



## Transport Committee

### Oral evidence: [Safety at level crossings](#), HC 680 Monday 4 November 2013

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Written evidence from witnesses:

- [Heritage Railway Association](#)
- [RSSB](#)
- [Rail Accident Investigation Branch](#)
- [Office of Rail Regulation](#)
- [Network Rail](#)
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Members present: Mrs Louise Ellman (Chair), Sarah Champion, Jim Dobbin, Karl McCartney, Mr Adrian Sanders, Graham Stringer and Martin Vickers

#### Questions 80-208

*Witnesses:* **Bill Hillier**, Director and Chairman of the Operating and Safety Committee, Heritage Railway Association, **Anson Jack**, Deputy Chief Executive, RSSB, **Michael Woods**, Head of Operations and Management Research, RSSB, **Carolyn Griffiths**, Chief Inspector, Rail Accident Investigation Branch, and **Ian Prosser**, Director of Railway Safety and HM Chief Inspector of Railways, Office of Rail Regulation, gave evidence.

**Q80 Chair:** Good afternoon, and welcome to the Transport Select Committee. Could you give us your name and organisation, please?

**Bill Hillier:** I am Bill Hillier, Heritage Railway Association.

**Ian Prosser:** I am Ian Prosser, director of railway safety and Her Majesty's chief inspector of railways at the Office of Rail Regulation.

**Carolyn Griffiths:** I am Carolyn Griffiths, Rail Accident Investigation Branch.

**Anson Jack:** I am Anson Jack, deputy chief executive of RSSB.

**Michael Woods:** I am Michael Woods, head of operations and management research, RSSB.

**Q81 Chair:** I have a number of questions for the Office of Rail Regulation. Mr Prosser, at Moreton-on-Lugg, the Office of Rail Regulation authorised a lower standard of safety work and, following that, Jane Harding was killed in January 2010. Because the ORR had authorised the work that was done, it was not able to prosecute Network Rail; however, the British Transport Police and the CPS did, and as a result Network Rail were fined £450,000. Do you think that incident demonstrates the conflict that the ORR has between economic regulation and safety regulation?

**Ian Prosser:** I would like to answer that in two parts, if I may. First, our thoughts are with the family of Jane Harding and others affected by her tragic accident. ORR did not approve the removal of the approach locking in the scope of the project. This project was done by Network Rail, and we did not approve it. It is a good example of the need for good, strong risk assessment at each and every crossing when you are doing a renewals project.

On the second point, I do not believe there is any tension between the economic and safety aspects of ORR's role. In fact, there are some very good examples where the role adds value in being both the economic and the safety regulator. For example, asset management is very crucial to both asset safety and asset performance, so from both aspects we are interested in the performance of the assets. Also, during the final and draft determinations for the next control period of the next five years, we have been able to evaluate the proposals to improve safety at level crossings and, with the support of Ministers, have earmarked £109 million for closures and improvements—

**Q82 Chair:** Mr Prosser, I am going on to that next, but I want to stop at the point when you said that you had not approved this. The RAIB report into the accident and the death of Jane Harding stated that Network Rail proposed a partial renewal of level crossing protection, on cost grounds and that ORR's consent to Network Rail's request meant that formal consideration was not given to approach locking, which would have prevented that particular fatal accident, so what you have said is not quite right, is it? The RAIB report said something different; it said that you were involved in approving what Network Rail wanted to do.

**Ian Prosser:** There were some meetings between Network Rail and ORR, and the evidence of one of ORR's signalling engineers to the actual prosecution. It is also the fact that we investigated that incident jointly with the BTP, and it was a matter of—

**Q83 Chair:** I am not talking about your investigation of the incident. My concern is that you gave approval to Network Rail to do something that subsequently was found to be wrong and inadequate, and in fact led to the death of somebody on that line. Now you are telling me that you were not involved, but the RAIB report said that the ORR was. Are you disputing the RAIB report?

**Ian Prosser:** No. A meeting took place between Network Rail and ORR, but it did not specifically go through the design details of that particular crossing.

**Q84 Chair:** Did you dispute the RAIB report at the time it was made?

**Ian Prosser:** The RAIB make their reports, which are their views. The evidence I have is that we did not approve the design of that particular crossing.

**Q85 Chair:** You are saying you did not approve what Network Rail did in relation to that particular crossing at that time.

**Ian Prosser:** No, we did not approve it.

**Q86 Chair:** So you disagree with the RAIB report. Are you or aren't you? That is what the RAIB report into the fatality said. Are you telling me that the ORR does not agree with the findings of the RAIB report?

**Ian Prosser:** What I am saying is that we did not approve the design for that particular crossing. There were discussions between Network Rail and ORR in relation to the views on renewals of level crossings in general.

**Q87 Chair:** In general you agreed, but not to do with that specific crossing. Is that what you are saying?

**Ian Prosser:** In general, the view was that Network Rail should propose in renewals the best risk reduction it could get for the money available. It is very important in these renewal enhancement projects that Network Rail carry out individual risk assessments for each and every crossing. That is very important so that you get the right scope for each level crossing in the project.

**Q88 Chair:** On reflection, do you think Network Rail carried out an acceptable risk assessment for the crossing at Moreton-on-Lugg?

**Ian Prosser:** No, they did not, and that was the reason why they were prosecuted. If it had not been the CPS, we would have prosecuted them for that failing.

**Q89 Chair:** It was not that the CPS prosecuted because you were unable to, because you had approved what they had done?

**Ian Prosser:** No, certainly not.

**Q90 Chair:** We will look at that further. How safe would you say our level crossings are?

**Ian Prosser:** ORR's goal is to reduce harm on the railways, and we have a vision that is about zero industry-caused fatalities to passengers, public and work force on the railways. My thoughts are with the families of those who have lost their lives at level crossings and on the railways.

Level crossings in Great Britain are ranked in European terms—in terms of the European Community—as the safest in Europe. However, the key is all about continuous improvement. Although the risks measured over a longer period of time are reducing, it is important that we are never complacent; there is always room for improvement.

**Q91 Chair:** But Network Rail's board performance is measured against several key indicators, and safety is not one of those. Does that not concern you?

**Ian Prosser:** Network Rail's performance is measured on a number of things.

**Q92 Chair:** It does not include safety, does it?

**Ian Prosser:** Every year we give a view to Network Rail's board, through their chairman, of their performance, and that very much includes a section on safety. We give a very clear view each and every year to the Network Rail board and executives of the company's performance on safety. It is the first thing included in our letter to their remuneration committee.

**Q93 Chair:** It is only a letter, rather than a criterion to measure their performance. Is that what you are saying?

**Ian Prosser:** It is for Network Rail's board, but we believe that by giving that information they can take it into account in deciding how to remunerate their executives.

**Q94 Chair:** "Take it into account." What specific funding and performance measures have you allocated for level crossings for the next control period?

**Ian Prosser:** For the next control period, the funding allocated is £109 million. Network Rail have put together some initial proposals to justify and explain how that will be spent. In the delivery plan in December, we expect to see more detail of how that is going to happen. We anticipate at least 500 closures of level crossings, if not more, and we shall monitor the performance of Network Rail throughout the next five years, so that we get what we would describe as the best risk reduction per buck, and make sure that we improve safety at level crossings as much as possible in the next five years.

**Q95 Chair:** How many safety inspectors do you employ?

**Ian Prosser:** ORR has 86 warranted inspectors. My team is about 110. Of the 86, some are also engineers who support the whole of our activities—but the important thing is not just how many; it is how good.

**Q96 Chair:** Can you tell me how many have a signalling qualification?

**Ian Prosser:** We have 26 engineers in ORR, and a significant number of them have signalling qualifications.

**Q97 Chair:** How many?

**Ian Prosser:** Probably about eight.

**Q98 Chair:** Eight out of how many?

**Ian Prosser:** We have 26 chartered engineers.

**Q99 Chair:** Do you think, generally speaking, that you have enough experienced and qualified inspectors and engineers to be able to do the job efficiently?

**Ian Prosser:** I do. As I said earlier, it is also about quality. We have a very comprehensive competency management system for inspectors, which includes railway engineering skills that have to be demonstrated, not just through learning at school or at university. It is a demonstrated skill, so we have a full-blown competency management system. It can take up to two years or more for an inspector to pass the bar, as it were. We have a full-blown panel for inspectors to be appointed as warranted inspectors.

**Q100 Chair:** You initiated the Law Commission's review of level crossings. Why do you think that abolishing a well understood system of level crossing orders was the right thing to do?

**Ian Prosser:** One of the main points is that level crossing legislation is very old; it is antique. It does not follow the form of general health and safety legislation we now have in this country, which is very much Health and Safety at Work etc Act-type legislation. We believe we can reduce red tape, improve the way in which closures can happen and make it easier for the regulation of safety at level crossings. We would like to see the Bill passed by Parliament, so that we can then work with the industry to get the right regulations and documentation that will support it.

**Q101 Chair:** Will you be taking enforcement action against highways authorities?

**Ian Prosser:** That is one of the reasons the Law Commission work is so important. At the moment, the enforcement responsibilities around level crossings are not always clear. Therefore, to get all the parties working together and coming to the best solutions to reduce harm at level crossings, it is very important that we bring the legislation up to date—many parts of it are extremely old and date from Victorian times—and work hard with the Department who supported, and together we initiated, the Law Commission work.

**Q102 Chair:** How many improvement notices have you served in recent years specifically for level crossings?

*Ian Prosser:* We have served 22 improvement notices on Network Rail, one on a farmer and one on a heritage railway in the last five years. The trend is moving downwards, but those are the sorts of numbers we have implemented.

**Q103 Chair:** Have they all been enforced?

*Ian Prosser:* Yes, they have.

**Q104 Chair:** Will you also be taking enforcement action against employers who require staff to operate user-worked crossings but do not provide adequate training—for example at farms?

*Ian Prosser:* Yes, we do quite a lot of work in that area. I have personally sat in a landowner's kitchen explaining to him the importance of closing gates at his particular user-worked crossing, so that children in a playing field nearby are not put at risk. We also do courses at Cannock Chase for farmers and users of worked crossings—utility drivers, for example. We served an improvement notice on a farmer in relation to his and his employees' use of a crossing.

**Q105 Chair:** What about more enforcement actions? How many times have you actually enforced action, rather than discussing with the people concerned what they ought to be doing?

*Ian Prosser:* In the last few years, we have once put an improvement notice on a farmer, but we use all sorts of influencing skills as well to improve behaviour by users of user-worked crossings.

**Q106 Chair:** And you are satisfied with the results of the work you have done there—that it has made a difference?

*Ian Prosser:* It has made a difference. As I said at the beginning, we can collectively do better—the industry and ourselves—in terms of improving. I think of three Es that are quite important for safety at level crossings: education, both for those who use them and those who manage them; enforcement, which is an important tool; and engineering, to take out some of the risks in a reasonable way through engineering controls. That also includes the highest level of control, which is to remove the crossing completely. That is why we supported Network Rail in removing 750 crossings in the last five years, and we will see a large number—over 500—removed in the next five years. That is the safest way to deal with level crossing risk.

**Q107 Karl McCartney:** Mr Prosser, do you think that as an organisation you are proactive or reactive?

*Ian Prosser:* As an organisation, in the last five years, since I have been in this role, we have increased the amount of time inspectors spend on proactive inspection from about 30% to 35% to 50%, so I believe we are very proactive in inspecting and auditing our duty holders, not just Network Rail but all the other duty holders across the industry, which includes light rail, London Underground and trams.

**Q108 Karl McCartney:** You claim that you are proactive rather than reactive. You proudly state that you have closed, or assisted Network Rail to close, 750 level crossings, and that a further 500 closures will take place in the next five years. That is all very admirable, but, in a situation where people who live around a level crossing do not want to see it closed, how often would you say that you are proactive in assisting, helping or forcing Network Rail to come up with a solution that improves the safety aspect of a level crossing, rather than waiting for something catastrophic to happen?

**Ian Prosser:** A large proportion of the improvement notices I talked about were about getting Network Rail, from a proactive point of view from us, to improve the controls at those level crossings. We have been actively engaged in encouraging them, sometimes through enforcement notices, to improve technological solutions, because you are right: in some cases there is no practical alternative to closing the crossing. We have encouraged and proactively pushed Network Rail to look for technological solutions, which have included improvements in how they can detect trains on long stretches of unsignalled branch lines, and in other cases. It is important, and technological and innovative solutions can help.

**Q109 Karl McCartney:** Can you give me any actual examples of where improvements have been made to safety at a very busy level crossing? I give you the example of Lincoln, which is my constituency. It has one of the longest and busiest high streets in the country, and we have waited 30 years for an improvement. We lost our footbridge back in the early '80s; we are now getting one, and we will be talking to Network Rail about that later, but it has taken 30 years. Why do you think it took that long? What were the ORR doing?

**Ian Prosser:** I have visited Lincoln.

**Karl McCartney:** Lovely place, isn't it?

**Ian Prosser:** Very nice. I was there to visit the level crossings and talk with the council, the county council and highways authorities to encourage them and Network Rail to work together to improve the situation in Lincoln, so I am well aware of the issues. Since I have been in this role we have tried very hard to encourage Network Rail and the council. Some of these solutions are not easy. Some bridges are difficult to construct, particularly in historic places like Lincoln. It needs road changes. They explained to me how they could change some of the road layouts in the city centre to make this a practicable solution, so there is a lot of work to do. We proactively try to assist and encourage both parties to come to a suitable solution.

**Q110 Karl McCartney:** Have you any examples quicker than 30 years where you have enforced improvements at a very busy level crossing to improve safety?

**Ian Prosser:** There are examples. We have been working with Network Rail on the Sudbury branch line, where they implemented some new control technology—after an improvement notice—which will assist signallers in improving the behaviour of drivers using user-worked crossings on that line.

**Q111 Sarah Champion:** Mr Prosser, at the beginning you spoke about the need for Network Rail to have strong risk assessments, and in response to my colleague's question, with regard to Lincoln you said that you tried very hard to encourage Network Rail. Is one of the fundamental problems communication between the two organisations and your lack of leverage to make things happen?

**Ian Prosser:** I think that in recent years communications have certainly improved.

**Q112 Sarah Champion:** Does that mean that historically they have not been good?

**Ian Prosser:** No, I think it is all about continuous improvement.

**Q113 Chair:** That sounds like a diplomatic turn of phrase.

**Ian Prosser:** I laid out very clearly to Network Rail a few years ago, not long after I came into this role, exactly what I thought were the systemic issues that needed to be addressed. We had quite a lot of RAIB recommendations and our improvement notices, all pointing to four key issues. One was leadership, so that there was central leadership of the direction in which to take level crossing risk management. The second was risk assessment itself and the data that go into risk



assessments—the data are absolutely crucial to getting accurate and sufficient risk assessments. The third one was ownership at local level: they had various people involved with level crossings, in different departments and so on; they have now changed that, and it is starting to embed—let's get local ownership and collaboration. One very important thing in level crossings is collaboration with train operating companies, because train drivers see what goes on on the railways. They have done some really good initiatives with train operating companies to get better data and information. I laid that out very clearly to Network Rail and they have responded, but there is still more to do and to embed.

**Q114 Sarah Champion:** So on your four points, they have started but there is a way to go yet.

**Ian Prosser:** They have made progress on all four. They have set up a central level crossing team, given it leadership and made a director responsible for it; they have appointed over 100 level crossing managers; they have improved their risk assessment process; and they are improving their data collection all the time, but it is a continuous process of improvement.

**Q115 Chair:** Miss Griffiths, since the RAIB was set up you have investigated just over half the fatalities at level crossings. What makes you decide whether or not there is to be an investigation?

**Carolyn Griffiths:** The criteria are based on a simple decision, which is whether we believe there could be significant safety learning from our investigation. There are some “mandates” from the European directive, but we are still not required to make those mandated investigations if we believe that, at the end of the day, there will not be much to learn in terms of safety. For instance, if somebody has been deliberately putting themselves at risk by playing chicken at a crossing or whatever, it is unlikely we would investigate if we had absolute certainty that that was the case.

**Q116 Chair:** Do you have enough staff and resources to investigate the cases you want to? Does that impede you, or is it not a problem?

**Carolyn Griffiths:** I am in the lucky position to be able to say yes. I have 19 investigators, five investigator managers, and then there's myself and my deputy. I believe that we do have sufficient resources.

**Q117 Chair:** In the written submission you sent to the Committee you identify a number of areas of concern, including risk assessment procedures. Could you tell us what the key problems are and what can be done to change them? It is a matter of great concern if risk assessments are wrong.

**Carolyn Griffiths:** This features quite large in our investigations, as you have rightly identified, and it falls into a number of groups. I can give you examples, if you want me to go back having given you the big picture.

**Q118 Chair:** What are the key issues involved?

**Carolyn Griffiths:** There is the quality with which risk assessments have been carried out; sometimes factors have been overlooked. The way the risk assessment should take place consists of two things: one is an algorithm, which is a prescribed procedure, and the other is taking account of local factors—those are two things that a risk assessor must do. We found some deficiencies in the algorithm, which is being worked on by RSSB; they are doing research to improve the algorithm. The second is that the person who goes to do the risk assessment must look around his or her environment and take account of the peculiarities of that site. We found that in the past certain things that should have been taken into account were not. This is one of the reasons Network Rail now has level crossing managers, in the hope that they will build the competence and confidence to be able to be more tuned into the local factors that will make a difference to the risks.

**Q119 Chair:** Who is lacking in competence in this situation? Is it to do with the inspectors, the regulator, or Network Rail? Who is responsible for a situation where there is so much concern about the adequacy of risk assessments?

**Carolyn Griffiths:** In the investigations where we found that local factors were not being taken into account, probably there are two parts. In some cases it was the individual: hitherto, that individual would not have been a specialist; it would have been somebody who had multifarious tasks, including risk assessment. That has recently changed, in the last year, when Network Rail introduced their level crossing managers.

The second area we pointed to was the guidance those people were given. Bearing in mind that this was not their everyday job, they clearly needed guidance. In some cases, there was a shortcoming in the guidance, and we made recommendations that there should be clearer guidance about not only what to look for, but how to factor that into what action should be taken.

**Q120 Chair:** Who should have been giving that guidance?

**Carolyn Griffiths:** In this particular case, in most of the investigations I am referring to bar one, Network Rail.

**Q121 Chair:** Could you make any estimate of how many crossings that are now seen as medium risk should be designated as high risk?

**Carolyn Griffiths:** That I cannot do.

**Q122 Chair:** Let me ask you about the role of the coroner. In the case of the unprotected Mexico footpath in Cornwall, your report did not recommend closure. The coroner issued an instruction that there should be a closure. Why was there a difference in that case, in that you did not recommend closure but the coroner did?

**Carolyn Griffiths:** What we did recommend were some improvements to the crossing. We felt that, subject to those improvements being made, the crossing could be made to operate at an acceptable level of risk. We did not see that that crossing was a priority for closure. Obviously, there would be a fairly serious outcome if, for all the crossings we went to, we took the ultimate sanction of recommending closure. We would have many recommendations for closure. We recognise that clearly there have to be priorities. We did not say, “Don’t close it,” but we felt that it could be brought back to a reasonable level of risk by the recommendations we made.

**Q123 Chair:** In the accident there, Mrs Jeanette Nicholls was killed and the crossing was subsequently closed because of the coroner’s instruction. Would you be concerned if it was going to be opened again?

**Carolyn Griffiths:** We would be looking for the recommendations that we made to be implemented. We believed there were deficiencies at that crossing that would have to be addressed. At Mexico, one of the deficiencies was the audibility of the whistle board—it blows when the train is on approach. Audibility was not reliable and we made recommendations that, since that crossing was reliant on an audible warning, the audible warning had to be reliable of course, and therefore Network Rail should look at alternatives. Indeed, at other crossings they are looking at sounding the warning at the crossing, as opposed to the whistle board further up the line.

**Q124 Chair:** I want to ask you about recommendations you made about lighting that appear to be contradictory. You looked at two separate fatal accidents at the Bayles and Wylies crossing in Nottingham. In November 2009, you recommended that pedestrian lighting be improved. In September 2013, you reported that the lighting was too bright and may have caused glare. Can you explain why you have these two apparently contradictory recommendations?



**Carolyn Griffiths:** Yes, certainly. As you rightly say, there were two separate tragic accidents, one of a lady and her grandson approaching from the Network Rail side—it is a two-part crossing—and the other the tragic death of a young girl coming from the Nottingham tram side. In between those two crossings there is an intermediate island. In the first one, the lady and her grandson first had to cross over a disused line and then on to a skewed crossing. We believe that part of the reason she may have been distracted was that she was looking for the edges of the crossing, which we felt needed illumination. We made a recommendation, as you have correctly identified, that there be collaboration between the local authority and Network Rail for illumination, for that reason. In the second case, we believe it was possible—we cannot be certain—that the glare of light might have been a distraction to the young lass on the tram side.

Our first recommendation said “Take account of” a number of things. One of those was to make sure that the person using this side of the crossing can still see the approaching train’s lights. We did not design in detail the Network Rail illumination. Therefore, when it was erected it was the gift of the people putting the lighting in as to how they installed it and the luminance they made it. We do not think that our two recommendations are inconsistent; it is just that we did not prescribe exactly how the installation should be, nor would that be in our gift.

**Q125 Chair:** In relation to the Beech Hill fatal accident, you made a recommendation just to Network Rail, not to the Secretary of State, but it is the Secretary of State who is responsible for road traffic signs and signals. Was there a reason you did not make a recommendation to him?

**Carolyn Griffiths:** Yes. The standard that applies to those lights makes reference to a European norm which allows for a variation in candelas—how bright the signs should be. The nature of the standard allows the infrastructure operator to tune the brightness of the lights to the circumstances. Obviously, bright lights in some circumstances would be right; in others, it would not. The deficient lights at Beech Hill would still have been to spec—there is deliberately a range of lamps. We wanted the infrastructure owner, still compliant with that standard, to take a more careful look as to how he tuned the brightness of those lamps to that circumstance. It was not the standard that needed changing; the standard deliberately gives you a range of luminance for your lamps.

**Q126 Chair:** I would now like to ask Mr Jack and Mr Woods of the RSSB some questions. In your written submission you say that “the biggest determinant of level crossing safety is...road safety.” Could you explain that link to us?

**Anson Jack:** One of the things the RSSB does is collect data associated with all accidents on the main line. In collecting and analysing those data we look at the underlying causes of accidents, not in the way that Miss Griffiths does; this is just collecting the data and analysing it. Over the years, the data we collected have identified that the majority of accidents that happen at level crossings, be they footpath crossings or road level crossings, arise from either misunderstandings by the users of the crossings, or wilful misuse by users of the crossings. The area that we have been talking about to date tends to occupy about 10% of the risk at level crossings—the risk that can be affected by the rail industry itself.

The reason we put the point forward to the Committee is that, in exploring the very desirable outcome of improving level crossing safety, we wanted to draw attention to the fact that many of the risk factors are associated with performance on the roads. If I can back that up with a couple of references, a study is being done in Canada where at different times different states introduced proactive road safety campaigns. If you tracked the performance on level crossings, the incidence of events at those crossings exactly followed.

Another study looked around the world at level crossing performance. A lot of railways around the world report that they suffer from not being able to get enough attention from road authorities. A piece of work was done for an international congress on level crossing safety to look at the

underlying cause of differences between different countries' level crossing safety. A piece of work done by a guy who until very recently was a non-executive director of the Office of Rail Regulation highlighted that by far the strongest correlation across countries was between level crossing safety and their road traffic safety record. Countries such as the United Kingdom and Sweden, which have very good road traffic safety records, are also the countries that come through as having better performance on level crossings. That is not saying that every level crossing accident is not a tragic event. As Mr Prosser said, there are still things that can be done to improve them.

**Q127 Chair:** You heard what Miss Griffiths said about concerns related to the adequacy of risk assessments, and she has also submitted written evidence on that point. Is what you are saying challenging that in any way? Are you saying it is not to do with risk assessment but it is something else?

**Anson Jack:** No, it is not challenging it at all. To the extent that the rail industry can influence level crossing safety—there are things it can do, and we have been hearing about some of them—it is highly appropriate to use a risk-based approach to decide where to allocate resources and where the priority crossings are.

**Q128 Chair:** How do you keep your independence from the industry? You are funded by the industry, are you not?

**Anson Jack:** We are funded by both the industry and the Department for Transport. The industry pays us levies.

**Q129 Chair:** How do you show that you are independent?

**Anson Jack:** Any key decision that is made by RSSB has to be unanimous. Within the RSSB board, we have an independent chairman, a non-industry non-executive director and two executive directors, none of whom is obliged to vote with the industry directors. In practice, we never have any issues around that, because the common goal that we are all seeking is to improve the industry's performance, including on safety. We have never had any issues where we found that our independence is threatened by the industry.

**Q130 Chair:** You conduct significant research. How do you make sure that the safety management information system is accurate?

**Anson Jack:** I am not sure of the relationship between the two sides of that question. We conduct a lot of research on behalf of the industry. We use money that is granted to us by the Government, and we go through an industry process to get stakeholders involved in sponsoring, challenging and peer reviewing research.

**Q131 Chair:** Are you convinced that the information you get from those industry sources is adequate, or do you do any checks yourselves?

**Anson Jack:** We use a variety of means for doing research. It may not be directly from industry sources, although we rely on our members to give us a lot of information. For instance, if it relates to safety, by virtue of the data that we have collected through the mandatory SMIS system that you referred to, we can use that system to validate any particular information that we are given for a research project. When it comes to the safety management information system in the round and how we satisfy ourselves that it is valid, we employ approximately 1.5 full-time equivalent people to do what we call health checks, but some people would call audits, of all of our members and the input they make to SMIS. They read newspapers; they look at coroners' reports; they look at the Network Rail control log; and they cross-check all those things with what is being reported into the system. That report is compiled once a year and shared with the people who make the reports, and

they are given an opportunity to comment. At the end of it, we provide it to our board, and a copy goes to the Office of Rail Regulation.

**Q132 Chair:** At our last session we heard some very alarming information about human factors in relation to accidents on level crossings. Do you have any suggestions that would make the situation better?

**Michael Woods:** Given that so many of the accidents and incidents at level crossings seem to involve road users and pedestrians crossing the railway, and they have no business on the railway other than to get across, those who make mistakes can often be helped by good signs of one sort or another, whether it is flashing lights, road signs on public highways, signs at private level crossings, or the various signs that pedestrians use. We have been working with the road and the rail sectors on three research projects running in parallel at the moment to see whether those various signs and signals are fit for purpose, whether they comply with modern human factors knowledge and whether they can be improved. In terms of public road crossings, we are hoping to make proposals to the Department for Transport's review of traffic signs, which we have to submit by April of next year. There are two particular signs that we are looking at specifically in that area. I can elaborate if you think that is a good idea.

**Q133 Martin Vickers:** Clearly, a great deal of time and effort is put into collecting data, researching evidence and the like. It begs the question: do we spend too much time and money collecting data rather than remedying known problems?

**Anson Jack:** The two things are complementary to each other. Network Rail as the duty holder, with responsibility for the majority of level crossings, has the day job of deciding what are the problems, what are the risk assessments and what are the outcomes from that. That is one issue. Another issue is whether there is anything that the industry can reasonably and practicably do to improve things, by changing the standards, changing the way that risk assessments are done and so on. What we do, where the industry supports it, is make the research input: "Here are things that might be worth considering and might be reasonably practicable." What Network Rail does is to take all of that and its other knowledge and decide what it is responsible for and what it should do.

**Q134 Martin Vickers:** Are you satisfied that Network Rail act on all the evidence that you provide them with?

**Anson Jack:** It is not for us to be satisfied. We produce evidence to support them in the way they conduct their roles, and it is for the safety regulator to consider that. But there is a very strong level of co-operation between our people who do the research and the Network Rail people who manage level crossings, and who together work out the most promising things to do.

**Q135 Chair:** Mr Prosser, what is your view on this? You are the regulator. Are you satisfied that the research findings are acted on?

**Ian Prosser:** As far as we are concerned, the research being done is the right research. These are quite difficult areas in terms of working out the best way to influence behaviour at level crossings for the good of users. Network Rail are proactively working with RSSB to use this research when it is complete. At the moment, we are keeping a close eye on the outcomes.

**Q136 Chair:** Are you satisfied that it is acted on? Apart from keeping an eye on it, are you satisfied with the action?

**Ian Prosser:** We are satisfied with the work that is being done.

**Q137 Chair:** Are you satisfied with the implementation of the good work that is being done?

**Ian Prosser:** We are satisfied with the progress Network Rail are making in improving the way they carry out the risk assessments. We are not completely satisfied about where we are in terms of improving the performance of level crossings. That was why I said earlier that there are always things that can be done.

**Q138 Karl McCartney:** Mr Jack, obviously you look at a lot of statistics. I am going to ask you about the four level crossings inside and the one just outside my constituency. I want to burrow down into what the safety risk is compared with how busy the railways are when all those four, plus one, level crossings involve road users. If you have a level crossing that has barriers down for, say, 20 minutes an hour, and it is going to be increased to 40 minutes an hour because of the level of railway traffic, what relationship does that have to safety issues? Is it exponential? Does it double? Or would you say it is all to do with the type of level crossing?

**Anson Jack:** Considering a single change like that, one could only speculate about what the change in risk would be. The model referred to earlier, which we developed for the industry, is called the all level crossing risk model, and has been the subject of some of Miss Griffiths' recommendations. We are doing work to improve and enhance that model to support the industry. The specific risk at a specific crossing is so much a product of local circumstances that you clearly understand better than I do that one can only speculate about whether if you do this it will improve it, or if you do that it will make it worse. Sometimes making changes has counter-intuitive impacts.

**Q139 Karl McCartney:** Surely, a level crossing in the middle of a field that a farmer uses has a risk because it is not manned and is not automatic. The farmer, or whoever uses it, has to be aware of train movements. That is very different from a level crossing in the middle of a city or in a suburb, or on a busy street next to a school.

**Anson Jack:** It is. If you would like us to elucidate a bit more the components of the risk, we can do so.

**Q140 Karl McCartney:** If you were to double the amount of railway traffic on the farmer's level crossing or in the suburb, where is the risk?

**Anson Jack:** That will generally increase the risk.

**Q141 Karl McCartney:** Yes, obviously. I would expect it to, but is it more or less depending on the type of level crossing?

**Anson Jack:** That is why I made the comment about its being counter-intuitive. You might think it would be more, but, if it is a farmer's crossing and he finds himself using it more often, he might become more adept at using it, so maybe the risk will go down. If he has a good programme of enforcing training for people who use it, that is something that will keep down the risk.

**Q142 Chair:** Mr Hillier, we have heard a lot about the reforms proposed by the Law Commission. You are opposed to some of those reforms. Can you tell us what your main concern is?

**Bill Hillier:** Indeed. Please can I make it clear that we are a trade body, so we have no powers of compulsion over our members? It is a matter of persuasion. There is a lot in the report that we like. We think the closures and things like that are very good, but we are worried about the lack of certainty. At the moment, there are some major items and complex new provisions, which we understand may be appropriate for the fast main line railway, but our railways work at 40 kph—maximum—so they are relatively slow. Our level crossings are usually staffed, and a number of them have the old-fashioned signal boxes, and we see in the new regulations scope for things to become more difficult.

For example, how do we persuade farmers and the motorist lobby to make an agreement? If you are part of a large group, like Network Rail, you have an army of solicitors with you. We do not have that luxury. You also get significant funding from the Government, as we heard, but all our expenses come out of our own pockets; we are all small enterprises. The largest turnover of any of our members is under £6 million, the average being £680,000, so any significant cost to our members has to be met, and usually it is a matter of juggling between one and the other.

We are also very worried by the possibility of level crossing signs changing from one location to another. We feel that to a motorist a level crossing is a level crossing. Whether it goes over a heritage line or a main line, they need to be looking at the same picture.

We are a little worried about the enforcement aspects. How do we enforce when a pedestrian or farmer does not do what he said he is going to do? That is one of the concerns that we will deal with later.

We have about 1,000 crossings. According to the new regulations, we have to get crossing plans in place in a very short time. We do not have that skill within us. We are fortunate in that Network Rail have given us access to a number of their documents, but you will appreciate that translating a 300-page document spread out in a very interesting manner, suitable for the 104 level crossing managers, for our members will take time because we are all volunteers—that is, the management tend to be volunteers. In case you are not aware, overall we employ about 1,750 paid staff and there are 17,500 volunteers, so there is a high predominance of volunteers.

**Q143 Chair:** Is there a threat to the viability of heritage railways if these changes go ahead?

**Bill Hillier:** Yes, because they are all small enterprises. What do they do? How do they prioritise the safety aspects? We look at these recommendations and we do not see an immediate safety improvement, bearing in mind that we have a maximum speed of 40 kph and we are more heavily staffed than the other people. As we do not see that, the regulations will require us to put an awful lot of effort into a particular area when maybe we should be putting it into other areas.

**Q144 Chair:** Such as what?

**Bill Hillier:** If we look at the bundle of risks, one of the major ones we have is the steam engine at the front of a train. It is potentially quite a large risk. We look carefully at the way we maintain it and run it to minimise the risks. We would hate to see effort pulled off that work to meet this particular aspect.

We are looking for an increase in time to take into account these changes. We want them delayed for ourselves in particular; and we also believe that the regulations—I have to be very careful: the proposed regulations—need to be significantly reworked. It is supposed to be getting us into the health and safety at work approach, yet it talks about things like a five-year review, i.e. very prescriptive, whereas I would expect that review period to be risk-based, depending on the particular circumstances, for example.

We have serious concerns that the signage could go lots of different ways. If you go to an average level crossing now, there is a plethora of signs. We would not like them to vary even more. We think that could be a serious problem. That is one of the other areas.

**Q145 Chair:** Mr Prosser, you are the regulator for heritage railways as well. Do you sympathise with what Mr Hillier is telling us?

**Ian Prosser:** With regard to the work of the Law Commission, we would like to see the Bill put through Parliament, and then to work with the industry on sensible regulations that would enable all sectors to implement the proposals in the Bill in an effective way. We have done this before

with previous changes in legislation. We have worked with the heritage sector in particular on the railways and other guided vehicles legislation. They did have longer to bring that into being. We think it very important that, when it comes to the actual regulations, we work with the industry to get them right so they do not become burdensome on the industry in areas like the heritage sector.

**Q146 Graham Stringer:** What do the Law Commission's proposals mean in terms of heritage railways? If something goes wrong and there is a major accident and deaths, who gets prosecuted?

**Bill Hillier:** Our members do.

**Q147 Graham Stringer:** All of them?

**Bill Hillier:** No; individual ones. There are 120 different companies; they are all separate, individual companies.

**Q148 Graham Stringer:** But you are not employers, are you?

**Bill Hillier:** No.

**Q149 Graham Stringer:** We were told by the Law Commission when they were here that under the Health and Safety at Work etc Act it is the employer who has the responsibility, and the employer who gets prosecuted. Who gets prosecuted on a heritage railway?

**Bill Hillier:** Some heritage railways do have an employer and employees. I am sure you are aware that one employee means that the company comes within it, but there are a number of railways that have no employees at all; they are run entirely by volunteers. In that case, there are, I believe, proposals by the Law Commission to take particular action to make them come under the same regulation and the same enforcement authority, which is the ORR.

**Q150 Graham Stringer:** I do not know how many volunteers there are, but say there are 40 volunteers—

**Bill Hillier:** On a particular railway?

**Graham Stringer:** Yes. If something goes wrong at a level crossing, who gets prosecuted?

**Bill Hillier:** It will be the duty holder—the person responsible for running that railway. Even though they may be volunteers, by taking on the job as a director or trustee they can be sued, or shut.

**Q151 Graham Stringer:** The Chair asked this question before in terms of costs. Is the viability of any heritage railway affected either by costs or by the transfer of responsibility to the individual duty holder?

**Bill Hillier:** I would not want to list an individual railway, as you would expect, but in general one of the big issues is getting people to take on that responsibility. It is true that in a volunteer group of 40 or 50, in many cases directors have suddenly realised their responsibilities and quickly backed off. Bear in mind that these people come from all walks of life, and a number of them have had no experience as a director in any ordinary company.

**Q152 Graham Stringer:** Without pointing the finger at any particular heritage railway, you think that some heritage railways would be threatened.

**Bill Hillier:** I do indeed. I think there will be significant risks.

**Q153 Graham Stringer:** What are your alternative proposals?



**Bill Hillier:** Looking at the different parts of it, if we have to get a level crossing plan written, we will need help doing that. There is precedent for this in the work we have done with the ORR in the past on various aspects of ROGS. We worked with them. They helped us run a particular training course to train our members, so we have the background for that.

**Q154 Graham Stringer:** What I am trying to get at is this: if something goes badly wrong and there is an accident and a death, somebody, whether it is a heritage railway or Network Rail, should be held responsible. I think we would all agree with that. I am asking what your solution would be to that particular problem.

**Bill Hillier:** It happens already. We come under the RAIB and the ORR. Never mind level crossings; we have had two deaths in my memory from shunting accidents, one on a railway in Wales and one on a railway in Yorkshire.

**Q155 Chair:** Who was held responsible?

**Bill Hillier:** In both cases it was the duty holder: the particular company responsible for the railway.

**Chair:** Mr McCartney has a question.

**Karl McCartney:** I have two quick ones.

**Chair:** Try one; we need to move on.

**Q156 Karl McCartney:** In that case, Miss Griffiths, you get away with my not asking you a question.

Mr Prosser, I am sorry to come back to you. You mentioned that 750 crossings had already closed and 500 were due to close. Can you give us a quick breakdown as to what type of level crossings they are percentage-wise? Are most of them single file-type level crossings?

**Chair:** Perhaps you could provide us with a written answer to that, please. I think that would be helpful.

**Ian Prosser:** We can do that and say where it is at the moment.

**Chair:** Thank you very much. I thank all of you very much for coming to answer our questions.

### **Examination of Witnesses**

**Witnesses:** **Robin Gisby**, Managing Director, Network Operations, Network Rail, and **Phil Verster**, Route Managing Director, London North Eastern, Network Rail, gave evidence.

**Q157 Chair:** Good afternoon, and welcome to the Transport Select Committee. Can we please have your names and your positions in the organisation?

**Robin Gisby:** My name is Robin Gisby, managing director of network operations in Network Rail.

**Phil Verster:** My name is Phil Verster, managing director of one of the routes for LNE in the east midlands.

**Q158 Chair:** Mr Gisby, could you tell us what your role was in the two fatalities that took place in December 2005 at Elsenham, where Olivia Bazlinton and Charlie Thompson lost their lives?

**Robin Gisby:** My role was director of operations and customer services in the functional structure that Network Rail had at the time. By that I mean we had several national organisations: I was responsible for day-to-day train operations; somebody else in the company was responsible for maintenance, engineering and asset management—we had different functions. We had perhaps a bit of a silo structure then. We have changed that in the last two or three years. The organisation we moved to a couple of years ago has clarified accountabilities across the business, particularly for level crossings and a lot of other activities—the creation of network operations—and now everything is much clearer, and it all comes straight through to me.

**Q159 Chair:** Were you responsible for conducting the risk assessment at the time?

**Robin Gisby:** People within the organisation I had at that time were responsible for filling in some of the data—there was conversation earlier about data gathering. The models being used and the algorithms and their application lay elsewhere within the business. As I said earlier, a lot of that has been tidied up and sorted out, and it is much clearer now than it was then.

**Q160 Chair:** The accident report stated that Olivia Bazlinton and Charlie Thompson were trespassers, though in fact they had purchased tickets to get on the train. Could you give me any explanation why such a phrase should have been used in the report?

**Robin Gisby:** No, I think it was quite inadequate and inappropriate. This morning, we were with Tina Hughes, and she raised exactly the same issue. That choice of words was completely wrong.

**Q161 Chair:** Two critical documents were not revealed until a whistleblower drew attention to them. Can you tell us how that situation arose?

**Robin Gisby:** I cannot easily. I do not know why those things were not produced. They certainly should have been; they were somewhere within the organisation, and we have investigated why they did not come out until much later in the day, as have other organisations. I think that was covered by the judge when Network Rail was sentenced. I think it was also covered in the ORR investigation.

I believe we are now in a much different place, due largely—I pay tribute to them—to the actions of the families at the time. Elsenham was a fundamental watershed for this business. We were in a much worse place several years ago in how we managed level crossings, and we are better now. We still have a long way to go, moving from a reactive to a proactive place. As to where I believe we are now, when we have an incident at a level crossing, we are able to find out true facts, good data and analysis that stand up to subsequent investigation much more quickly. Tragically, we had an incident just this morning on Mr Verster's route. Within a couple of hours now, we are able to get all the facts and pass them over to the relevant investigating authorities, apart from ourselves, and those data stand up much more than the appalling place we were in back in 2005.

**Q162 Chair:** Network Rail's lawyers at the time argued that the risk assessments should not be given to the inquest. Why did that happen then? Is that the position now, should there be any further accidents?

**Robin Gisby:** I cannot be sure about the view of our legal team there. As I said, we are in a completely different place. In the last year, we have published the risk assessments of all our level crossings, as part of our move to much greater transparency. The current risk assessments of all the level crossings are out there and are available on our website.

That is particularly important because risk assessments start with data, algorithms and models. We heard earlier about the all level crossing risk assessment tool used across the industry. That is very necessary, but I do not think it is sufficient. The more you get a narrative around the cold numbers, the more helpful it is. As to where we have moved in the last couple of years, we have been talking

to train drivers who can tell us an awful lot about the usage of level crossings, which would not necessarily come up in some of the census survey work we do; and we are also talking much more to the local community. We get a much richer view of the current usage and likely risk profile of a level crossing than we would just from the modelling census data.

**Q163 Chair:** Would you agree that it was negligent management at the time of Elsenham?

**Robin Gisby:** Yes.

**Q164 Chair:** You said you thought this was a watershed.

**Robin Gisby:** It was a watershed. The state our company was in over the risk assessment, and, to be honest, the subsequent behaviour of the company towards the families involved, were quite appalling. I think we have changed from that. I pay tribute to Tina Hughes and others who have helped get us there. She has been magnificent in helping us in the last two or three years. I believe that the company is in a much better place, but there is still a long way to go. Crossing the railway is dangerous, whether it is on foot or by vehicle. We are doing all we can to minimise those risks and make it as safe as possible.

**Q165 Chair:** The Committee has heard from a number of people who have been bereaved because of tragic accidents at level crossings. They all seem to have the same experience, feeling that Network Rail and others were disinterested in their situation, did not offer any help, and treated them in a cold way at the time of their bereavement when they were at their most vulnerable. Has that situation changed?

**Robin Gisby:** I would hope it has. One can learn from the excellent work, for example, of the British Transport Police liaison officers. It is different in each circumstance. How organisations such as ours would respond depends on the circumstance of the incident in which, tragically, somebody was killed and on the personal wishes of the bereaved themselves, but I would like to think that in such very difficult circumstances we would not behave as we clearly did after the Elsenham incident and others that are covered in other witnesses' evidence.

**Q166 Chair:** We have heard this afternoon about current concerns about risk assessments at level crossings. How do you react to that? What are you doing to make sure that your risk assessments are right? Why do you think there might be failings?

**Robin Gisby:** I think there was a comment in the previous evidence session about competence in risk assessment. We have improved that a lot in the last couple of years. The big step forward has been the appointment of 100 level crossing managers and the leadership of Martin Gallagher in the middle as head of level crossings. The training programmes we have put in, the new ways of gathering the data, the independent assessment of that and getting more managers out alongside the level crossing managers, are all helping to make sure that we are gathering the right data. We are not just relying on the cold numbers but asking broader questions and seeking broader advice on level crossing usage. That is giving us a better risk profile than would have been the case in the past.

**Q167 Chair:** Do you distinguish between misuse and unintended error? Sometimes we hear casual comments about the misuse of level crossings when in fact there has been human error with a very tragic end. Can you accept that to use the word "misuse" is not appropriate in those cases?

**Robin Gisby:** Yes. I think in some of the other witness statements there were some very good comments about human factors. Some of the language used—"misjudgment", "errors of judgment", "misuse" and "abuse"—needs tidying up. Fundamentally, we are trying to make crossing the railway as safe as possible, given that it is a dangerous environment. We could be rather clearer in our language between occasions of abuse and trespass, which do happen but which

are not nearly as significant as errors of judgment and misuse. On the latter, we can do a lot more through education—there is a repeat of our advertisement about the risks of level crossings coming out again today—and through how we engineer level crossings to minimise the chance of anybody being injured or killed.

**Q168 Chair:** Is there full co-operation between yourselves—the railways holder—and the highways authorities, or is that an area of difficulty?

**Robin Gisby:** It is one where we work closely with them. We have set up road-rail partnerships in a number of parts of the country, where we can work jointly and make sure that the money they have and the money we have can be put to best effect to improve the situation at each level crossing. There is a very good source of information for us in road census data, both motor vehicle and pedestrian, to understand how the risk profile is changing.

**Q169 Chair:** Is there a need for any more action to get more co-operation from highways authorities, or is that something that is evolving?

**Robin Gisby:** I think that is down to the relationships we have at most senior and junior levels with the Highways Agency and other authorities. My sense is that it is working pretty well, and, if it was not, we know each other well enough to make improvements.

**Q170 Chair:** When will you be building a road bridge at Ufton?

**Robin Gisby:** That is coming quite soon, as a result of the accident some time ago. I am sure we can confirm the date in a written response.

**Q171 Chair:** You said in your written submission that developers should pay for level crossing upgrade works. How would that happen?

**Robin Gisby:** We see that happening already in some industrial estates and housing developments. Some of that is linked to planning applications and so on in the normal course of events. That situation might arise if there was, say, a very significant housing development on the other side of a railway track that was going to generate a lot more traffic. We might have a discussion with the developer about the cost of putting a bridge over the railway and making it safe for a considerable increase in traffic. You can see that happening already around the network. Perhaps we could give you some examples in a further written submission.

**Q172 Chair:** How many level crossings are not compliant with the standards of various authorities: risk assessments, design standards and recommendations by RAIB or the ORR?

**Robin Gisby:** As to the exact number, it depends. There are not that many from the risk assessments we have done so far. Of the 6,500 overall, I have 282 at the moment that are classified as high risk with a possible consequence to the train, the pedestrian or the road vehicle user. We are upgrading our risk assessments all the time, so that we are on top of this as much as we can be, and then making sure that in our responses to those risk assessments we are minimising the risk, and hopefully eliminating the crossing altogether. We are moving as quickly as we can in that area.

We could do with some help in this area. As we said in our submission, the closure process is sometimes a little cumbersome. We have managed to close about 700 in the five-year control period that finishes in March of next year. As for the money we have for the next control period, in the initial determination of the Office of Rail Regulation we were offered something like £69 million. We went back and asked for more, and they have given us another £30 million-plus, so we are well over the £100 million mark. As we spend that money on a mix of reducing risk at some crossings and closures, I would seek to close about another 500, which is the number everybody is discussing.

To give an example of how we might do that, we have more than 600 crossings of the railway at the moment, whether footpath, user-worked or road crossings, where there is an alternative crossing within 200 metres. Those are particular ones where we would seek to close one and make greater use of the other, but we need to balance that with the overall view of risk. We must prioritise on a risk basis across the network. I would not like to come back here in two or three years' time to say that I had managed to close 300 or 400 crossings just to achieve some numbers if I had not done all I could to continue to reduce risk.

**Q173 Chair:** How many crossings rely on whistle boards?

**Robin Gisby:** I do not have that exact number to hand. They are usually in rural areas—footpath crossings and so on. There is a mix of things we can do at whistle boards. There was some discussion two or three years ago about the use of whistle boards at night. We have had some issues—you talked earlier about the Mexico level crossing in Cornwall. We have an issue elsewhere as to whether or not the whistle board can be heard properly and whether it gives enough sighting time. As soon as you move the whistle board further away from the level crossing to improve the time for pedestrians to cross, you perhaps reduce the time when it is audible. Some technology that we are introducing, which I believe one of your previous witnesses mentioned, is to sound the warning at the crossing by equipment that we put at the crossing itself, rather than it coming from the train. That gives you a much more audible and local sound, as well as the lights and so on that we use at other level crossings, so that crossing users can hear it immediately, rather than planning on whistle boards that might be some distance down the track.

**Q174 Chair:** Are you satisfied with the number and expertise of level crossing managers?

**Robin Gisby:** I am in a much better place, having 100-plus of them, getting them out there and training them. I have been out with them myself. The work they are doing is really important. Having them dedicated and specialist is a huge step forward from where we were two or three years ago. A level crossing is quite a complex thing, not just in the movement of people but in their technology. I have 14 or 15 different types of level crossing, some dating back to Victorian times. I have a lot of footpath crossings and a lot where I am dependent on a farmer or other user in how they cross it. That will vary during the year—if it is harvest time—and in some of the equipment they use. I am in a much better place now, the company is in a much better place, and I think users of the railway are in a much better place, because of the level crossing managers and their increasing expertise. It is a very specialist role. To go back to 2005, it was a role split among other things people did. That was inadequate and the focus now is much better.

**Q175 Mr Sanders:** Do you have a very long-term plan to eradicate all level crossings, or will that always be a pipe dream?

**Robin Gisby:** If we built the railway from scratch and started again, we would not have any. Our priority must be to eliminate the highest risk locations, not just the easy ones to close. You start looking at density of traffic and high-speed routes; that is where we have prioritised, and we will continue to do that. Where we do upgrades of significant railway lines, as we are doing on the Great Western main line and elsewhere round the country, we always ask ourselves the question—much more than we would have done five years ago—“What can we do to eliminate this level crossing, as opposed to upgrading it?” That might involve an underpass, a bridge over the top or diverting traffic to somewhere else. We are trying to do that as much as we can now.

**Q176 Mr Sanders:** But do you have an actual timetabled plan where you would categorise level crossings by priority and say, “These are the acute ones. We must eliminate those by 2020, and this lot by 2025”? Do you have such a thing on paper?

**Robin Gisby:** We have that as a rolling plan. Each of my 10 route managing directors—Mr Verster is one of them—has a plan of the ones they want to do all the time. The central management team stay on top of that, both myself and David Higgins. We are keeping on top of this all the time. It varies a little: if you look two or three years out, it varies as rail and road movements change, both vehicles and pedestrians; it also varies a little around planning and closure issues—getting permission to put in a footbridge and so on. It will vary now because, as of last Thursday, we have had greater certainty of the extra money—the extra £30 million-plus from ORR.

To go back five years, the original funding we had in the previous control period was £40 million. We increased that. Network Rail put in a further £90 million of efficiency money that we had generated. We have a slightly curious financial structure, as you know: any profit we make is reinvested back into the railway. We took the £40 million that was in our original funding in the last control period and added £90 million of profit we had generated in the five years to produce a level crossing fund of £135 million. We have got on and spent that. We have been spending a lot of money there. We are now taking that further forward into the next five years. The £69 million that was in the original funding has been topped up, so we have another £100 million to plan over the next five years. Like a lot of railway assets, this is a relatively long-term gain, but, if you have closed 700 in the last two or three years and have 500 to go, it is good progress.

**Q177 Mr Sanders:** Would you like to predict a date by which there will be no level crossings left on the network?

**Robin Gisby:** No. There will always be a significant number, just because of the way the railway was built. If you take the 6,500 we have at the moment and you look at the average cost of closure, which is in some of your submissions, and the average cost of building a bridge, and multiply those two numbers, I do not think that between us we will ever find the money to close all of them. What we will continue to do is minimise the risk. We will eliminate wherever we can with bridges and closure, and elsewhere try to reduce the risk to make it as safe as possible.

**Q178 Graham Stringer:** You said in answer to some of the Chair's questions at the very beginning that the way families of victims were being treated was not acceptable and that it had improved. Will you still be taking PR people with you to inquests?

**Robin Gisby:** I am not sure about that. It is a good point I had not considered previously.

**Q179 Graham Stringer:** You can see, can't you, that if you are tooled up with PR people, barristers and solicitors, whatever you said to the families of victims, who may not have very much money themselves, it is very difficult for them to feel that you are being fair with them?

**Robin Gisby:** That is a good point.

**Q180 Graham Stringer:** Can you expand any further?

**Robin Gisby:** I would go back, if I may, to a previous answer. It would depend on the circumstances at the time. What was the incident, what was Network Rail's level of involvement and culpability in that, and what would be the wishes of the family, to the extent they had made them known to us? I would go back to where we were five or six years ago, when some of our behaviours were unacceptable and wrong. I hope that, should tragedy happen again, we would behave differently.

**Chair:** Thank you very much, Mr Gisby.

### Examination of Witnesses



*Witnesses:* **Stephen Hammond MP**, Parliamentary Under-Secretary of State, Department for Transport, **Robin Groth**, Deputy Director, Rail Technical, International and Safety, Department for Transport, and **Chris Angell**, Senior Policy Adviser, Railway Safety, Department for Transport, gave evidence.

**Q181 Chair:** Good afternoon, Minister. I apologise for keeping you waiting. I know you have another appointment, so we will ask our questions as quickly as we can. Can you introduce your team?

*Stephen Hammond:* Can I introduce Mr Groth, a senior official in the Department for Transport, and Mr Angell, who has been delayed for a moment but is now joining us.

**Q182 Chair:** Do you want to make a statement?

*Stephen Hammond:* If I may, I would like to make a very brief opening statement. Thank you.

I welcome the opportunity to consider the issue of level crossings afresh and explore how we can further improve safety performance. It is important to recognise that the UK has the best level crossing safety record in Europe and, by extension, the world. If we exclude suicides and suspected suicides, there were nine fatalities on the network between 2012 and 2013. Of course, any death is deeply tragic, but all of these deaths happened as a direct result of misuse, either accidental or wilful, by the crossing users themselves; indeed, the latest figures indicate that 90% of the risk factors at level crossings arise from public behaviour. For instance, the most recent example—a near miss at Waterbeach in September—involved a cyclist who chose to ignore the crossing barrier, the warning lights and the warning sounds and decided to cross while the train was approaching. I am very pleased to say that she avoided death or severe injury, but it was only by the narrowest of margins. I am sure we all hope that she will never do that again, but it is that type of misuse which we must seek to prevent in the first place. Such behaviour not only puts the member of the public who does it at risk but has severe consequences potentially for both the operator and the train passengers. While rail industry operational errors or other process issues do occur, we should recognise that all the evidence is that they account for only a tiny percentage of level crossing incidents.

Aside from closure, obviously the best way to reduce risk at level crossings is to ensure that they are used safely and that any instructions displayed are followed. I think we can praise Network Rail for the work they have done in raising public awareness of the inherent risks of misuse through the Don't Run the Risk campaign and other initiatives. I know that they are still very keen to reduce that number further, and the Don't Run the Risk campaign has contributed to meeting the target of reducing level crossing risk by some 25% by the end of March 2014, a year earlier than the targets set for the control period. Network Rail should be congratulated on that.

The Government are supporting the work by providing £109 million, ring-fenced, to deliver maximum reduction in risks at level crossings, until 2019. The only certain way of reducing risk is to close crossings altogether. As I am sure the Committee and others recognise, that is not always possible, but Network Rail has an ongoing programme of closures. It is targeting crossings where funding will provide the most substantial safety benefits.

Overall, safety performance across the network has improved, and continues to improve, but no one is complacent. It is only through concerted effort and partnership working that the next steps in change can be achieved. We look forward to taking your questions.

**Q183 Chair:** Don't you feel that the use of the term "misuse" so much really distracts from the gravity of the tragedy of bereaved people associated with deaths at level crossings? This Committee has heard very recently from a number of bereaved people who are distraught and devastated, even some time afterwards, by the death of their loved ones at level crossings, and in none of the instances

that the Committee has heard about was there anything that could be called misuse. They were tragic accidents. There may have been liability in some cases, where Network Rail knew there was a risk but failed to do anything about it, but it was not about misuse by the people who died. Don't you feel that the deployment of that term is detracting from the gravity of the situation?

**Stephen Hammond:** I do not think anyone is underestimating the gravity of the situation, and I certainly did not underestimate it in my remarks. What I sought to do was to explain how many of the deaths had arisen, whether it was misuse or failing accidentally to see the barrier in place or the warning signs. Clearly, there are occasions when Network Rail, or other railway causes, may be at fault, but we have to recognise that we need a greater programme of education so that people clearly understand the risks they run. No one is underestimating the level of personal tragedy that anyone feels from a bereavement, but at the same time I have to recognise that we need to educate the public that, first, incidents are relatively infrequent and therefore perhaps some people do not take them as seriously as they should, but misusing or failing properly to acknowledge what a crossing is trying to tell you, i.e. stop, is likely to have very unfortunate and tragic consequences.

**Q184 Chair:** What do you think the role of the Department should be in reducing the level of tragic accidents? You talk about misuse, but we look at cases where risk assessments were not done properly and recommendations to make crossings safer were not carried out. There is a whole range of things behind the tragedies that the Committee has heard about in the last few weeks. What can the Department be doing to mitigate the risk?

**Stephen Hammond:** The responsibility for managing the risks at level crossings lies with the duty holder. What can the Department do? We liaise very closely with all the people who are looking to make sure the railway network is as safe as possible: the Office of Rail Regulation monitors the proper control of risk by the duty holders; the Rail Accident Investigation Branch carries out inquiries into the most severe and serious accidents; and the ORR is entitled to investigate accidents alongside the Railway Accident Investigation Branch as well. Our role is to ensure that there is the appropriate legislative framework in place, and to provide funding and ensure that Network Rail uses that ring-fenced money, which is £109 million. It is our role to ensure that there is reaction to and implementation of recommendations from the Rail Accident Investigation Branch and the ORR; and that they are put in place at the most appropriate places and at a level commensurate with the risk.

**Q185 Chair:** How many of those recommendations have actually been implemented?

**Stephen Hammond:** In terms of?

**Chair:** In terms of improving safety at level crossings—recommendations from the ORR, the Rail Accident Investigation Branch, or any of the bodies you have named. Is the Department actually monitoring how many recommendations are implemented?

**Chris Angell:** Each individual recommendation by the Rail Accident Investigation Branch is monitored by the Office of Rail Regulation, because the recommendations are addressed to the ORR, among other public bodies. They are reported against publicly, so the ORR reports back publicly on the implementation or otherwise, as their duty is to consider, not necessarily directly to implement, the recommendations of the Rail Accident Investigation Branch. There is a public reporting mechanism.

**Q186 Chair:** That is correct, but doesn't the Department feel it should have a role in knowing what is going on?

**Stephen Hammond:** The Department has a role. Departmental officials have meetings with the Rail Accident Investigation Branch. Its reports identify the parties that are best placed to carry out

their recommendations; they are addressed to the people who have the duty. It is the role of the Department to ensure that those duties are being carried out.

**Q187 Chair:** We have heard very disturbing information about the inadequacy of many risk assessments in relation to level crossings. Is that something the Department is aware of?

**Stephen Hammond:** I am aware that in a number of cases there are ongoing investigations into the level of concern about risk and safety. In the last five years, Network Rail have closed 700 of the most dangerous crossings. The money that is ring-fenced for improvements by Network Rail is being used on the ones with the highest risk assessment, to reduce the level of risk.

**Q188 Chair:** But we were told earlier today that the risk assessments themselves were often inadequate. Is that something that you are aware of or the Department is aware of?

**Robin Groth:** The important thing from the Department's point of view is to support and encourage the regulator, because it is the regulator's job to—

**Q189 Chair:** I am asking you a specific question. Are you as a Department aware that there is concern about the inadequacy of risk assessments on level crossings?

**Stephen Hammond:** We are aware that the ORR undertakes a review of these assessments, so we are constantly looking at what the ORR feeds back.

**Q190 Chair:** The RAIB told us very clearly in written evidence, reinforced by what they said to us this afternoon, that they were concerned about inadequacy of risk assessment in relation to level crossings. I am trying to ascertain whether the Department and you as the Minister are aware that that problem exists.

**Stephen Hammond:** As I said, I am aware that the ORR and the RAIB are continually looking at that. I will go back and ensure that we are fully aware, if there is any particular aspect of risk assessment that the RAIB are unhappy with.

**Q191 Chair:** Are there any targets set for the rate of reduction of accidents and deaths on level crossings?

**Stephen Hammond:** There is a target set for the improvement of safety at level crossings. Network Rail has been set a target in CP4 to produce a 25% reduction, and it achieved that a year earlier than it was targeted with doing.

**Q192 Chair:** And for the next control period?

**Stephen Hammond:** I believe the target is that it reduces level crossing risk by 50% by the end of control period 5.

**Q193 Chair:** Minister, your submission did not address issues to do with highways and roads in relation to safety at level crossings. Was there a reason for that? How do you see road safety relating to level crossing safety?

**Stephen Hammond:** There are clearly risks at level crossings. The principal thing we were trying to do was to highlight the most important risks associated with level crossings, and that is human behaviour. The key thing to improve the safety record at level crossings will be to ensure that people understand the risk they are undertaking if they do not follow the correct guidelines.

**Q194 Chair:** Do you think that is the main problem?

**Stephen Hammond:** There are a number of safety problems, but the main safety problem at the moment is that, of the 10 fatalities in the most recently recorded period, which are none the less tragic, at least eight can have been attributed to, if not misuse, then misunderstanding of how people should react at level crossings—ignoring or wilfully going round the barrier, and ignoring the warning lights. Of course, there are things we can do in terms of the highways, but the key is to concentrate on how we can improve safety, and that is to use the money we are giving to Network Rail to close crossings where we can and make crossings even safer. Some of the work Network Rail is doing now, in terms of spoken word announcements and making sure there are full barrier closures, is key. Equally key is ensuring that we all support the Don't Run the Risk campaign that Network Rail are running.

**Q195 Chair:** Could there be an issue to do with clarity of signage, which is something your Department should take an interest in?

**Stephen Hammond:** We are taking an interest in it. Part of what Network Rail has been spending its money on is indeed to do with improving the clarity of signage.

**Q196 Graham Stringer:** How much time do you spend a week at your desk dealing with level crossings?

**Stephen Hammond:** I have taken new responsibilities; we changed responsibilities within the Department and I became Minister for this particular brief on 4 October, or the Monday thereafter. So far, I have spent—in the last week prior to today when I have been trying to understand the issue, and on other days—something like four or five hours.

**Q197 Graham Stringer:** That is essentially preparing for this Committee.

**Stephen Hammond:** Yes, but obviously that will give me a good briefing so that when I meet Network Rail and others on a regular basis I know the issues directly.

**Q198 Graham Stringer:** It is slightly unfair to ask how much time you have spent in the past. How much time do you intend to spend in the future? How much time would you expect to spend looking at the problems of level crossings, say between now and the general election?

**Stephen Hammond:** It is quite difficult to give any timetable, but one of my priorities in this new brief, as within my maritime brief, is to ensure we have the safest rail system we can possibly have. There will always be some errors, but I want to continue to see improvement in the overall safety record of the railway, and some of that will be to do with level crossings. We are devoting £109 million in the allocation to the improvement of safety. I will be seeking an assurance from my officials that the money is being spent on the highest risk crossings, and, if we are looking for a reduction in risk, I will also want to see that that is shown in a reduction in fatalities.

**Q199 Graham Stringer:** We have just had Network Rail before us. They accepted that their treatment of the families of victims on level crossings has not always been appropriate or as good as it should be. Do you think it is sensible that Network Rail turn up to inquests with PR people as well as barristers and solicitors, and that the families of victims may have no representation?

**Stephen Hammond:** In terms of legal support for both civil and criminal matters, there is a possibility—it will depend on individual circumstances, as you will be aware—that families might choose to look at support from legal aid. There are other types of support. In particular, the British Transport Police has a dedicated victims and witness support group that is available to access. In what Network Rail choose to do, and how they choose those policies, I hope they would wish to show every sympathy to the bereaved families of victims. I am sure that is what they try to do, but exactly who they choose to turn up with is a matter for them as a private company.

**Q200 Graham Stringer:** It is a matter for them, but you can have an opinion on whether it is appropriate for a large company like Network Rail, which is effectively in the public sector, whatever the technicalities of its ownership, to turn up with PR people. It does not seem sensitive or fair to me. Does it to you?

**Stephen Hammond:** It is very difficult to judge circumstance to circumstance. The key thing Network Rail should be trying to do is to deal with each case with sensitivity.

**Q201 Karl McCartney:** You mentioned that £109 million had been given through the ORR to Network Rail to ameliorate safety issues at level crossings. On a micro-scale, what involvement is there within your Department, or with you personally, with any particular level crossing? Do you just have an overall view of the strategy and leave it to Network Rail per se? That is my understanding so far of the particular instances in my constituency of Lincoln. Phil Verster, whom we did not get to question, was like a breath of fresh air when he came into his role, but I do not think the Department get involved in any micro-issues, do you?

**Stephen Hammond:** Rather like you, Mr McCartney, I get involved in micro-issues in my constituency. I have a very controversial level crossing in my constituency, so at that level, yes; at my ministerial level, no. The Department works with Network Rail but it is Network Rail's responsibility in almost all cases, as the duty holder. Where there are other duty holders, it is their responsibility to ensure that the appropriate and highest levels of safety are undertaken.

**Q202 Karl McCartney:** With this arm's length relationship that the Department may have with Network Rail, they went back to the ORR to say they wanted more money than they were given originally, as we found out earlier today. Because of particular instances around the country, would you say, "We should probably give Network Rail more money to ameliorate more problems or safety aspects at various level crossings," or do you see the answer as closing as many level crossings as possible, which for some of us is just not an option?

**Stephen Hammond:** As I indicated earlier, ultimately the safest way to ensure there is no problem would be to close as many level crossings as possible, which is why that is part of what the money is being spent on and why 700 have been closed in the last five years. My understanding is that the ORR's initial view was that around £67 million was appropriate for England and Wales and £13 million for Scotland. The sum was increased from that level to the £109 million, which is now split between England and Wales and Scotland.

**Q203 Karl McCartney:** Those are interesting figures, particularly for Scotland, which may be dependent on how many railways there are across the geographical landscape. I think we will have a look at that later.

**Stephen Hammond:** It is perhaps a reflection of the number of level crossings.

**Q204 Chair:** In 2001, the Great Heck rail crash near Selby was caused when a car left the motorway and ended up on the East Coast main line. Has the Department made any assessments of problems where difficulties to do with roads could result in similar incidents? Are you looking at that area—to make improvements on roads to prevent accidents on level crossings?

**Robin Groth:** My understanding of Great Heck is that it was an incursion not at a level crossing but at a bridge. That resulted in a lot of work done to overbridges and to protect against the incursion of road vehicles on to the railway.

**Q205 Chair:** Is that being done now? Is there a budget to look at that or similar things?

**Robin Groth:** I understand that particular piece of work was done. That was about road vehicle incursions, not at level crossings. I have put them in slightly different boxes, unless I have misunderstood your question.

**Q206 Chair:** Is any work being done in the Department to look at road improvements or other changes that are required, which would prevent accidents on a rail line or at a level crossing?

**Robin Groth:** There is still one piece of work about co-ordinating local authorities in high-risk areas. There is a responsibility on the Department to co-ordinate with local authorities to look at either high-risk or known areas of incursion from the road on to the railway.

**Q207 Chair:** Minister, finally, could you tell us the position on the Law Commission's proposals in relation to a possible Bill? What is happening?

**Stephen Hammond:** The Department recognised that much of the legislation around level crossings was, at best, antiquated, so in 2008, in conjunction with the ORR, we requested a report from the Law Commission. The Law Commission has done what can only be described as a huge amount of work, for which we are extremely grateful. The short answer is that the report and recommendations arrived in the Department on 25 September. We are going through them extremely carefully and considering each proposal. There is a huge amount of work to do on their proposals, but I hope we will be able to make an announcement about how we intend to proceed, at some stage in the new year.

**Q208 Martin Vickers:** I want to follow up the point about co-ordination between your Department, Network Rail and local authorities. Local authorities could play a significant part in their road networks by taking traffic away from particular crossings. Is the network of co-operation between all the agencies satisfactory, and does that happen?

**Robin Groth:** The really important thing was Network Rail's appointment of about 100 level crossing managers. Those people know all the crossings really well and can do the co-ordination on the ground. The most important thing is that, at local level, the people who understand the issues at particular level crossings can make those improvements at that level. Network Rail made a good step forward with that. They could work with local authorities and think about the specifics and detail that always make that one crossing a little safer. I think the best thing is to encourage what is happening on the ground and support the work Network Rail are doing there.

**Chair:** Minister and your team, thank you very much.