On 25th June Justine Thornton QC made a statement to the Committee regarding the applicability of NFU assurances and access to severed land. She told the Committee that this statement would be made available as a note for their reference. The transcript of this statement is therefore set out below:

4. On the second matter, I’m in your hands as to how I take this. I could give you a brief explanation of our response on the applicability of the NFU assurances and our position on access to land and access assurances. Mr Colin Smith is behind me and can update you further or answer questions but in short, firstly, clarification has been sought as to whether and how assurances given to the NFU apply to affected farmers and rural businesses along the line of the Phase 2A route and you may remember that the NFU assurances are divided into two parts: part A, which were assurances given to the NFU and are of general applicability, for example the setting up of an agricultural liaison service; and then part B was specific assurances that were given to particular farmers on a case by case basis. So, just to confirm that the assurances in part A will and are intended to benefit farmers affected by the proposed scheme, whether or not they’ve petitioned the Bill, so that’s the first point to make clear; and then, secondly, I know that concerns have been expressed by the NFU and others that farmers who hadn’t petitioned the Bill were not entitled to the same protection as regards the part B assurances as those farmers who have petitioned the Bill and so we’ve reflected on that and wish to acknowledge those concerns. So, we’re adopting the following position which is as follows: the promoter is proposing to write to all affected farmers, affected by the proposed scheme and who have not petitioned against the Bill, to make them aware of the assurances to the NFU and to invite them to contact HS2 if they consider there are assurances within part B which directly relate to their landholding and would provide them with reassurances as to the potential impact of the proposed scheme on their landholding. The
promoter will then discuss with the farmer which of those assurances are relevant to their holding and should be offered to them and, if accepted, will enter all assurances which are given before the petitioning period closes for the House of Lords Select Committee and they will be entered on the register of assurances and undertakings. So, we hope that recognises those concerns. I should say, we will provide a note on this because clearly there’s a bit of information on here but it’s just I wanted to orally update the Committee. So, those are the NFU assurances.

5. And turning to the terms on which assurances on access to severed land parcels and over HS2 tracks have been offered to affected landowners, there was a particular concern that people were being asked to pay for maintenance. So, again, we’ve reflected on those concerns and carefully considered them. The position is as follows, if I say there are five principles but, again, I can put them in a note. For access tracks or rights sought which pass directly over or under the railway infrastructure, so for example under viaducts, we must, for safety reasons, retain ownership or control of the track over which it passes and we will grant rights of access to affected landowners. Similarly, if there’s an access track which is shared between different landowners, again, in the first instance we will retain ownership but, frankly, there we’re open to discussion if the landowners can come to an arrangement amongst themselves.

6. And so in those two circumstances we will, as I say, retain ownership and it will remain necessary for the landowner to enter into an agreement with us but, in general, we will seek to ensure that any restrictions placed on the use of the track are only those necessary to ensure the safety and integrity of the operational railway and its infrastructure. So, for example, only a certain weight of vehicle can go over, rather than as has been expressed in the past providing that rights of access were for agricultural purposes only, and in response to the particular concern addressed as regards maintenance of those tracks, we will not in general require or impose an obligation on the landowner to contribute to the cost of maintenance of that track. Instead what we propose will happen is that in the event a landowner causes damage to a track, it will be for the promoter to seek to rely on existing rights and remedies under the common law rather than imposing an obligation on them to contribute to maintenance.
7. Now, in other cases, so in other words where it’s not a track that passes directly over or under railway infrastructure, or it’s not a track in shared ownership between landowners, we’re prepared to consider entering into an assurance whereby the landowner retains, himself or herself, retains ownership of the land or the track and it would revert to the landowner, subject to us being granted rights of access for the purpose of maintaining the infrastructure. Now, that would require the landowner to enter into an agreement with the promoter and that would need to include an obligation on the part of the landowner not to interfere with the right of access or the track. So, again, that simply puts on a contractual footing the rights we would have at common law.

8. So, I appreciate that’s quite a lot of information. We will put it in a note but, in short summary, what we’ve sought to do there is address the concerns expressed by the Committee and, importantly, try and strike the right balance between seeking to place affected landowners in the same position as far as practicable as they were before whilst at the same time protecting the safety and integrity of the operational railway.