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Date: 10.7.2018

Dear Mr Bayne

High Speed Rail (West Midlands – Crewe) Bill  
National Farmers Union Specific and Case by Case Assurances

Further to our conference call on Thursday 21 June in regard to the application of the NFU Assurances for our members and all farmers and the explanation that Ms Thornton gave to the Select Committee in the afternoon session on 25th June 2018, the NFU would like to raise some points and questions on how the assurances will be applied to each farmer.

In paragraph 4 of the Transcript, Ms Thornton stated that the assurances in Part A were given to the NFU and were of general applicability and that Part B were specific assurances that were to be given to particular farmers on a case by case basis.

It was further stated that assurances in part A will and are intended to benefit farmers affected by the proposed scheme, whether or not they petitioned against the Bill.

As Ms Thornton said, the NFU are concerned that farmers who have not petitioned will not be entitled to the same protection in regard to Part B assurances as those farmers who have petitioned. The NFU is pleased that Ms Thornton explained that HS2 will write to “all affected farmers, affected by the proposed scheme and who have not petitioned against the Bill”.

Clarification is needed on what is meant by “all affected farmers affected by the proposed scheme”. We assume that HS2 decides. If so, what are the criteria to be used and how can a farmer challenge the decision? Please also confirm that “affected farmers” also includes affected rural business owners, as indicated in the heading of Part B.

It was stated that the letter from HS2 referred to above will make the farmer aware of the Part B Assurances and then invite them to contact HS2 if they consider there are assurances within Part B which directly relate to their landholding.

What does “directly relate to their land holding mean”?

It is then stated that HS2 will then discuss with the farmer which of the assurances are relevant to their holding and should be offered to them.

What does “relevant to their holding” mean and what if there is a disagreement between the farmer and HS2?
Then it said that if the assurances are accepted, they will be given before the petitioning period closes for the House of Lords Select Committee and then will be entered on to the register of Assurances and Undertakings.

If a farmer petitions in the House of Lords we believe that the farmer should be able to request Part B assurances after the end of the Lords petitioning period, and that if a farmer or rural business owner requests a Part B assurance after then, then it will be given due consideration by HS2. Please clarify that will be the case.

The above questions are of great importance. It seems to us that there should be a way of defining now, by reference to qualifying criteria, most of the farmers and rural business owners who will be entitled to receive some of the Part B assurances. In particular, it seems to us that any farmer or rural business owner who owns or occupies land within the Bill limits should (a) receive the initial letter from HS2 and (b) be entitled to receive certain of the assurances if requested.

Without prejudice to the NFU’s position in its petition and the case it made to the select committee about the drafting of some of the Part B assurances, the NFU makes the following points on those assurances. The term “Universal Assurance” means an assurance which farmers and rural business who own or occupy land within the Bill limits (ie those mentioned in the book of reference, or their successors in title (if known)), should be entitled to.

Assurance 9 - every farmer is likely to request the provision of information so it should be a Universal Assurance.

Assurance 10 – every farmer is likely to request the longer periods of notification in regard to notices of entry and will want to be given an estimate of the likely period of occupation of land by contractors so it should be a Universal Assurance.

Assurances 11,12 and 13 – These assurances relate to the relocation of agricultural buildings, the identification of land for the relocation of buildings and professional costs and fees in regard to identifying land suitable for the relocation of building. It is agreed that these three assurances will only be applicable if the farmer does need to relocate agricultural buildings so need not be a Universal Assurance.

Turning to the detailed wording of those assurances, in a telephone call with Stephen McFarlane, an issue was raised over the wording at 11.5 and 12.2 which states that in these assurances “agricultural building” includes a residential building occupied as part of an agricultural holding. We believe that this needs to say that “agricultural building” includes a residential building occupied as part of an agricultural holding.

In his email of 12th June, Stephen McFarlane said that there would be a requirement for the building to be exclusively occupied by the petitioner as his principal residence. But there will be instances where residential buildings may include cottages on the farm holding occupied by a family member or an agricultural worker. Residential buildings may even be holiday cottages. Therefore, in assurances 11, 12 and 13, “agricultural building” should include all of these residential buildings. Please could you clarify and confirm?

Assurances 14,15, 16, 17, 18 & 19 – Land Acquisition. These assurances are all in regard to land acquisition and highlight different scenarios where land may be taken under schedule 15 to the Bill and take temporary possession. We believe every farmer will request all of these
assurances (particularly if the assurances are to be given during the Bill’s progress through Parliament) unless HS2 can be very clear as to what change is happening to land up front. So they should be Universal Assurances.

Assurance 20 – Private Roads. Refers to the use of private roads and is likely only to be requested if the farmer in question has a private road affected so it need not be a Universal Assurance.

Assurance 21 – Field Drainage. We believe that this assurance will apply in every case so it should at the very least be a Universal Assurance. But it will also be applicable to farm holdings outside the Bill limits which are affected by HS2 construction works on a neighbouring holding. In those cases, the owner or occupier may not have received the initial letter from HS2 about Part B assurances, and therefore may not be aware that the assurance is available. We therefore think that it would be more appropriate for this assurance to be in Part A, with suitable minor adjustments to the wording.

Assurance 22 – Detailed Design. This assurance states that prior to completion of detailed design the Nominated undertaker will consult landowners and tenants regarding detailed design works and in so far as is reasonably practicable seek to minimise the loss of grade 1, 2 and 3a agricultural land. Further, the Nominated Undertaker will seek to accommodate reasonable proposals from the relevant owner/tenant to modify the detailed design.

We believe that all farmers affected by the scheme will request this assurance as this assurance is critical to further negotiation taking place in regard to modifying detailed design and ecological mitigation for facilitating the efficient management of the agricultural holding. This assurance is essential to all farmers. Counsel for HS2 has been stating in response to farmers petitions that this assurance 22 is available and will apply and be complied with in consultation with landowners and tenants before design is finalised. Mr Mould particularly referred to assurance 22 in response to Mr Bedson for his client Mr Mycock on 6th June 2018. He highlighted how the assurance is to ensure that the actual impact on the operation of a holding is kept to the reasonable minimum and that was the purpose of the assurance. It seems to us that the committee will be of the impression that this assurance is available to all farmers and that it should be a Universal Assurance.

Assurance 23 – Agricultural Soils – We believe that this will apply to landowners where land is only being taken on a temporary basis by construction and or are affected as a result of land raising and the intention is to bring this land back into agricultural use. HS2 and/or the landowner will need to be very clear about what use land is being taken for otherwise all farmers will request this assurance. We consider that this should be a Universal Assurance.

In summary, the NFU is of the view and always has been that Part B assurances would be available to all farmers affected by the scheme unless it was obvious that an assurance did not apply, for example the assurance for the relocation of buildings. We do believe that there is a risk in relying on HS2 writing to whosoever believe are all affected farmers. It is essential that farmers can request that Part B assurances apply.

The NFU would like to raise some concerns over points made to Roger Bedson, who as you know is an agent who is acting for a lot of NFU members, in an email from yourself 14/15th June 2018. You stated that the NFU assurances will only be given where HS2 believe they are genuinely needed.
We strongly believe that in most cases farmers will seek all of the assurances under Part B except for Assurances 11, 12 and 13 which apply to the relocation of buildings and assurance 20 covering private roads.

Further we would like clarification on whether agents’ fees will be covered in regard to time spent agreeing the Part B assurances for each client with HS2 now that HS2 has made it clear that the assurances will not automatically apply.

When it gave evidence to the Select Committee on 30th April, the NFU did request that it would like the new assurances agreed under Phase 2a to apply to Phase 1. Please confirm that the latest draft of assurances will apply for Phase 1 and that the process now under discussion as to how Part B assurances apply will also apply to farmers on Phase 1?

Yours sincerely

[Signature]

Louise Staples
Senior Chartered Surveyor