

Investigators' Handbook

Part 6 – External agency investigations



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Contents

Types of external agency investigations.....	2
Single point of contact.....	5
Documents/data.....	7
Interviews.....	10
Legal privilege.....	12
External agency investigations where Network Rail is not the lead organisation	12
Appendix A – Powers of ORR inspectors.....	13

Further details of the processes to be applied when an external agency requests information/data from Network Rail or requests to interview Network Rail staff as part of its own investigation are contained in [NR/L3/INV/0202](#).

Types of external agency investigations

The following external agencies may hold investigations into events:

The Rail Accident Investigation Branch (RAIB)

The RAIB investigate the more serious rail accidents or incidents.

The aim of the RAIB investigation is not to establish blame or liability or to carry out prosecutions – its sole purpose is to identify the immediate and underlying/root causes with a view to preventing future accidents and improving railway safety.

The RAIB will share physical and documentary evidence with the police and ORR. However, disclosure of witness statements obtained by the RAIB, e.g. to the police and/or ORR, may only take place if ordered by a judge.

The RAIB might make recommendations for alterations or improvements. The ORR is responsible for implementing any recommendations made by the RAIB.

The powers of the RAIB inspectors are set out in the Railways and Transport Safety Act 2003 and Railways (Accident Investigation) Regulations 2006.

<p>The Office of the Rail Regulator (ORR)</p>	<p>The ORR will investigate and, where appropriate, prosecute breaches of health and safety law under the Health and Safety at Work, etc. Act 1974 (HSWA).</p> <p>However, the ORR cannot investigate or prosecute unlawful killing or any other criminal offences which fall outside the health and safety remit. Such offences will be investigated by the BTP.</p> <p>The statutory powers of ORR inspectors derive from HSWA. They can request documents and, where appropriate, enter offices and sites to secure documents. Details of their powers are included at Appendix A.</p> <div data-bbox="350 647 969 763"> <p>Since 2009, the HMRI no longer exists within ORR but the inspectors may still refer to themselves as HM Railway Inspectors.</p> </div>
<p>The British Transport Police (BTP)</p>	<p>The BTP:</p> <ul style="list-style-type: none"> • have powers of investigation which are the same as other police forces; • do not take a decision as to whether to prosecute or not; this decision is made by the Crown Prosecution Service (CPS), based on the information passed to them by BTP. <p>In the context of an accident on the railway, specific offences under investigation might range from "endangering safety" to the most serious (but rare) which is manslaughter based on "gross negligence".</p>

Coroners

A coroner's powers and duties are set down in the Coroners Act 1988 and the Coroners Rules 1984 (as amended in 2005).

Coroners are appointed to investigate any sudden or unexplained death.

The Coroner might hold an inquest, which is an investigation into the circumstances leading up to the death. This aims to establish the identity of the deceased and when, where and how death occurred. It is not the job of the coroner to blame anyone for the death.

Following a death on the railway a Coroner, usually through the BTP, might require a witness to the circumstances to provide a statement and to give evidence at the inquest.

Such investigations will often be in addition to any formal or local investigation held by Network Rail or other industry members (e.g. train operators).

Single point of contact

To avoid confusion and duplication of effort, DCPs may nominate a single point of contact (SPOC) within the function/area/route/delivery unit to act as liaison with an external agency during its own investigation.

The SPOC may be:

- a) the DCP;
- b) the lead investigator of the Network Rail led investigation;
- c) any other Network Rail manager within the function/route/area/delivery unit.

The SPOC may be the DCP or the lead investigator of the Network Rail led investigation.

SPOC role

The role of the SPOC is to coordinate requests by an external agency:

- a) to interview Network Rail employees relevant to the external agency's investigation;
- b) to provide documents and/or data within the possession of Network Rail and which are relevant to the external agency's investigation.

The external agency may not know exactly what documents/data are available and it may be necessary to liaise with them to ascertain exactly what they are looking for in order to identify the documents/data that are available.

Keeping a record of requests

External agency requests for documents and/or data must be recorded. The SPOC must make sure that:

- a) a record is kept of:
 - the documents and/or data requested;
 - the documents and/or data actually supplied.
- b) a copy is kept of the documents and/or data supplied (whether original or not).

The record of requests should record the following information:

- the information/document/data requested;
- requested by (name);
- the agency concerned;
- date of request;
- request received by (name);
- the information/document/data supplied;
- date supplied;
- supplied by (name);
- any comments.

A Microsoft Excel spreadsheet offers a means of recording the above information.

An example of such a spreadsheet is available from the Senior Investigators.

The 'comments' should be used to record why the information/document/data was not supplied; it may also be used to record, for example:

- a) where clarification is sought from the external agency on a request;
- b) how the information/document/data was supplied;

Investigation file

The SPOC must arrange for the record of documents and/or data supplied to be retained with the investigation file.

See the 'Once the investigation is completed' section of Part 2B of the handbook for more information on investigation files.

Documents/data

When a request is received from an external agency for a document and/or data the SPOC must:

- identify the location and/or source of the document and/or data;
- identify the relevant line manager and/or employee with access to the document and/or data;
- request the line manager or employee to provide the document or data.

The documents and/or data that may be requested by an external agency will depend on the nature of the event being investigated and its circumstances.

The following table provides examples of what may be requested:

Type of document/data	Comments and sources of documents/data
Railway Group standards	These can be downloaded from the RSSB website RGS online . This contains: <ul style="list-style-type: none">withdrawn and current standards and guidance notes;ATOC Approved Codes of Practice (ACOP) and guidance notes;M & EE Codes of Practice.
Network Rail standards	These can be downloaded from the Network Rail standards page on <i>Connect</i> . This contains withdrawn and current standards and guidance notes.
Copies of applications for derogations or temporary non-compliances against standards	These will be available from the TRACKER database. This can be accessed from the Network Rail standards page on <i>Connect</i> . First-time users will need to apply for access.

Type of document/data	Comments and sources of documents/data
Technical (e.g. signalling) plans and drawings	<p>These may be obtained on request from Network Rail's National Records Group (NRG), York.</p> <p>If the number of the drawing/plan is known this should be advised to the NRG at the time of the request.</p> <div data-bbox="379 427 971 579"> <p>The NRG may seek approval to such requests from the Head of Legal Services, Litigation before providing the documents requested.</p> </div>
Maintenance and/or Inspection reports for a signal box, level crossing, structures, etc.	Maintenance inspection reports should be available from the relevant delivery unit. Asset inspection reports (e.g. PSICA reports for signal boxes) should be available from the relevant Route Asset Manager maintenance engineer.
ALCRM risk assessments for level crossings Signal assessment tool/Detailed assessments (for signals)	Available from the relevant Operations Risk Advisor.
Competency assessment records (e.g. COGNISCO and AiTL)	Available from the relevant line manager.
Personal records	<p>This may include, for example, an individual's employment application, pre-employment medicals, absence record/management, etc.).</p> <p>These should be available from the relevant HR manager.</p>
Job descriptions (JDs)	Network Rail JDs should be available from the Job Descriptions page on <i>Connect</i> .

Type of document/data	Comments and sources of documents/data
Organisation Charts	Network Rail's organisation charts should be available from the Organisation Charts page on <i>Connect</i> .
Minutes of meetings	Available from manager of the meeting.
Download of e-mails	Such requests should be passed to the Head of Legal Services, Litigation for assessment on the scope and relevance of the application. Once agreed by the Head of Legal Services, Litigation the request will be processed by Network Rail's Information Management function.
SMIS data	Contact the Safety Reporting Manager or relevant Safety Reporting Specialist.

Where an original document is required, arrangements must be made to:

- retain a complete copy of the original (it may be needed for operational purposes);
- provide two copies of the document to the SPOC.

Electronically held data

In the case of electronically held data, the SPOC should agree with the external agency on the most appropriate format or medium that the data should be provided.

Interviews

Any approach from an external agency requesting an interview should be channelled through the SPOC.

Note that the RAIB will not normally channel requests for interviews through the SPOC, but the employee or their line manager should inform the SPOC that the RAIB has arranged to interview the employee.

The SPOC must advise the line manager and local human resources manager as soon as practicable details of:

- a) the employee requested to attend for interview;
- b) the external agency requesting the interview;
- c) the external agency's proposed date(s) for the interview, once this information is known.

The employee's line manager must be given as much notice as possible to enable them to plan for the employee's absence.

Further information on interviews with external agencies is provided in Network Rail standard [NR/L2/INV/0202](#) and the [Witness Information Pack](#) available on *Connect*.

Employee unable to attend for interview

Where an employee is considered unable to be interviewed, or travel to be interviewed, because of injuries sustained in the event, ill-health, leave commitments or for other operational reasons the employee's line manager should advise the SPOC.

The SPOC must:

- a) advise the external agency that the employee is unable to be interviewed or travel to be interviewed, giving the reasons for this;
- b) advise the external agency when the witness is likely to be available for interview.

Industry led investigations

Where the industry led investigation of the event is to interview the same employee, arrangements will need to be made to avoid conflict with the external agency interviews.

Where it is the principal investigating agency, the RAIB has priority in interviewing witnesses. No arrangements should be made to interview employees before the RAIB has interviewed the employee or has given its agreement that the industry led investigation may interview the employee.

Interviews with ORR, HSE or BTP

Both the RAIB and the ORR have powers to compel an individual to co-operate with an interview.

Where the ORR, HSE or BTP request to interview an employee, the SPOC must liaise with the local human resources manager and the Head of Legal Services, Litigation to determine whether legal representation is desirable.

Where legal representation is considered to be desirable, the Head of Legal Services, Litigation will arrange this.

Even if it is said by the ORR/HSE/BTP that the interview is to be on an informal basis, an employee should be advised to consider seeking legal advice.

Where legal representation is arranged for an employee by the Head of Legal Services, Litigation the costs of such legal representation will be met by Network Rail.

If an employee is a member of a trade union, the trade union may decide, with the employee's agreement, to arrange legal representation for the employee. In such circumstances, the trade union will meet the costs of the legal representation it arranges.

The Head of Legal Services, Litigation will consider whether Network Rail also needs to be legally represented in relation to the particular accident/incident. If so, the Head of Legal Services, Litigation will decide whether an employee should be represented either by the same solicitors as Network Rail or by an alternative firm of solicitors to avoid any potential conflict of interest.

Legal privilege

If an employee is requested by the Head of Legal Services, Litigation to produce a document and/or data in relation to the event, the document/data may be protected by legal privilege.

Legal privilege can attach to a formal request for legal advice to Network Rail's lawyers and their response. This only applies when one of the parties to the correspondence is a qualified lawyer, which includes Network Rail's legal team. When a request for a legal opinion contains sensitive or potentially embarrassing material, it is therefore very useful to mark the document as 'legally privileged' so that the need to protect its privileged status is not overlooked.

If there are doubts about a document, e-mail or data an employee is preparing, advice should be sought from the Head of Legal Services, Litigation **before** creating or sending it.

If requested by the Head of Legal Services, Litigation to produce a document and/or data in relation to the event it should be marked 'Subject to legal privilege' and sent to the Head of Legal Services, Litigation only to review.

The document and/or data must not be circulated to others for comment.

External agency investigations where Network Rail is not the lead organisation

Where an external agency investigation is being undertaken into an event for which Network Rail **is not** the lead organisation, it may be necessary to appoint a SPOC to handle external agency requests for Network Rail to provide a document/data and to arrange interviews with Network Rail employees.

The relevant Network Rail DCP will determine whether a SPOC is needed.

Appendix A – Powers of ORR inspectors

An inspector may:

- a) Enter any premises which he has reason to believe it is necessary for him to enter for the purpose of the investigation.
- b) Make such examination and investigation as may in any circumstances be necessary for the purpose of the investigation.
- c) Direct that premises or any part of them, or anything therein, shall be left undisturbed for so long as is reasonably necessary for the purpose of any examination or investigation.
- d) Take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation.
- e) Take samples of any articles or substances found in any premises which he has the power to enter; and of the atmosphere in or in the vicinity of any such premises.
- f) In the case of any article or substance found in any premises which appears to him to have caused or to be likely to cause danger to health or safety, the inspector may cause it to be dismantled or subjected to any process or test.
- g) In the case of any article or substance in (f) above, the inspector may take possession of it and detain it for so long as is necessary for any of the following purposes:
 - to examine it and do to it anything which he has power to do;
 - to ensure that it is not tampered with before his examination of it is completed;
 - to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or proceedings relating to a notice under section 21 or 22 of HSWA.
- h) Require any person whom the inspector has reasonable cause to believe is able to give relevant information to answer such questions as the inspector requires and to sign a declaration of the truth of his answers.
- i) Require the production of, inspect, and take copies of any entry in:
 - any books or documents which are required to be kept;
 - any other books or documents which it is necessary for him to see.

The ORR may also, where appropriate, carry out raids on offices and sites to secure documents.

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