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Mr Andrew Hall
Deputy Chief Inspector of Rail Accidents
Cullen House
Berkshire Copse Rd
Aldershot
Hampshire GU11 2HP

Dear Andrew,

RAIB Report: Collision at Frogmal Farm User Worked Crossing on 23 October 2017

I write to provide an update¹ on the action taken in respect of recommendation 4 addressed to ORR in the above report, published on 23 August 2018.

The annex to this letter provides details of actions taken in response to the recommendation and the status decided by ORR. The status of recommendation 4 is **'Implemented'**.

We do not propose to take any further action in respect of the recommendation, unless we become aware that any of the information provided has become inaccurate, in which case I will write to you again.

We will publish this response on the ORR website on 15 October 2020.

Yours sincerely,



Oliver Stewart

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

Recommendation 4

The intent of this recommendation is to improve the safety of private level crossings by putting in place measures to give relevant Network Rail staff valid and up to date information about all those people who may regularly use the crossing.

Network Rail should review the way in which it collects, records and maintains data relating to people and organisations with the need to regularly use private crossings, so that local staff have an effective and efficient means of contacting anyone who is resident or whose business requires them to regularly use a user worked crossing. This review should cover:

- a) effective communication with everyone who may be affected by decisions made about changes to a crossing, using means such as correspondence, signage and publicity campaigns;
- b) determination of the extent and nature of the actual use at crossings; and
- c) establishing processes to give all people who must use the crossing regularly up to date information about any changes to the crossing, or to any responsibilities they have regarding the safe use of the crossing. (paragraphs 129a.ii, 130, 131d)

ORR decision

1. Network Rail has carried out an audit of the database of authorised users. This audit has raised population of this database from 60% to 92.2%, with the outstanding 7.8% primarily in Western Route, which Network Rail is working to close out. Alongside its established processes, Network Rail will include additional assurance requirements to help maintain ongoing data accuracy. This will include an annual health check and verification exercise with authorised users. Network Rail has also updated its template letters to authorised users before and after risk assessments are carried out.
2. Network Rail is working on updating its signage for private level crossings, and is in the process of updating its signage standard. The updated template letter for after a risk assessment has been carried out contains sections for telling the authorised user if any changes will be made, and if so, who to contact if they have any questions about it. Network Rail has also created a level crossing toolkit for routes to organise their own publicity campaigns in a consistent manner for local issues.
3. Network Rail's new template contains an updated census form which matches better to their corporate risk model, defines large and slow-moving more clearly, and asks for information on hazards such as use during darkness etc. It also asks for information about tenancy business that might increase traffic across the crossing. This will be used alongside other sources such as census cameras, signaller occurrence books, train driver accounts etc.
4. The new template letters sets out the legal responsibilities authorised users having to crossing users, and asks for more information on the use of the crossing. It also sets out how Network Rail will communicate any changes made to the crossing

by correspondence to authorised users. This is part of Network Rail's standard so is a required process for level crossing managers to follow.

5. While not every authorised user will decide to take part in the risk assessment or complete the census form sent by Network Rail, the updated template letters cover the considerations set out in the recommendation. The data audit should increase the accuracy of information held by Network Rail, and the annual health check/verification of data should prevent data becoming out of date and not being updated.

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

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

Status: Implemented.

Previously reported to RAIB

7. On 13 August 2019 ORR reported that the Network Rail response only covered measures being taken to gather information about authorised users of level crossings. Our understanding of the recommendation is that it covers all users of private crossings, so we have asked Network Rail if their intention is to focus only on authorized users, and if so, explain why.

Update

8. On 2 August 2020 Network Rail provided the following closure statement:



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9. Network Rail state the following:

Closure statement

In addressing the intent of these recommendations, Network Rail has undertaken a series of additional steps to bolster current process.

Network Rail should review the way in which it collects, records and maintains data relating to people and organisations with the need to regularly use private crossings, so that local staff have an effective and efficient means of contacting anyone who is resident or whose business requires them to regularly use a user worked crossing

Over the past 18 months, Network Rail's level crossing and liability negotiations teams have worked collaboratively to review and improve the data quality of the

company's authorised user database. At the start of the exercise, the database was around 60% populated. As of June 2020, and following a full audit, this has been increased to 92.2%. There are 4745 authorised user contact details identified across all 2480 level crossings that carry private status.

The gaps in data needed to accrue 100% population are primarily contained within Western Route. We are working to close out the outstanding 7.8% of missing data as part of continuous improvement and retain high levels of accuracy.

We have also reviewed our approach to the collection and maintenance of the authorised user database to assure we are doing all that can be reasonably expected to accrue intelligence and keep information current. We accept that this needs to be an iterative process as the accuracy of the data cannot simply be assured, continued intelligence is required so that we have the confidence it is correct. Our greatest challenge is where land or property is sold, and the land is subject to a right of access over a crossing, we need to be aware of these transactions. However, there is no requirement on the vendor or purchaser to notify us of this change. Further, where an authorised user dies, we are seldomly notified of the successor(s) in title.

Although there are challenges, we already have in place well established processes that can help to identify property or land ownership changes. These include:

- Close working relations between authorised users and Network Rail through the level crossing manager organisation. This includes direct engagement as part of the risk assessment process, during visits to site and properties or through calls, emails and texts.*
- Mandated use of template letters to authorised users as part of our risk management processes. These include provision for changes in occupancy and identification of others with legal rights of access to be advised to us.*
- A proforma is available to level crossing managers so that they can update our liability negotiations teams of changes in occupancy. This is included within the supporting closure documentation.*
- Checks against the Land Registry for changes in land ownership are undertaken by liability negotiations teams, although this cannot be guaranteed to provide absolute accuracy as updates can be subject to delays of several months.*

The above protocols are considered to meet the test of reasonable practicability. However, as part of our risk management standards review later this year, we will incorporate additional assurance requirements to help maintain data accuracy. This will include an annual health-check and verification exercise with authorised users.

This review should cover effective communication with everyone who may be affected by decisions made about changes to a crossing, using means such as correspondence, signage and publicity campaigns.

There are long-standing protocols in place which cement the need for engagement with authorised users of our level crossings, with stakeholder management at the forefront of our level crossing manager training.

Our level 3 standard directs the use of our template letters both pre and post risk assessment. The former invites authorised users to participate in the risk assessment process such that risks, and hazards, are duly identified and changes are discussed. The latter letter sets out to inform them of the output of the risk assessment (whether present during the risk assessment or not).

As part of our means to address the recommendation, these template letters have been reviewed and updated. The content is more robust in how it seeks to determine the extent and nature of actual crossing use and is explicit in seeking to identify subletting of property or dwellings. The legislative safety obligations placed on authorised users and their invitees are explicitly highlighted, including reminding authorised users who are businesses in their own rights, their responsibilities to their employees and customers under the HSWA 1974.

The new authorised user letter templates went live in June 2020 and are included as supporting documentation to the closure statement.

New signs for private vehicle crossings have been developed in partnership with RSSB, ORR and DfT. Trials have been undertaken to support their use. These new signs provide enhanced clarity relating to safe crossing operation. They will bolster existing asset safety and improve understanding of new practices when changes are made. Once DfT have sanctioned formal authority to deploy, Network Rail will commence rollout as part of risk-based safety improvements.

We have previously embarked on national publicity campaigns targeted toward authorised users of private level crossings and have worked in partnership with NFU toward this goal. The current focus is managing local risks at Route level through the use of the level crossing toolkit which can found at <https://safety.networkrail.co.uk/wp-content/uploads/2020/03/Level-crossing-toolkit-FINAL-v2.pdf>. The toolkit introduced earlier this year, provides the framework for Routes to tailor messages which reflect local issues rather than relying on the generic key messages of national campaigns.

This review should cover the determination of the extent and nature of the actual use at crossings.

We have reviewed the approach we take to obtain intelligence about the use of private crossings. In collecting this intelligence, we make use of the following (not exhaustive):

- *Direct engagement with authorised users, verbal and through formal correspondence*
- *Deployment of census gathering cameras, actively undertaking more 9 day or greater data collection as guided by our census good practice guidance document (LCG03)*
- *Smart sources of intelligence: site access records (where provided), Signaller occurrence books/local knowledge, train driver accounts etc*

In bolstering process further and to better understand use, types of use, patterns of use and influencing factors that might drive use, the update to the authorised user templated letters better support this aspect. Notably:

- *The census form aligns better to the requirements of our corporate risk model, including the defined user groups, vehicle types and frequencies*
- *Questions around vulnerable use is better defined and catered for*
- *A dedicated large and slow-moving vehicle section with improved clarity of what is meant has been added*
- *A section on other hazards such as use during darkness, regular bouts of poor weather and complexity to gain permission to cross has been introduced*
- *Intelligence about tenancy business that might attract irregular invitees and/or increase public use also added to the census proforma*

The review should cover establishing processes to give all people who must use the crossing regularly up to date information about any changes to the crossing or to any responsibilities they have regarding the safe use of the crossing.

With the additional actions taken in response to these recommendations, Network Rail is satisfied with the processes it employs within its standards framework. As outlined previously, a level of assurance will be added to our risk management standard to help maintain higher levels of accuracy with our authorised user database.

Previously reported to RAIB

Recommendation 4

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ORR decision

1. The Network Rail response only covers measures being taken to gather information about authorised users of level crossings. Our understanding of the recommendation is that it covers all users of private crossings, so we have asked Network Rail if their intention is to focus only on authorized users, and if so, explain why.

2. After reviewing the information provided 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, but ORR has yet to be provided with a plan that takes into consideration all users of private crossings.

***Status: Progressing. ORR will advise RAIB when further information is available regarding actions being taken to address this recommendation.**

Information in support of ORR decision

3. On 9 January 2019 Network Rail provided the following initial response: *Network Rail accepts this recommendation and in addressing its intent will:*

- *Audit its existing authorised user database to identify if further intelligence is required to improve the quality of information it holds. It will undertake this by identifying gaps in data and developing a timebound plan to address any areas of weakness. Target completion date is 30/06/2019.*
- *Explore opportunities to strengthen the accuracy in which information about authorised users and their undertaking is collected by taking a more holistic review of intelligence gathering. This review will focus on greater use of intelligence sources such as the land registry and will evaluate other collaborative on-site activities which may support more comprehensive data collection. Target completion date is 31/07/2019.*
- *Review the templated letters it sends to authorised users of private level crossings to assure:*
 - Content is robust in how it seeks to determine the extent and nature of actual crossing use and is explicit in seeking to identify subletting of property or dwellings;*
 - That the legislative safety obligations placed on authorised users and their invitees are explicitly highlighted, including where locally appropriate, noting where restrictions on land use form part of access agreements; and*
 - That the associated company procedures instructing communications, are suitable in delivering effective communication with everyone who may be affected by current crossing operation or future proposals and changes to private level crossings. Target completion date is 31/10/2019.*
- *Investigate the use of public notices to support cascading of information on changes to level crossings. Target completion date is 31/10/2019.*
- *Formalise any procedural changes within standards, guidance and good practice based on the output of recommendation activity by 31/12/2019.*

Network Rail is already working collaboratively with ORR and DfT to improve signage at private level crossings. This is a separate activity which addresses other recommendations made by RAIB, such as Frogmal Farm 1 and Frogmal Farm USA. Network Rail does not propose to duplicate reference to this workstream within its response to Frogmal Farm, recommendation 4.