

THE TRANSPORT SAFETY ORGANISATION

Statement of evidence to PACTS

Inquiry into UK Transport Safety, May 2014

“Who is Responsible?”

The Transport Safety Organisation submitted a previous paper to PACTS in May 2014, providing a short description of the organisation, a brief outline and a summary of its recommendations, with a reference to its forthcoming book:

The Heathrow Report 2015: What the Airports Commission missed...

This book will shortly be available for sale on Amazon.co.uk, and should be considered as reference material for this paper, as it details many Heathrow myths and problems, as well as the author’s personal experience in the field.

The concepts in this paper are intended to apply across all transport modes, with HM Government having primary responsibility for the protection of the public and therefore also for the health and safety risks, impacts and consequences arising from transport operations. However, the examples provided in this paper relate primarily to the disfunctionalities of air transport, as this mode has been the main transport focus and experience of the author and the Transport Safety Organisation over the last 26years and 14years respectively.

The usual caveats apply for these evidence papers, in that the author is not a lawyer and is not providing legal or professional advice. The author believes the content to be true, but provides no warranty that it is true or that it is up to date and neither the Transport Safety Organisation nor the Author shall be held liable for any error, offence, harm, loss or other damages resulting from this paper.

The author is acting in the manner and role of an investigative journalist and whistleblower to bring the contents into public awareness in the wider public interest. In particular, he is strongly recommending the establishment of independent and publicly funded Transport Health and Safety Authorities to carry out the necessary research and data collection, which it is not appropriate to provide in this paper, when it should be properly undertaken and provided by public funding. The fact that it is not, is a serious further breach of diminishing public trust in the Government and Parliamentarians which urgently needs to be remedied.

Leadership:

The principle source of leadership applicable to Transport Safety is the UK Government, through Parliament, although the Government also delegates its leadership through quangos, corporations and other organisations.

The primary role of leadership is to show the way to a better future, design the path for action and implementation and achieve the desired outcome. The usual model for leadership is one of Mission: to create a Vision of a more desirable future, with a clear Purpose for getting there, and also articulating the Values, Principles and Standards by which the mission will be achieved, along with the Time frame for completion.

The Leadership Question then in relation to Transport Safety is: What is the current state of affairs and what would be a more desirable future to move towards?

The answer must surely be, the better protection of people, prevention of harm, injury and loss of life, the better prevention of accidents and disasters, and the better development of health and well-being. Health and Safety normally go hand in hand. In this the UK Government has the primary leadership role, to ensure that its responsibilities are properly and actively managed, by means of continuous improvement.

Responsibility:

It is a primary responsibility of government to protect the human beings within its territory, both collectively and individually, and also to protect their human rights. These rights, including the right to life, non-interference in personal privacy, family life and home and the provision of ability to seek remedy from harm in the courts, are enshrined in international law as well as domestic law.

At the highest level, the UK ratified the United Nations Declaration of Human Rights of 1948 and it is a signatory to the European Convention on Human Rights of 1953. In 2000, the UK incorporated the European Convention into domestic law with the Human Rights Act 2000 to provide, as Jack Straw MP said on 16 Feb 1998, "a better balance between rights and responsibilities and between the power of the state and the freedom of the individual". More recently, at the UN World Summit in September 2005, along with all other UN Member States, the UK signed up to the Responsibility to Protect and accepted the concept that "national sovereignty not only gave a state the right to "control" its affairs, it also conferred a primary "responsibility" for protecting the people within its borders". National sovereignty in the UK rests with Parliament.

Furthermore, English common law ensures the protection (and preservation) of the right to life and the prevention of harm to persons and property, and the ability for persons to seek remedy from harm in the courts of law.

The Responsibility Question then in relation to Transport Safety, to be examined by Parliament is: How is the Government carrying out its responsibilities to protect people, both collectively and individually, and their rights, and how can it improve its effectiveness?

The answer must be to examine each mode of transport and to ensure that the Government has appointed bodies or persons with wide responsibility to carry out the Government's responsibility to protect people, their rights and their property; moreover to ensure that there are no gaps in that delegated responsibility where failure of responsibility, and therefore harm, might occur.

Coordination

Within each transport mode, it is then also necessary to examine coordination between Government and system providers to ensure that delegated duties and functions are being implemented by effective coordinated policy, design and decision-making to ensure that the primary responsibilities are being fully discharged.

Potential for system failures

It is often at the highest levels that system failure occurs in practice, by insufficient rigour of analysis in system design to ensure that voids do not occur inadvertently between different parts of systems. Such high-level system failures are particularly prone to occur in government systems, as relatively few people have sufficient access to system information and understanding of the inter-connections and potential disconnections in the system. Usually, operators examine the functionality of their own systems, but not the gaps in between, as they do not consider that they have any duty beyond their own line of responsibility as they perceive it.

When system failures occur, such, as through overload, the failures tend to manifest at the margins of operations – where no one is looking – rather than in the centre. This enables operators to dismiss incremental system failures as (a) not their problem; (b) unusual occurrences; (c) the fault of a lowly technician, rather than a system failure.

Objectives and targets

Objectives and targets appear to be laudable management tools as “things to aim for”. However, constant feedback and review is necessary to ensure that systems and procedures established to achieve objectives and targets are

actually working to achieve the desired aims rather than unintended harmful consequences. This is normally the role of parliament in a democracy: to provide feedback to government that changes are necessary. However, in the UK system, the parliamentary feedback process itself has become a system failure: usually feedback does not work or the government does not respond to it correctly, as many government actions occur without recourse to parliamentary debate or public review.

Both government and parliament appear to be suffering from systemic overload and have lost sight of their primary functions. The result is a political desire for objectives and targets that appear to provide quick fixes, yet create significant unintended harm; rather than find long-term resolutions for problems, by engagement of all interested parties, especially including those being, or likely to be, harmed.

It is notable that in planning law, harm can mean minor alterations to a building, which can lead to criminal enforcement action; yet with air transport operations, high levels of psychological suffering are not considered to be harm, nor is there any legal remedy available to those harmed. Furthermore, the state appears to be willing to take excessive action against individuals for what they say, but not against air transport businesses for what they do to create serious harm.

Perceptions of risk and 'health & safety' culture

In the field of Safety, the Health & Safety Executive has had major positive impacts on certain industries. However, there are areas where the Executive has no remit or responsibility. Indeed, it has clearly limited responsibilities. Yet, in the minds of many, public perception is turning against the generalised concept of "Health & Safety" as the concept has been seen to become a reason (or excuse) for over-restriction and a negative curtailment of action instead of a means to enable and promote safer systems, habits and actions. This problem often seems to result from inadequate and restrictive legislation, drafted too quickly, combined with lay interpretation in the face of criminal liabilities. The focus for Health and Safety needs to be not just on management of restrictive procedures, but also on enabling the improvement of systems. However, this requires more "big picture" thinking, which requires very different skills and understandings from procedural operations.

The Health & Safety Executive has developed a system of risk assessment, which tends to focus upon statistical 'individual' risk of harm, rather than 'societal' risk. It also focuses on 'tolerability' rather than 'acceptability' of risk and consequent harm. Furthermore, it tends not to differentiate very well between distinctive areas of 'control' and the choices which result: how much control does the person at risk have over the risk to which he or she is exposed? In some circumstances, an individual may choose to take high risks for convenience or challenge yet, for example, both a person travelling on an aircraft and one living

under a flight path are wholly reliant upon the system design to protect them: they are not, in any way, in control of their risks.

It is simply unacceptable that certain individuals should be treated as statistics destined to suffer a certain degree of harm which is defined as tolerable to people other than those being harmed.

Public transport systems therefore need to be designed with a far higher degree of protection for the general public, whether travelling or not, than for individual activity, where different individuals might choose higher risks. Public transport systems need to be designed to be as risk-free as possible in both individual and societal terms, especially because of the human and political costs of disasters. This is likely to involve system redesign at intervals. A notable difference in government cultural attitudes can be seen in the fact that over-flight of Paris by aircraft has long been banned by the French Government, whilst London airspace has become “highly complex and congested” with over-flying aircraft, and management of the societal risk to London is no body’s responsibility.

Health & Safety Executive responsibilities really only apply within the ground-based workplaces. For air transport, for example, these apply to protection of public and employees within airports; the CAA and NATS are responsible for the safe operation of each aircraft, such as in flight outside the airport boundaries; yet no one, it seems, is responsible for reducing the number of aircraft flying over London. Indeed, it appears to be the primary objective of all parties involved to cram ever more aircraft, and as many as possible, into this “highly complex and congested” airspace, without taking into account the consequent public risks.

There is a perception in Government that increasing activity at the London airports, and Heathrow in particular, should be encouraged in limitless fashion. This can be seen in the mandate to the current Airports Commission, whose mandate from the Government is to “maintain” – and by implication maintain the growth of – “the UK’s status as an international aviation hub”, seemingly without concern about the consequent risks of disaster for the people of London. This perception has been compounded by the Airports Commission’s selection of two proposals for a third runway at Heathrow, again without any prior consideration of the obvious risks from a massive further addition of air traffic complexity and congestion, despite showing the current congestion in Fig 5.1 of its report.

It is worrying enough that the Government and the Airports Commission see no need to consider the further risks to the protection of London. It is even more worrying that the airlines and airports operators are all advertising the benefits of these proposals, without any responsibility in the matter. It is particularly worrying when, after almost four years of consideration, the planning Inspector who examined the last major development (Terminal 5) at Heathrow reported:

“Terminal 5 would increase the risk of a major air crash involving many casualties on the ground which would raise questions about the future role of Heathrow” and “the fact that more people would be exposed to a material risk represents a real and substantial objection to terminal 5”.

On the subject of a third runway at Heathrow, the Inspector also said: *“I agree with BAA that the evidence placed before me demonstrates that a third main runway at Heathrow would have such severe and widespread impacts on the environment as to be totally unacceptable” and “In the context of the Government’s review, it should be assumed that no further major development would take place at Heathrow after Terminal 5”.*

Why are the airlines and airport operators not worried about this public risk? Because they have little responsibility or liability for the risk. No doubt insurance will pick up the costs, the affected local authority will clean up the disaster and bury the bodies. Why has Government not delegated responsibility for the protection of London – and the Houses of Parliament – from disaster? Perhaps that is a question best addressed to civil servants within the Department for Transport, who work perhaps too closely with the industry to stand back and think at a high enough level and take the necessary action. In other sectors when the industry gets too closely involved with those who are supposed to be policing them, this is called “regulatory capture”; in some places it is called corruption.

Funding

There appears to be no public funding available for public checks on the operation of the Government, or for research or development of policy on transport safety. The experience of the author, as director of the Transport Safety Organisation, is that almost all research for policy development in air transport is funded by the industry; or government pays the industry for research and policy development.

The result of this restricted relationship is that the Government only gets the research and development results which the industry wants the Government to have: that is, those in its own interest. Any external voices, which do not fit into the model of what the industry or the Government want to hear, are not heard and not taken on board. It appears that this is how the Government has designed the system: to protect it from the necessary checks, balances, criticism and positive change; specifically to serve only the needs of the industry rather than the very many people harmed by it.

Promotion

In air transport at least, the Department for Transport has, for many decades, appeared to be a law unto itself, totally closed to any ideas for change or improvement. It appears to take the view that transport public safety is a potential

burden and a restriction on the growth of the industry and therefore should not be discussed in public, let alone promoted. It cannot see that promotion of safety considerations may, or should, provide opportunities for more sensible and necessary system changes.

A current example is that the Airports Commission had no mandate from the Government to consider public safety prior to coming to its interim conclusions about the proposals for a third runway at Heathrow.

Monitoring & Evaluation

Monitoring and evaluation of existing operations is of key importance. So also is a constant external examination, questioning and review of existing operating systems and the policy objectives by which they operate.

At a higher level, a constant external examination, questioning and review of the structure of governmental and decision-making systems is also critical, to ensure that proper operational feedback from the public is being collected (rather than sham consultations) and the correct decisions are being applied to change delegated structures, responsibilities and policies.

Such system-challenging can only be carried out by independent and properly funded bodies, appointed at government level, to carry out impartial research and to be effective in making strong public recommendations for system change for the primary purpose of public health and safety.

It is quite clear that where public health and safety responsibilities are divided, compromised or absent, that public health and safety will be seen, like environmental considerations, as secondary to simple economic drivers, even, or especially, at government level.

Therefore it is essential that Transport Health and Safety Authorities should be established to carry out the necessary monitoring and evaluation on behalf of the public who are harmed or at risk of harm.

Research

It is notable that there has been no effective public sector research into the risks and harm to the public affected by aircraft operations, nor on the consequences of the statutory bar from public court action for remedy against aircraft operations. This is lamentable, if not despicable, especially as, for decades, parliamentarians and local councils have been left in no doubt about the harm that has been caused and the deep, long-term, psychological harm that aircraft noise and risk can cause. Even in its interim report, the Airports Commission has referred, albeit only casually in passing, to the “damage to health” and the “deep unhappiness” suffered by members of the public.

Instead, there is much evidence that the government system for the supposed monitoring of aircraft noise has been purposefully designed with a number of very serious flaws and limitations, which minimise and obscure, almost totally, the real effects of aircraft noise.

Furthermore, there is no remedy available to those harmed, legal or otherwise.

These defective Government systems urgently need to be addressed and changed by Parliament. The author urges the Transport Safety Commission to take these matters seriously and support the Transport Safety Organisation's recommendations for the establishment of specialist bodies to remedy the serious system dysfunctionalities.