

PUBLIC SESSION

MINUTES OF ORAL EVIDENCE

taken before

HIGH SPEED RAIL COMMITTEE

On the

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

Wednesday 9 July 2014 (Morning)

In Committee Room 5

PRESENT:

Mr Robert Syms (Chair)
Mr Henry Bellingham
Sir Peter Bottomley
Ian Mearns
Yasmin Qureshi
Mr Michael Thornton

IN ATTENDANCE

Mr Timothy Mould QC, Lead Counsel, DfT

Richard Harwood QC, HS2 Action Alliance
Hilary Wharf, HS2 Action Alliance

IN PUBLIC SESSION

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(at 09.30)

1. CHAIR: Order, order. Good morning and welcome to the fourth day of the Committee's substantive programme. Yesterday we made a SoundLab visit, which was attended also by a number of petitioners' representatives. If anyone wishes to raise points or issues around what we heard, they may do so in evidence to us.

2. We begin today to hear challenges to locus standi. We will be doing that over the next three or four sessions. Locus standi is the right of petitioners to be heard by the Committee, because their petition demonstrates a direct or special effect of the Bill on them. The Bill promoters have the right to challenge whether locus standi has been established and some 24 such challenges have been made by the Department of Transport. Two petitioners have confirmed that they will not contest these challenges.

3. Before we begin let me say that we intend to give our decisions on each of the cases we hear on locus standi in relation to all petitioners next Thursday, 17 July, with one exception, that will not apply to Dr Eglin, who is away, and we will hear his petition on Monday, 21 July and will give a separate decision on his petition.

4. Firstly, before we move on to the main business, I would like to ask you this, Mr Mould. We hear that there has been some confusion at HS2 over how far people are from the line, *Mr Milnam*, *Ms Chester*, *Mr Ealiffe* and *Mr McDonald*. We also understand that there is an issue about service of your legal case authorities quite late, 7 p.m. on Friday. Locus standi authorities are quite obscure for most people. Can you, please, address us as to why, with all the legal resources of HS2 and the Department of Transport, this was so late?

5. MR MOULD QC (DfT): First of all, sir, the guidance on this in your note required documents which were in the nature of evidence to be provided two working days, I think, before the hearings. I think that it is fair to say that the provision of those documents on Friday was within that time scale. With respect to those who have raised the point, I do not accept that there was any failure to comply with the guidance. The documents, themselves, were provided in a compendious form, so that they covered all of the outstanding locus challenges; that is to say those that are being heard today all the

way through to those who are being heard, as you say including Dr Egan, on 21 July. Viewed from that perspective, we did feel that to provide those documents in a single lever-arch file in electronic form - it is available in hard copy for those who would like it - we felt that that was an appropriate way forward. If you feel that it was too late, then, obviously, we will learn that lesson and, where a similar situation arises again, we will make sure that we get things done earlier. We were working to the rule and we met the rule as far as I am concerned.

6. The second point is about the error in distances. It is unfortunate, and I apologise to those who it has affected, we are getting in touch with them. Indeed, I think that we have been in touch with those to whom it relates. What I think has happened is this. The distance in the summary note was measured from the end point of the Phase One railway, whereas, of course, the petitioners with whom we are concerned are people who are complaining about those clauses in the Bill that might relate to Phase Two, so they are up in the north of England. I think what we recognise is that, actually, it would have been helpful not only to say they are 80 miles from Handsacre but to say that they are a matter of a few hundred metres from the indicative line that is shown on the current state of the Phase Two route. It is that last point, that is the omission that we have sought to cure. I am pleased to say that I think that nobody who is appearing today is affected by that. Those who are affected will have had due notice of the error. That is all I think I can say on that and, if there is anything else, let me know and I will do my best to deal with it.

7. CHAIR: Would you like to make comments, Mr Harwood?

8. MR HARWOOD: From our perspective, it is a matter of comment not objection to the proceedings today. We raise the point that, first of all, there was not compliance with the Court of Referees Rules. I should make it clear that it is documents that the promoter intends to rely upon, so the material was certainly evidence, in any event. But the real point is actually the convenience and the ability of those who do not actually have lawyers with high speed copying machines and the like to deal with material and to email a very large number of documents over which need printing out, tabbing and so on is not going to be helpful for many ordinary petitioners. To have, as we had this

morning, a hard copy handed to us by HS2, well, I am afraid, it is a nice thought but it is completely useless to give someone a hard copy of 160 pages on the morning of the hearing, because, by the nature of things, we have marked it up and so on. There is, I think, a concern that the promoters are being rather casual with the rules and not dealing with things in a way which is helpful. I say that not so much from the ability of bodies like HS2 Action Alliance, who are well resourced for this, but from the perspective of the huge numbers of individual petitioners who will have to deal with those responses. We would rather hope that HS2 up their game and, actually, start producing material in a more helpful and timely fashion.

9. CHAIR: I would like the Committee to consider this, so I will suspend the sitting. Could you please clear the room?

Sitting was suspended

On resuming—

10. CHAIR: Order, order. The Committee have considered this issue. It feels very strongly that documents should be served with adequate notice. Locus standi is an arcane area and petitioners should be given adequate notice of materials on it. We deprecate the errors and lateness shown by HS2 in these cases. Mr Rukin was on time with his documents, as were HS2 Action Alliance. We will proceed on the basis that there is minimal reference to the legal authorities by Mr Mould, preferably none at all, as we would actually rather hear arguments based on first principles. We will crack on.

11. The first to be heard today is the HS2 Action Alliance. I will, therefore, call them to make their case on why they believe they are directly and especially affected by the Bill. Who is going to kick off?

12. MR HARWOOD: I appear for the HS2 Action Alliance. You will have seen that there are two issues really raised by the Notice of Objection; one is locus itself and the second is the scope of the Select Committee exercise. The Committee will have had our skeleton submissions. I am not going to read those out, but I will make my presentation rather in the line of that material. We have also put in a witness statement

from Ms Hilary Wharf of HS2 Action Alliance. We are content for that evidence to be taken as read. I understand that Mr Mould does have some questions of Ms Wharf, but it is a matter for the Committee how you wish to proceed in terms of dealing with that evidence.

13. CHAIR: Okay. Do you want to continue or do you want to have Ms Wharf on early? Mr Mould, would you like to kick off and explain why you think they are outside the process, locus standi?

14. MR MOULD QC (DfT): If you would like me to do that, certainly.

15. CHAIR: That might be easier.

16. MR HARWOOD: Sir, I was intending to make my opening submissions. It may well then be convenient actually, if Ms Wharf is going to give evidence, to hear her evidence then and then my learned friend makes his submissions and I make any comments in reply that I need to.

17. CHAIR: What order would you like to do it? You want to kick off with your statement?

18. MR HARWOOD: I kick off with my statement, then evidence, as far as we need it, then Mr Mould and then any reply from me as far as that is necessary.

19. CHAIR: Okay, that is fine.

20. MR HARWOOD: Can I start then with locus standi and the principles? Really, there are three points. First of all, the entitlement to locus standi, which is historically to those who are specifically and directly affected, which would include people whose land has been taken and those who are directly impacted by the scheme, including those who have compensation rights in respect of disturbance and impacts on them. There is then the wider discretion, which the Select Committee has under Standing Orders 95 and 96, in particular. The Standing Orders make a number of specific entitlements as

well, but they do not arise in respect of our petition. As far as HS2 Action Alliance arise in terms of the Standing Orders, we fall within the discretionary elements of Standing Order 95 as representing interests and Standing Order 96 as representing the inhabitants of areas injuriously affected by the Bill. That is the historic position. That has to be looked at by the Committee in the light of the Environmental Impact Assessment Directive and the Aarhus Convention, which does change the approach, particularly to non-Governmental organisations, such as HS2 Action Alliance. I will come back to that in due course.

21. Taking the Committee to HS2 Action Alliance itself, there are two points. First, it has a representative role and, secondly, expertise, which is widely recognised. Ms Wharf's evidence is about how HS2 Action Alliance was set up in 2010 and how it concerned the project, well before the Bill, and, initially, on compensation matters and then broadening to the environmental impacts which arise. There are over 100 affiliated organisations. You have seen the map showing where they are based. They are up and down the line of the route on Phase One and also on Phase Two. There are some 15,000 registered supporters of HS2 Action Alliance. They include people whose property is going to be taken by the Bill and those who live close to the line. Four of the five directors of HS2 Action Alliance live very close to the line.

22. The representative role of the Action Alliance has been recognised in the correspondence which we have appended in our evidence, some of which I think the Committee will have received separately, from Members of Parliament up and down the line, who value HS2 Action Alliance's position, and also the correspondence which you have seen from the 51m Group and the letters from various actions groups and various residents, who are specifically and directly affected; a very large number of people make the point that HS2 Action Alliance does represent the interests of those falling within Standing Orders 95 and 96.

23. The second point is one of expertise. HS2 Action Alliance has commissioned experts and produced reports right through the HS2 process and that expertise has been called upon and recognised by Committees of this House. In dealing with matters, the Committee, of course, invited the Action Alliance to the programming meeting in May

and we were represented at the noise site visit yesterday. Our expectation is that we will be seeking to call some four to six experts. That is an important aspect; the Action Alliance because of its size and because of its ability to deal with group-wide issues is able to contribute expertise to the process, which this Committee has to deal with, in a way in which the smaller action groups are less able to do so. As the correspondence has made very clear, those individuals affected and smaller action groups are very much relying on the route-wide bodies to deal with some of the general issues and how it then affects them. Of course, the Committee itself is reliant upon the evidence which it receives from the promoters and the petitioners to help it reach the conclusions which it needs to reach.

24. The Secretary of State's objection, as we understand it from 9 June letter, is that the route-wide bodies do not represent people specifically affected or inhabitants of areas affected. Their complaint is that we are representing those up and down the line rather than those in a particular area. The Secretary of State's position seems to be - because they are not objecting to the local action group - that, if a body represents people on a particular part of the route, that number of individuals, then it will be allowed to be heard, but a body that represents people over the whole length of the route should not be heard. On the Secretary of State's approach, the more people specifically directly affected who a body represents or the more inhabitants of areas injuriously affected who the body represents, the less is the basis for that body to be heard by this Committee. The Secretary of State is inviting the Committee to enter a topsy-turvy world where the more people impacted by HS2 you represent the less is your right to appear in front of this Committee and to assist it in its deliberations.

25. The Secretary of State has accepted the representative role of HS2 Action Alliance. We put in part of the transcripts of the judicial review proceedings, which HS2 Action Alliance was involved with, and the recognition by Mr Mould, who again was appearing for the Secretary of State, that HS2 Action Alliance represented people who were dealing with compensation issues and will be seeking compensation from acquisition or from blight. In that process, the representative role has already been accepted by the Secretary of State. The Secretary of State cannot go back on that acceptance.

26. Similarly, at the programming meeting, there was no question raised by the Secretary of State about the ability of the Action Alliance to be there. It is axiomatic that, if there is going to be an objection in a process that somebody is taking part in, it is taken at the first point. If the Secretary of State really had this point in mind, then he should have said - obviously, he cannot put in his Notice of Objection, because there is no petition at that point - "Well, we don't quite see what HS2 Action Alliance and Stop HS2 are doing here, because we don't think they should be heard anyway." There was no glimmer of that point.

27. Can I then turn to the European law issues which may be of a greater or lesser source of excitement, but I am afraid are of some importance? As the Committee may well know from Mr Mould's opening submissions last week, the legislative process for approval of the High Speed 2 scheme is one which has an exception from the requirements of the Environmental Impact Assessment Directive. That is only on the basis that the objectives of the Directive are achieved through the legislative process. If those objectives are not achieved, even if the Bill goes through and is then enacted, there will be a need for a further application for the Development Consent Order and it would not be possible for the compulsory purchase powers and the Bill to be exercised - the Act as it would be to be exercised - until such point as there was a Development Consent Order in place. That would be a very considerable delay to the project. It is important that the Parliamentary process does meet the objectives of the Environmental Impact Assessment Directive and that, itself, is achieving the requirements of the Aarhus Convention on Access to Environmental Justice.

28. One element of the EIA Directive is the rights given to the public concerned. In 2003 "the public concerned" was defined and those rights specifically include the rights of environmental non-governmental organisations, of which HS2 Action Alliance is one. What that does mean is that, in terms of the public concerned, which include us, there is an ability to be heard, so the discretion at that point does turn into an obligation. This is a novel position for the Committee. It is novel because EIA issues have scarcely arisen in Parliamentary Committees, it is only on the last two hybrid bills. There were no locus challenges on Crossrail and on the Channel Tunnel Rail Link Bill. In 1995

environmental assessment was in its infancy, the case law on participation had not got started and the rights in the Aarhus Convention were not yet more than a glimmer in somebody's imagination, so the issue simply did not arise on the earlier authorities. The Secretary of State's submissions to the High Court in the judicial reviews on HS2, which are quoted in my skeleton submissions, recognise that the Select Committee was an important part of the overall process for environmental impact assessment compliance and that the ability of the governmental authorities concerned with environmental matters to be heard was part of compliance with the Directive in article 6, and the point was specifically made on that occasion, again, by Mr Mould, that there had been no challenges to locus standi on Crossrail and that bodies in particular, Save Britain's Heritage and the Ramblers Association, had been allowed to be heard. The recognition by the Minister there that this Committee process is part of that overall process of securing compliance is important and does show the need for this process to be able to comply. Subsequently, of course, there have been changes to the Standing Orders. Standing Order 224A was introduced last year, but that simply, in terms of the change from the Crossrail experience, codifies the consultation which had taken place prior to second reading on Crossrail, codifies the giving of reasons by the House at third reading, which had taken place on Crossrail, and provides simply a report. It does not alter the need for reliance upon the Select Committee process as part of compliance with that.

29. I do not know to what extent any point is going to be taken about ad hoc groups, but that does not apply in the context of representing the inhabitants of an area and, of course, is very much overtaken - entirely overtaken, we say - by the Environmental Impact Assessment Directive.

30. Sir, unless I can help further, that is what I am saying specifically on the locus point. The point which arises in paragraphs 5 and 8 of the Notice of Objection actually concerns the scope of the Select Committee's consideration. That is not locus in terms of whether we should be here. In reality, it is rather more concerned with what this Committee can do. Essentially, there are two points. I have set it out a little bit in the skeleton. One is that, of course, the petitioners may not argue on matters which do not give them locus, including matters which simply affect the general public and, as a more

important constraint – a certainly easier to apply constraint - the Committee needs to stay inside the instructions that it has received from the House, including questions of principle.

31. We are not, as HS2 Action Alliance, at the outer limits or close to the outer limits of the rules on what the Committee is able to consider. We have set out and put in the Select Committee report from 1948 as to what that actually involves. Expediency, of course, is not to be proven by the promoters. The petitioner is not able to challenge the public policy under the Bill, but a petitioner may, in fact, challenge the principle of the Bill if it is within its locus, but the key constraint is the instruction given by the House following second reading, in terms of there will be a high speed railway between London and the West Midlands, it will be at certain points and beyond the broad route alignment is not to be considered by the Committee.

32. What a person may argue is limited by their locus, but, of course, even a single landowner may propose a change which has route-wide effects. The local authorities, inhabitants from an area and non-governmental organisations have a wide range of issues which need to be dealt with, both directly and consequentially. Where they have standing because they are a local authority for the area, they can take points arising from the locus which is given there. The role of the Public Bill Committee, which is raised in the Notice of objection - to use the rather quaint language of Standing Committee - is different, but that is not a reason for restricting what the Select Committee may deal with. Both this Committee and the Public Bill Committee may make amendments, which are in a sense for the purpose of the same sort of matter. I gave the example of the Crossrail Bill Select Committee, which restricted the period for which the compulsory purchase powers could be exercised. The ability of the Secretary of State to renew those powers was limited specifically because of a petition from the Canary Wharf Group, who were concerned about being left in limbo. So a particular landowner or a particular person may raise a point about their position which then prompts a general route-wide change.

33. In terms of the HS2 Bill, it is not a Bill, actually, that affects the public at large. This is a bill about the construction and operation of a railway. The one point that goes

beyond Phase One is the introduction of survey powers for future high speed railways. It is accepted by HS2 Ltd that petitioners can raise points about that, provided petitioners are potentially going to be affected by the Phase Two route. Particular concerns can be met by general solutions. Of course, in looking at the concerns raised by petitioners, the Committee does need to have in mind, of course, the balance of the public interest. It is not simply the Committee saying that, well, there is a private interest or a particular person's interest that is affected. It is for the Committee then to weigh up what is said there against the public benefits of the scheme, and that part of the scheme, the public benefits or disbenefits of the change. Inevitably, that brings the Committee into looking at the overall benefits and impacts of that particular change in that particular petition. It does become, therefore, rather a wide process.

34. The Secretary of State in the Government's response to the Environmental Audit Committee report, which was published in June, accepted that environmental matters in petitions would be considered by the Select Committee, provided that they do not touch upon the principle of the Bill. Once the Minister accepts, as he has done, that environmental matters are in the remit of the Committee, the land acquisition and direct impacts, of course, are in the remit of the Committee and compensation is in the remit of the Committee. There is actually very, very little that is capable of being included in a petition, which is outside the remit of the Committee and none of the matters we have raised fall foul of that.

35. The Notice of objection - which we pointed out as soon as it was received - does not actually say on these aspects what is the HS2 limited concern and complaint. We are told in that Notice that certain matters in the petition go to principle. There is an allegation that comments made are principally of a public nature. We were not asking for some lengthy statement from the Secretary of State as to what his point was, but it is a fairly basic point that, if we are told we have got something wrong in the petition that we are not allowed to raise, that ought to be in the Notice of Objection to say which paragraphs they are actually taking objection to. It is not terribly a lawyer's point, it is simple a point of fairness and the ability to deal with it and it is now too late for the Secretary of State to complain about particular bits of this petition. They should have

done it at the time. We raised the point at the time. They responded by not giving any further elucidation.

36. The HS2 Action Alliance petition raises matters all of which go to the concerns of residents who are directly affected by this proposal, the concerns of the inhabitants of the areas, which we say are injuriously affected by this proposal, the concerns of the groups which we represent and they also, although certainly not exclusively any of those, go to our role as an environmental non-governmental organisation. They are entirely within the standing, which we firstly invite the Committee on conventional historic principles to give, and which, under the need to comply with the Environmental Impact Assessment we do and should have.

37. I am not going to go into the detail of the petition because, first of all, that is a matter for later and also, as I said, we are not told what it is that the Secretary of State actually is complaining about, but to very briefly isolate the main points: the need for the Environmental Statement to be sufficient for the House to do its job, the need for speed to be considered, which has specific effects on noise, specific effects on the ability to change the route locally to avoid or to reduce impacts, as well as, inevitably, general environmental questions that arise under that, the enforcement of the mitigation and the environmental impact matters, matters which I suspect are going to take up quite a lot of time of this Committee, as they usually do in hybrid bill committees, and compensation, which, of course, is a particular concern to those whose land is taken and those who are near the route and are going to be impacted in one way or another. We do not take points which are contrary to the principles of the Bill as established by the instruction of the House.

38. The final matter to mention, so my learned friend has an opportunity to deal with that, is the question of the costs of this hearing. I will take the point briefly if I may at this stage. Dealing with this locus challenge is, inevitably, an expensive process by HS2 Action Alliance. It is a drain on our resources and our ability to put in front of this Committee the material on the merits, the expert evidence and the analysis, which we see as being beneficial and which is our purpose. A select committee is able to award costs; costs were awarded by the Select Committee on the Crossrail Bill. There is not

normally an award of costs by committees, but one of the bases on private bills is that, where somebody has behaved in a vexatious and unreasonable fashion, then costs can be awarded. There is a second element in the private bill stage where an amendment to the bill has also been secured. What we are faced with here is that, as one of the well-established route-wide bodies who have played a major part in this process, we are facing - and now face - an expensive challenge brought by the Secretary of State. We invite the Committee, of course, to reject that challenge, but also to recognise that it is a challenge without merit and a challenge which will, unless costs are awarded to us for this expense, deplete our ability to properly put our case to this Committee. It is an appropriate matter for the Committee to decide that the Secretary of State should pay the costs. Waiting until whether or not our petition secures changes to the Bill in that case is going to be too late. It is a question of the position at this stage. That is all I want to say on costs and all that I wanted to say in opening. Unless there are any questions at this stage, I was going to propose to call Ms Wharf.

39. CHAIR: Thank you.

40. MS QURESHI: You are probably, perhaps, being very polite in not saying this, but do you think that part of the reason for HS2 promoters objecting to your group having locus standi is that, perhaps, they are afraid of the Committee hearing an alternative view being presented in a very professional way with alternative experts being presented to them to get a more balanced perspective and view on the project?

41. MR HARWOOD: Neither myself nor HS2 Action Alliance are able to speculate as to what went on within the minds of those responsible for this locus challenge. We do the best we can but we are not going to go that far. Perhaps I can say simply this in response, which I think is helpful. On the Crossrail Bill 10 years ago there was a deliberate and, you might have thought, sensible decision on the part of the Secretary of State not to challenge locus so the Committee was able then to get on with its job, which is actually getting to the merits of this, what are the concerns of the petitioners; what are the implications of this; what changes should be secured to enable that to be got on with. We would have thought, particularly as there is a concern about how long

this Committee is going to be sitting for, that getting on with that actually is more important.

42. In terms of the role that we play, we hope that we bring expertise and a wide perspective and, as you will have seen from the letters, many of the petitioners are saying, “Well, we’ve left those issues to HS2 Action Alliance”, so there is a danger, if we are not given standing, that issues which the Committee will probably think it wanted to hear about are not ventilated or are not sufficiently set out with expert evidence. Now, whether there is a calculation that they could knock-out issues, I don’t know; whether there was a calculation that this will deplete the resources of challenges I don’t know. It is hard to believe that there is a calculation that several weeks of locus hearings was actually going to save any time of the Committee. Winston Churchill once said of the Soviet Union, “I wouldn’t want to speculate about what’s going on. It’s an enigma wrapped inside a mystery”.

43. CHAIR: Can I ask, Mr Harwood – we are dealing with Phase One – how many members does the HS2 Action Alliance have along the line of Phase One – presumably there are members who are affected – because nobody has actually mentioned whether there are or aren’t, and how many affiliated organisations do you have?

44. MR HARWOOD: We have 105 organisations that features very helpfully in Appendix 1 of tab 6 of our bundle. Right at the back of Appendix 2 after the correspondence, we have included the plan which shows whereabouts we are. In terms of the organisations I am told that 26 are in Phase Two so that would therefore put 79 along Phase One. In terms of registered supporters who are directly affected, we do not have a figure for what that number would be because we are dealing with 15,000 people and we could search through that, but certainly there are people who are directly on the line and people who are very close to it, including the directors.

45. MR THORNTON: One of the points you are making is that HS2 can provide representation and expertise for people who want to make their point to the Committee. Are you saying, therefore, that you would be able to substitute for them so we would hear from you rather than from them, so that instead of hearing from innumerable other

people, you would act as their representative so we would hear their point of view via you because you are saying that you can act as their representative, or are you saying that we would hear from you about their point of view and then we would hear from them as well? I am just trying to understand this representation idea because if you are representing them we do not need to hear from them. Which is it? Which are we going to do if we allow the locus?

46. MR HARWOOD: What we are doing is representing 0:44:30 and doing it in terms of taking points which are of wider application, so you may describe them as very wide points. What we are not doing is duplicating for somebody saying, "Well, there is this particular impact upon us". What the petitioners have very carefully done is to focus on their particular local impacts making the point that the more general consequences of change, the speed of looking into those issues are ones which they have left to the HS2 Action Alliance. So, in a sense it becomes that splitting of the role, but what we are not doing is appearing as representatives of other petitioners in the sense of putting their petitions for them. It would be appearing in terms of our petition on the points which we are taking. What we hope to achieve and the intention will be that that is achieved, is that that means there is expert evidence on those particular points and other petitioners who have those concerns will either have not raised them in their petitions because they expect us to do so or the points having been dealt with by us, they do not then feel the need to deal with them.

47. MR THORNTON: When I look at that map it shows that on every single inch of that line one of your members of the Alliance is on there. So, I find it very puzzling that there should be something that would be represented by you, by members of your Alliance that wouldn't be covering exactly the same part of the route as somebody else on the line. So, if members of your Alliance cover every bit of the route, you might justifiably say you have a right to discuss each individual bit but why would we then want to hear from other organisations which also are sitting on the line? Can't they all work together so we hear together? That is every single bit of line so your organisation is covering that anyway, which is fine and maybe we will decide at one point or another whether we should do but it just seems to me that you are covering that point. So, you are saying that you would do a whole line thing and yet your members cover every

single bit of it. I don't quite understand how you are going to distinguish between the two. I am sorry, it is my fault.

48. MR HARWOOD: I apologise if I have not made this clear as I should have done. I will try again. What we are doing as you will see from the petition is to take points which whilst of course they do affect people on the line closest to it in the areas, are points which are route wide and look for route-wide solutions. What we are not doing is to say, "Well, the tunnel here should be extended"; "There should be better noise protection here"; "You can make a particular tweak to the line there"; "You don't need that working site", or, "There ought to be a provision for public rights of way". Those are the sort of points which inch by inch are going to be raised and have been raised by other petitions individually. We are not descending into that. Those are very much left to other petitioners. What we would hope and it maybe what the Committee would hope is that where petitioners have raised general points which have been covered by somebody else, whether it is by us or whether it is by the local authorities, that they don't go to the trouble of duplicating things and that they focus on their particular concerns. That is the sort of distinction between the more general points which are of concern to people up and down the line and some of the general solutions which will arise from specific problems and the specific local issues themselves, which we are not going to be calling evidence on. You won't hear from us saying, "Well, this particular tunnel ought to be longer".

49. MR THORNTON: I think it is important to have assurances that we do not get that kind of duplication. I think that that is very important, that we get a clear commitment on that.

50. MR HARWOOD: I can talk for HS2 Action Alliance. You have seen all our petitions and we are going to produce our evidence in line with that. We would hope that the petitioners will have regard, to the extent that they are able having been following proceedings, to what matters other people have covered adequately on their behalf and seek to add rather than duplicate.

51. MR THORNTON: Thank you.

52. SIR PETER BOTTOMLEY: If I can put it to you neutrally, there is a useful paragraph, I think, in the Camden Cutting Group letter. I will read the paragraph: “While we have submitted our own petition, as have many individuals in our community, these have all been done focusing on issues especially relevant to our local area or the particular works affecting us leaving route-wide issues to HS2AA.” That sums it up does it?

53. MR HARWOOD: Absolutely.

54. SIR PETER BOTTOMLEY: It could save an hour.

55. CHAIR: Right. Witness now?

56. MR HARWOOD: Yes.

57. CHAIR: We are all sworn in, I presume?

58. MRS WHARF: Yes, thank you.

59. MR HARWOOD: Mrs Wharf, if I can just introduce you to the Committee, you tell us that you are a director of HS2 Action Alliance Limited and you live within 300 metres of the proposed route of Phase One. You have produced a witness statement which the Committee have. I simply at this stage ask you to confirm whether that is correct?

60. MRS WHARF: Yes, that is perfectly correct.

61. MR HARWOOD: In that case, sir, the easiest course for the Committee who has had the opportunity of reading the witness statement is for me simply to tender Mrs Wharf for any questions which Mr Mould has now and re-examine as appropriate.

62. CHAIR: Okay. Are you ready, Mr Mould?

63. MR MOULD QC (DfT): Thank you very much. Good morning, Mrs Wharf. We have seen each other many times over the last two years but I don't believe we have ever actually spoken.

64. MRS WHARF: We spoke yesterday.

65. MR MOULD QC (DfT): We spoke yesterday, that's right. It is a pleasure to speak to you at last. First of all, just so that the Committee is clear on the HS2 Action Alliance, you deal with this in paragraphs 2 and 3 of your witness statement and for those who have it that is document A2 at page 55. It is actually a limited company isn't it?

66. MRS WHARF: It is, yes, limited by guarantee.

67. MR MOULD QC (DfT): Yes, and the members of the company are yourself and Mr Weston?

68. MRS WHARF: Correct.

69. MR MOULD QC (DfT): Yes. The company was set up, as you tell us in paragraph 3, with three main objectives. You refer to those in paragraph 60 of your petition but one I noted which I thought the Committee might be assisted by is the second of them, which is to facilitate the co-ordination of various things, community level organisation, specialist companies and Government groups and so forth, and to pool the best resources of talent. That is one of the key objectives of the company isn't it?

70. MRS WHARF: It is, yes, to get experts.

71. MR MOULD QC (DfT): And one of things that you say you are able to bring to the assistance of petitioners, that is to say those who undoubtedly are specially and directly

affected by the scheme along the Phase One route is that you have been able to pool resources and to commission expert reports and that kind of thing?

72. MRS WHARF: Yes, we have.

73. MR MOULD QC (DfT): And it is fair to say, isn't it, that the fruits of that labour and the deployment of those resources is expertise that in your co-ordinating role you could make available to individual petitioners who are amongst your supporters in the presentation of their petitions to the Committee, couldn't you?

74. MRS WHARF: It is available, yes, and already has been, yes.

75. MR MOULD QC (DfT): So if, for example – this isn't a true address – but let's say Mr and Mrs Smith of 1, Laburnum Cottages in Aylesbury were concerned about the noise impacts of the railway running to the south of Aylesbury. Suppose they made a petition to the Committee, they come along and they want to develop that case. You could make available the expertise that you have in relation to noise. You could make that available to Mr and Mrs Smith and a witness commissioned by you could give evidence to the Committee in support of their petition couldn't they?

76. MRS WHARF: I think that what that fails to say is that of course the expertise that we have drawn together is specifically targeted to assist, to help and to demonstrate what it is our registered supporters and affiliated action groups specifically want. So, it is not just expertise in a generic and non-specified form. It is there to represent and to help those who we represent.

77. MR MOULD QC (DfT): Absolutely, that is my point.

78. MRS WHARF: Not just Mrs So and So who might live somewhere and aren't necessarily somebody who we represent.

79. MR MOULD QC (DfT): No. Well, Mr Thornton pointed out that there appears to be not a square yard of the route, effectively, that does not have one of your affiliated

local people along it. What you have just confirmed is that your expertise is available to each and every one of those people to make use of if they choose to do so in support of their petition. That is right, isn't it? Would you accept that?

80. MRS WHARF: I would accept it only to the extent that those expert reports are being prepared to support our HS2 Action Alliance petition. As we have just said, there are very specific things in our petition that we would put forward, so the particular expert reports would be to support those. If I took noise, for example, they will be to particularly get to grips with some of the principles of noise that are being taken. So, that particular report won't be about Mr and Mrs Bloggs' noise where they particularly are on one of those little dots on the map there; it will be about some of the principles because it is a route-wide aspect that we are taking. So, although it will be available to Mrs So and So, it isn't going to be, necessarily, in her specific context for which she would have to go and perhaps commission something herself. What we are focusing on is the route-wide principles that it is very difficult and, indeed, almost impossible for individuals to do because of the cost and the complexity, and because those aspects are very difficult for individuals to focus on, particularly with subjects like noise, as we saw yesterday – they are not straightforward – we have them targeted on our petition.

81. MR MOULD QC (DfT): So, just to be clear then, you don't claim to represent any particular person and before the Committee you don't claim to represent the interests of any of those people who live along the route shown on the map which Mr Thornton held up? Your position is that you are pursuing your own case to the Committee at a higher level, at a route-wide level? That is your position isn't it?

82. MRS WHARF: They are asking for us to have route-wide issues so that they don't take them themselves. The Camden Cutting Group is one example, and several of them have said that. They are taking their local specific aspect and they look to us to represent them on the route-wide issue because the principles of things like noise are complex and so they look to us to take those. But we are still taking them on their behalf. It is just that we are having to divide the cake in the way of the particular topic, and compensation is the same.

83. MR MOULD QC (DfT): What interests would my putative Mr and Mrs Smith have, which is over and above that of the general public, in route-wide issues that don't actually directly affect their environment in the locality of Aylesbury? What interest do they have in noise impact in Staffordshire, for example, over and above those of the general public?

84. MRS WHARF: When I mean, "route-wide issues" I am taking it as a topic. We are not looking at the particular noise in Staffordshire or the particular noise in Aylesbury. We are taking some of the principles. Let me switch to the topic which I think everybody agrees has very much specially and directly affected individuals, which is compensation. We have from the outset taken principles in relation to compensation and we have taken it in a whole variety of ways: through consultations and through engaging in extensive correspondence with HS2 Limited and DfT about specific aspects of the rules of the various schemes.

85. We have done that on behalf of those people in Staffordshire and people in Aylesbury because they find it difficult to engage. They are complex subjects, even things like compensation schemes, and so we have been able to take that role on their behalf and assist them, and we have had some success in it. We have had some changes that have been made to some of those. And, indeed, as you know we have been to court on one point and we did that on the people's behalf, both in Staffordshire and in Warwickshire. That was something that they individually couldn't have done. We did it on their behalf.

86. MR MOULD QC (DfT): Why couldn't they have done it? Why couldn't Mr and Mrs Smith come to the Committee and say, "We believe that whatever may be the general law in relation to compensation, the impacts of the scheme on us are such that a specific and more generous compensation regime should be made available"? That was done on the Crossrail Bill, I remember, on a number of occasions and with some degree of success, actually.

87. MRS WHARF: I am sure, quite a lot. I have looked at the petitions too and I know that a lot of petitioners will come and ask in relation to compensation. But what they

will look to us to do is to be able to give some of the more expert evidence in relation to that. I take, for example, the property bond. Only yesterday the property bond has become an issue again as a Freedom of Information press was put out and I was able to respond on residents' behalf, about the property bond, in the media.

88. The property bond is something we have produced experts on. It is something that we promoted from April 2010 and we are still promoting it, and from an individual's perspective when they come before this Committee I could well expect that they would say, as indeed some of the petitioners do say, "We would like to have something like a property bond", and, if our locus is heard, you would then have heard in much more detail about the property bond through our petition because they are relying in their petition on us to come and talk about that and we have experts in that field. So, we actually think that that is a good example of a division which is efficient for the Committee.

89. The one group that has made the lead and was championed on that is actually HS2 Action Alliance. We have put that in our petition and that then will give us the opportunity through that to fulfil the aspirations of our registered supporters and affiliated groups that we will be able to come and explain why we think that that is an appropriate approach in a better way than an individual group and an individual person will.

90. MR MOULD QC (DfT): Just one more question and then I can make any further points I want to make to you directly. Just go back, if we may, to page A2(49). You have been doing your homework and I am sure the rather tedious task of going through the transcripts of the hearings before Mr Justice Ouseley in one of your several High Court challenges. Mr Harwood mentioned some things I said in that context, but I thought we could just look briefly and finally at what your counsel said in response to what I said.

91. SIR PETER BOTTOMLEY: It is the last page of number 4 in the bundle.

92. MR MOULD QC (DfT): It is, sir, yes. If you look at the bottom right-hand corner of page 146, instead of starting at the passage which you have highlighted, you start at the beginning of that paragraph. Mr Wolfe, QC, who was acting for the Alliance in that case said: (unable to find transcript online to check quote)

93. “My Lord, Mr Mould then talks about HS2 Action Alliance’s own position. He talks as if we are a representative body in the sense that we speak on behalf of, like a delegate body, which has a coherent view, like a trade union, maybe, on behalf of its members. We plainly do not, and we plainly, even to the extent that we can be seen as an umbrella, a representative organisation, do not supplant the views of our members or our affiliates who are entitled to make their own views and stand on their own making of those views.”

94. I simply suggest to you, Mrs Wharf, that if you follow that course in this Committee, the inevitable logic is that you can certainly stand behind those of your supporters and affiliates who do have a locus here but just as then you didn’t claim to represent them, so in no meaningful sense can you claim to represent them before this Committee. Do you accept that?

95. MRS WHARF: No, I don’t think I would. First of all, if I step back a bit, we say that we represent people. Our registered people say that they are represented by us. The affiliated groups say that we represent them and you, Mr Mould, yourself said that we represented groups.

96. MR MOULD QC (DfT): Mr Wolfe disabused me of that.

97. MRS WHARF: But if you look in my own witness statement, I then do also go on in paragraph 16 to actually talk about what Mr Wolfe said. As I say, he says that HS2 is representative in the way of an umbrella, representative organisation. We entirely agree. It does not mean that local groups and individuals represented cannot have their own separate views as indeed they do, or that they are represented in the way that a level of Government represents them. Councils represent people and they are going to bring petitions. Individuals too are going to bring petitions and we believe it is perfectly

consistent that looking at the specific aspects of our petition, we too will represent them on those issues in our petition. We see it as perfectly consistent as having a whole Government organisation of councils where you have representative bodies as having arrangements where you have an organisation like HS2 Action Alliance, Greenpeace, CPRE, all sorts of different organisations, and they all have lower levels too, and those lower levels as well can have a voice but so does the national organisation and the national voice which we believe we are and our members believe we are too.

98. MR MOULD QC (DfT): I have asked at least enough questions and I am grateful to you. Thank you.

99. Mr Mould, do you have a further statement to make?

100. MR MOULD QC (DfT): Yes, might I just summarise our position, which I hope will be of some assistance to the Committee. I suspect that of greatest concern in the Committee's mind here will be any risk that if the Alliance were to be denied locus standi to appear in their own right here there might be a relevant gap in the material that was before the Committee to enable it to deal fairly and justly with the points raised by those many people who clearly do have locus standi because they are clearly specially and directly affected. As I apprehended, that was really the burden of Mr Harwood's submission to you.

101. I would ask the Committee just to reflect on this. That is really reduced to the argument that because of the resources that are available to them, the Alliance have been able to commission a variety of expert reports and to commission the assistance of experts. Indeed, some of the points that we took account of yesterday in the presentation on noise came from an expert commissioned by the Alliance in relation to that topic. Their concern is that those who have written to you, and Sir Peter read out a specimen letter, in that respect ---

102. SIR PETER BOTTOMLEY: A paragraph.

103. MR MOULD QC (DfT): --- a paragraph, forgive me – thought that they would present their case on the basis that the Alliance would bring up the slack. That is actually, in my submission, not the right way to look at it. There is a distinction to be drawn between the petition itself and the evidence that is available to support the petition. There is absolutely no reason why each and every one of those petitioners who are represented on the map held up by Mr Thornton should not call upon the Alliance and receive assistance from the Alliance through the medium of the expertise that may have been able to obtain and to deploy and, if appropriate, to call on that and to bring evidence from that source before you in support of their petition. So, the Alliance can perform that very co-ordinating role that is one of its objects as set out in Mrs Wharf’s witness statement and, indeed, in paragraph 60 of the petition.

104. The Alliance does not need a front of house role in order to fulfil that. The Alliance can sit behind all those petitioners who are its affiliates and can provide support and resources in that way. In that way there is no risk that the Committee will lack for the evidence that is genuinely relevant to the main cases that are put forward by the petitioners to whom Mr Harwood has referred. That is completely consistent with the notion that I just put to Mrs Wharf that in truth the Alliance are not actually representative of any particular individual petitioner in the sense that this Committee is concerned with under Standing Orders. They may be more broadly representative in the sense that they have brought resources to bear and they are able to co-ordinate but this Committee operates on the basis of Standing Orders of the House. It does not operate on the basis of some wide discretion or some wide understanding of representation. The reason why we challenge locus here is really simply that we take the view – you may disagree with this – that when you translate those facts that I have mentioned into the Standing Orders of the House, and in particular Standing Orders 95 and 96 which have a very closely circumscribed discretion, this organisation simply does not come anywhere near close to coming within the scope of those Standing Orders. I am conscious of the fact that you said at the outset that you would not welcome legal submissions from me but would you at least indulge me to the extent of showing you those Standing Orders and just explaining briefly why I say that?

105. CHAIR: Okay, but could you please be to the point and brief?

106. MR MOULD QC (DfT): Of course. You have them in the file which is in front of you but the key number is P21. I am not going to refer to any of the precedents. I know that you would not want me to do that.

107. MR HARWOOD: In the physical file it is tab 43.

108. MR MOULD QC (DfT): I can be very brief. There are essentially three separate rules under which the Committee has a discretion to admit an organisation like the Alliance: 95(1), 95(2) and 96. 95(1): In order for the Committee's discretion even to arise there, it has to be alleged by the petitioner claiming to be a representative that a trade, business or interest represented by the society or association in question is injuriously affected by the provisions of the Bill. There is not an allegation of that sort here in the petition and nor could there be because that is not the purpose of this organisation. Its purpose is not to represent any interest in Aylesbury or any interest in Staffordshire which is on or close to the route of the Bill. That was the point made by Mr Wolfe in the passage that I showed you in the High Court transcript. 95(2), the same point. There has to be an allegation that an interest in the form of amenity, education, travel or recreation is affected, which this organisation claims to represent. Again, there is not any such allegation. In 96 they clearly do not claim to be a local authority so they have to allege that the interests of the inhabitants of any area of a local authority which is injuriously affected by the Bill, that they are amongst those inhabitants and they don't allege that because that plainly would be impossible to allege.

109. That is all I wanted to say. You operate on the basis of rules. Indeed, the instruction to you from the House at Second Reading said that you can hear petitions where the rules of the House allow it, and we simply say that whilst we do not in any way dispute the value that the Alliance can bring in the backroom towards supporting those who do clearly have locus to appear, there is no basis in the rules for them having front of house rights here and there is no gap that will arise if the rules are applied in that way because they can simply divert their resources away from taking up your time and assisting individual petitioners who will come before you.

110. MR THORNTON: 95(2) you skate over, rather swiftly, I noted.

111. MR MOULD QC (DfT): No, no.

112. MR THORNTON: 95(2) seems to say, “Without prejudice to the generality of the foregoing paragraph”, fair enough, “where any society, association or other body”, which seems to cover just about everybody you can imagine, “sufficiently representing amenity, education, travel or recreational interests”, which could be walking; going for a walk is a recreational interest – “petition against the Bill”. I don’t quite understand how you can say that that does not fit with the Alliance.

113. MR MOULD QC (DfT): Because the Alliance say themselves they don’t represent any such interests. What they say is they sit above a whole range of bodies that do represent such interests.

114. MR THORNTON: If you represent somebody who represents somebody, you represent them.

115. MR MOULD QC (DfT): No, because that does not amount to a sufficient interest for the purposes of that order. The golden thread that underlies all of this is that the business of this Committee is to address the private impacts of the Bill which affect those private parties over and above the effects of the Bill on the general public. This organisation actually disavows any representative function in relation to that kind of interest. They say they sit above it. They are interested in group-wide issues. Those don’t fall within Standing Order 95. Insofar as they affect the interests of specific individuals or in this case organisations, societies such as, shall we say, the Aylesbury section of the Ramblers Association, or a walkers’ group in Staffordshire, insofar as they sit above such a body, that body is able to bring its own petition in a representative capacity representing their interests, and as I understand it such bodies have done so. We have a number of petitions.

116. MR THORNTON: I think you are a bit “camel in the eye of a needle” because it says, “all other bodies” here and it doesn’t get specific. I think that unless you are

going to start trying to define “other bodies” which I think is incredibly difficult in the English language, there might be a legal point here.

117. MR MOULD QC (DfT): The body has to be one that alleges and does indeed represent one of those interests that were read out.

118. MR THORNTON: Or recreational interests.

119. MR MOULD QC (DfT): Yes, but it has to be a recreational interest that is adversely affected to a material extent by the provisions contained in the Bill.

120. MR THORNTON: I think the Chair wants me to shut up so I will.

121. CHAIR: Let’s hear from Sir Peter.

122. SIR PETER BOTTOMLEY: I am not sure that this is one that you could properly be expected to answer or whether it might come to Mr Harwood at the end but if for example one of the main issues for the HS2 Action Alliance is to reduce the maximum speed from 400 kilometres an hour to 300 kilometres an hour, which would allow variation to the line, would that take us beyond the scope of this Select Committee’s responsibilities?

123. MR MOULD QC (DfT): It would. The Committee would have to consider whether that took us outside the scope of the High Speed Railway because the principle of this Bill, of course, includes a high speed railway. But insofar as it was said by my putative Mr and Mrs Smith that subject to that point, reducing the speed of the railway as it passes along the south side of Aylesbury the Committee would bring about a reduction in the level of noise generated by the railway and would thereby ameliorate the impact on their living conditions to an acceptable extent, that would be a point that such a person would be able to raise perfectly properly as part of their petition before this House and if they or the Alliance co-ordinating the case against the Bill in that respect thought it would be helpful for the Alliance’s expert to be provided as a resource

to support that case, I would have no problem with that at all. It would be perfectly consistent with the way in which the Committee worked.

124. What I object to, and what I say falls outside the scope of these Standing Orders is the notion that the Alliance should be able to come along and effectively raise what are clearly public rather than private concerns about the operation of the scheme as a whole and in environmental terms. That is essentially what they are doing here.

125. SIR PETER BOTTOMLEY: So, if we take another example, and I am sorry that each of my examples have been near London, if a golf club said, "We'd like HS2AA to tell the Committee why the tunnelling should be an extra half mile long to avoid losing three holes of the golf course", you would suggest that that could be done by the golf club itself rather than by HS2AA?

126. MR MOULD QC (DfT): Yes, essentially because the way in which it has been done is this. Consistent with a co-ordinating role of the Alliance, what would happen is that the golf club would say to HS2AA, "We think it would be helpful if you could make available your expert or if your experts to come along and give evidence in support of our case".

127. I am sorry to trouble you to go on, but if you think of it in timetabling terms, it might actually be helpful to the Committee in the overall discharge of its business. If there are 45 petitions in the Aylesbury area, all of whom essentially raise concerns about the noise impact of the railway and its operation, and they want to make the case that if you reduced one of those thresholds we saw yesterday by 5 dBA that that would overcome to an acceptable degree their concerns, the Committee could programme the hearing of those petitions essentially over the course of a week and could hear the expert that we know the Alliance has already consulted and been able to resource in that co-ordinating role. It could resource those petitions and that might help to discharge the business, but the Alliance does not need to be given a locus, which it plainly does not have under the Standing Orders of the House, in order to do that.

128. That is why I say there is no gap here. It is just a case of slightly changing tack. Instead of saying, “We want to come along and present to the Committee”, I am suggesting that the Committee should say, “Don’t down tools, just divert the resources” to those who as you read out in the paragraph, feel that the resources will assist them. It is fairly straightforward, I would have thought.

129. MR BELLINGHAM: I was going to ask my learned friend what he makes of the MP’s letters that are being put in. One of the recurring themes in those letters is that many of their constituents are, of course, elderly and may well have some difficulties in getting their point of view across at different times. Of course, if the HS2 Alliance in those circumstances went maybe on to wider areas away from the specific, you would be able to call them up very quickly, but having the support of the Alliance in putting across their arguments might be very helpful.

130. MR MOULD QC (DfT): Sir, again I think that my point would cover that. If the concern is that people might find it difficult to come to the Committee, for example, or difficult to marshal resources, as I understand it the Alliance either are or have access to people who have rights of audience before this Committee. So, if Mr and Mrs Smith in my example were an example of those elderly people and they find it difficult to make the journey to these rooms, then the Alliance would use the resources in their co-ordinating function to provide representation. Indeed, I can recall in Crossrail there were a great number of local groups who either had themselves put up somebody as a Roll B agent or who had gone to the trouble of commissioning or instructing an agent or indeed counsel. So, again that would be a function that the Alliance could do.

131. The Alliance have a very valuable role to play, in my submission, before this Committee but it is not one that ought to cause this Committee to depart from the established rules and principles of this House. It can be deployed perfectly satisfactorily whilst maintaining the propriety of Standing Orders and allowing the Alliance to operate in the backroom rather than in front of house.

132. MS QURESHI: Firstly, Mr Mould, you understand the fact that if this was a construction of a building and there was going to be a public inquiry because it was a

massive building and there was big public impact, this project being a big project as well, very costly, if it had gone through ordinary public inquiry planning, anybody would have been able to make their representations and be represented. This is a major infrastructure project. You are effectively by objecting, are you not, stopping the other bodies from putting their ---

133. MR MOULD QC (DfT): Not at all. If this were to be dealt with under one of the conventional statutory regimes, or under the current regime it would almost certainly be dealt with as an application for a Development Consent Order under the Planning Act 2008, and under that Act there is not any right to a public hearing. That Act generally deals with representations by members of the public underwritten representations and the Alliance has had plentiful opportunities to put forward written representations but more particularly the right, correct and true analogy with that regime and this regime is that those who do accept and enjoy rights to appear before an oral hearing are those people who have their land at risk of being taken compulsorily. This Committee will be hearing – and we have not challenged a single person in terms of locus – people who have their land under threat from compulsorily purchase. So, there is complete consistency in approach between that regime and this regime in us resisting the locus of the Alliance.

134. Sir, I am sorry, I don't want to trouble your patience but there are a couple of other things that I really have to respond to so that they are on the record. The first is this. You heard some submissions about European environmental law and the Aarhus Convention. I can deal with that very shortly indeed just by drawing your attention to another of Mr Harwood's exhibits. It is A2, page 52, which for those who have the hard copy is in divider 5. The nub of his argument is that whatever may be the rules of this House, European law now requires that bodies like the Alliance should have a right to appear in an oral proceeding. That just simply is not right. If you look at this, this is the very source of that argument. Article 6 of the current European Directive on Environmental Assessment is the article that deals with public participation. It is an article that has been framed by reference to the Aarhus Treaty, so this does the job of both the European law and the international treaty. If you look at the bottom of the page, paragraphs 4 and 5:

135. “The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures ... be entitled to make comments and opinions when all options are open to the competent authority”, and then at 5: “The detailed arrangements for informing the public ... and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States”.

136. So, under European law and under the Aarhus Convention it is for each individual member state to decide whether there should be a written procedure or an oral procedure or a mixture of both, and this House has its own procedures, which involve a mixture of writing and oral representation. We are simply saying apply those procedures here. The Alliance have had their chance to make written representations. They will no doubt have further opportunities to make written representations but there is nothing in European law that requires this Committee to fear the simple application of its own established Standing Orders to this stage.

137. The final point that I make – because there has been an application for costs I just need to address that. The short answer to that is that this Committee, as you know, in dealing with locus operates under the same rules and procedures as the Court of Referees. It is well established that the Court of Referees has no power to award costs in relation to locus challenges. You will find that set out in a page of *Erskine May* that we have provided. I do not think that I need to ask you to look at bit, but just to give you and Mr Caulfield the reference, in this lever arch file it is at tab 45. Electronically it is P22. At tab 45 at the bottom of the page, page 957 in *Erskine May* it states that the Court of Referees has no power to award costs.

138. CHAIR: Mr Mould, since you had widespread experience of Crossrail, may I ask you – the issue was raised earlier about costs being awarded in Crossrail.

139. MR MOULD QC (DfT): That was nothing to do with a locus challenge.

140. CHAIR: Okay.

141. MR MOULD QC (DfT): In fact, what happened there, if you and your colleagues want to follow it up – I can't read that.

142. MR HARWOOD: If it helps, it is in my skeleton argument, the particular point in Crossrail.

143. MR MOULD QC (DfT): Yes, it is clear from the Crossrail Report, at paragraphs 121 to 123 – this is the Special Report of the Committee – that actually the Committee essentially invited the promoters to consider whether they would pay half the costs of the petitioner in question and the promoter, for reasons that were quite exceptional, agreed to do that. The Committee indicated that it would wish that to be the outcome. But it was quite different from a locus challenge. There is not any power to award costs and that is not affected by the Parliamentary Costs Act 2006.

144. MR MOULD QC (DfT): Sir, I think that Crossrail was raised more generally by Mr Harwood. He suggested that we in the Crossrail Committee, as it were, took a *laissez faire* approach on locus. The reason why we did not bring any locus challenges in the Crossrail proceedings was because there weren't actually any petitions in that case that obviously lent itself to being challenged on locus grounds. It was as simple as that, so with respect that is not a very helpful point to make. Unless there is anything else, I have probably troubled you too long.

145. CHAIR: Thank you. Mr Harwood, would you like to make some brief final remarks?

146. MR HARWOOD: I will, sir, just to pick up on a couple of the points which my learned friend has made. On Crossrail my learned friend accepts that there was not any petition which gave a locus issue. Those petitions accepted include a Save Britain's Heritage and the Ramblers Association, so national bodies were allowed to be heard. In terms of our representations, we make clear in the petition at paragraphs 60, 61 and 66 that we are representing people who are directly affected and areas that are concerned. My learned friend referred to the High Speed 2 judicial review. The context of that

argument was an argument from the Secretary of State that because High Speed 2 Action Alliance had been involved in compensation, there was no need to worry about anybody else being involved. The point was made, “Yes, Action Alliance has an important role there but so do those individuals themselves being able to do it.”

147. In terms of procedure, the Development Consent Order process that my learned friend referred to for major infrastructure projects does have oral hearings on issue-specific matters at which, undoubtedly, a body of this nature, Action Alliance, would be allowed to be heard in addition to those who are directly losing land in that process. And, of course, the Select Committee does not have a written representation procedure. You are either heard as a petitioner or you are not heard by the Committee. But can I go perhaps to the crux of these points, my learned friend’s arguments about gap? The Secretary of State has not sought to demonstrate that the matters which we raise are matters that are covered by other petitions and, as Sir Peter pointed out from the Camden Cutting letter, many petitioners have been very careful about ---

148. SIR PETER BOTTOMLEY: I pointed that out neutrally.

149. MR HARWOOD: Neutrally in terms of drawing attention to the letter, and I point out that Camden Cuttings has made the point that many petitioners have left the route-wide topics, which are of concern to them and which provide potential solutions to their problems and to their concerns, to the route-wide body. What this process is about is enabling the marshalling of the issues in front of the Committee in the most effective fashion.

150. The Secretary of State’s position seems to be, contrary to any impression that might have been given by the locus challenge, that they would like to see the back of HS2 Action Alliance, but my learned friend says they would like to see an awful lot of us turning up here, there and everywhere for petitioners up and down the route. Now, that misses a couple of points which, with respect to my learned friend, are quite obvious. One of those is that those petitioners are in charge of their petitions. They are putting in the points they want to do and deciding how to do it. Secondly, they are only able to put the points which they put in their petitions. They are not able to put other

points, and thirdly and perhaps most critically, the fact that particular individual petitioners are raising issues is not a reason for shutting out a body which is best able to help on the route-wide topics and some of the big issues and to put those forward. The idea that those issues are best addressed through the individual, Mr and Mrs Smith type objections within the working of their petition rather than taken as a cogent whole is really not sensible and not helpful to the Committee. It also seems to presuppose that HS2 Action Alliance has masses of resources that we are able to offer experts to petitioners up and down the route, offer advocates to people up and down the route and that really we are as well-resourced as the massed ranks which my learned friend has behind him. We are not, remotely.

151. We are focusing on the big issues which are directly concerned and which provide solutions to this Committee and to those who are troubled by this process. We intend to deal with that in a precise, clear fashion to help the Committee to do it and we are best placed in respect of those to achieve those particular points. The idea that those issues are best dealt with by scattering the representation and requiring the Action Alliance implicitly or explicitly to put a huge amount of resources behind other people's cases really is not one that is helpful. It is not sensible. It does not accord with locus standi and what this Committee is about. It does not accord with the directive.

152. So, for those reasons we ought to be granted locus and be able to take the points which we have taken. In terms of costs, of course it is a Select Committee. There is no rule stopping a Select Committee awarding costs and the Select Committee may have an eye as to why the Secretary of State is so keen to hear us. We have been put to so much trouble trying to defend our right to do so. Sir, unless I can help any further, those are the submissions I wish to make.

153. CHAIR: Thank you very much. I commend both barristers for sticking to the arguments and not waffling around, which is always a worry. We will give our decision on Thursday, 17 July. We will adjourn now until two o'clock when we will hear a further petition on locus standi from Stop HS2.