

By Email Only

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Our Ref: HXA/18136/00633

12 February 2018

Dear Mr Bettley-Cooke

Late submission / Formal complaint: The Network Rail (Suffolk Level Crossing Reduction) Order

Network Rail has received your late submission/formal complaint on the above Order emailed to the TWA Orders Unit at the Department for Transport on 23 January 2018.

You state that information obtained from Network Rail level crossing safety surveys is being used to justify level crossing closures, but in your view Network Rail is not the legal body responsible for judging the safety of level crossings for the general population and that that is a matter which is vested in the powers of the Office of Rail and Rail (ORR).

You also state that NR is responsible for maintaining level crossings to the ORR's safety standards but is not legally responsible for making or adjudicating such safety judgements, and any serious safety concern about a level crossing should have been investigated and adjudged by the ORR and its Railway Inspectorate (RI). Your complaint is that as there are no references to the ORR/RI having undertaken a single review or safety survey for the Suffolk and the other "Closure Orders" and that as Network Rail is not the legal entity empowered to adjudge the safety of level crossings for the public that all the Network Rail level crossing safety audits and submissions to the Level Crossing Reduction Orders are void and must be rejected in this public context.

First, Network Rail, in promoting the Suffolk (and the Cambridgeshire and Essex and Others) Level Crossing Reduction Orders and as is set out in its application and inquiry documents, is not relying on safety surveys for the selection of crossings, or on safety benefits as the sole driver of the level crossing closures contained in the Level Crossing Reduction Orders. Other benefits include the removal of constraints on the network to create a more efficient and reliable railway and to facilitate capacity and line speed increases and to reduce delays to trains, passengers and other highway users and reduction of operational and maintenance costs.

Network Rail is satisfied that it does have a legal responsibility under Health and Safety law to protect the public (whether passengers or not) from personal injury and other risks arising from the operation of the railway. The ORR is the Health and Safety regulator for the rail industry and of Network Rail in its operation of the railway. As such, the ORR in its strategy for health and

safety risks states that "railway businesses must manage level crossing risk effectively using their own safety management systems. ORR's role is to check that they are doing so." This sets out the regulatory role the ORR takes, and the position it expects Network Rail to take with regards to managing safety.

Network Rail as the infrastructure manager is responsible for the operation, maintenance and renewal of all level crossings on its network, and for level crossings working correctly and being safe to use. This obligation necessarily entails an assessment of safety risk at level crossings, in order to ascertain that the level crossings are safe or otherwise.

Network Rail also has a responsibility under its Network Licence from the ORR to manage safety on the network, which extends to the safety of those who come onto railway land. The Licence is a primary instrument through which ORR holds Network Rail to account, and Network Rail must comply with it in all respects. As level crossings are interfaces at which members of the public come onto railway land, there is a direct responsibility on Network Rail by the ORR to judge risk to members of the public using level crossings, in order to manage safety on the network.

Insofar as they are relevant to Network Rail's case for the closure of the level crossings proposed, Network Rail is content that there need be no reference to the ORR needing to undertake a review or safety survey as Network Rail has sufficient legal responsibility to both undertake and rely on the level crossing surveys.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Winckworth Sherwood LLP".

Winckworth Sherwood

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hparker@wslaw.co.uk

Dear Caroline,

Late submission / Formal complaint : Network Rail (Suffolk Level Crossing Reduction) Order.

Can I please submit the following, rather late in the day, to the Suffolk Inquiry?

I also wish to submit it as a formal complaint against Network Rail Infrastructure Ltd, The Office for Road and Rail, and The Department for Transport. (Three complaints). Can you please forward the complaint to the appropriate people at the three organisations listed? Many thanks.

Formal Complaint

That information obtained from level-crossing safety surveys undertaken by Network Rail Infrastructure Ltd is being used to justify level-crossing closures, when in fact Network Rail Infrastructure Ltd is *not* the legal body responsible for judging the safety of level-crossings, *excepting for the safety of its own workers*. The safety of level-crossings *for the general population* is clearly vested in the powers of The Office for Road and Rail, in their Railway Inspectorate, as is clearly stated in ORR publicity. This division of Health and Safety responsibility being authorised under a special Agency Agreement between the ORR and Health & Safety Executive.

Network Rail is a company responsible for maintaining level-crossings to the safety standards laid-down by the ORR, but it is not legally responsible for making or adjudicating such safety judgements, which are wholly an ORR matter. Therefore, any serious safety concern about a level-crossing should have been investigated and adjudged by the ORR/Railway Inspectorate and then passed-on for Network Rail to physically action. **It is not the role of Network Rail to judge the safety of level-crossings for the public. That is vested with The ORR alone.** Network Rail Infrastructure Ltd and the ORR are two entirely separate bodies, with their own responsibilities.

I therefore formally complain that as not a single reference is made to The Office for Road and Rail / Railway Inspectorate having undertaken a single review or safety survey for this (and all other) proposed Closure Orders, and that as Network Rail Infrastructure Ltd is not the legal entity empowered to adjudge level-crossing safety *for the public*, that ALL Network Rail's own level-crossing safety audits and submissions to all of the present Level Crossing Reduction Orders are void and must be rejected, *in this public context*.

Yours sincerely,

Guy Bettley-Cooke
The Cotswolds, Centre Drive, Cheveley, Newmarket CB8 8AN
23-1-2018

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