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Mr Richard Coates
Head of Performance, Highways Monitor
Office of Rail and Road,
3rd Floor, One Kimble Street,
London,
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Dear Richard,

**RE: Draft Enforcement Policy for Highways England: Sheffield City Region
Consultation Response**

As a member of the Transport for the North (TfN) partnership, Sheffield City Region (SCR) considers transformational investment in the North's highway network to be an essential factor to achieve the Northern Economic Powerhouse. Improving the existing road connectivity between the North's Core Cities and their City Regions is key to sustaining long term economic growth with a more reliable and resilient highway network that facilitates greater business interaction and agglomeration.

Throughout the development of the TfN programme, Highways England's Road Investment Strategy (RIS) has formed the basis of the required improvements to the North's highway network. Therefore from SCR's perspective, the delivery of the RIS process is absolutely essential and any deviance from the delivery of these schemes will have a significant impact on the overall effectiveness of the wider TfN programme.

In light of this, SCR welcomes the responsibility that is placed on Highways England to deliver the RIS and the statutory instruments that the Office of Rail and Road can enforce to enable this to happen. In line with the *Enforcement Policy for Highways England Consultation Document*, this response has been broken down into the 8 key questions, with our response detailed underneath.

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?

The policy and supporting consultation material are very clear and well structured, providing a comprehensive understanding of the proposed enforcement approach. Generally, SCR is supportive of the principle of the ORR scrutinising and ensuring the delivery of HE projects as these are of significant importance to the achievement of our economic, environmental and social ambitions.

In order to make the reason for contravention easier to identify and understandable, SCR welcome the approach to use 'stages and steps' and reference points under section 4 (ORR's Enforcement Policy). We appreciate that this information can be difficult to digest and communicate but the proposed method does this adequately.

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?

Absolutely, the early intervention and recognition of a potential contravention will ultimately minimise its likelihood and eventual impact (project time and cost). A proactive approach to mitigation in the long term can help avoid unnecessary conflict and in some cases, this process allows for an additional safeguard mechanism beyond the HE's project tolerances and controls. We would also expect the ORR's enforcement principles to be upheld during any period of pre-emptive enforcement.

This process also allows the HE to explain and communicate any future problems that may be related to the contravention before they arise. It may be prudent for the ORR to make additional enquiries as a method to help identify any related risks that may prolong the existing contravention or contribute towards any future contraventions.

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?

A staged approach seems perfectly sensible. This will ensure that the HE will address the contravention in the most efficient and effective way and ensure that the enforcement response is reasonable and proportional to the contravention. This would hopefully encourage the HE to address the issues immediately under the persuasive influence of a greater punishment.

We welcome that notices issued would clearly set out actions to be taken and identify a clear timeframe for HE resolution. This option of applying a time constraint to the required resolution will ensure that actions are taken promptly. However, this must be combined with an appropriate procedure for escalation and further punishment.

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?

In other regulated sectors, offers of reparations can be relevant to consideration of whether to impose a financial penalty or as a mitigating factor of deciding the amount of a fine. SCR would not wish to see HE moneys, i.e. moneys to improve the Strategic Road Network be lost due to contravention. We would like to see highways money retained within the industry, delivering the projects we need. Ultimately, we do not want funds diverted from their original purpose if this materially compromises deliverability; however, in some instances it may be appropriate to direct reparations to other/additional SCR highway schemes.

To ensure delivery of the RIS, we would hope that the HE builds in considerable financial risk into the project costs to account for any unintended fines. This could be reflected in the policy to make this clear.

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

It is important to draw distinction between contraventions where a fiscal resolution is appropriate compared to contraventions that require direct and immediate HE action. We would not expect reparations with the latter because this will not address the cause of the problem.

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?

The stages reflect the level of responsibility that is directly attributable to Highways England, which seems a fair methodology to apply. The policy should also take into the action taken by Highways England to remedy the contravention (to some extent this is already considered).

The timeframe of the resolution needs to be comparable with the seriousness of the contravention. There shouldn't be a general timeframe imposed on the resolution action, it should be specifically and relevant to impact of not resolving the problem and focused on resolving as quickly and effectively as possible. There needs to be a link between the seriousness of the contravention and timeframe of resolution i.e. a serious contravention needs to be resolved quickest, as these are likely to have the highest level of impact/disbenefit on the road users.

Building on the examples in the table, we would welcome clarification of the indicators that would be used to inform the seriousness of the contravention and how this will be calculated and by who. The policy will need to clarify and highlight what conditions attribute towards failure.

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?

The indicative figures in the table seem appropriate, however, we would like to reemphasise that the fines imposed for contraventions should be proportionate to the scale of the project and the impacts of the contravention.

7. 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?

The primary driver of the enforcement approach should be to prevent, mitigate and resolve contraventions. In many instances the fine may not be the most appropriate penalty. A fine ultimately will directly take money away from the project which is not always the most effective way to resolve the contravention. A wider understanding of why the contravention has materialised should be a consideration as to the appropriateness of the use of a fine.

I hope the above comments can be taken into consideration in your appraisal of the document and if you have any further queries or require additional information, please do not hesitate to contact me.

Yours Sincerely,

Julie Hurley

Interim Director of Strategy

South Yorkshire Passenger Transport Executive