

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL SELECT COMMITTEE

PETITIONS AGAINST THE BILL

Monday, 10 July 2023 (Afternoon)

In Committee Room 8

A video of the proceedings can be found [here](#).

PRESENT:

Andrew Percy (Chair)

Dr Lisa Cameron

Grahame Morris

Martin Vickers

FOR THE PROMOTER:

Timothy Mould KC, Lead Counsel, Department for Transport

Exhibits referred to by the promoter during the hearing with Nation Farmers' Union can be found visiting ([Part 1](#)) and ([Part 2](#)).

FOR THE PETITIONER:

1. National Farmers' Union

- James Findlay KC
- Louise Staples

Exhibits referred to by the petitioner during the hearing can be found visiting ([Part 1](#)) and ([Part 2](#)).

IN PUBLIC SESSION

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(At 4.20 p.m.)

1. THE CHAIR: Good afternoon. Welcome to this afternoon's session of the High Speed Rail Hybrid Bill Select Committee. Today we're going to be hearing from the National Farmers' Union, who last appeared before us in May. We hope, in the time away from this Committee, that the petitioner and the promoter have managed to resolve some of their outstanding issues.

2. A number of petitioners raising issues of relevance to the farming community have managed to settle many of the points outlined in their petitions through discussions with the promoter but there are, of course, some unresolved matters. As the views of these petitioners align with the asks of the NFU, these petitioners have decided not to appear before us this afternoon but to allow the NFU to represent their views on these issues. It's important to put this on the record, so these petitioners are Tracey Silcock, Peter and Nicola Darlington, HAE Bloor, James David Sinclair, Stan Jennings and Sons, JR Edge, AJ and GM Stubbs, C and S Fitton and Son, TL Sherwin Ltd, N Fryer and Son, Marjorie May Mason Will Trust and Hague Partners.

3. As usual, I'd like to remind to those petitioners to be clear and concise in your representations to the Committee, and to focus on what the outstanding issues are and what your specific asks of the Committee or the promoter are this afternoon. We do not need excessive background or commentary. It is better for you to be clear on what you are actually seeking our decision on.

4. We are sitting until 7.00 pm today and must leave time for the promoter, of course, to respond. So with those gentle reminders, I'll pass over to Mr Findlay.

National Farmers' Union

5. MR FINDLAY KC: Thank you. Could I have slide A107(12), please? Sir, just to let you know, I thought I'd pick up on your words about what's happened since the last time very briefly, then refer to outstanding issues, outstanding objections, and then we have about seven fairly discrete issues for you this afternoon. We both hope that we'll be finished by 7.00, if not before and won't need tomorrow.

6. This is the end of our last appearance before you, and you'll see that we were discussing GVDs and Mr Mould, my learned friend, was saying, 'Heaven forbid we

have to come back on this, we know where we're going to start next time'. He suspected you would say, 'Please don't start with this one'. Well, I will start with it but only to tell you that it has been agreed, so it's not coming back before you. Well, I say that and I put this slide up for two reasons, firstly to acknowledge both the input of my learned friend but also HS2 in their constructive approach to discussions we've had since then – obviously constructive, we consider, on both sides but it has led to significant areas of resolution.

7. As part of that, you'll recall some spirited discussion on environmental mitigation, biodiversity net gain and utilities, and satisfactory assurances have been given in respect of both of those matters, so they need not come back before you as well.

8. There was one issue that remains outstanding from last time which we didn't reach agreement on and there was no suggestion we were going to; that's inappropriate use of CPO powers. I do have three shortish issues to raise in respect to that.

9. One of our asks was drafted obscurely, which you may not recall, but Mr Mould and you read it in a different way than we intended, so if I can have slide 107(8), please. We've simply redrafted the ask to make it absolutely clear what we're seeking. It was a timing point.

10. This comes under the heading of, 'More design before you issue your GVD notices' and just looking at it, it's, 'No compulsory powers (whether either GVDs or notice to treat) may be exercised in the first two years unless detailed design has been completed,' etc, etc. Likewise, after that two-year period, that's ask 2, 'No GVD may be made at any time after the two-year period unless a detailed design stage has been completed,' and (b) and (c) – I won't read them out in full, but it's just to make that clear.

11. Our point is detailed design or some element of it before GVD. We had referred to previous assurances in this regard, and if I can briefly add 107(5), this is an extract of what we were offered last time – I'm not going to talk you through it; I'm not intending to reopen the issue – and 107(7), which is the current position on it. So, there is a recognition of interaction between detailed design before requiring possession in those documents, but there's a dispute between the parties as to the extent of that.

12. The only new thing I wished to add was ask Ms Staples, who's appearing virtually – I should've informed you she's tested negative today, but she still can't appear; I think the current guidance is five days after you've last tested positive – to bring you up to speed on what's been happening since. You recall, I think shortly before we appeared on the last occasion, there was a two-year moratorium, or an announcement of a two-year delay, and it's whether that's had an impact and the amount of interaction with farmers and HS2 in the meantime. If I can briefly ask Ms Staples to deal with that.

13. MS STAPLES: Thank you. It's Louise Staples here. Just to explain, since the delay has been announced, what we've seen on farm is that further negotiations have been taking place and that is exactly what we want to see when we're asking for a further two years of a detailed design stage before any GVDs are served. The delay in one way is now enabling this to happen on 2A, which hadn't happened before. Thank you.

14. MR FINDLAY KC: That was the only short point I wanted to make. Unless my learned friend – I don't wish to shut him out – or you have any questions, I was going to move on.

15. THE CHAIR: No, I'm fine. Mr Mould, did you have any?

16. MR MOULD KC (DfT): Well, I was just going to make one point if I may whilst it's fresh in your minds. A107(5), which was an assurance offered to the National Farmers' Union on the Phase 2A Bill, that is now reflected in paragraph 22.4 in the farmers and growers guide for this Bill, and the assurance that commits the promoter to fulfil that assurance in its current form in the farmers and growers guide is the assurance which I drew your attention in the letter of 4 May 2023, which is at P309(3). I just show that because it may be there's not very much between us on this point, in fact.

17. If you look at paragraph 1.3 on that page, 'Subject to paragraph 1.4, the promoter will use reasonable endeavours to reach agreement with an agricultural rural business owner to give effect to any of the specific arrangements set out in paragraphs 22.1 to 22.11 of part 3 of the farmers and growers guide'. The conditions are then set out at paragraph 1.4 and there's nothing, I think, controversial about those.

18. Although the assurance is not given in the same form as it was in the Phase 2A

Bill, in substance the same assurance has been given through the route that I've just described to you, and what it basically means is that, at least between now and Royal Assent, there is time in which the promoter and the National Farmers' Union, and their members, are able to go forward with negotiations under the aegis of this assurance in relation to any of those matters that are set out in paragraph 22 of the farmers and growers guide. Indeed, as you don't know particularly because they haven't come before you, we've managed to reach agreement in relation to a number of those scenarios with individual farm petitioners with whom we've settled in petitions that were made to your Committee. So, it is something that is happening in practice.

19. I just thought I'd mention that, because I do wonder whether in practice there is a great deal between us on the need to get on between now and powers becoming available on enactment of this Bill to see where we can find ways of limiting the amount of permanent land take in relation to farmers and farm land.

20. THE CHAIR: Just so I'm clear on this, the difference between the two is – Mr Findlay, you're seeking this two-year.

21. MR FINDLAY KC: Unless there's been a detailed design stage then no exercise of GVD powers at all. I am glad my learned friend accepts there's a narrowing of difference between us but to sum up Ms Staples' evidence on the last occasion, it was that our experience has been GVDs have been issued before detailed design has been undertaken. Indeed, that's what HS2's policy appeared to be and that leads to more land being acquired than is necessary, with adverse consequences.

22. Our request is that they do the detailed – or at least a stage of detailed design before they issue GVDs. What my learned friend, Mr Mould, has quite rightly pointed to is steps in that direction that were obtained on the last occasion, but NFU's experience is that those assurances did not go far enough to prevent the issues that arose.

23. THE CHAIR: In this period between now and Royal Assent where these discussions are already taking place, there won't be detailed design at this point – during that period for obvious reasons. But your contention, Mr Mould, is the effect is the same because the time we have until Royal Assent will allow this to be –

24. MR MOULD KC (DfT): The issue between the parties is this, I think: the NFU

say that the Committee should direct that the Secretary of State's powers of compulsory purchase, which will become available to him on enactment of this Bill, should be constrained for a period of at least two years. In effect, he shouldn't be able to exercise the undoubted power that exists under the Compulsory Purchase (Vesting Declarations) Act 1981, which is there to enable compulsory purchase powers to be used to assemble extensive and complex land assembly for a scheme.

25. We say that, as you heard last time, that would be disproportionate.

26. THE CHAIR: I will bring you in in a moment, Ms Staples. I can see you trying to come in. Don't worry, just so you don't have to keep your hand up.

27. MR MOULD KC (DfT): We say that would be a disproportionate constraint on the Secretary of State's powers in relation to this scheme. What we say instead is that the arrangements that are set out in section 22 of the farmers and growers guide, backed by the assurance I've draw to your attention from 4 May, provide a list of scenarios in which the promoter and the NFU, and its members, are able to discuss and to reach agreement that, in relation to certain land, we can take the view now that it's not required for more than construction works. We can take the view that other land, although it's required for some permanent purposes, those purposes can be assured by the grant of a right rather than full acquisition.

28. There's a menu of scenarios that are available for consideration now, and will continue to be available after Royal Assent as well.

29. THE CHAIR: The Secretary of State would be restrained for two years unless there was a detailed design.

30. MR MOULD KC (DfT): On the NFU's case, yes.

31. THE CHAIR: When is the detailed design – what's the timeframe for that normally? Would it be within that two-year period normally?

32. MR MOULD KC (DfT): No, it may well extend significantly beyond that. Yes, the experience on previous phases is that it's taken considerably longer than two years to fulfil. To be constrained on the ability to exercise land assembly powers whilst that process is going on would be practically highly difficult for the delivery of the railway;

that's our case.

33. THE CHAIR: What counts as detailed design stage? Is that all necessary permissions under the schedule 17 applications to local authority?

34. MR MOULD KC (DfT): That's part of it but it involves everything that is required in order to produce detailed construction planning for the railway, so all of the design of the permanent features, the arrangements for the establishment of construction camps, worksites, the arrangements for how the permanent way is going to be constructed, how the engineering is going to be addressed. The Bill sets out the broad framework for that and takes the powers that are required to enable that to be delivered without further consent being sought in terms of land acquisition. The Bill certainly contemplates a very extensive prolonged process of detailed design encompassing matters that I've just summarised but many other matters as well.

35. I'm going over ground that I covered last time to a degree but the issue still remains as to whether it's justified to limit the Secretary of State to land acquisition and land assembly in the way that is proposed. As I understand it, what is being said is, if the Secretary of State wishes to resort to acquiring plots of land by way of the notice to treat and notice of entry procedure under the Compulsory Purchase Act, that wouldn't be caught by this, but we're talking about literally tens of thousands of land plots here. The vesting declaration procedure is clearly the appropriate way of exercising compulsory purchase powers for a scheme of this kind, so I think that's a red herring really, the suggestion that we could resort to the Compulsory Purchase Act.

36. THE CHAIR: Ms Staples.

37. MS STAPLES: Thank you. It was just to explain that we really are only asking for a first design stage. We saw multiple different design stages on Phase One, so I think that is possible.

38. Just to explain further what's been happening on Phase 2A, we had those assurances that Mr Mould is referring to, as in paragraphs 22.1 to 22.11, on 2A and HS2 just did not follow those. So, what we've now just seen, because of the two-year delay that's been announced by Government, HS2 are now entering detailed discussions which are needed to actually solve the problems that are being faced by farm businesses

but they've only just entered into those. What I'm trying to say is, that is what is needed to happen at the beginning of 2B and I don't think we will see that before Royal Assent unless we get some type of assurance that is going to guarantee that before Royal Assent or that something happens in either the first year or second year before they're allowed to start serving GVDs. Thank you.

39. THE CHAIR: Thank you.

40. MR FINDLAY KC: Can I finish that off by going back to our slide at A107(8)? You'll see that in subparagraph (a) we say, 'A detailed design stage has been completed'. We're certainly not suggesting that there needs to be the level of detail that my learned friend was referring to and we don't pretend that that is necessarily the right language.

41. What we are aiming at is what Ms Staples has just said, that someone should have given a level of thought to detailed design before a GVD is issued rather than just issuing it on making sure that they have all the land that could possibly be necessary; that's the issue between the parties.

42. THE CHAIR: Okay.

43. MR FINDLAY KC: Moving on from that, there are three outstanding issues that will remain outstanding. They are paragraphs 25 to 27 in our objection. They relate to assurances and enforcement of assurances. There has been recent progress on this between the parties and it's primarily coming down to having a practical scheme to enforce assurances for farmers because the way one formally would enforce assurance is to bring something before the House itself, which is obviously unnecessary.

44. The bones of a proposal were put forward recently; both parties agree that further work needs to be done on detail and implementation, so that we're not going to ask you to look at that this evening. We simply hope that – we hope we don't have to come back on it, but if the Committee's still sitting, we would like to reserve the ability to do so if we don't reach agreement. If not, we might have to go to another place.

45. Further detail is promised by autumn, which we hope means September not November. Hopefully, that's something you will not be bothered with but I need to

point out that that issue will remain.

46. Outstanding objections brings us to the primary business of the afternoon. We have made much progress in whittling down the number of outstanding objections. The matters you are going to hear aren't perhaps broad issues of principle akin to those which you heard on the first occasion; they are more akin to practical issues as to how the scheme would be implemented and a number of short – we hope – reasonably sharp points to detail with that. I think we have seven or so to deal with this afternoon.

47. The first deals with severance and accommodation crossings. Could I have slide A54(52), please, and then we'll go back to (51)? This is, by way of background, dealing with the point, I think one of the examples we discussed last time, where a farmer's farm is severed by the temporary or permanent works; how is his access going to be maintained if appropriate in the meantime?

48. A54(52) was seeking futureproofing; we're no longer pursuing that. Our ask is on A54(51). So A54(51) is, 'The promoter should be required to provide an assurance that, in designing and undertaking the authorised works, the nominated undertaker will ensure, if requested by the owner or farmer, in a case where agricultural land will be severed by the authorised works, a suitable temporary crossing for agricultural use during the construction period by the owner and occupier of the agricultural land will be put in place before the land in question is severed and thereafter will be available for use at all times by the owner and occupier until, where appropriate, a permanent accommodation is available for use'.

49. I was going to ask Ms Staples to give you some examples to explain this.

50. MS STAPLES: Thank you. Please could we go to slide 54(48)? Hopefully you will actually recognise this slide; this was a slide we used a lot when we last presented to you. You'll see the pink strip again, which we believe might be a haul road, but actually, this is showing that that pink highlighted strip at the moment will sever a block of grassland which is on a dairy farm, and that is where we want to see that a temporary access is provided at all times. That's just an example of what can be happening on a farm.

51. If we could go to slide 54(50). This is again another farm, called Wrinehill Hall

Farm. This is where actually the farm has been severed, or will be severed, by the railway line itself and the railway line causes 168 acres to be severed. They were given an assurance for a bridge but actually were then told with six months to go that the bridge wouldn't be able to be built until the end of construction.

52. We're asking here again that some form of temporary access on these types of scenarios needs to be given to farm businesses to help them maintain their business throughout construction due to the construction time being such a long length of term.

53. Could I go back to slide 54(49)? Again, this is a similar scenario where this is Snape Hall Farm. Again, it has the railway line going through the middle and, again, about 100 acres have been severed. Here, this farm was given an assurance for an underpass but, again, has been told the underpass can't be built until the end of construction.

54. Again, this is a dairy farm and so to be able to continue the business without being able to temporarily go across the railway line really will be very difficult. It's these types of scenarios that we're trying to ask that a temporary access is maintained so that these farm businesses can continued and continue to be viable during the construction phase. Thank you.

55. THE CHAIR: Thank you.

56. MR FINDLAY KC: Three further points on that before I pass over to my learned friend. First, I can deal with. Can I have slide P624(1), please? There has been debate about all of these points; I think the parties are reasonably well aware of where the other side is coming from and one of the other points raised by HS2 is the Railways Clauses Consolidation Act 1845.

57. The relevance of that, as I understand, to this point is in the second paragraph: 'Such and so many convenient gates, culverts, passages over the railway or under the railway as shall be necessary for making good any interruptions caused by the railway to the use of lands through which the railway shall be made and such works shall be made forthwith' – and it's the timing point that's important – 'after the part of the railway passing over such lands has been laid out' – and just pausing there, you can see that wouldn't help on temporary works – 'or during the formation thereof,' which would

deal with temporary, but the promoter is given the option. There is no requirement to do it during the formation thereof.

58. Whilst there may be some relevance to the 1845 Act section 68, it doesn't, in our submission, meet Ms Staples' point because there's no requirement on the promoter to do anything during the formation of the railway line, and it's during the formation which is the issue.

59. The second issue to raise is in terms of caveats. If we go back to our slide A54(51), which is our ask, it is in absolute terms. Now, Ms Staples, if the only access was required from, say, a large farm to a one-acre field for sake of argument, is that something that the NFU would seek to insist upon?

60. MS STAPLES: No, that's not something we wouldn't insist on. We can quite understand that that just would not be necessary.

61. MR FINDLAY KC: Is that something that you consider being capable of being dealt with my drafting, if necessary?

62. MS STAPLES: Yes, we hope so.

63. MR FINDLAY KC: Then there may be cases where a haul road is being used or you have to be doing works to a haul road which might block an access temporarily; again, is that a matter of principle or a matter of drafting as far as you're concerned?

64. MS STAPLES: I think that's a matter of drafting and we have seen that on an assurance that's been given to one of the landowners on 2B, so we do think that's perfectly possible.

65. MR FINDLAY KC: If there was, for instance, an example where the gap that had to be bridged between the two parts of the farm was really very large indeed, again, is that the sort of exceptional case that could be dealt with by way of a drafting exclusion?

66. MS STAPLES: Yes, we would like to be able to see it being drafted.

67. MR FINDLAY KC: Thank you. But the principle of approach that we are seeking, sir, is the one set out in the slide before you at the moment. Unless you have any questions for myself or Ms Staples, I'll pass over to Mr Mould.

68. MR MOULD KC (DfT): I don't have any questions.

69. MR FINDLAY KC: No, if the Chair has any questions.

70. THE CHAIR: And then we'll have Mr Mould respond. Yes, I think it's better if we do it issue by issue. Any members any questions? I suppose my only question is, it's quite a strong request in terms of there must be, and then there's all these exceptions which come into play, which does mean it potentially gets quite messy in how you draft that.

71. Presumably, if there was a temporary crossing which is about to be made permanent, there could be a gap in that couldn't there, as well? Which would be not unreasonable to say that your temporary access will have to be closed whilst the completion of the permanent access. It could potentially be impossible to keep the temporary access open whilst –

72. MR FINDLAY KC: I'll let Ms Staples answer.

73. MS STAPLES: Really it was just to say that a lot of temporary accesses never actually are in the place where the permanent crossing is going to be built. We understand that and we see on a lot of infrastructure schemes that temporary accesses do not even stay in the same place, so even a temporary access can be built and rebuilt in a different place to allow a farmer to have access across whatever is being built.

74. THE CHAIR: The request is that the temporary access must be on the land that the farmer owns to the land the farmer owns, as opposed to then having to go round via some other route to gain access. If there is another access anyway but it requires going offsite on a road round, however, you wouldn't consider that as an appropriate way of accessing the land. The question is to you, Ms Staples so you don't need to put your hand up.

75. MS STAPLES: They are trying to look at that as a possibility on some of the farms that are affected on 2A but actually, the big problem is that some of those routes are too long, too time-consuming, not that easy. Some then end up going over third-party land. It's not that straightforward to do those types of routes.

76. Can I just say that the assurance that we've seen that has been given, some of the

exceptions are that interference is allowed for six hours, so it would be that type of drafting that we were saying we would be quite willing to see, so some exceptions like that.

77. THE CHAIR: Right, okay. Thank you. Anything else, Mr Findlay, from your –

78. MR FINDLAY KC: Not at this stage.

79. THE CHAIR: Mr Mould.

80. MR MOULD KC (DfT): Can I just put up the published policy commitment, which is at P318(14)? This is in information paper C2, which is dealing with rural landowners and occupiers. The published commitment, which is a registered assurance, you can see at paragraph 11.5, just at the top of that page, ‘During construction, the nominated undertaker will maintain access to the rural landowners’ land where reasonably practicable and where necessary under controlled conditions without prejudice to the landowner’s rights to maintain disturbance compensation’.

81. That is, in fact, as I understand it, the arrangement that the NFU are saying would be acceptable to them because what that acknowledges is that the objectives should be in every case to seek to maintain access but a recognition that there will be cases, because of the scale of the works going on, on the land that is taken for the railway, whatever it may be, where that isn’t going to be a reasonably practical possibility.

82. It acknowledges that it may be possible to use controlled conditions, so it may be possible to provide access only at certain times of the day and so forth, but it also acknowledges that there will be cases where – Ms Staples keeps putting her hand up – I think this is a case of me responding, isn’t it?

83. THE CHAIR: Yes, it is. Ms Staples, it’s Mr Mould responding at the moment. I wish when I was a teacher everybody put their hands up like this; you’re a perfect pupil. I’ll come back to you at the end of Mr Mould’s response, if that’s alright, Ms Staples.

84. MR MOULD KC (DfT): Recognition that, with a project of this scale, where the construction corridor, as you can imagine, is of the scale it is – let’s just put up A54(50), which was the farm at Whitmore Heath in Staffordshire. You can see the red line of the farm; you can see the railway is being constructed directly through the middle of that

farm and you can see the scale of construction works from what's shown on the plan there, a mixture of cutting, of embankment, of viaduct and so on.

85. It's going to be a huge corridor of construction between the two sides of the farm and there will be cases, of which this may be an example, where it simply isn't practicable to maintain access from one side of the farm to the other through that huge construction corridor. In those cases, it may be that one does have to fall back, to some degree, on the payment of financial compensation, which is what the paragraph in the information paper C2 refers you to.

86. Any profits lost as a result of severance of that kind during construction is recoverable by way of compensation under the land compensation code. If, heaven forbid, a farm was unable to continue because of severance of this kind during construction, then the business as a going concern would be compensatable, but nobody is suggesting that that's an acceptable solution.

87. Mr Eckett reminded me, before we started, of a case a little further to the south on the Phase 2A railway where some dairy farmers called Smith and HS2 negotiated in the context of a petition of theirs and came to an arrangement under which, effectively, the farm was reorganised at the cost of the promoter in order to enable the cattle farming business to continue on one side of the severed farm.

88. All of that under the aegis of that policy commitment that I showed you at paragraph 11.5 of information paper C2. Really, that's the nub of it, so far as we're concerned. We think if you compare that approach, which leaves matters to be addressed on a case-by-case basis, but imposes an obligation on the promoter because they're told that where it's reasonably practicable to do so, including consideration of controlled conditions, then the promoter is committed to maintaining access.

89. That's a more straightforward and realistic approach than the one that the NFU now seems to be moving towards, where you have a much more hard-edged commitment which is actually unachievable in some cases, and then you try and carve out particular examples of cases where you're saying, 'Well, no, we accept we can't do it'. This is the right way to deal with this, in my submission.

90. It recognises the inescapable truth, which is this: if there is a case, as there may be

– and perhaps the case on the screen in front of you is an example, of that – if there is a case where using all reasonably practicable methods the nominated undertaker or the promoter and the farmer are unable to find a way of maintaining access throughout the construction period because of the sheer scale of the works, then I’m afraid, in our submission, the needs of the railway have to prevail because this is a national project and this is where the law says, if we get to that stage, the needs of the railway must prevail and the affected landowner, unpalatable though it may be, is left with their claim in compensation; they are left with their losses being made good through the compensation code.

91. That’s the balance that underlies this case, this part of the petition, and paragraph 11.5 strikes that balance.

92. The point about timing, again, that’s covered by this paragraph because the obligation of maintaining access where reasonably practicable will embrace considerations of whether a proposed permanent underpass or overbridge, whatever it may be, can be provided at an earlier stage but you can readily see, if one’s engaged in a major piece of civil engineering work and part of that work, be it an embankment or a viaduct, whatever it maybe, involves providing an underpass to accommodate cattle crossing, you can’t allow that to be the driving consideration in the timing; you’ve got to build your embankment.

93. You can imagine there will be cases where the provision of the actual underpass is going to come relatively late in the process. That’s not something on which one needs to take a one-size-fits-all approach. Again, it can be dealt with on a case-by-case basis under the aegis of this paragraph.

94. The final point is that, actually, the Railway Clauses Consolidation Act doesn’t actually bear directly on this particular point. If we just go back to P624(1), I raised that with the petitioners before the hearing but that was more in the context of a point they’re going to raise later about drainage, I think.

95. That second paragraph on the screen in front of you, beginning with the word ‘such’ and going on to the words ‘formation thereof’, that paragraph actually is disapplied in this Bill; that’s dealt with under one of the schedules to the Bill. Paragraph 11.5 of information paper C2 is the promoter’s policy commitment in relation to the

maintenance of access.

96. THE CHAIR: Could we just have the policy up again, please?

97. MR MOULD KC (DfT): Yes, P318(14).

98. THE CHAIR: The compensation is paid under which scheme or which –

99. MR MOULD KC (DfT): Under the main Land Compensation Act, which is the Land Compensation Act 1961. It's rule 6 of the land compensation rules, which preserves the right to receive compensation for disturbance. If your business, in this case agricultural business, is temporarily disturbed, affected by severance of your holding and as a result, for a period of four years, you suffer a 40% drop in your profits whilst that severance is in existence, you're entitled to claim that by way of disturbance compensation.

100. THE CHAIR: If there was a different route to that severed land, would that compensation still kick in?

101. MR MOULD KC (DfT): The availability of a different route would be a factor which would need to be considered, because anybody who claims compensation for disturbance resulting from compulsory purchase and public works is required – to use the lawyer's language – to mitigate their loss. In other words, you've got to take reasonable steps to try and find a way of avoiding the loss that you're claiming.

102. If it would be a perfectly reasonable thing for the farmer to drive his or her combine harvester around that alternative route, then they might find that that was something that would be taken into account in assessing whether their claim was reasonable. If they're talking about driving a herd of cattle along a busy road for two miles, then that would probably not be considered something that they ought reasonably be expected to do in order to. So, if they claim for a significant fall in the turnover of their dairy business as a result of having to reduce the size of their herd or to accommodate their herd on a remote series of fields which makes it more inefficient to produce the milk, then, prima facie, that would be a loss that would be recoverable in compensation.

103. THE CHAIR: I'm just reading this again then. This is the HS2 policy.

104. MR MOULD KC (DfT): Yes. Mr Findlay said they can't find it on the register.

105. MR FINDLAY KC: We've found it.

106. MR MOULD KC (DfT): Oh, you have.

107. MR FINDLAY KC: It's been renumbered.

108. MR MOULD KC (DfT): I was going to say if it isn't on the register, it should be, because it's clearly a registrable commitment.

109. MR FINDLAY KC: No, it was renumbered.

110. MR MOULD KC (DfT): Good, thank you.

111. THE CHAIR: It comes down to this issue of reasonably practicable, doesn't it?

112. MR MOULD KC (DfT): To try and carve out that into little subcategories, or do you say for the purposes of a policy commitment that's a sufficient safeguard for the promoter but it also provides an obligation on the promoter because, unless the promoter can show that it isn't reasonably practicable to achieve, to maintain access, then their obligation is to do so?

113. THE CHAIR: What's the difference between, say, reasonably practicable and except in extreme circumstances?

114. MR MOULD KC (DfT): Extreme circumstances is – well, the honest answer is, I don't know.

115. THE CHAIR: Let's say exceptional, not extreme, exceptional circumstances; except in exceptional circumstances.

116. MR MOULD KC (DfT): Well, the phrase 'exceptional circumstances' begs the question exceptional to what? Reasonable practicality is a very familiar phrase in this legal context, and it basically entails a balance between the cost and burden of doing something and the advantage and desirability of achieving the objective that the thing is intended to do. It provides the balance between cost and benefit that is inherent in this field of legislation or, in this case, attendant policy commitments.

117. THE CHAIR: I think most people would – given this project is going to sever people's land – probably think best effort should be made to maintain access. I'm just trying to work out whether 'reasonably practicable' is as strong a commitment as 'best efforts' or –

118. MR MOULD KC (DfT): There is a thing called 'best endeavours' but that is something which is very, very rarely used. Certainly, it's something that I would resist because that implies money no object. If you start having 130 farmers with the benefit of best endeavours to maintain access during the 10 years of construction of a huge railway corridor along their route, you're going to very quickly load very significant additional capital costs on what is already a very significant burden on the public purse.

119. That burden is likely to be considerably greater than the burden of compensating those farmers for whom we haven't, in the exercise of reasonable practical efforts, been able to maintain access.

120. Bear in mind, this isn't about the permanent position; this is the temporary situation. We've got much firmer commitments in relation to permanent provision.

121. THE CHAIR: Okay. Anything more from you on this point, Mr Mould?

122. MR MOULD KC (DfT): No. That's where the balance lies really.

123. THE CHAIR: Mr Findlay.

124. MR FINDLAY KC: I'll ask Ms Staples first.

125. THE CHAIR: Ms Staples, yes, of course.

126. MS STAPLES: Thank you. Just to explain further as to what's been happening on 2A, I would like to say there's been no effort made by HS2 to be reasonably practicable and use controlled conditions.

127. They gave those assurances for the bridge and underpass and just left it. Suddenly said six months ago, 'Sorry, we're not going to build it till the end of construction'. Since then, we have been asking for some temporary access and to give a further example, in March we went back and said, 'Okay, we completely understand that perhaps moving dairy cows across a temporary access, across such a big construction

site, is completely unreasonable, but what would be reasonable is to ask for vehicle access at, say, silage time or harvest time for a set period.

128. That hasn't been considered at all, so I do not see why that does not fall into being reasonably practicable and under controlled conditions. It's that type of scenario where we would like to see HS2 being more proactive to try and keep access, even on a temporary basis – because construction is such a long time – so these businesses can be maintained. It is absolutely impossible, especially if you're losing 168 acres of grass, especially on that dairy farm with that many cows, you can't just find another block of land that big where you can go and silage and get that grass to that farm. So just to say it can go and have a disturbance compensation doesn't work practically in these scenarios. Thank you.

129. THE CHAIR: Mr Mould is now starting to put his hand up, so Mr Mould.

130. MR MOULD KC (DfT): If there's a pattern emerging of evidence being given about alleged bad practice on the part of the project, I simply am not in a position to respond.

131. THE CHAIR: No, no, I understand that.

132. MR MOULD KC (DfT): But what I'm asking you here to think about is what the framework of commitments ought to be.

133. THE CHAIR: Okay. Alright. Mr Findlay, you've got your hand up.

134. MR FINDLAY KC: You asked Mr Mould about best endeavours and I understand his response to that, but the use of reasonable endeavours, it may actually imply more than just reasonable practicability, because if there was an obligation on HS2 to use reasonable endeavours to maintain access, then that would place some greater onus on them than there is under the current policy statement here. I maintain our position, but as a fallback, I would suggest there should be a requirement for reasonable endeavours.

135. THE CHAIR: Mr Mould's view on 'reasonable' versus 'best'.

136. MR MOULD KC (DfT): I suspect if the negotiation hereafter is as to whether the

words ‘where reasonably practicable’ should be replaced by ‘the undertaker will use reasonable endeavours to maintain access’, I suspect there may be little between us.

137. THE CHAIR: Right.

138. MR FINDLAY KC: Well I hope that – I’m grateful for Mr Mould for putting that forward. Unless Ms Staples wishes to add anything at this stage, we’ll move on to the next one and we’ll park that one and hopefully that can be dealt with.

139. THE CHAIR: Everybody’s been very reasonable, which is –

140. MR FINDLAY KC: Well, we’ll do our best to change but –

141. MR MOULD KC (DfT): Speak for yourself.

142. THE CHAIR: The name of my political policy, ‘Reasonableness Party’, I think. Who can be against that?

143. MR VICKERS: Unreasonable people.

144. THE CHAIR: Unreasonable people, yes, that’s true. There are a lot in this place. Mr Findlay.

145. MR FINDLAY KC: The next one is use of roads, and it’s a fairly short point and I think can be best demonstrated if I take you to slide P626(7). This is about private roads during both construction phase and operational phase. One can see, at paragraph 22.4, the black lettering is what HS2 has offered and it covers existing access roads to a farm building during construction access.

146. The indicators you can read that they’re prepared to limit their exercise of compulsory purchase powers over the main access road and any adjacent land, and would use powers of temporary accommodation or powers to acquire rights. If you have an existing farm access, they will not seek to compulsorily purchase it, if it’s needed for construction access; they will rely on temporary occupation powers or acquire rights.

147. Our first ask is that that should cover both, not only construction access, but operational access. If you need a road to get to the line from time to time for inspection

duties and the like, whatever, that should be capable of being dealt with under the same – clearly not under temporarily occupation – but under acquiring rights.

148. Then 22.5 goes to if, instead of the existing access road is being used, a new or replacement access road needs to be provided and is seeking to have the same thing, so that is the ask. It's been matured from where it started off.

149. THE CHAIR: Can I just – before you move on – if, in this situation, the powers are used to acquire rights, presumably that still allows the farmer to use that road to access land or do they lose.

150. MR FINDLAY KC: The rights that should be acquired should effectively allow for joint use of the road.

151. THE CHAIR: Yes, sorry, yes, because there's no – right, yes. If it's for permanent use, then it would be compulsorily purchased and the farmer would continue to have access rights over that, or is this what –

152. MR FINDLAY KC: That's the point. The point of the assurance that has been offered by HS2 in black writing is that, on an existing farm road, if the only HS2 needs to use that road is for construction purposes, then they will seek to either take powers of temporary occupation or acquire rights over it.

153. THE CHAIR: You've no issue with that; it's where it's permanent.

154. MR FINDLAY KC: It's where it's permanent use after construction and if the old access road – no doubt because of design reasons – needs to be replaced, then a similar approach should be taken in respect of that. I was going to ask Ms Staples if she could turn to slide A54(42) just to give you – I hope it's the correct slide – just to give you an example. And if she wishes to add anything about the ask or the experience, then I will ask her to do that too.

155. MS STAPLES: Thank you. As you can see there the old green dotted line is the old driveway and then where the blue arrow points to is a new driveway that is to be built. That land there on this scenario, on Phase One, has been acquired rather than just the rights taken. We're being told that the land has been acquired because HS2 needs to be able to reach a pumping station. Just below where the little arrow that you're

pointing with at the moment is, there's a little square; that we understand is the pumping station.

156. We are saying it really is not necessary to have acquired that land. You could just – or you could acquire the land then give that land back and just keep rights to be able to go and maintain – do any maintenance that's needed at that pumping station, and that is what we would normally see on infrastructure schemes.

157. The problem with also acquiring that land is that you devalue that farm, because now the ownership of that main driveway to that main farm is owned by HS2 instead of the owner of that farm.

158. THE CHAIR: She or he would still have access and would continue to have rights of access over that road that's owned by HS2, correct?

159. MS STAPLES: Yes, but it's perfectly possible to do it the other way round. Why take the ownership away from that landowner when it's not necessary and you've devalued? They come to sell that farm; HS2 have devalued it because they will have to say, 'Yes, we own our farm, here we are, we'd like to sell it, but actually I've only got rights over my main access. I don't own my own driveway'.

160. THE CHAIR: Okay.

161. MR FINDLAY KC: I said earlier that it doesn't raise an issue of principle and in fact this probably does raise a fairly stark issue of principle. Should HS2 be empowered to acquire all the land that they think they would like to or only that which is necessary? Ms Staples' point is here is it's not necessary to acquire that land if just by acquiring rights that would suffice.

162. THE CHAIR: Yes, understood. Thank you. Mr Mould.

163. MR MOULD KC (DfT): Well, the first thing I can say is that on this particular example given I am able to give some factual response. I'm told that HS2 Ltd has given a letter of comfort to the owner of the farm in this case that it will offer that ownership of that track back to the farmer. So it sounds as though a way forward to resolve that particular point is available in that case.

164. In terms of what arrangements should be made for the purposes of this particular Bill and any attendant assurances, as I understand it, there are broadly two different types of case. There's the case in which land has been acquired by – or is subject to compulsory purchased – by the Secretary of State for the purposes of a number of different construction activities, one of which is the creation of an access that will serve as the access to a farm but also serve as the access, on a permanent basis, for maintenance purposes or for inspection of the railway.

165. The second is where the access exists already and HS2 Ltd needs to make use of it during the course of the construction works, and the question then is whether that access should be acquired or whether the Secretary of State or the nominated undertaker should simply take the necessary rights to make use of it for as long as they need to do, including for permanent maintenance purposes.

166. So far as the second of those cases is concerned, Clause 14 of the Bill does provide for limited powers for the nominated undertaker to share the use of an existing access for Phase 2B purposes. It's subject to the payment of compensation for any loss that the owner or the other users of that access suffer as a result of it sharing with HS2.

167. So far as the permanent position is concerned, there is an existing paragraph in the farmers and growers guide which we can put up, R6(32), paragraph 22.10. It's one of those paragraphs that I mentioned earlier on in the hearing. If you just look at paragraph 22.10, 'Where land is required only for construction of the Phase 2B western leg, but permanent rights are required over the land, for example in respect of rights of access for inspection or for maintenance of services, the promoter or a statutory undertaker authorised by the promoter may exercise powers to permanently acquire such rights over the property but as regards the remainder of the land, the nominated undertaker will only exercise temporary powers of occupation under the Bill.

168. That, backed by the assurance of 4 May that I mentioned earlier, does contemplate that where both the temporary and the permanent requirements in relation to the railway are limited to the need to have the right of access over land, the promoter will be willing to negotiate with the affected farmer/landowner for the grant of rights, whether by agreement, or failing that in the exercise of the powers that are granted under clauses 4 and 5 of the Bill to take rights.

169. As I see it, that goes a very long way, if not fully, towards addressing the substance of the concern that's being put before you. Again, it may be the difference between us is whether one should have this arrangement, which contemplates a negotiation on a case-by-case basis. You can see that there may be examples of permanent rights of access that are far more significant in terms of the need to use them, for example permanent access for maintenance of a very large civil engineering component of the railway, and permanent access, as in the case we saw, just to get access to a pumping station.

170. So whether we have a one-size-fits-all approach, which I think is what the NFU's proposal is contemplating, or whether we have a more nuanced approach, which this commitment addresses, which is designed to be deployed on a case-by-case basis.

171. THE CHAIR: What's the difference, for example with, say, a substation? The existing farm track is used to access that. What's the difference in practical terms of HS2 owning that and HS2 simply having acquired rights of access? What's the risk of not owning the access as opposed to just having the rights?

172. MR MOULD KC (DfT): If the only permanent need so far as the railway is concerned is to get to and from that balancing pond or that pumping station from time to time during the operation of the railway, then I can't see any difference. Indeed, that would seem to fall squarely within the scope of paragraph 22.10 on the screen in front of you, so it's already covered by our guide.

173. One could imagine cases where the new access is going to be used, not only by the nominated undertaker, but also by the farmer, but there may be other parties who need to use that access because it provides access to fields that are owned by other people or to facilities that are owned by other people, so there may be a need to make arrangements for rights to third parties as well.

174. Now, that's more difficult because it may in practice be more effective for the Secretary of State to be the freehold owner of that access, and then to grant the necessary rights to those other private persons who need to use it. Those rights can be granted on a freehold basis, so to pick up on Ms Staples' point, from a legal perspective, in the scenario she mentioned, the farmer with the benefit of an easement, a permanent right of way, providing access to and from their farm granted on a freehold basis would

in legal terms be in no different position to any material degree to the farmer who owns that access as part of the farm itself.

175. I struggle to see how, from a commercial perspective, having the benefit of an easement which is granted on a freehold basis – right away on a freehold basis – for the benefit of your holding, renders your farm any less valuable as a piece of property than the case where your farm holding includes that access. It comes essentially to the same thing, I would have thought, but perhaps that is not a point we need to go down to any significant degree.

176. My basic response to this is, it's a relatively narrow point of disagreement, but actually I suggest that what the NFU are looking for here is really covered by paragraph 22.10 in the farmers and growers guide. As I say, they are able to accept the assurance that was offered on 4 May that the entirety of section 10 of this guide is available to their members to seek by way of agreement from the Secretary of State. The Secretary of State has said that he will act reasonably in negotiating with individual farmers in relation to these paragraphs.

177. THE CHAIR: Okay. Thank you. Mr Findlay, Ms Staples, just briefly respond.

178. MR FINDLAY KC: Can I just go first and then Ms Staples can follow, if she'll forgive me?

179. THE CHAIR: Yes, of course.

180. MR FINDLAY KC: Three points. If I can ask you to put back 626(7), and if we just concentrate on existing farm access, so that's 22.4, first of all. Mr Mould raised the possibility that they might be needed for what I would call third-party access, of providing access to other people. Well, that's not covered by this clause so we're not seeking to control that. So that, with respect, is a red herring.

181. The second point is that paragraph 22.10, which he referred to, it requires HS2 to give consideration, whereas 22.4, the assurance that HS2 were prepared to offer in terms of construction goes further than that, and that's no doubt why it's been offered in addition to what is already in the farmers and growers guide. It's gone further. They thought it's appropriate to do so for construction, and with respect to Mr Mould, he's

provided no rational basis for distinguishing between a road over which you need access only for construction purposes, or for operational purposes.

182. Lastly, in 22.5 the only difference in reality between 22.5 and 22.4 is, as I pointed out in opening, that this covers new accesses as opposed to existing. There is no difference in principle and there is absolutely no basis that Mr Mould has advanced as to why, if HS2 were prepared to give the undertaking for existing accesses for construction purposes, why they shouldn't give it for new accesses if it's only required for construction purposes, and alike for operational purposes? With respect to Mr Mould, in our submission, he hasn't answered the point.

183. I'll ask Ms Staples if she wishes to add anything further.

184. MS STAPLES: Thank you. I just wanted to add that, in the scenario that we talked through, we've had to raise that numerous times with HS2 to get the ownership there changed, or for the ownership to be given back.

185. I think what we're asking for is – and if 22.10 was to apply what's under the farmers and growers guide – if HS2 actually would address when there's these type of issues, then that would be acceptable. What we've seen on Phase One is you have to ask over and over again before HS2 will consider something rather than you being able to go, 'Let's look at 22.10. Can we address this?'

186. That's what – if it can be actioned, then it would be acceptable.

187. THE CHAIR: Okay. Thank you. Mr Mould have you anything further?

188. MR MOULD KC (DfT): No. I mean, on that basis, it seems that the commitment in 22.10 is acceptable but HS2 needs to do better in the future in making sure that it abides by it; it seems to be the point.

189. THE CHAIR: Thank you.

190. MR MOULD KC (DfT): And your concern, I would suggest, is with the first of those propositions.

191. MR FINDLAY KC: Well, yes, our concern goes slightly further than that. You have our concern. Listening to your urging at the advance, I'd be just repeating myself

if we went further over it. I was going to –

192. THE CHAIR: No, no, I think the point's understood.

193. Submissions by

194. MR FINDLAY KC: The next matter relates to alternative dispute resolution. Can I ask for slide P618(3)? This is again one – there were points on wording but they've been dealt with, but during course of negotiation, a concern of the NFU as a result of experience arose and I'll ask by reference to this slide for Ms Staples to explain that in a little bit more detail.

195. MS STAPLES: What we are asking for is that, we've now seen there are cases that have been taken forward where ADR is being requested. What's happening in practice is, a lot of the time, ADR is being turned down. It's being turned down without any explanation, or if there is explanation, all that's happening is that the claimants' agents are being requested for more evidence even though they've already given evidence.

196. What's happening is, ADR is being promoted by HS2 but then when it's being requested, it's being turned down. We are trying to make it so that there is a way of ADR really being considered and being offered by HS2 and that it can't so easily be turned down, which is what is being seen at the moment.

197. MR FINDLAY KC: If I can then have P619(9), please, which is our ask, effectively. Paragraph 1 is primarily introductory. The ask is in 2 and 3, which I won't read out, but it asks that the promoter – I'll just emphasise two points – give proper consideration to request, provide reasons for refusal and shall not refuse for the reason that it considers there is no claim, unless the claimant has at least had the opportunity to go through paragraphs (a), (b) and (c).

198. Likewise, paragraph 3 requires the promoter to use reasonable endeavours to go through paragraphs (a), (b) and (c) before reaching a conclusion about ADR claim provided it's not considered to be frivolous or vexatious.

199. Again, Ms Staples, what is the purpose behind this ask?

200. MS STAPLES: Well, the purpose is that, in some cases, compensation claims are not being agreed so a way forward that everyone considers is sensible is that then that claim gets taken forward to ADR to be resolved. That's what's been happening in the last six months; more claims have been requested or agents have been requesting for ADR but a lot of those requests are now being turned down.

201. MR FINDLAY KC: If you just briefly put up P625(8), please, which is an extract from the HS2's guidance on ADR guidance, by way of introduction, this sets out consideration of when ADR is appropriate, and if one goes over the page to 3.2, slide 9, 625(9), if there cannot be agreement, then parties should consider ADR. If either of us think ADR is not appropriate, we should explain why.

202. Our ask, I should stress, sir, is, conscious of the fact that you cannot force – the whole point of ADR is you cannot force a party into ADR unless they're willing to go and there may be cost consequences. Eventually, you have to go to some form of tribunal or court and it could have been settled by ADR. That's not our issue; the issue is the one that Ms Staples has explained.

203. Ms Staples, is there anything you want to add at this stage before we pass over to Mr Mould?

204. MS STAPLES: Thank you. Just in regards to one or two cases that I know of at the minute, there isn't a detailed explanation coming forward to why ADR will not be taken up. The claimants' agents have given evidence and have now even had to state, 'This is the final evidence we can give; this is all the evidence we have'. Now we are hoping that some of those cases will be considered, but originally, all we were getting back from HS2 was, 'No, we will not take this forward to ADR', and then their other request always is, 'Please just provide more evidence'.

205. CHAIR: If I'm claiming compensation, it's denied and I'm denied access to ADR, then I have to go through the courts, correct?

206. MS STAPLES: Yes, they'd have to go to tribunal, which is obviously really expensive.

207. CHAIR: What tribunal is it?

208. MS STAPLES: Lands tribunal.

209. CHAIR: Thank you. Mr Findlay?

210. MR FINDLAY KC: No.

211. CHAIR: Mr Mould?

212. MR MOULD KC (DfT): Again, I don't know anything about the cases that you've been referred to. I don't know whether the matters on which – we're told what the circumstances are, but what I do know is that the guidance that is in front of you, it says – this is the Secretary of State's current published guidance on alternative dispute resolution in relation to land compensation claims arising from the exercise of compulsory purchase powers for the HS2 railway under the two Acts that have already been enacted and is a good guide to how matters will be addressed under this Bill once it becomes law.

213. The emphasis is placed on the need to explain why it is, if it is the case, that in a given case, resort to alternative dispute resolution mechanisms is not considered appropriate. Paragraph 3.1.6 says so and if you turn to P625(14), you'll see the same point made in paragraph 5.1.3. 'To request ADR, please fill out the form. We'll try to respond to you within two weeks when we'll either agree to your suggestion, explain why we consider other forms of ADR to be more appropriate, or say why we believe your case is not suitable for ADR'.

214. So, if, in a given case, the message that comes back from a request to resort to ADR, 'No, we don't think this is an appropriate case for that', then the remedy which is available to the person who is disappointed by hearing that news is to ask for the reasons; that's because the guidance says that reasons will be given.

215. If those reasons are good reasons, then, like it or not, it may be that the case will have to go via the Upper Tribunal (Lands Chamber), which is the current name of the lands tribunal, because that is the established statutory dispute resolution tribunal for land compensation claims.

216. If the tribunal, having heard the claim, decides that the party who had declined to agree to ADR did so for no good reason and, as a result, the other party has been put to

unnecessary cost and expense, then the tribunal may well make a decision on costs which reflects its disappointment with that. It may say that the party who had declined, in its view, unreasonably to accept ADR should pay some costs to reflect the wasted cost of the other party at that point.

217. If, on the other hand, the tribunal decides that it was perfectly reasonable, in that case, not to put the matter through to alternative dispute resolution, then no doubt the tribunal will act on the basis of that conclusion.

218. What is clear, if we go to P625(6), this guidance is quite categorical – see, for example, 1.1.3 and 1.1.4 – in advocating the merits of alternative dispute resolution techniques over and above traditional court proceedings. The same point is made at paragraph 2.1.1 on page 625(7).

219. In short, the Secretary of State's position is that he firmly endorses resort to alternative dispute resolution in an appropriate case and takes the view that many of the cases that are going to come forward following the exercise of compulsory purchase powers under the HS2 legislation will be cases that are appropriate for resolution through alternative dispute resolution techniques.

220. In any given case, both the Secretary of State and, indeed, the claimant will need to consider whether ADR is appropriate and, if so, what form of ADR is appropriate. There will be cases when the claimant says, 'I don't think that my case is an appropriate case to go to ADR. I would prefer my case to go to tribunal'.

221. I'm not entirely sure what it is that the Committee is being asked to do here. There is clear guidance favouring the use of ADR. That reflects the courts' own guidance, both in the High Court and in the Upper Tribunal (Lands Chamber), which positively encourages parties to litigation to consider whether ADR is an appropriate means of solving their differences.

222. There's consistency there between the Secretary of State's approach and the established approach in the courts, and the courts and tribunals seek to apply some discipline to the availability of ADR and sensible decision-making around using it through the use of their cost jurisdiction.

223. There is protection here for any party, any one of Ms Staples' members who feel that they have been refused alternative dispute resolution for no good reason. Bear in mind that nobody is forced either to go to ADR or forced not to. It's always a matter of bilateral agreement between the parties and I question whether it's appropriate for the Secretary of State, as a party to land compensation proceedings, to be put in a disadvantageous position to any other party. The Secretary of State ought to enjoy the same rights and responsibilities before the law in relation to disputes of this kind as any other party does. Otherwise the rule of law itself is called into disrepute.

224. With respect, I don't understand the issue here. If the system isn't working in the way that Ms Staples thinks it should, then she should encourage her members to ask HS2 Ltd in the given case to give the reasons why it is that they are not prepared to go through alternative dispute resolution, and if they are dissatisfied with those reasons, then they can store that up and they can seek to deploy that when the question of costs arises in the more formal proceedings.

225. CHAIR: Thank you. Mr Findlay.

226. MR FINDLAY KC: I will ask Ms Staples to respond first.

227. MS STAPLES: Thank you. I just want to say that what we're seeing then is a case of bad practice again by HS2. They are not following the guidance and they are not giving an explanation of why something can't go to ADR. Just to keep saying, 'We need further evidence' or, 'We don't think there's a claim', that is not good enough and that's where the explanation is needed.

228. I also just want to say that just even preparing a case to take to lands tribunal is very, very expensive and most landowners just cannot do that. Thank you.

229. THE CHAIR: Grahame.

230. MR MORRIS: Thanks, Chair. I wonder if you could just clarify something. I also serve on the Transport Select Committee and we, as part of our work scrutinising HS2, undertook a visit to Buckinghamshire and met with a group of farmers who were really unhappy about HS2, and this particular issue amongst a number of others.

231. I wonder if you might just explain. Is ADR, the alternative dispute resolution, a

form of arbitration and who is the arbiter? Is it a land agent who's agreed by both parties? Why would HS2 be seeking to make referrals to a land tribunal if this is a much cheaper and more convenient solution?

232. MR MOULD KC (DfT): The first question is what are the various forms of alternative dispute resolution that are available? They tend to be either mediation, in which case the parties agree to put their differences before an accredited mediator who is a trained professional who is sometimes a lawyer, it's sometimes another professional person, and that person hears the parties present – a mediation is held, the parties are invited to explain to the mediator in private sessions what their position is, and the mediator then uses their skill and training to try and find some common ground which enables the parties to reach agreement.

233. The second is through what's known as an expert determination, which is where the parties agree amongst themselves to appoint an expert whose expertise is relevant to the field – so, for example a valuation surveyor – and they present their dispute to the valuations expert and the expert then considers the material, the facts before them, and makes a determination which the parties agree to be bound by.

234. That role can also be fulfilled by a person who is appointed as an arbitrator; that's a rather more formal court-like approach, not least because the arbitrator operates under the aegis of the arbitration legislation which gives the court a role in relation to any complaints that the arbitrator has failed to act in accordance with the relevant legal requirements, so it's a more formal provision. Essentially, the arbitrator stands in the same shoes as a judge and receives representations of the parties, sometimes through an oral hearing, sometimes in writing, and then makes a decision on the questions that have been put to him or her.

235. The other well-known and established technique is known as early neutral evaluation, which is where the parties identify an issue between them. Often this relates to issues of principle as to whether a particular head of claim is actually recoverable under the land compensation code, for example, and they appoint a neutral evaluator, often someone with legal or professional experience in the valuation surveying world, and they ask them to express an opinion. That's not binding on them but depending on the outcome, if the answer favours one side or the other, then obviously that gives the

parties a clear steer as to whether they're likely to succeed or fail in court.

236. So those are the arrangements. There's also the small claims scheme which is operated by HS2, which sits outside the ADR scheme formally but sometimes is invoked in relation to small financial claims.

237. That's the answer to your first question. Those are the various techniques that are available and it's for the parties to decide whether they want to go through the ADR route and, if so, which of those techniques they think is the most appropriate to their case. It's a matter for agreement between the parties.

238. MR MORRIS: I'm grateful for that explanation and you've aided my understanding of the process. Can I ask about the time because that was one of the concerns that was raised with me and other members of the Committee: the length of time the process takes. Maybe it's like asking how long is a piece of string but could you give some steer to the Committee about how long the process takes?

239. MR MOULD KC (DfT): It is difficult to say because there isn't any fixed time scale. The generally accepted consensus amongst the legal profession and the surveying profession, and others who are involved in these kinds of disputes, is that, generally speaking, parties who refer their disputes to alternative dispute resolution will obtain a decision much earlier than would have been the case had they litigated in front of the Upper Tribunal (Lands Chamber). It's generally speaking a less costly form of dispute resolution and a swifter form of dispute resolution than going through the traditional, more formal route to the Lands Chamber.

240. MR MORRIS: Thank you.

241. THE CHAIR: Any more questions, Grahame?

242. MR MORRIS: No, thanks very much.

243. THE CHAIR: Mr Findlay.

244. MR FINDLAY KC: Just to assist Mr Mould with the answer to the last question. P625(15) gives some estimate of the timeframe that's expected. One sees in 5.1.6 to begin with; 'Once an expert mediator or evaluator is appointed, we usually expect ADR

to be completed within three months'. Then there's some timescales in the table below which I think also may be of assistance.

245. MR MOULD KC (DfT): Well that bears out the point; you'll be very lucky indeed to get a decision from the Upper Tribunal (Lands Chamber) within that kind of timescales. You're talking about, at the very least, several months but often, more than a year.

246. MR FINDLAY KC: I'd be very interested if the members concerned did indeed get a decision within three months, but that's the intention anyway. But can I make two points in closing? First of all, by reference to slide P619(9), which is the first slide we put up, which was our ask, which we maintain, and I only respond to Mr Mould's comments in this way, that the fabric of the law is not going to come to tumbling down, as he might have it, if the Committee was to accept this ask for the reasons that we've advanced.

247. By way of alternative, if I could ask you to turn back to paragraph 5.1.3, which Mr Mould took you to which is on P625(14), the tenor of Mr Mould's answer was, 'Well, look what we said here; we'll respond to you within two weeks and we'll give reasons'.

248. Now, the only enforcement provision behind that is if they don't, you ask for reasons, they're not given, where you can go along to the relevant tribunal and make your case there and hope you're going to get costs. That's not practical for the farmers. So, by way of alternative, if an assurance was given to bear out the policy in paragraph 5.1.3, that would go some way to assisting the NFU with its issue.

249. MR MOULD KC (DfT): So an assurance to try to respond in less than two weeks?

250. MR FINDLAY KC: And give reasons.

251. MR MOULD KC (DfT): Right, okay.

252. MR FINDLAY KC: Given that's the stated policy of HS2, I don't think we're asking for a great deal in that alternative. But I make it clear, we're still pushing our initial ask.

253. THE CHAIR: Well, I think the Committee also doesn't want to bring down the entire framework of law, but that request for a guarantee or an assurance that reasons will be given, what's HS2's position on that?

254. MR MOULD KC (DfT): Well, I can't answer that question categorically because I'll be told that I'm exceeding my instructions.

255. THE CHAIR: Of course. The policy is to provide reasons.

256. MR MOULD KC (DfT): The policy is to provide reasons. If the Secretary of State is so untrustworthy that he has to give a guarantee to that effect, then I suppose that that's a solution.

257. MR FINDLAY KC: No one is suggesting the Secretary of State is untrustworthy; I think Mr Mould overstates it, no doubt to further his own cause, restraint or otherwise. It's the practical application and such an assurance would help farmers with the practical application.

258. THE CHAIR: It's difficult for the Committee to hear – I mean it's hearsay really as to whether or not what we're – Grahame maybe has a different experience to us having – although whether or not they were people who have tried to go through this process, I don't know – but it's very difficult for us to comment on individual cases because we don't know the details or, indeed, the processes, so that's really, with respect, irrelevant to our considerations today.

259. I don't know if there's much else to say on this. I mean, we seem to be in a position where the petitioner is asking for us to guarantee that reasons will be given and the promoter is saying the policy guarantees that reasons will be given. It comes down to whether people believe that, so I don't really know if there's a great deal more to say on this subject. I don't know if colleagues have any questions.

260. MR MOULD KC (DfT): I will ask whether some sort of assurance can be offered in relation to this paragraph if that will help to reassure, yes.

261. MR FINDLAY KC: I'm grateful to Mr Mould.

262. THE CHAIR: We'll see what colleagues think when we meet privately as well.

Is there anything else for anybody to – Mr Findlay, you’ve finished for today.

263. MR FINDLAY KC: I’ve finished on that. Move on to the next one.

264. THE CHAIR: Okay, what’s your next one?

265. MR FINDLAY KC: The next one is interest.

266. THE CHAIR: I thought we had three points.

267. MR FINDLAY KC: No, no, I think I said seven.

268. THE CHAIR: Seven.

269. MR FINDLAY KC: Yes. We’re making good progress. We’ve taken the longest –

270. THE CHAIR: We better start making a bit more progress than if it’s seven. I thought we were –

271. MR FINDLAY KC: No, we’ve got through –

272. THE CHAIR: Well, we’re not even halfway yet. My sympathy starts to wane after a period, so if I can encourage you to –

273. MR FINDLAY KC: I will move on quickly. Interest on payments is hopefully a shorter point. Can I have A54(72), please? I’ll ask Ms Staples to speak to this slide and then our ask, if I can.

274. THE CHAIR: Ms Staples.

275. MS STAPLES: Thank you. Yes, at the moment interest is only payable on late payments, so our ask has always been to bring forward that interest is... It’s been looked at before and a figure of 8% has been discussed. In a lot of agreements, we have 4%, so that is what we’re asking for and we’re asking for it because there are payments that are taking for very long time to be paid.

276. MR FINDLAY KC: The current rate of interest is low. Claimants are waiting a long time for payment and you want a more commercial rate of interest to compensate

them for their loss. The solution is on the next slide, A54(73). We're asking that the 1995 regulations be disapplied, that the Bill specify a rate of interest for compensation payments and we're suggesting that rate should be 8% for the reasons you've just outlined.

277. THE CHAIR: Would that leave us in a position where a farmer affected by Phase 2B would be in an advantageous position compared to those under 2A and One?

278. MR FINDLAY KC: I would say less disadvantageous position.

279. THE CHAIR: A less disadvantaged position. So an advantaged position.

280. MR FINDLAY KC: He would be, yes.

281. THE CHAIR: So we'd be treating farmers between Crewe and Manchester differently to those from London to Crewe, for the purpose of this.

282. MR FINDLAY KC: Ms Staples has got her hand up.

283. THE CHAIR: Ms Staples.

284. MS STAPLES: Obviously, what we'd really hope is that, if this was taken up, HS2 would obviously let it apply to any compensation payments going forward on 2A and outstanding payments.

285. THE CHAIR: Did you argue this in front of our predecessor Committees?

286. MS STAPLES: Yes.

287. THE CHAIR: Okay. Well, I'm done with my questions on this. Anybody else? Mr Mould.

288. MR MOULD KC (DfT): The position is that – just to add to your thoughts, if I may, briefly – the current arrangements for the payments of interest on compensation are set out in the Land Compensation Act 1961 and in these regulations. The rate of interest now is actually at 5.5% because of the inexorable rise of interest rates, of which everybody is painfully aware, but obviously it might go down again; we all hope it will. The interest payable under these regulations is tagged to the passing bank rate.

289. The arrangements have been in place and settled and mature, not only for Phase One and Phase 2A, but for every single infrastructure project which involves the compulsory purchase of land and the payment of land compensation.

290. There is a provision in the Land Compensation Act 1973 – for your note, it's section 52B – which has not yet been brought into force. It's an amendment to that statute which Parliament enacted as recently as the Housing and Planning Act 2016, and what that provides for when it is brought into force is for the Treasury to make further regulations that would enable them to prescribe a different rate of interest where advance payments of compensation have fallen due and have not been paid on time.

291. That regime is, as I say, not yet in force and the intention is presumably to bring it into force across the board generally, as and when it's felt to be appropriate. The reference to 8% is, I think, taken from a consultation paper which preceded the Housing and Planning Act when there was a Bill, which suggested that one rate that might be appropriate would be the judgment rate, which is presently at 8%, which the court can impose on unpaid debts, so you can see the logic of that.

292. That's all by way of just emphasising the point that you made, that this in effect is asking that the Secretary of State as the acquiring authority on this Bill should be required to put those whose land is subject to compulsory purchase and therefore entitled to land compensation in a distinctly more advantageous position than any other person whose land is subject to compulsory purchase for public works, certainly in England and Wales. I believe it's also the position in Scotland, though I won't guarantee that because I'm not so familiar with the Scottish legislation.

293. THE CHAIR: Thank you. Mr Findlay.

294. MR FINDLAY KC: You don't need to note it; it's on our first slide, A54(72), the reference to the Housing and Planning Act and the 8%. The proposal was for a penal rate, and I do reiterate the NFU's point that, whilst viewed through one prism, if this change was made, farmers would be advantaged, through another prism, without it being made, they would remain at a similar disadvantage to farmers on earlier phases, but I can't go further than that.

295. THE CHAIR: Understood.

296. MR FINDLAY KC: There are then two points on rights of entry, just to let you know, one on rights of entry for conducting surveys, one on notice periods for entry, a very short point on land drainage and a very short point on utilities and conduits; those are the four points we're left to deal with.

297. Moving on to rights of entry for conducting surveys, can I have A54(61), please? It's only request 1 that you need to concentrate on. This is in the context of when HS2 quite rightly need to go on to land and carry out preconstruction surveys before they've acquired rights over the land. It's to the extent of notice they're required to give. Ms Staples, perhaps you can explain to the Committee by reference to both the issues that arise, and you might – could we have A54(57) – and to the current law under the Housing and Planning Act, what the position is and why you're asking for this detailed ask.

298. MS STAPLES: Thank you. The detailed ask really is, as you can see here, this is a table that was sent with a survey notice, but as you can see, all it says is that – let's have a look – 'bat emergence'. We know they want to do something there and it just says, 'Yeah, we'll be coming on to the farm for three days at some point in the next two months'. That's all the detail that some of our landowners are receiving. Then if we could go to the next slide, which is 54(58). Also, the only plan that they're receiving is like this, which also again does not give enough detail.

299. What the claimants' agents are asking for is, please, is it not possible to be given more information in regard to the types of surveys that are going to be carried out, the number of them, and have a more detailed plan so that farmers do know where the surveys are actually going to take place, in which field, so that they can understand the impact of what that is going to be on their business?

300. There are a lot of intrusive surveys taking place, especially bore holes and trial pits, where it's absolutely essential to be given that information. At the minute, even under section 174, which was our request 3, they still do not have to specify that type of detail, but it really would make a big, big improvement.

301. MR FINDLAY KC: Just so that the Committee understand your reference to 174, if we can go to slide A54(59), please, it sets out provisions as to notice of surveys that have to be given, and if one looks at subsection 3, 'The notice must include details of

search and what is proposed'. Again, just to reiterate that your practical concern, Ms Staples, is the detail of what is proposed on the particular farmer's land.

302. MS STAPLES: Yes. So if they're saying they're going to do searching and boring, farmers really want to know really the number of bore holes, as I've said, are going to happen. Where is that apparatus going to be left? Where are they going to be taking samples? Not just to be told, 'And we will be leaving apparatus' or, 'We will be coming on and doing some boring'. That really doesn't help them to understand how it's going to impact their farm business.

303. MR FINDLAY KC: It's that type of practical consideration of impact on the farm business that gives rise to this concern.

304. THE CHAIR: Thank you. Any questions? I might have some in a moment. Mr Mould, your response.

305. MR MOULD KC (DfT): Right, okay. Thank you. The answer is that section 174, subsection 3, which is in front of you, places an obligation on any acquiring authority who seeks to carry out surveys under this power to provide 'details of what is proposed' in relation to each of those five items. If any or all of those is proposed following entry for survey purposes, then details must be given and if they're not given then the acquiring authority is not fulfilling their legal obligations.

306. There's no need for this Committee and no case for this Committee to embellish that. That is what Parliament has decided, as recently as 2016, is the right balance to strike in terms of information provision, and if that mandatory requirement isn't honoured, then the authority in question is not fulfilling what the law requires of them.

307. THE CHAIR: The examples that were given appear to not be doing that.

308. MR MOULD KC (DfT): Yes. I don't know where and in what context those examples were put forward, but if your view is that they're not doing what was required of them, then obviously that needs to be rectified. What I can say is that the promoter is very well aware of the requirements of section 174.3 of this Act and is aware of the need to comply with the law in relation to them. I'm not willing to give an assurance to comply with the law.

309. THE CHAIR: Mr Findlay.

310. MR FINDLAY KC: So, it's far from exceptional for legislation to lay down the structure for what's meant to happen, which is what the legislation does here, and then for policy to thrash that out and provide the detailed approach.

311. What we're seeking here is to have some flesh put on the bare bones of section 174 in a way that is of practical use to deal with a real practical issue. It's not a request that HS2, or indeed Mr Mould, comply with the law; I'm sure they do. It's to set out in greater detail, far greater detail than is set out in section 174.3, about what is expected in this particular case where HS2 is going on to land, as said. I don't know whether Ms Staples wishes to add anything to that.

312. MS STAPLES: I'd just like to add that, on other major infrastructure schemes, using section 174 is a last resort, and most agreements are reached to go on to do the surveys, actually like has been happening to start off with, with surveys undertaken by HS2. Those were real examples that I've given that agents have been receiving, which does show that not enough detail is being given. So that's the only reason why we are asking for that request 1. And as I've said, under voluntary agreements, that is being given on other major infrastructure schemes.

313. MR MOULD KC (DfT): I'm sorry, sometimes one is almost left with a concern about whether you're being given a partial account. This project has a policy of seeking to reach agreement with landowners for the purposes of entry on to land for survey and its policy is only to resort to these statutory powers as where agreement can't be reached.

314. I have in the past, in earlier proceedings in this Committee, explained some of the shortcomings that that can give rise to in terms of the timely gathering of information, for example, on ground investigations where, because the project has been so keen to try to address matters consensually rather than resorting to the exercise of statutory powers, sometimes it hasn't been possible to move things along as quickly in terms of investigations as might otherwise have been the case.

315. I wouldn't want the Committee to have any doubt as to this project's adherence to precisely the approach that Ms Staples has said is commonplace amongst infrastructure

projects generally. I know that those behind me seek where at all possible to reach agreements in relation to entry on to land for survey and only resort to the statutory powers where they have been unable to do so, as is sometimes the case.

316. THE CHAIR: Thank you. We'll leave that there, I think. Next issue, Mr Findlay.

317. MR FINDLAY KC: Thank you. Notice periods for entry – could I have slide A54(63), please? Paragraph 12.1 sets out that, under the Bill, only 28 days' notice is required before entering the land and taking possession, whereas a period of three months is required to be given for permanent acquisition. The period of 28 days of notice is inadequate.

318. The NFU secured an assurance in the Phase 2A Bill which requires a period of three months' notice of temporary possession to be given in relation to farmland plus an additional notification of three months in advance of the beginning of the quarter of the year in which powers are to be executed. Provision is made for that in information paper C2, but it requires to be in the form of assurance and requires alteration. If you can go to the next slide, which is an extract of a notice received, Ms Staples, can you explain that to the Committee, please?

319. MS STAPLES: This is just the type of letter that is being sent out now to farmers and landowners. As you can see from the area that's highlighted in blue, it does state, 'I confirm that it's our intention to take possession of your land/property at a date not less than six months from the date of this letter'. This is what we would like to see being sent before permanent acquisition is taken.

320. MR FINDLAY KC: And if we go to the next slide, A54(64), could you talk the Committee through the request, please?

321. MS STAPLES: As we've said, we've now got this happening for temporary acquisition, but the request is that we would like to see, when it's permanent acquisition, that a notice is given of the quarter – three months' notice of the quarter is to be given as well, where there is going to be permanent acquisition, so when a GVD is going to be served.

322. MR FINDLAY KC: Then the second bullet point and the third bullet point,

please.

323. MS STAPLES: Just very simple, that the notice obviously includes a plan of that relevant land and if the entry date is delayed then notice be given of the delay and a further quarterly notice given.

324. MR FINDLAY KC: Thank you. Is there anything else you want to add on that, Ms Staples?

325. MS STAPLES: No.

326. MR FINDLAY KC: Thank you.

327. THE CHAIR: You're asking for a mirroring, effectively, of the assurance that was provided for 2A.

328. MR FINDLAY KC: And this additional point.

329. THE CHAIR: Yes. Okay. Any questions? Mr Mould.

330. MR MOULD KC (DfT): Paragraphs 6.1 to 6.3 of information paper C2 are a restatement of the assurance which was accepted by the NFU in relation to the 2A Bill and they are registered commitments, so they are enforceable as assurances. It shouldn't therefore be necessary to give a specific assurance in relation to them. There is no justification, we say, for a more generous position being taken in relation to this Bill than was taken in relation to the previous Bill.

331. THE CHAIR: Did the NFU ask for those additional elements when they petitioned the 2A Committee?

332. MR MOULD KC (DfT): I can't remember whether they asked for them but what I do know is that the assurance which was offered to them, which is at P299(7), assurance 10, those three paragraphs are effectively transposed into – the substance of those paragraphs is transposed into paragraphs 6.1 to 6.3 in information paper C2.

333. There's a theme emerging, obviously, in some of the points that have been made to you today, which is, 'We banked what we got on the previous Bill; we'd like to do better on this one,' but of course doing better on this one, from the farmers' perspective,

almost certainly means more cost and more risk delivery in relation to the delivery of the project.

334. If the balance was struck correctly and in a way that was accepted by the NFU on the Phase 2A Bill, it's difficult to see why there's a need to revisit it on this Bill.

335. THE CHAIR: Thank you.

336. MR FINDLAY KC: Ms Staples, I don't know whether you heard the question about whether the ask in the current form was requested of the previous Committee.

337. MS STAPLES: I think, if I remember correctly, on the Phase One, we actually got the three months' notice to be given on permanent acquisition. We didn't ask because it didn't come up like that in Phase 2A. We were asking for the three months and then for a further extension of that. It was then addressed that the Committee thought that, actually, there should be advance notice of the quarter. So that's how that came about. So now it seems sensible to be asking for that on permanent acquisition.

338. MR FINDLAY KC: So it's not a case of, as Mr Mould put it, banking what you got before and asking for something further.

339. MS STAPLES: No.

340. MR FINDLAY KC: Thank you. Sir, it's a short point.

341. THE CHAIR: Thank you. Any questions? Mr Findlay.

342. MR FINDLAY KC: Penultimate issue.

343. THE CHAIR: Penultimate. Well, I'm down to seven now, so I think it's crept up to eight, hasn't it? We're not going to get to eight and then you're going to tell me there's a ninth, are you?

344. MR FINDLAY KC: I'm certainly not. My maths is clearly – I need to go back to school. Anyway, it's a short issue. If I can have P619(14). It's to do with land drainage. The whole of the paragraph, if we just pause there for a moment. As a result of negotiation, new paragraphs to be inserted in the farmers and growers guide in those terms dealing with many of the issues relating to land drainage.

345. The one issue that remains in dispute is at the bottom of that page, which if you scroll down you will get to. The issue here is the request sought is that the nominated undertaker will ensure that any new land drainage system – so that when a track cuts through existing drains, obviously you'll need to be able to make replacement provision for the drainage – it's to ensure that when in any new land drainage system is implemented, they're implemented so that they are in a condition that is at least as effective as the condition of those which they replace. So that's the simple ask.

346. I doubt Ms Staples needs to explain why. It's probably self-evident why such a request is being made, but Ms Staples, if there anything you'd like to add, please do.

347. MS STAPLES: Yes. I think it does say we want it to be at least as effective; all I can say is that on all other major infrastructure schemes, we have this wording agreed in outline code of constructions. Thank you.

348. THE CHAIR: Thank you. Well, I will declare an interest as the president of the northern branch of the Association of Drainage Authorities, so this is an issue of considerable interest to me. The measure of 'at least as effective', though, this is presumably – is Cheshire drainage board...? It's not, is it? No. So, these will be the land drains which may connect to the broader land drainage system, which could be draining highway drains, etc, through into the land drainage system.

349. MR FINDLAY KC: Ms Staples, I think it was question for you but the drains that we're considering here, are they farm drains?

350. MS STAPLES: Yes, just agricultural drains. So it's the way the agricultural drains are flowing into outfalls, that those drains would not be taking, say, water off a highway.

351. THE CHAIR: Land drains do generally.

352. MS STAPLES: Normally a highway will have its system – yes, going into a –

353. THE CHAIR: But it normally ends up in the land drainage system and then out to wherever. Anyway, it's a moot point, I suppose. The issue is this question of them being as effective as –

354. MR FINDLAY KC: My apologies, sir. It's certainly directed at agricultural farm drains, running across a field. If the field is severed, the draining system will be severed and whatever replaces it, we would like it to be as effective as that which it replaces.

355. THE CHAIR: Yes. No, I understand that.

356. MR MORRIS: It generally doesn't need any further explanation.

357. THE CHAIR: No, it doesn't.

358. MR MORRIS: We've got it.

359. THE CHAIR: Mr Mould.

360. MR MOULD KC (DfT): So far as ensuring that the replacement drainage is effective in its impact on the public drainage system, that is something for which there are protective provisions in favour of the drainage authorities in schedule 32.

361. THE CHAIR: We'd have assumed so because presumably you'd have to have the relevant drainage authority sign off that design, wouldn't you?

362. MR MOULD KC (DfT): Yes. I can't point you to the specific paragraph, but part 4 of the protective provision schedule, schedule 32, sets out the various protective provisions for the benefit of the drainage.

363. THE CHAIR: The local authority or the EA, or if it is a drainage board, would have to sign off on that if it was to affect any public drainage which –

364. MR MOULD KC (DfT): Yes. I'm sure, after this, we can provide you with the relevant paragraph number, for the purposes of the report. I think the concern here is about the operation within the landholding itself.

365. I don't have any quarrel with the underlying objective; I mean that's clearly right, that the objective should be that what is provided in place of what is severed should be at least as effective. I mean in the sense it's a technical point, but we say that one shouldn't include anything by way of an assurance unless it's actually necessary in order to secure that objective. This is where we do come back to section 68 of the Railways Clauses Consolidation Act 1845, if we can just put up P624(2).

366. The first paragraph on this page is effectively incorporated into this Act or applies to the development of this railway. As you can see, it requires that, amongst other things, ‘All culverts, drains or other passages will be sufficient at all times to convey water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be; and such works shall be made from time to time as the railway works proceed’. There’s a statutory requirement which covers the subject matter of this assurance.

367. THE CHAIR: Forgive me if I’m confused here. I thought you, in response earlier, said this was disappplied in the Act.

368. MR MOULD KC (DfT): No. The disapplication relates to the previous page. This is quite a long clause, this section. The disapplication –

369. THE CHAIR: Oh, right.

370. MR MOULD KC (DfT): It’s the second paragraph on this page, and also the words, ‘Together with all necessary gates’ down to, ‘necessary stiles’ in the fourth to sixth line of the third paragraph.

371. THE CHAIR: Okay, that’s fine.

372. MR MOULD KC (DfT): On the second page, the provisions of the Railways Clauses Act apply with full force. In the extensive and helpful and positive exchanges of correspondence – I echo Mr Findlay’s characterisation of the tenor with which we’ve been able to negotiate with each other in the weeks since we last appeared on this petition, very much – but as part of those series of exchanges, the promoter said that there would be an amendment to paragraph 11.1 of information paper C2 in order to bring in an explicit reference to section 68 of the 1845 Act. Yes, it’s at P622(11). It’s under the heading, ‘Accommodation crossings’.

373. You can see that the promoter has indicated on – this was on 5 July, I think – that the following amendment will be made to section 11 of the information paper. ‘The provision of permanent accommodation works will depend on the individual circumstances of the holding and will usually be developed as the detailed design of the proposed scheme is undertaken and, where relevant, accommodation works will be

determined in accordance with section 68 of the Railways Clauses Consolidation Act 1845', so that paragraph relating to drainage – that brings it to the notice of farmers and growers to whom this information paper is directed.

374. THE CHAIR: Again, we seem to be in a position where what's being asked for appears to be being offered but –

375. MR MOULD KC (DfT): As I say, you may think it's technical, but it seems sensible not to make additional commitments which, in substance, simply duplicate what is already a mandatory legal requirement.

376. THE CHAIR: Okay. Mr Findlay, did you wish to respond to that?

377. MR FINDLAY KC: Yes. Just taking that, that tells the farmer that under accommodation crossings it will be relevant. It doesn't tell the farmer that it's going to be relevant to his drainage. And secondly, if you go back to page 619(14), which is our ask, if there was substance to Mr Mould's point, then most of that paragraph, from 11.11 onwards, would be encompassed by the provisions of the Act that he's just referred to, at least large parts of it. In our submission, I'm sure the awareness, recent or otherwise, that the 1845 Act has something to say on this point will be borne out in due course, but it's no reason why that should not be put in the farmers and growers guide, making it clear what farmers can expect.

378. THE CHAIR: Thank you. Grahame.

379. MR MORRIS: I know it's almost 18.45, but is there anything to preclude us having a belt and braces approach with a more modern piece of legislation, this hybrid Bill?

380. THE CHAIR: I'm not sure we'd amend the Bill around this, but it's whether or not there is an assurance or something added to the farmers and growers guide, I think is what you're asking for, Mr Findlay.

381. MR FINDLAY KC: Yes.

382. MR MOULD KC (DfT): I would certainly prefer, if that is the view of the Committee, that the matter should be dealt with in the way that Mr Findlay suggests,

rather than a clause in the Bill. I suspect that the House would not regard it as convenient to seek to duplicate legislation that remains on the statute book, however antique it may be.

383. THE CHAIR: I think you get a sense of where people are on this, which is I think broadly obviously sympathetic of the idea that if you're committing works on people's land, then the land drainage should be returned to the state it was in to allow the farm to continue in the same way. I think that you can get a sense from the questioning that's where I think members are, if that's a helpful guide, rather than the 'bomb Moscow' option of amending all of the legislation, the wholesale updating of Victorian legislation. Maybe if it could added to the farmers and growers guide, that might be a neater way of dealing with it, perhaps. Grahame's not happy.

384. MR MORRIS: You're not asking for the sacrifice of the firstborn. It seems a very modest ask to me.

385. THE CHAIR: I think that might be easier to achieve than amending the 1845 Railways Act. Okay. Anyway, we'll leave that there, I think for now. Mr Findlay, your –

386. MR FINDLAY KC: Last issue.

387. THE CHAIR: 7(a) we'll call this point – number 8.

388. MR FINDLAY KC: I only plead for mitigation that HS2 have been so accommodating that we've been getting rid of issues right until this morning. This is about utilities and conduits. If I could have slide A54(88), please? It's a futureproofing point that, if land is severed by the railway and provision is going to be made for culverts, bridge or underpasses, then, if we go to A54(89), when that bridge, underpass or culvert is constructed, a sleeve or similar work is installed to allow cables or pipes to be carried through at the time the railway is constructed.

389. I'll ask Ms Staples to explain the practical purposes that lie behind that request.

390. MS STAPLES: Thank you. The request is just to make it so this can actually happen in future, so that if there is something, some utility that needs to be taken across the trace, then it is possible. If there's no sleeve or conduit built while the railway is

being built, this will not be able to happen.

391. MR FINDLAY KC: What sort of practical purpose might that be put to on a farm? Why would the farmer need to lay –

392. MS STAPLES: It might just be a small water pipe going to another field. It might be something to do with telecoms; it might be fibre. Anything practical that will be needed in the future to help the function of that farm business.

393. MR FINDLAY KC: Thank you.

394. THE CHAIR: This would be on every piece of severed land, wherever an underpass or crossing was being constructed, HS2 would be required also to construct an additional culvert for –

395. MS STAPLES: Practically, they're already building a crossing point. To put a sleeve or a conduit in with that build seems possible.

396. MR FINDLAY KC: If you're putting a culvert in it anyway, you also add a sleeve or a conduit for that. If you're putting a bridge over it, you make provision for it in the construction of the bridge.

397. THE CHAIR: Thank you. Mr Mould.

398. MR MOULD KC (DfT): The approach that the project is committed to can be seen from P622(11) and (10); you'll see why I say it in reverse order when we get to it. If we come to (11), I'll just remind you of paragraph 11.1 of the information paper C2, 'The provision of permanent accommodation works' – and what we're here talking about is an example of that – 'will depend on the individual circumstances on the holding and will usually be developed as the detailed design of the proposed scheme is undertaken', and then there's the reference to the 1845 Act.

399. If you then go back to page 10, you'll see that the next paragraph of information paper C2 in the form that is proposed to be amended. 'Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location on the lands concerned, and including both the current and reasonably foreseeable operational

needs of the landowner where shared use of accommodation bridges or underpasses would enable current and future operational needs of a landowner severed by the railway to be accommodated. The nominated undertaker will, in a timely way, discuss with the landowner the process of finalising the detailed design of the proposed scheme’.

400. The approach that is committed to in the information paper, in its current form, is essentially focused on the needs of each case and, in some cases, those needs will clearly involve the provision of sleeves and conduits and so forth; in other cases, they won’t. We simply suggest that it would be more sensible to be reactive to the needs of each case, including their reasonably foreseeable future needs, rather than to have an arbitrary arrangement where a sleeve is provided at each underpass, each bridge, where it may be that it will never actually be used. None of those sleeves will be provided at nil cost; they will all come with a cost and surely it makes sense for public money to be spent where it’s needed rather than where it may not be.

401. THE CHAIR: Members, any questions? Okay. Mr Findlay, anything else in response?

402. MR FINDLAY KC: No.

403. THE CHAIR: Ms Staples?

404. MS STAPLES: No, that’s fine, thank you.

405. THE CHAIR: Excellent. That’s all our issues dealt with today, I think.

406. MR FINDLAY KC: It is.

407. THE CHAIR: Excellent. Well, I do thank the parties for working through them at speed, but also in a way that has allowed us to understand very clearly what the issue is and what the ask is, which is helpful for us when we deliberate later, so I appreciate that. On that basis, I will end the Committee now.