

From: CCT Contact [<mailto:contact.cctXXorr.gsi.gov.uk>]
Sent: 30 January 2017 15:42
To: Peter Silverman
Subject: Litter on the HE network - Role of the ORR - Our Ref:CC 1457

Dear Mr Silverman,

I refer to your email of 5 December 2016 to Mr Antolik, and apologise for the delay in reply. We have responded to your points as follows.

1. You have asked us to clarify whether assessing (without enforcing) Highways England's compliance with the s.89 duty in the Environmental Protection Act 1990 is outside the scope of our functions. I confirm that assessing Highways England's compliance with the specific provisions in s.89 is outside the scope of ORR's functions. The duty under s.89 falls on the Secretary of State.
2. You made a point relating to ORR having regard to the interests of road users and the environmental impact of the way Highways England achieves its objectives. This point was addressed in the letter to Mr Pease, and also by Peter Antolik when you met with him at ORR's offices on 14 September 2016: we have stated clearly that we must prioritise which areas of performance we focus on, taking into account the resources we have available. Our monitoring takes account of the interests of road users and the environment, for example through the environmental and user satisfaction key performance indicators. However, as set out in section 12 of the Infrastructure Act 2015 (the "IA15"), in determining our approach to monitoring, we must ensure that we carry out our activities in a way which is proportionate and targeted. I would also note that the factors set out in section 12(2) are not in any order of priority and it is for ORR to give such weight to these factors as we consider appropriate in the circumstances.
3. You suggested a conflict between the IA15, section 10 of which says that ORR must carry out activities to monitor how Highways England exercises its functions, and our email to Mr Pease which stated that section 10(1) did not necessarily require ORR to routinely or actively monitor all of Highways England's functions. We do not consider that these statements are in conflict. It must be noted that "functions" is not defined in the IA15. We interpret the reference in section 10(1) to relate primarily to monitoring Highways England's compliance with the RIS (and with any direction to produce such route strategies as the SoS may direct) – that is, the two activities set out under the heading "Functions" in sections 3 and 4 of the IA15, and how we carry out that monitoring role is a matter of judgment and prioritisation. But "functions" is also used more widely elsewhere in the IA15 e.g. in relation to Highways England's ability to delegate functions (section 7), which in turn leads to the lengthy lists of functions set out in the Delegation of Functions (Strategic Highways Companies) (England) Regulations 2015, being functions conferred on strategic highways companies under the Highways Act 1980.
4. You state that ORR may take non-statutory action, such as making public comment on the company's performance. We have already done this in our annual report, which was published in July 2016, where we referenced the work that we have done to review Highways England's performance in regards to litter.
5. We believe that the information contained in this response, and in previous correspondence, fully sets out how we have interpreted our role in relation to the Environmental Protection Act, 1990. However, if you do wish to pursue this matter further, then I suggest that you contact the Department for Transport, whose contact details can be

found here: <https://www.gov.uk/government/organisations/department-for-transport#org-contacts>

6. We will, of course, continue to monitor Highways England's performance in relation to litter on its network, in line with the letter that we sent to the company on 13 June 2016 (which we have previously shared with you). During 2017, we will review Highways England's progress against the actions listed in this letter, including how it has engaged with stakeholders to prevent littering at source, and what data it has collected to demonstrate how it is tackling litter on the network.
7. The views of road users, and other stakeholders, are important to us. If you have any other concerns on how Highways England is undertaking its duties on the network, please contact us.

Yours Sincerely,



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