



# Railway Industry Coronavirus Forum: Social Distancing Agreement

TSSA ADVICE TO REPS AND  
ORGANISERS

07/05/2020

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## **COVID-19: managing the risks of transmission in the context of increasing rail services and staffing**

### **Introduction**

In this document TSSA sets out guidance to reps and members that should be read in conjunction with the Social Distancing Principles Agreement.

That Agreement was reached between the trade unions, railway industry and the Office of Rail and Road (ORR) in May 2020 and is designed to ensure Government guidance on social distancing and related issues are kept in place to manage the risks of transmission of Covid-19 as the number of railway services increase along with the consequential increase in the number of staff in railway workplaces.

The Office of Rail and Road (ORR - the railway health and safety enforcement authority) has adopted these principles to be applied across the railway industry.

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## **Background**

TSSA has been issuing guidance to our reps and members since the outbreak of Coronavirus (COVID-19).

As part of a series of measures designed to reduce the spread of the virus, the UK Government announced a lock down across the country from 23 March 2020. Those organisations providing critical services such as health and social care, food retailing and public transport have remained open. The railway has kept passenger services running on a much reduced basis to ensure key workers could get to their workplaces. Freight services have been maintained, and in some cases enhanced, to ensure that essential supplies are kept moving. Whilst many staff have been able to stay at home, working from there if they can, frontline railway staff have continued to be required to attend for work.

TSSA reps and paid organisers have been involved in discussions with rail employers about managing the risks of transmission of Covid-19, including compliance with Government guidance about social distancing, regular hand washing and enhanced workplace cleaning regimes as well as ensuring that vulnerable people are treated fairly and being paid when forced to be off work by the need to self-isolate.

What has become clear to TSSA is that some employers have failed to take their health and safety obligations and responsibilities seriously. Consequently, railway workers have been exposed to additional risk, some have contracted the disease, and sadly some have died as a result. TSSA does not and will not tolerate employers playing fast and loose with our members' lives, and the union has taken action including the involvement of appropriate authorities, a theme repeated in this document.

TSSA has worked with the other railway unions in direct discussions with Government, the Department for Transport (DfT) and ORR around issues related to the health and safety of railway staff. The union has also, separately, been involved with the Railway Industry Coronavirus Forum (RICF), a collaborative body that involves the rail unions, Network Rail and the passenger train operators.

TSSA appreciates the very real concerns that some members may have in being asked to return to their workplace in circumstances where there are still large numbers of new cases of Covid-19. However, there is no such thing as a risk free workplace, especially on the railway. What the union believes our members have a right to expect is that employers do all that can reasonably be expected of them to minimise the risks to their staff, including in respect of Covid-19.

The union believes that if employers observe the provisions of the Social Distancing Principles Agreement, the risks to our members will be minimised.

## **An introduction to the Social Distancing Principles Agreement**

It was under the auspices of the RICF, working with the ORR assisted by the Railway Safety and Standards Board (RSSB) that, following a request from the Government, the RDG railway employers approached the trade unions to discuss plans for a potential increase in passenger rail services from 18 May 2020.

The main concern for the discussions has been in relation to managing the risks of transmission of Covid-19 principally by meeting Government guidance about social distancing in circumstances where more people are in workplaces and more passengers are using the railway.

The Government guidance about social distancing is that individuals should remain at least 2 metres apart as far as possible. This is based upon scientific evidence that the disease is spread through droplets of fluid potentially carrying the virus emitted from a person when coughing and sneezing in particular, or even breathing and talking. These droplets will in most cases not travel more than 2 metres.

In the Agreement, considerations about social distancing underpin any increase in services and the activities that may enable such a “ramping up” of rail services, covering activities such as:

- the management of passenger flows in stations;
- train maintenance;
- in cab assessments;
- ticket sales;
- revenue protection activities;
- the number of people riding in the same road vehicle.

The principal disagreement between employers and the trade unions has been in relation to some controversial Government guidance that suggests an infringement of the 2 metre social distancing rule doesn't increase the risk of transmission of COVID-19 if it takes place for no longer than 15 minutes. TSSA along with the other unions completely disagreed with this position, which has no scientific basis, and this document includes specific advice about this matter.

Fundamentally, the Social Distancing Agreement is about avoiding an increase in risk from COVID-19 which is why there is a stress on conducting risk assessments, an approach mandated by health and safety legislation. The document also stresses that risk assessments must involve union health and safety reps - because it is a legal requirement that risk assessments are consulted on with health and safety reps. This process is crucial, enabling reps and members to give of their experience and concerns. Too many employers have failed to conduct risk assessments, and even when they have done so they have too often failed to consult on them with TSSA health and safety reps. There will be guidance on both of these matters later in this document.

Reps and members will also see that TSSA will respond robustly to employers that fail to adhere to the terms of the agreement or whose actions mean that members are put at increased risk from being infected by the virus. Some employers may attempt to dilute or undermine the Social Distancing Principles Agreement and/or local agreements, and we advise reps and members to be aware of that, report any such transgressions to TSSA, and adopt the approach that is set out in this document.

## **Stopping or Refusing to Work**

Whilst the Agreement does not mention this matter, individual workers have the legal right to refuse to begin a task or continue with a task if they reasonably believe that to do so would place them or their colleagues in serious and imminent danger of potential infection by the Covid-19 virus. Workers may take appropriate steps to protect themselves in such circumstances, which generally would be to remove themselves to a place of safety.

In reaching their decision to stop work or refuse to work, individuals should take account of the Social Distancing Principles Agreement and any revisions to it, and any changes to advice from the UK, Wales and Scotland governments as applicable, and their health agencies such as Public Health England.

Your employer must have a procedure in place that allows you to do this - in Network Rail for example it is called the 'Worksafe Procedure'. Check on what your employer's procedure is and familiarise yourself with it.

If you are unable to find such a procedure, immediately contact your HR Department or company Health & Safety section. Alternatively, get in touch with the TSSA Helpdesk (phone 0800 328 2673 or complete a webform at: <https://www.tssa.org.uk/en/Your-union/about-us/contact-us/tssa-helpdesk-information.cfm>).

If you do refuse to commence work or stop working under these circumstances, you should immediately report this to your TSSA organiser or the TSSA Helpdesk.

## **What are TSSA's Principles?**

TSSA has adopted a set of principles that have informed our discussions with employers. TSSA reps should also adhere to these objectives in meetings with their employer.

TSSA's base principles mirror those adopted by the Government as a way to reduce the spread of COVID-19:<sup>1</sup>

1. Personal hygiene (frequent hand washing, not touching the face, use of sanitiser where hand washing is not readily available);
2. A strict 2 metre social distancing between individuals;
3. A much more rigorous cleaning regime in workplaces, etc;
4. Staff must stay at home if they exhibit any symptoms that could be those of Covid-19 infection. Barriers to this such as sickness absence management processes should be removed so to ensure there are no factors that encourage an individual to go to work with these symptoms).

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<sup>1</sup> See "How to stop the virus spreading" at: <https://www.nhs.uk/conditions/coronavirus-covid-19/staying-at-home-to-avoid-getting-coronavirus/staying-at-home-and-away-from-other-people/>

In addition, TSSA has adopted principles designed to maintain social distancing to meet the increase of staffing that is likely to follow from running additional train services:

5. **Any need for an increase in staff returning to work should be fully risk assessed** and the current position of “only where essential” maintained:

5.1. It is crucial to maintain a position where only staff deemed absolutely essential to the safe running of the railway are returned to work. Where people can, they should continue to stay at home, working from there if they can;

5.2. People who are needed back at work for the essential running of the railway should only be brought back into the workplace when they are needed - not before.

6. Personal hygiene regimes need to be maintained - provision of hand washing facilities (soap and water - or if not readily available, hand sanitiser). This needs to be in place and increased in direct proportion to the numbers of staff returning;
7. Increased cleaning regimes (eg, of surfaces in workplaces) need to be in place and increased in direct proportion to the numbers returning;
8. There should be no relaxing of social distancing. Each and every workplace/worksite/station and on board location should be able to give us guarantees that as far is reasonably practicable a minimum of 2 metre distancing can be maintained at all times;
9. Close proximity working: ANY task identified as essential that either requires, or has the potential to require, that the 2 metre distancing cannot be maintained, must have an adequate control measure in place based on the hierarchy of control principles (eg, elimination, substitution, etc). Controls can include the use of screens or barriers or, as a last resort, Personal Protective Equipment (PPE);
10. 'Wearable barriers' (PPE) such as visors or masks should always be used when tasks require a closer approach to another individual (whether a fellow worker, a passenger or member of the public) than 2 metres UNLESS alternative adequate controls can be used instead. A time limit on such close approaches cannot be acceptable as a sole control measure;
11. Effective management of Covid-19 must always take precedence over ticket sales or revenue protection;
12. At the very minimum, there must be full and meaningful consultation with both health and safety AND staff representatives on the implementation of the agreed principles, and on any risk assessments. Ideally, reps should be invited by employers to work collaboratively with them to draft risk assessments and identify suitable control measures and solutions. Joint

reviews of the outcomes should take place regularly;

13. The principles and any risk assessments must always consider any conflict with existing risk management measures to avoid unforeseen consequences, and any 'Emergency Plans' must be reviewed and take Covid-19 risks into account. These reviews should be subject to full and meaningful consultation at the very minimum with health and safety AND staff representatives; those reviews should be subject to further regular joint reviews, for instance, in the light of experience or changes in guidance;
14. The same principles that are agreed for 'National Rail' should also apply to TfL operated services, including London Underground. This will be particularly important at shared stations like Farringdon and Stratford, and at major interchanges like Kings Cross. They should also be applied to other metro systems.

### **The RICF Social Distancing Agreement and TSSA action around deviation and lack of agreements**

Reps are advised to have to hand the Agreement and to note the following points which may be useful in their meetings with employers:

1. Contents of Agreement: The industry wide Agreement contains a Preamble, Introduction and a set of Overarching Principles that apply across railway organisations in Britain. The next four sections then look in more detail at particular areas (Stations, Offices, On Train and Depots), creating a further set of principles for specific circumstances.
2. Overarching Principles: Employers should not deviate from the Overarching Principles within the document because they apply to all organisations across the GB mainline rail industry. There is also expected to be a consistent application across the rail sector (see the Preamble).
3. Deviation from Overarching Principles: Organisations that deviate from the overarching principles will have to robustly demonstrate (to the ORR) that their alternative arrangements provide equally effective control of the risk of exposure to COVID 19.

***TSSA ACTION:** Reps must advise their TSSA organiser if they become aware that their employer is deviating in any way from the Overarching Principles, especially if risk assessments are not being carried out or reps are not being consulted about them. Your TSSA organiser also needs to know if infringements of social distancing are being imposed and adequate controls/PPE are not being provided. It is TSSA's intention to inform employers that unless they remedy these deficiencies immediately, we will refer the matter to the ORR. We will also consider other responses that are open to us, including industrial action if necessary;*

4. No increase in risk: The principles - based on risk assessment - are to be applied to both passengers and employees with the purpose being to "ensure there is not an increase in risk as services and usage increase." (See



Preamble)

**TSSA ACTION:** We would draw attention to the statement that there is not to be an increase in risk which employers may attempt to argue for in practice (if not explicitly by words) as they seek agreement about working within 2 metres (something that can only be done with appropriate precautions like controls or PPE (masks, visors, etc). TSSA would particularly emphasis that a trade union agreement to such a measure would then apply to all of the members concerned when so many people are concerned about catching the virus.

*Reps should advise their TSSA organiser when they receive proposals and give details of their concerns;*

5. **Risk assessments:** The Overarching Principles require each employer to carry out risk assessments in order to effectively manage the risk of Covid-19 transmission through social distancing and other measures.

A risk assessment will look at the particular task - for example, cleaning a Ticket Vending Machine at a station between each passenger using it. The idea is to assess the chance of catching the virus which means the assessor will look at what risks to social distancing are present - such as:

- the position that the employee stands in when they are carrying out the work;
- where and how the customers queue;
- how easy it is to infringe the space of the worker;
- what barriers may be present or needed to prevent transmission (bearing in mind that the virus is spread by droplets from sneezes and coughs as well as talking and breathing).

The risk assessment will also consider the implication of catching the virus - which could be fatal.

It will then be necessary to look at mitigating the risk.

The Annex at the end is designed to give advice to managers and reps about carrying out risk assessments under the Management of Health and Safety at Work Regulations 1999. It also lists advice from the Health and Safety Executive about the concept of “hierarchy of control” which employers must use when determining a response to a particular risk.

This works by having identified the risk (in this case, carrying out a particular task which breaches social distancing - eg, working in a cab with another person, dealing with passengers at a gateline), measures then have to be instigated to remove or control the risk - such as stopping the job, re-designing it so social distancing can be maintained, installing appropriate physical barriers to prevent COVID-19 spread - and, if none of those can be put in place, the use of PPE.

**REPS ACTION:** In this process, reps may want to ensure that all the

*elements of an activity - like cleaning TVMs - have been considered. They may also want to think about the factor that for someone doing the work, it could be a repeated task over the length of a shift, not just a one off event in their working day.*

6. Involving reps: A key part of the Agreement is that companies should obey the law (The Safety Reps and Safety Committee Regulations 1977) about both involving reps in formulating the risk assessments - and doing so “in good time.” This latter aspect, described in more detail in a TSSA Reps Bulletin (enclosed with this guidance) means that the rep should be given sufficient time to consider the information they have received and to discuss it with union members before then formulating a response.

***REPS ACTION:*** *TSSA needs to know about any infringement of this arrangement - such as not being consulted or not being given time to consider a proposal.*

7. Escalation where no agreement: In the event that an employer’s proposal is not acceptable and agreement cannot be reached by pursuing some form of compromise situation that still protects staff, the RICF Social Distancing arrangement permits an escalation to the ORR, who will independently consider the issue.

However, internal collectively agreed (with the trade unions) company industrial relations processes should ideally be exhausted before an issue is referred to ORR.

***REPS ACTION:*** *Reps should consult their collective agreement in relation to Health and Safety if they think they may need to escalate an issue. Usually, the process involves recording a “failure to agree” and then referring the matter to the company’s equivalent of a Joint Safety Committee which would include union appointed members. More specific advice can be obtained from your TSSA organiser.*

What should happen in the event that there is a disagreement (failure to agree) is that the proposal is frozen whilst the issue is sorted out at the next stage. Some employers may disregard this process and seek to implement their social distancing proposal, an action that is completely unacceptable and which reps should immediately report to their TSSA organiser for escalation to the ORR.

Another ploy by management is to delay considering issues that have been raised relating to the risk assessment and then attempt to implement the proposal as a fait accompli. If reps find themselves in this circumstance, they are advised to contact their TSSA organiser for advice in relation to escalation to the ORR.

8. Minimising instances of breaching social distance: Principle 2 of the Overarching Principles emphasises the need to evaluate risks through risk assessment in order to “minimise the instances employees need to work in

circumstances that are not within the social distancing guidelines.” This means infringing on the 2 metre separation between individuals.

The initial question for reps has to be whether their manager or employer has actually considered how they could make use of an earlier stage of the hierarchy of control to preserve social distancing for those workers involved? For instance, could the task be stopped/postponed, re-designed, or make use of some physical barrier (see Principle 4) to reduce the risk?

The use of PPE, including masks and visors, always has to be a last resort when other controls have not been possible. For some managers, resorting to PPE from the outset is the “too easy” option and could indicate that they have not really engaged with the risk assessment process. This leads us onto look at social distancing.

### **Social Distancing and 15 minutes**

One of the issues that has arisen at the industry wide talks has been in relation to Government advice in relation to social distancing.

A number of railway employers have been stressing a piece of Government/Public Health England advice that says in a work situation where it is essential that employees should have face to face contact, this should be kept to 15 minutes or less wherever possible.

TSSA and the other trade unions have rejected this advice which reps may find being repeated to them. The reasons for the rejection are that:

- According to scientific evidence, the transmission of the virus takes place by contaminated droplets emitted by sneezes, coughs, speaking and even breathing. The spray output can travel directly from one person to another if they are close enough and be inhaled directly or land on the person’s face or a surface like a mobile phone, handle or table only for the individual to then touch it and rub their eye, etc.<sup>2</sup>

If a worker is required to interact with another person for up to fifteen minutes within their social distance zone, there could be many occasions in that time when the virus could be transmitted. Indeed, the transmission could take place in the first few seconds;

- For many railway workers, interacting with colleagues or passengers, there is likely to be multiple occasions in a working day when breaches of the 2 metre rule could take place, each one potentially lasting for up to fifteen minutes and all increasing the chance of infection from the virus. The important point for us here is that employers often present the ‘up to 15 minutes’ scenario as if it would be exceptional when we know that there are many situations, such as working on a busy station, when a member of staff

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<sup>2</sup> See, for example: <https://www.england.nhs.uk/coronavirus/primary-care/about-covid-19/virus-transmission/>

could be having numerous conversations with passengers;

- Some employers have tried to stress the face to face element of being in close proximity as being an important factor. They may argue that staff working close together but not facing each other reduces the risk and so enables greater time together. TSSA rejects this assertion because it does not feature in Public Health guidance and has no basis in scientific evidence. Neither does it take account of transmission via nearby surfaces;
- One problem with UK Government advice is that it is not consistent. The up to 15 minute allowance was a part of arrangements for staff working outdoors in the construction industry. Yet advice for transport workers does not mention this time factor (only that there may be occasions when the worker have may not always be able to stay 2 metres away from colleagues or passengers - but that they should minimise those occasions) - and neither does it mention it for workers in the food industry.<sup>3</sup> Instead the main advice is to ensure the 2 metre social distancing is maintained;
- Perhaps one of the most significant interventions has been that the ORR believe the 15 minute assertion is based on unsound science so is not a factor that they support.

### **How to achieve separation**

Ways to assist with separation appear in Principle 4 of the Agreement and include the use of screens, barriers and/or floor markings.

Another factor in this area has been in relation to the use of PPE (Personal Protective Equipment), including masks and visors which can be regarded as “wearable barriers.” In the event that a task needs to be carried out within the social distance limits and alternative control measures really cannot be used (including those elements in Principle 4), members should be equipped with appropriate PPE, including visors and/or masks. In our view, visors are preferable because:

- Masks can have limitations in that they:
  - contain the spread of CV19 from the wearer but do not necessarily protect the user from other people who may have the virus when they cough or sneeze, etc;
  - require frequent replacement because they get damp (damp masks are a hazard in themselves);
  - need special disposal arrangements;
    - need care and good hygiene to be exercised when putting them on and taking them off;
    - do not protect the eyes;

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<sup>3</sup> See the various sectors and additional detail at: <https://www.gov.uk/guidance/social-distancing-in-the-workplace-during-coronavirus-covid-19-sector-guidance#transport-businesses>

- can irritate the skin, leading to a temptation to touch them and consequently the face.
- Full face visors (adopted by Network Rail):
  - give a more complete barrier against infection (from the wearer or the person within the social distance space) by covering the whole face including the eyes;
  - prevent the habit of individual employees occasionally touching their face (especially their eyes, transmitting infection from/to others) when wearing masks;
  - are less familiar than face masks and therefore treated with more caution;
  - can also be regularly washed; and
  - are reusable.

One of the most valuable points to make is that we should aim for 'mutual assurance' - so that staff have confidence that they can work safely - and visors provide that extra assurance.

### **Implications of elements of the Social Distancing Agreement**

During debates with employers one of the approaches that many reps adopt is to look at the broader implications of what is being proposed. For instance, in the On Trains section of the Agreement there is a reference to revenue protection (see Principle C2, page 8).

Most TOCs have stopped carrying out on train revenue protection duties by introducing a blanket suspension because observation of social distancing measures is usually impossible. The wording of C2, however, says “employers shall review their normal arrangements to ensure employees’ and passengers’ exposure to the hazard are mitigated to as low as possible.” It then continues by suggesting that

“On-train revenue protection should only be carried out where social distancing can be visibly assessed and maintained according to the circumstances on each train/coach at the time.”

Clearly, the implication is that on each train or coach revenue protection duties could start again but only after the social distancing is visibly assessed and that it can be maintained. In the event that this measure was adopted it would mean a removal of the current suspension but also put a responsibility on revenue protection staff to carry out that assessment for each train they worked on - and even in each coach. It could also mean that they have to potentially justify their assessment to their managers.

Fundamental to the Agreement is that underpinning any change in activity that may affect social distancing is that of carrying out risk assessments. It may be that an employer, working with union reps in fulfilment of the Safety Reps and Safety Committee Regulations 1977, will take the approach of continuing not to carry out revenue protection duties on trains because of the obvious social distancing concerns.

In the event, however, that a company adopts the RICF employers' stance (described above) and puts the employee at the heart of the decision making process on social distancing following a risk assessment, it will be necessary for TSSA reps to ensure that an agreement is made (if not already in place) to observe various protections such as:

- The employee will be trusted and supported in exercising their discretion;
- That there will be no recriminations in terms of disciplinary or other sanctions;
- That members will not come under pressure to bend or ignore the social distancing rules.

Our experience is that some employers and managers will seek to influence, cajole or threaten workers who seek to exercise their rights or be undermined in their decision making if questions are asked by others. This would also concur with work safe arrangements both in legislation and company agreements.

#### **RIDDOR reporting : When to report Covid 19 as a workplace hazard.**

The subject of RIDDOR reporting is not addressed by the Social Distancing Agreement but advice is included here so that reps are aware of what they should advise members who may feel that they have been put at risk by the coronavirus.

Under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) employers have a duty to report occupational diseases and dangerous hazards at work.

Covid 19 is a virus and although it is not classed as an occupational disease it is clearly a biological hazard.

A great deal of our members workplaces and jobs have the potential - especially if adequate control measures are not put in place - to put them at significant risk of contamination:

- If you witness or are made aware of an incident at work that has the potential to expose yourself or your colleagues to Covid 19 it should be reported - for example where social distancing measures have been breached and no protection is in place;
- Likewise, if you or a colleague are diagnosed with Covid-19 and you have sufficient evidence to suggest this may have been as result of your/their work this must be reported.

Reports can be made under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013).

Reports should be made when:

- An incident at work has led to someone's possible or actual exposure to coronavirus. This must be reported as a dangerous occurrence;

- A worker has been diagnosed as having Covid-19 and there is reasonable evidence that it was caused by exposure at work. This must be reported as a case of disease via the Health and Safety Executive;
- A worker dies as a result of occupational exposure to coronavirus.

To submit a report on a dangerous occurrence - available at:

<https://notifications.hse.gov.uk/riddorforms/DangerousOccurrence>

To submit a report on disease or death - available at:

<https://notifications.hse.gov.uk/riddorforms/Disease>

TSSA Reps and members are asked to send copies of any such reports by email to [healthandsafety@tssa.org.uk](mailto:healthandsafety@tssa.org.uk) . We would also encourage reps and members to, where appropriate, take photographs to assist with the recording and reporting of incidents and issues.

Sources:

- TUC Coronavirus guidance - available at:  
<https://www.tuc.org.uk/resource/covid-19-coronavirus-guidance-unions-updated-16-april>
- Legislation relating to RIDDOR regulation 7 and Schedule 2 - Section 10 are available on <http://www.legislation.gov.uk/uksi/2013/1471/contents/made>
- COSHH definition of a biohazard - available at:  
<https://www.hse.gov.uk/biosafety/law.htm>
- ORR RIDDOR reporting and COVID-19 (Novel Coronavirus)  
[https://orr.gov.uk/\\_data/assets/pdf\\_file/0004/42673/riddor-reporting-and-covid-19.pdf](https://orr.gov.uk/_data/assets/pdf_file/0004/42673/riddor-reporting-and-covid-19.pdf)