



House of Commons
Transport Committee

**Safety at level
crossings: Network Rail
Response to the
Committee's Eleventh
Report of Session
2013–14**

**Eighteenth Special Report of Session
2013–14**

*Ordered by the House of Commons
to be printed 7 April 2014*

HC 1260
Published on 14 April 2014
by authority of the House of Commons
London: The Stationery Office Limited
£5.00

The Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its Associate Public Bodies.

Current membership

Mrs Louise Ellman (Labour/Co-operative, Liverpool Riverside) (Chair)
Sarah Champion (*Labour, Rotherham*)
Jim Dobbin (*Labour/Co-operative, Heywood and Middleton*)
Jim Fitzpatrick (*Labour, Poplar and Limehouse*)
Karen Lumley (*Conservative, Redditch*)
Jason McCartney (*Conservative, Colne Valley*)
Karl McCartney (*Conservative, Lincoln*)
Mr Adrian Sanders (*Liberal Democrat, Torbay*)
Chloe Smith (*Conservative, Norwich North*)
Graham Stringer (*Labour, Blackley and Broughton*)
Martin Vickers (*Conservative, Cleethorpes*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

The Reports of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/transcom>.

Committee staff

The current staff of the Committee are Mark Egan (Clerk), Nick Beech (Second Clerk), Richard Jeremy (Committee Specialist), Adrian Hitchins (Senior Committee Assistant), Stewart McIlvenna (Committee Assistant), and Hannah Pearce (Media Officer)

Contacts

All correspondence should be addressed to the Clerk of the Transport Committee, House of Commons, 14 Tothill Street, London SW1H 9NB, The telephone number for general enquiries is 020 7219 6263; the Committee's email address is transcom@parliament.uk

Eighteenth Special Report

On 1 April 2014 we received a response from Network Rail to the Transport Committee's Eleventh Report of 2013–14, *Safety at level crossings*, which we publish with this Special Report.¹

Network Rail Response

In building a modern railway today, it would be inconceivable that society would tolerate the construction of level crossings, particularly those where a pedestrian could encounter trains travelling at speeds greater than cars are allowed to travel on our road network.

When the railway was originally constructed, agreements were struck with landowners whose land was bisected by the track which led to ways of crossing the railway on the level. The harsh reality is that the 6,400 or so level crossings on our railway today are a legacy from an era when roads were for horse drawn carriages and rail was for an occasional slow steam train. The world is now very different, but decisions taken over 100 years ago are still affecting the safety of the public today. Network Rail is faced with managing this legacy every hour of every day. This is a considerable challenge, but as the Committee has noted, the risk of using level crossings in Britain is lower than the vast majority of countries across Europe.

The solution to eliminating risk completely would of course be to close all crossings but this is a challenge society is unlikely to be able to afford and the resources needed would be disproportionate when compared with addressing the risks facing the public on the road network for example.

We are however totally committed to maintaining our level crossings such that they may be used safely, to close crossings where we can, and to replace crossings with alternative routes across the railway such as bridges and underpasses. But we need help from other parts of society if we are to deliver the improvements in safety we all wish to see.

At over 5,000 level crossings, the public decides how and when to cross the railway and is not required to inform Network Rail before deciding to cross. We are of course reliant on the public using level crossings correctly and adhering to signage, guidance and instructions when doing so. Rather tragically we know this is not always the case. But equally we know the way in which some level crossings were originally designed and have since been maintained and operated can also put the public at risk and have led to tragic accidents.

We are reliant on others to play their part in both ensuring level crossings can be used safely and in closing crossings where the risk is unacceptable. Local authorities play a particularly important role in helping us close level crossings promptly and permitting alternative ways of crossing the railway such as bridges and underpasses. They are, on occasions, reluctant to help us deliver these changes, thereby leaving the public at risk; a risk which we are then required to continue to manage.

1 HC 630, published on 7 March 2014.

Highway authorities need to ensure the roads and signage around level crossings are constructed and maintained in a way which enable road users to approach crossings safely. Landowners also have an important role in ensuring that crossings on their land are used for the purpose intended.

Safety at level crossings therefore involves a range of stakeholders and while we fully accept our role in managing this legacy we need the support and cooperation of many stakeholders to reduce the risks to those who wish to cross the railway.

We therefore welcome the Committee's report into safety at level crossings as another valuable contribution to the public debate about the safety of the public when they come into contact with the railway and the measures that may be taken to reduce risk in the future.

Specific Response to Recommendations

In the sections below, we have responded to those recommendations directed specifically or in part at Network Rail. We have also commented on recommendations directed at other parties where we believe the recommendation or any response is particularly important in determining how risk at level crossings can be reduced.

How safe are level crossings?

Recommendation 1

The Committee recommended the Office and Rail Regulation (ORR) adopt an explicit target of zero fatalities at level crossings from 2020. While it will be for the ORR to consider this recommendation, it is important to note that delivering on this target year on year would require a programme of crossing closures which would have significant social and economic costs. Closing crossings in town centres for example could require properties and businesses to be demolished to accommodate bridges, or bypasses to be constructed to provide alternative routes. Any closure programme would also need to be supported by considerable legislative change to enable crossings to be closed within the requisite time.

Making level crossings safer

Recommendation 2

The 1 in 10,000 risk guidance provided by the Health and Safety Executive and cited by the Committee's report needs further explanation.

The 1 in 10,000 risk, or tolerable limit, defines the risk of death to an individual member of the public where the risk is imposed on them. The guidance was aimed at limiting the risk to an individual from, for example, a petrochemical plant being constructed near houses. In such an example, the risk is clearly imposed on the individual. The risk at level crossings, however, is not imposed on an individual as the user can decide whether to cross or to use other routes such as bridges or tunnels to cross the railway. In this regard, we do not believe the 1 in 10,000 risk limit applies to level crossings.

There are however 1792 level crossings where the risk, calculated on 500 traverses by an individual per annum may be greater than 1 in 10,000. A total of 1452 of these are user-worked crossings where any given individual would be unlikely to cross a particular level crossing 500 times per annum. For the remainder, both the individual and collective risk are managed to as low as reasonably practicable – known as ALARP. The 1 in 10,000 risk to the individual cited in the Committee’s report is misleading and may give the impression that level crossings are less safe than is actually the case.

However we do accept that the nomenclature of ‘A to M’ and ‘1 to 13’ used to describe the individual and collective risk is unhelpful. It is important that an individual arriving at a level crossing understands the risk of crossing at that time and can compare that risk with others with which they will be familiar. We are therefore committed to publishing a list of level crossings with a clearer and consistent articulation of the risk a user may experience.

As regards the publication of our level crossing risk reduction programme, we have agreed a process with the ORR as part of the Final Determination for the next control period (2014 until 2019). Using ALCRM to risk rank the level crossings, we have targeted improvement at a population of level crossings across the control period. However we expect some crossings to come into this population and some to leave during the control period as risks change. That said, we will agree a firm annual programme of risk reduction with the ORR at the start of each year, together with planned timescales. We will make this publicly available once it has the agreement of the ORR.

Recommendation 4

We welcome the Committee’s observation that the appointment of Level Crossing Managers has made a significant contribution to recent improvements in safety at level crossings. Level Crossing Managers will continue to play an important role in reducing the risk posed to both passengers and the public when they encounter level crossings.

Recommendation 5

A range of factors are taken into account when determining how best to close a level crossing. Clearly there has to be an appropriate cost-benefit assessment to ensure resources are allocated to maximise the level of risk reduction across the portfolio of level crossings. In arriving at such decisions we consider factors such as the previous construction of the railway and its ability to accommodate underpass, the efficiencies of both standard bridge designs and bulk construction over bespoke solutions. We also consider the environment in which the crossing is located. For example, if the crossing is on farmland providing access from one field to another the potential users are likely to differ those accessing a crossing set in the middle of a busy town. In all circumstances however we always seek to comply with the requirements of the Equality Act.

Recommendation 6

We welcome the Committee’s observation that Network Rail has already voluntarily published information on level crossings and recognise the need to continue to make progress in this area. We will begin publishing full narrative risk assessments in September 2014. Between now and then we will work with the Information Commissioner’s Office

and the Open Data Institute to maximise the accuracy and accessibility of all level crossing risk data.

Closure of level crossings

Recommendation 8

We note the Committee's concerns regarding the proposed appeal mechanism for closure orders. While this recommendation is for the DfT to consider, it is important to note that where we have taken all reasonable efforts to close a crossing the ORR should consider where the responsibility for the future risk at that crossing should reside in circumstances where the closure is refused on appeal.

Cooperation between railway operators, highway authorities and planning authorities

Recommendation 9

We welcome the recommendation made by the Committee on improving cooperation with planning authorities as regards assessing the impact of additional numbers of people using level crossings. Experience with a crossing in Cannock Chase where the Forestry Authority routed a cycleway over a level crossing without prior consultation resulting in a dramatic increase in the number of users, illustrates the additional risks land owners can pose. In extending the Health and Safety at Work etc Act 1974 to cover level crossings we would request that consideration be given to the responsibility of land owners adjacent to level crossings.

Human factors

Recommendation 13

We welcome the focus on human factors set out in this recommendation. We will be reviewing our internal risk assessment guidance to ensure it takes account of recent human factors research.

Highway Code and other road regulations

Recommendation 14

We welcome the Committee's suggestion that the review of the Traffic Signs and General Directions 2002 should include guidance on signage and road layouts as regards the approach to level crossings. We will provide the DfT with examples of where signage and road layouts are contributing to risk at level crossings to ensure that future guidance can contribute to risk reduction.

Motorists' education

Recommendation 15

We welcome the Committee's suggestion that the DVSA should incorporate level crossings into the next version of the hazard perception test. In particular, we would suggest the DVSA consider driving behaviour in the approach to level crossings as well as behaviour at different forms of level crossings, including those with automatic half barriers and user-worked crossings.

Pedestrian education

Recommendation 16

We welcome the Committee's suggestion that the Department for Education (DfE) should include rail and level crossing safety in the PHSE curriculum. We have provided educational material to schools adjacent to level crossings and have produced video material featuring Olympic athletes, DJs and music celebrities to explain such risks to children and will make this material available to the DfE.

Network Rail's treatment of families

Recommendation 17

We note the Committee's observation about our previous treatment of the families of those involved in accidents at level crossings. Our Chief Executive made a full and un-reserved apology on 7th March 2014 for prior mistakes.

Recommendation 18

In 2011 the ORR conducted a comprehensive investigation into the issues which had been raised in relation to disclosure. We cooperated fully with the investigation during the course of which it is understood that over 18 of our employees and former employees were formally questioned. We did not duplicate the investigation as we felt this was neither necessary nor appropriate. We do not know if the ORR investigation was incorporated in a formal report, if it was it has not been shared with us.

In anticipation of the threat of legal proceedings we did instruct external lawyers to provide legal advice to the company and in the course of advising the company it was necessary for the lawyers to seek to establish the salient facts. The facts established formed an appendix to the *Basis of Plea* which was accepted by the Crown Court at Chelmsford in the course of the subsequent prosecution of Network Rail under the Health & Safety at Work Act 1974. It is believed that the ORR shared this document with the families. However for the avoidance of any doubt a copy of the document is provided at Annex A.

Whistleblowing

Recommendation 19

We note the Committee's observation regarding the actions of the whistleblower in respect of the Elsenham tragedy. It is important to note that in addition to the industry-wide CIRAS reporting scheme, we have introduced an internal anonymous whistleblowing facility SpeakOut and a Close Call system to provide employees with additional routes to raise concerns. We have also implemented a Fair Culture process in collaboration with the RMT and TSSA unions which provides reassurance to staff that Network Rail will support anyone raising a close call.

Senior accountability

Recommendation 20

We note the Committee's observation regarding the award of bonuses to Executive Directors. Any bonus awards to Executive Directors are subject to considerable discretion from the Remuneration Committee of the Board. The Committee consider, in full, the business performance for the period in question taking input from the Safety, Health and Environment (SHE) Committee of the Board regarding public, passenger and workforce injuries. This advice would include a review of fatalities and life changing injuries. It should be noted that Executive Directors are not members of either the Remuneration or SHE Committees.

Duty of candour

Recommendation 21

We note the suggestion of the Committee as regards openness, transparency and candour, in particular that government consider making Network Rail subject to a statutory duty of candour similar to the one currently being considered by Parliament in the Care Bill. We readily acknowledge that in the past our culture was not as open as it ought to have been. Since 2012 we have worked hard to become a more transparent company and believe the steps we have taken in this regard, coupled with the success of our Close Call and Fair Culture approach are creating a culture where open reporting of concerns by our employees and contractors is now the norm rather than the exception.

Family liaison

Recommendation 22

We note the Committee's observation that we could do more to improve communications with the families of people involved in incidents at level crossings. With our focus on reducing risk at level crossings, clearly our aim is to ensure there are no further fatalities. Should any fatalities occur, we will provide the families of those involved with a single point of contact for as long as the families feel this is necessary.

Investigations and inquests

Recommendation 24

We agree with the Committee's observation that inquests into deaths at level crossings should not become adversarial in nature. By providing more transparency around information on level crossing risk and the outcome of investigations into incidents, we would expect any future inquests which may take place to focus on the evidence base.

Concerning legal representation at inquests, we consider each inquest on a case by case basis. The level of representation will vary depending upon a number of factors which will include whether the coroner has designated Network Rail a "Potentially Interested Party" under the Coroner's Rules or whether the coroner has required us to attend in order to provide specific assistance to the court. It would be most unusual, even in the most complex of cases for the core legal team to exceed one solicitor and one barrister. Frequently, representation will take the form of only one solicitor. It should be borne in mind that other interested parties including train operators; ORR, British Transport Police (BTP) and Rail Accident Investigation Branch (RAIB) may on occasion also require legal representation at inquests and this may create the impression of a large number of lawyers instructed on behalf of the rail industry.

Media, communications and use of language

Recommendation 26

We welcome the Committee's views on the terminology used in respect of level crossing incidents. In the early stages of any event it will be unclear why the event took place. It is important that the language used at this time neither pre-judges the outcome or colours the views of those involved in any investigation. We would therefore suggest we use neutral word "*incident*" to describe the event until there is clear evidence as to the cause. We would then propose replacing the term "*deliberate misuse*" with "*trespass*" to bring it in line with terminology used to describe deliberate unauthorised access to the railway beyond level crossings, where the evidence supports this conclusion. Where the evidence does not support this conclusion, we would propose to use the term "*accident*" as suggested by the Committee.

Annex A: Appendix to the Basis of Plea

“Appendix: Alleged Late Disclosure”

May 2002 Hill risk assessment

1. In light of the investigations Network Rail has been able to conduct since receipt of the PCS, Network Rail considers it likely that this document was disclosed to the ORR in the course of its initial investigation.

2. First, by a memorandum dated 5 December 2005², Mr. Hill sent to Mr. Frary of the ORR “copies of risk assessments and inspections conducted by the level crossing risk control team and the local Mobile Operations Manager”. There is no reason to suppose that the assessments enclosed did not include the totality of the author’s own assessment.

3. Secondly, an email dated 7 December 2005 from Mr. Frary to Mr. Lewis of Network Rail and an internal email from Ms. Kinnish of Network Rail to Mr. Lewis dated 15 December 2005 were both annotated in manuscript to show that the level crossing risk assessments had been collated. When the level crossing file was revisited as part of a review in July 2010, the original Part B (which was the risk assessment) was stapled together with the original Part A (the inspection report). It is unlikely that copies of Part A of the document would have been copied or provided in isolation to the Part B risk assessment.

4. Thirdly, on 20 December 2005, Mr. Lewis of Network Rail attended HMRI’s (predecessor to ORR) offices at Rose Court and delivered a copy bundle of documents. The same copy bundle was provided to the RSSB on 21 December 2005. It is clear that the Part B risk assessment was received by the RSSB as it was referred to in the evidence heard by the Inquiry on 5-6 January 2006³.

5. Further, whilst not demonstrating that the 2002 risk assessment was received by the ORR, it is material that on 13 April 2006, Mr. Lewis sent to Mr. Frary of ORR a copy of a schedule⁴ listing the documents held by him with a request that ORR indicate which documents they required. The Part B risk assessment formed part of the document title “Inspection of footpath and bridleway crossings” listed at section 3.3.9. On 19 April Mr. Frary forwarded to Mr. Lewis an amended version of this schedule newly titled “Network Rail Elsenham file HMRI request” which did not seek copies of the documents listed at section 3.3.9 of Mr. Lewis’ schedule.

July 2005 Cook risk assessment

6. The same factors as set out above in relation to the 2002 risk assessment apply in relation to the 2005 risk assessment.

Hudd memorandum

7. The Hudd memorandum was not in the hard copy Elsenham file. It was not, therefore, disclosed with the other documents referred to above.

2 Bundle Tab 7.

3 Notes taken by David Jones of Network Rail, Bundle Tab 8.

4 Bundle Tab 9.

8. It appears to have been attached to an email to Mr. Lewis on 11 January 2006 from Mr. Rigby of Network Rail. It was marked "Elsen.doc". Mr. Lewis has no recollection of receiving the email and its enclosure but the email records show that he forwarded it to an unidentified person. Mr. Lewis does not know to whom he sent it but accepts that it should have been disclosed to the ORR in April/May 2006 when further disclosure was provided.

9. The failure to disclose this document did not arise because of any failure to have in place a proper system for disclosure. This was one document which does not appear to have been printed off and placed in the file. Neither Mr. Hudd nor Mrs Kaye now has any recollection of this memorandum, or whether they, respectively, drafted and received it or what consideration was given to the matters raised in it and the proposals made. Whilst it seems clear that the memorandum was created in 2001, it is not clear that it was actually communicated.