

ORR protects the interests of rail and road users, improving the safety, value and performance of railways and roads today and in the future



HMRI: Experiences of enforcing Health and Safety Law

Just Culture & Judiciary
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Overview – what this talk is about.

■ Health and Safety Law in Great Britain

- Investigation and Prosecution of Criminal Offences

■ HM Railway Inspectorate

- History
- Role today

■ Experiences of enforcing health and safety law

Health and Safety Law in Great Britain 1

A brief history lesson...

- Health & Morals of Apprentices Act, 1802
- 1833 Factory Inspectorate created. Inspectors granted powers to:
 - enter
 - examine (inspect)
 - gather evidence
 - make regulations



Health and Safety Law 2

■ 1833- 1961 Factories Acts

- Prescriptive
- *Every machine shall be.....*
- Industry specific
- *The Herring Curing Welfare Order 1927*
- Many separate Inspectorates
 - Mines
 - Factories
 - Agriculture
 - Railways

What industry thought...

- *“a briefless lawyer, a broken down merchant, a poor aristocrat, and an intimate friend of Lieutenant Drummond, incompetent for their task, but amply provided with the most unconstitutional means of annoyance and mischief.”* (Short time Committee of Birstall, 1833).

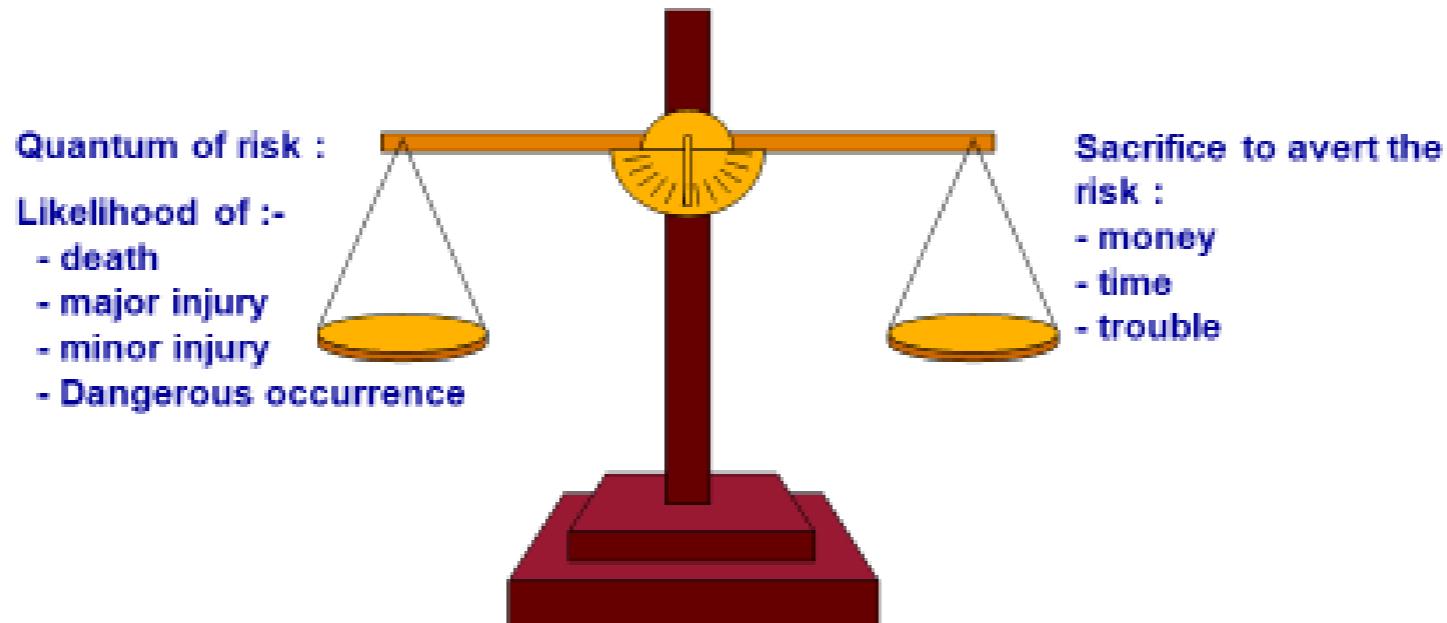
Health and Safety at Work etc Act 1974

- Represented a radical change in the approach to health and safety-regulation
 - moved away from prescriptive legislation to ‘goal setting’ (not ‘*do a specific thing*’ but ‘*achieve an end result*’)
- Introduced the concept of “Reasonable Practicability”
- Established the Health and Safety Executive (HSE) - most inspectorates were combined to form the HSE (but not railways)

Reasonable Practicability

Legal Terms in H&S

“Reasonably practicable”



Health and Safety at Work etc Act 1974

■ Health and Safety at Work etc Act 1974

- Imposes duties on legal persons
- Companies, individuals and LLPs

■ Subordinate regulations

■ Inspectors appointed under the Act;

- Health and Safety Executive - most industries
- Local Authorities - offices and shops
- Office of Rail & Road } Industry
- Office for Nuclear Regulation } Specific

Health and Safety Inspectors

- Powers- same fundamental powers granted to the original factory inspectorate but enhanced in detail ;
 - Power to enter premises
 - Power to examine
 - Power to take into possession
 - Power to require people to provide information
 - Ability to issue legal notices
- Inspectors have considerable discretion- decision- making is guided by the Enforcement Management Model



Manslaughter

- Voluntary and involuntary manslaughter
- Gross Negligence Manslaughter
 - Grossly negligent breach of a duty of care
- Corporate Manslaughter – failing by an organisation not an individual
- Only the Police and Crown Prosecution Service can bring manslaughter charges

Enforcing the Law 1

- When a breach of the law is identified...

- ... enforcement action may result

1951, Sir Hartley Shawcross, (then Attorney General)

"it has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution"

- Enforcement action can comprise

- Verbal and written advice
- Legal notice (prohibition or improvement)
- Prosecution (court will make the decision)

[ORR Enforcement Policy](#)

Enforcing the Law 2

- All enforcement action must demonstrate
 - Proportionality
 - Targeting
 - Consistency
 - Transparency
 - Accountability
- All prosecutions must demonstrate
 - Evidential sufficiency
 - That the action is being taken in the “public interest”

[ORR Enforcement Policy Statement](#)

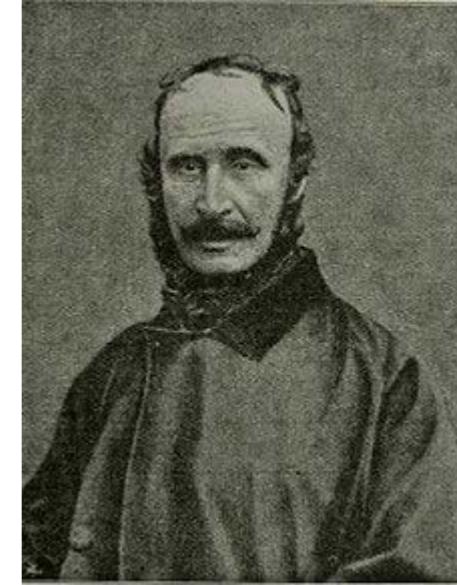
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Her Majesty's Railway Inspectorate

HMRI History 1

- Safety is inextricably linked to the history of the railways
- 1830: First notable railway accident
 - William Huskisson fatally injured by the “Rocket”
- 1840: First Railway Inspectors appointed
 - Power to ‘inspect’ (but not effect changes) and ‘investigate’ serious railway accidents



HMRI History 2

- 1840s: Parliament begins to enact railway- specific legislation
 - 1842- Inspectors gain power to 'approve' new railway
- 1889: Armagh Train Crash
 - Overloaded passenger train runs away
 - 80 killed, 260 injured- mainly children
- 1889: Regulation of Railways Act
 - Lock, Block & Brake- key principles



History 3

- 1990: Transfers to Health and Safety Executive
 - Railway Employment Officers- monitored workplace health and safety for railway employees
- 2003: RAIB (Rail Accident Investigation Branch of DfT) established
 - Investigates railway accidents and makes Recommendations to improve safety
 - HMRI/ ORR investigates to identify breaches of the law
- 2006: HMRI move to Office of the Rail Regulation to form Railway Safety Directorate of ORR

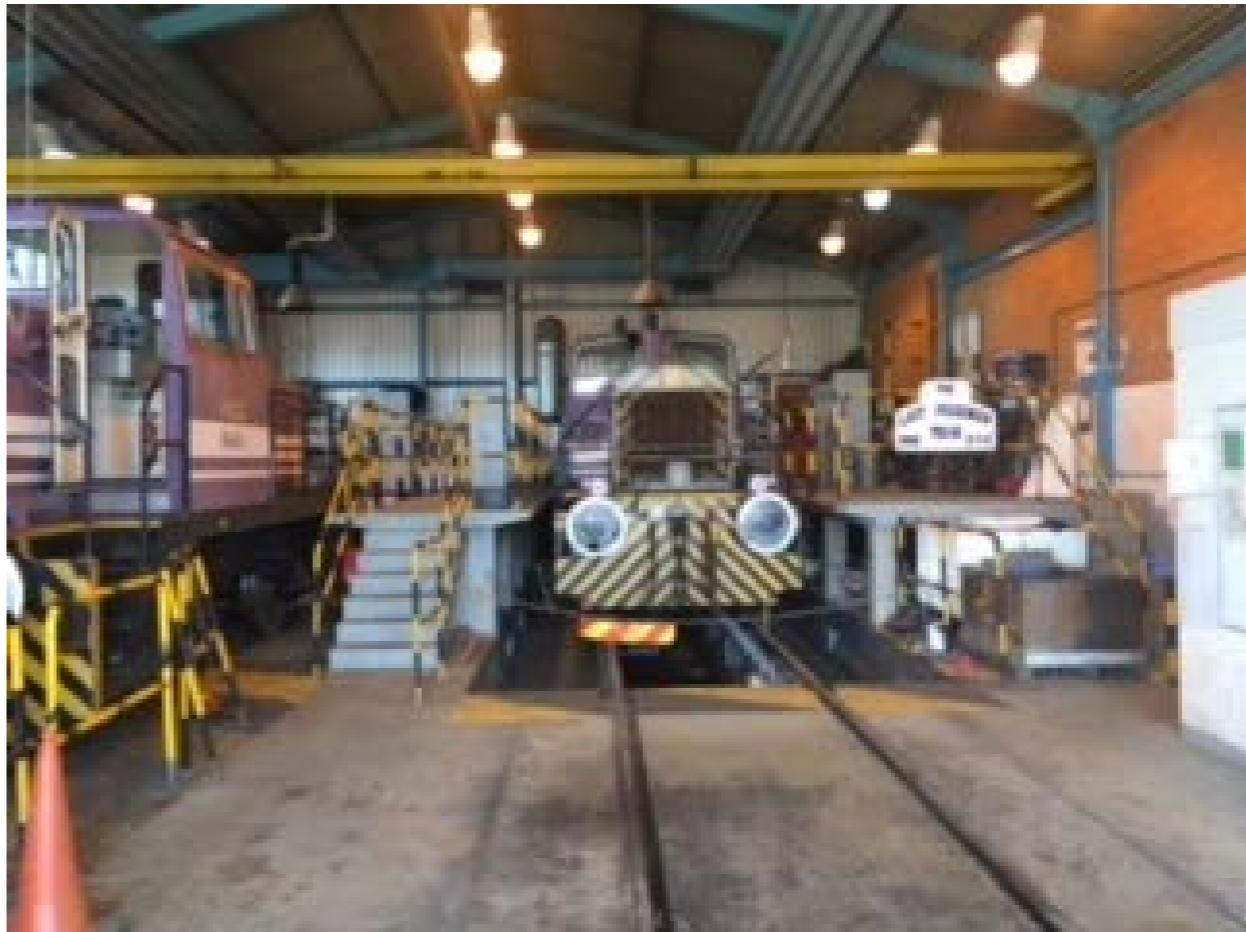
The Office of Rail & Road

- Combined regulator
 - Economic and Safety regulatory functions
- Responsible for *all* of Britain's railways
- 100 staff dedicated to railway safety matters, c. 80 are warrant holding inspectors



The Office of Rail & Road

- Possibly unique in Europe!
- National Safety Authority
- Health & Safety inspectorate for railway operations
- Prosecuting Authority



Investigating Railway Incidents

- Police (either British Transport Police or local police):
 - Manage the emergency response
 - Identify and investigate any serious criminality- including manslaughter
- Rail Accident Investigation Branch
 - Independent accident investigation body- will make recommendations
- ORR – investigates for breaches of health and safety laws
- All organisations work together collaboratively

What does ORR Investigate

■ Mandatory investigations

- Fatal accidents to employees and members of the public
- Collisions and derailments on main line infrastructure
- Significant infrastructure failures
- Level crossing collisions
- Significant operational incidents (e.g. SPADs)

[ORR Investigation Policy](#)

Investigation by ORR

- Investigation will depend on the circumstances of the incident
- Proportionate approach to investigation
 - Investigation can vary from basic information gathering to team based response to major incidents
- Relationship with police and RAIB is formalised in a “memorandum of understanding” (MoU)

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Examples of Enforcement Action

Prosecution: South Devon Railway- Corporate

■ South Devon Railway, 2017

- Carriage placed in service on heritage railway with floor missing in toilet cubicle
- Door was inadequately secured
- Small child opened the door & nearly fell to death through missing floor



©RAIB, 2017

■ ORR prosecuted the organisation not individuals

£40,000 fine + costs

Prosecution: Hitchin- Individual 1

■ Signal passed at Danger, Hitchin, October 2013

- Cambridge- London express train
- Driver failed to set up cab radio system that would allow him to talk directly to signalling centre on departure
- Train passed signal at danger at Hitchin and was brought to a halt by the train protection system
- The driver simply reset the train protection system without contacting the signaller and continued with journey
- Signaller became aware that an incident had occurred and attempted to contact the driver with no success.
All traffic had to be stopped to bring the train to a stop

Prosecution: Hitchin- Individual 2

- ORR investigated and made the decision to prosecute the driver
- Strong 'public interest' rationale
 1. Driver failed to set up and overrode two safety systems
 2. Driver failed to comply with railway operating procedures by not contacting the signaller
 3. By restarting the train without the authority of the signaller the driver placed the train, its passengers and the railway at risk
- Driver received 3 month suspended prison sentence and made to pay £500 costs
- No prosecution of the drivers organisation

Prosecution: South Kentish Town – Corporate

- Cleaning supervisor sustained serious injuries after falling from scaffolding while cleaning tunnel ventilation shaft
- ORR investigation revealed that the injured party had climbed on the outside of the scaffolding, putting himself and potentially others at risk of serious injury
- Prosecution considered against individual and employer (London Underground)
 - No action taken against individual (who sustained serious injuries)

Prosecution: South Kentish Town, 2014

- Investigation identified Organisational failure . London Underground had failed to properly plan, manage and supervise the work.
- London Underground fined £500,000 + costs



Conclusions

- British health and safety legislation places duties on both organisations and individuals
- Employers have a duty to implement suitable risk control arrangements and monitor their effectiveness
 - This includes ensuring that employees comply with these arrangements
- Where an employee acts in a grossly negligent way or actively fails to comply with risk control arrangements put in place by the organisation that employs him/her then they may find themselves liable to prosecution

Thank You
Any Questions?

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