

## Written Evidence from the Office of Rail Regulation

### UK Transport Safety Inquiry: Transport safety regulation, transport safety policy and practice

November 2014

#### Introduction

The Office of Rail Regulation (ORR) is the independent health and safety regulator for all Britain's railways and the economic regulator for Britain's mainline railways. We are here to ensure the mainline railway network operates safely, reliably and provides value for taxpayers and customers.

Though there is no room for complacency, Britain now has one of the safest railways in Europe – for passengers and for workers. As well as the mainline railway network in Britain, we regulate health and safety on Transport for London's London Underground and other systems, metro systems, light rail, trams and the heritage sector. It's our responsibility to ensure that those responsible comply with health and safety and other legislation to make Britain's railways safe for passengers and provide a safe place for staff to work.

Our role includes:

- providing health and safety guidance and ensuring the industry conducts appropriate research to promote continuous improvement;
- publishing reports on the railway industry's health and safety performance;
- carrying out inspections to ensure that the train and freight operating companies and infrastructure managers, such as Network Rail manage both health and safety for passengers and the public and the health, safety and well-being risks to their staff appropriately;
- investigating breaches of health and safety regulation on the railways; and
- taking informal and formal enforcement action where appropriate and in the public interest, including improvement and prohibition notices and lay prosecutions in the courts.

Our vision for railway safety is '*zero workforce and industry-caused passenger / public fatalities, with an ever decreasing overall safety risk*'.

#### Leadership, responsibility and coordination

*Are there clear lines of responsibility for transport safety? How is responsibility structured currently across the different modes and for different system providers? Is national leadership in transport safety evident in all the modes?*

Within the rail industry there are clear lines of responsibility for health and safety which are defined by law and regulated and enforced by the ORR as the national safety authority for railways in England, Wales and Scotland.

Under health and safety law in Britain all employers have a legal duty to manage risk to their staff and anyone else affected by their operations. 'Duty holders' within the railway industry

have clear responsibilities defined by legislation to manage risks arising from their operations that could effect: workers, passengers and/or members of the public, *so far as is reasonably practicable*, and have a duty of cooperation to work with other duty holders and relevant stakeholders, such as the Highways Agency and local authorities in respect of level crossings, to ensure that related systems and cross-modal interface risks are also managed effectively.

The Rail Delivery Group was established in 2011, following a recommendation in Sir Roy McNulty's 'realising the potential of GB rail' report, to promote greater co-operation between train operators and Network Rail through leadership in the industry and by working together with Government, the supply chain and relevant stakeholders. It had a specific focus on safety. We are required, under the EU's Common Safety Method for supervision, to publish a strategy for supervising mainline transport operators. Our strategy<sup>1</sup> was published in September 2012 and also encompasses the whole railway sector, including London Underground, trams and the heritage sectors. Our strategy is evidence based and helps to shape the way in which we regulate industry, within the framework of our legal powers and enforcement approach. It helps us set challenging objectives to drive for continuous improvement.

To realise our health and safety vision we need to ensure we address the right issues in the industry in the right way, and this is the basis of the ten programmes in our strategy, covering:

- enablers: health and safety management systems; *industry staff competence and human failure*; and *management of change*, interface with Europe, and
- main risk areas: *level crossings*; *interface system safety*; *infrastructure asset safety*; *rolling stock asset safety*; *workforce safety*; and occupational health.

We have adopted a rolling programme to review the chapters; those in italics above having been revised since publication.

Our continuing work in this area has also identified a need to introduce new or revised chapters covering enablers in the following areas: long term health and safety vision; leadership and culture; safety by design, and the main risk area: train control / protection technologies, which we plan for early 2015.

We also work collaboratively with duty holders and other relevant stakeholders in a number of industry forums focused on improving health and safety management.

Proposals for ORR to take responsibility for monitoring the efficiency of the Highways Agency take effect from 1 April 2015. This new role will not include specific health and safety responsibility, which will remain with the police and other highway regulatory authorities including HSE for work-related road safety matters. We will liaise with HSE to determine that any efficiency assessment of the Highways Agency's performance and costs reflects their health and safety obligations.

## **Objectives and targets**

*What transport safety results are currently being sought for the different modes and which agencies are accountable on behalf of government for achieving them? What is the role and*

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<sup>1</sup> Our strategy for regulation of health and safety risks can be seen at: <http://orr.gov.uk/publications/corporate-publications/health-and-safety-strategy>.

*nature of aims and targets? Should the long-term Safe System goal and strategy be adopted for all transport modes? How can road safety goals be aligned with other transport objectives such as sustainability, public health and active travel measures to achieve co-benefits?*

Duty holders have a legal responsibility to reduce risk *so far as is reasonably practicable* under domestic health and safety law and to seek continuous improvement under European law. These requirements do not prescribe themselves to a specific quantified target as setting such a target would be more likely to under or overshoot the legal requirement, as legal requirements shift over time as innovation drives good practice improvement. Duty holders are required to provide a suitable and sufficient risk assessment, and apply appropriate measures to manage those risks identified *so far as is reasonably practicable*. However, we target our focus on specific priority areas:

- in our determination of Network Rail's outputs and funding for the current control period (2014-19), on top of what was already being funded to comply with existing health and safety law, we provided specific safety-focused funding: £99m to reduce level crossing risk in England and Wales and £10m to close crossings in Scotland, with a national target to close 500-crossings; £163m to improve the taking of electrical isolations; £70m to improve the design of road-rail vehicle stock; £10m to improve the design of new excavator railway vehicles; and a regulated target to save £20m from improvement to occupational health management by the end of the five year control period.
- our strategy for regulation of health and safety risks (as detailed under leadership above) which identifies areas where further improvements can be made and sets out our regulatory approach to encouraging the industry to achieve this.

As part of our proactive inspection process, we developed a railway management maturity model (RM3)<sup>2</sup> which we use to help assess the effectiveness of a duty holder's safety management approach. Maturity is measured against a common ascending scale: ad-hoc; managed; standardised; predictable; or excellent. It helps identify the steps needed to improve a duty holder's risk management maturity. A duty holder rated as excellent would demonstrate that it has suitable and sufficient controls in place to effectively assess and manage risk and drive for continuous improvement.

Generally, the industry has an improving safety culture, with low levels of serious train incidents, injuries and fatalities compared to railways in Europe but we cannot be complacent.

We also used a version of the RM3 model to measure our own regulatory effectiveness and identify areas where we can improve.

We helped the European Railway Agency (ERA) develop a tool (based on RM3) to measure the maturity and effectiveness of other national safety authorities' regulatory regimes. The ERA used Britain for one of its pilot assessments which we found useful. It is now being rolled out to other European national safety authorities and it has the potential to be employed in other sectors to drive continuous improvement and help identify and share good risk management practice.

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<sup>2</sup> Full details can be seen at: [http://orr.gov.uk/\\_\\_data/assets/pdf\\_file/0013/2623/management-maturity-model.pdf](http://orr.gov.uk/__data/assets/pdf_file/0013/2623/management-maturity-model.pdf)

The EU has specified common safety targets for each member state in order to drive for a more consistent level of safety for the EU as a whole. Common safety targets are set for the mainline sector as a whole, and it is not possible to disaggregate them down to the level of individual duty holders. Achievement of these common safety targets is dependent on each duty holder delivering its obligations including its duty of cooperation with other industry parties, to effectively manage system risk *so far as is reasonably practicable*. Britain has one of the safest railways in Europe, particularly as regards passenger and level crossing safety, and has consistently performed well compared to its common safety targets.

## **Perception and Culture**

*How do we gauge public perception of risk, public acceptability of effective measures; and public and corporate acceptance of liability? How can a greater culture of safety be achieved among employers, transport users and others?*

Our role is clearly defined in legislation, to ensure that duty holders are compliant with their health and safety obligations, which include a duty of care to passengers, employees and others who come into contact with the operational railway. We do not have legal health and safety powers to direct railway duty holders to gauge public perceptions of risk; as they operate a public transport system, operators should have a direct commercial incentive to address passengers' adverse perceptions of railway safety risk, often by the provision of appropriate information. However, with assistance from Department for Transport, we have an important regulatory function as the regulator of a mass public transport system (and over which passengers have no direct control) to consider societies' concern about railway safety risk.

As an independent integrated economic and health and safety regulator, we draw on independent external input from:

- the Railway Industry Health and Safety Advisory Committee, which plays an important role in providing a consultative forum where all interests within the railway industry, such as employers, trade unions, passenger representatives, employees, suppliers and government bodies, meet and reach consensus on how to progress health and safety proposals and other related developments; and
- a stakeholder consumer advisory panel to inform our discrete role under consumer legislation law to protect the collective interests of passengers as consumers and our other regulatory activities, which includes the provision of better information to passengers before, and during rail journeys. Often the direct provision of timely and well-presented information helps normalise passengers' perceptions of risk and what they can do to help mitigate them, such as the provision of information to help avoid crowded services or seek less crowded sections of platforms and trains.

We consider the impact of organisational culture in effectively embedding safety management systems, process and behaviours. This is measured as detailed in the monitoring and evaluation section, particularly through the rail management maturity model described above.

## **Funding**

*What are the current levels of funding for transport safety? Are annual funding mechanisms and resource allocation procedures appropriate?*

Our health and safety activity is funded through a safety levy on railway duty holders. The level is determined by what we need to do to effectively discharge our legislative duties and associated costs are apportioned based on the duty holders' turnover. In line with government policy we have worked in recent years to increase the value for money to industry. Our safety budget for 2014-15 is £16.6m.

Duty holders are legally obliged to manage health and safety *so far as is reasonably practicable* and should therefore make available sufficient funds to effectively discharge this responsibility. Government may procure additional safety improvements through Network Rail's periodic settlement or through the Department for Transport passenger train operator franchise specification process.

## **Promotion**

*Is transport safety receiving adequate promotion and championing?*

We take an active role in promoting and championing health and safety within the railway industry. We have pressed for improvements in risk assessments and risk reduction particularly in respect of level crossings, worker safety (especially on track), and more recently, pushed the whole railway industry to do more to measure and effectively manage occupational health.

We believe that rail safety is adequately promoted and championed within the railway industry, though there are a number of deep seated cultural issues that need to and are now starting to be addressed, such as improvements in occupational health management and improvements to infrastructure worker safety by Network Rail and its contractors.

## **Monitoring and Evaluation**

*How should trends in safety be monitored and by whom? What is the case for an independent road safety or collision investigator?*

Trends in railway safety are monitored individually by each duty holder and for the mainline railway as a whole through industry systems and risk modelling systems managed by RSSB. Transport for London has its own risk models for its operations. The railway industry has a relatively mature monitoring and evaluation system and continues to examine ways to improve this.

All mainline risks are reviewed by the industry and associated stakeholders (including ORR) working in cooperation through an RSSB facilitated System Safety Risk Group with specific risk areas being overseen by sub-groups, focusing on risks at level crossings, platform train interface, train operations; and people on trains and in stations, for example.

Independently we undertake our own monitoring and evaluation of duty holders' effectiveness at managing risk using a balanced scorecard approach drawing on information gained from:

- our proactive inspection, including our audit of whole management systems: people, procedures, outcomes, and inspection of particular issues;
- our reactive investigations, driven by complaints, incidents and accidents;
- the emerging trends in industry derived data informing the precursor indicator model, and the trends in fatalities and weighted injuries harm, which is collated and managed by the RSSB.

Each year the RSSB publishes an Annual Safety Performance Report on key facts and figures and we issue our annual report summarising our findings and identifying the main health and safety issues that have arisen from this. We also report on railway health and safety through regular statistical releases and the six-monthly Network Rail monitor.

## **Research**

*What provision is made for keeping abreast of effective global practice? What provision is made for transport safety in R&D budgets?*

We have duties under Schedule 3 paragraph 2(2) of the Railways Act 2005 to:

- make such arrangements as we consider appropriate for the carrying out of research in connection with the railway safety purposes and for the publication of the results of such research; and
- encourage research by others in that connection.

Most research activity in Britain is coordinated and managed by the RSSB, funded by DfT grant or by Network Rail to address R&D requirements specified in a periodic review determination and/or separately, or by other industry parties, with the conclusions of any research undertaken by RSSB published on its dedicated website: SPARK.

We review research undertaken by RSSB for the industry, clearly identifying how each piece of research is linked to our risk priorities / strategy, and assess if there are any gaps. If any gaps are identified we seek to influence the relevant industry party to address. We do not normally fund research and development directly. We are in the process of incorporating the reference to relevant research in each of our strategic risk chapters.