

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

### **Draft minutes of the 123rd RIHSAC Meeting**

**Wednesday 17th November 2022**

**25 Cabot Square/Microsoft Teams**

#### **Present:**

Justin McCracken	ORR
Ian Prosser	ORR
Paul Appleton	ORR
Tracy Phillips	ORR
Max Buffey	ORR
Sukhninder Mahi	ORR
Patrick Talbot	ORR
Ian Raxton	ORR
Chris Knowles	ORR
Martin Leggett	RSSB
Iain Scott Ferguson	Network Rail
David Porter	IOSH
Jason Connelly	Transport Scotland
Mark Gaynor	Rail Partners
David Clarke	Railway Industry Association
Alastair Young	Transport Scotland
Rob Miguel	Unite the Union
Sarah Friday	RMT
Andrew Hall	RAIB
Hannah White	TFL
Matt Green	Heritage Railway Association
Graeme Banks	Infrastructure NI
Simon French	
Pam Warren	

#### **Welcome, introductions, apologies for absence, and actions from 24 February 2022 meeting.**

1. Recording of the meeting commenced (and would be deleted once minutes were written). Justin McCracken welcomed everyone to the meeting which was to be run as a hybrid

meeting. Apologies had been received from Mark Norton and Bertie Bricusse (DfT), Vincent Borg (ASLEF). Hannah White was attending for Lilli Matson (TfL).

2. There was one action from the last meeting which was for Paul Appleton to put Rob Miguel in touch with Sharon Mawhood from ORR to discuss health matters. This had now been actioned.

### **Health and Safety Regulation Committee (HSRC) update (Justin McCracken)**

3. HSRC had held two meetings since the last RIHSAC meeting. At the meeting in June there was a discussion with Network Rail with Mike Putnam (Chair of NR's SHEQ Committee) and Allan Spence. Specific risk areas were discussed, such as the risk of distraction in the industry with all of the changes currently happening, and weather related risk. At a general level, the most important thing that was discussed was progress on developing the safety culture in NR, and increasing the pace of improvement in the company.
4. HSRC also discussed sector level safety assurance, which was also on RIHSAC's agenda for today, with Simon French leading the discussion.
5. The September meeting included a discussion of Transport for London's health and safety performance with Lilli Matson and Andy Lord. This included a discussion on how TFL was dealing with the financial pressures that it is now under, which focused on asset management.

### **Chief Inspector (CI) update (Ian Prosser)**

6. Ian gave his update on current issues. In respect of the Retained EU Law Bill, ORR was working closely with DfT and HSE to help ensure the right health and safety legislation was captured on the central list so that next steps could be determined in terms of which of the Bill's powers would be used. For example, for legislation that wanted to be retained, Departments would have to "restate" this otherwise it would be sun-setted (currently by end Dec 2023 but clear guidance on timing and process was still awaited). RIHSAC members were encouraged to engage in the call for evidence exercise which was open until the 22<sup>nd</sup> of November.
7. On the Post Implementation Review (PIR) of the Train Driving Licensing and Certificates Regulations, there was a thank you to RIHSAC members who took the time to complete the survey to inform the PIR and the report was now being drafted for DfT's consideration. The report was likely to include recommendations to reduce prescription in some of the regulations and updating and improving the clarity and interpretation of medical requirements.
8. ROGS guidance – ORR would be publishing new ROGS guidance shortly. This updated guidance swept up the impact of the new statutory instruments that came into force when the UK left the EU, confirmed which Common Safety Methods remained in force and what they do, and consolidated guidance from elsewhere, for example on the duty of cooperation in ROGS. The opportunity had also been taken to include some of the recommendations from the last ROGS PIR where possible.

9. Active investigations – Sandilands was now set for trial with the two corporate duty holders having pled guilty; Carmont investigatory work had been completed and was now in the hands of the Crown Office and Procurator Fiscal for decisions on possible enforcement action. ORR would support any requests for further information.
10. The recent Rail Wellbeing Live was a successful event in ORR’s view, Ian stressed the need to maintain momentum on mental health and wellbeing.
11. Open ORR consultations – ORR has published conclusions on the proposed operating model of the rail ombudsman as well as a consultation on ORR’s complaint code of practice.
12. Justin invited any comments or questions. Ian Ferguson asked for clarification regarding the Common Safety Method for Risk Assessment and whether it would remain. Ian confirmed that it was retained at EU exit and the updated ROGS guidance made this clear but Tracy Phillips clarified that it would now be subject to the Retained EU Law Bill.

### **Track Worker Safety in Network Rail (Tom Wake)**

13. The first presentation was from Tom Wake (ORR) on Track worker safety (see slides previously circulated). The following points were made during discussion:
  - Ian Ferguson wanted to reflect on his experiences from the Eastern region. In his view, overcoming the inertia, effective leadership and visualising the end point and progress was key. He believed there was a genuine desire to change but filtering that down to the front line was important.
  - David Porter commented that he would take a different stance - the amount of resource ORR has had to use to move a large and well-resourced organisation such as Network Rail to develop in this way in his view revealed weakness and immaturity in culture and systems. He asked, looking forward, what the plan was to tackle those underlying issues. Tom Wake responded that the issues ORR faced was that the industry tended to focus on individual competence, it depended on one person doing the right thing at the right time in the right place, not the fundamental organisation of risk management.
  - David asked if ORR was happy that Network Rail had accepted this and that there was visible progress that could be taken forward into GBR. Ian Prosser commented that he had seen a shift in Network Rail, for example through their embracing of RM3. It was now used much more effectively on a regional basis which was driving improvement. Ian Ferguson agreed that improvement plans using RM3, that focused on the smaller issues as well as the larger ones, could lead to material change. Justin McCracken commented that there was some evidence that the safety culture in Network Rail had improved: the Safety Task Force, for example, was a fantastic example of how to do things well and demonstrate strong leadership. But, it was agreed that it was a work in progress and would need everyone involved to keep minds focused.
  - Mark Gaynor asked to what extent were train operators involved in the process and the levels of impact on disruption to passenger services considered? Ian Ferguson

commented that use of technology, and planned working in quiet hours was intended to reduce passenger disruption. Tom Wake commented that a lot had been achieved already, but there were still work to be done to ensure the improvements were sustained.

- Sarah Friday picked up on comments regarding safety culture and industrial relations. She commented on the use of contingency workers during industrial action and some incidents that had occurred during that period. She remarked that that contingency labour had not been held to the same standards as regular workers and that it seemed to her members that it was the organisation “keeping its fingers crossed” that nothing would happen during this time. Ian Ferguson commented that there was a policy of fair culture at Network Rail. Ian Prosser added that ORR had already been engaging with RMT on these issues and would continue to do so, as required.

### **ORR’s 2022 Risk Profiling exercise (Garry Stimpson, Kristina Barbet)**

14. Garry Stimpson and Kristina Barbet (ORR) went through the presentation (previously circulated) to provide an update on the ongoing risk profiling exercise taking place at ORR. The following points were raised in discussion:

- Matt Greene asked about “process B” and whether the intention was to share findings/information with the Heritage Railway Association? Garry said that the intention was to be as transparent as possible and ORR was considering the best way to share and present the findings. Ian Prosser commented that the results of the exercise would be taken to HSRC so were shared at ORR Board level. Kristina added that the final workshop for the risk profiling exercise was still to take place on Friday 25<sup>th</sup> November, and a “sense check” of the findings would be taking place after that.
- Noting that the process was different to previous years, Justin asked if it was too early to have had any feedback from ORR inspectors involved in the exercise? Garry commented that feedback had been positive so far and was heading in the right direction and that they found it more user friendly.
- David Porter asked how safety management maturity factored in and how more generic or underlying issues were identified and followed up. Garry responded that with process B there was a specific requirement to look at safety maturity. More use was being made of RM3 end of year reports, with the aspiration to use them even more thoroughly. David asked to clarify if process B applied to all duty holders. Garry responded that process A applied to most sectors but process B was appropriate to heritage as it relied on inspector knowledge and judgement and was not so data driven.
- David asked how risk profiling outcomes would carry through to work programmes for the mainline – were there components that cover the generic health and safety management issues as well as specific risk areas? Garry responded yes, but that it was down to the operational teams to decide what they would focus on. David asked how the teams would monitor and follow up progress. Garry answered through RM3 end of

year reports. Paul Appleton added that as part of the process there were explicit questions against each hazard, informed by RM3, but noted that ORR would not necessarily have good RM3 data or evidence for every issue.

- Ian Ferguson offered a discussion with Garry offline regarding using RM3 reports if helpful.
- Pam Warren commented that the word “priority” could be misleading and would benefit from being changed. She also asked about retention of the data and other evidence, - would this information be kept so that it could be compared in 5-10 years? Garry commented that this was absolutely the intention i.e. to build up a sound knowledge base.

## **Rail Transformation Programme – Safety Assurance (Simon French)**

15. Simon French talked through his presentation on safety assurance and the Rail Transformation Programme. This was a slightly updated presentation to that which had been previously circulated so would be sent to members

**Action 123.1 - Max Buffey to send later version of Simon French’s presentation to members.**

16. The following points were made during the discussion:
  - Justin commented that, whilst the switch from DfT to GBR might look simple on paper, the potential implication in terms of the relationships between the train operating companies and GBR and Network Rail were fundamental as GBR would become the principal and the others would become ‘just’ contractors. A lot of other industries worked like that but with differing outcomes in terms of safety – how the relationship between principal and contractor is handled is important. He asked whether Simon was looking at other industries as part of the process. Simon French agreed that this was fundamental and that it needed to be clear that train operators were never ‘just’ contractors, and remained responsible under ROGS for the delivery of train operations so must have a real voice which is listened to. It still needed to be worked through to what extent the ‘guiding mind’ was going to guide versus instruct. He confirmed that he had been looking at models in other industries. Paul Appleton added that ROGS assumed a “level playing field” which would not be the case under GBR so ORR’s job as a regulator would be to make sure there was no abuse of power from the guiding mind. Each train operator would still hold a safety certificate and they would have a duty to uphold that regardless of GBR.
  - Paul Appleton commented that there were some big risks that needed to be worked out first before taking them to GBR to ask how they plan to deal with them. Simon French responded that, although there was uncertainty regarding timescales and implementation, now was the right time to be asking these questions, even if the answer was that they “don’t know”. He remarked that absence of certainty in an area

was, in itself, a risk. By asking the questions, issues could be brought to a head and influence thinking in the programme to identify any residual risk.

- Alistair Young asked how the concept of the guiding mind would work in the devolved administrations in Scotland and Wales. Simon responded that GBR would not be a franchising authority in Scotland and the Scottish government would directly fund the railways in their jurisdiction; things still needed to be fully worked through but to some extent it was where we are today. Alistair asked whether policy matters would be moving to the guiding mind rather than this being through DfT? Simon French responded that high level policy would still be set through the UK government and did not see it moving to a guiding mind but conversations do still need to be had with the devolved governments.
- Rob Miguel asked who was involved in the safety working group – was it external stakeholders and how would consultation and engagement with stakeholders evolve? Simon French responded that, as things were at concept level at the moment, there had been limited stakeholder engagement (a reason for asking to come to RIHSAC was to help start that process). The intention was to engage at all levels of the industry but things were not quite at that point. Paul added that the change management process requirements of individual organisations had not gone away and it was important to think even more about the interfaces between those organisations.
- Justin made the point that making the process as inclusive as possible was the best way of building trust in the new system and consultation might not necessarily be at the forefront of everyone’s mind. Simon added that there were several workstreams involved and it was important that there was co-ordination so that changes could be brought about in a measured manner. Simon would talk to the team leading the change management workstream and would flag the concerns raised and ask them how they saw wider engagement would start to take place.

17. Simon was thanked for his presentation and asked to return to RIHSAC’s June meeting.

**Action 123.2 - Simon French to return to June RIHSAC to update members on the Rail Transformation Programme and safety assurance. RIHSAC secretary to add to forward programme.**

### **Forward planning (Justin McCracken/Tracy Phillips)**

- 18. The forward programme had been circulated with the papers. Ian Prosser suggested that the topic of Health and Wellbeing should come to the next RIHSAC meeting
- 19. Mark Gaynor offered an item on depot safety and Alastair Young suggested that the Carmont working group on HSTs would be a good topic.
- 20. Tracy commented that dates would soon be fixed for 2023 RIHSAC meetings and Justin advised members that from now Sukhninder Mahi would be overseeing RIHSAC and working

with Max Buffey (RIHSAC secretary). Any further thoughts on potential agenda items should be put forward to Sukhninder.

**Action 123.3 - Items on health and wellbeing, depot safety, and Carmont working group should be added to the forward programme by the RIHSAC secretary and dates fixed for 2023 meetings.**

**Action 123.4 – RIHSAC members to contact Sukhninder Mahi with any further, future agenda items.**

### **Meeting review (Justin McCracken)**

21. Justin reflected on the meeting and thought it had run smoothly, both in person and online. Members were thanked for their contributions.

**Next meeting: 2023 meeting dates to follow**