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Dear Duty Holder

Update on ORR's review into the costs and benefits of health and safety interventions

Earlier this year, we initiated a programme of work to review how the costs and benefits of safety interventions are assessed by duty holders (including Network Rail and train and freight operators). As the joint safety and economic regulator for Britain's railway, we want to confirm how and when cost estimates are compiled for these purposes, and whether reasonable practicability is systematically tested. This is important to ensure that the railway is delivering value for money at a time of rising costs and high levels of taxpayer subsidy.

The UK rail industry has one of the best health and safety records in the world and we recognise that this reflects sustained focus in health and safety interventions. By working closely with duty holders and other rail industry parties, our aim is to identify learning points for the industry to deliver best practice in assessing the costs and benefits of safety interventions.

This letter provides an update on our programme of work. This includes our engagement with train and freight operating companies, commissioning an independent review of Network Rail's approach and reviewing industry guidance (including ORR's) on cost benefit analysis in support of health and safety-related decision making.

We intend to issue a report on our findings and recommendations in January 2025.

Engagement with passenger and freight operating companies

The concept of 'reasonably practicable' is at the heart of compliance with the general duties of the Health and Safety at Work etc. Act 1974 (HSWA). Duty holders are responsible for making sure a risk has been reduced as far as is reasonably practicable, which is about weighing the risk against the trouble, time and money needed to control it.



Available guidance from the Rail Safety Standards Board (RSSB), ORR and the Health and Safety Executive (HSE) sets out that duty holders should deliver safety interventions that align with existing 'good practice'. 'Good practice' is decided by a process of discussion between stakeholders including employers, trade associations, trade unions, government, health and safety professionals. For high hazards, complex or novel situations, duty holders are expected to build on good practice, using more formal decision-making techniques, including cost-benefit analysis.

To understand how duty holders approach and test reasonable practicability in health and safety-related decision making, we have written to and spoken to 23 companies. This includes train operating companies (TOCs), both franchised and open access, freight operating companies (FOCs), as well as some vertically integrated operators including Transport for Wales and Nexus. We have also spoken to members of the Rail Industry Association (RIA) to help us capture the supply chain's view.

We have also discussed the application of industry standards, to explore how often duty holders challenge or seek derogation from those standards.

Our intention has been to discuss these issues with as many duty holders in rail as possible. We recognise that we have not spoken to all duty holders and would be happy to meet with anyone we have not previously spoken to (please contact prm@orr.gov.uk if you would like to arrange a meeting).

Some emerging findings from our engagement to date include:

Testing reasonable practicability and the use of cost benefit analysis in rail

- The guidance produced by RSSB for the rail industry (including [Taking Safe Decisions](#)) is used by most duty holders and they consider it to be helpful. Duty holders have also indicated that RSSB helps encourage industry to share information and best practice, through established cross-industry forums.
- While there was awareness of RSSB's guidance on cost benefit analysis (as part of its wider guidance to industry referred to above) a mixed picture exists in terms of whether this is applied to test and determine whether a measure is necessary to ensure safety so far as is reasonably practicable.
- ORR has also published [guidance](#) for our own inspectors on cost benefit analysis in support of health and safety-related investment decisions in 2008, which was reviewed in 2016 but has not been updated since. The original purpose of this guidance was to assist ORR staff in assessing whether risks on Britain's railways have been reduced 'so far as is reasonably practicable'. It was published for transparency, to help set out our view on what should and should not be included in a duty holder's cost-benefit analysis. There was limited awareness of this

guidance and duty holders were much less familiar with it.

- Some duty holders have explained that when it comes to making health and safety interventions, it is difficult to extract the costs directly relating to health and safety because many interventions bring wider benefits, such as for performance and asset management.
- Minimising reputational risk often appears to be a driver of health and safety decision making. While there were good examples provided of health and safety interventions needing to be prioritised through governance processes, it appears that the use of quantitative cost benefit analysis is rarely used to test reasonable practicability - including challenging when an intervention may be grossly disproportionate.

Collaborative working

- Good examples have been provided of collaborative working on health and safety interventions, including within TOC owning groups, industry steering groups, Network Rail/Great British Railways Transition Team (GBRTT) and with the RSSB, Rail Delivery Group (RDG) and Rail Partners. Duty holders have mentioned good engagement through joint safety groups with Network Rail, particularly at a local, regional and route level. They have also referenced dedicated multi-party groups to focus on specific topics – such as risk management for extreme weather. There has also been references made to close collaboration with RSSB – with duty holders interacting on future policy and research projects.
- There were some good examples of duty holders sharing information and best practice (typically within the same owning group) and working together to improve outcomes (including between certain TOCs and Network Rail, and some examples of alliancing, i.e. the South East Alliance).
- With the opportunity to better join up decision making related to track and train through the creation of Great British Railways (GBR), some duty holders considered this could help with gaining a better understanding of the costs and benefits of health and safety interventions. However, we note that while GBR brings together Network Rail and many passenger operators (i.e. those funded directly by the Secretary of State for Transport) many operators will continue to sit outside GBR. This includes those funded by other public bodies – such as by Scottish Ministers, Transport for Wales, Transport for London and commercial operators like open access passenger services and freight companies. Therefore, continued cross-industry working and cross-organisation collaboration will remain vital.

Industry standards

- There was a view that relevant industry sub committees (e.g. RSSB's [Traffic Operation and Management Sub-Committee](#)) are helpful fora for the rail industry, manufacturers and ORR to ensure compliance with industry standards.
- However, there were differing views from duty holders on the implementation of standards. Many duty holders considered that the process to deviate from a standard is reasonably well understood and that the system allows duty holders to test standards. However, other duty holders considered that the ability to deviate from a standard was not always straightforward in practice. For many duty holders we spoke to, standards are taken as the starting point, with minimal or no deviation from them.

Independent review to assess Network Rail's decision making on safety interventions

We have jointly commissioned with Network Rail an Independent Reporter review of Network Rail's approach to assessing the costs and benefits of health and safety interventions. The Independent Reporter will assess, against a set of agreed case studies, Network Rail's approach to testing reasonable practicability in health and safety decision making.

The case studies that have been agreed include areas such as Electrical Safety Delivery; Level Crossings; Track Worker Safety; Public Safety (Dawlish Sea wall). These case studies were selected as they represent examples of safety interventions where costs were significant, and we think could help inform recommendations to how Network Rail (and, in future, GBR) responds to future major safety initiatives. We also anticipate using the recommendations from this report to identify potential industry-wide learnings.

The Independent Reporter study is due to conclude in December 2024 and we will incorporate the findings and recommendations into our own report.

Guidance on cost benefit analysis

As set out above, we have previously published internal guidance on what should be included in cost benefit analysis to support health and safety-related investment decisions.

We are reviewing whether this guidance is still required given the established *Taking Safe Decisions* guidance and, if so, to ensure it remains fit for purpose, particularly considering feedback from our engagement with duty holders as set out above. If we decide that it should remain, we recognise that as it was last updated in February



2016 some parts of the guidance may need to be updated. We are in discussion with RSSB about this as there are currently links from its guidance to ours.

Given the importance of ensuring a consistent approach to implementation of HSWA and other relevant legislation across the economy, we will also be discussing guidance on testing costs and benefits and reasonable practicability with the HSE. We will also be proactively engaging with rail Union colleagues.

Next steps

There are two key outputs that we expect to deliver in January 2025:

- Building on the feedback that we have had from our engagement with duty holders, we will provide a more substantive report in the new year summarising the findings and putting forward recommendations from this engagement and the Independent Reporter review of Network Rail.
- We will confirm the position regarding the future of ORR's guidance on assessing cost benefit analysis for safety interventions.

Our thanks to all those we have spoken with so far and we look forward to continuing to work with duty holders and industry on this important area of policy and practice.

Yours faithfully

Will Godfrey, Director Economics, Finance and Markets.

Richard Hines, HM Chief Inspector of Railways and Director of Railway Safety.