



Chartered Institution for Highways and Transportation (CIHT) response to the ORR consultation 'Enforcement policy for Highways England'

CIHT is a membership organisation representing those who work in the highways and transportation sector. CIHT members plan, design, build, operate and maintain best-in-class transport systems and infrastructure, whilst respecting the imperatives of improving safety, ensuring economic competitiveness and minimising environmental impact.

CIHT welcomes the opportunity to respond to the ORRs consultation document on the enforcement policy for Highways England. CIHT welcomed the creation of Highways England as part of the Department for Transport's (DfT) approach in providing certainty and continuity of investment for the strategic road network, given the importance of the issue to our membership and the wider public.

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?

CIHT welcomes the engagement philosophy outlined in the consultation and the clear recognition of the need for structured engagement between the ORR and Highways England. We welcome the further clarity on the relationship between the two organisations which will be important if the overall aims of the changes to the management of the strategic network is to be successful.

CIHT strongly agree with section 1.11 'We expect our approach on enforcement will evolve over time as we, Highways England and the industry learn from experience. We consider it important to be flexible in our approach, recognising that this is a new role and a new approach for us and Highways England.'

With regards to the format, style and practicality of the document – CIHT believe that both this document and the full enforcement policy document are well written and easily understandable. Sections such as the Stage/Step sections (4.11-4.32 of the full enforcement policy document) are important, further clarity/simplicity could perhaps be helped by a diagram e.g. a flow chart to highlight the stages and steps.

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?

CIHT agrees that the ORR's enforcement role should be forward-looking, identifying potential non-compliance. A forward-looking approach and early identification of, and early engagement over, the issues before they escalate to a full contravention will assist with the early development of Highways England and the RIS.

CIHT agree with the enforcement principles as set out at 2.2 in the consultation document.

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?

CIHT agree with the staged approach to enforcement. The process is clear and appears to ensure consistency of approach.

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.

CIHT takes the view that offer of reparations should be taken into account in the second case i.e. once a decision has been taken to issue a fine and should not be used as a factor in consideration of whether to issue a fine. The decision on whether to issue a fine should remain clearly with ORR.

This would have the effect of retaining funding within the sector during cases where a fine is appropriate and avoid a "bargaining" process whereby there is uncertainty as to whether a fine will be issued or not.

It is important that there is complete clarity over the decision to issue a fine and further clarity of where reparations will be used to mitigate the effects of the situation that has led to the fine.

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

Only in circumstances where the service provided by Highways England has proved to be clearly at fault but has occurred in a way that was not foreseen and therefore not subject to the process above.

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?

CIHT agree with the statement at 5.7 which suggests that as HE is a new organisation there will be flexibility to begin with and that the ORR, Highways England and the industry learn from experience and gain a better understanding of how the regime operates to incentivise Highways England to efficiently and effectively deliver the RIS (sic).

CIHT agree with the seriousness categories set out in the table in Chapter 5 and the approach to assessing the seriousness of non-compliance.

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?

CIHT agree with the indicative scale of the fines set out in Chapter 5 and the expected effect of the fines.



- 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?**

CIHT agree that fines should be a last resort after all measure have been taken to address the contravention.

CIHT agree with the principles that the serious and very serious cases where contraventions are 'wider sustained, systemic or persistent' and 'might involve significant harm, or the risk of significant harm, being caused to a wide range of third parties' should be subject to fines.