Formal response for Select Committee regarding the need for an HS2 Specific Ombudsman

1. The Secretary of State has considered the need for an HS2 Specific Ombudsman, separate to the role of the Parliamentary and Health Services Ombudsman (PHSO). The Promoter does not consider there is a need for this for the following reasons:
   - HS2 Ltd have just introduced a new complaints process which should be allowed to prove it’s efficacy or fail before alternatives are considered; and
   - The PHSO is part of the new HS2 Complaints process, is fully independent and is able to direct HS2 Ltd to appropriate remedies for complaints they uphold.

2. The Promoter also considers that adding a separate HS2 Specific Ombudsman would put in place an additional layer of bureaucracy and regulation to a complaints system which we seek to keep as simple as possible. Keeping the complaints process simple makes it as accessible as possible to as many people as possible and enables complainants to be dealt with quickly and appropriately.

3. Where a complainant does not wish to escalate a complaint to the PHSO but is dissatisfied with the outcome of their complaint, the Promoter would encourage complainants to engage in alternative dispute resolution where possible.

Background

4. The petitioner suggested that a new HS2-specific Ombudsman, separate to the existing PHSO, would provide a faster and more accessible service to those affected by the HS2 Programme, and provide a single point of accountability. Specifically they stated there was a requirement for an “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” (Hansard, HSRBC, 13/06/2018, morning session, paragraph 4).

5. A comparison for this new Ombudsman was made by the petitioner and the Select Committee to industry regulators such as OfWat and OfGEM. OfGEM is the Office for Gas and Electricity Markets, a non-ministerial government department and independent National Regulatory Authority. OfGEM conduct investigations into suppliers and the market, not individual complaints. The appropriate point of referral for individual customers experiencing gas and electricity problems is not OfGEM but the Energy Ombudsman.

6. Nevertheless, in making a comparison, it should be noted that regulators require individual complainants to make complaints directly to their supplier in the first instance and for the suppliers to be given the opportunity to respond. Individual complainants may then be referred on to the appropriate Ombudsman. This is similar to the new process that HS2 Ltd have developed for complaints handling, whereby complainants should inform HS2 Ltd first, before the complaint is escalated if there is a lack of resolution.

7. Were a new ombudsman developed specifically for HS2, akin to the system of an industry regulator, it would be unlikely to reduce the steps involved in handling
complaints. To copy the regulation system offered for comparison, complaints would still need to be handled by HS2 Ltd first and they be given the opportunity to respond, prior to the involvement of the Ombudsman.

8. Regarding a single point of accountability, it is not clear what an HS2 specific Ombudsman would offer in addition to the independent scrutiny role carried out by the PHSO. The PHSO is, as requested by the Petitioner, a truly independent Ombudsman, reporting directly to Parliament who can fulfil the role that the Petitioner asks for an HS2 Specific Ombudsman to carry out.

9. There is also a question of proportionality and precedent. Ombudsmen generally oversee whole sectors, while the petitioner proposed Ombudsman would only have a remit of the relatively smaller number of people affected by HS2. Cabinet Office guidance asks that where departments are assessing the instatement of new Ombudsmen, they consider ‘the reason for additional adjudication and dispute resolution, and how it will add value to existing schemes (e.g. Parliamentary & Health Service Ombudsman and Local Government Ombudsman), and to the Department’s own internal complaints procedures’¹. There is not a meritorious case for which services could be provided by an HS2-specific Ombudsman that are not already provided by the PHSO.

Role of Residents Commissioner

10. The Residents’ Commissioner is independent and has been put in place to hold HS2 Ltd accountable to the commitments made in the Residents’ Charter. The Residents’ Commissioner oversees and monitors HS2 Ltd’s commitments to residents and produces periodic reports, published online at gov.uk/government/collections/hs2-ltd-residents-commissioner. In addition, the Residents’ Commissioner meets regularly with the HS2 Ltd Chairman about emerging trends and concerns.

11. The Resident’s Commissioner is in place to take an overarching view. This means that the Residents’ Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints. HS2 Ltd has established a new complaints process in April 2018 to consider individual complaints. This process is laid out in the annex to this document.

Annex A – The HS2 Ltd Complaints process from April 2018

- HS2 Ltd has a new Public Response Team who will be assisting every complainant at every step, treating each complainant as an individual, adapting to their needs and supporting the business throughout. A dedicated member of the Public Response Team will become the single point of contact for every complainant and will determine with the complainant the best way to handle each individual case.

- Within HS2 Ltd’s Community Engagement Strategy HS2 Ltd have made a public commitment to acknowledge complaints within 48 hours, and where possible, provide a full response within 20 working days. If the complaint is complex and will take longer than 20 working days, HS2 Ltd will notify the complainant and confirm when a full response will be received. During 2018, 91% of complaints have been closed within 20 working days.

- HS2 Ltd’s complaints process is set out clearly on the HS2 Ltd website: https://www.hs2.org.uk/how-to-complain/, this provides an easy to follow guide for anyone wishing to raise a complaint. The process is described below:

The first step will identify the context for the complaint, and with the complainant, determine if immediate action is required (for example, a noise complaint regarding a generator, or construction vehicle blocking a residents drive would require immediate resolution), or if further information is required from the department involved.

If the complainant is unhappy with the response from HS2, they are able to request that their complaint be escalated to step two and independently reviewed. In this instance there are two options:

- For complaints about construction, they will be referred to the Independent Construction Commissioner, who has a role to review, mediate and monitor the way in which HS2 manages and responds to construction complaints. The Construction Commissioner will carry out an independent review of the complaint and provide both the complainant and HS2 with a single or series of recommendations.

- For all other complaints, a member of HS2 senior leadership team who has not previously been involved with the complaint will carry out an independent review within 20 working days. The findings of the review will be presented to the Chief Executive for consideration and approval of a full and final response. To ensure transparency, a copy of the review findings will also be made available to the complainant.

- Following this step, complainants can ask for their complaint to be reviewed by the Department for Transport’s Independent Complaints Assessors and subsequently the Parliamentary and Health Services Ombudsman.
At all times the Public Response Team are on hand to support both the complainant and HS2 in ensuring effective communication between both parties.

Where recommendations are made, they are recorded, reviewed and where possible implemented through HS2’s continuous improvement process. If a recommendation is not able to be implemented, HS2 will set out the reason why.

Tell us about your complaint

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<tr>
<th>Complaints about Construction</th>
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Continuous Improvement
We will continually learn from the feedback we receive in order to make improvements to the service that we provide.

- ‘Step Four’ of the complaints process provides a mechanism for complaints to be raised to the PHSO, following a review by the DfT’s own Independent Complaints Assessor (ICA).