

Office of Road & Rail: Enforcement Policy for Highways England

Response to the Consultation by the Association for Consultancy and Engineering (ACE)

Introduction

This is the response from the Association for Consultancy and Engineering (ACE) to the Office of Road & Rail (ORR) consultation on its proposed enforcement policy for Highways England. ACE represents the business interests of its members and the consultancy and engineering industry in the UK. It is the leading business association in this sector, counting around 650 firms - large and small, operating across many different disciplines, as its members.

Our members are some of the world's leading consultancy and engineering businesses. Renowned for the quality and excellence of their work, they regularly win awards for engineering innovation and achievement. Many of our members are directly involved with the management and enhancement of the strategic road network and we therefore consider ourselves to be a key stakeholder in the terms of the consultation.

The consultation response was prepared by our Roads Sector Interest Group (SIG) which exists to pre-empt and address the business issues affecting ACE members who work in the roads sector. It does this through a programme of meetings throughout the year, and through engagement with key stakeholders. The objectives of the Roads SIG are:

- Lead ACE's engagement with Highways England
- Promote smart investment in the road network to stimulate economic growth
- Promote a sustainable approach to the development of the road network that effectively manages demand, mitigates environmental impacts and increases resilience
- Promote views on strategic road network planning in the UK
- Explore the link between traffic congestion and journey time reliability with the economy and the environment
- Promote views on the procurement of consultancy services in the roads sector

The following ACE member companies and stakeholders participate in the Roads SIG:

- PCS
- Ramboll

- Hyder
- Atkins
- Jacobs
- WYG
- WSP / Parsons Brinckerhoff
- AECOM / URS
- Amey
- Capita
- Arup
- Mott MacDonald
- CH2M

Request for meeting

With reference to Section 4.2 of the Consultation Document, in addition to this written consultation response, we would like to take this opportunity to request a meeting between representatives of our two organisations. Given the significant reliance that Highways England places on their supply chain to meet their performance targets, we consider that it would be sensible for the supply chain and its representatives to engage with the Office of Rail and Road in this way. In this regard, we believe that the vast majority of Highways England's Tier 1 suppliers are represented through either ACE, CECA or HTMA.

The following is the ACE response to the consultation:

Question	Response
<p>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?</p>	<p>We consider the document to be quite heavy and rather dry. This is perhaps understandable considering the nature of the policy that is being defined in the document. With the exception of the table that defines the seriousness of potential contraventions, there are very few examples that put the proposed contents of the policy into context. It could perhaps be made more readable by including graphics, flow charts and symbols/icons to provide signposting and aid navigation. This approach would also provide much better alignment with the RIS document.</p>
<p>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?</p>	<p>Yes, we fully agree with this approach. We believe that ORR should consider a range of indicators and factors relating to the prescribed KPIs so that an understanding is developed of the underlying reasons for Highways England's performance.</p> <p>An example, which is of particular interest to ACE members, is the impact that procurement processes can have on the wider delivery programme. We would encourage ORR to look at Highways England's procurement processes, as the measurement of progress against the various procurement milestones (such as publication of the OJEU Notice, issue of tender documents and completion of tender assessment) will provide a very good forward-looking indicator.</p> <p>We also believe that some aspects of RIS compliance are currently defined in rather generic terms and that there is potential ambiguity between the headline outcomes and specific KPI requirements. For example, is it the headline objectives of RIS (96% journey time reliability, mile-per-minute network flow etc.) that will be measured, or the specific KPI's within the Performance Specification?</p> <p>We believe that engagement with Highways England's supply chain will help ORR take a forward-looking view on compliance and performance and in this respect ACE would be happy to provide a focal point for engagement.</p>
<p>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?</p>	<p>Yes, we agree with the proposed staged approach. There are no obvious omissions although we feel that some additional detail on the approach and methodology, including timelines, would assist a comprehensive understanding of the process. This is of particular interest to ACE members, many of which are key members of Highways England's supply chain.</p>

<p>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?</p> <ul style="list-style-type: none"> • 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. 	<p>We believe that reparations should not generally be allowed. The ORR enforcement actions should be clear, predictable and in line with the policy and we feel that reparations would not be consistent with that clear and predictable approach.</p>
<p>5. Do you consider there are any other situations where an offer of reparations should be taken into account?</p>	<p>No, we don't believe reparations is an appropriate approach (as detailed in our response to question 4).</p>
<p>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?</p>	<p>The seriousness categories are appropriate although they might benefit from additional detail to describe and differentiate each of the five levels.</p>
<p>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?</p>	<p>We agree that any fine, almost regardless of the level, will have a reputational impact and therefore the enforcement regime should drive the right behaviours. We question why the three intermediate seriousness levels all have the same maximum fine level (£2.5m) with such a large increase at the 'very serious' level? We recognise fines would be set at an appropriate level up to the maximum, but feel that different maximum levels in each category might be more appropriate.</p>
<p>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?</p>	<p>The draft enforcement policy sets out a clear approach where fines are the last resort and we believe this is the right approach.</p>