MINUTES OF ORAL EVIDENCE
taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Wednesday 13 June 2018 (Morning)

In Committee Room 5

PRESENT:

James Duddridge (Chair)
Sandy Martin
Mrs Sheryll Murray
Martin Whitfield
Bill Wiggin

___________

IN ATTENDANCE:

Timothy Mould, QC Lead Counsel, Department for Transport

___________

WITNESSES:

Jonathan Andrew Loescher and Elaine Loescher

IN PUBLIC SESSION
## INDEX

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jonathan Andrew Loescher and Elaine Loescher</td>
<td>3</td>
</tr>
<tr>
<td>Submissions by Mr Loescher</td>
<td>3</td>
</tr>
<tr>
<td>Submissions by Mrs Loescher</td>
<td>10</td>
</tr>
<tr>
<td>Response by Mr Mould</td>
<td>12</td>
</tr>
<tr>
<td>Final submissions by Mr Loescher</td>
<td>30</td>
</tr>
</tbody>
</table>
1. THE CHAIR: Welcome to the Committee. Normal process applies. I’ll start with yourself; I’ll then come to Mr Mould. Thank you very much. Over to you. Looking forward to hearing your petition, sir.

Jonathan Andrew Loescher and Elaine Loescher

Submissions by Mr Loescher

2. MR LOESCHER: Thank you, Chairman, for allowing us to be heard today. We’d like to thank the promoter for allowing us to be heard, given the slightly unusual circumstances of our case.

3. We are Mr and Mrs Loescher. We run a chartered accountancy business specialising in farming. We’re just south of Lichfield and our existing property, business and community are all being completely demolished to make way for HS2. We’re here today not to ask for any concerns for ourselves but really about a request which we believe is the elephant in the room. We believe it’s a request that could transform the experience of HS2 for all people affected.

4. We’re petitioning the Phase 2A Bill so that a very simple but essential principle be incorporated into the Bill, that there be proper checks and balances put in place to regulate how HS2 affects those affected by the scheme, in other words, a fully independent ombudsman, with teeth, who reports directly to Parliament to make HS2 comply with appropriate standards, including engagement, and in respect of the businesses, residents affected by the scheme. Those people affected by this scheme through no fault or choice of their own stand to lose their homes, businesses, lifestyles and communities, possibly all four, as in our case. People in these circumstances are extremely vulnerable and we believe, as a matter of principle, should be treated with the utmost care, probity, honesty, fairness and transparency. We believe the promoter has a huge duty of care to this group and the evidence we’re going to show today shows that this duty of care has not been upheld.

5. As I say, the reason we’re looking for these checks and balances are not for ourselves, we’re pretty much largely through the horror of dealing with HS2 Ltd, but for others affected by the scheme in future. Nobody should have to go what we have been
through at the hands of HS2 in the last six years. We’ve not been alone. We represent scores of families and businesses that have suffered shoddy treatment at the hands of HS2.

6. Firstly, if I can, Chairman, I want to explain why checks and balances are needed. We have to remember here that HS2 is essentially a commercial organisation who are charged with building the railway on budget, on time. Now, I’m a taxpayer; I’m an accountant who represents taxpayers. We applaud and fully understand that objective. However, it is a matter of common sense that that objective is diametrically opposed to the proper treatment of the residents on the route. There is a massive inherent conflict of interest in the mandate of HS2. This conflict of interest needs to be managed. I’m a bit of an anorak. I’ve checked through the development agreement that governs the agreement between the Department for Transport, the Secretary of State and HS2 and I’ve been through the framework agreement. There is virtually nothing in those agreements to regulate the duty of care HS2 has to those affected by the scheme. What is included, I believe, HS2 are in breach of and has not been enforced. In my view, it is in itself shocking that these documents don’t document the duty of care and have checks and balances within them.

7. There is a huge tide of evidence showing that HS2 is not managing the conflict of interest properly. In November 2015, as a result of complaints from our community, the parliamentary ombudsman issued a report into the treatment of our engagement. Now, I should say, Chairman, here, I’ve got lots of evidence, I’m not going to bring it up on screen for the sake of speed but if you do need to see any of these documents, I’ve got the references and we can look at them. Dame Julie Mellor, the head of the PHSO, in summarising their investigations said, ‘I’ve found that the overall HS2 actions fell well below the reasonable standards we so much expect, so much so they constituted maladministration. We cannot undo what has happened to the families involved in this case but we hope learning from it will help prevent others going through the similar distressing experience in future’.

8. In the spring following, the parliamentary Constitutional Affairs Committee did a similar more wide-ranging investigation into HS2’s treatment of those affected. The then chairman, I think he’s Sir Bernard Jenkin now, stated summarising his report ‘There is still a culture of defensive communication and misinformation within this
public body that is not acceptable. Unless those responsible for delivering HS2 understand that first and foremost they serve the public, they will continue to be criticised for having complete disregard for the people, some of them vulnerable, who are impacted by this large-scale infrastructure project’.

9. Since the first PHSO report was issued, we’ve had a further report go through the independent complaints assessor of the Department for Transport. In writing to us, there’s a lot of private information in that report about valuations, but in writing to us the independent complaints assessor said, ‘I have to a large extent upheld your complaint. HS2’s handling of your questions and complaints fell below a reasonable standard’. That probably is rather an understatement. It was a very distressing time and we were misinformed about the compensation code.

10. I act for farmers in Phase 2A, Phase 2B and Phase One so I have a unique view of what is happening. Engagement has gone from poor to virtually non-existent, so much so that we actually did a survey of those affected by HS2. Now, I understand a copy of that survey has been sent to you but I’m just going to highlight two or three statistics from that survey. It indicated that 90% of respondents felt that HS2’s engagement was poor or very poor. 80% of respondents believed that HS2 was not telling them the truth. Of those affected, or at that stage, most were having concerns about having their professional fees paid by HS2, and we fall in that category. The survey indicated those having reached the stage of negotiating compensation claims virtually all felt they were rather being bullied or unfair settlements were being reached.

11. Your Committee has had a letter from a group of farmers from northern Lichfield in the Ridware who are being driven to despair by HS2’s completely deficient lack of engagement. I have in my pack a letter from a correspondent in Northamptonshire that claims he’s been to seven funerals as a result of stress created by uncertainty caused by HS2 Ltd. I have in my pack a letter from a doctor northern Lichfield stating seeing a spike of patients with stress and depression as a result of uncertainty of dealing with HS2 Ltd. I have in my pack a press release from the NFU following a meeting of 30 farmers indicating that HS2’s lack of communication is causing a severe impact on farmers’ health. I have a letter in my pack from our MP, Chris Pincher, who’s been a fantastic support, that he sent to Alison Munro, the CEO of HS2, citing mental health issues in our small community of 11 houses. The Committee will have heard from
petitioners, such as those yesterday, who are dealing with trauma caused by HS2’s lack of engagement. HS2’s bullying, and I’m going to use this word after thought, and Carillion-esque handling is causing widespread mental health issues up and down the line. At least two people in our local community of 11 houses have suffered breakdown as a result of HS2’s handling of their cases. I have suffered ill-health and stress myself. Coping with the project itself and the implications is bad enough. We understand that infrastructure has to be built. We’ve got beyond that very quickly. However, dealing with HS2’s maladministration, misinformation and incompetence is a bit like having your hands tied behind your back, a sack put over your head and told to go 10 rounds with Mike Tyson. This is causing a litany of evidence of mental health and other health issues up and down the line.

12. We were fortunate enough, at the beginning of last month, to have a meeting, Elaine and myself, with Mark Thurston and we raised this issue and in raising this issue we quoted from an article in Construction News on 22 March 2018 and I want to quote this article. ‘The CEO also wants to address wellbeing of workers in a different way, particularly their mental health. HS2 has already begun work to train its line managers to better understand and identify mental health issues. It will also roll out a number of training sessions for staff developing a network of mental health first aiders to give staff access to psychological support. It is becoming a major issue for our sector’ Mr Thurston said. We challenged, very directly, Mr Thurston, what HS2 was doing to mitigate the effects on residents’ health. His answer was very short, and I’ll quote it, ‘Our people do not go to work to create stress for constituents on the route’. I find that double standard deeply, deeply, shocking. When pressed, Mr Thurston was not able to confirm his staff had had any training or indeed there were any measures in place to address the wellbeing and mental health issues of residents affected by the scheme. We know through freedom of information requests, no risk assessments have been carried out in respect of mental health issues as we believe are required by health and safety law. We suspect HS2 Ltd are being negligent and that negligence may be even illegal or criminal.

13. So, what’s the Department for Transport doing while all this is happening, then? Well, we don’t believe the Department for Transport has any real interest other than getting the railway built, and you’ll keep hearing this phrase, on time and on budget. It
is simply seeking to ensure that project is completed on time. In my pack, I have a letter we wrote directly to the Department for Transport because they just weren’t handling complaints we’d put forward and I’m going to read the letter that came back. ‘As part of the agreement, HS2 will deliver a high-speed railway to the specification, cost and timetable set by the Department for Transport, provide support functions to the Department for Transport, including policy development, Bill design, stakeholder engagement and communication and act as proxy operator and eventually infrastructure manager of the railway. The HS2 complaints process is fully owned by HS2 and is independent of the Department for Transport.’ In other words, this could simply be paraphrased as, build it on time, on budget and we’ll turn a blind eye to complaints.

14. We have to remember that senior management of HS2 is not drawn from the public sector, used to public sector standards of service; they are drawn from the construction sector and, in our view, are Carillion-esque in nature. Most of the management team are ex-Olympics authority, ex-Crossrail, where similar problems with engagement of the public were noted. We believe it’s getting worse. For the last four years our MP, Chris Pincher, and ourselves have been asking the relevant authorities how this conflict of interest should be managed. Who is monitoring HS2? And included in my pack there is letters that we got back. There was a letter from Alison Munro, the then CEO, saying it’s the PHSO’s job. There was a letter from the PHSO saying it’s not their job, it’s the job of ministers and MPs. There’s a letter from Nusrat Ghani the minister for HS2 that says the complaints process is 100% owned by HS2 and nothing to do with her or the Department for Transport. There’s a letter from Sir Philip Rutnam, the permanent secretary at the Department for Transport, saying it was the newly appointed Residents’ Commissioner. The Residents’ Commissioner told us she can’t get involved in individual cases and so it goes on. No-one is taking responsibility.

15. Another reason an independent ombudsman is needed, that the assurances offered by the promoter are completely unenforceable in practice. Residents and businesses, parish councils, will have no legal redress to enforce these assurances. They are only a third party to the developer agreement. As things get tighter, the mantra of on budget and on time will supplant any assurances offered. We have already seen evidence of this in our own case.

16. The promoter, I’m sure, will argue that checks and balances are in place and I just
want to go through those because we have first-hand experience of them. First of all, the independent Residents’ Commissioner. Until recently, she was paid by HS2, situated in HS2’s office, using HS2’s staff, reporting to the chair of HS2 and she comes from a background of compulsory purchase acquiring as opposed to acting for those being acquired from. She is not independent. The Residents’ Commissioner can’t get involved in individual cases and, ironically, when we met the CEO of HS2, Mark Thurston, at the beginning of last month, he didn’t even realise this himself which perhaps underlines the irrelevance of the role to him. And I think, finally, there can be no greater evidence of the vacuous nature of the Residents’ Commissioner’s role when we look at her January 2018 report where she states, ‘Community engagement is generally working well. The low volume of concerns on this topic raised with me reflects substantial improvements that HS2 has made since 2015’. The phrase ‘Nelson’s eye’ comes to mind. There is a stark contrast to the real experience of those affected by this scheme with those recorded by the Residents’ Commissioner. We believe the Residents’ Commissioner was put in place purely as a fig leaf to create the image of proper governance.

17. There’s a Construction Commissioner. Again, we don’t know about the independence of that, it’s still largely unproven. He can only get involved in construction related claims which is a small fraction of the total and he only can arbitrate over claims of less than £10,000. Thereafter, his role is purely advisory.

18. There’s a complaints system, the ICA and the Parliamentary Ombudsman. We’ve been there. From our own experience from first raising complaint to receiving the results of a PHSO investigation takes approximately two to three years, a long time after appropriate resolutions need to be determined. This length of time in our own case has been exacerbated by HS2 taking over four months to respond to our complaints and then taking three months to send the papers to the PHSO and then only after being pushed by the PHSO. A complaint to the PHSO takes hours and hours of work and meetings. It is not for the fainthearted and it is simply beyond the reach of most people traumatised by HS2.

19. The promoter will try and make a virtue of the fact that in the 2016/2017 year the PHSO only dealt with four complaints in respect of HS2, one twentieth of 1% of the total complaints they dealt with. This, however, ignores certain key facts. There are
655 government departments. HS2, so far, only directly affects an incredibly small proportion of the population, probably one fifth of 1%. It takes hours, two years and hours of work to get a complaint to the PHSO and HS2 are obstructing the complaints processes in any event. The fact is, the rate at which complaints are going to the PHSO is a cause for alarm, not a cause for complacency. To make matters worse, the complaints system has been recently changed to make it, in our view, far more inaccessible, complicated, contains more exceptions to its use and removing timescales for senior managers to respond.

20. Then finally, the promoter will say that the compulsory purchase scheme and the Lands Tribunal offer a check or balance. The leading QC on compulsory purchase, the writer of this book, states that it’s not worth taking a case with a difference of less than £250,000 to the Lands Tribunal, a difference of £250,000. It’s simply out of the reach of most ordinary people.

21. HS2 have recently introduced an alternative dispute resolution scheme. We are pleased about that. However, this was promised to Parliament, this was promised this would be received, be in place, by May 2017, a year ago. How many billion pounds’ worth of property has HS2 purchased under the cosh of the Lands Tribunal while this scheme hasn’t been in place? Further, there are flaws in the scheme. I act as an accountant. Before we take cases to a tribunal with HMRC we can go to alternative dispute resolution. HMRC will pick up the costs of that, the mediator costs, whatever. Under the HS2 scheme, we have to pay Russian roulette. We have to pay half the cost. That cannot be fair. Now, I could go into a great lot of technical detail today about the ADR scheme. I’ve put in my pack, and you have it, a letter from an academic and consultant that specialises in this area, Charles Cowap, and it sets out various concerns about the scheme. I will suggest that the scheme is reviewed in the light of that letter.

22. In face of all of the above, the individual householder and business is completely denuded of any way of holding the Carillion-esque HS2 in balance. As somebody said, it’s a bit like putting Dracula in charge of the blood bank or the fox in charge of the chicken coop as things stand, without any checks or balances. So, what are we asking for? A fully independent ombudsman with teeth such as Ofsted, Ofwat, Ofgem and most non-ministerial government departments report that where there is an imbalance of power and a monopoly, you tend to have an ombudsman. In our view, HS2 is a rogue
company with crushing powers over individual citizens’ property and personal rights with a mandate diametrically opposed to the fair treatment of people. We recommend that the new ADR system is completely reviewed. We would ask that the HS2 complaints process is reversed to the one that worked so well for the last six years, at least until it’s reviewed by an independent ombudsman. We would ask that the injuries caused by HS2 need to be referred to the Health and Safety Executive and we believe that our concerns need to be taken back to the parliamentary Administration and Constitutional Affairs Committee for reconsideration. We don’t know whether that’s in your powers but clearly things have got no better.

23. What will happen if these changes are not implemented? Residents on the route will pay the price for the project rather than the government. The epidemic of health issues, mental and other, will mushroom as the promoter neglects a duty of care and exploits its imbalance of power. We are potentially looking at something very serious here. This could lead to a rash of claims against the promoter and, by implication, the government. The assurances offered by the promoter could be completely unenforceable in practice. This will mean the gains made through this Committee, through gaining assurances, could be illusory and vacuous.

24. And finally, the lack of proper engagement with the scheme will mean that the scheme is sub-optimal for the communities through which it passes, opportunities will be missed that could have benefited both the scheme, neighbouring communities and the environment. We have been through three dark years at the hands of HS2 Ltd. They’ve had a traumatic effect on our lives. Others have followed in this dark path. No citizen of this country should be forced to go down the path we have for the sake of a commercially run company. We implore this Committee to stand up for what is right and logical and stand up for the vulnerable minority against the juggernaut of HS2. We leave this in your hands. Could my wife just have two or three minutes to talk about the effect it’s had on our family? It will be two or three minutes, much shorter than mine.


**Submissions by Mrs Loescher**

26. MRS LOESCHER: Is that okay? Sorry, I’m not used to this. We’re just normal families in normal life, not here. So, the last six years have taken a heavy toll on our
family and the stress hasn’t been caused by the scheme. Obviously initially it was distressing but we got round that and we have accepted that fully. But, the stress has been caused by the way HS2 Ltd has handled our case going forward. As Jonathan mentioned, he’s suffered ill-health due to the maladministration and stress of dealing with HS2 Ltd and that time was an all-time low for our family as I had to arrange treatment for my husband and manage my business on our own, look after my children and, on top of that, take over the negotiations of our house and business valuation with the HS2 agent who is bullying in her approach and very difficult to deal with. At this time, I wrote a personal email to the Residents’ Commissioner begging him to help me but all I got back was a refusal to get involved in our case.

27. I mean, we’re still under stress. A current example of my stress is that HS2 Ltd’s agent is threatening not to agree payment of our agent’s fees and so it goes on. That’s just one small example of what folk on the route and we are dealing with that induces stress and worry and anxiety. This has made me ill also. Sleepless nights are common. Children miss out on quality time with us as parents because our time is swallowed up negotiating with HS2 Ltd and the ombudsman and whatever else we’ve come through and we’re currently on our second ombudsman’s investigation that is just starting. It’s serious what’s happening out here.

28. We’ve had many holidays spoiled due to HS2 Ltd; our social life has diminished. We were active members of our church and community and we’ve had to retire from that because of the time in dealing with HS2 Ltd’s maladministration. We’re not an isolated case by any means and if you walk down our lane I could show you numerous examples of people’s health, not only ours, that have been destroyed by HS2 Ltd. Again, it’s not the scheme. People accept this is what’s going to happen but it’s the way people are being treated and we on the route are just the weakest link and often treated with contempt unfortunately. Even the bats in our roof have had more care and concern regarding their relocation requirements. You won’t believe how many people have investigated them. And just in our small hamlet, we’ve had two, possibly three, nervous breakdowns and one person has lost their job as a consequence of this. We’ve had another going on TV to report they’re on antidepressants and they’re at their wits’ end and we’ve others totally stressed and strained and looking a shadow of their former selves. But, as I say, we’re the weakest link, we’re at the bottom of the chain so who do
we get help from? Who looks after our health and safety and who is holding HS2 Ltd to account? So, that’s my personal bit, thank you.

29. THE CHAIR: Mr Mould?

Response by Mr Mould

30. MR MOULD QC (DfT): Thank you very much. The first point I wish to make is this: the fact that there has been maladministration in relation to the handling of these petitioners and their interests and those of the members of the community within which they live, Flats Lane, is a matter of record. There was, as you have been told, an investigation by the parliamentary ombudsman. That investigation reported, I think, in late 2015 and made clear findings of maladministration on the part of HS2 Ltd in relation to events from 2013 I think until the end of 2014 and recommended remedies including financial compensation to those who had made the complaints, including these petitioners, those monies were paid, and also recommended structural changes in relation to the way in which HS2 Ltd and the Government addressed, particularly, the critical question of community engagement in relation to the promotion and the construction of this very substantial public works scheme. Those recommendations were accepted and changes have been made in response to them.

31. There was then, as you’ve been told, an investigation by a Committee of this House which culminated in a further series of recommendations for changes and improvements in the way in which community engagement and related matters were addressed by HS2 Ltd and by the Government. Again, those recommendations were accepted and they have been implemented. There is a further ongoing investigation by the parliamentary ombudsman. That investigation I’ve not doubt will be concluded and obviously there will be great interest amongst those concerned in the conclusions that the ombudsman reaches in relation to that and any recommendations that are made as a result of that will obviously be very carefully considered by the promoter of both the Phase One scheme –

32. THE CHAIR: Yes, Bill Wiggin’s got a question.

33. MR WIGGIN: I’m sorry to interrupt. Did you say that they’d been paid? Is that right?
34. MR MOULD QC (DfT): Yes.

35. MR LOESCHER: Yes. I’ll come back afterwards if I can.

36. MR WIGGIN: Well, no, I just want to know if you have been paid.

37. MR LOESCHER: Yes, well, we were paid £4,000.

38. MR WIGGIN: That’s all I wanted to know.

39. MR LOESCHER: I don’t want the promoter to create the image we’ve suddenly gained this great big lump of money. That cost us far more than that to even raise the complaint.

40. THE CHAIR: Okay, back to Mr Mould. Thank you for taking an interruption.

41. MR MOULD QC (DfT): That was the sum of money that was the recommendation of the ombudsman in relation to that. The resolution of Mr and Mrs Loescher’s particular proprietary position through the effects of the Phase One scheme, in relation to which they perfectly properly petitioned a committee of this house in relation to the Phase One bill, that was resolved by agreement and there was an agreement to buy their existing property and to pay them compensation. The compensation payable in relation to that acquisition has not yet been fully resolved because there is not yet agreement been reached on the appropriate amount that should be payed to Mr Loescher in relation to his business losses, that is to say the disturbance component of his compensation. Mr and Mrs Loescher have put forward forceful criticisms of the way in which that process was handled and have alleged that they were coerced into signing that agreement. That particular complaint was not upheld by the ombudsman in the report that the ombudsman made.

42. But I turn back to the general point that they have made and that is, essentially, that there is a need for an HS2 ombudsman. That is a serious proposition and one that I am not going to respond to today. What I’m going to do is, if you’ll allow me, is to ask that the promoter considers very carefully indeed the points that have been made by Mr Loescher in his presentation to you, the great majority of which are points that I have not heard until he has made them. They are not set out in his petition and they do not emerge clearly from the documentation that he provided to us, and to ask that the
Secretary of State in the Department provides you with a written response which will be copied obviously to Mr Loescher, responding to his proposal that there should be an ombudsman established under the aegis of this Bill. What I would remind you of is, as was evidenced from the facts of this case, there is of course the Office of the Parliamentary Ombudsman which is a fully independent ombudsman which has, within its remit, any sphere of central government activity and, as you know from the record, includes consideration of complaints of maladministration in relation to HS2. To include a specific provision in the Bill would no doubt be said to move from the general to the specific in that respect but in terms of the timescales involved, it would, I would suggest, be sensible not to expect too much of whether a bespoke process would lead to a significantly more speedy outcome for the reasons that any complaint that is made, and you’ve heard some complaints from Mrs Loescher directed at individuals, any complaint that is made against a public servant or a public body, that complaint has to be investigated fully and fairly and fairness cuts both ways. It is obviously necessary that the complainant is treated fairly but it is also necessary that the person who is the object of the complaint is treated fairly and that takes time to run through.

43. So, however frustrating it is for people that sometimes they don’t get as speedy a response to their complaint that they would wish, that is the inescapable consequence of something which is cardinal to the constitutional principles on which this country operates and that is that everybody is entitled to fair treatment when their reputation, professional or personal integrity is called into question and the more significant or far reaching complaint, and the allegation of bad behaviour or failure to comply with due process and so forth, the more likely it is that the process of investigating that complaint will take longer to pursue because the issues at stake will be greater. So, managing expectations is very, very important in this case.

44. There have been, as I say, very significant changes made. I’m not going to assert that they are improvements or not. That is for others to judge but there have been significant improvements made. The Construction Commissioner is an established principle of schemes of this kind. It has been successful, as I am told, in relation to the delivery of the Crossrail scheme. There is no reason, I would suggest, to doubt in principle that it will also be a successful component of community relations and engagement in relation to HS2. The Residents’ Commissioner, again it follows a model
that was established in relation to the delivery of the Olympic Park and although I take Mr Loescher’s point that that official, in the strictest sense, it might be questionable as to whether that is a truly independent office, that official operates on the basis of seeking to secure fierce independence from the project because that official’s terms of reference of that office, and the way in which those terms of reference are applied is, from my understanding and my experience of the work done by that official, it is in practice independent. It is designed to hold the company to account and it does so. The fact that it doesn’t deal with individual complaints, is simply a function of the terms of reference of that office. It is not reasonable to criticise an office holder who is fulfilling a function in relation to set terms of reference that they have not done something that falls outside the scope of their terms of reference. You may criticise the system and say that the system is in that respect somehow deficient, but it’s not a legitimate criticism of the person who is doing their job and that is what I say in relation to that.

45. THE CHAIR: Sandy?

46. MR MARTIN: Yes, I take your point, Mr Mould, and clearly we wouldn’t want to level any criticisms at an individual Residents’ Commissioner for not dealing with something outside of their scope of reference. However, how was that scope of reference set up? Because it would appear to most normal people, I think, that if you set up a post of Residents’ Commissioner they would actually be able to deal with residents.

47. MR MOULD QC (DfT): Well it’s designed to ensure that the systemic consideration and handling of community engagement, particularly in relation to residential communities along the route, that that follows appropriate and effective principles and framework. So, it was designed specifically to look at matters at that level of generality. The question of particular complaints is dealt with in the document that you have in the back which I’ll bring up at P528 and this is a document, one of a number of documents, that has been periodically reviewed and as the company would say, improved, in response among other things to the recommendations of the parliamentary ombudsman in relation to Mr and Mrs Loescher’s complaint and also the report following your colleagues in Parliament and this is the up to date version of this document but it is a document that is a living document, by which I mean it is subject to ongoing review and refinement in response to suggestions that it might be improved. So, this is not the final word for evermore in relation to HS2 complaints. It is the
present approach to that. The intention is that it should be a one-way ratchet, that is to say it should always if changed be change for the better rather than be changed for the worse.

48. Now, if you turn to the third page of this document, you will see that there are, broadly speaking, two categories of complaints system. The first is where there is a complaint about construction. It’s dealt with in the process on the left-hand side which leads to the independent Construction Commissioner. Where there is a complaint about broader HS2 services, it leads to the approach on the right-hand side which, as you can see, culminates under step 3 if we get that far, which obviously the company would seek to avoid, that is the position of the company, step 3 is the independent complaints assessor which is a departmental institution and then, finally, the parliamentary ombudsman which is that fully independent, established office which considers and responds to and, if necessary, recommends remedies in relation to maladministration and breaches of other codes which are imposed upon public sector officials and bodies.

49. And the, I won’t take time to take you through it, because you have it on the papers in front of you, but then I would ask you to consider whether this document which runs to some 11 pages and which sets out a clear explanation of the steps, to consider whether this is both an effective regime but also is expressed in language that enables the ordinary reader to understand the process that is available to them.

50. So, Mr Loescher asks you to recommend that there is something added to the system, that is to say an HS2 ombudsman. I’ve given you a response which focuses, I hope to at least some degree, on the arrangements that are in place and the ultimate remedy takes you to precisely the kind of, that form of independent body, that is to say the parliamentary ombudsman, who is able to deal with these matters. And it is, I suggest to you, it’s a matter for you, it is I suggest to you of some significance that the parliamentary ombudsman has been able to report that although there have not been no complaints about HS2, there have been some complaints about HS2, they form a very small component of the overall balance of their work. I take the point; we are at a certain stage in the project. I cannot say whether or not in a year’s time or two years’ time, obviously the expectation that you will have is that that should continue to be the pattern. But it’s not insignificant that at this stage, notwithstanding as I say as a matter of record the regrettable experiences that these petitioners have had and which has been
dealt with through that very process, that the general position as things stand at the moment on the record is that HS2 forms a very small component of the complaints made to the ombudsman, the complaints made rather than any findings made by the ombudsman in any investigation.

51. THE CHAIR: Can I just check, are you coming to a conclusion?

52. MR MOULD QC (DfT): Yes, I’ve got one more thing to mention to you.

53. THE CHAIR: One more thing and then with the permission of the Committee, I think we’ll all have a go at some questioning. With the permission of the Committee, I think that’s probably more useful to do than come to you straight away, Mr Loescher, but we will give you an opportunity to come back and indicate to me if there’s something you need to chip in after Mr Mould has finished. Mr Mould?

54. MR MOULD QC (DfT): I simply wanted to – well, actually, I had two small points. The first is, in Mr Loescher’s exhibits at A162(17), there is a letter addressed to you, Chairman, which I had not seen until yesterday and at A162(19) and following is the survey that he mentioned which I understand from reading the letter was provided with that letter. I simply draw that to your attention because he places significant weight on this letter and also on the contents of the survey and reading through the survey as I have, it contains a range of, at face value, highly critical and worrying allegations about the performance of HS2. I say ‘at face value’ because, for the reasons I’ve just given to you, I simply haven’t had an opportunity to respond to those and I’m not going to try and do it now. But I would like the opportunity to respond because I’d like the Committee to have on the record what the promoter’s response to that is then you can decide what, if any, action, if I may say so, you wish to take in relation to it.

55. THE CHAIR: We will give you that opportunity to come back.

56. MR MOULD QC (DfT): That’s very kind of you. The second and final point was just in relation to compulsory purchase. If we put up A164(1) which is another of Mr Loescher’s exhibits, you’ve heard him say, and he’s quite right, that HS2 Ltd has lately published its bespoke alternative dispute resolution regime which is designed to provide those who have an outstanding claim for compensation with a more informal and easier to operate, cheaper approach to seeking a resolution to their outstanding
disputes over land compensation than a fully-fledged claim to the Lands Tribunal. I don’t recognise his comment about the minimum level of money that it’s worth going to the Tribunal about. He said that Mr Denyer-Green, who is the author of the book he flashed in front of you, is on record as saying that no one who has a claim of less than £250,000 should go. I don’t recognise that. That may be Mr Denyer-Green’s view, I don’t know, but anyway, that’s beside the point. The point here is that although this letter which is the letter referred to in passing from a gentleman who has been asked to comment on the adequacy of the recently published alternative dispute resolution mechanism, although it makes some suggestions as to how the published procedure might be improved, you will see that the overarching reaction of this person in the middle of the page is that he thinks that the guidance is very welcome and he particularly welcomes the commitment to use ADR approaches, given the particular difficulties and obstacles to the presentation of a dispute to the Upper Tribunal. So, it’s important not to go too far in relation to these matters. This evidence, actually, suggested HS2 on this particular point is going very much in the right direction and, again, where an ADR system is in place, its performance and whether it could be improved as it begins to be rolled out, and people begin to make use of it, is obviously something that will need to be kept under review and this gentleman’s views will be on the record and, if it’s felt that they provide some useful means of improving the system, then I’ve no doubt careful consideration will be given to that. That’s all I wanted to say to you.

57. THE CHAIR: Thank you, Mr Mould. We’ll go to Martin and then Sandy.

58. MR WHITFIELD: Thank you. If I can just start, Mr Mould, we heard evidence that the ADR was originally due last year. What was the reason for the delay? Do we know?

59. MR MOULD QC (DfT): Well, it wasn’t due last year. The expectation was internally that it would be published last year. As I understand it, settling it has taken rather longer than was initially anticipated but the great majority of claims for which this independent, this alternative process is designed to assist, those remain for the future rather than the past. So, in practice, if it’s felt that its publication has been delayed, that shouldn’t, in my submission, have delayed in practice its utility to those who might wish to make use of it and it’s also fair to say that it hasn’t been the case that
there’s been no resort to ADR, the published information papers from 2014 onwards have made clear that the Secretary of State supports the use of ADR in relation to disputes around HS2 land compensation claims and so it’s always been open to those who wish to bring a claim to have it resolved quickly, for example, someone who has had a blight notice accepted and therefore is at a much more advanced stage in resolving their compensation claim.

60. MR WHITFIELD: But Mr Loescher is right that there are a group of people who may be very hard to identify who due to a 12 month longer period of internal analysis, have been without this ADR available to them.

61. MR MOULD QC (DfT): He’s right about that but, as I say, they’ve not been without recourse to ADR.

62. MR WHITFIELD: Not been without remedy but they’ve been without this remedy?

63. MR MOULD QC (DfT): Yes, and broadly speaking the techniques that are deployed in the ADR scheme that HS2 has put forward now, accord with the established techniques for ADR which actually are also strongly advocated by the Lands Tribunal themselves in their own practice guidance. They actually expect acquiring authorities and claimants for compensation to consider seriously resorting to ADR before they progress a claim to the Lands Tribunal because it is generally recognised that ADR is a very valuable technique to seek to avoid the greater costs and often somewhat greater delay that come with formal court proceedings.

64. MR WHITFIELD: And the other question that not so much flows from this, and we have heard this before on this Committee and I just really would welcome your views Mr Mould, Mr Loescher raised the question, as did Mrs Loescher, that employees of HS2 and the evidence of the bats, because they have very obvious statutory protection under the health and safety and the environmental legislation, and very rightly so, do you recognise the gap between those individuals and assets, I suppose, and the actual petitioners who seem to lack a very obvious statutory protection by way of mental health? Yes, disturbance when it becomes physical disturbance. There seems to be a genuine imbalance and would you accept that at the very least the petitioners must have the same level of protection and ability to hold those to account as employees?
65. MR MOULD QC (DfT): Well, first of all, nobody would doubt the vital importance that employees should be given proper protection under health and safety legislation by their employers.


67. MR MOULD QC (DfT): So, that’s the first point. The second point is that health and safety legislation obviously imposes requirements not only on employers, not only on their employees, but in short to ensure that any members of the public that are affected by their activities are also given proper protection under health and safety. The particular concern about the impacts on mental health and wellbeing, as a matter of general law and practice, that is a less developed science. That applies to any organisation, public or private, as much as it does to HS2. But one of the techniques that has been developing over the last ten to 15 years, and is still in the process of developing, is the use of health impact assessment techniques whilst a scheme is being developed and following through following its approval –

68. MR WHITFIELD: I’m sorry, I don’t mean to interrupt you but just to pause, if we just go back one step, the level of expectation of someone who’s living there who could potentially be a petitioner who is affected by this, their level of protection surely can’t be lower than an employee. Their level shouldn’t be lower.

69. MR MOULD QC (DfT): No. I mean, as a matter of general principle that is indisputable but one has to consider the context in which the risk of their health being affected arises. It’s obviously – you might say that where someone is required as part of their employment to go and do potentially risky things, there’s a much more direct risk that they may suffer injury or damage to their health than a situation where members of a local community are finding themselves with a very unwelcome and, no doubt, unexpected prospect of a major public works scheme being constructed through their area. Now, that’s not to say at all that their expectations of fair and considerate treatment in order to seek to limit the degree of distress and impact on their wellbeing that flows from that that their expectation is any less but it is a slightly different relationship. What it comes to is this. It emphasises the critical need for effective community relations because the more people know about what is going to happen in their area the better they’re able to compute it, to sift through it and to work out how
they’re going to address it.

70. So it bring us back to the point that HS2 Ltd and the promoter of HS2 as a whole, not just this bit but the railway from London to Manchester and Leeds and whatever, it has to have community relations in the way in which I’ve just explained to you absolutely at the forefront. The complaint is that it hasn’t – well, I was going to say ‘hasn’t always done so’; Mr Loescher would say very little. There’s very little evidence of it. You will understand I don’t accept that but I don’t dispute the principle that that is something that is vital. And what I’ve sought to explain to you, at least a little in part over the course of my short submissions, is that certainly systemically the company has sought to put in place procedures. I haven’t shown you, for example, the community engagement plan for this type of subject, but it’s in the pack and it is – that was published in March of this year and that itself will be subject to six-monthly review to ensure not only that the system’s in place but the system is actually delivering.

71. MR WHITFIELD: With your indulgence, Chair, I’d just like to ask Mr and Mrs Loescher just a couple of questions. Firstly, can I say thank you for your petition? Just on a factual point, would you like to just read the name of the book and the author so it can go into our –

72. MR LOESCHER: I’ve got two books –

73. MR WHITFIELD: Where you took the quote from, because –

74. MR LOESCHER: Firstly *Compulsory Purchase and Compensation*. Unfortunately I’m a bit of an anorak and when I knew there was going to be compulsory purchase I paid over £100 for this book. It’s the leading book. As Mr Mould was saying, I’ve read it backwards and forwards. It’s by Barry Denyer-Green. He’s a leading QC. I can send a press release where somebody reports the comment about the difference between –

75. MR WHITFIELD: It was really just to make sure it went on the record for those outside –

76. MR LOESCHER: It’s well worth having a copy.

77. MR WHITFIELD: And my other question, you’re basically seeking an
independent ombudsman –

78. MR LOESCHER: Yes.

79. MR WHITFIELD: Not ‘basically’; that’s a terrible thing to say. Your ask is for an independent ombudsman and yet in your evidence you have raised a striking imbalance of power between HS2 and individual petitioners with regard to the time expenditure, the emotional involvement that you have as a petitioner that perhaps is not quite the same as far as HS2 are concerned because you describe them, in essence, as a company. Can I ask you how do you think that an independent ombudsman or do you think an independent ombudsman would in any way shift that balance, that unfair balance of power, the firepower between the individual petitioner and HS2?

80. MR LOESCHER: Can I perhaps just give one example? Let’s take the issue of engagement. At the moment if we’ve got a problem with engagement the only thing we can do is put in a formal complaint. That formal complaints process takes four months at least to get to the end of the – at the current rate the end of HS2’s process. It then goes to the ICA, which will take another six months. If it then needs to go to the PHSO it will be another year or two. It will be far too long. Most people just can’t go there. I’ve recommended people raise complaints. They’re just too traumatised. If you had an ombudsman who was truly independent, first of all they could pick up this problem far quicker and far more forcefully and ask HS2 to make changes. And, as we’ve seen from the Residents’ Commissioner, she’s there to pick up themes and still doesn’t realise there’s a problem. I mean, it’s like the elephant in the room.

81. MR WHITFIELD: So actually the balance of power becomes more equal simply because of greater efficiency, faster justice and in the ability to identify a problem that, because it’s identified faster, is put right faster so that subsequent people don’t suffer from it.

82. MR LOESCHER: Yes. Can I give you another example, very quickly? I’ll be very quick. Also there’s a great deal of technical information needed in this. The ICA and the ombudsman struggle to take on board the technical information that they need to know. They come at it from totally different backgrounds so an ombudsman would be specialist.
83. MR WHITFIELD: Right.

84. THE CHAIR: Before you ask a supplementary, I’ll just ask Mr Mould, who was trying to catch my eye, to say something.

85. MR MOULD QC (DfT): Yes. Just two points on that, if I may. The first is Mr Loescher understandably but nevertheless assumes that every complaint will not be satisfactorily addressed before it gets to the final stage. The evidence before you is that that is by no means the case.

86. The second point is this. Any bespoke ombudsman arrangement would almost certainly not be the first port of complaint. It would almost certainly need to come in at a final stage. So it would be unusual to think that you can go straight from a lorry grazing your garden fence, for example, directly – it simply wouldn’t be a sensible use of resources to approach matters in that way.

87. So it is an illusion, in my submission, to consider that this provides, as I said earlier, this in practice would provide a significantly speedier approach, a more effective approach.

88. MR WHITFIELD: One more question.

89. THE CHAIR: Take as much time as you want. Everyone on the Committee will get some time but we’re going to stick with you, Martin.

90. MR WHITFIELD: If we accept what you say, Mr Mould, I’m not saying I don’t accept what you say, it wouldn’t be the independent complaints bureau but there is still an expectation that individuals would go through HS2’s own internal complaints because there will always be that –

91. MR MOULD QC (DfT): Yes.

92. MR WHITFIELD: – procedure irrespective of what’s on – because a company needs to look at its events and things. But one of the things that we appear to be confronted with here today and have heard before is that there is a great deal of misunderstanding, a great deal of shadow over how people go about complaining, how they go about various things. And this goes to the heart, I think, of what we’ve heard
today; that the ability to communicate efficiently has certainly not been achieved. I put that out there. So HS2 are not against an independent ombudsman. Do you see an advantage, Mr Mould, of an independent ombudsman being a much clearer system for all ranges of complaints to point towards?

93. MR MOULD QC (DfT): No I don’t because that is, effectively, what exists now.

94. MR WHITFIELD: But if it was labelled as such, if it was independent, do you see there may be some advantage of clarity for everyone as to where they go, as Ofgem was mentioned as?

95. MR MOULD QC (DfT): I don’t doubt the importance of the objective of clarity. That’s the first point. But the second point is this. I showed you those two charts. I mean if you ask the question, is it possible to make that process clearer, I’d be delighted to receive suggestions on how it could be done. But to substitute HS2 ombudsman for parliamentary ombudsman, which is essentially what is – that is the realistic way in which that would be done, I don’t think that that would actually improve things.

96. The concern about the clarity, as I understand it, is more about the delivery of engagement and there is no doubt that – it’s on the record, I’m not going to deny the record – in this case there have been instances in which there has not been that clarity of delivery. But that is a challenge which HS2 faces, as does anybody, whether it’s the NHS or a local authority, that is a challenge which any body of that kind faces when it’s seeking to give effect to its own community engagement in these procedures. And the only way in which I suggest in practice you can secure improvement in that respect is in three ways. Firstly, proper training for the person who is delivering it on the ground. Secondly, proper and effective periodic review of performance. And thirdly, having an independent body or bodies that are able to hold the organisation charged with delivering that process to hold them to account and to shine a light, if you like, on whether delivery is taking place effectively and, if not, how it could be improved. And all of those matters are in place now and they have been the subject of improvement and review in the light of the various reports that you’ve had mentioned to you today.

97. So my answer really today is what is the systemic arrangements that you would expect to see and require for a scheme of this kind they are in place and you do have the ultimate resort to the independent parliamentary ombudsman to deliver that shining light
that you seek.

98. THE CHAIR: No, of course. Sandy?

99. MR MARTIN: Yes. Mr Mould, in the document ‘How to Complain’ it says under the Residents’ Commissioner, ‘The Commissioner does not investigate individual cases or deal with complaints. However, she is responsible for monitoring, reporting and advising HS2 on emerging trends and concerns’. Was there anything from the independent Residents’ Commissioner about the issues surrounding Packington Moor which subsequently went to the PHSO?

100. MR MOULD QC (DfT): Well, my recollection is that the office of the Residents’ Commissioner hadn’t been established at the time when those events took place. It may be that she – the person in question is a woman, so she – was appointed towards the end of the time period that – I’m afraid I can’t recall offhand. But what I do know is that the way that she – my clear recollection is she gave evidence before the parliamentary Committee that Mr Loescher mentioned to you, Mr Jenkins and the Committee made some recommendations about her role and those recommendations were carefully considered and were accepted. And so her role now reflects those matters that I’ve just described to you.

101. We can provide you with more detail on that to the Committee if you would find that helpful but that’s the gist of the way in which matters have developed.

102. MR MARTIN: Well, I would quite like more detail. I have to say my memory is not perfect but I was a little surprised that we had not been briefed about the role of the Residents’ Commissioner before –

103. MR MOULD QC (DfT): I’m sorry. I mean the reason why I haven’t dealt with that is because my purpose, as you know, is essentially to respond to petitioners and I don’t believe that you’ve had a concern raised hitherto about the –

104. MR MARTIN: I wasn’t criticising you, Mr Mould. I was just saying that it would have been helpful, I think, for the Committee if we had been briefed about –

105. MR MOULD QC (DfT): Well, we can certainly do that.
106. MR MARTIN: – the role of that Construction Commissioner and the Residents’ Commissioner.

107. Can I ask you? You say that there is a critical need for effective community relations, which I think we would all accept. Under those circumstances, do you not feel that there are always, however carefully you try to design any engagement, there are always going to be some people for whom that sort of level of engagement with a large organisation like HS2 is going to be much more difficult than it is for others and that there might be a useful role for an advocate rather than a complaints’ backstop, which is what an ombudsperson is, an advocate who will actually help people to engage better in the first instance?

108. MR MOULD QC (DfT): Well, first of all, the answer to the first question you posed to me is yes. Of course, how people react and how empowered or disempowered they feel in response to a so significant a scheme as HS2 will clearly go, depending on the self-confidence and so forth of the person concerned.

109. Secondly, is there a role for an advocate? That’s not actually what Mr Loescher was asking for. He’s asking for an independent – but is there a role for an advocate? I can see in principle the attractions of that. I’m not at all clear about how that kind of role would be delivered over and above the arrangements that are in place already. I mean one of the things that a community engagement officer for any public body is expected to do is, to some degree, if you want to use the phrase, to advocate the concerns of those who are required to receive in this case a railway scheme but the manifold range of things that ordinary citizens of this country have to accept in order to meet the public good, if you like.

110. So I think my answer, insofar as I’m able to do and I’m trying to be helpful, my answer to you is that that role is within the scope of a properly drawn community relations plan and it’s something which those who are employed to deliver that plan should have very much in their minds.

111. MR MARTIN: But, I mean, you would also, I hope, accept that for most people if somebody is employed by an organisation they are unlikely to be able to see that person employed by that organisation as being a useful ally in a situation where they might feel that the organisation that that person’s employed by is actually detrimental to their –
112. MR MOULD QC (DfT): Well, I mean obviously there is force in that point, if I may say so, but, equally, one knows of, you know, one only has to look at Her Majesty’s honours list to see how many people who are employed, you know, nurses within the NHS, teachers, so on and so forth, who are commended for the fact that they have acted in the way that you have just described. I only draw that to your attention because it’s a very well-known but, you know, people –

113. THE CHAIR: Let’s stick closer to the –

114. MR MARTIN: I think I’ve finished anyway.

115. THE CHAIR: Thank you, Sandy. Bill Wiggin?

116. MR WIGGIN: I just wanted to finish off with why, in your opinion, please, would it be a disaster if this Committee was to recommend that the Residents’ Commissioner did take individual cases?

117. MR MOULD QC (DfT): I don’t say that it would be a disaster. I don’t actually have any considered view on what the implications of that would be. All I seek to tell you is that it would certainly be a significant extension of the Residents’ Commissioner’s work. We would need to consider whether it would dilute the work that the Residents’ Commissioner does or whether it would be the resource implications –

118. THE CHAIR: Perhaps we could integrate that in the Secretary of State’s response on the broader ombudsman because there’s lots of interlinking issues. We can then consider that more fully.

119. Sheryll Murray?

120. MR MOULD QC (DfT): Sorry. Could I just mention, because you have that point, I can just give you some basic facts just on the record and it was just this. The Residents’ Commissioner was appointed in January 2015 and the principal function of the Commissioner is to hold HS2 Ltd accountable to commitments given in the Residents’ Charter. It’s explained in information paper G2. That was all I wanted to say.
121. THE CHAIR: Thank you.

122. MRS MURRAY: It’s just one piece of information that Mr Mould might be able to help me with. If there were an independent ombudsman like Ofgem, for instance, would you not still have to go through or would – if I wanted to make a complaint would I still have to go through the same process; so make a complaint, first of all, to HS2 before I could go to that ombudsman? So the process really would be no different whether there was a parliamentary ombudsman or an independent specific ombudsman apart from the fact that I might need to get my MP to sign the parliamentary ombudsman. Am I correct?

123. MR MOULD QC (DfT): I think there is considerable force in what you say. Yes, I think that’s right. And, if I may say so, Mrs Murray, the point you make about the involvement of the MP is an extremely important one. Members of this House are able, probably more effectively than anybody else, to mediate a hitherto intractable point of complaint and then to assist in the – and Mr Pincher, of course, as you know, has assisted and continues to assist Mr and Mrs Loescher. He was at the meeting –

124. THE CHAIR: Can we see Mr Pincher’s letter?

125. MR MOULD QC (DfT): Mr Pincher’s letter? I don’t think we had a letter from Mr Pincher. We had a –

126. MR LOESCHER: Was it the one about the health?

127. MR MOULD QC (DfT): Ah right, yes.

128. MR LOESCHER: Let me just have to find the reference and the – A162(6). It’s in the second paragraph, halfway through. This was at the height of our relocation problems as a community. He’s never ever received any response from HS2 to those points about health issues. They’ve just simply always ignored him. As a matter of record I put my own health records with my solicitor for HS2 to view if they wish. They have never taken up that offer.

129. MR MOULD QC (DfT): This is a letter of 3 March 2013, as you can see.

130. MR LOESCHER: The correspondence about health has been going on. HS2 just
ignore it.

131. MR MOULD QC (DfT): Well, I –

132. THE CHAIR: There doesn’t seem to be a lot of evidence around mental health and there’s no way – I don’t, you know, there’s a compulsion to have an environmental report but there’s not a compulsion to have a specific mental health report when I’m going through some infrastructure but is there any ability to work out whether there is a mental health problem associated with big infrastructure projects?

133. MR MOULD QC (DfT): There is very little developed learning on that and it may be one of the challenges that those who promote major schemes, both through the public and the private sector, face in the coming years is to grapple with that problem because I think there is an increasing recognition of the potential for the prospect of major schemes of this kind to cause people anxiety and stress and so one can see that that is something that may require – but I suggest to you that the lead on that ought to come from government on a more general basis so that it’s not focused particularly – it may be that the stimulus for it comes from a very large scheme but the how to deal with it needs to come from government because you can see the very wide range of people whose views and input one would need to obtain in order to make sure that any guidance on that or any process that is set up is one that has been very carefully and fully considered before it is brought into operation. I mean, you know, health professionals are an obvious example of how that would be done.

134. THE CHAIR: I appreciate that might be your preferred option. Another option is the Committee discussing in private and coming to a conclusion. A more eloquent hybrid might be us asking the Government through you, through this Committee, to consider what types of things we could do and use HS2 to understand a bit more around mental health and infrastructure. There may be some quick wins in terms of people along this line but for future phases and if that come to us before we do our report so we can consider it, the adequacy of it, we might have additional ideas as well, I think that would be quite helpful because it’s very much in our field of vision now and I don’t think anyone has good data on it.

135. MR MOULD QC (DfT): If that were your view, I can see considerable force in it and if it’s going to be done it may be that the time to consider how it might be done
should be sooner rather than later. So –

136. THE CHAIR: Well can I – I’m getting nods of assent from the Committee so can I instruct you to go back to HS2 and say the Committee would like to see within a four-week period an initial view of what could be done and scoping out so we can consider that before we put down our final report. I am conscious that is a short timescale and I will, you know, expect a proportionate piece of work, given the short timescale. I’m not expecting, you know, reams of documents but if you could go away and just to ask what the Committee want that would be helpful.

137. MR MOULD QC (DfT): Would you just allow me just to respond quickly on that? Not to seek to resist it at all but simply to say, for the reasons I’ve just given, in order to respond to that instruction it will certainly be necessary for a number of government departments to be consulted.

138. THE CHAIR: Can I stop you? I understand that. Do it. That’s it. Done. Let’s move on. Anything more, Sheryll?

139. MRS MURRAY: No, I’m fine. Thank you.

140. THE CHAIR: Fantastic. Any more questions? I think we now come to a point, Mr Loescher, where you can summarise anything. Normally I only give one or two minutes. I think if I can give you five minutes are you happy to summarise within that time?

141. MR LOESCHER: Well, I’ll try top down. Stop me when you need to because I could talk for two hours now but I’m not going to, don’t worry. I’ll start top down; stop me when you need to.

142. THE CHAIR: Well, try to focus on the most important things early on because I don’t want to rudely interrupt you just before you’re about to climax on to your main point.

**Final submissions by Mr Loescher**

143. MR LOESCHER: No. The first and most important point I want to make it is completely incorrect that Mr Mould says an ombudsman would be illusory, the benefits
would be illusory. Let me give you an example. If you go through their complaints process and they abide by it it’s 20 days plus 20 days. That’s 40 days you’re through their complaints process, if they abide by it. You could then go straight to the ombudsman. Now, hopefully, this ombudsman would be a specialist ombudsman that would know the background and the detail so, therefore, wouldn’t have to spend time genning up or whatever. It would be a running start. Now, we put our latest complaint, which was escalated by Mr Pincher, to the ombudsman, this is not a criticism of HS2, but put our complaint to the ombudsman in February 2017 the complaint went to the ombudsman. They have only just received the papers from HS2. That wasn’t all HS2’s fault. We’ve had 15 months before they even started their investigation. Now, you could actually drop the ICA stage, which is a complete red herring; I don’t see why. You can go straight from HS2’s complaints process 40 days into the ombudsman. And it would be massively quicker. To say it’s illusory there’s no gains is just complete nonsense.

144. And then you’ve got the specialist nature of it. Mr Mould rightly talks about training. Lest one forgets, this project has been going for eight years. Most of the staff that were originally there have left already. When are we going to start training these staff?

145. The question was asked by someone on the Committee about whether the Residents’ Commissioner had raised the points before the ombudsman’s report. That was a fair question. Now I think the answer was correct there but since then we’ve noticed very much as a trend of the Residents’ Commissioner to sort of raise the points after the horse has bolted. So, in other words, it gets through the complaints process, it gets to the consciousness and you suddenly find it in her report. She’s not on the ground. Now, I should say here I’ve worked with HMRC in an adversarial position for 20 or 30 years. I’ve never had to raise a formal complaint. I’ve raised dozens against HS2. It’s not my area, I don’t do it but we’ve had to. But for all my complaints all through the PHSO the Residents’ Commissioner has refused to even speak to me. So that’s how divorced she is from reality. I don’t think, in response to Mr Wiggin’s, I don’t think she’s the person – her taking on individual complaints won’t get us anywhere. I just don’t think she’s the right person.

146. MR WIGGIN: Is that because you don’t think she’s adequate or because –?
MR LOESCHER: I don’t think she’s got the right brief and that is right but actually I don’t think she has the time. She’s only three days a week.

MR WIGGIN: She doesn’t seem to have any complaints either.

MR LOESCHER: And the trouble is, you’ve got to remember these people are traumatised, they’re vulnerable. I’m one of those people I just – I’m lucky, I’m self-employed, I’ve got the time, I’ve got the capacity and the support to do this. Most people are out for the count before they’ve even got to the first complaint, you know. We’re talking about most people don’t even get there. If you’re talking about access to justice most people – you’re talking about 1% of 1% here, you know. But if we could shorten the complaints process to where it was, 20 days, onto the ombudsman then – and the ombudsman could sieve it out fairly quickly. And my wife’s just quite right said, you can go to Ofgem quite easily. You don’t have to have a great rigmarole before you go to Ofgem. You go through their complaints system and then you go to Ofgem.

MRS LOESCHER: A simplified process where we could get help for normal everyday people, you know –

MR LOESCHER: It doesn’t have to be two years before you even get into the nuts and bolts of it with the parliamentary ombudsman.

Health impact assessments, they’re not the same as risk assessments for health and safety and they’re just very general documents. They’re pretty irrelevant.

The survey. The survey I checked with an academic. I had the questions checked, I had the means of dissemination checked and he confirmed to me that it was both reliable and valid. There were 111 responses. I can assure you that copies of the email that circulated it said, you know, ‘We want to hear good and bad’. We did our best to do that properly. I appreciate Mr Mould hadn’t had a chance to – he said he didn’t know where I was coming from. It was included in my petition that I wanted checks and balances over HS2. We offered 50 pages of evidence in our pack, which I could refer to. I’m a bit surprised if he didn’t know where I was coming from.

There were one or two rather disturbing things that Mr Mould has obviously been
misinformed about our own case. The issue about us being told in our contract to buy our house that we couldn’t petition hasn’t gone to the ombudsman yet. The ombudsman hasn’t reported –

155. THE CHAIR: Speak to us, not Mr Mould.

156. MR LOESCHER: Sorry. The issue about – he said the issue about there being in our contract are you coerced to buy our house not to come to the Committee hasn’t gone to the ombudsman yet. It’s in the next – the ombudsman has not reported on that yet.

157. And then – yes, that’s all. I mean I could go on forever. There are other petitioners behind me. I think you’ve got the force of what we want to say. I don’t want to go on forever.

158. THE CHAIR: I don’t think there are any questions. Can I say thank you on behalf of the Committee for raising these broad issues so we can consider them? I think you’ve been very generous in your time not focusing on your individual concerns and plights and focusing on the broader issue and it’s provided us an opportunity to reflect on the accuracy of the systems and we can now go away and consider that.

159. So I’m going to close this meeting and the Committee are going to sit in private for a short while and we will resume in public at 2 o’clock. Thank you very much. Thank you, Mr Mould.