

## CECA Consultation Response

Civil Engineering Contractors Association  
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Richard Coates  
Head of Performance, Highways Monitor  
Office of Rail and Road  
3<sup>rd</sup> Floor  
One Kemble Street  
London  
W2B 4AN

25 September 2015

Dear Mr Coates

**[Re: Enforcement Policy for Highways England](#)**

The Civil Engineering Contractors Association (CECA) welcomes the opportunity to respond to the above named consultation.

CECA provides the voice for those companies large and small who create, improve and maintain the UK's vital transport and utility networks. Our membership of more than 300 companies together delivers an estimated 70-80 per cent of all infrastructure construction work carried out nationwide. Our industry supports the employment of around 200,000 people with annual activity worth up to £25 billion.


Last year we welcomed the completion of the roads reform process with the conversion of the Highways Agency into Highways England, creating for the first time a long-term strategy for the English strategic road network. This long term certainty allows for investment in skills, equipment and innovation, reducing delivery costs and making savings for the taxpayer. It is imperative that this commitment to roads capital investment is maintained, ensuring capacity and capability. To this end, we welcome this consultation on an enforcement policy for Highways England, which, once implemented will ensure a robust future for the government-owned company.

We would like to suggest that the ORR and Highways England are required to publish their findings and resulting action plans to allow the industry to be aware and actively support improvement. Commitment and timescales should be clearly set out in the enforcement policy.

In addition, the ORR should actively monitor compliance with the Roads Investment Strategy both current and planned to highlight any short comings in future planning / procurement / strategy. We believe that the ORR should not only monitor compliance but should also monitor the risk of potential non-compliance to assist Highways England perform a structurally different role through RIS1 and into RIS2.

As we look forward to working with the ORR in its new role, we trust that you find our comments helpful and that they will be taken into consideration.

Yours sincerely,



Alasdair Reisner  
Chief Executive  
Civil Engineering Contractors Association

- 1. Do you have any general comments on the policy, for example, comments on how ORR can improve the format and style of the document to make it a more practical reference document?**

CECA believes that the draft enforcement policy for Highways England is very long and the language is rather complicated. For ease of understanding we would favour a shorter document, in plain English, perhaps using graphics to break up the pages of heavy text.

We also believe that there is merit in an executive summary, or a pull-out summary of the policy, which can be referred to quickly, or displayed for reference.

- 2. Do you agree that ORR's enforcement role should also be forward-looking and identify potential non-compliance with the RIS and/or Statutory Directions and Guidance before there is a contravention?**

CECA agrees that the ORR's enforcement role should be forward looking and should monitor and react to trends or changes in, for example:

- Safety performance;
- Procurement;
- Annual spend; and
- How non-motorised users of the road network are integrated into Highways England schemes.

- 3. Do you agree with ORR's staged approach to enforcement and whether we have captured all relevant and necessary activities and action? Should anything else be listed?**

CECA agrees that all the relevant and necessary activities and actions have been captured in the ORR's staged approach to enforcement.

- 4. Do you think the policy should allow for consideration of an offer of reparations by Highways England to be taken into account? If yes, do you think the policy should provide for an offer of reparations to be taken into account in the following situations on a flexible basis depending on the circumstances of each case?**

- **During consideration of whether to issue a fine;**
- **As a mitigating factor once it has been decided that a fine is appropriate when determining the amount of the fine.**

CECA does not believe that there should be any mechanism to enable Highways England to pay reparations in any case. This is because, it could muddy the waters on the rules and could result lengthy legal processes between Highways England and the damaged party.

Instead, we would favour a clear cut procedure and process, which is then adhered to.

**5. Do you consider there are any other situations where an offer of reparations should be taken into account?**

As indicated above, we are not in favour of the payment of reparations in any circumstances.

**6. Do you think the seriousness categories set out in the table in Chapter 5, paragraph 5.22 of the policy are appropriate and helpful to Highways England and stakeholders? Do you agree with our approach to assessing the seriousness of non-compliance?**

We agree that the explained seriousness categories are appropriate and helpful to Highways England and stakeholders and support the ORR's approach to assessing the seriousness of non-compliance.

To this end, we would add that it would be helpful to provide further guidance on potential contraventions. For example on:

- Clearance of accidents within certain timeframe criteria; and
- Possession over-runs within certain timeframe criteria.

**7. Do you agree with our indicative scale of fines set out in Chapter 5 of the policy and our expectation that fines imposed on Highways England will generally be set at a level to have a reputational as opposed to punitive impact?**

CECA agrees that the ORR should be able to levy fines on Highways England in order to enable the new government-owned company to fulfil its obligations. We also agree that the fines should be set to have a reputational as opposed to a punitive impact.

To this end, we suggest that a £20m/£25m fine is appropriate for "very serious" contravention. However, we believe that the fines for "Serious" contraventions should be more significant – up to £10m.

We would also recommend a "three strikes" rule for £2.5m offences which would trigger a larger fine upon accumulation.

Finally, we believe that there should be a personal reputational / performance bonus impact if a fine is issued at director level.

**8. Do you agree that fines should be a last resort and, as a general rule, intended to be used infrequently and for serious and very serious breaches as per the seriousness categories set out in the table in Chapter 5, paragraph 5.22 of the policy?**

We are in complete agreement that fines should only be issued as a last resort. The intention of the ORR should be first and always focused on driving compliance, behavioural change and achievement of KPIs.