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24/04/2019

Your Ref: 34423/lh

Dear Sir,

RE: Regulation 28 Report - Steven John Key (Deceased)

Firstly, on behalf of all at Network Rail, I would like to take this opportunity to express my sincere condolences to the family of Mr Key.

I refer to your report dated 25 February 2019 made under paragraph 7, Schedule 5 of the Coroners and Justice Act 2009 and Regulations 28 and 29 of the Coroners (Investigations) Regulations 2013 in relation to the inquest into the very sad death of Steven John Key.

Network Rail takes its safety obligations seriously and has taken additional measures beyond those required by its standards, to install additional meshing and netting at this location to act as an increased deterrent to climbing. This is explained in the responses to your matters of concern.

Background

As noted in your report, the conclusion of the inquest was that Steven died on 14 September 2018 as a result of multiple injuries sustained after laying down on the railway track in front of an oncoming Virgin train travelling from Glasgow to London, approximately 1 mile south of Oxenholme Railway Station, where the train driver had no opportunity for avoiding him.

Response to matters of concern

In your report you raise some matters of concern, which I respond to below:

- 1. Network Rail has a duty under the Railway Safety (Miscellaneous Provisions) Regulations 1997 to prevent access to the railway line so far as is reasonably practicable.**

Network Rail Standard NR/L2/TRK/5100 on the Management of Fencing & Other Boundary Measures, has been created to ensure Network Rail complies with its legal

obligations regarding fencing and boundaries, including its obligation under Regulation 3 of the Railway Safety (Miscellaneous Provisions) Regulations 1997 to, so far as is reasonably practicable, prevent unauthorised access to rail infrastructure.

2. The fencing at the scene of Mr Key's death was a low wooden fence which was easy to climb over.

The boundary measure in place at the area in question is a wooden post and rail fence, with additional meshing and netting attached to the post and wire fence to provide an additional deterrent to climbing.

This fencing is subject to an annual inspection and risk assessment in accordance with NR/L2/TRK/5100. The Standard requires boundary measures to be assessed according to the likelihood and consequences of unauthorised access.

The likelihood of unauthorised access taking place is scored according to the risk of such access taking place. A likelihood score is given between 1 and 4, with a score of 1 for areas at low risk of unauthorised access, e.g. for non-grazing agricultural land or remote woodland, and a score of 4 for areas at very high risk of unauthorised access, e.g. where there has been recorded evidence of trespass within the last 12 months.

The consequence of unauthorised access is similarly scored between 1 and 4, where a score of 1 denotes low risk consequences i.e. for track categories 5 or 6, and a score of 4 denotes very high risk consequences, i.e. third/fourth rail electrified, or track category 1A areas.

The area where Mr Key accessed the railway was last assessed on 26th July 2018. It has a likelihood score of 3, because the adjacent land is used to graze livestock and therefore the likelihood of unauthorised access is deemed to be high, and a consequence score of 3 because this is a category 1 track. Track category is determined by a matrix of line speed, train frequency and tonnage. Using the matrix within NR/L2/TRK/5100, this score (3 for likelihood and 3 for consequence) ordinarily requires a Class II fence, but where, as in this case, the adjacent land is used for livestock grazing then stock fencing, i.e. a Class III fence, may be considered standard.

3. The British Transport Police report into Mr Key's death recommended replacing the fence and gate with a heightened palisade gate and fence.

Network Rail grades boundary measures in terms of barrier class, with a Class I barrier being the most stringent type of barrier, e.g. vertical bar (palisade), expanded metal, brick & mortar walls, concrete panels and decorative iron railings, then a Class II barrier being of a type to include welded mesh, chain link fencing or close boarded timber, and finally a Class III barrier being of a type to include post & wire (including stock netting where appropriate), post & rail (timber or equivalent), dry stone walls or natural features including ditches hedges and watercourses.

The boundary measures in this area are equivalent to a Class II barrier due to the installation of the additional meshing, which is in fact a higher standard of barrier than required by NR/L2/TRK5100. This is because, given the scoring for this boundary, and as the adjacent land is grazing land, Network Rail would be permitted to utilise a Class III stock fence barrier.

As this area has no prior evidence of trespass, a Class III boundary measure would be appropriate as per the Standard, and in effectively having a Class II equivalent barrier in place I consider that Network Rail has met its obligation to prevent unauthorised access to the railway in so far as reasonably practicable.

4. Trains regularly travel on this section of the track at speeds of 125mph.

While our records indicate that the line speed at this location is 110mph, I nevertheless accept that trains do travel at high speed along this section of the track.

5. Children and adults would, like Mr Key, be able to climb the wooden fence and be at risk of injury or death on the track from passing trains.

As indicated, there is no prior evidence of trespass in this area. Network Rail has a process in place for monitoring incidents of trespass and designating parts of its boundary as 'hotspots' for trespass, which in turn would trigger the implementation of an action plan to mitigate the trespass risk in a particular area. This area has not met any triggers for further assessment. Notwithstanding this, Network Rail takes its safety obligations seriously, and has taken additional measures beyond those required by its standards, to install additional meshing and netting at this location to act as an increased deterrent to climbing.

6. It would be reasonably practicable for Network Rail to fence the track at this point in the way suggested in the BTP Report.

While I understand the British Transport Police's recommendation to replace the fence and gate with a heightened palisade gate and fence, Network Rail is responsible for looking after some 20,000 miles of track and 30,000 bridges and it is not reasonably practicable to fence all of it with palisade. Our risk assessment process takes account of all local factors in determining the most appropriate boundary measure to implement, bearing in mind what is reasonably practicable.

Unfortunately, the risk of trespass cannot be entirely eliminated even with the best of fencing, but I consider that in this particular area the current boundary measures in place meet the reasonably practicable test. That said, Network Rail is constantly striving to improve safety on our network and that is why we create and adhere to standards such as NR/L2/TRK/5100. In the light of Mr Key's death, we have reviewed the risk of potential trespass in this area in general and have identified the bridge wing wall and the galvanised iron tubular hand rail / safety rail at track level as an area where we could further mitigate any risk of trespass. To this end, the Route Structures Senior Asset Engineer has been

requested to investigate whether affixing a mesh to the galvanised iron tubular hand rail / safety rail at the top of the bridge could make this area more secure.

I hope this response answers your concerns, but if I can be of further assistance, or if you would like further clarification, please do not hesitate to contact me.

Yours faithfully

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Route Managing Director
London North Western