HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE

MR & MRS LOESCHER (PETITION HS2-P2A-0000001): 13 JUNE 2018

Introduction

1. This note responds to the issues raised during the hearing of Mr & Mrs Loescher’s petition before the Select Committee on 13 June 2018, over and above the responses given on the day by Mr Mould QC, Counsel for the Promoter and the formal response to the petition set out in the Promoter’s Response Document (PRD) issued in April 2018. A copy of the PRD is attached at Annex A and a copy of the full transcript of the hearing is attached at Annex B (extracts from the transcript below are shown in italics).

Mental health and wellbeing

4. 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.

6. 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.

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.

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.

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.

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.

2. The Development Agreement\(^1\) between the Department for Transport (as sponsor) and HS2 Ltd makes it clear that HS2 Ltd is responsible for the “Promotion, Engagement and Communications Functions” in respect of the programme, and this includes “effective engagement of stakeholders” affected by the scheme. It also includes at Annex 2 a list of the Sponsor's Requirements and at Annex 3 HS2 Ltd’s functional response. These include a requirement to minimise adverse impacts. Annex 8 sets out the strategic goals and objectives of the programme, and these include "HS2 will create an environmentally sustainable solution and be a good neighbour to local communities", and a commitment to “actively communicate with neighbours and interest groups to minimise the impact of HS2 construction and operation on people and the environment”. HS2 Ltd rejects the assertion that it is in breach of its obligations under the Development Agreement and the Promoter can confirm that it is committed to enforcing the Development Agreement in order to ensure that the sponsors requirements and strategic goals and objectives of the programme are met.

3. The Promoter has submitted a note on consultation and community engagement. A copy is attached at Annex C. HS2 Ltd acts in accordance with its Community Engagement Strategy and the underlying principle of being a good neighbour. Among HS2 Ltd's four values of “Respect, Leadership, Integrity and Safety” is a commitment that HS2 Ltd will be inclusive in all engagement activities and that it “will create safe environments and prioritise the health, safety and wellbeing of communities and our workforce”. Further, HS2 Ltd have committed to “Respect the wellbeing of communities, minimising disruption to their lives with local mitigation plans and activities and ensuring we meet the standards set out in the Code of Construction Practice”\(^2\).

4. The Promoter has had extensive discussions with landowner representative organisations on the concept of a ‘duty of care’ and has explained that the underlying principles of such a duty – for example, minimising land take, accepting responsibility for the actions of the nominated undertaker, paying demonstrably fair compensation promptly etc – are provided by the commitments already given in the Environmental Minimum Requirements and in the Register of Undertakings and Assurances, as well as by the existence of the Residents’ Commissioner and Construction Commissioner.

5. Safety is a core HS2 Ltd value and HS2 Ltd rejects the assertion that it is not acting in compliance with applicable health and safety legislation or that it is acting negligently or illegally.

6. HS2 Ltd take any accusation of bullying very seriously indeed and, if details are provided, are committed to investigating the circumstances thoroughly.

7. HS2 Ltd recognise that how they behave and communicate is very often just as important as what they agree with those affected by the project, and this was a key message in the re-induction sessions conducted for all staff earlier this year. That said, this is something HS2 Ltd are constantly trying to improve, including in respect of the operation of property schemes. The Resident's Commissioner is undertaking a review on behalf of Ministers into individuals experiences of the property schemes. In undertaking this piece of work, the Resident's

\(^{1}\) https://www.gov.uk/government/publications/hs2-development-agreement-july-2017
Commissioner is writing to applicants to get their views on how the process worked for them and conducting some telephone conversations. This will inform the recommendations that she makes on the operation of the schemes, which the Promoter would expect to implement.

8. Furthermore, HS2 Ltd have regular supplier days with their land and property supply chain - their supply chain are very often the people that those applying for schemes have the most contact with – and underline to suppliers the impact that they have and the need to show the right behaviours and communicate in a clear and timely way.

9. The correspondence regarding Mr Loescher's health has not been ignored by HS2 Ltd and has been referenced in correspondence with Mr & Mrs Loescher.

10. As requested, the Promoter has produced a scoping report considering what types of things could be done to better understand the relationship between mental health and wellbeing and major infrastructure projects.

**Governance**

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.

11. HS2 Ltd is an Arms Length Body (ALB) of the Department for Transport. It is governed by:

- the Development Agreement – the Development Agreement governs the relationship
between the Secretary of State for Transport and HS2 Ltd for the delivery of HS2.

- the Framework Document\(^2\) - the Framework Document, sets out the corporate framework within which HS2 Ltd must operate.

- Managing Public Money\(^3\) which is a document published by HM Treasury that sets out what is expected of public servants, arm’s length bodies and others who are responsible for spending public money. The National Audit Office (NAO) audits HS2 Ltd’s Annual Report and Accounts and whether HS2 Ltd are complying with the terms of their Framework Document and delivering Value for Money.

- the High Speed Rail (London to West Midlands) Act\(^4\) - The 2017 Act authorises the construction of HS2 Phase One between London and Birmingham.

- the Register of Undertakings and Assurances\(^5\) - provides information on the commitments given during the passage of the 2017 Act.

- a complaints process\(^6\) - in relation to complaints management, for service complaints, HS2 Ltd has two, formal, internal stages. There then exists two external stages, the DfT Independent Complaints Assessor (ICA) and the Parliamentary and Health Service Ombudsman (PHSO). This procedure, and level of involvement, is in line with accepted good practice in both the private and public sector. The scrutiny of property schemes and HS2 Ltd’s interaction with residents is overseen by the Residents Commissioner.

**Previous investigations**

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.*

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\(^6\) [https://www.hs2.org.uk/how-to-complain/](https://www.hs2.org.uk/how-to-complain/)
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.

12. In November 2015 the PHSO published a report into complaints about HS2 Ltd’s communication and engagement with six families, including Mr & Mrs Loescher, related to matters that occurred from April 2012 – December 2014. HS2 Ltd accepted the recommendations contained within the report and changes have been made in response to them. Among the changes are:

- an expanded Community Engagement team
- launch of the Community Engagement Strategy
- an expanded Public Response team
- a new Complaints procedure

13. The PHSO report led to a subsequent inquiry by the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) in early 2016. The PACAC published a report in March 2016 which largely endorsed the recommendations made by the PHSO. The PACAC report stated “We welcome the improvements made by HS2 Ltd to its complaints handling process since the publication of the PHSO report. Steps such as the introduction of named case officers and appointment of a Public Response Manager should result in a better service for members of the public. We also applaud the personal commitments given by the Chief Executive and by the Minister to play an active role in complaints handling”.

14. The independent review recommended by the PHSO was subsequently undertaken by Ian Bynoe, a former Independent Police Complaints Commissioner and DfT Independent Complaints Assessor. The review made thirteen recommendations and one suggestion: five in relation to the need to have a Community Engagement Strategy; four pertaining to the complaints process; two in relation to the Helpdesk; one pertaining to updating the Residents’ Charter; and one for the Residents’ Commissioner and Independent Complaints Commissioner to meet. The suggestion was to establish a best practice advisory panel comprising practitioners who have dealt with comparable community engagement challenges to that of HS2.

15. In March 2018, HS2 Ltd completed its formal response to the Bynoe Review. Since the report was published HS2 Ltd has made comprehensive changes to the way community engagement and complaints handling are managed. HS2 Ltd undertook an extensive review into the HS2 Ltd complaints service, as a result of which its complaints procedure has been updated and published on the new HS2 Ltd website. Under the new procedure, HS2 Ltd will assist every complainant at every stage ensuring it treats each as an individual and adapt to their needs as well as offering a dedicated single point of contact to provide support and continuity.

Residents’ Commissioner

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.

26. 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.

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.

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.

145. 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.

16. The Promoter has submitted a note to the Committee on the Residents’ Commissioner. A
copy is attached at Annex D.

17. The role of the Residents’ Commissioner is to hold HS2 Ltd accountable to the commitments made in its Residents’ Charter. The Residents’ Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints. The Residents Commissioner’s terms of reference was communicated to Mr & Mrs Loescher.

18. It should also be noted that the appointment of the Residents’ Commissioner was welcomed by the PHSO, ICA and PACAC. The Residents’ Commissioner publishes a report at least twice a year which outlines their work to date and future activities. All the reports, and the responses from HS2 Ltd, are available online at https://www.gov.uk/government/collections/hs2-ltd-residents-commissioner.

19. In February 2017 the ICA also reviewed but did not uphold a complaint by Mr & Mrs Loescher about the Residents’ Commissioner.

Construction Commissioner

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.

106. MR MARTIN: – the role of that Construction Commissioner and the Residents’ Commissioner.

20. The Independent Construction Commissioner’s role has been developed to mediate and monitor the way in which HS2 Ltd manages and responds to construction complaints. The Construction Commissioner will mediate any unresolved construction related disputes between HS2 Ltd and individuals or bodies, and provide advice to members of the public about how to make a complaint about construction. The Construction Commissioner regularly meets with the HS2 Ltd Chief Executive Officer to raise any concerns or emerging trends across the project and produces reports and recommendations which HS2 Ltd respond to.

21. The Construction Commissioner publishes a report at least twice a year which outlines their work to date and future activities. All the reports, and the responses from HS2 Ltd, are available online at https://www.gov.uk/government/collections/hs2-independent-construction-commissioner.

Complaints process

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.
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.

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.

149. 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, 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.

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

151. 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.

22. Following an extensive review, in April 2018 HS2 Ltd implemented an enhanced complaints procedure which better reflects the current stage of the programme.

23. 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.

24. Within the 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.

25. HS2 Ltd has a dedicated page on the HS2 Ltd website setting out the complaints process and contact details including email address, 24/7 helpline and freepost address. The process is described below.

26. 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.

27. If the complainant is unhappy with the response from HS2 Ltd, 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 (PHSO). The PHSO’s remit is to provide an independent complaint handling service for complaints that have not been resolved by the NHS in England and UK government departments.

28. At all times the Public Response Team are on hand to support both the complainant and HS2 Ltd in ensuring effective communication between both parties.

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

7 https://www.hs2.org.uk/how-to-complain/
30. HS2 Ltd will endeavour to resolve complaints within the first step of the complaints process. The majority of complaints are closed within 20 days or less at step one to the satisfaction of the compliment. If this is not possible; construction complaints can progress to the second step, while complaints about wider HS2 Ltd services can progress through the second, third or fourth step. The timescale for service complaints to process through HS2 Ltd’s complaints procedure to the ICA (third step) is 40 days, (20 days for step one and 20 days for step two). If the complaint is complex and will take longer, HS2 Ltd will notify the complainant and confirm when a full response will be received. The ICA and PHSO are independent and their timescales are published and communicated as part of their investigations.
31. Below is a summary of complaints received by HS2 Ltd:

<table>
<thead>
<tr>
<th>Step 1 - Construction and Service</th>
<th>Calendar Year 2017</th>
<th>of which Mr &amp; Mrs Loescher</th>
<th>January 2018 – June 2018</th>
<th>of which Mr &amp; Mrs Loescher</th>
</tr>
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<tbody>
<tr>
<td>Step 2 – Construction (referral to the Independent Construction Commissioner) / Service</td>
<td>0 / 9</td>
<td>0 / 1</td>
<td>1 / 6</td>
<td>0 / 2</td>
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<tr>
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<td>6</td>
<td>1</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Referred to Independent Complaints Assessor</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

32. The ICA said in their annual report for 2016/17, covering the period April 2016 to March 2017:

“We received eight HS2 Ltd referrals this year, one of which, as we have noted, contained 13 sub-complaints. While these eight represent a doubling of all the complaints previously received about HS2 Ltd, the number remains low. However, although representing only 3 per cent of our total referral numbers, the seven cases completed at the time of drafting this report had occupied 11 per cent of our caseworking time.”

33. The table below from the DfT Annual Report and Accounts provides a comparator with other DfT ALB’s for PHSO complaints in 2016/17 Financial Year.

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8 Page 35 – DfT Annual Report and Accounts (2016-17)
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.

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.
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.

34 The Promoter has submitted a formal response on the proposal for an HS2 specific Ombudsman. A copy is attached at Annex E.

Compliance with Undertakings & Assurances

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.

23. 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.

35. HS2 Phase 2A Information Paper B5: Compliance with Undertakings and Assurances⁹ sets out how undertakings and assurances given during the passage of the 2017 Act and the Phase 2A Bill will be recorded and met. The arrangements in place for HS2 mirror those put in place successfully for both the Channel Tunnel Rail Link (HS1) and Crossrail, and there is no reason to believe that they will not similarly work for HS2.

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Engagement

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.

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.

36. The Promoter has submitted a note on consultation and community engagement. A copy is attached at Annex C.

37. HS2 Ltd published its Community Engagement Strategy in September 2017 which sets out its approach to community engagement and the 10 key commitments that they use as the measure of success. The aspiration is for HS2 Ltd to be a good neighbour every single day, by respecting the people and communities it impacts and being sensitive to their needs.

38. The strategy sets out HS2 Ltd’s interpretation of community as any person, people, business or organisation who:

- will be affected by the new railway or its construction;
- has a special interest in HS2, such as environmental or technical stakeholders;
- is elected to represent the communities in which the new railway will operate; and
- is responsible for holding HS2 Ltd to account.

39. The four means of engagement undertaken by HS2 Ltd are:

- Informing – through clear, timely and tailored communications;
- Involving - create opportunities for local communities to get involved throughout the design and delivery of the project;
- Consulting – formal, written public consultations including plans for review and seeking views from interested parties to inform development and delivery; and
- Responding - provide free and accessible options for communities to contact us to seek information and raise their concerns. We will respond to their requests and comments in a timely and comprehensive way.
40. HS2 Ltd has a Community Engagement Team and each community is represented by an engagement manager. The engagement managers work with teams throughout HS2 Ltd to ensure communities perspectives are considered and reflected.

41. HS2 Ltd also applies existing best practice and guidance from other programmes and taps into the skills and experience of local authorities, the independent Design Panel, Residents’ Commissioner and Construction Commissioner to deliver outstanding community engagement.

42. The Community Engagement Strategy sets out the HS2 Ltd values of:

- **Leadership** – being transparent in and understanding the impact of decision-making. Being open and accountable and showing HS2 Ltd understand the needs and views of local communities. Being collaborative and consistent in HS2 Ltd’s engagement and communications.

- **Respect** – HS2 Ltd will listen, build trust, minimise surprises and anticipate concerns and address them up front. It will create a sense of community ownership and awareness of feelings and opinions. We will respond to our communities and stakeholders in a timely and accessible manner.

- **Integrity** – HS2 Ltd will be open and honest when sharing information. If HS2 Ltd are not able to make a requested change it will explain why. HS2 Ltd will deliver on its promises and do so collaboratively. HS2 Ltd will report on its discussions and consultations fairly.

- **Safety** - HS2 Ltd will be inclusive in all our engagement activities. HS2 Ltd will create safe environments and prioritise the health, safety and wellbeing of communities and its workforce. HS2 Ltd will identify impacts and feed them back into the business.

43. Through the Residents Charter⁺ HS2 Ltd has identified 10 community commitments which will be used as the measure of success in how it delivers HS2:

1. Continue to build respectful, long-term relationships with communities, and actively encourage our workforce to listen to local concerns and be considerate and accountable for their actions at all times.

2. Work with communities to develop local two-way engagement and communication programmes, and ensure these are accessible and tailored to local needs.

3. Make sure communities are made aware in advance of any activities taking place in their area.

4. Operate a Freephone Community Helpline 24 hours a day, 365 days a year.

5. Make health and safety a priority for communities and our workforce.

6. Respect the wellbeing of communities, minimising disruption to their lives with local mitigation plans and activities, ensuring we meet the standards set out in the Code of Construction Practice.

7. Leave a positive and sustainable legacy for the communities in which we operate.

8. Respond to questions and complaints quickly and efficiently, with an acknowledgement within 2 working days, and responding within a maximum of 20 working days if we cannot answer the query straight away.

9. Promote awareness of all our property schemes so that anyone who may be eligible has all the information they need and is aware of the support available to them.

10. Display the Residents’ Commissioner’s and Construction Commissioner’s contact details on all relevant materials, along with the HS2 Helpline information and complaints procedure.

44. HS2 Ltd has a dedicated page on the HS2 Ltd website setting out the complaints process and contact details including email address, 24/7 helpline and freepost address11.

45. Following the launch of HS2’s national Community Engagement Strategy in 2017, HS2 Ltd’s focus has been to demonstrate what the strategy means for communities at a local level by working with them to develop tailored local engagement plans. HS2 Ltd has launched 10 Commonplace digital engagement platforms offering localised information sites for Phase One. By June 2018 over 25,000 people had visited the combined sites and over 1200 people are subscribed to regular updates, meaning they will automatically receive alerts for construction works in their area. In addition during 2017 across all three phases HS2 Ltd held 195 events, at which it spoke to over 33,000 people. There was also an incremental increase in enquiries to the Helpdesk, with nearly 27,000 contacts via telephone and email reflecting HS2’s growing impact in line with increasing construction works in Phase One and the huge programme of land surveys and assessments in Phases 2a and 2b.

Stakeholder feedback and survey

5. We represent scores of families and businesses that have suffered shoddy treatment at the hands of HS2.

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 https://www.hs2.org.uk/how-to-complain/
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.

46. The results from the complaints received by HS2 Ltd in 2018 indicate a major difference between the conclusions reached in the survey put forward by Mr & Mrs Loescher, the results of which are not recognised by HS2 Ltd. Between January-June 2018 HS2 Ltd received 165 complaints, 23 of which were about the way HS2 Ltd engaged with communities and residents, which represents 13.9% of the total, in contrast to the 90% figure cited by Mr & Mrs Loescher. HS2 Ltd had five complaints raising concerns of honesty (two of which were from Mr & Mrs Loescher). 21 complaints raised to date in 2018 have related to customer service. 14 complaints have related to unnecessary delays by the agents. 91% of complaints raised this year were closed within 20 working days. Of the 165 complaints received, 18 have been escalated to step two or three of the complaints procedure. Of the 18, nine of these escalations were for complaints raised by Mr & Mrs Loescher.

47. HS2 Ltd take any accusation of bullying very seriously indeed and, if details are provided, are committed to investigating the circumstances thoroughly.

48. The Promoter has submitted a note on consultation and community engagement. A copy is attached at Annex C.

49. HS2 Ltd is not aware of Mr & Mrs Loescher formally acting for any petitioner against the Phase 2A Bill or formally acting as an agent for any farmers on Phase One or Phase 2B in their dealings with HS2 Ltd.

50. The Community Engagement Strategy commits HS2 Ltd to publishing progress reports against its 10 community commitments every six months. As well as providing transparency about performance, these reports will help HS2 Ltd to continuously learn and improve.

51. The reports will show how well HS2 Ltd and their contractors are performing across a range of indicators:

- how well HS2 Ltd handle your enquiries;
- how well HS2 Ltd handle your complaints;
- progress against the strategy and Local Engagement Plans;
• HS2 Ltd contractors’ progress against their engagement delivery plans;

• how well HS2 Ltd are informing communities about works taking place in their area;

• how well HS2 Ltd demonstrate that they are continually looking to lessen the impacts of the programme;

• what long-term benefits HS2 Ltd’s investment programme is delivering in communities;

• evidence that HS2 Ltd staff and contractors understand, and are behaving consistently with the strategy; and

• review and analysis of the feedback on how HS2 Ltd are doing.

52. Finally, HS2 Ltd has committed\textsuperscript{12} to developing a Community Engagement Index as one of its key performance indicators and to report performance.

**Land & property**

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.

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. **We recommend that the new ADR system is completely reviewed.**

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

\textsuperscript{12} Hs2 Ltd Corporate Plan 2017-2020
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.

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

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.

154. 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.

53. HS2 Ltd has operated a policy of Alternative Disputes Resolution (ADR) for a number of years and the guidance note recently issued was based upon the HS2 experience and experience of other major projects. HS2 Ltd appreciates the feedback from Mr & Mrs Loescher and their adviser and will reflect on these comments together with feedback from other parties and professional bodies to review and improve the ADR policy over time.

54. Once again, HS2 Ltd take any accusation of bullying very seriously indeed and, if details are provided, are committed to investigating the circumstances thoroughly. Complaints regarding agent behaviour have been investigated previously and responded to. HS2 Ltd acknowledge the ongoing concerns raised by Mr & Mrs Loescher and there are currently two open complaints under step one and step three of the complaints process regarding agent behaviour.

55. With reference to the time spent by Mr & Mrs Loescher, HS2 Ltd recognise this has been a difficult case to resolve. The PHSO in their report of November 2015 considered complaints over previous years and an award of £4,000 was recommended which has been paid to Mr & Mrs Loescher. They also received a separate significant amount of money to cover their time.
56. In November 2016 the ICA reviewed a complaint by Mr & Mrs Loescher that HS2 Ltd were departing from the rules provided in the Compensation Code in its handling of their property claim. The ICA partially upheld the complaint finding that responses to Mr & Mrs Loescher’s questions about the application of the Compensation Code had not met the required standard of clarity. However, he noted that he balanced that finding with a recognition that aspects of HS2 Ltd’s handling were of a good standard. Moreover, he noted that face to face resolution early in the life of the complaint would have offered the best opportunity to resolve matters, rather than linear and sequential exchanges through complaint correspondence (Mr & Mrs Loescher had declined the offers of a face to face meeting to resolve the points of dispute as they felt it would have been futile) and that matters that should, in the first instance at least, have been referred back to the professionals acting for the parties, instead entered a complaints process that was ill-suited to provide resolution. He also noted that he did not detect anything approaching deliberate obfuscation, lies or obstructiveness from HS2 Ltd staff.

57. Following the ICA report there is currently an open PHSO complaint investigating the claim that “HS2 Ltd failed to follow the processes and procedures in the Compensation Code”.

58. On timescales, HS2 Ltd does not control or influence the programme within which the PHSO operate. HS2 Ltd looks forward to receiving and acting upon the conclusions and any recommendations that the PHSO may make.

59. As explained in the PRD, Mr & Mrs Loescher submitted a petition against the Phase One Bill in the House of Commons in 2014. They signed a conditional sale agreement for their current property (“the Agreement”) on 3 December 2014, in advance of their scheduled appearance before the Phase One Bill House of Commons Select Committee on 4 December 2014.

60. Mr & Mrs Loescher were fully represented by their own solicitors and surveyors and the Agreement was negotiated over several months in late 2014. It was tailored to Mr & Mrs Loescher’s specific requirements and made provision for HS2 Ltd to pay 90% of the value of their property on Royal Assent enabling them to be able to fund the construction of a new house with compensation payable in accordance with the Compensation Code.

61. Heads of Terms for the agreement were agreed by the agent acting on behalf of Mr & Mrs Loescher on 8 October 2014, and those included (section 20):

   “Claimant to withdraw their petition against HS2, upon exchange of Contracts and covenant not to lodge any future petition against the proposals contained in the Hybrid Bill as at the date of signing the Agreement.”

62. This requirement was duly replicated in the Agreement signed on 3 December 2014 (paragraph 7.5):

   “The Seller and Occupier 2 are to formally withdraw their petition against HS2, or request their professional representatives withdraw the petition on their behalf, (Petition Number 10) [forthwith] from the date of this Agreement and the Seller and Occupiers undertake to the Buyer that they will not lodge any future petition against the Hybrid Bill in its form as at the date of this Agreement.”

63. Such a requirement in agreements with petitioners are common practice and there is nothing improper about such a requirement. Mr & Mrs Loescher were not obliged to sign the
Agreement and had the option instead to appear before the Phase One Bill House of Commons Select Committee if they had wished to do so. This was a matter for their own judgement and preference based upon the terms they had negotiated and whether they believed at the time that either signing the Agreement or appearing before the Select Committee was in their best interests.

64. HS2 Ltd notes that Mr & Mrs Loescher say that this issue is being considered by the PHSO in their latest investigation; the PHSO’s original report in November 2015 covered events from April 2012 – December 2014 (ie including the period during which the Agreement was negotiated and the petition scheduled to be heard).

HS2 Ltd
July 2018
April 2018

HIGH SPEED RAIL (WEST MIDLANDS - CREWE) BILL

HOUSE OF COMMONS SELECT COMMITTEE

Petition No. HS2-P2A-001:
Mr Jonathan Andrew Loescher and Mrs Elaine Loescher

Promoter’s Response Document
INTRODUCTION

This Promoter’s Response Document (PRD) forms the Promoter’s response to Petition No. HS2-P2A-001, from Mr Jonathan Andrew Loescher and Mrs Elaine Loescher.

In this PRD, ‘the Promoter’ means the Secretary of State and HS2 Ltd acting on his behalf.

The purpose of the PRD is to advise you and the Select Committee of the Promoter’s position in relation to the petitioning points raised. It is intended that the PRD will alleviate many of the concerns raised in the petition.

The Table of Contents overleaf lists the page number, petitioning points in the order they appear in the petition, and a summary statement of the issue(s) contained in the petition for quick reference. Other supporting material (e.g. reports, drawings and photographs) referred to in the response are attached where applicable.


Department for Transport
High Speed Two (HS2) Limited

BACKGROUND

Mr Jonathan Andrew Loescher and Mrs Elaine Loescher (“Mr & Mrs Loescher’) currently live at Cherry Trees, 17 Flats Lane, Weeford, Lichfield, Staffordshire. The property is within the limits of land to be acquired under the High Speed Rail (London – West Midlands) Act 2017 (“the 2017 Act”), to the west of the alignment, and the property in its entirety is required for the section of the Phase 1 Birmingham to Crewe spur authorised by the 2017 Act. Mr & Mrs Loescher submitted a petition against the Phase 1 Bill in the House of Commons in 2014.

Mr & Mrs Loescher are in the process of building a replacement dwelling and office on a 4 acre site at “The Steading”, Jerries Lane, Packington, Lichfield, Staffordshire, a short distance away from their current property, and that site is 300m to the east of the Phase 1 Birmingham to Crewe spur authorised by the 2017 Act. The Promoter understands that Mr & Mrs Loescher entered into an Option Agreement to purchase the site in Autumn 2015 and the purchase was completed in March 2017 after Royal Assent to the Phase 1 Bill.
PETITION NO. HS2-P2A-001

MR JONATHAN ANDREW LOESCHER AND MRS ELAINE LOESCHER

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Our new property is 300m from the Birmingham to Crewe Spur (but on the phase 1 part of the spur). The new property will suffer from additional noise due to the additional traffic on this spur if phase 2a goes ahead. Further mitigation is therefore needed.

It is important to note that we were prevented from petitioning the phase 1 Hybrid Bill Committees as HS2 Ltd coerced us to contract out of our right to petition the Commons and the Lords by HS2 Ltd inserting a clause in the contract to purchase our property. HS2 Ltd's conflated our property relocation issues with preventing us petitioning on mitigation. We simply had no choice but to proceed with the contract on account of needing to secure our relocation and the health effects we were already suffering caused by the maladministration we had already received at the hands of HS2 Ltd. HS2 Ltd's maladministration is evidenced in the Parliamentary and Health Service Ombudsman report into the handling of our case dated 26 November 2015.

Our MP (Christopher Pincher) has raised our concerns about not being able to petition either Commons or the Lords against phase 1 of HS2 bill with Sir David Higgins (Chair of HS2 Ltd) and Mark Thurston (CEO of HS2 Ltd).

In response to the concerns raised by our MP of being prevented from petitioning, the senior management of HS2 Ltd voluntarily offered the following way forward:

- Sir David Higgins volunteered the following assurance in a letter of 14 September 2017: “With regard to Mr and Mrs Loescher’s ability to petition, we confirm they would be able to submit a petition against the phase 2A
Bill to the extent their property or interests are ‘directly or specially affected’ by the proposals contained in the Bill”

- Mark Thurston has conceded to our MP in a letter of 9 November 2017 that “I appreciate that Mr and Mrs Loescher felt that they had no choice but enter into the agreement”. He then volunteered the following assurance: “Mr and Mrs Loescher will have the opportunity to submit a petition against the Phase 2A Bill to the extent their property or interests are ‘directly or specially affected’ by the proposals contained in the Bill”.

These assurances were given in the full knowledge of the background and the location of “The Steading” (our replacement property) and whether it might be considered to be ‘directly or specially affected’.

We hope that these assurances volunteered by the senior management of HS2 Ltd were indeed genuine and can be taken at face value. We trust the assurances do not prove to be deliberately deceptive, misleading and vacuous assurances intended to obfuscate the serious issue of HS2 Ltd preventing us petitioning phase 1 of HS2. In these circumstances we trust the Promoter will not seek to challenge our Locus Standi.

The Parliamentary and Health Service Ombudsman in currently conducting a second investigation looking into the circumstances around us being prevented from petitioning amongst other issues.

**PROMOTER’S RESPONSE:**

*Phase 1 Bill*

1. Mr & Mrs Loescher’s current and new property are affected by the Phase 1 Birmingham to Crewe spur authorised by the 2017 Act. Neither property is affected by the works proposed in the High Speed Rail (West Midlands – Crewe) Bill.

*Additional noise due to additional services on the spur if Phase 2A goes ahead*

2. The operational noise assessment in the Phase 1 Environmental Statement (ES) was based on the highest likely train flows within the first 15 years of operation, including the Phase 2 services, where that resulted in higher noise levels than the operation of
Phase 1 services only. See, for example, paragraph 1.1.3 of Annex D2 to the Phase 1 ES Volume 5 Appendix SV-001-000, which explains:

“The effects of operational airborne sound arising from the Proposed Scheme have been assessed on the basis of the highest likely train flows within the first 15 years of operation, including the Phase Two services, where this results in higher noise levels than the operation of Phase 1 services only. The assessment considers the baseline anticipated at Year of Opening (2026) in the absence of the Proposed Scheme.”

**Petition against the Phase 1 Bill**

3. Mr & Mrs Loescher submitted a petition against the Phase 1 Bill in the House of Commons in 2014. They signed a conditional sale agreement for their current property (“the Agreement”) on 3 December 2014, in advance of their scheduled appearance before the Phase 1 Bill House of Commons Select Committee on 4 December 2014.

4. Mr & Mrs Loescher were fully represented by their own solicitors and surveyors and the Agreement was negotiated over several months in late 2014. It was tailored to Mr & Mrs Loescher's specific requirements and made provision for HS2 Ltd to pay 90% of the value of their property on Royal Assent enabling them to be able to move to a new property. It did not deal with Mr & Mrs Loescher’s relocation.

5. Heads of Terms for the agreement were agreed by the agent acting on behalf of Mr & Mrs Loescher on 8 October 2014, and those included (section 20):

   “Claimant to withdraw their petition against HS2, upon exchange of Contracts and covenant not to lodge any future petition against the proposals contained in the Hybrid Bill as at the date of signing the Agreement.”

6. This requirement was duly replicated in the Agreement signed on 3 December 2014 (paragraph 7.5):

   “The Seller and Occupier 2 are to formally withdraw their petition against HS2, or request their professional representatives withdraw the petition on their behalf, (Petition Number 10) [forthwith] from the date of this Agreement and the Seller and Occupiers undertake to the Buyer that they will not lodge any future petition against the Hybrid Bill in its form as at the date of this Agreement.”

7. Such a requirement in agreements with petitioners are common practice and there is nothing improper about such a requirement. Mr & Mrs Loescher were not obliged to sign the Agreement and had the option instead to appear before the Phase 1 Bill House of Commons Select Committee if they had wished to do so. This was a matter for their own judgement and preference based upon the terms they had negotiated.
and whether they believed at the time that either signing the Agreement or appearing before the Select Committee was in their best interests.

**Parliamentary and Health Service Ombudsman report (November 2015)**

8. The Promoter fully respects and cooperates with the work of the Parliamentary and Health Service Ombudsman.

9. In November 2015 the Parliamentary and Health Service Ombudsman published a report into complaints about HS2 Ltd’s communication and engagement with six families, including Mr and Mrs Loescher, known as the Flats Lane and Knox Grave Lane Residents Group. Mr Loescher acted as spokesman for the Group.

10. The Parliamentary and Health Service Ombudsman found that overall HS2 Ltd’s actions fell below the reasonable standards which could be expected to the extent that this amounted to maladministration.

11. The Parliamentary and Health Service Ombudsman made a number of recommendations including that HS2 Ltd make an apology and compensation payments to the families (varying from £750 to £4,000 and totalling £10,500) and appoint an independent person to review its processes around complaint handling and community engagement. Paragraphs 23-30 of the Promoter’s response to (2) of Section 3 of the Petition explains how HS2 Ltd have addressed these recommendations.

12. The Parliamentary and Health Service Ombudsman report led to a subsequent inquiry by the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) in early 2016. PACAC published a report in March 2016 which largely endorsed the recommendations made by the Parliamentary and Health Service Ombudsman.

**Phase 2A Bill right to appear (previously known as ‘locus standi’)**

13. The Promoter has not challenged the right of Mr & Mrs Loescher to appear on their petition against the Phase 2A Bill.

**Parliamentary and Health Service Ombudsman second investigation**

14. The events surrounding Mr & Mrs Loescher withdrawing their petition, and so not appearing before the Phase 1 Bill House of Commons Select Committee, occurred during the period covered by the first investigation conducted by the Parliamentary and Health Service Ombudsman and covered in their November 2015 report.

15. The Promoter understands that the proposed second investigation by the Parliamentary and Health Service Ombudsman will cover complaints since the November 2015 report, complaints that:
• HS2 Ltd misled them about who was working on their case;
• HS2 Ltd made them feel singled out for negative treatment;
• HS2 Ltd failed to properly respond to questions or follow processes and procedures related to the Compensation Code;
• HS2 Ltd lost critical correspondence in relation to the valuation date of their property;
• the Residents’ Commissioner is ineffective in providing the required checks and balances;
• HS2 Ltd prevented them from appearing before the House of Commons and House of Lords Parliamentary Select Committees considering the Phase 1 Bill;
• HS2 Ltd failed to progress his concerns in accordance with their complaints procedure; and
• the DfT Independent Complaints Assessor did not investigate and report on their complaint in a fair and balanced way.

16. During 2016-17 (the most recent data available) the Parliamentary and Health Service Ombudsman dealt with 7,205 complaints covering 655 UK Government departments and agencies and other UK public organisations; of these just four (0.05%), relate to HS2 Ltd. Currently the Parliamentary and Health Service Ombudsman is investigating two complaints related to HS2 Ltd and the Promoter looks forward to receiving and acting upon the conclusions and any recommendations that the Parliamentary and Health Service Ombudsman may make.
PROMOTER’S RESPONSE TO PETITION OF: Mr Jonathan Andrew Loescher and Mrs Elaine Loescher

PETITION NO: HS2-P2A-001

PARAGRAPH NO: (1) of Section 3

ISSUE RAISED: Mitigation between Flats Lane and Packington Moor farm

PETITION PARAGRAPH:

We require a simple inexpensive tree covered 5m high, 500m long bund or similar to be placed East of the line between Flats Lane and Packington Moor farm. The following is relevant:

a) The cost of building the bund would be cost neutral at the worst. It would protect the value of Packington Moor farm (now owned by SoS for Transport) and save the construction costs of soil having to be hauled from adjacent cuttings in the locality to further afield.

b) The cost of planting the trees could be met out of the “HS2 Woodland Fund” (£5 Million) and so would be cost neutral.

c) No further land would need to be compulsorily acquired as the SoS for Transport already owns the land where the proposed bund would be built.

d) The land required for the bund would easily fit within “Limits of Land to be Acquired or Used (LLAU)” available for mitigation works for phase 1.

e) The proposal is supported by our local MP, four local Parish Councils, Lichfield District Council, Staffs County Council, the Heart of England Way Association, the local National Farmers Union, the previous owners of Packington Moor Farm and local residents.
PROMOTER’S RESPONSE:

1. The Promoter notes that Mr & Mrs Loescher are requesting mitigation for the perceived impact of the construction of the Phase 1 Birmingham to Crewe spur authorised by the 2017 Act on their replacement dwelling and office. The Promoter considers that this is outside the scope of the Select Committee considering the High Speed Rail (West Midlands – Crewe) Bill.

Request for noise mitigation in petition submitted against the Phase 1 Bill in the House of Commons in 2014

2. The petition Mr & Mrs Loescher submitted against the Phase 1 Bill in the House of Commons in 2014 included a request for noise mitigation between Flats Lane and Packington Moor Farm. The petition response sent to Mr & Mrs Loescher in September 2014, in advance of their scheduled appearance before the Phase 1 Bill House of Commons Select Committee (attached at Annex A), explained the Promoter’s position on the request:

“1. The preliminary design for the Proposed Scheme, which can be found in the Environmental Statement (ES), Volume 2, CFA 21 Map Book drawing CT-06-12, shows that much of the route in the Flats Lane area would be constructed in cutting. As stated in the ES, Volume 2, CFA 21 report section 2.2.19, this cutting would have a depth of up to 15 metres to the north of Packington Moor Farm and would offer noise attenuation benefits. Further background information is available in the ES, Volume 2, CFA 21 report section 11.4.7.

2. No adverse noise effects are expected at any properties situated at Flats Lane beyond the area of land required for the construction and operation of the Proposed Scheme. This is illustrated in the ES, Volume 5, map SV-01-061a, which shows that properties at Flats Lane lie beyond the extent of the 40dB night-time and the 50dB day-time noise contours.

3. Approximately 175 metres of the 600 metre section of the Proposed Scheme between Flats Lane and Packington Moor Farm will be in shallow cutting or close to existing ground level. The ES, Volume 2, CFA 21 report indicates that significant adverse airborne operational noise effects are likely to occur at one residential property close to this particular section of the route (Packington Moor Farm). Paragraph 11.4.15 of the ES, Volume 2, CFA 21 report explains that this property is likely to qualify for noise insulation that would reduce noise inside the property to such a level that it would not significantly affect residents. On this basis, no requirement for noise barriers or fences in this location has been identified, although landscaping and hedgerow planting is proposed on either side of the railway to address visual impacts associated with this section of the route.
4. Paragraphs 4.2 and 4.3 of HS2 Information Paper E20, The Control of Airborne Noise from Altered Roads and the Operational Railway, also provides further information on the approach adopted by the Promoter on mitigating operational airborne noise effects and explains what factors are taken into account in determining the most practicable and reasonable mitigation options.

5. No other non-residential properties would be adversely affected and there is no requirement identified in this area for additional noise mitigation measures to address non-residential uses.”

3. In terms of possible relocation sites being considered by Mr & Mrs Loescher at the time, the response went on to say:

“8. Matters relating to the relocation of residents at Flats Lane/Knox's Grave Lane, whose properties would need to be demolished to construct the Proposed Scheme are addressed in response to paragraph 10 of the Petition. The future baseline assumed in the Environmental Assessment (see the Environmental Statement Volume 5, Committed Development – Drawing CT-13-061a) does not make any allowance for possible relocation sites. However it is evident from the operational noise contours illustrated in drawing SV-01-061a (contained in the ES, Volume 5, Operational assessment SV-004-021 for Sound, noise and vibration for CFA21) that there are a number of locations along Flats Lane which would not be affected by adverse operational noise impacts and which could therefore be considered subject to normal planning processes.”

4. The Promoter understands that Mr & Mrs Loescher entered into an Option Agreement to purchase the site for their replacement dwelling and office in Autumn 2015, and although the site would have been identified by Mr & Mrs Loescher some time before that it would not in any event have been practicable to have had a meaningful debate before the Select Committee in December 2014 about mitigation for a property not owned or even conditionally agreed to purchase at the time, and which had not at that stage been designed or built.

_Same request made by other petitioner against the Phase 1 Bill in the House of Commons in 2014_

5. One of Mr & Mrs Loescher's neighbours, Peter Edwin Bennett and Inez Bennett of 16 Flats Lane, also submitted a petition against the Phase 1 Bill in the House of Commons in 2014. It also included a request for mitigation between Flats Land and Packington Moor Farm, in exactly the same terms as the petition from Mr & Mrs Loescher. Mr & Mrs Bennett submitted a blight notice seeking the acquisition of their property by the Promoter, which was accepted, and as a result they withdrew their petition in October 2014 without appearing before the Select Committee.
Subsequent requests for mitigation to be provided to the east of the alignment

6. Although they did not appear before the Phase 1 Bill House of Commons Select Committee to raise the issue, Mr & Mrs Loescher have continued to request that mitigation be provided to the east of the alignment, to mitigate noise from the railway and, it is sometimes also suggested, to mitigate the impact of users of footpaths in the local vicinity. They have also questioned why mitigation is proposed to the west of the alignment, but not the east.

7. The Promoter has reiterated, as originally explained in the September 2014 response to their petition against the Phase 1 Bill, that no mitigation is proposed to the east of the alignment because the predicted impacts do not require it. Mitigation, such as the provision of tree planting or bunds, is not provided simply because a stakeholder requests it, but rather to mitigate a predicted impact. Had the environmental impact assessment carried out for the ES for the Phase 1 Bill identified the need for mitigation, in particular for noise, on the east side of the alignment, it would have been reported in the ES and the mitigation required included within the Phase 1 Bill. However, the environmental impact assessment identified no such need when taking account of the current and future baseline, including any committed developments, at the time of the environmental impact assessment. By contrast, the mitigation proposed to the west of the alignment, as explained in the ES for the Phase 1 Bill, is proposed for habitat replacement and connectivity purposes in relation to protected species.

8. That said, the Promoter has explained that final mitigation measures are not yet confirmed and that it remains committed to discussing the specific mitigation requests made with Mr & Mrs Loescher in further detail now that the Main Works Civils Contractor has been appointed to deliver this section of Phase 1.

9. The Main Works Civils Contractor is responsible for undertaking the detailed design of the Phase 1 works. This is currently ongoing and involves an examination of the alignment and structures all along the route. Given the impact that small changes in alignment can have upstream and downstream, plus the number of structures involved, any changes require very careful evaluation before the Promoter can confirm their acceptability. Confirmation of the final design would allow necessary mitigation measures to be confirmed. Locally, the Main Works Civils Contractor is examining an option to lower the alignment slightly to allow it to pass under the A5 trunk road without that needing to be raised. If this option is viable it could lead to a lowering of the alignment in the Flats Lane area and a reduced impact on receptors. This is not yet confirmed but any changes to impacts would be assessed as part of the evaluation process.

Cost of proposed mitigation

10. The Promoter has not conducted a cost evaluation of the provision of the bund requested by Mr & Mrs Loescher, however the Promoter is not in a position to state
with any certainty that its provision would be “cost neutral at the worst”. The Main Works Civils Contractor’s strategy for mass haul has not yet been finalised and this is dependent upon ground investigation results along the route which is currently in progress. Material excavated locally may need to be used for engineering fills elsewhere on the route, for instance, with material for a bund having to be brought in. It does not necessarily follow that because material is being excavated locally it is appropriate to deposit it locally – usage is important and it may be of a quality that means it is needed elsewhere.

*Use of funds from the HS2 Woodland Fund for tree planting*

11. The HS2 Woodland Fund is administered by the Forestry Commission and it would rest with the applicant to fulfil the application criteria. The Promoter cannot prejudice the outcome of applications to the fund. Details of the fund can be found at [https://www.forestry.gov.uk/forestry/beeh-aggjm5](https://www.forestry.gov.uk/forestry/beeh-aggjm5).

*Ongoing engagement with Mr & Mrs Loescher*

12. The Promoter has committed to directly engaging with Mr & Mrs Loescher through a dedicated public response manager. Furthermore, the Promoter and Main Works Civils Contractor will be having regular meetings with local Parish Councils as part of the engagement strategy and would be happy to attend future meetings of the Flats Lane and Knox Grave Lane Residents Group.

13. A meeting between Mark Thurston (Chief Executive Officer, HS2 Ltd), Christopher Pincher MP, Julie King (Director of Community Engagement, HS2 Ltd) and Mr Loescher is planned for 4 May.
PETITION

We require this not for ourselves, but for the many other residents and businesses affected by Phases 2a, and 2b of HS2.

We have personally suffered immensely due to HS2 Ltd’s dysfunctional treatment and maladministration. This is, in part, documented by the Parliamentary and Health Service Ombudsman (PHSO) report into the handling of our case dated 26 November 2015. HS2 Ltd’s handling of our case has, if anything, got worse as evidenced by the Independent Complaints Assessor of the DfT report dated 16 November 2016. At the request of our MP, the PHSO is conducting a further investigation into the continued handling of our case since it’s first report. Our treatment at the hands of HS2 Ltd has had a critical effect on our health, home life and business.

There are no effective “checks and balances” to regulate how HS2 Ltd treat affected parties and HS2 Ltd act with impunity. The Residents Commissioner is a sham refusing to get involved in individual cases and turning a blind eye to HS2 Ltd’s behaviour.

We believe it is imperative the Committee hear first hand how HS2 Ltd behave in practice. We would like to the Committee to hear our proposals for an effective system of checks and balances for the benefit of all parties.
PROMOTER’S RESPONSE:

Parliamentary and Health Service Ombudsman report (November 2015)

1. The Promoter fully respects and cooperates with the work of the Parliamentary and Health Service Ombudsman.

2. In November 2015 the Parliamentary and Health Service Ombudsman published a report into complaints about HS2 Ltd’s communication and engagement with six families, including Mr and Mrs Loescher, known as the Flats Lane and Knox Grave Lane Residents Group. Mr Loescher acted as spokesman for the Group.

3. The Parliamentary and Health Service Ombudsman found that overall HS2 Ltd’s actions fell below the reasonable standards which could be expected to the extent that this amounted to maladministration.

4. The Parliamentary and Health Service Ombudsman made a number of recommendations including that HS2 Ltd make an apology and compensation payments to the families (varying from £750 to £4,000 and totalling £10,500) and appoint an independent person to review its processes around complaint handling and community engagement. Paragraphs 23-30 below explains how HS2 Ltd have addressed these recommendations.

5. The Parliamentary and Health Service Ombudsman report led to a subsequent inquiry by the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) in early 2016. PACAC published a report in March 2016 which largely endorsed the recommendations made by the Parliamentary and Health Service Ombudsman.

Bynoe independent review

6. The independent review recommended by the Parliamentary and Health Service Ombudsman was subsequently undertaken by Ian Bynoe, a former Independent Police Complaints Commissioner and DfT Independent Complaints Assessor. His report was published in April 2016 and it and HS2 Ltd’s response is attached at Annex B.

Parliamentary and Health Service Ombudsman second investigation

7. The Promoter understands that the proposed second investigation by the Parliamentary and Health Service Ombudsman will cover complaints since the November 2015 report, complaints that:

- HS2 Ltd misled them about who was working on their case;
- HS2 Ltd made them feel singled out for negative treatment;
• HS2 Ltd failed to properly respond to questions or follow processes and procedures related to the Compensation Code;

• HS2 Ltd lost critical correspondence in relation to the valuation date of their property;

• the Residents’ Commissioner is ineffective in providing the required checks and balances;

• HS2 Ltd prevented them from appearing before the House of Commons and House of Lords Parliamentary Select Committees considering the Phase 1 Bill;

• HS2 Ltd failed to progress his concerns in accordance with their complaints procedure; and

• the DfT Independent Complaints Assessor did not investigate and report on their complaint in a fair and balanced way.

8. During 2016-17 (the most recent data available) the Parliamentary and Health Service Ombudsman dealt with 7,205 complaints covering 655 UK Government departments and agencies and other UK public organisations; of these just four (0.05%), relate to HS2 Ltd. Currently the Parliamentary and Health Service Ombudsman is investigating two complaints related to HS2 Ltd and the Promoter looks forward to receiving and acting upon the conclusions and any recommendations that the Parliamentary and Health Service Ombudsman may make.

*DfT Independent Complaints Assessor report (November 2016)*

9. The DfT Independent Complaints Assessor reviewed a complaint by Mr & Mrs Loescher’s that HS2 Ltd were departing from the rules provided in the Compensation Code in its handling of their property claim. The DfT Independent Complaints Assessor partially upheld the complaint finding that responses to Mr & Mrs Loescher’s questions about the application of the Compensation Code had not met the required standard of clarity. However, he noted that face to face resolution early in the life of the complaint would have offered the best opportunity to resolve matters, rather than linear and sequential exchanges through complaint correspondence (Mr & Mrs Loescher had declined the offers of a face to face meeting to resolve the points of dispute as they felt it would have been futile) and that matters that should, in the first instance at least, have been referred back to the professionals acting for the parties, instead entered a complaints process that was ill-suited to provide resolution.
DfT Independent Complaints Assessor report (February 2017): Residents’ Commissioner

10. The DfT Independent Complaints Assessor also reviewed but did not uphold a subsequent complaint by Mr & Mrs Loescher about the Residents’ Commissioner.

DfT Independent Complaints Assessor annual report for 2016/17

11. The DfT Independent Complaints Assessor said in their annual report for 2016/17, covering the period April 2016 to March 2017:

“We received eight HS2 Ltd referrals this year, one of which, as we have noted, contained 13 sub-complaints. While these eight represent a doubling of all the complaints previously received about HS2 Ltd, the number remains low. However, although representing only 3 per cent of our total referral numbers, the seven cases completed at the time of drafting this report had occupied 11 per cent of our caseworking time.”

Ongoing engagement with Mr & Mrs Loescher

12. The Promoter has committed to directly engaging with Mr & Mrs Loescher through a dedicated public response manager. Furthermore, the Promoter and Main Works Civils Contractor will be having regular meetings with local Parish Councils as part of the engagement strategy and would be happy to attend future meetings of the Flats Lane and Knox Grave Lane Residents Group.

13. A meeting between Mark Thurston (Chief Executive Officer, HS2 Ltd), Christopher Pincher MP, Julie King (Director of Community Engagement, HS2 Ltd) and Mr Loescher is planned for 4 May.

Accountability for treatment of affected residents and businesses

14. The Promoter agrees that it is important that those delivering HS2 can be held to account if they do not meet the high standards that they have been set, and believes that the existing checks and balances, set out below, ensure that this is the case.

Construction Commissioner

15. The independent Construction Commissioner’s role is to mediate and monitor the way in which HS2 Ltd manages and responds to construction complaints. The Construction Commissioner mediates any unresolved construction related disputes between HS2 Ltd and individuals or bodies, and provides advice to members of the public about how to make a complaint about construction.

16. The Construction Commissioner was appointed in July 2016 and regularly meets with the Chief Executive Officer of HS2 Ltd to raise any concerns or emerging trends
across the programme and produces periodic reports, which can be found at

“The Commissioner’s office has received 6 enquiries and potential complaints from members of the public between September-December 2017. Two related to issues outside his scope. One complaint had not been investigated by HS2 Ltd and was referred to its Helpdesk; it has subsequently been escalated to the Commissioner after it exhausted the normal HS2 Ltd complaints process. In all these cases, where a member of the public agrees the Commissioner’s office will ensure their concern or complaint is addressed by HS2 Ltd.”

17. The Construction Commissioner can be contacted on complaints@hs2-cc.org.uk and his dedicated website can be found at www.hs2-cc.org.uk.

Residents’ Commissioner


19. The Residents’ Commissioner started in post in January 2015 and oversees and monitors HS2 Ltd’s commitments and produces periodic reports, which can be found at gov.uk/government/collections/hs2-ltd-residentscommissioner. In addition, the Residents’ Commissioner meets regularly with the Chairman of HS2 Ltd about emerging trends and concerns. The Residents’ Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints.

20. The Residents’ Commissioner can be contacted on residentscommissioner@hs2.org.uk and her dedicated website can be found at www.gov.uk/government/publications/hs2-residents-charter.

Parliamentary and Health Service Ombudsman and the DfT Independent Complaints Assessor

21. The Promoter fully respects and cooperates with the work of the Parliamentary and Health Service Ombudsman and the DfT Independent Complaints Assessor. Indeed, the Parliamentary and Health Service Ombudsman and the DfT Independent Complaints Assessor themselves exist to provide checks and balances and HS2 Ltd welcomes their expert advice and support in cases where they have been involved.

22. The recommendations and suggestions contained in the Bynoe independent review into HS2 Ltd’s community engagement approach and complaints handling
have all been implemented. Comprehensive changes to the way community engagement and complaints handling are managed have been made, and the scale of this work has been recognised by both the Construction and Residents’ Commissioners.

23. Those changes include the appointment of a Director of Community Engagement in December 2016 and the creation of a dedicated and expanded community engagement team. Of particular note is the new Community Engagement Strategy, launched in September 2017, which sets out the 10 community commitments HS2 Ltd have made and how they will be used to measure performance. HS2 Ltd has said that it will:

- continue to build respectful, long-term relationships with our communities, and actively encourage our workforce to listen to local concerns and be considerate and accountable for their actions at all times.

- work with our communities to develop local two-way engagement and communication programmes, and ensure these are accessible and tailored to local needs.

- make sure communities are made aware in advance of any activities taking place in their area.

- operate a Freephone Community Helpline 24 hours a day, 365 days a year.

- make health and safety a priority for our communities and our workforce.

- respect the wellbeing of our communities, minimising disruption to their lives with local mitigation plans and activities, ensuring we meet the standards set out in the Code of Construction Practice.

- leave a positive and sustainable legacy for the communities in which we operate.

- respond to questions and complaints quickly and efficiently, with an acknowledgement within 2 working days, and responding within a maximum of 20 working days if we cannot answer the query straight away.

- promote awareness of all our property schemes so that anyone who may be eligible has all the information they need and is aware of the support available to them.

- display the Residents’ Commissioner’s and Construction Commissioner’s contact details on all relevant materials, along with the HS2 Helpline information and complaints procedure.
24. Underneath the Community Engagement Strategy is the Community Engagement Framework, which sets out how HS2 Ltd will manage the activity of its contractors and acts as a public expression of its commitment to high quality community engagement. Each community will be represented by an Engagement Manager within the community engagement team, who will work in partnership with them to develop their local Community Engagement Plan. These set out how the Promoter will engage with local communities whilst providing details of upcoming construction activities. The plans will be updated regularly as the construction programme develops. The Engagement Managers will work with the relevant teams in HS2 Ltd to ensure communities’ perspectives are considered.

25. HS2 will be built by its contractors. Each Tier One contractor is developing and implementing Community Liaison Plans. These plans include, amongst other things, information about where and when work will be taking place, plans for managing traffic and stakeholder communications, and tracking of compliance with the undertakings and assurances which have been agreed as part of the 2017 Act.


27. The Residents’ Commissioner’s latest report, in January 2018, says:

“Community engagement is generally working well. The low volume of concerns on this topic raised with me recently reflects the substantial improvements that HS2 Ltd has made since 2015.”

28. Finally, at HS2 Ltd there is now a four stage complaints process:

- **Stage One (internal):** if informal resolution is not possible or appropriate, the HS2 Ltd Public Response Team and relevant Director or Head of Department will investigate the concern and provide a response outlining the outcome of any investigation and, where necessary, any recommendations or action required (complaints will be acknowledged within 2 working days and responded to within 20 working days if they cannot be answered straight away)

- **Stage Two (internal):** a member of the HS2 Ltd Senior Leadership Team not previously involved in the complaint will review the complaint and the findings
of the review will be presented to the Chief Executive Officer for consideration and approval of a full and final response (construction related complaints will at this stage be referred to the independent Construction Commissioner)

- **Stage Three (external): DfT Independent Complaints Assessor.** The DfT Independent Complaints Assessor’s role is to look at, or identify whether the complainant has been provided with a reasonable service and had their complaint handled appropriately. The DfT Independent Complaints Assessor will carry out an independent review of the case and then advise both parties of the outcome

- **Stage Four (external): Parliamentary and Health Service Ombudsman.** If a complainant remains dissatisfied after the review by the DfT Independent Complaints Assessor, the complainant may seek advice from any Member of Parliament and ask them to refer the complaint to the Parliamentary and Health Service Ombudsman

29. The Construction Commissioner’s latest report, in March 2018, says:

“Pleasingly, there is progress on how HS2 Ltd is handling complaints. Four new senior staff have been taken on with significant experience of complaints handling, directly addressing a previous recommendation. They will work to handle those complaints that cannot be addressed at source by contractors. It has been agreed that for construction complaints, the current three stages of the HS2 Ltd complaints process will become two stages: complaints that would otherwise have been escalated to the Chief Executive being sent to the Construction Commissioner’s Office instead. The project is also setting out systems for capturing points for improvement as a result of complaints. HS2 Ltd will now start to publicly communicate those changes, together with details of the Commissioner’s role.”

30. A more comprehensive complaints process was launched in April 2018 with the aim of making the process, fairer, clearer and simpler for all complainants and potential complainants. The HS2 Ltd Public Response Team will help guide complainants through the process and a dedicated member of the team will act as a single point of contact whilst the complaint is being investigated. A copy of HS2 Ltd’s ‘How to Complain’ guidance can be found at [https://www.hs2.org.uk/how-to-complain-2/](https://www.hs2.org.uk/how-to-complain-2/).
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

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IN ATTENDANCE:

Timothy Mould, QC Lead Counsel, Department for Transport

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WITNESSES:

Jonathan Andrew Loescher and Elaine Loescher

IN PUBLIC SESSION
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11. 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

12. 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.

13. 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.

14. 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.

15. 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.
16. 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.

17. 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'.

18. 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'.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.
27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. THE CHAIR: Absolutely.

Submissions by Mrs Loescher

36. 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.

37. 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.

38. 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.

39. THE CHAIR: Mr Mould?

Response by Mr Mould

40. 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.

41. 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 –

42. THE CHAIR: Yes, Bill Wiggin's got a question.

43. MR WIGGIN: I'm sorry to interrupt. Did you say that they'd been paid? Is that right?

44. MR MOULD QC (DfT): Yes.

45. MR LOESCHER: Yes. I'll come back afterwards if I can.

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

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

48. MR WIGGIN: That's all I wanted to know.

49. 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.

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

51. 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.

52. 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.

53. 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.

54. 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.

55. THE CHAIR: Sandy?

56. 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.

57. 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.
58. 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.

59. 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.

60. 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.

61. THE CHAIR: Can I just check, are you coming to a conclusion?
62. MR MOULD QC (DfT): Yes, I've got one more thing to mention to you.

63. 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?

64. 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.

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

66. 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.

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

68. 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?

69. 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.

70. 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.

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

72. MR WHITFIELD: Not been without remedy but they've been without this remedy?
73. 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.

74. 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?

75. 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.

76. MR WHITFIELD: Absolutely, absolutely.

77. 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 –

78. 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.

79. 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.

80. 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.

81. 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 –

82. MR LOESCHER: I've got two books –
MR WHITFIELD: Where you took the quote from, because –

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 –

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

MR LOESCHER: It's well worth having a copy.

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

MR LOESCHER: Yes.

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?

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.

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.

92. 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.

93. MR WHITFIELD: Right.

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

95. 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.

96. 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.

97. 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.

98. MR WHITFIELD: One more question.

99. 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.

100. 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 –

101. MR MOULD QC (DfT): Yes.

102. 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?

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

104. 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?

105. 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.

106. 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.

107. 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.

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

109. 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?

110. 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.

111. 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.

112. 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 –

113. 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 –

114. 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 –

115. MR MOULD QC (DfT): Well, we can certainly do that.

117. 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?

118. 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.

119. 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.

120. 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.

121. 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 –

122. 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 –

123. THE CHAIR: Let's stick closer to the –

124. MR MARTIN: I think I've finished anyway.

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

126. 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?

127. 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 –

128. 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.

129. Sheryll Murray?

130. 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.

131. THE CHAIR: Thank you.

132. 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?

133. 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 –

134. THE CHAIR: Can we see Mr Pincher's letter?

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

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

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

138. 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.

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

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

141. MR MOULD QC (DfT): Well, I –

142. 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?

143. 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.

144. 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.

145. 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 –

146. 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.

147. 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.

149. MRS MURRAY: No, I'm fine. Thank you.

150. 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?

151. 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.

152. 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**

153. 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.

154. 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?

155. 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.

156. MR WIGGIN: Is that because you don't think she's adequate or because –?

157. 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.

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

159. 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, 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.

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

161. 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.

162. 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.
163. 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.

164. 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 –

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

166. 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.

167. 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.

168. 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.

169. 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.
HS2 PHASE 2A: CONSULTATION AND ENGAGEMENT

Introduction

1. This paper describes the consultation and engagement undertaken during the route development phase and immediate aftermath of deposit of the Bill for Phase 2A in July 2017, and the engagement that will take place during the construction phase.

Consultation and engagement during the route development phase

Chronology

2. Consultation and engagement has been undertaken in the context of the following stages and milestones during the route development phase:\(^{13}\):

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Date</th>
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<tbody>
<tr>
<td>Announcement of Initial Preferred Route for Phase Two</td>
<td>January 2013</td>
</tr>
<tr>
<td>Phase Two route and stations consultation</td>
<td>July 2013 - January 2014</td>
</tr>
<tr>
<td>Safeguarding consultation on West Midlands to Crewe (Phase 2A)</td>
<td>November 2014 - January 2015</td>
</tr>
<tr>
<td>Phase 2A Preferred Route and timescale announced.</td>
<td>November 2015 - February 2016</td>
</tr>
<tr>
<td>Consultation on property assistance schemes</td>
<td>January 2016 - November 2016</td>
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<tr>
<td>Site visits, route walks and meetings with directly affected stakeholders and their representatives; local authority officer and member briefings; and meetings with technical, statutory and commercial stakeholders</td>
<td></td>
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<tr>
<td>Environmental and Equality Impact Assessment scope and methodology consultations</td>
<td>March 2016 – May 2016</td>
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\(^{13}\) For more information see HS Phase 2A Information Paper A1: Development of the Proposed Scheme, and Volume 1 of the ES.
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<thead>
<tr>
<th>Equality Impact Assessment report, and Design Refinements</th>
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### Consultation

3. Consultation has involved:

- supporting media to publicise the consultation and any local events;
- the production of leaflets and letters which are distributed to properties within the broad vicinity of the line of route;
- online information, in some instances with a dedicated consultation website;
- documents and maps which are available from the website and on request via a dedicated consultation telephone number;
- local information events which are open to the public and at which relevant specialist staff are present to answer questions;
- dedicated response channels, where people can respond by email, post or online;
- independent handling, analysis and reporting of consultation responses;
- the publication of a consultation report covering the main themes of the consultation responses once the consultation has closed; and
- the publication of a decisions document, setting out decisions taken as a result of the consultation process.

### Engagement

4. Stakeholder engagement undertaken since November 2015 has included:

<table>
<thead>
<tr>
<th>Description</th>
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<tr>
<td>Site visits, route walks and meetings with directly affected stakeholders...</td>
<td>December 2016 - July 2017</td>
</tr>
<tr>
<td>Formal consultation on the Environmental Statement (ES) and Equalities Impact Assessment</td>
<td>July – September 2017</td>
</tr>
<tr>
<td>Formal consultation on the Additional Provision Environmental Statement and Supplementary Environmental Statement</td>
<td>March – May 2018</td>
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Community engagement meetings

- local community engagement to discuss local design and environmental matters. These were undertaken with community representatives, residents groups and individual land and property owners.

Environmental NGO forum

- environmental NGO engagement on general environmental matters.

Environment Forum

- statutory bodies and Government department engagement on general environmental matters.

Planning Forum

- local authorities that would have a role under the planning regime established under Schedule 17 to the Bill.

Bilateral discussions

- local authority engagement on local matters including design, environmental impacts and potential petitioning issues.

- Extensive discussions with many stakeholders, including directly affected landowners (eg Farm Impact Assessment meetings undertaken in 2016 as part of carrying out the EIA).

Public awareness

- dedicated media handling. In addition, both online and offline communication methods have been adopted, including the development of a dedicated HS2 website and the use of social media (eg Twitter, Facebook etc).

- a public enquiries team has been in place throughout the development phase, with a dedicated telephone number, email address and postal address.

- a series of information events held in August 2017 following deposit of the Phase 2A Bill.
Accessibility

5. A variety of mechanisms have been used to facilitate participation in consultations, such as:

- provision on request of translations of documents and publicity materials;
- wheelchair accessible venues for consultation and engagement events;
- Hearing Loops at certain venues;
- provision of materials, including maps, for those with visual impairments;
- interpreter services at certain venues;
- provision of transport to facilitate attendance at events in remote areas; and
- facilitating responses from people with disabilities.

Organisational change

6. In 2016 a number of organisational changes were made at HS2 Ltd. Those changes included the appointment of a Director of Community Engagement in December 2016 and the creation of a dedicated and expanded community engagement team. That expanded team included a team dedicated to Phase 2A community engagement. The team continues to be responsible for Phase 2A community engagement during the passage of the Phase 2A Bill, working alongside other teams in HS2 Ltd, such as the petition management and land & property teams.

Engagement that will take place during the construction phase

General principles

7. The general principles of community engagement we will follow are to:

- provide the overall community engagement framework for Phase 2A, owning the overarching policies and plan for engagement and ensuring the business has the right tools, materials and support to deliver;

- investigate any claim of a breach of any undertakings and assurances recorded in the register or any of the Environmental Minimum Requirements (EMRs) during construction;

- ensure contractor and sub-contractor compliance with community requirements, including with EMRs, undertakings and assurances, through performance of commitments, local agreements;
• provide a knowledgeable and professional point of contact for parties affected, or potentially affected, by construction;

• maintain and advertise a free telephone helpline;

• advertise community relations information and contact details (including via a website) on site signboards at prominent site egress and access points;

• engage with contractors, community representatives, local authorities, local councillors, residents, businesses, schools, transport operators, emergency services and statutory agencies;

• liaise with appropriate local community projects, employment and educational initiatives\(^ {14}\);

• provide information to local residents, businesses, local authorities, local MPs and parish councils in advance of works taking place locally where appropriate;

• work with the independent Construction Commissioner and Residents’ Commissioner (see below);

• provide a point of contact for a small claims procedure, relating to claims of physical damage to property. We will help to ensure that claims are progressed promptly by liaising with the small claims administrator\(^ {15}\);

• respond quickly to emergencies, complaints or other communications. Where reasonably practicable, we will respond to complaints with an update within 24 hours;

• liaise closely with the emergency services, local authority officers and other agencies (through established contacts) who may be involved in incidents or emergency situations;

• ensure that there is a comprehensive emergency crisis plan for each section of the work and contractual recognition that we will coordinate with the relevant emergency services; and

• ensure compliance with the relevant requirements of equality legislation.

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\(^ {14}\) See HS2 Phase 2A Information Paper H4: Skills and Employment.

\(^ {15}\) see HS2 Phase 2A Information Paper C10: Small Claims Scheme.
Community Engagement Strategy

8. The Community Engagement Strategy was launched in September 2017 and sets out the 10 community commitments that have been made and how they will be used to measure performance. We have said we will:

- continue to build respectful, long-term relationships with our communities, and actively encourage our workforce to listen to local concerns and be considerate and accountable for their actions at all times.

- work with our communities to develop local two-way engagement and communication programmes, and ensure these are accessible and tailored to local needs.

- make sure communities are made aware in advance of any activities taking place in their area.

- operate a Freephone Community Helpline 24 hours a day, 365 days a year.

- make health and safety a priority for our communities and our workforce.

- respect the wellbeing of our communities, minimising disruption to their lives with local mitigation plans and activities, ensuring we meet the standards set out in the Code of Construction Practice (CoCP).

- leave a positive and sustainable legacy for the communities in which we operate.

- respond to questions and complaints quickly and efficiently, with an acknowledgement within 2 working days, and responding within a maximum of 20 working days if we cannot answer the query straight away.

- promote awareness of all our property schemes so that anyone who may be eligible has all the information they need and is aware of the support available to them.

- display the Residents’ Commissioner’s and Construction Commissioner’s contact details on all relevant materials, along with the HS2 Helpline information and complaints procedure.

9. A copy of the Community Engagement Strategy is attached at Annex A.

Community Engagement Framework

10. Underneath the Community Engagement Strategy is the Community Engagement Framework, which sets out how we will manage the activity of our contractors and acts
as a public expression of our commitment to high quality community engagement. Each community will be represented by an engagement manager within the community engagement team, who will work in partnership with them to develop their local Community Engagement Plan. It and other information will be posted on a dedicated Commonplace website established for each area. These local plans set out how we will engage with local communities whilst providing details of upcoming construction activities. The plans will be updated regularly as the construction programme develops. The engagement managers will work with the relevant teams in HS2 Ltd to ensure communities’ perspectives are considered.

11. Phase 2A will be built by our contractors. On Phase One (and we would expect the same to apply on Phase 2A) each Tier One contractor is developing and implementing Community Liaison Plans. These plans include, amongst other things, information about where and when work will be taking place, plans for managing traffic and stakeholder communications, and tracking of compliance with the undertakings and assurances which have been agreed during the passage of the Bill.

12. A copy of the Community Engagement Framework is attached at Annex B.

Local Community Engagement Plans

13. A copy of the first Phase One Staffordshire local Community Engagement Plan is attached at Annex C.

Site-specific community groups

14. In general, any site or area-specific community liaison groups or forums will be engaged appropriately where they already exist or are established near the start of construction. Establishment of, or use of existing, local forums will be initiated at the request of local communities. The forums will address construction related issues and concerns.

Community engagement in design development

15. We recognise the importance of public engagement in the design development process. The exact scope and nature of public engagement will depend on the element being designed. For example, we would expect a higher degree of public engagement on those parts of the railway that have the most significant impact on people.

16. We plan to adopt the following approach for public engagement in design development:

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16 the Commonplace website established for Staffordshire can be found at https://hs2instaffs.commonplace.is/schemes/proposals/community-engagement-strategy-plans/details.
Key design elements - we will engage the public on the design development of key elements of infrastructure - including main viaducts and maintenance buildings in sensitive areas. The engagement exercise is likely to focus on engaging the public in the locality where the infrastructure is located\(^{17}\).

Common design elements - we will develop standard or common designs for certain permanent structures associated with the railway (such as road-bridges, foot-bridges, noise barriers). We undertake wider public engagement on design development for common design elements, including for example interactive on-line materials, with associated local and route-wide publicity.

**Local plans**

17. The Code of Construction Practice contains control measures and the standards to be implemented throughout the route. At a local level, site-specific control measures would be included within Local Environmental Management Plans (LEMPs). We and/or our contractors will engage with local communities, local authorities and other stakeholders in order to develop the LEMPs.

18. In addition, prior to the commencement of the works, Local Traffic Management Plans (LTMPs) would also be produced in consultation with the highway and traffic authorities, the emergency services and other relevant key stakeholders.

**Construction Commissioner**

19. An independent Construction Commissioner has been established. The Construction Commissioner's role is to mediate and monitor the way in which HS2 Ltd manages and responds to construction complaints. The Construction Commissioner mediates any unresolved construction related disputes between HS2 Ltd and individuals or bodies, and provides advice to members of the public about how to make a complaint about construction.

20. The Construction Commissioner was appointed in July 2016 and regularly meets with the Chief Executive Officer of HS2 Ltd to raise any concerns or emerging trends across the programme and produces periodic reports\(^{18}\).

**Residents' Commissioner**

\(^{17}\) see HS2 Phase 2A Information Paper D1: Design, which includes the list of key design elements

\(^{18}\) these can be found at [https://www.gov.uk/government/collections/his2-independent-construction-commissioner\#construction-commissioner-reports](https://www.gov.uk/government/collections/his2-independent-construction-commissioner\#construction-commissioner-reports). His dedicated website can be found at [www.hs2-cc.org.uk](http://www.hs2-cc.org.uk).
21. An independent Residents’ Commissioner has been established. The Residents’ Commissioner holds HS2 Ltd accountable to the commitments made in the Residents’ Charter 19.

22. The Residents’ Commissioner started in post in January 2015 and oversees and monitors HS2 Ltd’s commitments and produces periodic reports 20. In addition, the Residents’ Commissioner meets regularly with the Chairman of HS2 Ltd about emerging trends and concerns. The Residents’ Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints.

23. The Residents’ Commissioner’s latest report, in January 2018, says:

   “Community engagement is generally working well. The low volume of concerns on this topic raised with me recently reflects the substantial improvements that HS2 Ltd has made since 2015.”

HS2 Ltd
June 2018

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20 These can be found at gov.uk/government/collections/hs2-ltd-residentscommissioner. Her dedicated website can be found at www.gov.uk/government/publications/hs2-residents-charter.
RESIDENT'S COMMISSIONER

The Residents' Commissioner

The Residents’ Commissioner is independent and holds HS2 Ltd accountable to the commitments made in the Residents’ Charter. A copy of the Charter is included in Annex A.

The Residents’ Commissioner oversees and monitors these commitments and produces a periodic report, published online at [gov.uk/government/collections/hs2-ltd-residents-commissioner](https://www.gov.uk/government/collections/hs2-ltd-residents-commissioner). The two most recent reports (from January 2018 and June 2018) are included in Annex B.

In addition, the Residents’ Commissioner meets regularly with the HS2 Ltd Chairman about emerging trends and concerns, as well as with the Parliamentary Under Secretary of State for Transport and members of HS2 Ltd staff including the Chief Executive.

The Residents’ Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints.

Appointment of Residents’ Commissioner

The post of Residents' Commissioner was advertised openly in October 2014, including in *The Guardian*, *The Sunday Times*, *The Lawyer* and *Property Week*, as well as on the HS2 website.

The Residents’ Commissioner was appointed to hold HS2 Ltd accountable for the way in which it communicates with residents who are affected by its proposals, particularly in regard to property measures, and ensure that these communications take place in the clearest and plainest language possible.

The Residents’ Commissioner is accountable to the HS2 Ltd Board and the Chairman of the HS2 Ltd Board, currently Sir David Higgins. This creates a direct link to ensure that the Commissioner’s views are heard at the highest level.

Current post holder: Deborah Fazan

Deborah Fazan assumed the post of Residents’ Commissioner in January 2015.

Deborah is a property surveyor and a member of the Royal Institution of Chartered Surveyors, with experience as an independent commissioner and property advisor on transport and construction schemes. She worked at BAA Ltd for over 20 years, latterly on land and property acquisition for the second runway at Stansted Airport. She has also been an independent panel member for two exceptional hardship schemes, operated by Thames Water and HS2.

Annex A – HS2 Ltd Residents' Charter
Annex B – Residents’ Commissioner’s two most recent reports (from January 2018 and June 2018)
HS2 SPECIFIC OMBUDSMAN

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 its 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’\(^\text{21}\). 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.

Roles 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.
‘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).