



**RESPONSE TO ORR CONSULTATION PAPER
“ENFORCEMENT POLICY FOR HIGHWAYS ENGLAND”**

22nd September 2015

Introduction

This is the response of the Royal Society for the Prevention of Accidents (RoSPA) to the Office of Rail and Road's consultation paper, "Enforcement Policy for Highways England". RoSPA thanks the Office of Rail and Road (ORR) for the opportunity to comment on the proposals. Our response has been produced following consultation with RoSPA's National Road Safety Committee.

ORR has responsibility under Part 1 of the Infrastructure Act 2015 to carry out monitoring and enforcement on Highways England. Section 12 of the Act aims to promote the performance and efficiency of Highways England, whilst Section 11 enables ORR to take statutory enforcement action when it is satisfied that Highways England has contravened or is contravening compliance with the Roads Infrastructure Strategy (RIS) and or Statutory Directions and Guidance.

Where there is a contravention ORR may:

- give notice to Highways England as to the contravention and the steps Highways England must take in order to remedy it: and/or
- require Highways England to pay a fine to the Secretary of State.

With this new responsibility ORR is seeking the views of its stakeholders about their proposed enforcement policy, and RoSPA is delighted to provide the following responses to the questions asked below.

Q1. 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?

RoSPA Response

Both the consultation document and the full enforcement policy document are clearly written in a language which is jargon free and understandable. The use of a flow chart to explain the stages of enforcement would be complimentary and helpful to the written text on pages 18-24, sections 4.11-4.32

We wholeheartedly support ORR's proposed enforcement principles of proportionality, targeted, consistency, transparency and accountability.

Section 12 of the Act requires ORR to exercise its enforcement function in the way that it considers most likely to promote the performance and the efficiency of Highways England. RoSPA firmly believe that the 'safety of the Strategic Road Network' is of paramount importance and enforcement should be used as a tool to ensure that this does not fall below the agreed KPI standards.

Q2. 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?

RoSPA Response

RoSPA strongly agrees with the principle of being proactive and in identifying and tackling issues before they become a problem. Being proactive should prevent a potential issue from developing into a contravention or help to remedy an actual contravention as quickly and effectively as possible.

Q3. 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?

RoSPA Response

We agree with the proposed principles of a staged approach of review, investigation and escalation. This should ensure enforcement is consistent and the severity of any sanctions is proportionate to the infringement identified.

Concerning Stage 2, where it has been decided to proceed with non-statutory enforcement action, we would expect as a minimum that ORR would hold meetings with Highways England and this would be an integral part of the communication process when requesting Highways England to take action.

It is important that any enforcement process is flexible and can be successfully used in a responsive and timely fashion. It is, therefore, vital that the system is able to bypass stages if it is deemed necessary and appropriate. RoSPA would support this within the staged approach as outlined in the consultation paper, as it may be necessary, for example, to issue a notice and a fine simultaneously for the same contravention.

We agree that stage 3 should only be used where there is an actual contravention.

Q4. 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?

RoSPA Response

We do not believe that reparations should be an option for Highways England; rather we believe that ORR should carefully look at the infringement and adjust any fine (up or down) considering relevant mitigating and aggravating factors, taking into account the particular facts and circumstances of each case.

The appropriate adjustment will be a matter of judgement, taking any previous cases where fines have been issued against Highways England into account for consistency. The ORR will need to apply an overall adjustment reflecting the net effect of all the relevant mitigating and aggravating factors.

If reparations were to be allowed, then it is important that it is clear where the money is going and who is to benefit from it. A reduced fine, as a result of a reparation payment may be seen as a 'less severe penalty', especially if the money goes back to the treasury as presumably would be the case with a fine. This may undermine the credibility of the policy.

Q5. Do you consider there are any other situations where an offer of reparations should be taken into account?

RoSPA Response

We are not in a position to comment on this.

Q6. 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?

RoSPA Response

RoSPA supports the overriding principle that the primary objective in undertaking enforcement action is to change the future behavior of Highways England, if necessary, so to deter non compliance.

Q7. 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?

RoSPA Response

RoSPA agrees with the indicative scale of fines as set out in Chapter 5.

Q8. 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?

RoSPA Response

We concur with the view that a fine should be used as a last resort after all other reasonable measures have been explored. However, we also recognise the need, in very serious instances, to bypass certain stages as set out in our answer to question 3.

Fines should be used to encourage good performance; the level of the fine is of less importance than the reputational damage it will create. A fine imposed upon Highways England in practical terms will reduce the annual budget available, as it is unlikely that the government will make up this shortfall. Therefore, we support the level of fines suggested, 1% of annual average funding. However, we agree that a maximum cap should not be set.

RoSPA supports the principle of focusing on sustained failures rather than one off minor incidents, unless this failure has compromised either those using or working on the SRN.

RoSPA thanks ORR for the opportunity to comment on their first consultation document. We have no objection to our response being reproduced or attributed.

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