

Ian Prosser

HM Chief Inspector of Railways
Railway Safety Directorate

17 February 2016

Patricia Marshall
Managing Director
West Coast Railway Company Limited
Jesson Way, Cragbank
Carnforth, Lancashire, LA5 9UR

Dear Ms Marshall

**RAILWAYS AND OTHER GUIDED TRANSPORT SYSTEMS (SAFETY) REGULATIONS
2006 (ROGS)****DECISION LETTER FOLLOWING END OF NOTICE PERIOD - REVOCATION OF
SAFETY CERTIFICATE – PARTS A & B**

We write to formally advise West Coast Railway Company Limited (WCRC) of the Office of Rail and Road's (ORR) decision whether or not to revoke its safety certificate issued on 24 September 2013, following the end of the relevant notice period and in accordance with regulation 15 of ROGS.

Process

In accordance with regulation 15(3)(a)(i) of ROGS, our letter of 9 December 2015 formally put WCRC on notice that we were considering revocation of its safety certificate and set out the reasons why. In accordance with ROGS, we advised WCRC that the notice period would end on 20 January 2016, however this was subsequently extended following a request from WCRC to 31 January 2016. A copy of our notice letter was sent to affected parties in order for it to make any representations in accordance with regulation 17(10) of ROGS.

In accordance with regulation 15(3)(a)(ii) we invited WCRC to make representations during the notice period which could be made either in writing or orally. WCRC chose to exercise its right to make oral representations at a meeting on 27 January 2016, however we further allowed WCRC to provide us with additional written representations to supplement its oral submissions. During the meeting, WCRC also provided us with two written statements and a letter from its Chairman. Following the meeting, a further extension of the notice period was provided until 5 February 2016 in order for WCRC to provide us with further assurances and time bound plans for further improvements.

Background

We had previously considered revoking WCRC's safety certificate following an incident when Train Protection Warning System (TPWS) isolation equipment was interfered with

resulting in a signal being passed at danger at Wootton Bassett Junction on 7 March 2015, in which a catastrophic incident nearly occurred. As part of this process we heard oral representations from WCRC and re-iterated our concerns which had led us to consider revocation. We informed WCRC that we expected them to demonstrate that WCRC is committed to making the necessary changes from the Board level down, in order to secure safety management which is fit and proper for the scale of its operations. Our main areas of concern being: management capability, governance and assurance.

We emphasised to WCRC during the notice period that its leadership must set and communicate clear direction to reinforce a consistent approach to health and safety and shape the company's day-to-day activities. We stated that WCRC policies should clearly express the top-level management expectation, accurately defining what it wants to achieve, how it will be achieved (through effective leadership), and how management will know when that expectation has been met. WCRC informed us that it had recruited a non-executive Director, General Manager and additional staff to supplement its safety management team.

Owing to the steps WCRC had taken, we decided to not to revoke its safety certificate and instead served an Improvement Notice to ensure the above concerns were addressed. We further stated that we would periodically require WCRC to demonstrate that it is meeting all of the conditions of its revised Safety Management System and Improvement Notice and that any non-compliance could re-open the consideration of revoking its safety certificate. The Improvement Notice was complied with by 17 July 2015 and signed off by ORR.

We were therefore disappointed that following the above process and decision, there were a number of incidents involving WCRC which demonstrate that the efficacy, consistency and extent of the changes made in response to our regulatory interventions had essentially reverted to "old practices." In light of this, we considered it necessary to put WCRC on notice that we were considering revoking its safety certificate. Our notification letter of 9 December 2015 and subsequent letters, which were provided following requests for further information from WCRC, set out our reasons for considering whether or not to revoke its safety certificate.

We highlighted the following incidents which had raised these concerns:

- 13 June 2015 – a train dispatch incident at Reading Station where a train lurched forward due to miscommunication between the guard and driver;
- 19 August 2015 – a driver management inspection at Rugby found that although there were route learning materials available, no mechanism for updating route maps etc. existed (information was being obtained unofficially from other operators.) Refresher training was dependent on the driver making a request for it and was not robustly managed. There was no system for the monitoring of drivers to indicate when refresher training was needed and additionally, no route risk assessments were available for inspection.
- 5 September 2015 – Weymouth buffer stop collision. This incident was not reported to ORR contrary to RIDDOR rules. Coaling of locomotives was conducted with insufficient management of working at height and management of contractors was

deemed to be poor (re-coaling), advice regarding risk assessment and the management of contractors was subsequently provided by ORR.

- 15 September 2015 – an ORR inspection identified that risk assessments for steam operation were out of date and staff were not aware of such risk assessments. The risk assessment for coaling and watering was said to be subject to review and the copy supplied to ORR was not dated and unlikely to be appropriate in terms of managing the risk from working at height. However, WCRC acknowledged that the suite of task based risk assessments needed updating.
- 2 October 2015 – an unauthorised TPWS activation at signal D264 located on the up and down Hexthorpe Goods cord, Doncaster. The locomotive involved was making a propelling movement with a steam locomotive and support coach. The footplate staff intervened with the TPWS resulting in the unauthorised TPWS activation. This was a serious incident which was similar to the unauthorised intervention with the TPWS which led to incident at Wootton Bassett Junction, creating a risk to personal safety. This incident led ORR to serve a Prohibition Notice on WCRC which is still current and stipulated that steam locomotives under WCRC's control must be fitted with proper control measures to prevent casual, inadvertent or improper interference with and overriding of the TPWS and automatic warning systems.
- 26 November 2015 – Bath Spa dispatch incident where a locomotive was alleged to have moved approximately one metre whilst passengers were boarding.
- 1 December 2015 - An Improvement Notice was served on WCRC following an inspection of Southall Railway Depot. It was found that WCRC did not have adequate safety arrangements in place to ensure effective control and monitoring of the preventative measures for managing health and safety risks arising from workplace activities. The Improvement Notice highlighted poor underfoot conditions, no internal lighting, no Control of Substances Hazardous to Health assessments, fire extinguishers not being managed, no Portable Appliance Testing regime and Liquefied Petroleum Gas being incorrectly stored.

The above points had been discussed previously with WCRC management. In our correspondence we further set out additional concerns:

- That the newly appointed General Manager had resigned from WCRC and no new appointment had been made
- Contrary to agreement with WCRC that steam hauled trains would be no longer than 10 passenger coaches, there are indications that this has been disregarded which had led to other incidents causing delays on the mainline railway.
- That WCRC are not effectively managing the safety of its operations at the most senior level of the organisation. In particular, staff carrying out functions to ensure health and safety and/or compliance with WCRC's safety management system are being undermined and their actions in the pursuit of safety are being negatively interfered with by senior members of staff on the Board, in particular the Chairman. Further, the Chairman is making the decisions for WCRC regardless of the views and advice of other staff members and contrary to WCRC's safety management

system. This raises significant concerns in relation to WCRC's safety culture and leadership.

Due to the incidents and concerns highlighted above, we informed WCRC that we had serious concerns that it is not satisfying the conditions of its safety certificate and that a significant risk is arising as a result in our letter of 9 December 2015.

Representations from WCRC

As stated above, WCRC decided to exercise their right to make oral representations in response to our letter of notice. Prior to this meeting, WCRC also sent to us lengthy written submissions on 25 January 2016 to assist their oral representations. During the meeting itself, WCRC produced two written statements and a letter from its Chairman.

WCRC's submissions addressed the following points raised by ORR:

- 13 June 2015 – WCRC's written submission stated that this was a "lurch" forwards of around five feet. The signal had been cleared and the train was ready to depart therefore no risk to passengers was created. The guard had stated that WCRC's dispatch process was complete but that the driver should await formal dispatch however this was mistaken by the driver as permission to continue. The incident was investigated with corrective action identified.
- 18 August 2015 – WCRC's written submission accepted that its maps do not cover the whole country and that the southern area is weaker. However, it is actively considering other options to obtain and update maps to provide full national coverage. WCRC further stated that it has Work Instructions which cover route knowledge and route refreshing. Drivers can request a review however there is a blanket six month limit for all routes which is enforced by management. WCRC asserted that it considered this to be a robust process and that to keep a current log of all route sections driven by each driver would be complex and add little value. However WCRC is continuing to evaluate whether it would be reasonably practicable to implement such a record. WCRC further maintained that its route risk assessment is adequate, which is supported by the lack of incidents where deficient route knowledge is a contributing cause.
- 5/15 September 2015 – WCRC's written submission stated that this was a minor collision with the buffer which resulted in no damage to the train, therefore it was not reportable under RIDDOR. It was reported into SMIS, which will automatically generate a RIDDOR report if required. In relation to coaling, WCRC indicated that it has subsequently carried out a risk assessment and formulated a method of working for the various means of coaling, which will be subject to review. A similar risk assessment and method of working has been produced for the normal methods of filling tenders with water, which will also be subject to review. The new head of safety now produces a formal safety report for the monthly WCRC Board meetings, which is underpinned by a new process of incident identification, logging and tracking to ensure that incidents are properly reported, investigated and corrective actions implemented. A set of KPIs appropriate to WCR operations will be derived from this information, covering all relevant precursors. When this has matured it will be formalised via the SMS.

- 2 October 2015 – WCRC's written submission stated that the driver reported this incident, but not promptly. The incident was identified in the analysis of the routine download of the locomotive's OTDR and an investigation was initiated. WCR accepted that it should have been reported on SMIS but this was not done, therefore ORR was not informed. A full investigation was carried out but was not passed to ORR by the General Manager. WCRC's Board accepted responsibility for this and expressed regret that ORR was not informed of the incident, however it was not intentionally done. It was the fireman who powered off the TPWS without permission contrary to the Rule Book and briefings delivered following the Wootton Bassett incident. WCRC submitted that this incident was briefed to staff and that it would be addressing the issue which led to the non-reporting to ORR. WCRC explained that this incident and the Wootton Bassett incident were not similar and should not be used as an indicator that lessons had not been learned.
- 26 November 2015 – WCRC's written submission stated that it was not aware of an incident on this date. When brakes were released at departure there was a movement backwards but this after all passengers were on board and the doors locked.
- 1 December 2015 – WCRC's written submission stated that Network Rail had cut off the power and water to Southall depot leaving it without lighting or washing facilities. WCRC is working to comply with the requirements of the Improvement Notice.

WCRC's written submissions further confirmed that the General Manager had left, which had been communicated to ORR and that it was looking for a suitable replacement. It was decided that a head of operations would be employed instead who would have a direct reporting role to the Board. An acting head of operations was appointed on 7 December 2015. In addition to this a head of safety was appointed who would also directly report to the Board.

In relation to the number of steam coaches being used, WCRC acknowledged that this was discussed with ORR during the first revocation notice period. This issue is being discussed at a Steam Forum, which ORR and WCRC are attending in order to establish an industry line. WCRC stated that it did initially limit steam trains to ten coaches until it was confident that the risk was being properly addressed, which was discussed with ORR. WCRC were not aware of any incidents where train lengths had caused delays. We have agreed with WCRC that provided a class 7 steam locomotive or above is used, we would be content with ten passenger coaches plus a support vehicle.

In relation to its general governance, WCRC provided ORR with its new organisational structure. However it was highlighted at the meeting by ORR that this structure is confusing as to who conducts the day-to-day running of the company and that there was a lack of clarity in the roles and responsibilities in WCRC. In its oral submissions WCRC stated that it was the Board that was responsible for running the company as well as authorising and managing the required finance for operations.

At the meeting with ORR, a letter from the Chairman was produced. This stated that he would continue to be Chairman of the Board but that he would be taking a step back to give the staff responsibility for running the company.

Subsequent to the meeting, WCRC also produced a document on 5 February 2016 outlining initiatives and time bound plans which it said would address the following:

- Moving staff from zero hour's contracts to a more appropriate form of employment – with 80% take up within three months and the remainder over the next six months.
- To investigate the current industry position for assessing and managing safety culture and the tools available with a time estimate of three months.
- To use its findings to focus on staff with a background of heritage railway operations or support crew with a time estimate of six months.
- To provide further clarity and a time frame for changes to the make-up of the Board, specifically the Executive Group, in order to address the concerns expressed by ORR with a time estimate of three months.

Throughout the notice period, WCRC has raised concerns and made representations in relation to the revocation process adopted by ORR. As set out at the beginning of this letter, we have followed the legal process as set out in ROGS. We have also given WCRC ample opportunity to respond, extending the deadline to allow for more time. Whilst not a requirement under ROGS, a summary of responses made by affected parties was provided to WCRC to assist in its representations. Further, the incidents highlighted in ORR's letter are all within the knowledge of WCRC and therefore it was perfectly able of addressing the points in that letter. Therefore we consider that WCRC has been given every opportunity to make full representations and we do not accept the criticisms made.

In accordance with regulation 15(3)(b) of ROGS we considered all of the representations, made orally and in writing, made by WCRC in deciding whether or not to revoke its safety certificate.

Representations by other parties

As indicated above, we received a number of representations during the notice period, a summary of which was provided to WCRC out of courtesy. We further allowed non-affected parties to provide letters of support for WCRC. In accordance with regulation 17(6)(b) of ROGS all representations received were considered as part of the revocation process.

Decision

The decision whether or not to revoke any holder's safety certificate is not taken lightly by ORR.

We welcome acknowledgement of some of the incidents raised in our letters and the changes which WCRC has proposed in response. However, we have been disappointed by WCRC's seeming lack of appreciation of the seriousness of these incidents taken together, coupled with ORR's concerns as to its governance, especially when these have occurred after such a serious incident as Wootton Bassett. For example, whilst it is accepted that the incident at Doncaster occurred in different circumstances with a different level of risk from Wootton Bassett, WCRC has failed to appreciate that the incident

demonstrates the lack of a safety culture amongst its staff. This suggests to ORR that there is still an inadequate appreciation of the need for an appropriate safety culture from the Board down, and the senior management's role in ensuring that its staff operate safely.

In relation to safety critical activities, we do not consider that WCRC have suitable and sufficient management and supervision of train crews, many of whom have zero hour contracts. We have further concerns in relation to WCRC's process for route risk assessments and are disappointed by WCRC's apparent lack of understanding of the importance of such a process, such as identifying hazards and signals on particular routes and determining the minimum frequency needed for drivers to maintain competency of a route. WCRC's assertion that there have been no route knowledge related incidents to date is irrelevant. The need for robust route risk assessments is established as good industry practice and is covered in a Railway Industry Standard.

We were further disappointed in the lack of clarity in WCRC's governance structure, leaving it unclear as to who is in control of the day-to-day running of the company. We consider that WCRC's governance arrangements, management and supervision do not accord with that of an operator carrying out safety critical mainline railway operations and does not accord with industry practice. In particular, WCRC does not have an autonomous Chief Executive who is fully responsible for the operation of the company and its safety management systems. Further, WCRC does not have a person responsible for safety or engineering on the Board, it is standard industry practice that such positions on the executive would be held by a suitably qualified and competent person with a railway engineering/operating background. Safety cannot be devolved and it is imperative that a senior member of the executive, who is suitably qualified, is accountable for safety and its continuous improvement as well as for holding members of staff to account for the safety aspects of their roles.

We do not consider that WCRC's Board governance of the company is robust and suitably constituted. Control of day-to-day operations of the company is not fully devolved to an executive and there is considerable overlap of control over safety critical activities. We do not believe that there is adequate independent challenge of Board decisions to ensure that decisions of the Board do not compromise safety either through agreed funding or directions to the executive.

We note WCRC's time bound plan for making further changes to its governance structure. However, it should be noted that these were measures which were highlighted to WCRC following the Wootton Bassett incident. It concerns ORR that these measures were not embedded following such a serious incident and makes it difficult for us to trust that these further changes will actually be embedded in WCRC and be continued into the future.

We do not accept WCRC's assertion that the revocation of a safety certificate is a measure of only last resort. ROGS imposes an obligation upon ORR to revoke in instances where it is satisfied that a holder is no longer complying with its safety certificate and where a serious risk arises as a result. We consider that for the reasons stated above, WCRC is not complying with the conditions of its safety certificate. We consider that these failings create a significant risk to operations on the mainline network, which manifested themselves firstly at Wootton Bassett, and are continuing.

We therefore consider that the criteria for revocation as set out in ROGS have been met. However, we are mindful that ORR has at its disposal other powers as set out in the Health and Safety at Work etc. Act 1974 (HSWA.) In light of measures which WCRC has proposed to make and many letters of support, we consider it appropriate and proportionate to consider these alternative powers, namely either an Improvement or Prohibition Notice. In this instance, owing to the significant risk to the railway, which gives rise to a risk of serious personal injury, that is currently still present, we do not consider an Improvement Notice to be a viable option.

However, we do consider that in the circumstances it would be proportionate and appropriate to impose a Prohibition Notice on WCRC.

The Prohibition Notice

The effect of the attached notice is that as of 18 February 2016, WCRC are no longer able to operate trains on the mainline network until such time as they can satisfy us that its governance and operations meet industry practice and are fit for the scale of its operations. We have opted to defer the start of this notice to give WCRC the opportunity to move its stock to an appropriate place.

In order to satisfy us that it has governance reflective of industry practice and which is fit for the scale of its operations, we would expect WCRC to address the points raised in the decision section of this letter and demonstrate the following which is intended as a guide but does not form part of the Prohibition Notice itself:

- To change the make-up of its Board, specifically the Executive Group. This should include the appointment of:
 - an autonomous Chief Executive who is fully responsible for the operation of the company and its safety management systems;
 - an executive in charge of safety who is suitably qualified and competent;
 - an executive in charge of engineering who is suitably qualified and competent;
 - for the Chairman to step back as proposed in his letter.
- To provide a clearer organisation structure where each member of the executive has a clearly defined role and set of responsibilities for which they can be held to account;
- To action and complete its proposal for moving staff from zero hour contracts to a more "appropriate form of employment."
- To action and complete its proposal to investigate the current industry position for assessing and managing safety culture and the tools available and to use these findings to implement a more robust process for managing staff.
- To implement a more robust route risk assessment process.

WCRC's European licence

As indicated in our notice letter, the decision whether or not to revoke WCRC's safety certificate could have implications for its European licence.

In light of our decision to issue a Prohibition Notice in respect of WCRC's operation of trains on the mainline network, we consider that there is serious doubt about whether WCRC is complying with the professional competence requirement that must be met in order to continue to hold a European train operator's licence as set out in Schedule 2 of the Railway (Licensing of Undertakings) Regulations 2005. In order to determine if WCRC is complying with those requirements (and has a management organisation which possesses the knowledge and experience necessary to exercise safe and reliable operational control and supervision) we will continue to monitor WCRC's compliance with the attached Prohibition Notice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Prosser', written over a horizontal line.

Ian Prosser

HM Chief Inspector of Railways