);*
- fatal or life changing injury to a member of the workforce employed by or contracted to Network Rail whilst at work/on duty.*

In such circumstances the process allows the Corporate Investigation Manager to act as DCP [Designated Competent Person] for the accident. Where witnesses who have been involved in or directly witnessed an event that is likely to have resulted in shock then the Corporate Investigation Manager has taken this role for all such events since the autumn of 2013 and is now policy. This is evidenced in the handling of the staff electric shock at

Stafford on 5 November 2013 and the lookout fatally injured at Newark on 22 January 2014.

The Corporate Investigation Manager now agrees the interview strategy with the lead investigator for such accidents and incidents which takes into account the needs of the interviewees. For example following the Newark fatality arrangements were made for the two members of the ultrasonics team who witnessed the accident to be interviewed as a 'group' separate from the main investigation team meetings.

The interview comprised the Lead Investigator, Network Rail's Principal Occupational Psychologist, a Lead Trade Union Health and Safety Rep and the two witnesses. Feedback from all involved was that this was both a sensitive way of managing the interview from the interviewees' perspective and productive in terms of evidence gathering for the investigation.

The members of the investigation team not participating in the interview agreed to the approach and were asked for subject areas that they wanted to be covered during the interview.

Although it is anticipated that the approach outlined above is suitable to manage the risk identified by the recommendation; Network Rail has decided to create a small team of investigators that are additionally trained to manage the interview of vulnerable witnesses.

To this end Network Rail has worked with the RAIB to develop additional training which will be undertaken 16 – 18 June 2014 with the following objectives:

A small team of accident investigators was created in January 2014; the team consists of the three Senior Investigators and two members of the Ergonomics team. It will be supplemented by two or three additional members later this year [2014]. This team will be able to manage the interview of 'vulnerable witnesses'. These interviews are likely to be in the days rather than the hours after the event.

These interviewers will be able to:

- Plan the interview.*
- Be aware of the other agencies that may have interviewed the witness and the purpose of these interviews.*
- Seek subject areas for interview from interested parties.*
- Conduct the interview such that the most accurate account available is obtained without creating undue stress for the interviewees.*
- Have an appreciation of the benefits and difficulties of family liaison.*

It is anticipated that as the specialist interview team is small that biennial training and the materials from this will form suitable guidance for the activity.

ORR Decision

20. Network Rail has not provided any evidence that it has addressed the training aspect of the recommendation. Confirmation will also be sought that Network Rail has been in consultation with other industry partners.

Status: In-progress