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25 June 2020



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

Dear Andrew,

**RAIB Report: Track worker struck by a train at Stoats Nest Junction, near Purley on 6 November 2018**

I write to report<sup>1</sup> on the consideration given and action taken in respect of the recommendations addressed to ORR in the above report, published on 11 July 2019.

The annex to this letter provides details of actions taken in response to the recommendations and the status decided by ORR. The status of recommendations 1 & 2 is '**Implemented**'.

We do not propose to take any further action in respect of the recommendations, 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 25 June 2020.

Yours sincerely,

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

A handwritten signature in black ink, appearing to read 'Oliver Stewart', with a stylized, cursive script.

Oliver Stewart

## Initial consideration by ORR

1. Both recommendations were addressed to ORR when the report was published on 11 July 2019.
2. After considering the recommendations ORR passed recommendation 1 to Network Rail and recommendation 2 to Vital Human Resources Ltd asking them to consider and where appropriate act upon them and advise ORR of its conclusions. The consideration given to each recommendation is included below.

### Recommendation 1

*The intent of this recommendation is for Network Rail to improve the way it manages the risks associated with the use of workers on zero-hours contracts. Examples of some good practice in this area may be found in the actions taken by Vital following the accident at Stoats Nest Junction.*

Network Rail should review how it manages the risks associated with the use of workers on zero-hours contracts, and what its requirements are in respect of the systems used by its labour suppliers to manage such staff. This should include consideration of the arrangements for:

- Managing fatigue, including advice on the interaction with other employment, lifestyle, sleeping and eating;
- Managing the competence and fitness of safety critical staff; and
- Supervision of staff who normally work alone and/or outside normal office hours

### ORR decision

3. Network Rail has provided a detailed plan setting out the steps they are taking to improve their understanding and management of the risks associated with zero-hours contracts.
4. Actions identified include a review of the safety requirements in current contracts; a review of the safety data currently collected from the Network Rail supply chain and what may be required in future; and work to reduce the volume of zero hours contracts in work bank planning.
5. Network Rail's Fatigue Risk Management plan was published in December 2019.
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 taking action to implement it

**Status: Implemented**

## Information in support of ORR decision

7. On 6 November 2019 Network Rail provided the following initial response:

### **Action Plan**

*This recommendation will be managed through 4 work streams*

- **Action 1- Joe Jordan & Edward Hawkins – Zero hours.**  
*See action plan attached.*



RAIB  
Recommendation Rec

- **Action 2 - Julian Hendon - Fatigue Management**  
*See action plan attached.*



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Recommendation A9-

- **Action 3 – Workforce Safety & Occupational Health – managing competence**

*PTS and COSS competence have been amended to change the way individuals behave safety on track. Network Rail has also reviewed and the updated Possession Support training that was launched in December 2018. This also changed the way the course was delivered with more candidate participation and again behavioural training. This was developed with our SODM's and the 5 providers of PS staff.*

COSS	<p><i>June 2017 a cross industry working group was established and reviewed the current arrangements for COSS training.</i></p> <p><i>It was agreed that there was not enough training given to support the development of someone wanting to be a COSS and that contractors were trained in a different regime compared to Network Rail and this was highlighted in the trend of a reduction in near misses to Contractors and an increase to NR employees.</i></p> <p><i>From this in November 2017 a paper was produced stating that 3x pre-requisites as pre-course development were agreed and also that it would go from a T3 Regime to a Regime 1 for everyone so that NR staff would have to have an 9-15 month interim assessment as well as a recertification in the classroom every 2 years in line with Contractors. The RBA also stated that tom maintain COSS they need to do 16 COSS duties a year (8 every 6 month) to maintain their competence. This was the</i></p>
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	<p>same outcome as 5 years earlier but COSS was not changed at the time and it was absorbed into SWL.</p> <p>The paper also recommended psychometric testing for all potential COSS's and as they did in Sydney Rail, Australia to test current COSS's to see if they are the correct individuals to do the role. Currently of the 24,000 PTS holders in NR 12,000 hold COSS. Western route at the time had 500 COSS's but they believe they only need 250.</p> <p>In January 2018 NR Training started working with NR, Trade Unions, Training Providers and Contractors to change the course so that it also focused mainly on behaviours of those carrying out COSS duties. It was decided rather than pre-reqs they would be in the course and also during the training candidates would be assessed on their behaviours as well as having to pass a test at the end. Trainer score the individuals throughout and this is totalled up at the end of the course.</p> <p>In 2019 while the course was being developed NR Training used PA Consulting to look at the current COSS course and they produced findings not dissimilar to the findings in the paper and 5 years previous. It also empathised the use of psychometric testing and behavioural training.</p> <p>On 1st July 2019 the new course was launched. It did not though have any pre-course work that was recommended or had any work on the recertification course had been done. So NR Training have started work on this with a target date of April 2020. Also the SCC developed by RSSB and NR was missed out and SWL SCC training was used. NR Training are now working to incorporate this SCC training. They are also working on how to carry out psychometric testing on new candidates.</p> <p>The new training has introduced VR to be used to assist the COSS in decision making and risk perception and awareness. It also explains to them how to challenge as well as be challenged.</p>
PTS	<p>Last year it was decided that PTS training also needs to change and focus more on behaviours of the individual with the same assessment of the individuals during the course and this goes towards their final assessment.</p> <p>The new training will look at a day in the life of a PTS holder from getting ready to go to work until they get home. It will focus on fitness to work and challenging of unsafe acts.</p> <p>It has also reviewed the length and relevance of the eLearning and this will now be an hour long and will be discussed as the first part of the face-to-face training. This will also stop the practice of someone turning up on a course at great expense but be told to leave at the beginning if they don't pass the test.</p>

*NR Training are hoping to pilot the course in the next few months and recently filming took place on a bad and good COSS briefing. The good briefing will be shown at the beginning of the course and uses all terminology without explanation. The candidates will then discuss what they saw and understood and the course will at the end of the training ensure the candidates can understand the briefing.*

### Health and Wellbeing

*Network Rail specifies the industry requirements of fitness for role within its Level 2 Business process, 'competence specific medical requirements and occupation health provider requirements for medical assessments', document reference NR/L2/OHS/00124. This document requires sponsors to make the necessary arrangements to monitor and maintain the fitness for duty of individuals who hold one or more of the competences listed on Sentinel and implement a process for the booking of initial and periodic medical assessments and for recording outcomes of the assessments.*

*The implementation of this business process contributes to:*

- a. controlling the risk of individuals being appointed to roles they are not medically fit for;*
- b. reducing the risk of individuals' health impacting on their work; and*
- c. supporting occupational health providers in providing safe, appropriate and effective services.*

*This standard defines:*

- a. the minimum medical fitness requirements for individuals working on Network Rail managed infrastructure;*
- b. the requirements for conducting a competence specific medical assessment; and*
- c. all providers of occupational health services who wish to become a registered, approved Network Rail supplier for medical assessments.*

*There are six medical levels specified within the business process which is used to define the fitness requirements for competences within sentinel, said medical levels can be found below:*

	General health - clause 6.2	Normal colour vision - clause 6.3	Hearing Category 1 - clause 6.4	Hearing Category 2 - clause 6.4	Visual acuity Category 1 - clause 6.5	Visual acuity Category 2 - clause 6.5	Visual acuity Category 3 - clause 6.5	Ability to work alone - clause 6.6	Specific individual medical restrictions - clause 7.2
Level 1	✓	✓	✓		✓			✓	
Level 2	✓	✓	✓		✓				✓
Level 3	✓		✓		✓			✓	
Level 4	✓		✓		✓				✓
Level 5	✓	✓		✓		✓			✓
Level 6	✓	✓	✓				✓		

*All providers who deliver such a service within our industry must be RISQS approved and are assured according to this. There is also the requirement to upload all results of medicals within the sentinel platform which subsequently impacts on the ability to hold a specific competence dependant on the medical level assigned.*

- **Action 4 – owned by Cajetan Chukwulozie & Mark Jelley**

*Principle Contractor Licensing will issue a questionnaire on the subject to all Principal Contractors to ascertain current practice, methodology and approach in these areas, both with their own workforce, and with their sub-contractor and contingent labour provider operatives as well.*

*Some of the PC community have undertaken some very good work and initiatives around fatigue management, so there may well be a great deal of useful information, data and ideas out there that we can capture and report upon.*

*This would enable us to compile a report highlighting good practices and any identified gaps/areas for improvement that can then be shared back with the Principal Contractor community and also internally within NR.*

*Completion date February 2020.*

## **Recommendation 2**

*The intent of this recommendation is for Vital Human Resources Ltd to validate, and where necessary improve, the way it manages the risk associated with fatigue and ‘ghosting’.*

Vital Rail Human Resources Ltd should commission an independent review of the actions it has taken following the accident at Stoats Nest Junction in order to assess

their completeness and effectiveness. In particular this should address the following areas:

- The effectiveness of the processes that have been implemented to ensure that persons responsible for safe systems of work are present and the effectiveness of the associated management assurance system;
- The process for briefing the arrangements for reporting of incidents of safety critical staff absence and similar irregularities affecting the safety of staff and the railway;
- The appropriateness of current instructions concerning protection staff sleeping between the placing and lifting of protection; and
- The return of SSOW packs in compliance with Network Rail's NR/ L2/ OHS/019 process.

### **Any areas for further improvement should be implemented**

#### **ORR decision**

8. In response to the fatal accident at Stoats Nest, Vital Rail Human Resources Ltd carried out a programme of work aimed at improving management of the risks associated with fatigue and 'ghosting'.

9. As per the recommendation, an independent review of the actions taken was carried out in September 2019. Vital planned to carry out a further review six months later, but that has not yet been possible due to precautions related to the Covid-19 pandemic, as the review requires the independent person to visit sites and interact with staff.

10. After reviewing the information provided ORR has concluded that, in accordance with the Railways (Accident Investigation and Reporting) Regulations 2005, Vital Rail Human Resources Ltd has:

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

***Status: Implemented.***

#### **Information in support of ORR decision**

11. On 22 October 2019 Vital Human Resources Ltd provided the following initial response:

#### ***Improvement actions undertaken***

*After the fatal accident a full review was undertaken of the organisation's Possession Support operations as part of the on-going business improvements relating to the continual improvement cycle, and business risk management elements of the Integrated Management System certified to ISO9001, ISO14001, and BS OHSAS18001.*



*An improvement plan was created relating to key areas identified in the accident investigation to manage the potential opportunities for ghosting, fatigue related issues, the return of completed SWPs and sleeping on shift.*

*The improvement plan is attached.*



VHRL -  
Improvement Plan(6)

*In summary it dealt with the issues of fatigue, (points 1, 2, 3 and 14), ghosting, and the reporting of, (points 4, 5, 7, 9 and 12), the return of completed Safe Work Packs (point 8), Safety Critical Communications (points 10, and 11), and, sleeping whilst on shift (point 6).*

### **Safety Communications**

#### *Possession Support Staff Brief*

*An initial brief regarding the fatal accident was briefed to all Possession Support staff from 11<sup>th</sup> November, 2018 onwards. It covered key, related topics such as The PICOP speaking to the Possession Support Assistant, Possession Support Staff to only work and walk in safe areas, and the Possession Support Assistant to be in attendance at all times.*

#### **Quarterly Briefs**

*These are given face-to-face either in the delivery unit or via the mobile safety units visiting sites. Copies of all briefings can be provided to the ORR upon request.*

#### **Q4 2018:** 1475 Sentinel sponsored individuals briefed

- *Fatality – Stoats Nest 06 Nov 2018*
- *Accident Reporting*
- *Hazard Spotting – How Many Can You See?*
- *Morson Close Call App*
- *Work Safe Procedure*
- *Track Safety Alliance – Prep For Winter (Driving, Ecology, Waste & Ballast)*
- *Safety Award*

#### **Q1 2019:** 1162 Sentinel sponsored operatives briefed

- *Fatigue*

- *Fatigue Management Policy (new Policy & Your Responsibilities).*
- *Work Attendance/Ghosting.*

**Q2 2019:** *1007 Sentinel sponsored operatives briefed*

- *Fatigue Management Policy (new policy and your responsibilities)*
- *Work Attendance/Ghosting*
- *Near Miss Campaign*
- *Use of Hotels*
- *We Care.....Let's Talk*
- *Look after Your Tyres*
- *Caring Neighbours*

**Q3 2019:** *Brief on-going*

- *Fatigue Management Policy (new policy and your responsibilities)*
- *Gold Safety Campaign – Fatigue*
- *Use of Hotels*
- *Work attendance/ghosting*
- *Accident Reporting*
- *Handbooks*
- *Blockbusters*
- *Questions*

**Ghosting**

*It was decided to undertake a survey of the Possession Support (PS) and Possession Support Assistant (PSA) workers to ascertain their knowledge of any ghosting activity with in Vital.*

**Vital questionnaire to PS and PSA ghosting survey results**

*Vital has circulated an online questionnaire to c.170 possession support workers out of Farnham Depot. 120 responses to that were received.*

The questionnaire was circulated as a link via email and text message on 21 February 2019. In order to overcome concerns around disciplinary action and encourage full disclosure, the questionnaire was prefaced with an introduction offering a disciplinary amnesty for those who came forward with information.

Results summary:

- a. Over 97% of workers reported that they were not aware of any occasion on which a Possession Support worker had intentionally not worked a shift and failed to notify Vital.
- b. Of the 3 workers who reporting ghosting, two referred to previous known incidents [Names redacted]. The third made reference to hearing about an occasion a while ago where two people divided up shifts between them. The company believe this may be another reference to [Names redacted] but cannot be certain, and no further information is provided.
- c. Workers were asked for suggestions for improvement to working practices that would assist Vital in identifying ghosting. The responses included the following:
  - Random and frequent spot checks;
  - The role of the PICOP in checking attendance by speaking with the COSS and PSA at the beginning and end of each shift;
  - Improving the process by which workers sign in and out of shifts (though improved use of Sentinel cards, technology and tracking devices);
  - Training/debriefing staff on the need to notify On Call when ghosting occurs, and the penalties for not doing so.

### **Independent Review**

Vital commissioned an independent review of the actions following the Accident at Stoats Nest Junction in order to assess their completeness and their effectiveness.

This review was undertaken on 19/09/2019 by Steve Leatherbarrow of RAAS (UK) Ltd HSQE Consultancy.

In commissioning this independent Review, Vital's aim was not simply to respond to specific points raised by the RAIB in their Rail Accident Report, but to carry out a root and branch analysis of our safety and compliance system, in order to ensure we were complying with best practice across our possession management work. The results of the wider audit are attached.



VHR Stoats Nest  
Recommendations A

In summary it dealt with the issues of fatigue, (points 1.4, and 1.9), ghosting, and the reporting of, (points 1.6, 2.1, 2.2 and 2.3), the return of completed Safe Work Packs

*(point 2.4), Safety Critical Communications (point 1.8), and, remedial actions (points 2.5 and 2.6). Sleeping whilst on shift is dealt with in the improvement plan (point 6). In addition it examined job descriptions and roles and responsibilities*

*We intend to commission a further review in 6 months' time to ensure that all improvements have been made and that we are proactively monitoring key areas identified in the RAIB's Rail Accident Report, the independent Review and our Improvement Plan. We will provide a copy of this audit to the ORR upon completion, we would welcome any comments that the ORR has on the initial review in the meantime.*

12. On 20 April 2020, Morson International Ltd (parent company of Vital) notified us that implementation of the improvement plan would be delayed due Covid 19 precautions preventing access to site and interaction with staff by an independent person:

*You will have noted from our previous correspondence that it was our intention to commission a further independent review of improvements within 6 months. As I am sure you will appreciate, the current guidance around coronavirus means that plans to commission the services of a third party, which necessarily entails them visiting our sites and interacting with our staff, have been put on hold. Our focus during this time is very much on protecting the health and safety of our staff.*

*We will keep you updated in respect of this, and would welcome any comments that the ORR has on the initial audit in the meantime.*