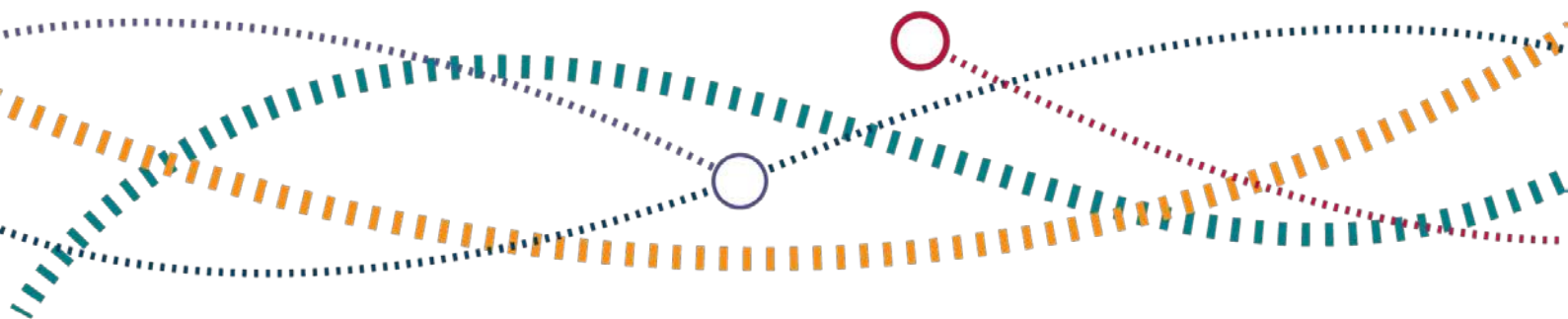




# ORR's Enforcement Management Model

19 September 2023



# Contents

---

<b>Foreword</b>	<b>4</b>
Context	4
Equalities Act 2010	4
Document review	4
<b>Purpose</b>	<b>5</b>
<b>Summary</b>	<b>7</b>
Key Considerations for Railway Regulation	7
Prosecution	9
Crown Bodies	11
Individuals	11
Health	12
<b>Process Overview</b>	<b>13</b>
EMM Routes	13
Step 1: Enforcement Priorities	14
Step 2: Risk of Serious Personal Injury	14
Step 3: Gap Analysis	15
Step 4: Initial Enforcement Expectation (IEE)	15
Step 5: Dutyholder Factors	15
Step 6: Strategic Factors	16
Step 7: Enforcement Conclusions	16
<b>Route 1: Health and Safety Risks</b>	<b>17</b>
Step 1: Enforcement Priorities	17
Step 2: Risk of Serious Personal Injury	17
Step 3: Gap Analysis	17
Step 4: Initial Enforcement Expectations	22
Step 5: Dutyholder factors	23
Step 6: Strategic Factors	24
Step 7: Enforcement Conclusions	24

---

<b>Route 2: Non-risk-based compliance and administrative arrangements</b>	<b>25</b>
Step 1: Enforcement Priorities	25
Step 2: Risk of Serious Personal Injury	25
Step 3: Gap Analysis	25
Step 4: Initial Enforcement Expectation	26
Step 5: Dutyholder factors	27
Step 6: Strategic Factors	27
Step 7: Enforcement Conclusions	27
<b>Route 3: Non-Health and Safety Railway specific legislation</b>	<b>28</b>
Step 1: Enforcement Priorities	28
Step 2: Risk of Serious Personal Injury	28
Step 3: Gap Analysis	28
Step 4: Initial Enforcement Expectation	31
Step 5: Dutyholder factors	33
Step 6: Strategic Factors	33
Step 7: Enforcement Conclusions	33
<b>Route 4: Permissioning</b>	<b>34</b>
Step 1: Enforcement Priorities	34
Step 2: Risk of Serious Personal Injury	34
Step 3: Gap Analysis	34
Step 4: Initial Enforcement Expectation (IEE)	35
Step 5: Dutyholder factors	37
Step 6: Strategic Factors	37
Step 7: Enforcement Conclusions	37
<b>Table 10 Dutyholder factors guidance</b>	<b>38</b>
<b>Flowcharts</b>	<b>45</b>
<b>Table 11 Strategic factors guidance</b>	<b>49</b>

# Foreword

---

## Context

It has been ORR's policy to adopt the [Health and Safety Executive's \(HSE\) Enforcement Management Model \(EMM\)](#) as an aid to decision making when carrying out our enforcement responsibilities to help maintain a level of consistency with HSE as the principal enforcing authority for the Health and Safety at Work etc. Act 1974 (HSWA).

However, as the HSE EMM was written with their regulatory remit and duty holders in mind, ORR produced additional guidance documents to supplement the HSE EMM guidance to cover any railway specific aspects, including railway specific legislation. The use of multiple documents could be quite cumbersome both in general use and for training purposes.

As such, this document replaces the suite of HSE guidance and ORR supplements to create one standalone Office of Rail and Road (ORR) Enforcement Management Model (EMM), that retains the same regulatory principles as the HSE EMM<sup>1</sup>, but is for use in the railway context.

## Equalities Act 2010

The ORR EMM has been reviewed in relation to the [Office of Rail and Road Equality Information and Objectives \(orr.gov.uk\)](#) as required by the Public Sector Equality Duty (PSED) under the Equalities Act 2010.

The strategic factors of the ORR EMM, see Table 11 – Strategic Factors, asks the Inspector to consider whether the enforcement action will protect vulnerable persons.

As such, those with protected characteristics are considered and reflected within our enforcement decisions through the use of our enforcement management model.

## Document review

The ORR EMM will be reviewed and revised as necessary.

# Purpose

---

1. The ORR EMM is intended to assist Inspector's in judging how far from the standard a dutyholder is, whether that be a legislative benchmark, an Industry standard or a permissioning document.
2. It is to guide the inspector in determining the severity of any failings and what the proportionate enforcement action to them might look like.
3. The ORR EMM should not be used in isolation as proportionate enforcement action is that which considers the output of the ORR EMM, the professional judgement of the Inspector and the ORR EPS.
4. Notwithstanding that any prosecution decisions must also be tested against [the Code for Crown Prosecutors in England and Wales](#) or the [Prosecutors Code and the Procurator Fiscal for Scotland](#).
5. Suitable and sufficient enforcement is that which:
  - Is evidentially supported;
  - Meets the principles of the [Office of Rail and Road's \(ORR\) health and safety compliance and enforcement policy statement 2016](#) (ORR EPS);
  - Ensures serious risks are dealt with promptly to minimise harm being realised;
  - Promotes or is likely to secure sustained compliance; and
  - Holds those responsible for breaching legislative requirements to account, whether that be corporate or Crown bodies, managers, directors and/or individuals, which may include prosecution, or censure for Crown Bodies, or recommendation of such action in Scotland, as necessary.
6. As such, the ORR EMM is intended to guide, not direct, enforcement action and so, it should not restrict an Inspector's discretion to exercise their own judgement.
7. Consequently, there is a final 'review' stage built into the model, to allow for Inspectors, and their line managers, to review the enforcement output against the bigger picture and the public interest and justifiably deviate as necessary.
8. In summary, the ORR EMM's purpose is to act as a framework for ORR Inspectors to base their enforcement decision process upon, to ensure that any action is:

## Office of Rail and Road | ORR's Enforcement Management Model

- Suitable and sufficient;
  - Consistent across ORR; and,
  - In accordance with the aims of the [Enforcement Concordat of the Better Regulation Executive](#).
9. It can also be utilised as a management tool in the internal peer review of others' decisions, such as trainees, and to assist in early identification of failings presenting the most severe gap or deviation, to direct our limited and finite investigatory resources accordingly.

# Summary

---

## Key Considerations for Railway Regulation

10. There are three key considerations for railway regulation that need to be accounted when applying the ORR EMM.
11. **Key Consideration 1:** *Large organisations (such as Network Rail Infrastructure Ltd and Transport for London) should be treated as a single entity rather than individual components, but require careful application of dutyholder factors to prevent unfair enforcement action uplift:*
12. Where action is being considered against part of a large organisation, whose single Safety Management System (SMS) will be/is being implemented across the whole of that corporate entity, the level of enforcement should be influenced by any similar or related incident/enforcement that has occurred previously elsewhere within that corporate entity operating under the same SMS, i.e. across routes or regions.
13. Using Network Rail Infrastructure Ltd (NR) as an example: A letter is given to a dutyholder regarding a failing identified in the Southwest of England. Subsequently, the same failing arises in the Northeast. The initial enforcement action should be uplifted through dutyholder factors, on the grounds that there is previous relevant enforcement.
14. Under such circumstances, the onus is on the organisation's senior managers to ensure that risk management is applied consistently across all regions. We should expect that any lessons learnt from incidents or failings identified in one part of an organisation should be communicated and rectified company wide.
15. This may include the improvement/amendment of their own standards if these are being followed correctly but the standards themselves are not legally compliant.
16. However, it should be recognised that the nature of ORR's regulatory role, means that we will purposefully target multiple sites under these same large single entities, thus resulting in substantial inspection history.
17. As such, inspection and incident history should only be applied where the underlying failing is of the same or a very similar nature to that being considered.
18. For example, an unacceptable safe system of work (SSoW) for track maintenance may result in various outcomes being investigated (a derailment, near miss, fatality,

etc) on different parts of the network. In such a case, it would only be the continuing existence of the inappropriate SSoW that should be applied with regards to action uplift.

19. **Key Consideration 2:** *Further breaches of on-going failings may be subject to additional enforcement action, irrespective of arguments that the original matter is being addressed.*
20. Due to the size and span of some ORR dutyholders, remedial action implementation deadlines can be months rather than weeks for health and safety breaches.
21. Considering this, alongside the finite number of ORR dutyholders and sites, it is probable that inspector's may identify breaches by a dutyholder that is already undertaking remedial steps for the same or similar breaches identified at a previous intervention.
22. To enable fair application of dutyholder factors to such situations, inspectors agreeing to long-term remedial action, such as an Improvement Notice with a 12-month deadline, should also request an implementation plan with clear milestones.
23. This plan can then be used by subsequent Inspectors to evaluate future compliance where the same or similar failings arise.
24. If timely progression against the plan can be demonstrated, then this should be considered a positive intervention and not used as an example of poor performance/poor inspection history.
25. Contrastingly, if they are unable to demonstrate to the satisfaction of the Inspector that active steps are being taken to rectify the previously identified breaches, then additional enforcement action should be considered, and the inspection seen as an example of poor history.
26. It is also possible that the same or similar breach may be found at two different sites, under the same dutyholder, at the same time by different inspectors. (Consider NR regions.)
27. The duty holder may argue that enforcing upon both sites would be duplication as both sites are under their control.
28. However, enforcement action at both sites should still be considered because it:
  - (a) should not be assumed by the Inspector that company senior management has taken action to rectify identified deficiencies across the organisation; and



- (b) sends a reaffirming message to senior management that there is an endemic problem that needs to be addressed and will not be tolerated.
29. **Key Consideration 3:** *The wider repercussions of enforcement action must also be accounted for within the final enforcement decision.*
30. Enforcement action by ORR could have an impact on other industry stakeholders as well as the direct recipient of the action. Especially where that action is against a large organisation, upon which other railway duty holders rely.
31. For example, if enforcement action is taken against NR that stops all work on a section of the network – e.g., a Prohibition Notice regarding unsafe OLE under the Electricity at Work Regulations 1989 – this would have implications not only on the intended region and dutyholder, but also upon anyone using that network (FOCs, TOCs and passengers) and anyone up or downstream of that part of the network that may be severely delayed.
32. This impact should be considered when applying the strategic factors, in particular consideration of the acceptability of the functional impact of the indicated enforcement action.
33. However, whilst this should be considered, this factor should not deter inspectors from taking enforcement where necessary, and ORR will fully support any action taken based on evidence and risk.

## Prosecution

34. The EMM cannot dictate that prosecution will be taken. It can only ever recommend the *consideration* for prosecution.
35. This is because the EMM does not seek to formally apply any evidential tests to determine if there is sufficient admissible evidence to support prosecution, or to apply a public interest test to determine whether prosecution is proportionate, as required by [the Code for Crown Prosecutors](#).
36. Notwithstanding that for Scotland, the decision to prosecute is taken by the COPFS and not ORR.
37. Similarly, it does not seek to formally identify whether the circumstances under assessment fall under one of the 10 categories stated within the ORR EPS as being a likely prosecution.

38. Paragraph 32 of the ORR EPS states that ORR will be more likely to prosecute, (or recommend prosecution in Scotland) where one or more of the following circumstances apply:
- (a) death was a result of a breach of the legislation;
  - (b) the gravity of an alleged health and safety offence, taken together with the seriousness of any actual or potential harm which warrants it;
  - (c) there has been reckless disregard of legal requirements;
  - (d) there has been a failure to adhere to statutory standards which has resulted in a significant financial benefit or competitive advantage to the offending duty holder (particularly where that failure was intentional);
  - (e) there have been repeated breaches of a similar nature which give rise to significant risk, or persistent and significant poor compliance in related areas;
  - (f) work has been carried out without, or in serious non-compliance with, a legal authorisation, order or certificate;
  - (g) a duty holder's standard of managing its legal responsibilities is found to be far below what is required, and to be giving rise to significant risk or other detrimental impact on others;
  - (h) there has been a failure to comply with an improvement or prohibition notice or there has been a repetition of a breach that was the subject of a simple caution;
  - (i) false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk; or
  - (j) inspectors have been intentionally or recklessly obstructed by the duty holder in a way that prevents them from carrying out their lawful duties.
39. The inspector should formally identify if paragraph 32 is met, then utilise their own judgement to consider the ORR EMM output and the full circumstances to calculate the appropriate enforcement.
40. Wherever an EMM output of 'consider prosecution' is reached, inspector judgement should be applied at the review stage to confirm whether it is appropriate and where it is, the relevant prosecutors' tests must still be applied against the evidence and public interest before proceeding.

41. Similarly, there may be circumstances where the EMM output isn't 'consider prosecution' but the inspector uses the review stage to conclude that consideration of prosecution *is* appropriate, such as, due to the awareness and attention to the topic prosecution would bring. This is perfectly reasonable, and the strategic factors of the ORR EMM process can assist with this justification.

### Crown Bodies

42. Crown Bodies cannot be subject to statutory enforcement.
43. However, non-statutory arrangements for enforcing health and safety requirements in Crown bodies allow enforcing authorities, including ORR, to issue non-statutory notices and the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified.
44. As such, the ORR EMM should be applied to Crown Bodies as it would be applied to any other dutyholder.

### Individuals

45. ORR enforcement is not confined to corporate or Crown bodies, as it can extend to individuals.
46. Acts and Regulations often place duties upon individuals and of particular note, are four Sections of the Health and Safety at Work etc. Act 1974 (HSWA):
- Section 7 – General duties on employees at work.
  - Section 8 – Duty for individuals not to interfere with or misuse things provided in pursuant of any relevant statutory provisions.
  - Section 37 – An individual who is a directing mind of a body corporate is guilty of an offence themselves if they have consented to, connived in or their neglect is attributable to that body corporate committing an offence.
  - Section 36 – An individual whose actions resulted in another person committing an offence is also guilty of said offence.
47. As such, employees, directors, managers and any other individuals should also be considered with regards to their adherence to the law.

48. Within ORR, we are often exposed to consideration of Section 7 due to the number of individual safety critical roles within the rail industry, such as tram and train drivers, whose actions can and should be an intrinsic part of an ORR investigation.
49. Where the ORR EMM and/or inspector judgement results in an output of 'consider prosecution,' there are some additional aspects to be considered when applying the evidential and public interest test.
50. For example, a driver has a micro-sleep and SPADs resulting in a collision and derailment. Evidence demonstrates that the driver had worked a series of double shifts, had reported feeling fatigued to his manager on the morning of the incident but was told to carry out his shift anyway and the drivers' employers' fatigue management system is well below that deemed suitable and sufficient. Therefore, whilst it was the drivers act/omission that resulted in the SPAD, the root cause of that omission can be linked to significant failings by the drivers' employer and therefore, it may not be within the public interest to prosecute the individual.
51. These additional tests can be found within [HSE's OC 130/8 'Prosecuting Individuals'](#) and any decision to prosecute must provide a justification that utilises both the ORR EMM and that OC as a framework.

## Health

52. Risks to health are just as important to consider as risks to safety and as such, the ORR EMM will refer to health risks and descriptors throughout.
53. However, due to the wide-ranging variety of risks to health, and the variables between each of them, it can sometimes be difficult to accurately apply an EMM to a health risk.
54. As the principles of this remain the same, regardless of the industry that the health risk is found in, inspectors should refer to [HSE's EMM: Application to Health Risks](#).

# Process Overview

---

## EMM Routes

55. The ORR EMM contains four possible routes:
56. **Health and Safety Risks Route:** For assessing compliance with duties where non-compliance could give rise to a risk of harm to health, safety, or both.
57. **Non-Risk-Based Compliance and Administrative Arrangements:** For assessing compliance with duties required by health and safety legislation, that are not directly related to a risk of harm, such as the need to risk assess.
58. **Non-Health and Safety Railway Specific Legislation:** For assessing compliance with duties required by railway specific legislation, that is not health and safety related, such as the Railways (Interoperability) Regulations 2011 (RIR).
59. **Permissioning:** For assessing a dutyholder's adherence to documentation issued under a permissioning regime, such as certificates of authorisation issued under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS).
60. The route to utilise is determined by the nature of the breach.
61. There may be circumstances where more than one route could fit and the inspector should determine which is most appropriate, which might mean utilising two routes. A breach under RIR might require assessment under Route 3 for the breach and Route 4 for any deviation from the interoperability permissioning document.
62. Another example, a dutyholder in possession of a Regulation 4, Railway Safety Regulations 1999 (RSR99) exemption certificate is found to be failing to adhere to their inspection and maintenance regime of the crashworthiness improvements. It would be appropriate for an inspector to utilise the Health and Safety Risks Route to identify whether the risk created by the failure requires enforcement action (e.g. an improvement notice to undertake a structural integrity inspection and act upon any findings) **and** the Permissioning Route to identify whether the deviation from the certificate is significant enough to require any impact on the permissioning document itself (e.g. amendment of exemption time or revocation).
63. Regardless of the route, the EMM is a 7-step process as detailed below.

## Step 1: Enforcement Priorities

64. During an intervention, inspectors will assess an array of topics against the legislative requirements, making regulatory judgements on each.
65. As such, when utilising the EMM, it is important that the inspector clearly identifies the issue under assessment, known as the **priority for action** as this will determine the EMM Route to follow and the benchmark to measure the dutyholder against.
66. Because of this, it is not appropriate to assess multiple priorities for action at once as they may each require different benchmarks or EMM routes,
67. If there are multiple failings, consideration should be given to how best to achieve sustained compliance and root cause (i.e. is there one singular root failing that is causing the multiple found.)
68. As such, it is perfectly reasonable for the ORR EMM to be applied multiple times at any one intervention and for multiple enforcement actions (verbal advice, letter, notice and prosecution) to result. An inspector might also use the review stage at Step 7 to condense those multiple actions indicated.
69. For example, during track renewal works, the ballast handling machinery is found to be lacking in suppression or extraction, thereby exposing workers in the vicinity to respirable crystalline silica, and the dutyholder is found to have no COSHH risk assessments. An inspector could run through the EMM for the lacking controls (which might result in an Improvement Notice) *and* run through it again for the lacking risk assessments (which might result in a separate Notice or letter). An inspector couldn't run through the EMM once for both the controls (H&S risk route) and the risk assessment (compliance and administrative route) at the same time.

## Step 2: Risk of Serious Personal Injury

70. **Inspectors should always deal with any matters giving rise to a risk of serious personal injury before anything else.**
71. If it is the Inspectors opinion that there is a risk of serious personal injury, then they should consider whether a Prohibition Notice or seizure of the article/substance creating the risk is required. (See HSWA S.22 and S.25.)
72. If the duty holder voluntarily stops the activity or use of the article/substance giving rise to the risk, this may remove the need for a formal Notice.

73. Consideration should be given to Key Consideration 3 (see paragraph 29), but in general the risk of serious personal injury outweighs anything else.

### Step 3: Gap Analysis

74. The '**benchmark**' is the minimum requirement expected of the duty holder.
75. What this requirement looks like (legislation, standard, permissioning document) will be dependent on the EMM route followed.
76. The '**actual**' is where the duty holder is, in terms of that expectation.
77. Therefore, Gap Analysis is a comparison of the actual – where they are – to the benchmark – where they should be – to establish whether the duty holder is meeting the required expectation, and if not, how far below that expectation they currently fall.

### Step 4: Initial Enforcement Expectation (IEE)

78. The 'gap' identified at Step 3 is then compared to the 'authority' of the standard to which they are being measured against to give the **initial enforcement expectation (IEE)**.
79. This can differ between routes. For permissioning, the IEE is calculated differently as the standard is the permissioning document itself. (See paragraphs 181 to 189).
80. Where there are multiple standards that apply to the circumstances, the most appropriate standard that best fits the priority for action should be utilised.

### Step 5: Dutyholder Factors

81. Application of **dutyholder factors** allows for the dutyholder's circumstances, background and activities to influence the enforcement expectation.
82. These factors can either confirm the IEE or move it up or down one level within the hierarchy. The resulting action is known as the **Indicated Enforcement Action (IEA)**.
83. As per the key considerations (see paragraph 11 to 33), careful application is required to ensure fairness and consistency and therefore, **Table 10** – Dutyholder Factors provides additional guidance on how to apply each of the factors in the railway context.



84. It is important to note that the applicable factors differ dependent on the IEE established. As such, Table 10 – Dutyholder Factors should be considered alongside the various **flowcharts** that feature after that table.

### Step 6: Strategic Factors

85. Application of **strategic factors** enables consideration of the wider implications of enforcement action, including the broader socio-political impact, and public interest.

86. Unlike dutyholder factors, these do not impact the IEA as they are instead designed to assist the inspector in applying their own judgement on whether the Indicated Enforcement Action is proportionate to the circumstances.

87. If, when considering the indicated enforcement action, the inspector answers 'no' to any of the strategic factors, this should trigger the 'review' part of the process where the proportionality of the IEA is assessed.

88. "Table 11, Strategic Factors" provides additional guidance on how to apply each of the factors in the railway context.

### Step 7: Enforcement Conclusions

89. This is the '**review**' **stage** of the process where the inspector and their line manager should exercise their professional judgement to determine whether the IEA is representative of suitable and sufficient enforcement action.

90. The final enforcement conclusion should be a consideration of the EMM indicated enforcement action, the inspector's own judgement and the ORR EPS and as such, deviation from the IEA can be justified.

91. As per paragraphs 34 to 51, prosecution recommendations require additional tests to be fulfilled.

92. Enforcement action is appropriate when:

- It deals with all serious risks (unless there are none/no ongoing risk);
- It is likely to secure sustained compliance (unless it already has been);
- The principles and expectations of the EPS have been met; and,
- There is sufficient evidence and justification to support the action.



# Route 1: Health and Safety Risks

---

## Step 1: Enforcement Priorities

93. For this route, the priority for action is associated with a hazard – something with the potential to cause harm – and its control measures – precautions/systems to reduce the risk of that hazard.
94. The priority for action should be regarding the appropriateness of the measures implemented to directly control the identified risk.

## Step 2: Risk of Serious Personal Injury

95. Before proceeding further, Inspectors should first determine whether there are any matters giving rise to a risk of serious personal injury.
96. See paragraph 70 to 73.

## Step 3: Gap Analysis

97. For this route, **the benchmark** is the accepted level of risk that exists, when all reasonably practicable actions required of the duty holder by law are implemented. This level will vary dependent on the risk under assessment.
98. **The actual** is the level of risk that is present, when accounting for the measures, if any, that the duty holder has put in place.
99. **The risk gap** is then a comparison of the actual to the benchmark, to quantify how far below the benchmark the dutyholder is.
100. The risk gap is defined as either **extreme, substantial, moderate, or nominal**.
101. Both the benchmark and the actual are an accumulative measure of the severity of the potential injury (the consequence) against the likelihood of that injury occurring.
102. **Consequence** should be selected to represent the harm risked. The descriptors for consequence are **serious, significant or minor**. See Table 1 – Consequences for full descriptions.
103. Remember that this is consideration of the harm risked and not the harm realised. As such, the harm risked could be death, even where a fatality has not occurred. (E.g.

Whilst a freight train collision caused by signalling failures results in no injuries to the drivers, there was still a risk of death posed by the failings.)

- 104. **Likelihood** can be entirely subjective, dependent on the circumstances under assessment, and requires the inspector to make a judgement using their knowledge of the industry/activity and any supporting guidance or standards.
- 105. The likelihood categories are a **probable, possible, remote** or **nil/negligible** chance of the identified consequence occurring.
- 106. When considering a **health risk**, generally inspectors should also consider **frequency** of exposure when judging the likelihood of a consequence occurring – e.g., the likelihood of asthma from a one-off cutting of wood without extraction by a heritage volunteer vs a worker in a depot who makes cuts all day, every day.
- 107. Some measures may reduce the consequence – e.g., use of seatbelts for drivers of trains or machinery may reduce the consequence of a collision.
- 108. Many measures will target the likelihood of the same consequence occurring – e.g., working within a possession reduces the likelihood of a worker-train collision.
- 109. And some will address both consequence and likelihood – e.g., introducing a reduced speed limit on a section of the network with work ongoing, reduces the likelihood of a collision as the driver has longer to react, and reduces the consequence of a collision due to reduced impact.

**Table 1      Consequences: What are the potential consequences of the event?**

Descriptor	Definition
Serious	It is credible that an injury could occur that is: Fatal; or, Results in a permanent or irreversible disabling condition or requires immediate treatment in hospital. It is credible that a health effect could occur that causes a: permanent, progressive, or irreversible condition or, permanent disabling leading to a lifelong restriction of work capability or major reduction in quality of life.

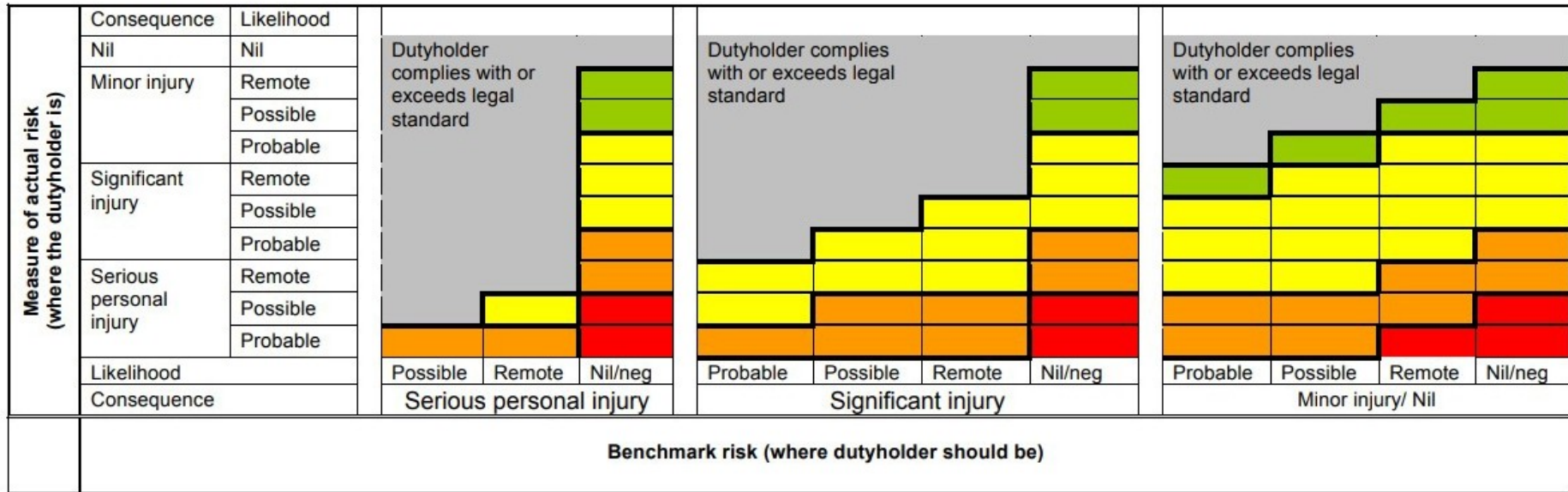
Descriptor	Definition
Significant	<p>It is credible that an injury could occur to a person that results in that person being unable to perform their normal work for more than 3 days.</p> <p>It is credible that a health effect could occur that causes:                      non-permanent or reversible health effects,                      non-progressive conditions or,                      temporary disability.</p>
Minor	Injuries and conditions/ill-health affects not included above.

110. **Extent** is considered via two Risk Gap tables – one for single and low casualties (Figure 1.1) and one for multiple casualties (Figure 1.2).

111. For rail events that could lead to multiple fatality outcomes to members of the public, such as train collisions, derailments and serious fires, especially in tunnels, Figure 1.2 should be used.

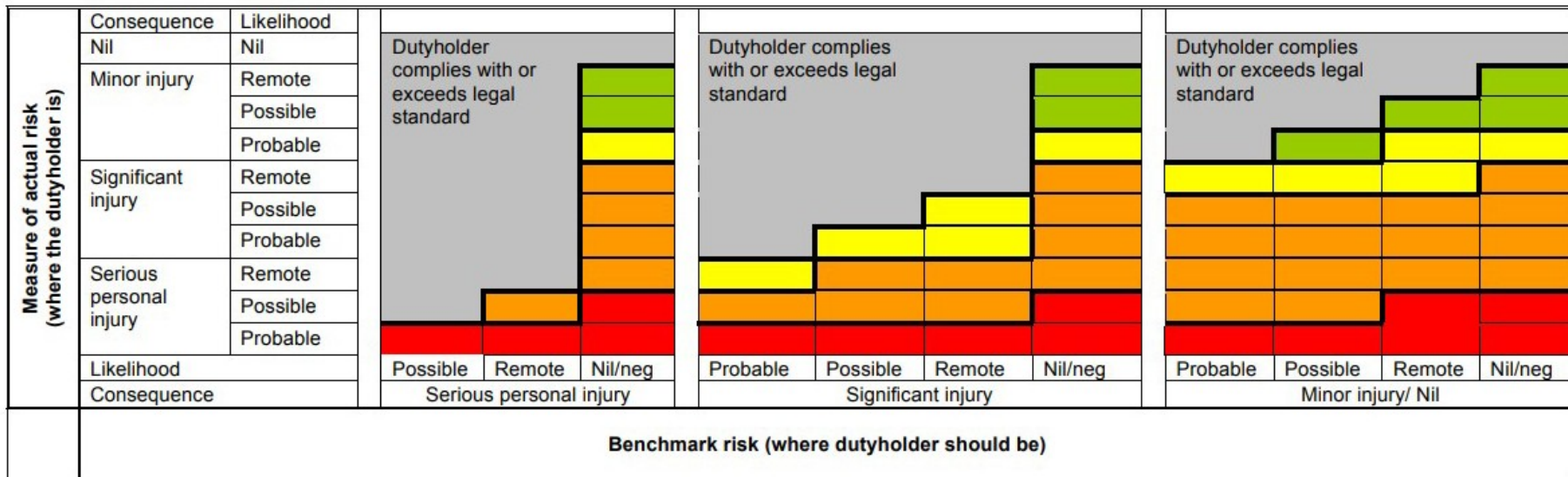
112. Due to the nature of the incidents that might lead to multiple fatalities, they would be considered '**major incidents**' and so the benchmark should always be nil/negligible as the dutyholder should have measures to prevent such an incident from ever occurring.

Figure 1.1 Risk gap: single and low casualties



Source: HSE's EMM [hse.gov.uk/enforce/emm.pdf](https://www.hse.gov.uk/enforce/emm.pdf)

Figure 1.2 Risk gap: Multiple casualties



Source: HSE's EMM [hse.gov.uk/enforce/emm.pdf](https://www.hse.gov.uk/enforce/emm.pdf)

## Step 4: Initial Enforcement Expectations

113. For this route, the **initial enforcement expectation (IEE)** is calculated by comparing the risk gap to the 'authority' of the **standard** to which they are being compared to.
114. The requirements of duty holders – standards – can come from different sources. Because of this, standards have differing authorities dependent on their source – e.g., explicitly specified in legislation vs inferred in an industry guidance document.
115. The reason the gap analysis is compared to the standard authority, is because a higher level of enforcement is expected where the standard is well known and established.
116. The three standard authorities are **defined, established** and **interpretive** and Table 2 below describes each.

**Table 2 Standards: What is the authority of the appropriate standard?**

Descriptor	Definition
Defined	The minimum standard specified by Acts, Regulations, Orders and ACoPs. For example, the defined standards for welfare; the defined standards for edge protection/scaffold; the defined standard for a train protection system.
Established	Codes of Practice and other published standards endorsed by ORR, HSE, industry or other credible organisations that are well known and link to legislation. For example, the HSE's CIS series, including CIS69 for construction dust controls and Network Rail and RSSB standards.
Interpretive	Standards that are not published or widely known/available but are those required to meet a general duty. These may be interpreted by inspectors from first principles. For example, how industry dealt with the pandemic and the standards that were quickly formed, but not widely known, around that.

117. The initial enforcement expectation (IEE) indicated will either be **verbal warning, letter** or **Improvement Notice**.
118. Where the extent of the breach requires it, it may also indicate that **prosecution** should be considered.

119. The IEE does not include Prohibition Notice because a risk of serious personal injury should already have been considered and dealt with where necessary at Step 2.

120. Table 3 demonstrates the outcomes of the comparison to the standard authority.

**Table 3** Calculating the Initial Enforcement Expectation for Route 1

Risk gap	Standard	Initial enforcement expectation (to secure compliance with the law)	Consider prosecution?
Extreme	Defined	Improvement Notice	Yes
	Established	Improvement Notice	Yes
	Interpretative	Improvement Notice	
Substantial	Defined	Improvement Notice	
	Established	Improvement Notice	
	Interpretative	Letter	
Moderate	Defined	Improvement Notice	
	Established	Letter	
	Interpretative	Letter	
Nominal	Defined	Verbal warning	
	Established	Verbal warning	
	Interpretative	Verbal warning	

## Step 5: Dutyholder factors

121. Apply the **dutyholder factors** as per the guidance at Table 10.

122. See paragraphs 81 to 84.



## Step 6: Strategic Factors

123. Apply the strategic factors as per the guidance at Table 11.

124. See paragraph 85 to 88.

## Step 7: Enforcement Conclusions

125. As per paragraphs 89 to 92 the Indicated Enforcement Action should be reviewed to ensure it is representative of suitable and sufficient enforcement action.



## Route 2: Non-risk-based compliance and administrative arrangements

---

### Step 1: Enforcement Priorities

126. These are the priorities for action associated with legislative duties within health and safety law that do not directly control the risk.
127. This might include the requirements to; submit an SMS, to gain competent advice, to possess a written risk assessment or, to have suitable and sufficient welfare.
128. However, there is often a strong relationship between the control of risk and failure to address compliance issues.
129. In cases where both risk and compliance failings exist, inspectors should decide on action principally in relation to the control of risk.
130. For example, where a worker is cleaning axles via an abrasive technique and the process may release lead, the requirement for full welfare becomes necessary for control of the risk of exposure to lead and not just a compliance and administrative requirement under Construction (Design and Management) Regulations 2015, and as such, the breach should follow the Health and Safety Risks route instead.

### Step 2: Risk of Serious Personal Injury

131. Before proceeding further, Inspectors should first determine whether there are any matters giving rise to a risk of serious personal injury.
132. See paragraph 70 – 73.

### Step 3: Gap Analysis

133. For non-risk-based compliance, likelihood and consequence is not applicable as these arrangements do not directly result in the control of risk.
134. Here the **benchmark** is the required standard, and the **actual** is what the duty holder has done, if anything, to comply. As such, the gap analysis is categorising how far from the required standard the duty holder is.

135. There are three categories for this: **absent**, **inadequate** or **minor**. (See Table 4)

**Table 4** Gap analysis: How well are the standards for compliance or administrative arrangements complied with?

Descriptor	Definition
Absent	Total absence or lack of implementation of compliance or administrative arrangement. For example, risk not assessed, toilets not provided, or accidents not reported.
Inadequate	Only rudimentary observance with standards or inadequate compliance, where such failures are of a substantial nature. For example, washing facilities provided but no hot water or only fatal or major injuries reported.
Minor	Deficiencies or inadequacies are minor and can be remedied easily.

## Step 4: Initial Enforcement Expectation

136. For non-risk-based compliance, the **initial enforcement expectation (IEE)** is a comparison of the calculated deviation to the authority of the standard.

137. Table 2 - Standards and paragraphs 113 to 116 should be utilised to identify that authority.

138. The IEE will either be verbal warning, letter or Improvement Notice.

139. Table 5 details how that outcome is reached.

**Table 5** Calculating the Initial Enforcement Expectation for Route 2

Descriptor	Standard	Initial enforcement expectation
Absent	Defined	Improvement Notice
	Established	Improvement Notice
	Interpretative	Letter

Descriptor	Standard	Initial enforcement expectation
Inadequate	Defined	Improvement Notice
	Established	Letter
	Interpretative	Verbal Warning
Minor	Defined	Verbal Warning
	Established	Verbal Warning
	Interpretative	Verbal Warning

140. Consider prosecution is not included within this table as, generally, compliance and administrative requirements would not warrant prosecution where they exist in isolation.

141. However, for a site with multiple failings, including compliance arrangement failings, consideration of prosecution may be required as a totality (consider Section 2(1) and Section 3(1) of HSWA and Paragraph 32(e) and (g) of the ORR EPS.)

## Step 5: Dutyholder factors

142. Apply the **dutyholder factors** as per the guidance at Table 10.

143. See paragraphs 81 to 84.

## Step 6: Strategic Factors

144. Apply the strategic factors as per the guidance at Table 11.

145. See paragraph 85 to 88.

## Step 7: Enforcement Conclusions

146. As per paragraphs 89 to 92 the Indicated Enforcement Action should be reviewed to ensure it is representative of suitable and sufficient enforcement action.

## Route 3: Non-Health and Safety Railway specific legislation

---

### Step 1: Enforcement Priorities

147. These are the priorities for action associated with legislative duties required by non-health and safety (H&S) law, usually railway specific. This might include:

- (i) Railways (Interoperability) Regulations 2011 (RIR);
- (ii) Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (RVAR); and,
- (iii) Train Driving Licences and Certificates Regulations 2010 (TDLCR).

148. This route of the ORR EMM can be used to assess whether deviation from their legislative duties is significant enough to require enforcement action.

### Step 2: Risk of Serious Personal Injury

149. Before proceeding further, Inspectors should first determine whether there are any matters giving rise to a risk of serious personal injury.

150. See paragraph 70 – 73.

151. Inspectors should also be mindful of **Regulation 41 of RIR** that provides the ability to serve a Prohibition Notice where an interoperability constituent, in relation to which an EC declaration of conformity or suitability for use has been drawn up, is unlikely, when used as intended, to meet the essential requirements relating to it.

152. In such circumstances, a notice can be served to prohibit the use or to require the recall and withdrawal of the interoperability constituent however, such a notice would not be issued in relation to Section 22 of HSWA.

### Step 3: Gap Analysis

153. If an inspector determines that a non-H&S railway specific standard has been breached, then one of following should apply:

- (a) the breach has a health and safety implication/risk and should therefore be dealt with via Route 1;
- (b) the breach relates to compliance and administrative arrangements and should therefore be dealt with via Route 2;
- (c) the breach relates to a non-conformance with the permissioning document and should therefore be dealt with via Route 4; or,
- (d) the breach relates to a non-H&S provision and the seriousness of that breach needs to be assessed as per the below instruction.

As per paragraph 61, the breach may require the Inspector to utilise more than one route such as Route 3 and Route 4.

154. The assessment of the seriousness of the breach follows a similar pattern to that of compliance arrangements, in that this is a comparison of the **benchmark**, the standard required by the legislation, to the **actual**, which is what the duty holder has done to comply.

155. There are three levels: **substantial**, **moderate** and **nominal** (See Table 6).

**Table 6** Gap Analysis: How significant is the non-compliance with the agreed technical standards?

Descriptor	Definition
Substantial	<p>Total or significant lack of compliance with the requirements of UK legislation or EU Regulations.</p> <p>For example, a consistent or deliberate failure to maintain authorised interoperable infrastructure or rolling stock in compliance with agreed TSIs, perhaps for economic gain. This might also affect the performance of either the rolling stock or infrastructure which might in turn affect other duty holders or users of the railway.</p>
Moderate	<p>Only rudimentary observance with standards or inadequate compliance, where such failures are notable, but not of a deliberate or significant nature.</p> <p>For example, the unintentional fitment of components which, whilst working adequately, do not comply with the interoperability or accessibility regulations, but which provide no economic or competitive advantage to the operator and no health and safety risk.</p>
Nominal	<p>Deficiencies or inadequacies are minor and can be remedied easily.</p> <p>For example, the use of inappropriate labelling or signage, or a failure to produce a train driving licence upon request due to oversight.</p>

156. There may be occasions where a breach of relevant non-H&S legislation results in more than one impact that then needs to be assessed via multiple ORR EMM routes.

157. For example, where a breach of RIR results in a minor safety risk, which Route 1 IEA is a letter, but a significant deliberate financial gain which, under this Route, we might consider prosecution.

158. In such cases, it is not expected that one enforcement route would necessarily take precedence over the other. We should instead consider both routes and take the necessary and proportionate enforcement action to ensure sustained compliance.

## Step 4: Initial Enforcement Expectation

159. For non-H&S railway specific legislation, the standards will always be a technical standard and therefore, the **indicated enforcement action (IEE)** calculation is much simpler to calculate.
160. However, as the **extent** of the breach must also be considered, through inspector judgement, the IEE is given as a range for some circumstances. (See Table 7.1)
161. In extreme circumstances, prosecution action should be considered in relation to a particularly serious breach of legislation or continuing lack of compliance with legal obligations by the duty holder / operator.

**Table 7.1 Calculating the Initial Enforcement Expectation for Route 3**

Descriptor	Initial Enforcement Expectation	Consider Prosecution?
Substantial	Improvement notice	Yes
Moderate	Letter - improvement notice	
Nominal	Verbal warning - letter	

162. Alongside the above are specific circumstances to be considered, that may elevate or amend the IEE.
163. These **extenuating factors**, and the IEE's associated with them, are described in Table 7.2.

**Table 7.2 Extenuating factors**

Extenuating factor	Identified Gap	Initial Enforcement Expectation	Consider prosecution?
Actual or potential impact on passengers / other railway users / other third parties	Substantial	Improvement notice	Yes
	Moderate	Letter - improvement notice	
	Nominal	Verbal warning - letter	
Consistent failure to meet legal obligations	Substantial	Improvement notice	Yes
	Moderate	Letter - improvement notice	
	Nominal	Verbal warning - letter	
Economic / competitive advantage	Substantial	Improvement notice	Yes
	Moderate	Letter - improvement notice	
	Nominal	Verbal warning - letter	
Actual or potential impact on other duty holders	Substantial	Improvement notice	Yes
	Moderate	Letter - improvement notice	
	Nominal	Verbal warning - letter	

164. An additional area for the inspector to consider here is the **applicability of** an Improvement Notice, served under **HSWA**, to the breach in question.

165. Where the confines of Section 2, 3 or 6 of HSWA apply, a HSWA-related IN may be served. Where HSWA does not apply, a HSWA-related Notice would have no legal basis.

166. **Regulation 42 of RIR** details a Notice of ‘improper drawing up of the EC declaration of conformity’, and the purpose of this Notice is similar to that of an IN, in that the dutyholder must demonstrate in a specified timeframe remedial action has been taken.



167. As such, where the IEE is Improvement Notice but HSWA doesn't apply, consideration to the applicability Regulation 42 should be given.

168. For other situations, referral to RPP for use of the Regulatory Escalator may be more appropriate.

## Step 5: Dutyholder factors

169. Apply the **dutyholder factors** as per the guidance at Table 10.

170. See paragraphs 81 to 84.

## Step 6: Strategic Factors

171. Apply the **strategic factors** as per the guidance at Table 11.

172. See paragraph 85 to 88.

## Step 7: Enforcement Conclusions

173. As per paragraphs 89 to 92 the Indicated Enforcement Action should be reviewed representative of suitable and sufficient enforcement action.

## Route 4: Permissioning

---

### Step 1: Enforcement Priorities

174. These are priorities for action associated with a failure to comply with a licence, approval, certificate or authorisation issued by ORR.
175. This might include ROGS safety certificates and safety authorisations, and any specific conditions, obligations or parameters contained within; exemption certificates issued under the Railway Safety Regulations 1999 (RSR99) and the conditions set; and various Orders such as Level Crossings.
176. This route is an assessment of the level of deviation from the agreement with ORR and it sits separate to any permissioning application processes. For example, where the findings of an inspection or investigation indicate that the SMS is either not being followed or is not effective.

### Step 2: Risk of Serious Personal Injury

177. Before proceeding further, Inspectors should first determine whether there are any matters giving rise to a risk of serious personal injury.
178. See paragraph 70 to 73.

### Step 3: Gap Analysis

179. This is an assessment as to the level of deviation from the specific conditions, obligations or parameters set out within the permissioning documents.
180. For this, the **benchmark** is the requirements set by the permissioning documents, and the **actual** is how far from those requirements the duty holder is.
181. The level of deviation may fall into three categories: **contravention**, **irregularities** or **none** (See Table 8).

**Table 8** Gap Analysis: How significant is the deviation from the permissioning document?

Descriptor	Definition
Contravention	A clear and obvious failure to entirely implement a requirement of the permissioning document. This might be the operation of vehicles or a service type not detailed at assessment, or any substantial change to operation not highlighted or accounted for at assessment.
Irregularities	A partial failure to implement a requirement of the permissioning document. This might be a deviation from the SMS provided at ROGS assessment, or where the organisation is not structured in a way that enables the SMS provided at assessment to be sufficiently delivered.
None	Adherence to the permissioning document

## Step 4: Initial Enforcement Expectation (IEE)

182. For this route, the standard is the permissioning document, and the **IEE** is calculated by comparing the deviation from the document to the level of risk the deviation has caused.
183. However, the IEE here is associated with the permissioning itself –the **amendment** of a document (e.g. Part B of a ROGS safety certificate, remembering we also have the ability to direct someone to apply for an amendment under Reg 14 of ROGS), the **revocation** of a document, the **variation** of a condition (e.g. limiting the validity period or the scope of activities on a ROGS safety certificate or safety authorisation or, revising conditions listed within an exemption certificate issued under RSR99), the **refusal** of an application or issuing a **letter** or **verbal advice**.
184. As such, whilst level of risk is considered at this step, any IEE and IEA via this route will only ever consider the permissioning document.
185. Therefore, any associated H&S risks or compliance and administrative failings should be progressed independently through their respective ORR EMM Route to determine their IEE.

- 186. The inspector should then consider what the proportionate enforcement action is to ensure sustained compliance.
- 187. The descriptors for the risk level match those utilised in Figure 1.1 and 1.2 to guide analysis.
- 188. As such, the level of potential risk should be categorised as either **extreme**, **substantial**, **moderate**, **nominal** or **nil/negligible**.
- 189. Due to the considerable differences between the permissioning regimes under ORR, and the different action required dependent on the stage of application (new applicant vs existing) the IEE is given as a range to enable the Inspector to utilise their own judgement as to which one (or more) they deem proportionate.
- 190. As an example, a new applicant cannot have a certificate revoked as one does not already exist, but they could have their new application refused. (See Table 9.)

**Table 9      Calculating the Initial Enforcement Expectation for Route 4**

Deviation from the Permissioning Document	Level of Potential Risk caused by Deviation	Initial Enforcement Expectation	Consider prosecution?
Contravention	Extreme	Revocation/Refusal/Amendment	Yes
	Substantial	Revocation/Refusal/Amendment/Variation	
	Moderate	Refusal/Amendment/Variation/ Letter	
	Nominal	Variation/Letter	
	Nil/negligible	Letter	
Irregularities	Extreme	Refusal/Amendment/ Variation/Letter	Yes
	Substantial	Amendment/ Variation/Letter	
	Moderate	Variation/Letter/Verbal warning	

Deviation from the Permissioning Document	Level of Potential Risk caused by Deviation	Initial Enforcement Expectation	Consider prosecution?
None	Nominal	Letter/Verbal warning	
	Nil/negligible	Letter/Verbal warning	
	N/A	No action	

## Step 5: Dutyholder factors

191. Apply the **dutyholder factors** as per the guidance at Table 10.

192. See paragraphs 81 to 84.

## Step 6: Strategic Factors

193. Apply the strategic factors as per the guidance at Table 11.

194. See paragraph 85 to 88.

195. With regards to key consideration 3, inspectors should remember that for a revocation, a substantial file of evidence to support such an action is required alongside consultation with other parts of ORR to fully consider the functional impact.

## Step 7: Enforcement Conclusions

196. As per paragraphs 89 to 92 the Indicated Enforcement Action should be reviewed representative of suitable and sufficient enforcement action.

## Table 10 Dutyholder factors guidance

Descriptor	Definition	ORR guidance
<b>Does the duty holder have a history of relevant, written enforcement being taken against them?</b>		
Yes	Enforcement action has been taken against the duty holder on the same or similar failings, by notices, prosecutions or letter requiring action.	<p>The key words here are ‘same or similar’. Where previous enforcement has been taken on a failing which should then have been addressed and rectified across the organisation, we would not expect to see the same or similar failings occur in future.</p> <p>We need to be careful not to automatically count all previous enforcement history when considering this factor – the key is whether the previous enforcement relates to a similar failing. That said, a high level of enforcement activity against a single duty holder on a wide variety of failings may be an indication that its management systems are inadequate and/or ineffective, and so could justify stronger or additional enforcement action.</p>
No	No written enforcement action against the duty holder on the same or similar failings.	<p>This factor reflects the importance of sufficient recording of inspections, enforcement and investigations, to enable ORR to access, review and accurately reflect any previous enforcement. Including, for larger organisation, an appropriate implementation plan with clear milestones to allow other inspectors to judge whether the failing is either new, a repeat or undergoing long-term remedial action plan. (See key consideration 2.)</p>

Descriptor	Definition	ORR guidance
<b>Does the duty holder have a history of relevant verbal enforcement being given to them?</b>		
Yes	Enforcement action has been taken against the duty holder on the same or similar failings, by verbally telling them what they have to do in order to comply with the law.	The same approach to that above, also applied here, although targeting the information will likely prove more difficult than above due to a lack of hard evidence/records. This factor reflects the importance of sufficient recording of full inspections, including where only verbal advice has been provided.
No	The duty holder has not been told previously what they have to do in order to comply with the law on the same or similar failings.	
<b>Is there a relevant incident history?</b>		
Yes	The duty holder has a history of related incidents, or that there is evidence of related incidents, e.g. accidents, cases of ill health, dangerous occurrences.	It might not be appropriate for us to increase the IEE each time a duty holder experiences an incident. Inspectors need to consider if the charges/breaches and circumstances of the breach are comparable.

Descriptor	Definition	ORR guidance
No	No previous history or evidence of related accidents, ill health or dangerous occurrences.	<p>As well as ORR information, RAIB reports, advice from specialist colleagues and action by other enforcing authorities (e.g. HSE) may point to previous incidents involving the same failing.</p> <p>One other matter to consider is the use of these factors to drive duty holders to deliver timely improvement of risk control. For example, where there may not have been a previous incident, but the breach has arisen because of a failure by the duty holder to promptly consider near miss or other intelligence and implement changes to safety arrangements, then stronger enforcement action might be appropriate.</p>
<b>What is the intention of the duty holder in non-compliance?</b>		
Economic advantage sought	The duty holder is deliberately avoiding minimum legal requirements for commercial gain. (For example, failing to price for or provide scaffolding for high roof work)	Further examples when considering this factor might be the lack of training provision resulting in lower company costs or, in terms of 'non-safety' risk, the fitment of non-interoperable components which are cheaper than compliant items being fitted by other duty holders.



Descriptor	Definition	ORR guidance
No economic advantage sought	Failure to comply is not commercially motivated.	<p>Such as the use of the local hardware store for easier obtainment of door bolts rather than undergoing the full procurement processes which could result in having vehicles out of traffic for longer periods.</p> <p>This will be a judgement for the inspector to consider in the light of evidence gained during the investigation process. Large corporate bodies should be treated no differently than other organisations (with the exception that the commercial gain for larger companies might arguably be more significant).</p> <p>Depending on the circumstances of the case, advice might be sought from colleagues in the Railway Planning and Performance (RPP) and / or the Economics Finance and Markets Directorate.</p>
<b>What is the level of actual harm?</b>		
Serious	A 'serious personal injury' or 'serious health effect' has occurred as a result of the matter under consideration.	In considering this factor inspectors should refer to Table 1 which provides definitions of 'serious injury / health effect'.

Descriptor	Definition	ORR guidance
Not serious	There has been no actual harm, or the harm has been no greater than a 'significant personal injury' or a 'significant health effect'.	<p>As 'harm' is defined as 'both physical and economic damage caused to one person by the conduct of another' it is relevant, in ORR, to consider this factor in relation to breaches of 'non-safety' legislation, such as a passenger with a disability being unable to travel because of a failure to comply with accessibility standards. DfT leads for accessibility policy so a steer from DfT's accessibility team may be appropriate to assist in the proper application of this factor.</p> <p>A failure by the duty holder to promptly consider and implement changes to safety standards might also be applied here: Has serious harm been caused because of a duty holder failure which might not have been so serious had new standards / arrangements been implemented earlier?</p>
<b>What is the standard of general conditions?</b>		
Poor	There is a general failure of compliance across a range of issues, including those matters related to the activity being considered through the EMM. For example, failure to address risks arising from hazardous substances, machinery, transport, vibration, noise etc, or inadequate welfare facilities.	<p>This factor should focus on the site/region where the incident happened, and the conditions found as part of the investigation.</p> <p>For ORR, as a general guide, if action was required for one or more H&amp;S topic area, other than that under assessment, the conditions should be seen to be 'poor'.</p> <p>If only verbal advice was required for topics other than that under assessment the conditions should be seen as 'reasonable.' Although, where considerable verbal advice is required across multiple topics, the inspector should consider if this requires an uplift to 'poor'.</p>
Reasonable	The majority of issues are adequately addressed, with only minor omissions.	

Descriptor	Definition	ORR guidance
Good	Full compliance across the whole range of indicators with no notable omissions.	<p>If no other non-compliance was seen, other than that under assessment, then the conditions can be seen as reasonable.</p> <p>For larger railway duty holders, this can be a difficult factor to judge due to the wide range of tasks and therefore risks being managed. Inspector's may wish to use recent Railway Management Maturity Model (RM3) assessments to help inform their decision.</p>
<b>What is the Inspection history of the duty holder?</b>		
Poor	The duty holder has an inspection history of significant problems and copious advice.	Inspectors should ensure that sufficient information about failings identified during inspections is recorded on the case management system to allow for this factor to be accurately assessed.
Reasonable	The duty holder has an inspection history of nominal or piecemeal problems, where non-compliance has been related to new or obscure duties.	As with above, RM3 will provide Inspectors with a useful assessment of a duty holder's performance which should be used as a tool to aid their deliberations.
Good	The duty holder has an inspection history of good compliance, effective response to advice and consistently high standards.	

Descriptor	Definition	ORR guidance
<b>What is the attitude of the duty holder?</b>		
Hostile/indifferent	The duty holder is actively antagonistic, or completely uninterested in health and safety. Impossible to establish an effective relationship.	For large organisations, this may require consideration of both the overarching senior management’s attitude to health and safety, as well as the local management’s attitude – the two could differ and shape the Inspector’s outlook of this factor. If either has a poor attitude, the factor should be negatively applied accordingly.  There should also be a consideration as to whether previous advice from ORR has been ignored, remedial action intentionally delayed or whether an initial positive attitude has regressed: Has the attitude of the duty holder, in delaying the implementation of new or revised standards, despite our advice, contributed to an incident occurring?
Reasonable	The duty holder is open to discussion and reasoned persuasion and effective communications can be established.	
Positive	The duty holder is enthusiastic and proactive towards health and safety, actively seeking advice and pursuing solutions.	

# Flowcharts

Figure 2 Application of dutyholder factors when the IEE is Prohibition Notice

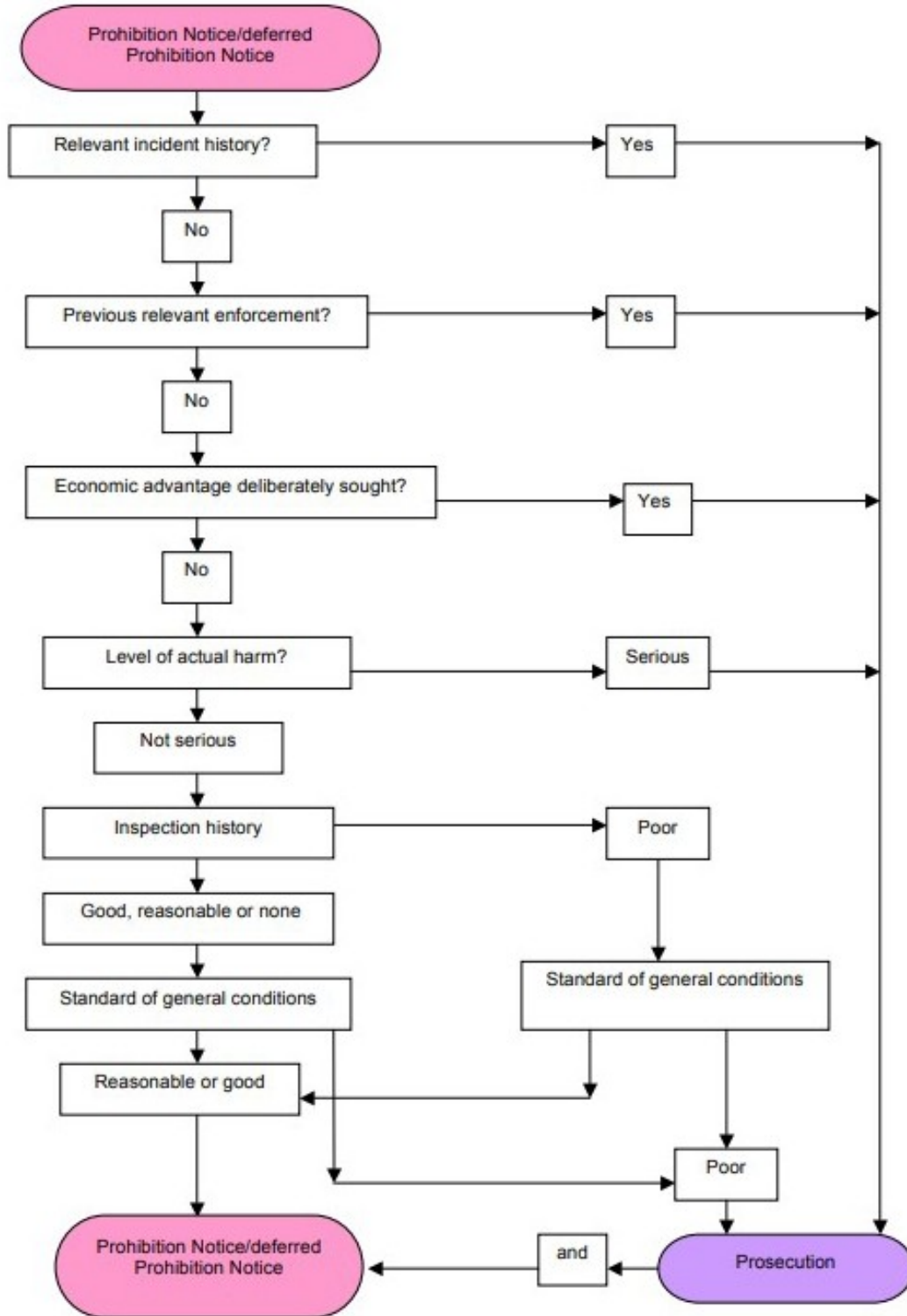


Figure 3 Application of dutyholder factors when the IEE is Improvement Notice

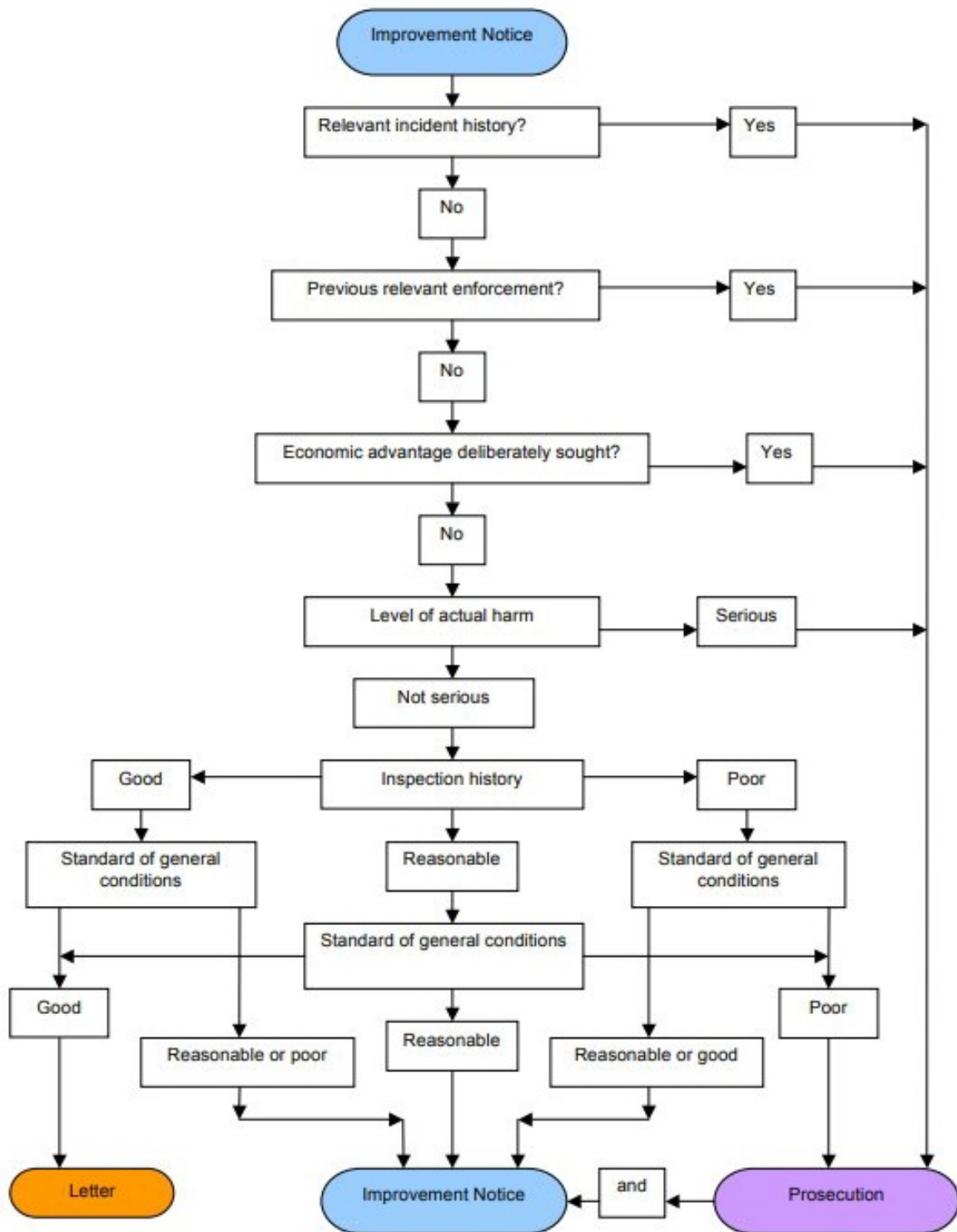


Figure 4 Application of dutyholder factors when the IEE is letter.

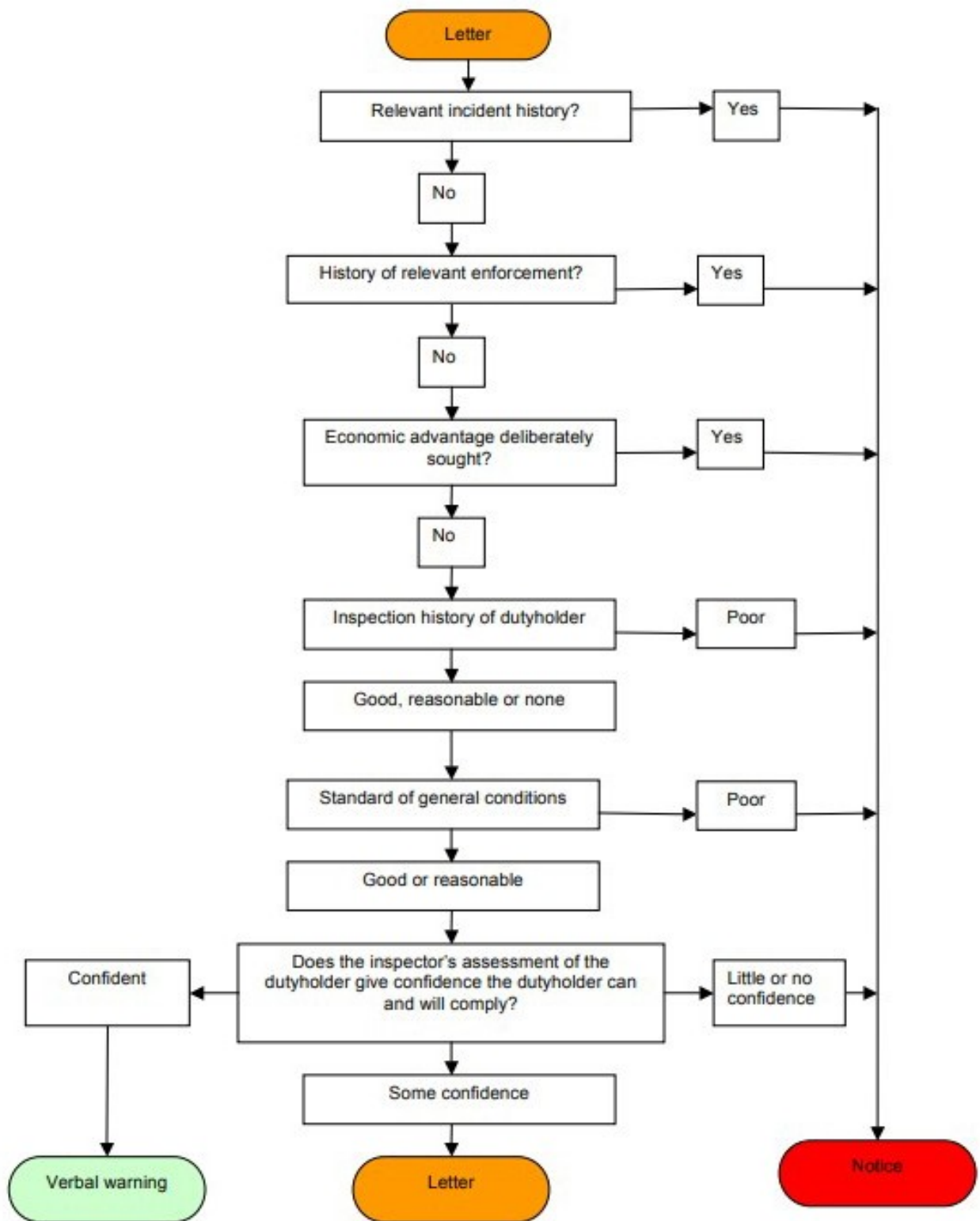
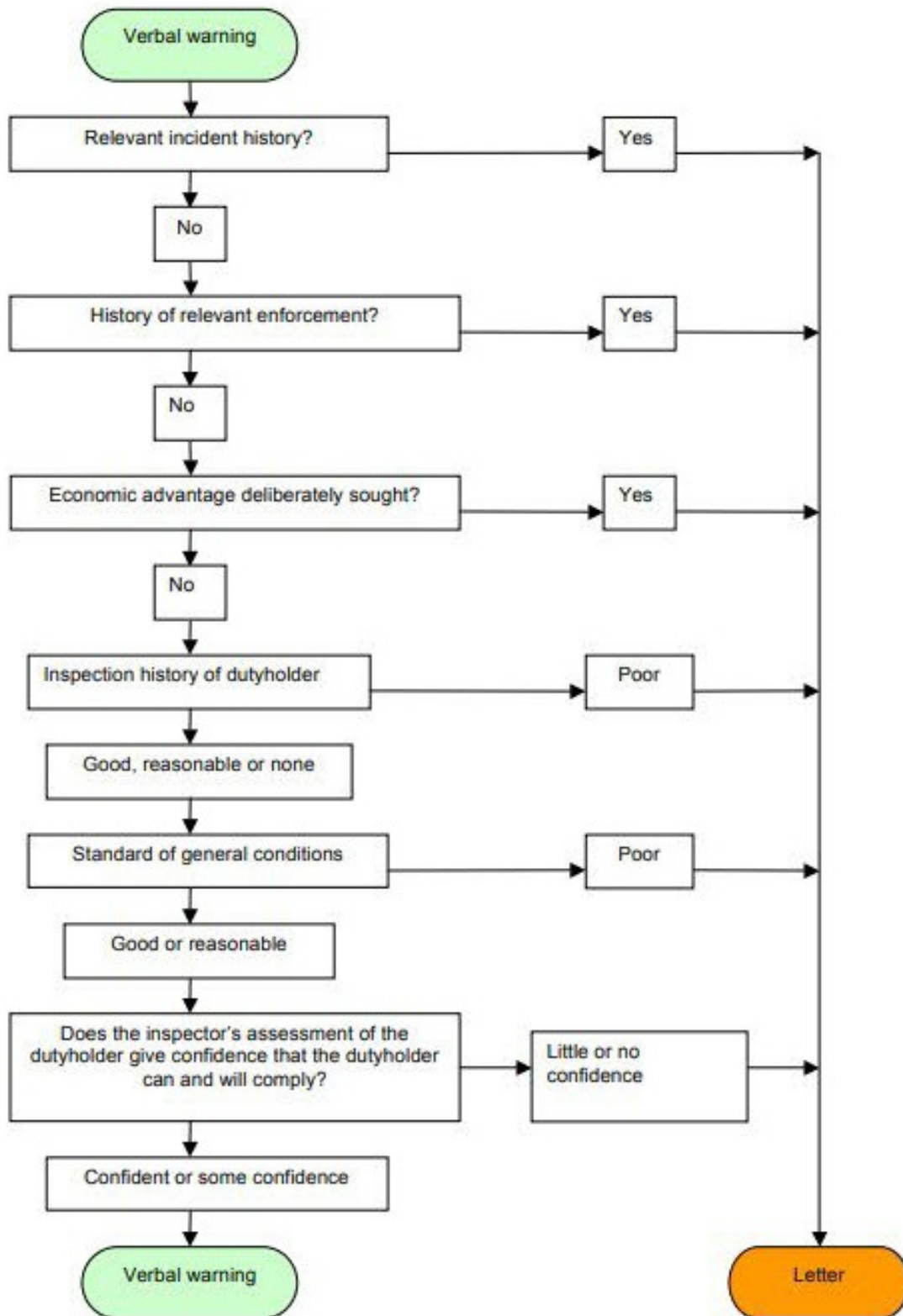




Figure 5 Application of dutyholder factors when the IEE is verbal warning.





# Table 11 Strategic factors guidance

Descriptor	Definition	ORR guidance
<b>Does the action coincide with the Public Interest?</b>		
Yes	The action results in a net benefit to the wider community in terms of targeting resources on risk and meeting public expectations of ORR.	<p>The two-stage test in the <a href="#">Code for Crown Prosecutors</a> (for England and Wales) and the <a href="#">Prosecution Code</a> (for Scotland) may be applied to all Inspectors enforcement activities and must be followed where a prosecution is being considered. The second stage of this test is public interest and the two Codes set out a number of common public interest factors.</p> <p><b>However, this strategic factor is in relation to all enforcement action, rather than simply prosecutions and so is a lesser application than the full Code requires.</b></p>
No	The action results in a net disadvantage to the wider community in terms of addressing risk, targeting resources on risk and failing to meet public expectations of ORR.	<p>The factors to consider are:</p> <ul style="list-style-type: none"> <li>- Was the breach of law premeditated?</li> <li>- Would enforcement action have a significant positive impact on maintaining community confidence?</li> <li>- Are there are grounds for believing that the breach of law is likely to be continued or repeated?</li> </ul>

Office of Rail and Road | ORR's Enforcement Management Model

Descriptor	Definition	ORR guidance
<b>Are vulnerable groups protected?</b>		
Yes	The action results in control of risks to vulnerable groups, e.g., children, members of the public, patients etc.	This factor should be applied where a risk to a 'vulnerable group' has been identified. Those with 'protected characteristics' as defined in the Equalities Act 2010 should also be considered here. For employees/workers this might include pregnant or new mothers, migrants, lone workers, those with disabilities, under 18s or the elderly and labour-only contract staff.
No	The action does not result in control of risks to vulnerable groups.	<p>This factor will always apply within ORR where there are passengers involved/potentially involved as they are unable to influence or have any effect on how the service operates or what happens to them.</p> <p>For accessibility failings ('non-safety'), vulnerable groups will specifically relate to persons with disabilities and persons with reduced mobility (PRM).</p> <p>An answer of 'No' signifies that the proposed action <i>does not</i> adequately ensure that the risk is dealt with.</p> <p>If you believe there are no vulnerable people to protect, then an answer of 'yes' should be applied to prevent inappropriate negative impact.</p>
<b>What is the long-term impact of the action?</b>		
Sustained Compliance	The action is sufficient to achieve sustained compliance across the range of risks associated with the duty holder	Due to the significant range of potential risks associated with a railway duty holder, this factor should be applied within the confines of the priority for action: Will the action result in sustained compliance by the dutyholder for that specific factor?

Descriptor	Definition	ORR guidance
No long-term impact	The action is insufficient to secure sustained improvements and that problems may be expected at subsequent visits.	<p>For large companies, this may need to be further filtered to region, depending on the circumstances of the intervention: Will the action result in sustained compliance by the dutyholder for that specific factor in that specific region?</p> <p>If continued non-compliance is anticipated even after the proposed course of action has been taken then the IEE should be strengthened to ensure compliance is achieved – e.g., IEE of Notice, but one already served and still no compliance so uplift to consider prosecution.</p>
<b>What is the effect of the action on other duty holders?</b>		
Positive	Other duty holders within the same industry, geographical location or wider business community are deterred from committing similar offences or encouraged to adopt a more favourable view of health and safety requirements. In effect, the action taken broadcasts a positive message about ORR.	<p>The negative effect relates to an enforcement decision which would give the impression that we are happy to allow substandard compliance with health and safety and 'non-safety' law. As such, this would be generally unfavourable and such an action would need to be supported by strong evidence that it was appropriate and still aligned with the principles of the ORR EPS.</p> <p>Positive may include the opportunity to drive a quick uptake of change: Will publicising the impact of one duty holders failure to comply with or implement new standards, drive change across the industry at a quicker pace?</p>

Office of Rail and Road | ORR's Enforcement Management Model

Descriptor	Definition	ORR guidance
Negative	The course of action undermines both positive duty holders' perceptions of ORR and the wider appreciation of the standards of health and safety required. For example, failure to prohibit construction work causing a danger to the public.	
<b>What is the initial effect of action?</b>		
Benchmark achieved	The action secures compliance with the relevant benchmark.	As an example, a depot is visited and there is no legionella risk assessment completed, yet there are noticeable pipework bends within the system. An Improvement Notice to gain an assessment and implement the findings of that assessment will ensure the benchmark is achieved.
Incomplete compliance with Benchmark	The action does not secure full compliance with the benchmark.	

Descriptor	Definition	ORR guidance
<b>What is the functional impact of the action?</b>		
Acceptable	<p>There is a net benefit to the employees, and others who might be affected.</p> <p>Please note that risk is the overriding concern, and that the wider impact may be a qualifying issue but is not definitive.</p> <p>To illustrate: where risk gap is nominal or moderate and the strict application of the law would result in closure of the workplace or unemployment, then all of the ramifications of the action should be taken into account. The net benefit of the enforcement action in this situation is for the inspector to judge.</p>	<p>For example, serving a notice which shuts down a section of network will impact on the IM, TOCS, passengers and freight customers, or revoking a safety authorisation of a major dutyholder.</p> <p>This factor will be more complex to apply when balancing health and safety impact (i.e. prevention of serious injury) vs monetary and convenience impact (i.e. services are disrupted and business lost).</p> <p>It is unlikely that enforcement action taken by ORR will result in unemployment and so the above should be the primary consideration for this factor.</p> <p>However, the primary focus of the EMM is to inform enforcement decisions that need to be made in response to breaches of legislation. As such, if an inspector identifies a risk of serious personal injury, then appropriate proportionate action should be taken to prevent such harm materialising (e.g. serving a PN) irrespective of any financial or operational implications for the duty holder.</p> <p>However, if considerable financial implications are identified, and there is time to consider these further before taking the proposed action, it would be prudent to discuss them in advance.</p>
Unacceptable	<p>There is a net disadvantage to employees and others who might be affected, from the action taken.</p> <p>Please note that risk is the overriding concern, and that the wider impact may be a qualifying issue but is not definitive.</p>	

Office of Rail and Road | ORR's Enforcement Management Model

Descriptor	Definition	ORR guidance
<b>Have the principles and expectations of the Enforcement Policy been met?</b>		
Yes	The policy has been followed	<p>The ORR EPS states that we will have regard to the five 'Principles of enforcement': proportionality, consistency, targeting, transparency and accountability.</p> <p>This does not mean that we must follow these principles rigidly, but they must be considered as part of reaching a balanced decision.</p> <p>Inspectors should also consider Paragraph 32 of the ORR EPS that stipulates situations where prosecution is expected.</p>



© Crown copyright 2025

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [orr.gov.uk](https://orr.gov.uk)

Any enquiries regarding this publication should be sent to us at [orr.gov.uk/contact-us](https://orr.gov.uk/contact-us)

---

<sup>i</sup> ORR consulted HSE on this document to ensure the regulatory principles remained aligned with the HSE EMM.

