

PARLIAMENTARY ADVISORY COUNCIL ON TRANSPORT SAFETY

**TRANSPORT SAFETY COMMISSION INQUIRY :
UK TRANSPORT SAFETY - WHO IS RESPONSIBLE?**

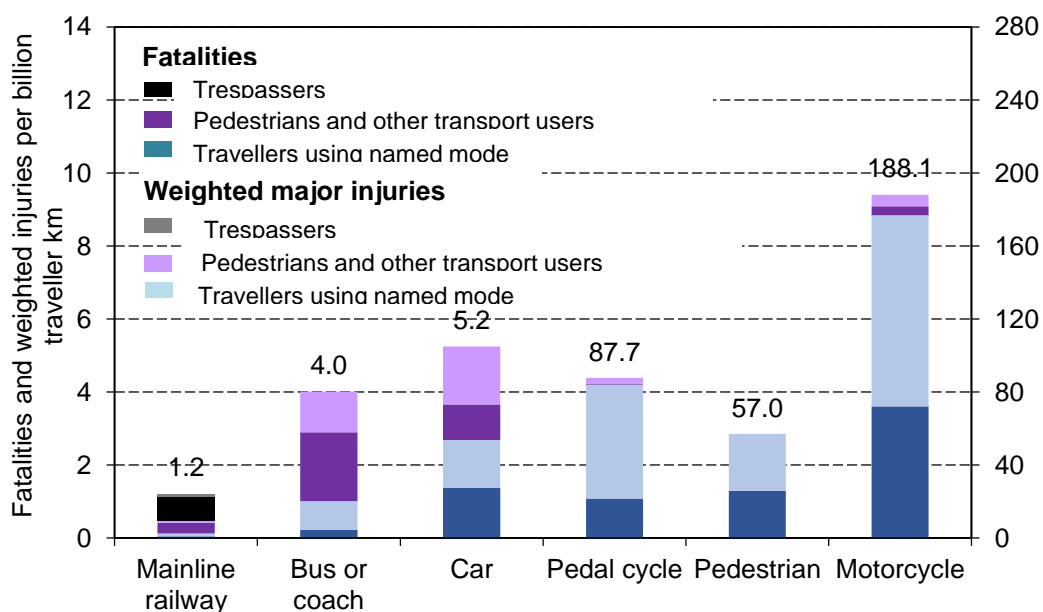
Note submitted by John Cartledge

[John Cartledge is a “public interest” representative on the Office of Rail Regulation’s Rail Industry Health and Safety Advisory Committee, and a member of PACTS Rail Safety Working Group. For 25 years until 2013, he was safety policy adviser to London TravelWatch and Passenger Focus. London TravelWatch is the statutory consumer consultative body covering all modes of passenger transport provided, procured or licensed by Transport for London, as well as the main line rail network in and around the capital. Passenger Focus has a similar role in respect of the main line rail network in England, Scotland and Wales, and of bus, coach and tram services in the rest of England.]

Introduction

This note is concerned with the regime for ensuring physical safety on the (main line) National Rail network. Broadly similar (and often identical) arrangements apply also to the metro, light rail, tram and heritage sectors of the rail industry, and any differences of detail are not relevant to its central arguments and conclusions.

It is important to note that, when asked, passengers expect a high level of safety when using public transport, because they are entrusting themselves to the safe-keeping of others. During a period of several years around the turn of the millennium, a sequence of high-profile multi-fatality accidents (most notably those at Southall, Ladbroke Grove, Hatfield and Potters Bar) and the ensuing public inquiries and trials brought the safety performance of the industry into the spotlight, and there was much discussion in the mass media and elsewhere of the compatibility of system safety with profit-oriented private ownership. But the issue has now been largely absent from the headlines for the past decade, and such evidence as is available suggests that most passengers take their physical safety during journeys largely for granted. So while it tops the list of requirements that they expect the industry to meet, it ranks lower than (say) punctuality, comfort or value for money amongst their priorities for improvement. That they are justified in taking this view is evidenced by the relative safety performance of the various inland transport modes.



Source : RSSB Annual Safety Performance Report 2013

The legal framework

The overarching framework governing safety on the railways is provided by the Health and Safety at Work etc Act 1974 (HASWA). This places a general duty on all employers to identify and control risks arising from the conduct of their business, and to reduce it to a level “as low as reasonably practicable” (ALARP). It also places a duty on employers and employees not to place avoidable risk on others who may be affected by their work, and thus extends their responsibilities both to the railways’ users and to third parties (such as neighbours and passers by). A body of case law and good practice guidance has been developed to assist rail operators in understanding and applying the concept of ALARP – see *Taking safe decisions* (RSSB 2009, currently under revision).

The duty is borne by the railway operators themselves, to the extent that each has control of particular facilities or equipment, and it cannot be delegated. The various component parts of the industry are required to co-operate with each other to manage shared risks where these arise at the interface between different organisations. There is a high level of collaboration between them in recognition of the fact that safety should not be compromised by sectional interests or commercial rivalries.

The HASWA duty is complemented by a small body of railway-specific legislation, such as that governing level crossings, and the railways’ bye-laws, as well as by a rapidly expanding volume of law originating with the European Union. The EU’s rail safety directive prescribes common safety indicators, targets and management systems for all member states (the last of these being largely modelled on existing British regulatory practice introduced to address the challenges presented by the vertical organisational disintegration which accompanied privatisation in the 1990s). The rail interoperability directive has given rise to common technical specifications for infrastructure, rolling stock, signalling, power supply, telematics, etc, primarily in order to facilitate the development of a single market in railway equipment.

Railways are, of course, also subject where relevant to the general body of both statute and common law – e.g. the Occupiers’ Liability Act, and the “duty of care”.

Leadership, responsibility and coordination

There are four key bodies exercising safety oversight functions within the rail sector.

First, the Office of the Rail Regulator (ORR), a non-departmental public body, is the safety regulator for the entire rail industry. This role is complementary to its functions as economic regulator for the main line infrastructure operators (Network Rail and HS1), and is broadly equivalent to that of the Civil Aviation Authority. Its functions include

- (a) monitoring safety performance and providing advice to operators,
- (b) scrutinising and approving applications for safety certificates, without which no operating licence is valid,
- (c) inspecting new works, equipment and operating procedures, and
- (d) enforcing the provisions of HASWA and related regulations (including, when necessary, issuing improvement or prohibition notices, and bringing prosecutions).

Prior to 2006, this role was performed by HM Railway Inspectorate (HMRI), which functioned under the aegis of the Health & Safety Executive (HSE).

Second, now known simply by its initials as RSSB, the Rail Safety & Standards Board was created in its present form to meet a recommendation made in the report of Part 2 of the Ladbroke Grove Rail Inquiry (“the Cullen report”) in 2001. It is jointly owned and largely funded by all of the organisations which hold rail operating licences on the main line network, i.e. Network Rail, passenger and freight train companies, and those infrastructure maintenance/renewals companies which operate rail-borne engineering plant, as well as rolling stock owners and major industry suppliers. Its functions include

- (a) producing the industry’s five-year strategic safety plan,

- (b) drafting and publishing industry-wide safety standards, including the Rule Book,
- (c) recording safety-related incidents, analysing trends and issuing safety performance reports,
- (d) commissioning safety-related research (a role which is largely government funded),
- (e) sponsoring CIRAS, the industry's confidential incident reporting and analysis system, and
- (f) managing groups which oversee joint industry action to address particular areas of risk, such as level crossings or suicides.

Third, the creation of the Rail Accident Investigation Branch (RAIB) was also recommended in the Cullen report, and would in any event have been necessary in order to comply with the EU rail safety directive. It is a specialist – and operationally autonomous - unit within the Department for Transport (DfT), closely modelled on the equivalent bodies serving the civil aviation and shipping industries. It became fully operational in October 2005. Its duty is to conduct investigations into significant railway accidents and safety-related incidents, and to make recommendations for mitigating the likelihood of similar events occurring in future. It is solely concerned with establishing fact, and not with apportioning blame (responsibility for bringing any prosecutions arising from such events remains with the Crown Prosecution Service (CPS) and/or ORR). It also conducts “class investigations” where a series of incidents gives rise to concern about underlying causes of a generic nature – e.g. the effects of extreme weather on infrastructure integrity. The existence of RAIB does not exempt rail operators from their general duty (imposed by an obligatory industry-wide standard) to investigate incidents of a safety-related nature arising on their premises or vehicles.

Fourth, mention should be made of the British Transport Police (BTP). Its name derives from the long-defunct British Transport Commission, but it is now a specialist police force serving (and confined to) the rail industry. The National Rail operators and TfL are legally obliged to maintain and fund it, and a number of light rail systems also contract into its services voluntarily. It is governed by a statutory police authority comprising both industry representatives and members of the travelling public. Its officers have exactly the same powers and duties as the members of any civil police force. But they are trained additionally to meet the particular policing challenges of the railway environment, e.g. working on and about the tracks or on trains moving over long distances. Their duties are the same as those of the police generally, i.e. protection of life and property, prevention and detection of crime, preservation of public order, etc, but they have particular skills in relation to problems arising on the railways such as handling football supporters, preventing terrorist attacks and dealing with the immediate aftermath of accidents. BTP's powers to investigate run in parallel with those of ORR and RAIB, and there are agreed protocols governing the roles and remits of the three organisations in the aftermath of safety incidents, covering inter alia the exchange and use of evidence.

Perceptions and culture

Led by ORR, in recent years the rail industry has embraced a “vision zero” approach to safety, recognising that there are limits to human performance and that it is the responsibility of the system designer to ensure as far as is reasonably practicable that errors do not have serious safety consequences. Notably, the Crossrail project has adopted a public commitment to zero industry-caused fatalities and major injuries in both the construction and operation of its network, and other companies involved in the installation and maintenance of railway infrastructure have also embraced this philosophy. The average annual total of both passenger and staff fatalities on the railways is now in low single figures, with most serious passenger injuries occurring on stations rather than on trains, and with track staff being as likely to be injured in road accidents while travelling to or from work sites as in incidents on railway premises. Despite a number of initiatives by the industry, the long-term reduction in harm to rail users and rail workers has, regrettably, not yet been matched by a similar reduction in the number of railway suicides and of the deaths of trespassers – categories of fatality whose victims are not under the industry's control (and for which there are few, if any, parallels on other modes).

“Vision zero” is clearly easier to apply in a closed system such as the railways, where everyone who is legitimately present is subject to clearly defined rules and there is a single controlling mind overseeing the network. If all vehicles are confined to tracks, all drivers are highly trained professionals, and all movements are signalled, many of the hazards encountered in the road environment are removed. By contrast, the road sector has to deal with a multiplicity of actors of

varying competence, who have unfettered access to the network for a variety of purposes, and use it in a range of different ways. Nevertheless, wherever risk reduction has been achieved in one mode, it is always important to consider whether the same approach has potential applications in another.

The importance of investigation and enforcement

The rail safety management regime lays stress on the need fully to investigate the circumstances surrounding any significant safety-related incident, and to learn and apply any lessons arising from it. Such investigations must be thorough and objective, directed at establishing cause rather than apportioning blame. A culture of fairness is essential if trust is to be maintained, and close calls (which are often mis-described as near misses, and can often be the precursors of events with more serious outcomes) are to be fully reported, recorded and analysed.

But, that said, timely and effective enforcement is essential, when prima facie breaches of the law occur, in order to maintain public confidence and to focus the attention of those at all levels within an organisation on its legal obligations. On the railways, responsibility for enforcement is shared by ORR (in respect of offences under HASWA and subsidiary regulations) and BTP/CPS (in respect of the general body of criminal law, including homicide).

Conclusion

A clear focus on operational safety and a sophisticated approach to risk management have produced steady improvements in railway safety over recent decades. The network carries more than a billion passengers a year, but none have died in circumstances for which the railway was held responsible for more than six years. Data compiled by the European Rail Agency show that the safety performance of Britain's railways equals or exceeds that of any other EU member state. This is not an argument for complacency, because there is always more that can and should be done, not least to mitigate further the risks presented by level crossings (which are faced primarily by road and path users, rather than rail passengers or staff). But given the railways' record of achievement, it is appropriate to ask whether and to what extent the approach which has delivered this is transferable to other sectors.

Three important components are (a) integrated regulatory oversight allowing a holistic approach embracing both vehicles, infrastructure and drivers; (b) comprehensive and systematic accident/incident investigation with clear responsibility for taking forward recommendations arising, and (c) the application of the ALARP principle to safety policy making, in order to optimise the societal benefits accruing from investment in this field. The Commission may wish to consider their relevance and utility in the context of road safety.

June 2014