

IRSC 2011: RAIL SAFETY – PERCEPTION & REALITY



REGULATING FOR AN IMPROVING CULTURE

Allan Spence

HM Deputy Chief Inspector of Railways
Office of Rail Regulation, GB

SUMMARY

If the climate in a railway business is one where bad news is unwelcome and punished, people will find ways to conceal bad news – even if the accidents keep happening. And in such a climate, arguably the accidents are more likely. To really make progress towards zero fatalities and ever decreasing risk, we have to influence the prevailing culture and behaviours.

A regulator needs to maintain professional distance and the objectivity to enforce where necessary. But that can sit comfortably alongside constructive engagement to promote a culture and management maturity where compliance comes naturally and risk diminishes. By working with the mainline infrastructure manager in Britain, we have started moves towards the company having a more just and open culture.

INTRODUCTION

The Office of Rail Regulation (ORR) is the safety and economic regulator for the railway industry in Great Britain. Our legal framework for safety is based around employers assessing and controlling risks so far as is reasonably practicable.

ORR also sets the economic framework for the mainline industry through a price control mechanism. Within that 5-year financial settlement, the infrastructure manager is explicitly funded to develop, operate and maintain the network safely.

Our corporate strategy for 2009-14 ⁽¹⁾ describes our vision of success for Britain's railways as:

- zero workforce and industry-caused passenger fatalities, with an ever-decreasing overall safety risk;
- satisfaction levels of passengers and freight customers equivalent to the best in railways and other forms of transport; and
- efficiency equivalent to that achieved by the best comparable railways in the world.

So it is quite clear that we expect the best of the industry we regulate.

I am certain that the classic components of providing safe equipment, workplaces and systems of work, training people and having an effective management system are only part of the picture. It is how people feel and behave that will determine the success or failure of safety objectives.

To really make progress towards zero fatalities and ever decreasing risk, we have to influence the prevailing culture and behaviours. If the climate in a railway business is one where bad news is unwelcome and punished, people will find ways to conceal bad news – even if the accidents keep happening. And in such a climate, arguably, the accidents are more likely.

Injury data

For some years, ORR had flagged the apparently skewed injury data recorded and reported by the mainline infrastructure provider, with virtually as many major injuries as less serious, lost-time injuries. But the company directors had convinced themselves that initiatives like improved personal protective equipment explained the pattern and were comfortable that the Accident Frequency Rate (AFR) was improving. They often used that to contest ORR evidence of weakness in underlying indicators. This came to a head in 2010 when evidence emerged through the trades unions of specific reportable events that had been consciously (but erroneously) recorded as non-reportable, and hence not appearing in AFR data.

ORR published details of the skewed data pattern in our Annual Health and Safety Report ⁽²⁾ (July 2010) and investigated the extent of the failings. I led that investigation and concluded that the AFR data was simply not credible. Separately, following challenges through the company's corporate governance arrangements, the Chairman commissioned the Rail Safety and Standards Board (RSSB) to further explore the problem. I was a member of the stakeholder review panel for the study.

The RSSB report ⁽³⁾ concluded that the under-reporting of lost time injuries occurred because of the change in both the culture of the company and its relationship with its contractors. The report comments on real and perceived pressure and, in some cases, fear felt by staff and contractors if they report accidents or incidents. The disincentives to open reporting included the fear of losing contracts by companies and of employment by individuals with a potential for a culture of information suppression. Some 500+ minor 'concealable' injuries went unreported (let alone the near misses) and the opportunities to learn and prevent the next mishap disappeared. The unintended consequences led to people hearing a message not to report accidents.

In a culture of fear there is an incentive to cover up. When combined with targets and league tables, there are both real and perceived disincentives for staff and contractor companies to report lost time injuries. RSSB found that violations were by far the most significant part of the under-reporting issue. Examples included: front line staff deciding not to report events which they know should be reported, managers using disincentives to discourage reporting by front line staff and contractor companies having unwritten policies which discourage reporting.

The culture we saw as regulator

In addition to the investigations about reported events, ORR was able to take a view on the prevailing culture from our day-to-day activity of inspecting the routine and investigating mishaps. This is of course neither quantified nor hard information, but nevertheless a powerful indicator of the way things are.

In my annual presentation to feed back our national inspection findings to a group of directors last year, I was struck how unwilling many of those present were to hear 'bad news'. Evidence presented was dismissed as anecdote, criticism was countered using the (later discredited) AFR data and the animosity was palpable. It would have been so much more comfortable for me to give them good news. But while my salary and livelihood didn't depend on how I was received, it was clear that this reaction to me could not be unique and there was every likelihood that bad news would not flow readily uphill within the company structure. For those brave souls who did speak honestly, my experience suggested the hostile environment was not comfortable. That event represented a real low point in our perception of the company.

Translating this down the hierarchy, my inspectors also reported examples of people both within the company and in contractors blatantly lying about safety issues. We have seen important information concealed from investigators after serious incidents, documents falsified to cover up events and conspiracy to fraudulently record working hours.

I believe that it is vital that we better understand the incentives to behave in this way and help improved leadership in the company to drive better behaviours.

CHANGING THE CULTURE

Our goal is to put in place incentives to encourage the best outcomes and then to use the most effective levers to steer the company, and the wider industry, in the right direction. Those levers can involve regulatory enforcement but will almost certainly also include influence through advice and encouragement, and embarrassment by making public, things that should have been done better. In the case of changing culture, and how people think and behave, there are no immediate legal remedies - so we need to be a little more sophisticated.

Rather than sitting back waiting for the next adverse event and resorting to enforcement, by working with the company we have started moves towards them having a more just and open culture. This is still work in progress, but with a new direction in company leadership, and constructive input by ourselves as regulator, the signs are positive.

Once the company acknowledged the injury reporting failings and demonstrated a willingness to put them right, I did not see value in looking backwards. I concluded that in view of the openness shown in their internal enquiries, and to ensure everyone's focus was on the future shift in openness and improving safety culture, I would not prosecute for the apparent non-reporting offences. We had already made public the reporting weaknesses, using embarrassment as a lever at that stage. So now with an opportunity to make real safety progress, we focussed on working with the company to improve the underlying culture.

Improving understanding

To have the best influence, requires good understanding between the players. With the company, we have improved understanding between inspectors and key managers, including of each other's role and pressures, through workshops and frank dialogue. With better, more frequent contact between the local managers and inspectors and greater openness, we can contribute to preventing problems rather than finding them after the event. This drives better learning from others – whether from elsewhere in the company or outside. And when something happens that is sufficiently serious to warrant enforcement, they understand why and we better understand how they are feeling. We've had to dispel some urban myths about targets for enforcement numbers too – they simply don't exist.

As the regulator, we also have to recognise that some enforcement can be counter-productive if badly targeted and risks distracting from higher priority action. Enforcement is extremely powerful, but unhelpful if we get it wrong. We recognise that we must think through the things we ask for, recognising that providing 'nice-to-have' information to us can distract precious resource in the company.

Management maturity

Two years ago, ORR developed, and is now using, a Rail Management Maturity Model ⁽⁴⁾ – RM3 – to assess the broader management capability of dutyholders. My colleague Iain Ferguson, one of those who developed the model, spoke about it at last year's conference. We have now used RM3 across a wide range of businesses and with the infrastructure manager, have applied it to different functions in the company to build a broader picture of the current strengths and weaknesses. We want all companies to aspire to, and in due course to demonstrate excellence in health and safety management - reliably doing the right things. But to get there requires influential leadership and a cultural shift.

With the change of company leadership in the past year, and a moment of truth when influential people in the company started to recognise they were not as good as they thought they were, senior managers have become more receptive to change. They studied RM3 and recognised the value to them as well as to us as a regulatory tool. The improved dialogue led to them inviting me to be part of their workshops to identify key actions to enable the changes to culture and safety performance. And as a result of the more constructive engagement between us, ORR has agreed with the company board a trajectory for improvement, as

assessed through RM3, for the next three years. In other words, we are realistic that we cannot have instant change to the embedded culture and management system maturity.

To further help them make the best of RM3, we have seconded an inspector into the company to work internally to promote understanding and uptake. That has been reciprocated, with ORR hosting a track engineer secondee from the company. He has helped us not only in his professional discipline but more widely to develop his understanding of our role and the wider industry.

Recognising the good as well as weaknesses

While unusual territory for a regulator, it is also important that where we see good things happening, we support and commend them. Improving risk control at level crossings has been one area where (after much criticism by ourselves) I was impressed by the fresh approach and honesty demonstrated by those leading key areas of work. Recognising the internal hurdles those people face from some colleagues, I have consciously nudged, cajoled and supported the positive moves along rather than simply waiting for gaps to appear and tackling them by threat of enforcement. But everyone is clear that does not imply any sort of amnesty from a harder regulatory line where failings emerge that warrant it. So we have continued to serve enforcement notices and take prosecutions where local factors indicate that is the right action.

One direct product of the wake-up call provided by the RSSB report has been a potentially very powerful leadership and cultural change programme led by a senior manager in the company. It is relevant that the word 'safety' doesn't feature – this is a programme seeking to make a fundamental shift in how the company runs its business, and through that to drive a change, not a superficial look at changing safety as a bolt on to business-as-usual. One challenge faced has been that the normal formulaic spreadsheet of workstreams and hard deliverables doesn't fit so readily a piece of work aiming to change how people think and behave. We have been clear that we support the programme and have provided advice over the past few months. In March, I was pleased to be able to host a session involving the programme director, some full time trade union safety representatives from the company and our inspectors working jointly to shape its direction.

Changing the mindset

In a rules-based culture, one consequence can be that people act because the rules say they must, not because they understand and truly believe it is the right thing to do. And when those rules are so complex they can't be readily understood, or they're inconvenient, or a slip occurs, in a culture of fear all the incentives are for failings to be concealed. We would like to see a shift in the approach to standards and rules, with people being able to use intelligent competence to take risk-based decisions, not just to slavishly do what a standard says without understanding why, or believing it's the right thing.

This requires trust – by managers of staff and vice versa – that people will do the right thing. And it also requires tolerance of some lapses when humans make mistakes. But with management system integrity, and effective assurance, to avoid a lapse becoming a catastrophe.

It's also important for the company to examine how it communicates with and relates to the people who do its work. Too often, information is cascaded by briefings, usually without any interaction or real check of understanding. I have often felt that after the third briefing in ten minutes as I go onto a maintenance worksite, each giving repetitive overlapping information that disappears into the wallpaper, it is little wonder that people switch off and simply sign on the bottom line.

Contractors

Our work to encourage culture change is not limited to the core company. While it retains the responsibility to manage the myriad of contractors involved in the industry, we can add our regulatory influence where those contractors are dragging their feet. Reflecting the findings from the injury reporting investigations, I am particularly concerned about the

perverse incentives that can operate with contractors and in particular the labour-only subcontractors where workers have no employment protection. I believe more can and should be done by clients to set down high expectations of how labour providers must operate. People are so far making the right noises, but I am impatient for improved pace of real change in this particular area.

Professional objectivity

A regulator needs to balance encouragement with authority and must maintain professional distance and the objectivity to enforce where necessary. And we most certainly do. My inspectors continue to use prosecutions and notices to drive improvement, stop dangerous practice and punish as appropriate. But we are more focussed in how and where we use that enforcement. We also publish details of all enforcement we take – for public accountability and as a further lever. Inevitably, where we believe enforcement is necessary, there is the scope for tension between regulator and the company. But the extent of that tension, and the way it is handled, is a surrogate measure for management maturity too. Once again, the signs are positive with significantly more constructive engagement between us and company directors and lawyers while cases progress.

CONCLUSION

I believe we are now demonstrating that firm regulation can sit comfortably alongside constructive engagement to promote a culture and management maturity where compliance comes naturally and risk diminishes.

And once again, I didn't refer there solely to safety risk. We firmly believe that if we can successfully help the company improve its culture and management maturity, we can create not only a safer railway but one which better performs for its customers and is more efficient, in turn delivering for its funders too. And so, regulating for an improving culture delivers benefits for all of ORR's objectives.

It is perhaps premature to claim any measurable success in the outcomes of our work to regulate for an improving safety culture. Much of the credit for the progress to date must lie with key people within the company. But the regulator has undoubtedly played an influential part. My realisation of that influence happened in June 2011 when I was invited to speak at a gathering of the top 90 or so leaders in the company on improving the culture. I was expecting to say my piece and go, allowing free internal debate on wider issues during the rest of the day. But the new CEO unexpectedly asked if I could stay to both see, and take part in, a very frank 360 degree feedback on the board executive directors. This would have been inconceivable a year ago and illustrates a fundamental shift for the better in the company's culture

The signs are promising and I'm confident we can continue to help the company progress towards an excellent safety culture.

REFERENCES

- 1. Promoting safety and value in Britain's railways - our Strategy for 2009-14, Office of Rail Regulation, 2009**
- 2. ORR Health and Safety Report 2010, Office of Rail Regulation, 2010**
- 3. Independent review of RIDDOR reporting by Network Rail and its contractors, Rail Safety and Standards Board, 2011**
- 4. Rail Management Maturity Model (RM3), Office of Rail Regulation (updated 2011)**