

From: Peter Silverman
Sent: 22 September 2016 18:07
To: Peter Antolik Office of Rail and Road
Cc: Prof. Stephen Glaister - Chairman ORR
Subject: ORR - Clean Highways Meeting 14_09_16

Dear Peter,

Thanks you and Ian for taking the time to meet with me once again to discuss litter on the HE network. The meeting was timely as you had recently published your [first annual report on the performance of HE to March 2016](#). I think it is fair to say that we differ profoundly on the ORR's approach to the subject.

"Litter" gets a mention at last

In my [e-mail to your Chairman of 6th April 2016](#) I had pointed out your half yearly report to September 2015 did not make a single reference to "litter" compared to 17 to "biodiversity". I was therefore pleased to see a section on litter, on page 31, of the new report.

It says that the issue of roadside litter had been raised by stakeholders (plural). However in [responding to Michael Pease's FOI request](#) your Customer Contact Team had indicated that I was in fact the only stakeholder.

Role of the ORR

You described your role in more or less in the same words as on your web site namely to:

...monitor how well Highways England is delivering against the Performance Specification, Investment Plan and aspects of its License, to publicly report our findings and to advise the Secretary of State;

The Performance Specification and Investment Plan are part the [Road Investment Strategy](#) (RIS). Neither the RIS or the [License](#) mention "litter". The Key Performance Indicator (KPI) for the environment in the RIS refers only to "noise" and "biodiversity".

Your view, I think I am correct in saying, was that for issues not specified in these documents you could prioritise where you put your limited resources. Litter, you said, was only a small piece of what you looked at.

This approach I believe is fundamentally wrong. Let me explain why.

Under the Schedule 1 Section 111 of the [Infrastructure Act](#) HE is a duty body for the purposes of [Environmental Protection Act S89](#) (*duty to keep land and highways clear of litter etc*).

One of its functions therefore is to *ensure, so far as is practicable, that its network is kept clear of litter and refuse.*

Under S10 (1) of the Infrastructure Act the ORR must carry out activities to monitor how Highways England exercises its functions.

S10(2) says those activities may include investigating, publishing reports or giving advice to the Secretary of State on whether, how and at what cost HE has achieved its objectives under a [Road Investment Strategy](#).

As you see the ORR must therefore monitor HE's compliance with EPA S89. In contrast it may, depending on how it sees its priorities, monitor HE's performance against the KPIs set by the DfT.

Focus on documents

I am further concerned that:

The ORR does not carry out any direct visual monitoring of the condition of the HE network.

It has not asked HE for copies, or analyses, of the complaints they receive from the public.

It does not seem to have taken on board the numerous complaints about litter from members of the public that I have forwarded to you.

Your approach seems to focus on documentation rather than what is happening on the ground. This is exemplified in the section of the annual report dealing with litter. It says that you had *"asked HE to publish an updated Litter Strategy and further details of the litter picking it undertakes to provide assurances to its users and stakeholders that it is effectively managing the issue"*.

Surely, the only additional paperwork we need is a letter from the ORR telling HE to pick up the huge, clearly visible, backlog of litter on the verges of its network.

I strongly concur with Lord Gardiner, now Under-secretary of State at DEFRA, when he said in the [House of Lords on 6th July](#) *"I am very conscious that many people from abroad see how filthy our motorways are and wonder about us"*.

Litter hotline

In your report you say "The company has set up a hotline for members of the public to report litter". I said that I could not see anything on the [HE web site](#). "Litter" does not appear in the "Contact Highways England" section or elsewhere on the home page. There is a general enquiries number but this dates back to the days of the Highways Agency.

Environment Strategy & Stakeholder Panel

HE's license required them (5.24) to produce a strategic plan to demonstrate how they aimed to meet their legal duties with regard to the environment and (5.22) to establish a stakeholder advisory panel.

Neither requirement has been fulfilled. These breaches of the license should in my view have been highlighted in the annual report.

You said the environment strategy was being held up because HE are discussing with DfT what documents they can publish.

ORR's relationship with the DfT

Prior to April 2015 the HE network was run by the Highways Agency, an executive branch of the DfT. HE have therefore inherited the litter situation from the Highways Agency. Any assessment of HE's subsequent performance should surely recognise this. However, to do so would expose the DfT to criticism.

I suspect this was the reason "litter" was excluded from the Road Investment Strategy and it's Key Performance Indicators on which you, wrongly in my opinion, choose to focus your assessment of HE's performance.

Peter, I hope this is of help and thank you for continuing to put up with my admonishments.

Kind regards

Peter Silverman MA MSc

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[Duty to keep highways clear of litter](#)