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18th December 2020

Dear Sir or Madam,

**Re: Network Rail Infrastructure Ltd - Application for an Amended Safety
Authorisation: PRM-SCA-0234**

I am writing to you on behalf of TSSA with a submission in relation to Network Rail Infrastructure Limited's Application for an Amended Safety Authorisation (PRM-SCA-0234).

Many of the points made in this response have previously been advised to ORR in a letter from 20th November 2020 but what follows is now being submitted in the formal process required by ROGS Regulations 17(3). The following represent our concerns:

- 1. TSSA is deeply concerned that whilst the Target Operating Model was consulted on and validated, it has not been implemented in the same way because of a lack of staff resources due to the effective imposition of a recruitment freeze. This undermines the Amended Safety Authorisation in practice and means that Network Rail are effectively consulting on, and seeking authority for, one organisation whilst actually implementing another.**

At various points in the Amended Safety Authorisation documents (eg, Paragraph 2.4.2 in Part One), reference is made to the network-wide target operating model (NTOM). Similarly, there are a number of places where consultation with recognised trade unions and their appointed reps are stipulated.

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General Secretary **Manuel Cortes**



Network Rail has set out the NTOM for Putting Passengers First (PPF) which has been validated through the company's internal validation system (NR/L2/HSS/020 'Safety Validation of Organisational Change'), and it has been consulted on with the recognised trade unions - TSSA, RMT and Unite.

During consultation with the trade unions, the company stated that the PPF NTOM is designed to be fully resourced, which we understood to mean that all of the posts in the new staff structure would be filled. However, as demonstrated by the Pie Charts in Appendix A (downloaded from Network Rail's 'OrgPlus' in December 2020), the PPF NTOM is currently operating with a company-wide vacancy gap of 23%, and in some functions with a much greater vacancy gap. Crucially, the Technical Authority (TA) currently exists with 33% of posts unfilled. So many areas of the business have leadership, assurance, safety and governance posts unfilled.

After being challenged by TSSA, Network Rail has claimed that there is no 'recruitment freeze'. Not surprisingly, Network Rail has stated that it is giving priority to filling 'Key Safety Posts' (as defined in STE/HSMS/001), though tellingly it has also stated that recruitment will be 'headcount neutral' - which effectively amounts to a recruitment freeze.

Our view is that these 'Key Safety Post' roles alone do not meet the resource required to run a safe railway. One example can be found in Network Services, where the Head of Safety for Network Services is considered by Network Rail as a 'Key Safety Post' but the fourteen safety professionals reporting into this post are not. We believe that Safety Critical Work Posts (as defined in STE/HSMS/001 and Regulation 23 of The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended)) and Business Critical Posts (where post holders are accountable for business critical rules) must be filled, otherwise the railway will be at risk.

We believe that while these positions remain unfilled, the NTOM is insufficiently resourced to meet the health, safety and service needs of the country's railway - the complete opposite of what PPF was explicitly projected to deliver. We are also concerned at indications that further headcount reductions are likely in the immediate future.

Network Rail's organisational structure post-PPF has been 'validated' using a Target Operating Model that Network Rail has failed to create and, apparently, has no intention of creating, and has been consulted with health and safety representatives from the recognised trade unions based on a NTOM that is not being implemented, and therefore, in our view, meaningful consultation has not occurred.

2. The legitimacy and legality of the National Target Operating Model

In the email message that invited stakeholders to comment on the Amended Safety Authorisation, Network Rail states that it is:

“transitioning to a new operating model as part of its ‘Putting the Passenger First’ (PPF) transformation and the cumulative changes to the organisational structure of the business to facilitate this transition are judged to be substantial”.

TSSA is deeply concerned at the legitimacy and legality of the new NTOM for PPF because what has been implemented is substantially different to that validated and consulted upon. In our view - and we anticipate that of the ORR - Network Rail's choice to work in this way amounts to a potentially serious undermining of health and safety on Britain's railways and sends a message across the industry that legitimises this approach.

3. CSM RA - Safety by Design restructuring of organisation

There are numerous references to the Common Safety Method (CSM) and the use of risk assessments in the Amended Safety Authorisation application but the practice, in relation to PPF, tells a different story.

In the context of organisational restructuring, Network Rail has struggled to bridge the gap between two organisational standards it considers suitable to manage the requirements of the EU 402/2013 European Commission Regulation on the Common Safety Method for Risk Evaluation and Assessment (CSM RA). The two standards are:

- a) NR/L2/RSE/100/02 Application of the Common Safety Method for Risk Evaluation and Assessment;
- b) NR/L2/HSS/020 Safety Validation of Organisational Change Standard 100/02.

The former effectively outsources the risk management of organisational change to the latter, yet Standard 020 deals only with the validation of design outputs and does not confirm how risk evaluation will be managed in the context of CSM.

No consideration is given to the UK legislative requirement for ‘suitable and sufficient’ risk assessment, or ‘reasonably practicable’ controls over the lesser requirement of the EU directive which requires no more than ‘no greater risk’ to be the measure.

This gap in procedure has left the organisation lacking a process for change management. The one employed is devoid of any discernible risk assessment mechanism. The makeshift process, known as a ‘Safety Plan’, includes a Hazard Record, a Hazard Log and a Risk Register (as referenced in STE/HSMS/001):

- a. The three hazard repositories have been identified - but no risk assessments or evaluation mechanisms! To populate these multiple hazard repositories the company adopted Hazard Identification Workshops, some 21 nationally and others locally;
- b. No RM3 assessments were conducted nor were the organisation’s Risk Registers, Accident Investigations or Close Call data reviewed to confirm

known or foreseeable structural or organisational hazards;

- c. The purpose of Network Rail's drafted PPF Safety Plan in lieu of any other process is to meet the expectations of a validation process only, not to confirm a design model where safety by design is forefront. Whilst this may meet the company's O20 standard, we do not believe it meets the requirements of CSM RA.

4. Network Rail's approach to Safety Consultation with the trade unions can be summed up as 'presentation not consultation'

Once again, there are many references to Safety Consultation in the Amended Safety Authorisation application. However, these statements bely what has actually occurred and, we fear, may be the company's approach in the future.

For instance:

- a. Hazard Identification workshops were attended by staff in Bands 1 and 2 only but no such engagement was extended to health and safety representatives or indeed to any staff in Bands 3 to 8 (or equivalent);
- b. Trade unions have in no way been involved in the design of the new structure or been consulted on the design prior to its selection and in many cases its implementation;
- c. Those few people attending Hazard Identification Workshops were mainly design team members and/or external consultants.

What's more, divisive and obstructive tactics have been employed which have had a detrimental effect on collaborative risk management:

- d. The National PPF Health and Safety Consultation was ended unilaterally by Network Rail without agreement being reached with the TSSA, RMT and Unite trade unions. The company simply terminated the national consultation, referring the trade union health and safety representatives to the Regional/Functional Consultations to come.
- e. The phasing of the organisational change resulted in Network Rail pushing all specific questions raised by the trade unions relating to risk to a Regional/Functional Consultation Phase. On engagement with Regional/Functional Consultation, the trade unions have been presented with the incorrect assertion that all hazards were consulted at National Consultation;
- f. There has been no central management of Regional/Functional-level consultation resulting in the resourcing of these engagements by the trade

unions being practically impossible to meet, especially given the pace and compressed timeframes the company insisted on employing.

The Technical Authority (TA) has, contrary to strong warnings from TSSA, devolved Level 2 assurance activities to the Functions and Regions, leaving Level 3 assurance activities to third parties including the ORR. This regional self-assurance has been identified by TSSA as a conflict of interest and a risk to the operability of the company's Health & Safety Management objectives.

It now seems that this change comes without the resource required to meet its activities. During consultation on the transfer of posts from the TA to the Network Services Directorate (NSD) the company was unable to say when or indeed if unfilled posts would be recruited. TSSA did not consider this to be meaningful consultation and as such consultation has not yet concluded.

NSD is currently running with over 30% of its posts unfilled and is reviewing *in camera* which of these posts, if any, will be advertised in January 2021. This is despite a government announcement of a £1.2 million investment in digital signalling. A recent TA announcement made by the chief engineer confirmed that there was a headcount cap operating for the TA which was less than the consulted organisation. During the last TA PPF consultation, we asked for quantification of this cap; we still await a response. We have made it clear that we will not consider consultation to be meaningful without the consultation of any headcount cap and the control measures for implementing that cap. We have again reiterated that we would expect any restriction on filling consulted posts to have been described as part of the consultation process.

5. Validation Panel

Under Standard 020 the Independent Assessment Body is the Safety Validation Panel. However, the PPF Programme has appointed Aegis as a second independent assessment body. Aegis does not sit independently as we believe it should; rather it sits on the panel as an observer being asked for opinions throughout the Safety Validation process. This collaborative style of assurance is one that we believe presents a conflict of interest with Aegis being no longer independent, being an invited 'part of the solution', proffering advice throughout and thus unable to provide a dispassionate conclusion / validation. The Panel itself claims to remain independent and reserves the final say where disagreement arises with the second independent assessment body.

The Panel itself cannot claim to be independent given that each member in turn has been required to validate one another's Region/Function, often at times including like-for-like roles similar to their own. This too is a conflict of interest. We believe that the role of Aegis is to assure process not substance. We believe that the role of the Panel is to challenge and assure that identified risks are met with suitable controls. Despite their best efforts there has been no scope to do so as the Safety Plan process has not required quantified risk assessment of workload or competence. The Panel does not meet independently of those it is charged with

validating. Instead, it meets alongside the Transformation Team, whose work is the subject of the validation exercise. Panel members are not free to explore concerns or consider omissions in the design as the designer is present during such discussions and permitted to counter challenge at their conception. This is not an objective environment for an independent Panel to sit; to challenge in this environment is uncomfortable and potentially intimidating. In allowing the Validation Panel to certify the PPF programme as aligned to a Target Operating Model that is not going to be employed gives the impression of a verification of the organisation's current structure which is disingenuous. This diverts attention away from the immediate crisis the railway faces. The Panel is validating a structure on paper rather than the structure as presented.

6. Immediate Risks to the Organisation

Network Rail's current structure has devolved responsibility for assurance to the Regions and Functions. These business units have merged safety and assurance professions as well as departments to proffer a 'matrix' style organisational capability. This means that:

- a. A Health, Safety, Assurance, Quality and Environmental competence is now required of our members to stretch over greater geographies and across rail specialities;
- b. Devolution may afford greater assurance responsibility closer to service provision, but we are concerned that it does so at the expense of quality;
- c. Our long experience of devolution (or fragmentation) in the railway suggests that almost invariably, more staff are required. Yet Network Rail has reduced staff numbers and continues to reduce headcount;
- d. Through matrix-style HSAQE functions the company requires greater management of competence, yet it is operating with a backlog of over 100,000 training days this year alone, with no competency matrix to upskill individuals across multiple professions. Indeed, the Skills Assessment Scheme, which defines the company's competence management, is currently under review and audits of the Scheme are currently suspended;
- e. The 'recruitment freeze' / 'headcount pause' has been imposed when Network Rail is at its most under-resourced whilst also asking more of its staff;
- f. It is notable that PPF and Network Rail's under-resourcing of safety comes at a time when RAIB has just published its report into the Margam incident and follows ORR's serving of two Improvement Notices on Network Rail in respect of trackworker safety.

The RAIB report contains the following comment:

“Network Rail’s safety management assurance system was not effective in identifying the full extent of procedural non-compliance and unsafe working practices, and did not trigger the management actions needed to address them”¹

Similarly, the Eastleigh Long-welded Rail Depot fatality (November 2020) has led to a Prohibition Notice against the company on the basis of the absence of a safe system of work, surely raising questions of the adequacy of health and safety assurance at the site. The company has now employed a third party consultancy to conduct a PUWER assurance audit on all plant, in doing so demonstrating the facility is not in place within the ranks of the current company capability.

It is hard to see how Network Rail will improve its performance in effectively managing employee safety unless it devotes the necessary management and assurance resources to the issue.

7. CDM Health & Safety File (Paragraph 4.11.15)

Network Rail records department confirms that less than ten percent of projects requested or used a Health & Safety file to inform pre-construction information and less than five percent return a completed file. There is no assurance method in place to ensure compliance with this area of CDM 2015 requirements.

Efforts are currently underway to remove the applicability of Standards where works are not considered to import risk to the infrastructure (so-called ‘Highstreet Works’). No such reference is made to this within the HSMS nor are alternative controls or a suitable assurance process in place to meet this change in project safety management. This project is referred to as ‘Barriers to Contestability’.

8. NR/L2/OHS/019 ‘Safety of people at work on or near the line’

Network Rail is currently in the process of briefing its staff on the ‘Principles’ of ‘Safety of People at work on or near the line’. The contents of this briefing have little bearing on the documented procedure, version 10 of which is currently within the HSMS. A revision of this process in its entirety is planned by the focus group ‘The Safety Task Force’ for June 2021.

¹ Paragraph 177 (Page 42) and discussed at Paragraphs 263-300 (Pages 61-69), RAIB Report 11/2020, “Track workers struck by a train at Margam, Neath Port Talbot, 3 July 2019” at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934741/R112020_201112_Margam.pdf

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However, the company is currently under-resourced to meet the needs of its own procedure and has a reduced assurance capability to confirm it is being met.

Both assurance and the safety of staff on or near the line are the subject matters of current Improvement Notices from the ORR, the dates of compliance for which are highly questionable. This is because whilst the safety of staff on or near the line is an acute risk to our staff, the company is funded sufficiently to render the 'reasonably practicable' argument of safety mitigation moot.

In contradiction however the improvement notices in relation to safety of staff on or near the line have been given a compliance date of 7th July 2021, a period of two years since being served. However, the Network Rail Assurance Directive, "Delivering 'safe and effective' railway maintenance" (STF/AD/001, v3), refers throughout to a compliance date of 31st July 2022, suggesting an extension to this timeframe has been agreed! These are enforcement levels and timescales used by the HSE in relation to chronic hazards where funding lends the reasonably practicable argument to suggest a proportionate timeframe in response.

These timeframes nor Network Rail's efforts reflect the level of risk present. The rail industry is well funded, yet we kill staff each year and now request more time to do so.

9. The Safety Task Force

The 'Safety Task Force' has been included in the HSMS (see Paragraph 4.20.10) along with an aspirational remit. This focus group sits outside all authorised standards and procedures in place currently whilst advising on safety with no confirmation as to the competence or governance required to hold such a position.

In giving the misplaced comfort that the subject is under review, the organisation is in fact demonstrating that there exists over 28 million tasks² that present risk yet have not been risk assessed - and that 700+ signallers direct trains each day without consideration to workload or safety.

However, procedures exist today to manage these subjects in their entirety. Those procedures have been authorised by the ORR for use to run a safe railway. Resource is required in assurance of these procedures; robust, independent and objective assurance positioned to afford transparent data on what exists today and where improvement is required.

10. NR/L2/ASR/036 [Issue: 5] Network Rail Assurance Framework

TSSA is also aware that the current Network Rail Assurance Standard has not been revised in relation to the new assurance model employed. We are left asking why

² See Paragraph 4.20.10, Page 101, NR IM Safety Authorisation Part B consultation document

that is given the large part assurance plays in ensuring processes and procedures are being complied with?

11. Definitions of accountability

The HSMS makes multiple references to the accountabilities of key safety post holders. Accountability is, however, not defined either within the document or by safety legislation:

- a. Health & Safety legislation refers to responsibility only;
- b. BS45001 to responsibility and authority only.

Industry standard definitions along with those of IOSH and NEBOSH do not consider accountability and responsibility to be synonyms. Those accountable have responsibility and can be held to account for said.

Responsibility can result from position, authority, appointment and action. If acting as a directing mind or designer, safety responsibilities will be relevant to those actions and those carrying out the acts. By all definitions one can devolve responsibility but not accountability, authority brings with it responsibility.

Regionalisation has identified a number of new roles considered 'accountable' yet they are not resourced to exercise complete authority which leads us to question why? As such a definition is required of what is meant by 'accountability' and specification made as to how that responsibility is held and assured by those ultimately with the authority to exercise the HSMS, namely the Chief Executive and Network Rail Board.

12. Asset Management

Through devolution assets previously 'owned', managed and maintained by Network Services are to be devolved to the regions. This meets the principal of regionalised devolution but not the principal of efficiency and safety as required of putting the passenger, freight user and ultimately the taxpayer first. Assets are to be devolved to regions with already failing level 1 assurance processes.

To further add to this complex set up of localised accountabilities, only non-fibre optic assets are to be devolved. How this will work has not been confirmed or reflected in the HSMS submitted for authorisation nor can it be as design discussions between the regions and Network Services have not yet been concluded. What is known at this time is the risk which such a move will present to the organisation: fibre and non-fibre assets and their associated assets cannot be separated as planned without robust management. CDM 2015 duties are now unclear as the asset owners of the fibre being maintained is housed in troughing owned by another business unit and is connected to instrumentation they own but which is powered by yet another business unit. The deconfliction requirements of the multiple interested parties required to allow safe access to site increase beyond our current capability meaning the safety of access arrangements, welfare,

devegetation and asset/structure maintenance are unfathomable and therefore unmanageable. NR's past record of CDM 2015 compliance is questionable at best, an example being the fielding of multiple Principal Contractors on single projects. Devolution of nationally monitored and owned assets to the routes and regions now means NR have multiple Client duty holders to consider prior to project commencement - at an undetermined but surely significant financial cost and safety cost - both of which are, we feel, avoidable.

13. Safety Consultation

Paragraph 4.8.7 (Page 53, Part B consultation document) states:

“The chair and secretary of the Council are appointed by NRIL. At Council meetings, the organisation's side comprises not more than ten representatives appointed by NRIL. The employee's side comprises not more than nine representatives appointed by the trade unions on the basis of a maximum of 4 x RMT, 3 x TSSA and 2 x Unite. In addition, each trade union may appoint one official employed by the union and one employee of the trade union who is a health and safety specialist.”

L146 Guidance note 9, however, states that the number of management representatives should not exceed the number of employee representatives so the Amended Safety Authority needs to be revised to ensure nine representatives appointed by NRIL.

In closing, we look forward to your response and trust that the serious issues that we have identified will be properly considered and remedied prior to the Amended Safety Authorisation being implemented. TSSA is available to meet with the ORR to discuss any of the above matters in order to secure an improvement and we look forward to consulting with Network Rail on all matters referenced herein prior to the necessary resubmission of the company's Health & Safety Management System.

Yours faithfully

Rob Jenks
Policy Advisor
On behalf of
Manuel Cortes
General Secretary

APPENDIX A

Network Rail resourcing: numbers of posts without occupants as at 8th December 2020



