

Report on an investigation into complaints about High Speed Two Limited

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of the Parliamentary Commissioner Act 1967

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Foreword

This is our report of our investigation into how High Speed Two Limited (HS2 Ltd)¹ dealt with a group of six families in one hamlet, whose small community faced break-up under Government plans for the new high speed rail network.

Our investigation shows how, keen to keep their community intact, the families engaged constructively with HS2 Ltd from the beginning, and made alternative proposals based on the planned rail route. The families' preferred option was for the whole community to be relocated together to a new site. For this to happen, the families needed help from HS2 Ltd.

But HS2 Ltd failed to respond fully and promptly to this proposal. Instead its continual delay in providing feedback left the families in limbo for two years. HS2 Ltd repeatedly made promises to respond to the families' proposal by particular dates, but repeatedly failed to follow through on these.

HS2 Ltd's handling of the situation made the families feel as though their proposal had simply disappeared into a 'black hole'. The uncertainty they faced over the future of their small community was unnecessarily prolonged and they experienced worry, distress and frustration. For some, their home life, their jobs and careers, and their health were affected.

The families complained to HS2 Ltd about how they had been treated. Not satisfied with how their complaints were handled, they then brought the issues to us to look into. In this report we describe the failures we identified, the recommendations we have made to HS2 Ltd to respond to the families' complaints, and how we expect it to learn from its mistakes and improve how it handles such situations in future.

I am laying this report before Parliament under section 10(4) of the Parliamentary Commissioner Act 1967 to bring the issues we uncovered to the attention of Parliament and the public more widely. By doing so, I want Parliament to hold HS2 Ltd to account to ensure it has learnt from this case. I also encourage other public organisations to take note of our findings and consider how they engage and consult with individuals, families and communities. We cannot undo what has happened to the families involved in this case, but I hope that the learning from it helps to prevent others going through a similarly distressing experience in future.

Dame Julie Mellor, DBE
**Parliamentary and Health Service
Ombudsman**

November 2015

¹ HS2 Ltd is the company responsible for developing and promoting the UK's new high speed rail network and is wholly owned by the Department for Transport.

Executive summary

What we have investigated

This report is of our investigation into a number of complaints from a group of residents who were affected by the Government's plans for Phase One (London to the West Midlands) of the proposed high speed rail link HS2.

In our investigation we did not consider the decisions taken in relation to the route itself. That was not part of the complaint put to us. Our investigation focused on the way HS2 Ltd dealt with the residents.

The residents were all affected by the proposed route that specifically impacted the hamlet they lived in. HS2 Ltd asked residents to engage with them and provide possible solutions to the impact of the route. The residents proposed to HS2 Ltd that they be relocated as a group, so that they could stay together as a community. This was their preferred option rather than HS2 Ltd simply purchasing their properties and giving them compensation.

The residents, represented by Mr D, told us that HS2 Ltd wasted their time (both business and personal) and exacerbated what was already a very stressful situation. The residents said that this affected their health, employment, and family life. Finally they said that it led to most of them having to abandon their plans to relocate and instead settle for a different option. As a result of their interactions with HS2 Ltd, the residents said that they have lost all trust in the organisation. Mr D also made a separate complaint to us about the way that HS2 Ltd handled his family's specific situation.

What we have found

Our investigation looked at HS2 Ltd's communication and engagement with the residents, including the way in which HS2 Ltd handled the complaints put to them.

We found that overall HS2 Ltd's actions fell below the reasonable standards we would expect, so much so that they constituted maladministration.

While we recognise that the time period covered in our report was always going to be stressful, HS2 Ltd could, and should, have minimised the impact on the residents by being open, accountable and customer focused. Instead HS2 Ltd's repeated delay in providing feedback to the residents on their relocation proposal made a stressful situation worse and caused them inconvenience and frustration.

We have found that by failing to engage with the residents or their proposals reasonably, HS2 Ltd unnecessarily prolonged the uncertainty that the residents were experiencing.

The residents were seeking that HS2 Ltd's failings be brought to the attention of the public and Parliament, and for improvements to be made so that similar failures could be avoided in future. They were also seeking financial redress to recognise the time they have spent dealing with HS2 Ltd and for the additional distress that HS2 Ltd's actions caused.

Recommendations for remedy

We have noted in this report that HS2 Ltd has made some improvements to its services already. We have made a number of recommendations that, as far as possible, put matters right for the residents and will help HS2 Ltd further improve its service.

We have recommended that within four weeks of publication of this report, HS2 Ltd provides appropriate apologies to the residents.

We have also recommended that within four weeks of publication of this report, HS2 Ltd make appropriate payments to the residents as a financial remedy for the failures identified in this report. Those payments vary depending on the situation of the families and range between £750 and £4,000.

Mr D has asked us to consider the cost of the time he spent during business hours dealing with HS2 Ltd. We have not considered these costs in this investigation as we understand they will be submitted to HS2 Ltd as part of his claim under the *Compensation Code*. We therefore recommend that HS2 Ltd take our findings, and that we have not considered this claim, into account as part of that consideration.

We have also recommended that within four weeks of publication of this report, HS2 Ltd appoint an independent person to review their current processes around engagement, communication and complaint handling. The review should take explicit account of the residents' experiences and of our findings of maladministration.

We have recommended that HS2 Ltd publish the outcome of that review within three months of the date of this report including its recommendations for action; and within six months of this report HS2 Ltd publish the outcome of the implementation of those recommendations.

Introduction

1. In early 2009 the Government started seriously considering a high speed rail route to link London to the West Midlands and possibly further north. In late 2010 the Government published the High Speed Two (HS2) route, for consultation. The route was from London to the West Midlands, and then split in two, with one line going to Manchester and the other to Leeds. In January 2012 the Government announced that the London to West Midlands part of HS2 would be built. It called that 'Phase One' and announced a broad outline of the proposed route.
2. One of the areas affected by the HS2 Phase One proposal was a rural hamlet of 12 properties (the Hamlet). The residents of six of those properties organised themselves into a Residents Group (the Residents), represented by Mr D. The proposed HS2 route would affect the Hamlet, meaning some properties would be demolished and others would not. At the time of the January 2012 announcement, one compensation scheme was available to those affected and that was the *Exceptional Hardship Scheme* (EHS)². It meant those who had been unable to sell their properties (except at a substantially reduced price) due to HS2, and had an urgent need to sell, could have their properties purchased by the Secretary of State. From that point, the project started to progress in terms of route design and community engagement. This complaint is made by six of the families that lived in that hamlet.

² Announced July 2010; consultation had been from March to June 2010.

Our role

3. We make final decisions on complaints that have not been resolved by the NHS in England and UK government departments and some UK public organisations. We consider the evidence impartially and if we decide there has been an injustice or hardship because an organisation has got it wrong we make recommendations for it to put things right.
4. We cannot say something is maladministrative just because we, or anyone else, would have acted differently. There may well be more than one course of action that is not unreasonable. We can only say something is maladministrative if we judge it to have fallen below the acceptable standard.

The complaints

5. We have received two sets of complaints about HS2 Ltd that are covered in this report. The first is a group of complaints made by Mr D on behalf of the Residents. The second is a set of complaints made by Mr D and his family.

The complaints from Mr D on behalf of the Residents

6. The Residents complained about the way HS2 Ltd dealt with them. They told us that HS2 Ltd did not engage or communicate with them or their proposal for community relocation in an effective or timely manner. That included not dealing with their complaints effectively.
7. The Residents also complained that HS2 Ltd did not understand, or make any assessment of, how its actions in terms of engagement and communication could or would affect them.
8. The Residents said HS2 Ltd's failings have: wasted their time (business and personal); exacerbated what was already a stressful situation, affecting their health, employment, and family life; and led to most of them having to abandon their relocation plans and settle for second best. They also said they have lost all trust in HS2 Ltd.

9. The Residents said that they want the failings to be brought to the attention of Parliament and the public, and for proper systems to be put in place to stop something similar happening in future. They also want a financial payment to remedy the unnecessary time they have spent dealing with HS2 Ltd and for the stress which has affected their health and family life.

The complaints from Mr D

10. Mr D complained, on behalf of himself and his family that HS2 Ltd: did not consider their particular circumstances at its February 2014 Commercial Committee meeting; pressurised them to withdraw their complaint; and took too long to finalise the contract with them between 7 October and 3 December 2014.
11. Mr D said HS2 Ltd's failings have: wasted his time; exacerbated what was already a stressful situation; impacted on his family life; and meant that he lost all trust in HS2 Ltd. He would like the failings to be brought to the attention of Parliament and the public and for proper systems to be put in place to stop something similar happening in future. He also wants financial redress for the unnecessary time he has spent dealing with HS2 Ltd and for the stress and impact caused.³

³ In terms of the impact on Mr D and the outcomes he seeks, his comments relate to the impact of HS2 Ltd's failings in general.

Investigation

Our approach

12. Our report (and specifically our findings) is split into three areas. The first area deals with the complaints put to us by Mr D on behalf of the Residents – these relate to how HS2 Ltd engaged with and communicated with the Residents. The second area deals with Mr D's specific complaints about his situation. The third area deals with how HS2 Ltd dealt with the complaints put to it by Mr D both on behalf of the Residents and himself.
13. In this report we have not included all the information we found during the course of our investigation. However, we are satisfied that we have not left out anything of significance to the complaint and in our findings.
14. Both HS2 Ltd and the Residents have had the opportunity to comment on our draft findings and to provide any further evidence that they considered relevant. We have taken those comments and the additional evidence into account before we finalised this report.

The relevant standards

15. The relevant standards we have taken into account when considering these complaints are set out at Annex 1.

16. In particular, when considering how well HS2 Ltd engaged and communicated with the Residents, we have used our *Principles*. In summary, those *Principles* mean that when HS2 Ltd dealt with the Residents, it should have:
 - been open, accountable, and customer focused - that should have included: being clear about what could and could not be achieved; explaining any restrictions on what it could do; and doing what it said it would do (for example, if it tells the Residents it will consider their proposal by a certain date, or will engage with them to move forward, that is what it should do); and
 - been aware that the project itself, as it affected the Residents' homes and livelihoods, meant it would be dealing with people who were in an already stressful situation and it was therefore even more important to engage and communicate with those people properly.
17. We have also compared what happened in this case to HS2 Ltd's published complaints process.
18. We have also taken into account the fact that the HS2 project is a large one and affects many areas, many individuals and groups. As such, there were many programmes of community forums and bilateral meetings; many proposals submitted from different people; and significant contact with those affected. We have noted that a key part of HS2 Ltd's role is to engage and work with communities, and to broker solutions with individuals and groups if necessary. Apart from formal consultations, the main way it does that is through community forums and bilateral meetings⁴.

⁴ More detail as to the purpose of these meetings can be found in Annex 1.

The facts

19. As noted earlier in this report, the Government started seriously considering a high speed rail route to link London to the West Midlands and possibly further north in early 2009. In late 2010 the Government published the High Speed Two (HS2) route, for consultation. The route was from London to the West Midlands, and then split in two, with one line going to Manchester and the other to Leeds. In January 2012 the Secretary of State for Transport confirmed the HS2 project would go ahead. Phase One would be to build the London to West Midlands part of the route.
20. Shortly after the announcement of the proposed route, HS2 Ltd set up a programme of community forums and bilateral meetings in the areas affected by Phase One of the route. For the Residents, that meant that, between April 2012 and October 2013, six community forum meetings and six bilateral meetings took place.
21. From very early on, HS2 Ltd encouraged those affected by the HS2 project to work with it to come up with solutions. The Residents realised an option that would work for them was for HS2 Ltd to purchase their properties and assist them with relocating together.
22. On 4 April 2012 Community Forum 1 took place. At that point the proposed route indicated that about half of the properties in the Hamlet would be demolished. The Residents submitted proposals to mitigate the impact of HS2 at that meeting which included: i) relocating the track and using a tunnel, and ii) HS2 Ltd purchasing all of their properties at the earliest possible date. HS2 Ltd took the proposals away to review them.
23. On 14 April 2012 Mr D requested a meeting to discuss: mitigation; timescales; compulsory purchase; and relocating the properties in the Hamlet. The (bilateral) meeting was scheduled for 9 May.
24. On 9 May 2012 Bilateral Meeting 1 took place. HS2 Ltd explained that the current track route would be refined, within limits, as the process continued. The Residents put forward similar proposals for mitigation to those they had put forward previously – including the proposal for relocation. HS2 Ltd said it would look into the proposals, with the exception of re-routing the line which had already been considered. HS2 Ltd said it would provide an explanation of why other routes had been discounted. HS2 Ltd explained that a safeguarding⁵ consultation would take place, which would also cover blight and claims, and suggested the Residents made their proposal for relocation '*through a different channel*'. At this point HS2 Ltd was unable to say exactly how many houses would be demolished and how many would remain.

⁵ Safeguarding is where directions are issued by the Secretary of State to protect areas expected to be needed for a project (in this case the HS2 Ltd Phase One route). The aim of safeguarding is to make sure that new developments do not affect the ability to build or operate the relevant project, or lead to excessive additional costs.

25. On 8 June 2012 in response to an email from Mr D, HS2 Ltd told him, among other things, that it would meet the Local Council to discuss issues including housing and the green belt. HS2 Ltd said that the meeting was likely to happen '*after the community forum meetings*'.
26. On 10 June 2012 Mr D emailed HS2 Ltd saying it was unacceptable that not all of their properties would be demolished or compulsorily purchased.
27. On 19 June 2012 Community Forum 2 took place. HS2 Ltd gave a presentation which, among other things, listed the proposals that were under review. It included the Residents' proposals to move the track and build a tunnel. The Residents requested that HS2 Ltd consider purchasing all of their houses and said that their community would like to relocate in the area. HS2 Ltd said that route placement and demolition were not yet fixed and that it was possible that not all 12 properties would need to be demolished. Residents asked that HS2 Ltd provide feedback on its proposals in September rather than November, which HS2 Ltd agreed to try to do. HS2 Ltd also agreed to tell the Residents whether their properties would be in the safeguarding zone, and give them information about providing new housing. HS2 Ltd also agreed it would try to circulate draft minutes within three weeks of each forum meeting.
28. On 25 June 2012 HS2 Ltd responded to Mr D's 10 June email saying it did not know which properties would need to be demolished to build the track, because the design was not fixed. At the end of June 2012 Mr D discussed the relocation proposal with the chair of the local community forum (a local councillor). Mr D, in particular asked for his thoughts on the demolition and rebuilding of the community with regard to planning issues. Mr D shared that information with HS2 Ltd.
29. On 8 August 2012 Bilateral Meeting 2 took place. The Residents presented their relocation proposal asking that all of their properties be purchased as soon as possible and that comparable properties be constructed. The Residents made it clear that their biggest issue was the uncertainty caused by their situation, the fact that the letters HS2 Ltd had sent them were confusing and caused tension, and that they found telephone contact with HS2 Ltd was unhelpful.
30. On 28 August 2012 the Residents' MP provided HS2 Ltd's technical director with the mitigation plans that the Residents had developed. He asked him to consider the plans and to liaise directly with the Residents at the community forums.
31. On 4 September 2012 Community Forum 3 took place. The notes of those discussions about the Hamlet focused on the further information HS2 Ltd had provided on the tunnel proposal.

32. On 19 October 2012 Bilateral Meeting 3 took place. Before the meeting Mr D had submitted plans for a temporary diversion of part of a road in the Hamlet and an amended mitigation statement to reflect that any tunnel would need to be longer than HS2 Ltd had previously proposed. The amended statement still stated that relocation was the Residents' preferred option.
33. On 25 October 2012 Mr D emailed HS2 Ltd expressing the dissatisfaction he and the other Residents felt about HS2 Ltd's approach. He said the community had spent many hours developing proposals and attending meetings but it felt as if HS2 Ltd was carrying out a box ticking exercise. He said that the lack of certainty about their situation was causing stress and anxiety. Also, on 25 October 2012 the consultation on discretionary compensation measures⁶ opened (it closed on 31 January 2013).
34. On 20 November 2012 Community Forum 4 took place. The notes of the meeting reflect that the chair, a local councillor, expressed frustration with HS2 Ltd's lack of information and communication. The Residents focused on the tunnel proposal and the proposal for the relocation of the whole community. The notes of the meeting reflect that the chair suggested that HS2 Ltd talk to the Local Council. HS2 Ltd said that it was considering the community relocation proposal under the criteria used for route refinement. Forum members expressed concern that HS2 Ltd was not taking the Residents' proposals seriously. HS2 Ltd said that it had increased the resources and the size of the team that was working on this proposal. As such, consultants were able to attend meetings. HS2 Ltd said that this would be kept under review. The forum members noted that they wanted information and certainty, and that the meeting scheduled for February would only be worthwhile if HS2 Ltd had more concrete information.
35. On 29 November 2012 Bilateral Meeting 4 was due to take place and the Residents were to meet HS2 Ltd's chief engineer. Before that meeting, the Residents submitted their relocation proposal, which noted that their preferred solution was an early purchase of their properties so that they could relocate to a new community built nearby. The proposal for a tunnel was the other option mentioned in the document. Also before the meeting, Mr D emailed HS2 Ltd setting out the points that the Residents would like addressed. These included: discussing what effective mitigation was possible; discussing a longer tunnel; being given some indication about whether mitigation was likely to be effective; an explanation of the safeguarding zone; and confirmation of the steps and assurances that HS2 Ltd could give in relation to the suggestion to relocate the Hamlet.

⁶ Measures to assist property owners and occupiers affected by new infrastructure projects have developed over the years through a mixture of statute, case law and established practice and are referred to as the *Compensation Code*. Any compensation over and above that is at the discretion (choice) of the Government. For the HS2 project, the Government decided to go further than what was absolutely required so consulted on a number of discretionary schemes.

36. The notes of the meeting on 29 November 2012 show that HS2 Ltd said it was aiming to respond to all mitigation proposals by the end of January but that a tunnel would be too costly. HS2 Ltd said that it would consider compulsory purchase of all the houses and demolish them to make obtaining planning permission for replacements easier for the Residents.
37. On 11 January 2013 Mr D asked HS2 Ltd a number of questions about the width of the safeguarded area, in which properties would be marked for demolition. HS2 Ltd told him he should submit his views in response to the consultation on safeguarding, which at that point remained open. HS2 Ltd said an update on the design would be shared at an upcoming bilateral meeting.
38. In January 2013 the Residents' MP sought information from the Local Council about the relocation proposal given that any rebuilding would need to take place on green belt land. On 17 January the Local Council confirmed to the MP that the demolition of the properties would be considered special circumstances and therefore the Local Council would be able to grant planning permission for new properties to be built. The Local Council also said that it would be possible to build new properties before the current ones were demolished, as long as there were conditions to make sure those properties were eventually demolished. The Residents shared that information with HS2 Ltd.
39. In January 2013 HS2 Ltd began to seriously consider raising the track. That would have meant that the cutting width would have been reduced and therefore that less land was required on each side of the track. At that point HS2 Ltd put back the community forum meetings that were due to take place at the end of January to February. HS2 Ltd told the forum members that it wanted to be able to share as much information as possible on the developing design, hence the postponement.
40. On 31 January 2013 the consultation on discretionary compensation measures closed. Also at the end of January Mr D, on behalf of the Residents, told HS2 Ltd that, if there was nothing of value to share, there would be no point in having the 4 February 2013 bilateral meeting.
41. On 4 February 2013 Bilateral Meeting 5 took place. HS2 Ltd told the Residents it was considering changes to the proposed local road layout which would have meant that all of the Residents' properties would be included in the safeguarding zone and would therefore be demolished. This was a step the Residents welcomed because, in light of what the Local Council had told their MP, the demolition of their properties (or at least a promise to demolish) was required in order for them to obtain planning permission for new homes. HS2 Ltd also told the Residents it was not expecting any significant changes to the horizontal alignment of the track but there may be some changes to the vertical alignment.

42. In mid-February 2013 HS2 Ltd's contractor sent *Land Interest Questionnaires* to the Residents. The purpose of these questionnaires was to enable HS2 Ltd to accurately understand who had an interest in the land due to be affected by the project and what that interest was. Mr D told us that he telephoned the contractor on the day he received the questionnaire. There is no record of this conversation, however Mr D told us that he asked if assistance with legal costs was available. Mr D told us that the contractors told him there was up to £250 available *'but this is not being advertised to contain the costs to HS2'*.
43. On 21 February 2013 Community Forum 5 took place. At that meeting the Residents, together with residents from three other community groups, complained about the lack of feedback on their mitigation proposals. HS2 Ltd said it aimed to complete its consideration of the proposal in March and would feed back to the Residents in April. HS2 Ltd also told the Residents that the track through the Hamlet would be raised by seven metres, thus reducing the cutting width (and therefore the amount of land required). The Residents pointed out that that would still mean some of their properties were left outside the safeguarding zone and so would not be demolished. They noted that this created additional uncertainty for them. However, HS2 Ltd was unable to explain to the Residents exactly how the decision to raise the track would affect them.
44. On 26 February 2013 Mr D asked HS2 Ltd to confirm what the implications of the decision to raise the track were. Specifically, he asked if this meant that HS2 Ltd was going back on what had been noted regarding the possible demolition of all the properties at the meeting on 4 February 2013. Mr D expressed the shock and frustration of the Residents at the change, and at the fact they still had not had feedback on their proposal to relocate all of the Residents together. Also on 26 February 2013 Mr D's MP wrote to HS2 Ltd expressing concern about the way HS2 Ltd was acting.
45. Meanwhile the Residents continued to ask HS2 Ltd to consider their relocation proposal. Mr D contacted HS2 Ltd in March 2013 and it said it would report back on the proposal at the April meetings. The Residents' MP also contacted HS2 Ltd in March 2013 and HS2 Ltd said it hoped to report back on the proposal towards the end of April. Also in March 2013 the discretionary compensation measures consultation had been successfully judicially reviewed, and the Secretary of State for Transport decided that the consultation would be re-run.
46. On 27 March 2013 (in an email at 4.24pm) HS2 Ltd told Mr D that it had not confirmed the roads would be realigned, simply that HS2 Ltd would consider this. Mr D responded to HS2 Ltd by email the same day saying that the information was a shock to all of them. He received an out-of-office message saying the recipient would be away until after the Easter weekend. His wife telephoned HS2 Ltd the following day, Maundy Thursday, and was told no one was available to take her call.

47. In mid-April 2013 HS2 Ltd told the Residents it would update them on the relocation proposal at a meeting that was due to take place a few days later. However, HS2 Ltd subsequently cancelled the meeting. This was on the basis that the Residents had asked questions HS2 Ltd did not have answers to and that a meeting would be more useful when the consultations on the draft *Environmental Statement* and safeguarding had begun.
48. On 28 April 2013 Mr D again complained about the lack of response to the Residents' proposal. The following day HS2 Ltd's chief executive told Mr D that when the safeguarding issues had been resolved HS2 Ltd would discuss the next steps with Mr D and the Local Council.
49. On 7 June 2013 HS2 Ltd told the Residents that a community forum would take place in late summer⁷. On 25 June 2013 some of the Residents and their MP met the Secretary of State for Transport. The Residents put forward their community relocation proposal and expressed dissatisfaction with the way that HS2 Ltd was engaging with them. At that meeting the Secretary of State for Transport said he would look at the proposals and continue to talk to HS2 Ltd.
50. In July 2013 the Secretary of State for Transport made an announcement following a consultation about safeguarding measures⁸. The outcome was that residents became eligible to serve blight notices⁹ on the Secretary of State for Transport in which they could seek a commitment that their properties be purchased as though they were being compulsorily acquired – which meant the sellers would receive the 'unblighted' value, plus an additional payment of 10% of the value of their homes (a loss payment) and reasonable removal costs and expenses. No announcement was made on additional (discretionary) compensation measures at that time, because those measures had been the subject of a successful judicial review¹⁰ which did not involve the Residents.
51. Throughout this period, the Residents continued to ask HS2 Ltd to consider their relocation proposals. They also submitted complaints to HS2 Ltd about: the lack of consideration by HS2 Ltd of their relocation proposal; the track raise; what the Residents saw as a lack of availability of staff from HS2 Ltd at key times; and what the Residents felt was HS2 Ltd '*hiding*' the option of fee-reimbursement for completing the *Land Interest Questionnaires*. The Residents also complained that on a number of occasions, including 23 August 2013, HS2 Ltd had told them it could not help with their concerns about planning issues, which were for the Local Council.

⁷ That meeting did not take place until October 2013.

⁸ Consultation ran from October 2012 to January 2013.

⁹ A blight notice, if accepted by the Secretary of State, agrees to purchase the property to which it applies on compulsory purchase terms (un-blighted value plus a loss payment, plus expenses and disturbance). It is then open to the owner to choose to take that option or not - they have three years to decide.

¹⁰ This is included as background information to set the complaint in context. The compensation packages offered as part of the compensation schemes have not been challenged as part of this complaint.

52. In mid-September 2013 HS2 Ltd met the Local Council and discussed the Residents' proposals. HS2 Ltd's internal correspondence suggests the meeting took place because the Local Council had indicated it would petition the Hybrid Bill when it moved to committee stage. The Residents later complained that they were not included in that meeting and had found out about the meeting after it had taken place. HS2 Ltd subsequently shared a note of the meeting with them. Also in September the discretionary compensation measures consultation (the re-run) was opened with a closing date of 4 December.
53. On 3 October 2013 Community Forum 6 took place. HS2 Ltd did not feedback on the Residents' relocation proposal. The membership of the forum held a vote of no confidence in HS2 Ltd. The minutes state that HS2 Ltd accepted it had not had a clear idea of what the community forums could achieve at the outset and said it had learned a lot from the process. The Residents had, in advance, drafted an agreement for HS2 Ltd to sign saying they would be given enough time to rebuild their homes and that HS2 Ltd would help them with temporary finance. HS2 Ltd said they would take the agreement away to consider.
54. On 11 October 2013 Bilateral Meeting 6 took place. The Residents gave HS2 Ltd a paper dated 9 October that set out slightly more detailed proposals for relocation. HS2 Ltd put forward an 'issues, topics and options' list for discussion. Items on the list included: sale and rent back; exchange of contracts with delayed completion; bridging finance; phased compensation; location options for replacement properties; planning issues; and timings for planning, land acquisition, construction, and relocation. The minutes show that HS2 Ltd suggested to the Residents that they come up with a business case for relocation. The minutes also record that HS2 Ltd told the Residents that such a proposal would be outside of the statutory processes and would therefore take time for it to consider.
55. The Residents submitted their refined community relocation proposal to HS2 Ltd on 23 October 2013. The proposal was a more detailed version of the proposal that was submitted in writing ahead of the bilateral meeting in November 2012. Mr D had already asked HS2 Ltd to enter into an agreement with the Local Council to demolish the properties on the condition that HS2 went ahead the day before this proposal was submitted. He had also suggested options such as HS2 Ltd underwriting planning costs and providing temporary funding. HS2 Ltd told Mr D that it would prepare a report on the Residents' relocation proposals for its executive to consider in November.
56. In November 2013 HS2 Ltd submitted the Hybrid Bill to Parliament. The draft *Environmental Statement* and *Health Impact Assessment* accompanied the Bill.¹¹ The Bill had its first reading on 25 November.

¹¹ Consultation had taken place May to July 2013.

57. Also in November 2013 the chair of the community forum wrote to HS2 Ltd to express his '*concern and disappointment*' at the process not having considered the Residents' relocation proposal. Mr D's MP also wrote to HS2 Ltd to reiterate that the main issue for the Residents was the proposal to demolish the properties and rebuild. The MP said he believed HS2 Ltd should give the Local Council an assurance of demolition, or HS2 Ltd should underwrite the costs associated with redesigning and rebuilding new properties, if the present properties were not demolished.
58. On 4 December 2013 the discretionary compensation measures consultation (the re-run) closed.
59. On 6 January 2014 Mr D made it clear in an email that they were looking for HS2 Ltd to: guarantee to the Local Council that, on Royal Assent, the Residents' houses would be demolished; agree to underwrite the Residents' planning costs in the meantime if their houses were not demolished; provide temporary funding while the Residents built new houses; and delay building HS2 until 2018 to give them time to rebuild. He asked what HS2 Ltd's current position was.
60. At the beginning of January 2014, HS2 Ltd told the Residents they would receive a response to most of their issues by the end of January. On 24 January 2014, Mr D's MP wrote to the Secretary of State for Transport and restated the Residents' proposals. In his letter, he complained about the time HS2 Ltd was taking to compile the report in response to the proposal, and asked for an assurance that HS2 Ltd would comply with its most recent statement that the report for the Commercial Committee would be prepared by 15 February. Mr D asked that he and the Residents be allowed to see and comment on the report before it was submitted to the Commercial Committee.
61. In mid-January 2014 Mr D emailed HS2 Ltd regarding the impact of the project on his business.
62. On 20 January 2014 Mrs D emailed HS2 Ltd. She asked that, as well as HS2 Ltd considering the community relocation, it also consider her family's unique circumstances (mainly Mr D's business, but also family and social ties, and lifestyle). She pointed out there was nowhere similar locally for them to move to. HS2 Ltd responded the following day saying that a blight notice could be submitted. The response was limited as to how much further it could assist the family because further discretionary measures had not yet been announced. However, HS2 Ltd said it would put the community relocation proposals to its Board.
63. On 25 January 2014 Mrs D emailed HS2 Ltd again. She said its response had missed the point, and she asked that the family's unique situation be set out in the report that was to be prepared for the Board and considered on its own merits. She chased a response on 1 February 2014.
64. On 4 February 2014 HS2 Ltd's Commercial Committee considered the report produced in response to the Residents' relocation proposal. Four options were put before the Committee and legal advice had been sought on each option. The options were:
- i. The Residents to work within existing compensation schemes but for HS2 Ltd to be as flexible as it could within those schemes.

- ii. HS2 Ltd to offer some flexibility outside of the existing schemes, particularly offering six months' notice of when vacant possession would be required, and giving a timescale for when it would be able to consider entering into an agreement to demolish the properties.
 - iii. HS2 Ltd to give a binding commitment to the local District Council to demolish the properties (the date that commitment would be given was not fixed and would require consideration).
 - iv. As option iii, however, HS2 Ltd to also offer a range of financial and technical support to the Residents. For example, underwriting the Residents' expenditure on planning and other fees.
65. Following the consideration of the Commercial Committee, HS2 Ltd recommended to the Secretary of State for Transport that it should continue to operate within existing compensation schemes but should be flexible to help the Residents within those schemes (option i). HS2 Ltd noted that the Commercial Committee felt the compensation measures already on offer were a reasonable remedy and were hesitant to create a precedent by treating the Residents differently to other affected property owners.
66. The report HS2 Ltd put to its Commercial Committee specifically noted that Mr D ran an agricultural accountancy business from the property, but did not provide any additional information or ask for any special consideration of that point. Annexed to the report were documents that included: a copy of the Residents' Group Proposals Paper; an email that Mr D had sent on 6 January 2014; and a letter from his MP dated 23 January 2014. Some of those documents mentioned aspects that made Mr and Mrs D's position unique. However, it appears they were mentioned in passing, as part of the wider reasons people in the community would have difficulty relocating. The minutes of the meeting do not suggest that the Committee specifically considered Mr and Mrs D's individual situation.
67. HS2 Ltd responded to Mrs D's correspondence regarding her family's situation on 7 February 2015. It said there had been a delay in completing the report but it hoped to be able to share the outcome of the considerations soon. HS2 Ltd did not address Mrs D's concerns about her family's situation.
68. Mrs D emailed HS2 Ltd on 9 February 2015 and noted that it had not responded to her specific concerns. HS2 Ltd responded saying that it would tell her the outcome of its consideration shortly. In the meantime, HS2 Ltd had responded to Mr D's mid-January emails suggesting he appoint an agent (funded by HS2 Ltd).
69. Meanwhile on 18 February 2014 the Secretary of State for Transport responded to the Residents' MP's letter of 24 January. In his letter, he said that it would not be correct or consistent for him to make a decision on the Residents' community relocation proposal until after the upcoming announcement on the compensation package that would be available under the discretionary compensation scheme. HS2 Ltd subsequently shared the decision of the Commercial Committee with the Residents in an email at 4.43pm on Friday 28 February. It reiterated what it had told the Residents' MP and said that, while it could not take a position on the proposals at the current time, there was still scope for some issues to be explored, and it was happy to meet and discuss a way forward.

70. On 24 February 2014 Mrs D wrote again to HS2 Ltd noting that she had not received a response to her concerns outlined in the email she had sent on 9 February 2014. She asked HS2 Ltd to deal with her concerns as a formal complaint.
71. In March and early April 2014 there was a lot of contact between Mr D, on behalf of the Residents, and HS2 Ltd, and a meeting was arranged on 11 April 2014 to discuss the way forward. Mr D and his family were going on holiday that day but delayed their departure so that Mr D could attend. Prior to the meeting, on 4 April, Mr D told HS2 Ltd to decide whether the meeting should go ahead as Mr D questioned whether the purpose was to look at constructive steps forward. HS2 Ltd responded that it wanted to work with the Residents and other parties to identify actions that could be taken, now or in the future. HS2 Ltd noted that it did *'not have the legal powers or authority to undertake many of the actions that you wish us to deliver'*.
72. On 9 April 2014 the Secretary of State for Transport announced additional discretionary compensation schemes¹². The *Command Paper* setting out the additional schemes¹³ added an *Express Purchase Scheme* to the existing *Exceptional Hardship Scheme*, which simplified the blight notice process. A copy of this can be found at Annex 2. That announcement also included, at Section 9 of the *Command Paper*, new provisions for exceptional situations where the operation of the existing compensation measures would result in an unfair outcome. It called these properties *'atypical'* or where *'special circumstances'* applied.
73. Mr D suggested to HS2 Ltd that his family's unique circumstances be used as a case study at the meeting on 11 April 2014. He asked HS2 Ltd to explain the reasons for the Secretary of State for Transport's decision and, specifically, which parts of the proposals HS2 Ltd could act on and which aspects of the proposals it could not, and why. HS2 Ltd in response reiterated that it could not agree to the Residents' relocation proposal and explained that, among other things, the meeting would be to *'work together to identify a constructive way forward'*. It said that, at the meeting, it would explain why it could not provide the commitments the Residents were seeking.
74. On 10 April 2014 Mr D suggested to HS2 Ltd that, if it had not come up with any options for a way forward in light of the proposed new compensation measures, it should think about what those proposed changes (in particular Section 9 of the *Command Paper*) would mean before the meeting took place. HS2 Ltd responded (less than two hours later) that it did not consider Section 9 of the *Command Paper* changed the situation in relation to the Residents relocation proposals. HS2 Ltd said that it could talk through the discretionary measures and whether they might help the Residents, but that they could not provide assurances those measures would meet the Residents' requirements. HS2 Ltd cancelled the meeting noting that it was the Residents'

¹² Consultation had taken place from September to December 2013.

¹³ See the document Property compensation consultation 2013 for the London to West Midlands HS2 route: decision document. Available at: <https://www.gov.uk/government/publications/hs2-property-compensation-consultation-2013-for-the-london-to-west-midlands-route-decision-document>.

'wish' to do so. HS2 Ltd also said that the Secretary of State would need to review the Residents' proposals in light of the current position - HS2 Ltd had been told that by the Department for Transport - and so it would not be able to provide any further commitments at the meeting.

75. In response Mr D stated it was not the Residents' wish to cancel the meeting but if HS2 Ltd had not thought about a way forward in light of the proposed changes, there seemed little point in having it. HS2 Ltd continued with the cancellation and told the Residents it would liaise with the Secretary of State for Transport about the consideration of the relocation proposal. The Residents asked HS2 Ltd to explain to them in writing what 'constructive steps forward' would have been discussed at the meeting. HS2 Ltd did not respond to that.
76. Mr D continued to correspond with HS2 Ltd about whether the Residents' situation, and his own, fell under the atypical properties and special circumstances provisions (Section 9) of the *Command Paper*. On 16 April 2014 HS2 Ltd told him it did not think it did because his case could be treated and taken forward under the *Compensation Code* and discretionary schemes - it noted he was a 'residential occupier with ancillary office premises'. HS2 Ltd suggested Mr D appoint a property agent (to be funded by HS2 Ltd) to help him with his options. HS2 Ltd also said it could provide explanations about the *Compensation Code* and discretionary measures, and information about the petitioning stage of the Hybrid Bill. HS2 Ltd offered to meet with him

and the Residents to discuss those points. Mr D (and the Residents) did not accept the offer of a meeting because they said that, by that time, relationships had deteriorated so much so that, with the exception of Mr D and Mr K, the Residents had effectively given up on their relocation hopes.

77. On 28 April 2014 the Hybrid Bill's second reading took place. The Bill was approved, in principle, so moved into petitioning and committee stage¹⁴. The window for petitions to be submitted was between 29 April and 23 May. Also in late April 2014 the Residents complained about HS2 Ltd's response to their query about Section 9 applying to them. On 21 May HS2 Ltd told the Residents that its current understanding of the definition of atypical properties was those properties where there was no equivalent demand or market and therefore would not include residential or business premises. HS2 Ltd explained that the compensation available to the Residents was in accordance with the *Compensation Code* for compulsory purchase and that was the same as if the property was acquired under statutory blight. HS2 Ltd said Mr D was already eligible to serve a blight notice and Section 9 would therefore not introduce any material considerations that were not already available to him.
78. Meanwhile on 7 May 2014 Mr D submitted a petition to be considered by the Select Committee. The District Council and the County Council also submitted petitions, which HS2 Ltd have accepted provided some support for the relocation proposal.

¹⁴ This is when a Select Committee considers the finer points of the Bill, together with any petitions that are received. Opponents to Hybrid Bills may submit petitions and certain individuals and groups can state their case before the Select Committee.

79. On 27 May 2014 HS2 Ltd's head of property acquisitions met Mr D's property agent to discuss '*heads of terms*' for a way forward. HS2 Ltd subsequently drafted an agreement that was approved by its Commercial Committee on 10 June 2014. The terms were approved and shared with Mr D's property agent on 20 June. Mr D's property agent responded on 4 July 2014. He said that while Mr D broadly agreed to the '*heads of terms*', he preferred the 'exchange of contracts and delayed completion' that had previously been discussed, to the '*sale and rent back scheme*' mentioned in the '*heads of terms*'.
80. On 24 July HS2 Ltd agreed to the change in the '*heads of terms*' and confirmed that, when the contracts were exchanged, Mr D would receive 90% of the compensation with the remaining 10% to be paid on completion. On the same date HS2 Ltd attached a condition to any agreement that would assist Mr D with relocation. This was that Mr D would withdraw any formal complaints. However, this was subsequently raised at the meeting with HS2 Ltd on 31 July 2014 and on 7 August 2015 HS2 Ltd agreed to remove the condition.
81. Following further exchanges about the '*heads of terms*', a draft document was put before HS2 Ltd's Commercial Committee on 7 October 2014. The Commercial Committee approved the draft. Broadly, it stated that HS2 Ltd would recommend that the Secretary of State for Transport enter into a conditional contract to purchase Mr D's property as long as Mr D withdrew the petition he had submitted¹⁵. The contract covered: financial arrangements (including compensation in line with the compulsory purchase scheme and the timing of that payment to allow Mr D to finance rebuilding elsewhere); a conditional promise to the Local Council about the demolition of the property and; time for rebuilding. HS2 Ltd instructed solicitors to draw up a legal contract and a confidentiality agreement (to be agreed before the contract negotiations began to cover the negotiations and the contract). That was communicated to Mr D's solicitor late on 7 October. Mr D was broadly satisfied with the terms agreed by the Commercial Committee. However, he did not withdraw his petition at that time because he had not had legal confirmation of the contract. A Select Committee hearing was scheduled for 5 November 2014.
82. On 13 October 2014 HS2 Ltd's solicitors sent a first draft of the confidentiality agreement to Mr D's solicitors.
83. On 5 November 2014 the first draft of the contract had been shared with Mr D's solicitors so as not to delay things. This was drafted so that the bulk of the compensation would be paid on the completion date of the transfer. However, this did not provide Mr D with what he needed to start rebuilding elsewhere.
84. On 10 November 2014 the confidentiality agreement was completed. In the meantime, Mr D had liaised with the Select Committee clerk and HS2 Ltd regarding the date of the hearing that was subsequently moved to 4 December 2014.

¹⁵ Only a broad overview has been given in this report. It should not be taken that this report sets out all of the terms agreed. The detail is not necessary for the investigation and the contract itself (and the negotiations that led to it) is the subject of a confidentiality agreement.

85. On 17 November 2014 Mr D's solicitor returned a slightly amended contract to HS2 Ltd's solicitor. He said Mr D needed the bulk of the compensation a while before they moved out so they could rebuild elsewhere. He said Mr D would be happy to convey the property and receive the compensation as long as he could occupy it until 31 January 2018 (the date it had been agreed that Mr and Mrs D's involvement with the property would end). HS2 Ltd instructed its solicitor to return to the agreed terms and the contract was redrafted to include a tenancy agreement and was shared again on 19 November. Mr D's solicitor made some minor amendments to the contract and returned it to HS2 Ltd on 24 November. However, on 26 November Mr D told HS2 Ltd that he did not want to enter into a tenancy agreement.
86. HS2 Ltd's solicitors revised and agreed the contract on 28 November 2014. On 2 December Mr D's solicitor asked for an amendment to the contract and on the same day Mr and Mrs D signed it. Mr D consequently withdrew his petition and therefore did not attend the Select Committee hearing.

Findings

87. We will first set out our findings in relation to the complaints made by Mr D on behalf of the Residents. We will then set out our findings in relation to the complaints specifically made by Mr D regarding his personal situation. Finally, we will set out our findings regarding the way that HS2 Ltd have handled the complaints put to them by Mr D, both on behalf of the Residents and himself.

The complaints made by Mr D on behalf of the Residents

88. In setting out our findings we have highlighted the key areas that the Residents have complained to us about and commented on HS2 Ltd's actions in relation to those specific complaints.

The February 2013 bilateral meeting and the track raise

89. The Residents complained that the bilateral meeting of 4 February 2013 went ahead when the only thing of substance HS2 Ltd told them was that it was looking into changing the road layout so that all the properties would be marked for demolition. They also complained that this information became uncertain again 13 working days later at the community forum meeting. HS2 Ltd told us that it was important the meeting went ahead because it was keen to tell the Residents about those possible changes. HS2 Ltd said it could not have shared the information about the track raise at the meeting because that information was not confirmed until mid February. HS2 Ltd told us it considered cancelling the meeting but believed it would have been criticised for cancelling it without explanation.

90. We have looked at the minutes of the bilateral meeting of 4 February 2013 and they confirm the Residents' view that the only substantive piece of information shared was the consideration HS2 Ltd was giving to realigning the road layout so that all properties would be demolished. We note that at the time of the bilateral meeting, the track raise proposal was near the end of the review process (HS2 Ltd told us that realigning the road layout took a lot of work and consideration). We also note that HS2 Ltd told us that it did not want to cause concern by rearranging the meeting, and that it would have been difficult to do so.

91. Having considered the matter carefully we can see that there were a number of ways in which HS2 Ltd could have managed the situation better. One option would have been to postpone the meeting, and explain to the Residents that there were some other key developments that would have been ready for discussion in a couple of weeks' time. We note that HS2 Ltd had already postponed the January community forums, which had a much wider attendance, for the same reason. Another option would have been to explain at the meeting the prospect of a track raise but noting that this was under consideration and therefore not decided upon.

92. We do not consider it was customer focused or open and transparent for HS2 Ltd to have gone ahead with the meeting and concealed the likelihood of the track raise. While recognising that a decision had not yet been confirmed, given the stage at which HS2 Ltd had got to on this consideration, the chances of the track raise not being confirmed seemed unlikely. It is clear that the Residents had already lost a lot of confidence in HS2 Ltd, and we consider HS2 Ltd should have recognised that by not sharing this information with the Residents matters were likely to worsen.

93. Furthermore, when HS2 Ltd informed the Residents about the raising of the track, it was not in a position to answer what we consider was an obvious question posed by the Residents; what does that mean for us in terms of the demolition of our properties? While it later transpired that all of the properties would stay within the safeguarding zone, and would therefore be marked for demolition, the way the communication about the track raise was handled was not open and accountable, and was not customer focused.

The advertisement of the availability of reimbursement of professional fees for completing the Land Interest Questionnaire

94. The Residents complained that HS2 Ltd did not advertise that fees could be reimbursed to people who had used professional help to complete the *Land Interest Questionnaire*. They also complained that HS2 Ltd's contractor, on HS2 Ltd's advice, deliberately hid the reimbursement scheme from them.

95. Having considered this aspect of the complaint we are satisfied there was no obligation on either HS2 Ltd or their contractor to proactively publicise the fee reimbursement scheme. Although it was not publicised by HS2 Ltd or its contractor, we note that it was publicised by companies assisting those affected, and HS2 Ltd does not appear to have been hiding the scheme when people asked about it. For instance: Mr D accepts he was told about it; HS2 Ltd amended the minutes of the February 2013 community forum to make it clear that fee assistance was available; and during the complaints process HS2 Ltd reimbursed a number of other sets of fees. Importantly for the Residents, Mr D had made them aware of it so that if they had not known about it before, they could have used it at that point.

96. Turning to the complaint that the contractor told Mr D it had been instructed to hide the reimbursement scheme, Mr D has stated his view of the conversation, which we have no reason to doubt. However, the contractor, in correspondence with HS2 Ltd, said that while it recalled advising Mr D about the fee reimbursement, it did not tell him it was not being advertised in order to contain costs to HS2 Ltd. We are therefore in a position where there are two conflicting accounts of events. There is no record of the telephone call and, without any independent evidence, we cannot make a determination on this aspect of the complaint.

HS2 Ltd's September 2013 meeting with the Local Council and the communication with the Residents about it

97. The Residents complained that HS2 Ltd met the local District Council on 19 September 2013 without telling them, when they had been told they would be involved in any such meeting.
98. HS2 Ltd has accepted the Residents were not told about the meeting and subsequently shared the record of the meeting with them. HS2 Ltd explained that it was committed to being open and that it was normal practice to meet local councils to discuss local issues. HS2 Ltd noted that it had not met the Local Council about the Residents' issues previously but that they considered it was appropriate to talk to the Local Council without the Residents being present.
99. We do not consider it was unreasonable for HS2 Ltd to meet the Local Council without the Residents being present. Meetings with the Council are part of HS2 Ltd's general strategy of engagement and we do not consider that it was necessary for the Residents to be present at that meeting. However, we appreciate that, after asking for their relocation plans to be taken forward for so long, the Residents felt frustrated that HS2 Ltd met the Local Council without their knowledge. We also recognise the Residents' frustration that the meeting took place so soon after HS2 Ltd had told them it could not help with council-related matters.
100. We note that the Residents said they believed HS2 Ltd arranged the meeting to '*torpedo*' their relocation proposal. We have seen no evidence of that, but we agree with the Residents that HS2 Ltd was not open with them about what it

was doing. We also see no reason why HS2 Ltd could not have, at the very least, told the Residents that the meeting was taking place. This is another instance where HS2 Ltd was not clear and open in its communication with the Residents.

The cancellation of the meeting scheduled for 11 April 2014

101. During March and early April 2014, the focus of Mr D's correspondence with HS2 Ltd shifted to the agenda for the meeting scheduled for 11 April 2014, which did not take place. It is clear that HS2 Ltd did not properly manage the Residents' expectations about what could be discussed at this proposed meeting. We note that HS2 Ltd said in correspondence that it had cancelled the meeting at the Residents' request. However, the correspondence we have seen demonstrates that Mr D was simply seeking reassurance from HS2 Ltd that any meeting would involve constructive discussions and move things forward. HS2 Ltd did not provide that reassurance and instead chose to cancel the meeting.
102. Given the point that had been reached, it is clear to us that going ahead with the meeting on 11 April would have been the best course of action. It should have been apparent from the correspondence HS2 Ltd had received that the Residents were keen to enter into constructive dialogue about what could be done. Had the meeting gone ahead it would have been a chance to discuss what HS2 Ltd could and could not do within the existing schemes. It seems to us that HS2 Ltd missed a clear opportunity to move forward the dialogue with the Residents regarding their community relocation proposal.

The way HS2 Ltd dealt with the Residents' request that their community relocation proposal be considered under Section 9 of the 9 April 2014 *Command Paper*

103. It is not our role to take a view as to whether Section 9 of the *Command Paper* applied to the Residents. More information on exactly how Section 9 worked, and what circumstances it could be applied to, has become available during the petition hearings, and that information was not available to HS2 Ltd at the time it dealt with the Residents' request. However, what we have looked at is the way HS2 Ltd responded to the Residents' query about the relevance of Section 9 to their community relocation proposal.
104. The correspondence shows that HS2 Ltd sent the initial response very quickly – within two hours of receipt. It also shows that the Residents were given very little explanation as to how HS2 Ltd came up with that response. Moreover, when the Residents queried the decision, HS2 Ltd's further response did not add to the earlier explanation.
105. We believe that HS2 Ltd should have understood the importance of this matter to the Residents. In doing so, they should have provided a more detailed and considered explanation to the query. As it was, the Residents did not receive a more detailed explanation until HS2 Ltd responded to their formal complaint on 21 May 2014.

How HS2 Ltd shared information with the Residents

106. The Residents complained about two instances in particular where they considered that the timing of information-sharing by HS2 Ltd was insensitive. When

considering whether HS2 Ltd's actions were reasonable in these instances we have taken into account both the nature of the information that was shared and the circumstances that the Residents had found themselves in.

107. First, the Residents complained that HS2 Ltd sent important information to them late in the afternoon before the 2013 Easter bank holiday break. Due to the timing of that contact, when the Residents received that information and wished to discuss it with HS2 Ltd there was no one available to answer their queries. That information came as a shock to the Residents and we consider that HS2 Ltd should have reasonably expected this. Given the position the Residents were in, the information that was shared and the manner in which it was sent, was not customer focused.
108. Secondly, the Residents complained that HS2 Ltd shared the Secretary of State's decision (made following the February 2014 Commercial Committee) with them late on a Friday. That decision was an important one for the Residents and we consider HS2 Ltd should have shared it with them at the earliest possible opportunity. As it stands, we cannot see why HS2 Ltd was not able to share that decision before 28 February. Furthermore, given the significance of the decision, and the Residents' previous concerns about the way in which HS2 Ltd had shared information with them, we consider HS2 Ltd should not have simply emailed the Residents late on a Friday afternoon without any warning. Again, to do so was not customer focused.

Sharing minutes of meetings in a timely way with the Residents

109. The Residents complained that meeting minutes were not issued in a timely way¹⁶.
110. We have seen copies of all the minutes and it is not immediately clear when they were issued. Having said that, we have seen a number of examples when the minutes of meetings took far too long to be shared with the Residents. We outline these examples below:
- HS2 Ltd took until 18 May 2012 to issue the draft minutes of the first community forum (4 April), yet the chair of the community forum had chased this in the meantime;
 - it took almost three months (until 2 November 2012) for HS2 Ltd to issue the draft minutes of the 8 August bilateral meeting, by which time the next bilateral meeting had taken place (on 19 October);
 - at the February 2013 community forum HS2 Ltd agreed to circulate an actions log detailing the actions arising from all the previous meetings, and an update on what actions had been completed. It took more than two months for it to circulate this (on 26 April); and
 - it took until 7 November 2013 for HS2 Ltd to issue the draft minutes of the 3 October community forum.
111. HS2 Ltd had no set guidance in place regarding how long it should take for the minutes of those meetings to be issued. However, simple good administration (as outlined in our Principles) would dictate that such items should be drafted and

issued within a reasonable time frame – and in general as close to the meeting as possible. That is particularly important in cases such as these where minutes of meetings were being issued for approval before they could be finalised, they contained action points for HS2 Ltd, and where the Residents found themselves in a difficult and stressful position. It is clear that HS2 Ltd failed to provide the minutes of a number of important meetings in a timely manner.

Communication with the Residents about their community relocation proposal

112. When considering this aspect of the Residents' complaint, it is important to remember that part of HS2 Ltd's role is to engage with communities to come up with practical solutions that work for both the relevant community, and for HS2 Ltd.
113. Furthermore, HS2 Ltd (and not the Residents) should have had the expert knowledge as to what could and could not be done. It is important to remember that the Residents are not experts at understanding the ins and outs of a large infrastructure project, nor should they be expected to have that understanding. Therefore, when HS2 Ltd asked the Residents to engage, they did so, as far as we can see, to the best of their abilities. The Residents did not set that in the context of the project as a whole or with reference to HS2 Ltd's powers, nor could they be expected to.
114. As we have noted above, HS2 Ltd encouraged those affected by the HS2 project to work with it to come up

¹⁶ Please note, the information provided in this section about when meeting minutes were issued is information that has not formed part of any other background section of this report.

with solutions. The Residents took that suggestion seriously and engaged with it, putting forward a proposal that HS2 Ltd commit to early purchase of the Residents' properties and build a new community nearby for the Residents to relocate to.

115. As early as April 2012 HS2 Ltd had told the Residents that it would review their proposals. However, we have seen no evidence that HS2 Ltd took any action on, or provided any proper feedback in response to, the Residents' community relocation proposal. Having said that, we note HS2 Ltd did consider the tunnel proposal, between April 2012 and November 2012, when the Residents submitted their revised relocation proposal. By February 2013, ten months after the Residents had submitted their relocation proposal, and three months after they had submitted a revised version, HS2 Ltd said it would consider realigning the roads so that all the present properties were demolished. That was important for the Residents, because they wanted to all move together, and they needed confirmation that their properties would be demolished in order to obtain planning permission to build new ones. However, that feedback was solely relevant to the demolition aspect of the proposal, and HS2 did not give any other feedback.
116. It is clear that, at that meeting in February 2013, while the Residents welcomed the feedback on the demolition aspect of their proposal, they were frustrated at the lack of progress on other aspects of the proposal. In response, HS2 Ltd said it aimed to complete its consideration of the proposal in March and would provide feedback on all of the proposals in April. HS2 Ltd later said it would report back on the proposals at April's community forum. However, HS2 Ltd did not provide feedback on the proposal in April 2013. Rather, HS2 Ltd cancelled the community forum on the basis that the Residents had asked questions it did not have answers to, stating that a meeting would be more useful when the consultations on the draft *Environmental Statement* and safeguarding had started. On 29 April HS2 Ltd said, in response to a complaint from Mr D, that it would not discuss the next steps until the safeguarding issues had been resolved.
117. The Residents continued to ask HS2 Ltd to look at their relocation proposal and when asked added to their proposal, for example when HS2 Ltd suggested the Residents submit a business case. At the beginning of January 2014, HS2 Ltd told the Residents it would receive a response to most of their issues by the end of January. However, it did not consider this until 4 February and, more importantly, the Residents were not informed of the decision until the end of February.
118. We consider that HS2 Ltd very early on in the process, should have looked at the spirit of the Residents' community relocation proposal and considered how that could have worked in practice and what that would have meant for HS2 Ltd. As we have noted, HS2 Ltd was the expert and had a responsibility to communicate to the Residents at what point any restrictions were removed, and what, if anything, of use can be done in the meantime.

119. We can understand why, as far as the Residents were concerned, having made their community relocation proposal in April 2012, it had gone into a black hole with HS2 Ltd continuing to say that it would provide feedback on it, but that feedback did not materialise. This lasted until February 2013 at which point HS2 Ltd told the Residents it had changed the road realignment to bring all of the properties within the safeguarding zone.
120. HS2 Ltd has told us that realigning the road layout took a lot of work and consideration and, although we appreciate that HS2 Ltd would have been wary about giving the Residents false hope, we do not understand why it did not tell the Residents that this was something it was considering. This is particularly so given that the Residents had made it clear they were losing all confidence in HS2 Ltd. The only other action we can note on the part of HS2 Ltd in relation to the Residents' proposal in the two-year period was the meeting with the Local Council.
121. Although HS2 Ltd had frequently told the Residents it would feed back on their proposal, as far as we can see, some aspects received no attention at all until the February 2014 Commercial Committee meeting. Furthermore, following that, HS2 Ltd did not properly explain to the Residents which aspects it could not or would not assist the Residents with, and when any restrictions would be removed.
122. Throughout the two-year time period (April 2012 to April 2014) when petitioning opened, HS2 Ltd mentioned in passing some of the restrictions it was operating under but did not, at any point that we can see, actually say to the Residents *'you want to relocate as a community, here are some ways that could happen, but there are some aspects that we will not be able to consider until [date] for [reason]'*. Certainly, the Residents did not, at any point, understand there were aspects of their proposals that HS2 Ltd could not or would not progress.
123. We consider that the Residents made clear to HS2 Ltd on many occasions throughout the two-year period that they required feedback and assistance with their proposal but this seemingly did not prompt HS2 Ltd to set out the situation to the Residents, who had no idea of HS2 Ltd's remit, powers, and restrictions, at any point. Had HS2 Ltd been open and accountable about its position, the Residents would have had as much information as was possible to enable them to make informed decisions.
124. From the evidence we have seen, it appears that HS2 Ltd was reluctant to deal with any of the Residents' compensation issues ahead of the discretionary compensation schemes being finalised. It also appears that the Residents, who believed their proposal had been submitted as mitigation and not under the compensation schemes, did not understand that. We consider this was because HS2 Ltd did not clearly explain this to them. The lack of announcement on the compensation schemes appeared to stall consideration of any aspect of the Residents' proposal. We do not consider that was necessary. That is not to say it would have been unreasonable for HS2 Ltd to take that position, we have not taken a view on that, rather HS2 Ltd did not make its position clear to the Residents.

125. It is worth at this point to comment specifically on the February 2014 Commercial Committee meeting. HS2 Ltd looked at the Residents' proposals with the benefit of legal advice. The minutes of the meeting show that a very narrow view was taken. HS2 Ltd looked at how the Residents (or their MP) had phrased the aspects of their proposal and made a decision. All of those decisions were that it could not, or would not, agree to other aspects of the proposal. However HS2 Ltd gave no indication to the Residents that it was working with them.

126. We believe it would have been possible for HS2 Ltd to have mitigated at least some of the uncertainty of the developing project by entering into a much earlier, but more conditional, agreement with the Residents. This would have demonstrated HS2 Ltd's commitment to work with them. It is not for us to dictate to HS2 Ltd what its consideration should have resulted into. However, having asked people to come up with ideas and having committed to considering those ideas, HS2 Ltd should have addressed all of the aspects of the proposal at a very early stage so that the Residents understood where they stood. At the opposite end of the spectrum, if HS2 Ltd had decided it would not do anything until the petitioning stage, it should have simply told the Residents that. This would have enabled them to make an informed choice about what to do and saved them spending significant time and effort pursuing their community relocation proposals in the meantime.

127. HS2 Ltd actively went out and asked people to come up with solutions to issues, and then promised to consider them. Having raised expectations in that way, HS2 Ltd should have properly considered those proposals in a timely manner explaining where things could not be progressed and why. If it was not possible to provide feedback on the proposal, it should have been made clear to the Residents why that was the case. The Residents made it clear at numerous meetings and in extensive correspondence that they did not understand the position HS2 Ltd were taking, and HS2 Ltd should have explained to them why it was taking that position. Overall, we consider that HS2 Ltd's actions were not open, accountable, or customer focused.

The complaints made by Mr and Mrs D

128. There are three aspects of Mr D's complaints. We have considered each in turn.

Complaint that HS2 Ltd's February 2014 Commercial Committee did not deal with the unique situation of Mr and Mrs D's property and business

129. We appreciate it was frustrating for Mr and Mrs D that their position was not set out in detail in the prepared papers, and that it does not appear to have been considered in detail by the Committee. It is our view that this complaint, though specific to Mr and Mrs D, is an extension of the complaints outlined above regarding how HS2 Ltd communicated and engaged with the Residents in general.

130. It seems to us that the confusion could have been avoided had HS2 Ltd clearly explained to Mr and Mrs D what they could and could not consider - as well as saying whether their specific circumstances would be included in the Committee papers. Given the point things were at, we think it would have been customer focused for it to be included in the papers and given proper consideration at that point. Having said that, we do not consider that alone is sufficient to be maladministrative because HS2 Ltd may have had a number of reasons for that (for instance, it seems likely it had already requested legal advice and may have thought that adding to that would have delayed things further).
131. What we can say is that HS2 Ltd should have been clear with Mr and Mrs D about that at the time and it was not. Mr and Mrs D clearly wanted their situation to be given separate consideration, and if HS2 Ltd were not going to do that, it should have explained why. Furthermore, HS2 Ltd should have explained if there were any steps that needed to be taken in order for Mr and Mrs D to move towards that. For the avoidance of doubt, we do not think the outcome of that particular Commercial Committee meeting would have been different for Mr and Mrs D, even if their specific circumstances had been considered.

Reaching the final contract (October to December 2014)

132. Regarding this aspect of his complaint, Mr D asked us to pay particular attention to two things: that the first draft of the contract, shared on 5 November 2014, did not include anything about financing the relocation; and that the second draft of the contract, shared on 19 November, contained sale and rent back provisions, which it had long since been agreed were unnecessary.
133. First, we have looked at the two-month period, from 7 October to 3 December, as a whole. We do not think that two months for the confidentiality agreement and then the contract to be drawn up, the assurance to be drafted, and the contract to be negotiated between HS2 Ltd's and Mr D's solicitors, and executed, was unreasonable. Furthermore, we cannot see any period where there was significant inaction by HS2 Ltd or its solicitors. We, therefore, do not consider HS2 Ltd's actions in this instance were maladministrative.
134. Secondly, we have considered Mr D's specific points about the drafting of the financial/compensation provisions. We appreciate Mr D was frustrated that things did not move more quickly, particularly given he had waited so long for things to start moving. We do not underestimate the stress and inconvenience caused by the fact the contract was only agreed the day before an already re-scheduled Select Committee. However, we have looked at the reasons why the provisions were drafted as they were at the time and we have not found any evidence of maladministration by HS2 Ltd in this respect. The agreement was a commercial one and HS2 Ltd were entitled to rethink it a bit, and revisit areas that had already been covered, if it did not think the agreement provided sufficient protection for it.

Concern that HS2 Ltd tried to prevent Mr D continuing with his complaint to us

135. It is for HS2 Ltd to carry out its negotiations during the petitioning and Committee stage as it sees fit (as long as that is reasonable). However, it should not have sought to remove the right to make a complaint about its actions. While there may be situations where it would be appropriate for negotiation around a complaint to result in an agreement that removes the right to make a further complaint about the same issue, that would be in a case where all the complaints had been discussed and the remedy being offered by the organisation was to cover all the failings. The negotiation in this case was not about trying to resolve and remedy all of the complaints; it was about trying to agree a practical way forward. HS2 Ltd's attempt to remove the right to complain was therefore inappropriate and constitutes maladministration.

A summary of the maladministration found in Mr D's case

136. We have found that HS2 Ltd telling Mr and Mrs D that moving forward with their relocation plans was conditional on them withdrawing their complaint to us was maladministrative. We have also found that HS2 Ltd failing to tell Mr and Mrs D that it would not specifically consider their individual situation at their Commercial Committee meeting was maladministrative.

How HS2 Ltd handled complaints from the Residents and Mr and Mrs D

137. In looking at the way HS2 Ltd has dealt with the complaints put to them, we have considered three specific issues: the procedural aspects of how complaints were dealt with; the management and organisation of the complaints; and how HS2 Ltd handled a specific complaint made to them about fee reimbursement, which we consider serves as a useful example of its complaint handling.

The procedural aspects of the way HS2 Ltd dealt with the complaints

138. Mr D made, by his (sometimes retrospective) numbering, 23 formal complaints (these are the labels that both he and HS2 Ltd use) in total. The complaints were only considered to be 'formal' complaints when he specifically marked them 'formal'. This meant that, in addition to the formal complaints, he made a lot of 'informal' complaints and enquiries. He raised multiple issues in many of the complaints.

139. Until Mr D labelled his concerns 'formal complaints' HS2 Ltd did not deal with them, or escalate them, in a timely manner. For example, very early on, Mr D was unhappy that HS2 Ltd had not properly considered the Residents' proposal. Certainly, by June 2012, HS2 Ltd was aware that the Residents were dissatisfied that it had not considered their general proposals as there were many emails between Mr D and HS2 Ltd about this, but HS2 Ltd continued to deal with the concerns informally.

140. In October 2012 Mr D, on behalf of himself and other Residents, made what was clearly a complaint about HS2 Ltd. He said that: HS2 Ltd had not considered their proposals; they felt like HS2 Ltd was wasting their time; and the lack of certainty was causing stress and anxiety. Disappointingly, and seemingly (taking into account what HS2 Ltd has told us) because the complaints were not marked 'formal complaint', HS2 Ltd continued to deal with these complaints informally. It was only when Mr D specifically asked HS2 Ltd to deal with the complaints formally on 7 April 2013, that HS2 Ltd did so.

141. We do not consider that it is customer focused for an individual to have to label correspondence as a 'formal complaint' in order for it to be dealt with as such. HS2 Ltd should not have required a complaint to be labelled as 'formal complaint' before progressing it to the formal stage of its complaints procedure. Rather, HS2 Ltd should have been able to look beyond that wording and recognised something as a complaint, particularly when the Residents had made it abundantly clear time and time again how unhappy they were.

142. Furthermore, we consider that in general, dealing with complaints repeatedly at any stage of a complaints process (or outside of that process) without escalating them, causes distress. Moreover, it is not an effective use of resources and does not provide any way for the complaints to reach a conclusion or resolution – particularly such action often leads to complaints being repeated. A conclusion can only be reached by completing the complaints process.

143. Even when HS2 Ltd did recognise correspondence as a 'formal complaint' it did not always deal with complaints within their published timescales. For example, of the 23 formal complaints Mr D made, nine had a response that was outside of the published timescales at either stage 2 or stage 3 (HS2 Ltd's table summarising the complaint response timescales can be found at Annex 3). Although taking longer than published timescales is not necessarily, on its own, maladministration, on the occasions HS2 Ltd's responses were late, we cannot see any explanation was provided. Nor can we see that HS2 Ltd informed Mr D in advance that it was not going to meet the published timescales. We consider this to be maladministrative.

The management and organisation of complaints within the complaints process

144. Mr D, on behalf of the Residents, sent many emails to HS2 Ltd, raising a number of different issues. Many of those issues featured in repeated enquiries, complaints, and correspondence (see Mr D's summary of the complaints at Annex 3 for an illustration of this). There is some evidence HS2 Ltd tried to manage the complaints by giving the Residents a specific name as a contact point. However, the evidence is that incoming enquiries and complaints were not consistently directed or managed through that contact point. Until July 2013 Mr D dealt with at least three different people at HS2 Ltd on a regular basis. That was not customer focused.

145. At that point HS2 Ltd gave the Residents a contact in HS2 Ltd's property team, the senior property acquisition manager, who dealt with general communication and complaints. Things seemed to improve. However, even from July 2013, if Residents made enquiries and complaints to staff who were not their contact point, staff without any apparent oversight of the correspondence continued to deal with the complaints without referring them to the senior property acquisition manager. That is not an effective way to deal with complaints. In March 2014, when the contact point was changed to the area petition team manager, things started to settle down.

146. There is also some evidence that HS2 Ltd tried to organise the complaints (when we say complaints in this context we mean both the formal complaints that were being dealt with through the complaints process and the complaints HS2 Ltd had not yet accepted as complaints and were dealing with as enquiries). For example, formal complaints 5 and 7 were dealt with together at the later stages of the complaints process, as were 13 and 14. While this appears to us to be an effort to take a sensible approach, when set in the context of the volume and breadth of complaints that were made as a whole, we do not consider that alone to be enough.

147. Furthermore, HS2 Ltd took the complaints on face value rather than taking a bit of time early on in each complaint to think about exactly what the issues were, what was at the heart of the complaint, and how best to deal with that. Had it organised the complaints better from the start, we consider that it would have found them easier and less resource-intensive to deal with. That in turn, would likely have improved the complainants experience

and lessened the frustration and distress caused by poor complaints handling.

148. On 3 February 2014, at stage 2 of its complaints process, HS2 Ltd told Mr D it did not think the dedicated contact had acted unprofessionally, unfairly, inappropriately or unreasonably. It accepted that some of the responses may not have contained direct or detailed answers to Mr D's questions, but stated that was because the dedicated contact was not in a position to do that. At that time, four more of the Residents' complaints were awaiting consideration at stage 2 of HS2 Ltd's complaints process. We consider that HS2 Ltd missed an opportunity at this point to recognise that its system was not working well and to correct it.

149. Overall, it was not customer focused or effective for HS2 Ltd to deal with the complaints the way it did. On that basis we consider its efforts in managing and organising the complaints to be maladministrative.

The complaint about fee reimbursement

150. There were two aspects to this part of Mr D's substantive complaint. First, that the fee reimbursement was not advertised and secondly, that HS2 Ltd instructed its contractor to hide it. We have considered those substantive points earlier in this report. However, Mr D also complained that HS2 Ltd had given conflicting and misleading statements about the situation throughout the complaints process. We will consider this point separately here.

151. We are satisfied that HS2 Ltd properly addressed the complaint in January 2014. In fact, we note that their conclusions are aligned with our own. However, in order to get to that point, the complaint had to go through the complaints process twice. This should not have been necessary and was maladministrative. We also do not agree with HS2 Ltd's final comment that the April 2013 letter appropriately set out HS2 Ltd's communication with the contractor. When taken in isolation, the comment that the contractor recalled the conversation seems sufficient. But when set in the context of Mr D's complaint about the contractor advising him that it had been told to hide the fee reimbursement, it was clearly open to interpretation, and the subsequent response should have recognised that.

accountable'. We are not saying HS2 Ltd failed on every occasion, but, overall, its engagement and communication with the Residents fell short of the expected standard and that was maladministrative.

154. Furthermore, the way in which HS2 Ltd handled the complaints made by Mr D, both on his own behalf and on behalf of the Residents, was so poor that it constituted maladministration.

Summary of our findings of maladministration

152. We have not found errors in relation to all of the individual complaints that we have considered in relation to how HS2 Ltd engaged and communicated with the Residents and Mr D, including the way in which it handled the complaints put to it. However, we have seen evidence of a number of instances and areas where HS2 Ltd's communication with the Residents was not open, accountable and, or, customer focused.

153. We would not necessarily find that every such instance alone was maladministrative, but HS2 Ltd's errors were sufficient in frequency and seriousness to lead us to conclude that, overall HS2 Ltd's general engagement and communication with the Residents amounted to maladministration. It fell below what we would expect as set out in our Principles of '*Being customer focused*' and '*Being open and*

Injustice

The impact of the failings on the Residents

155. The time period we have considered was always going to be stressful for the Residents. The impact on a person of losing, or potentially losing, their home and community (and for some their livelihood) should not be underestimated. Part of HS2 Ltd's role was to work with the Residents constructively. HS2 Ltd could, and should, have minimised that by being open, accountable and customer focused with the Residents. On many occasions it was not.
156. The Residents should have had information from HS2 Ltd that would have allowed them to be clear about the decisions they had to make and when. HS2 Ltd's failings exacerbated what was already a stressful situation for all of the Residents and caused them inconvenience and frustration. By failing to engage with the Residents or their proposals reasonably, HS2 Ltd prolonged the uncertainty to the point where it was too much for the majority of the Residents.
157. HS2 Ltd's failure to engage effectively removed the element of choice about the Residents' futures. It is clear from conversations with some of the Residents that they simply wanted to understand what their position was. Not being able to do that, and not feeling like they could make an informed choice, despite the level of contact with HS2 Ltd, made the Residents even more worried, distressed and frustrated.

158. We asked the Residents to provide us with information about the impact on them. They have reported effects such as a significant impact on family life, jobs and careers, and health. That information is personal and private and a number of the Residents have asked us not to disclose that information publicly, so we have not set it out in any more detail in this report.
159. Mr D, in his capacity as the person leading the interactions with HS2 Ltd, experienced additional inconvenience and distress because of HS2 Ltd's failings to engage and communicate, in particular in its complaint handling. He has told us that some of that time had to be spent in business hours because the dealings with HS2 Ltd were so significant they could not be attended to outside business hours.

The impact of the failings on Mr and Mrs D

160. Not being clear with Mr and Mrs D about whether the February 2014 Commercial Committee would consider their particular circumstances separately from the community relocation proposal caused additional distress and inconvenience. Furthermore, telling Mr D that in order to proceed with his relocation plans he would need to withdraw his complaint, caused Mr D some additional distress and inconvenience over the two-week period before the condition was removed.

Remedy

161. There are two parts to our consideration of remedy. First, what personal remedy should the Residents and Mr D and his family receive? Second, what should HS2 Ltd do to improve the way it works to prevent similar failings happening in future?

Personal remedy

162. In this section we have first set out what HS2 Ltd has already done in terms of personal remedy. We have then set out how we have approached personal remedy in this case, and the action we recommend HS2 Ltd take to put things right as far as it is able, given we cannot turn the clock back.

Action already taken by HS2 Ltd

163. Before the complaint was brought to us, HS2 Ltd had already accepted responsibility for some of the minor failings we have identified. For instance, it had apologised that no one was available to speak to the Residents on Maundy Thursday, and for the fact that the minutes of meetings were not issued in a timely manner. We do not think it would serve any purpose for HS2 Ltd to specifically apologise for every instance identified in this report in which its actions fell short of the expected standard. We have, however, recommended it provide general apologies for the failings we have identified.

How we have arrived at personal remedies

164. We consider that HS2 Ltd's failings began in mid to late 2012, by which time, having told the Residents it would consider their proposal, it should have fed back on it. There is no scientific way to assess the impact of HS2 Ltd's failings on each set of Residents. However, we have considered the information each family provided to us about their particular circumstances.

165. We have found that the impact of HS2 Ltd's maladministration on each of the families was significant. As well as recommending apologies, we have made financial recommendations to reflect what we consider the impact on each family was. As such our recommendations for financial remedy are at three levels to reflect the differences in impact on family life, jobs and careers, and health. In addition to that, Mr D, as representative of the group, suffered further inconvenience, frustration and stress which had a knock-on effect on his family, and we have taken that into account. Mr D asked us to consider the impact on his business. However, we have not done that as it is part of an ongoing claim to HS2 Ltd. Instead we have made a recommendation to try to make sure it receives appropriate consideration.

Recommendations

166. In order to put right, as far as possible, the failings identified in this part of the report, we recommend that within four weeks of this report, HS2 Ltd:

- Apologise to each of the six families for: failing to reasonably engage with the Residents or their relocation proposal; failing to communicate reasonably; and failing to reasonably deal with the complaints. HS2 Ltd should acknowledge the impact its failings had in exacerbating what was already a stressful situation.
- Apologise to Mr and Mrs D for initially telling them that they would need to withdraw their complaint in order to move forward with their relocation plans, and for not being clear with them about its consideration of Mr and Mrs D's specific circumstances.
- Apologise to Mr and Mrs D for the additional impact their failings had on their family because of Mr D's role as the person leading the communication with, and complaints to, HS2 Ltd.
- Make a payment to:
 - Mr and Mrs K of £750
 - Mr and Mrs L of £750
 - Mr and Mrs P of £1,000
 - Mr and Mrs R of £2,000
 - Ms T of £2,000
 - Mr and Mrs D of £4,000. This is to remedy the impact of HS2 Ltd's maladministration, bearing in mind that Mr D was the Residents' representative. For the reasons given in the previous paragraph it does

not include any consideration of the impact on his business.

Mr D has asked us to consider the cost of the time he spent during business hours dealing with HS2 Ltd. We have not considered these costs in this investigation as we understand they will be submitted to HS2 Ltd as part of his claim under the Compensation Code. We therefore recommend that HS2 Ltd take our findings, and that we have not considered this claim, into account as part of that consideration.

Service improvement

167. In this section we have first set out what HS2 Ltd have already done to improve the service it provides, and we have then set out the action we recommend it now take.

Action already taken by HS2 Ltd

168. HS2 Ltd accept that no one was available to speak to the Residents on Maundy Thursday 2013, and it has said it has given instructions that mobile numbers are used to contact senior staff when enquiries are urgent (HS2 Ltd's letter of 26 April 2013). We consider that to be reasonable action to improve that area of its service.
169. HS2 Ltd told us it tried to learn from the community forum process as it went on, and have improved the management of information flow, the management of expectations, and its ability to head off disruptive confrontations. It said it did that through: the bilateral meeting process; training and vetting its forum presenters; briefing the team before the meetings; considering when to schedule community forums and bilateral meetings in terms of the progress of the project; and getting information to communities early to allow them time to digest and react.

170. In much wider terms, HS2 Ltd has developed a Residents' Charter¹⁷. The Charter is a series of promises and pledges that relate to how HS2 Ltd will communicate with people who live along or near the HS2 route. A Residents' Commissioner has been appointed to make sure the standards set in the Charter are met. Part of that role is to report quarterly to HS2 Ltd's Board on communication so that the Board can address any problems. The Charter and Commissioner do not replace the complaints process; those who wish to complain about HS2 Ltd's service should still follow the formal complaints procedure.
171. HS2 Ltd told us it now centrally records both informal and formal complaints to help deal with them, report on them and achieve continuous improvement, which is the responsibility of a newly appointed public response manager. It has also added a step to its complaints process: if someone is not satisfied with HS2 Ltd's response to their complaint, they can ask the Department for Transport's Independent Complaints Assessor (ICA) to consider it.
172. When we pointed out to HS2 Ltd that its suggestion to Mr and Mrs D withdraw their complaints as a condition of taking forward the agreement with it, HS2 Ltd told us it has resolved not to make a similar request if the same circumstances arise again.

Recommendations

173. HS2 Ltd now has new processes in place that are different to those relevant to the events in this report. Therefore, we have not made specific recommendations for improvement. However, we recommend that:
- within four weeks of the date of this report, HS2 Ltd appoint an independent person to review its current processes around engagement, communication and complaint handling. The review should take explicit account of the Residents' experiences and of our findings of maladministration;
 - within three months of the date of this report, HS2 Ltd should publish the outcome of the review, including its recommendations for action; and
 - within six months of the date of this report, HS2 Ltd should publish the outcome of the implementation of the recommendations.

¹⁷ Available at: <https://www.gov.uk/government/publications/hs2-residents-charter>.

Conclusion

174. We have upheld the Residents' complaint about the way HS2 Ltd dealt with them, because the failings we have identified were of sufficient frequency and significance for us to be able to say that, overall, HS2 Ltd was maladministrative in the way it dealt with the Residents. We have also found that these failures detrimentally affected the Residents.
175. We have partly upheld Mr and Mrs D's complaint, because we have found that it was maladministrative that HS2 Ltd made the withdrawal of their complaint a condition of moving forward with their relocation plans (albeit HS2 Ltd removed the condition after some discussion). We have also found that it was maladministrative for HS2 Ltd to fail to tell Mr and Mrs D that their individual circumstances would not be considered at the February 2014 Commercial Committee meeting. We have found that both of these failings detrimentally affected Mr and Mrs D and their family.
176. We have made recommendations to put things right as far as possible for the Residents. We also looked to see what needed to be done to try to prevent a similar situation happening in future. HS2 Ltd has made a number of changes to the way it works already so we have recommended a review of its current processes to make sure it prevents similar events happening again.

Annex 1 - the relevant standards

Role of HS2 Ltd

1. HS2 Ltd is the company responsible for developing and promoting the UK's new high speed rail network and is wholly owned by the Department for Transport. On 11 January 2012 the Department for Transport told HS2 Ltd that it should undertake work and provide advice to allow it to deposit a Hybrid Bill¹⁸, and to secure powers for the scheme. Activities should include: delivery of a safe and affordable route design, assessment of environmental impact, production of an Environmental Statement, and consultation with relevant organisations.

Public participation

2. The formal consultation process is conducted in order to meet the requirement of active dissemination of environmental information and the public's right to participate in decision-making¹⁹.
3. In addition to the formal consultation process, HS2 Ltd set up community forums.²⁰ The functions of community forums are:
 - to allow local influence, including discussion of local preferences on design, during the research and production of the Environmental Statement;

- to identify local benefits and activities that could be linked to HS2 work;
- blight consultation;
- information flow;
- engagement;
- addressing misunderstanding; and
- brokering solutions.

HS2 Ltd is focused on community solutions. Individuals wishing to discuss their circumstances should do so with HS2 Ltd in private meetings.

4. The area affected by Phase One of HS2 was split into five geographical areas, each made up of a number of different community forums. Each of the five geographical areas has a stakeholder manager, environment manager, engineering manager, and a technical team. The three managers are expected to attend all forum meetings, with technical specialists in attendance where relevant. Community concerns and priorities should lead the agenda of the meetings. A process for how recommendations are considered and placed, or not, on the mitigation register should be worked out and clearly communicated.

¹⁸ Hybrid Bills often propose works of national importance. The changes to the law proposed by a Hybrid Bill would affect the general public but would also have a significant impact for specific individuals or groups.

¹⁹ These rights come from the United Nations Economic Commission for Europe Convention on access to information, public participation in decision making and access to justice in environmental matters, adopted June 1998, came into force 30 October 2001 (the Aarhus Convention). The right to receive environmental information was echoed in the Environmental Information Regulations 2004.

²⁰ HS2 Ltd's community forums Framework and a community forum: Terms of Reference March 2012 set out what community forums are expected to consider and how they should operate.

5. At community forums, HS2 Ltd are expected to be:
 - clear about the boundaries of what mitigation is possible;
 - clear about how much influence communities can have;
 - clear about the project's limitations (for example, cost); and
 - open, transparent and proactive in sharing information.
6. HS2 Ltd's guidance is clear; the community forums have no legal standing in terms of design decisions but can make recommendations to HS2 Ltd. HS2 Ltd should integrate communities' recommendations into the design using a clear, accountable process. The thinking when the framework was drafted was that all proposals from community forums would be considered by the HS2 project delivery group. It would then keep the community forum informed about whether it will endorse a proposal or not, and make recommendations to the Secretary of State, who would be able to approve the recommendations in principle. The recommendations that had been approved in principle would be submitted to Parliament with the Environmental Statement.
7. Where it is perceived that community forums are not working effectively, HS2 Ltd should consider alternative approaches.
8. The stakeholder managers provide the links between the community forums and planning forums. The area teams should engage in bilateral meetings with residents and local/district authorities that are particularly impacted.

Powers of HS2 Ltd and the Secretary of State for Transport

9. Before the enactment (passing) of the Hybrid Bill, HS2 Ltd does not have any power to obtain property. The Secretary of State for Transport has the power to do so but only in limited circumstances:
 - under the *Exceptional Hardship Scheme* announced in July 2010;
 - under statutory blight since July 2013;
 - under express purchase since April 2014; and
 - under powers set out in the *High Speed Rail (preparation) Act 2013* which provide for purchase on a case by case basis, subject to Treasury approval of each case.

HS2 Ltd's role in the context of property purchase is to carry out the work and make recommendations for purchase to the Secretary of State.

HS2 Ltd's complaints procedure

10. HS2 Ltd's procedure for dealing with complaints about its service is:
 - Step 1: the complainant should try to resolve the complaint with the officer they have been dealing, by phone, email, in writing or in person. This stage can be skipped if the complainant does not feel that it is appropriate.
 - Step 2: the complainant should make a formal complaint to the relevant head of business unit. The complaint should be acknowledged within five working days and fully responded to within 20 working days.

- Step 3: the complainant should complain to the chief executive. Complaints should be acknowledged within five working days and a full response should be sent within a further 15 working days.

The Ombudsman's Principles

11. When considering we also use our published *Ombudsman's Principles*²¹. Our Principles outline the approach we believe public organisations should adopt when delivering good administration and customer service, and how to respond when things go wrong. They underpin our assessment of performance, our vision of good complaint handling and our approach to putting things right.
12. The *Principles* are based on our extensive complaint handling experience and endorse legality, flexibility, transparency, fairness and accountability – the necessary ingredients of good administration.
13. The *Principles of Good Administration* most relevant to this report are 'Being customer focused', 'Being open and accountable', and 'Getting it right'. We have set out the key parts of those for this report here.

Being customer focused

- Provide services that are easily accessible to their customers. Policies and procedures should be clear and there must be accurate, complete and understandable information about the service.

- Aim to make sure that customers are clear about their entitlements; about what they can and cannot expect from the public organisation; and about their own responsibilities.
- Do what they say they are going to do. If they make a commitment to do something, they should keep to it, or explain why they cannot. They should meet their published service standards, or let customers know if they cannot.
- Behave helpfully, dealing with people promptly, within reasonable timescales and within any published time limits. They should tell people if things take longer than the public organisation has stated, or than people can reasonably expect it to take.
- Communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.
- Treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case. Where appropriate, they should deal with customers in a coordinated way with other providers to make sure their needs are met; and, if they are unable to help, refer them to any other sources of help.

²¹ The Principles are available at <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples>.

Being open and accountable

- Give people information and, if appropriate, advice that is clear, accurate, complete, relevant and timely.
- Be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions.
- Handle and process information properly and appropriately in line with the law. So while their policies and procedures should be transparent, public organisations should, as the law requires, also respect the privacy of personal and confidential information.
- Create and maintain reliable and usable records as evidence of their activities. They should manage records in line with recognised standards to make sure that they can be retrieved and that they are kept for as long as there is a statutory duty or business need.
- Take responsibility for the actions of their staff.

Getting it right

- In some cases a novel approach will bring a better result or service, and public organisations should be alert to this possibility.

14. Our *Principles of Good Complaint Handling* are also relevant to this report, in particular:

Being customer focused

- Making sure that complaint handling is simple and clear.
- Dealing with complaints promptly. Resolving problems and complaints as soon as possible is best for complainants and public organisations.
- Listen to and consider the complainant's views, asking them to clarify where necessary, to make sure the public organisation understands clearly what the complaint is about and the outcome the complainant wants.
- Respond flexibly to the circumstances of the case, including considering whether to adjust its normal approach.

Annex 2 - section 9 of the *Command Paper*

Property Compensation Consultation 2013 for the London - West Midlands HS2 route

9 Atypical properties and special circumstances

9.1.1 In chapter 6 of the September 2013 consultation document we set out our thinking with regard to atypical properties and special circumstances. It was noted that in certain specific cases it may be desirable for Government to supplement its discretionary schemes with further assistance for owner-occupiers living in atypical properties or special circumstances.

9.1.2 Though the measures outlined in this document are designed with flexibility and inclusiveness in mind, there will inevitably be some instances where it is appropriate for Government to go further. We intend to avoid unfairly disadvantaging certain individuals and to ensure that all those who take advantage of discretionary measures for HS2 are given the assistance or support they need.

9.1.3 HS2 Ltd will therefore work directly with property owners of atypical properties or those who are experiencing special circumstances in order to consider how their needs can best be met while protecting the interests of the taxpayer.

9.1.4 Though it has been suggested that this approach may not offer sufficient flexibility, we would like to reassure individuals facing such circumstances that we are committed to providing fair and appropriate access to compensation and all necessary support to those directly affected by HS2. Our approach to atypical properties and special circumstances fully reflects that commitment.

Annex 3 - complaints

1. Mr D's summary of the formal complaints he made to HS2 Ltd – both on his own behalf and on behalf of the Residents. Where appropriate, we have anonymised this summary.

Issue	Complaint numbers
Sham and time wasting consultations, bilateral meetings and meetings generally.	1, 18
Purposely misleading (untruthful) statements and emails from various members of HS2 Ltd staff including the Chief Executive.	1, 2, 3, 22
Inability and refusal to issue correct minutes of meetings.	3, 8
Refusal to engage on, and deal with the unique issues surrounding the Hamlet and Mr D and Co Ltd	10, 11, 16, 22, 23
Deliberately mischaracterising our community proposals	15, 23
Inappropriate sending of stressful information as HS2 Ltd staff leave office for Easter and weekend's away (despite being requested not to)	1, 13
Lack of, and/or very late responses to our proposals	1, 4, 12
Refusal to address issues of lack of accountability of HS2 Ltd (These concerns have now been subsequently vindicated by the proposed introduction of a residents charter – see attached – We understand this Charter still has not been fully implemented)	5, 7
Obstruction, delays and prevarication of dealing with our proposals	1, 4, 6, 12, 21
Concerns around fair and proper complaints handling	17
Deliberately covert and secret meeting with local District Council (Despite previously being promised by Ms W we would be involved in such a meeting.)	2
Refusal to abide by the <i>Compensation Code</i> principles, deal with us consistently with other entities, and keep us informed about reimbursements residents are properly due.	3, 14, 16, 20
Conflicting and confusing statements causing stress	1, 2
Refusal to answer questions, emails and issues generally.	5, 6, 7, 11, 19
Poor communication and not being kept informed.	4, 9, 12
Inappropriate solutions suggested to our predicament	8
Lack of openness and transparency	2, 9
Lack of any apparent strategy or intention on behalf of HS2 Ltd to mitigate the stress of residents affected by HS2	1, 9, 13

2. HS2 Ltd's summary of the formal complaints put to it and the dates. Where appropriate, we have anonymised this summary.

Formal Complaint:	Date Received:	Regarding:	Stage 2 Response Due Date:
No.1	07-Apr-13	Issues with bilateral meetings and community forums	03-May-13
No.2	13-Oct-13	Conflicting messages about demolition. 'Covert' meeting with local District Council	08-Nov-13
No.3	30-Nov-13	Inconsistencies about comments made at community forums/ fees for completing LIQ's	31-Dec-13
No.4	07-Jan-14	Fourth Formal Complaint (lack of keeping informed etc)	04-Feb-14
No.5	19-Jan-14	Accountabilities and monitoring of HS2 - lack of response	14-Feb-14
No.6	21-Jan-14	Mr D for Mrs D - general points	18-Feb-14
No.7	27-Jan-14	Accountabilities and monitoring of HS2 - lack of response	24-Feb-14
No.8	27-Jan-14	Caravan comment, 7-10% rental issue	24-Feb-14
No.9	10-Feb-14	Ninth Formal Complaint: refusal to release advance copy of report.	10-Mar-14
No.10	24-Feb-14	Business losses and potential claim - formal complaint	24-Mar-14
No.11	24-Feb-14	Mrs D - follow-up re committee date etc - formal complaint	24-Mar-15
No.12	25-Feb-14	Delays in decision etc	25-Mar-14
No.13	28-Feb-14	Formal complaint about timing of emails before the weekend	28-Mar-15
No.14	03-Mar-14	Rehousing assistance - response to reply to email of 12 Jan	31-Mar-14

	Stage 2 Response Sent:	Stage 3 Escalation Received:	Stage 3 Response Due Date:	Stage 3 Response Date Sent:	Compliance with procedure?
	N/A	n/a	n/a	26-Apr-13	Escalated straight to Stage 3
	N/A	n/a	n/a	25-Oct-13	Escalated straight to Stage 3 (originating complaint addressed to Head of BU)
	10-Dec-13	10-Dec-13	09-Jan-14	10-Jan-14	1 working day late (Stage 3)
	03-Feb-14	04-Feb-14	04-Mar-14	11-Feb-14	Compliant
	14-Feb-14	16-Feb-14	14-Mar-14	25-Mar-14	6 working days late (Stage 3)
	20-Feb-14	21-Feb-14	21-Mar-14	18-Mar-14	2 working days late (Stage 2)
	14-Feb-14	16-Feb-14	14-Mar-14	25-Mar-14	6 working days late (Stage 3)
	25-Feb-14	25-Feb-14	25-Mar-14	25-Mar-14	1 working day late (Stage 2)
	10-Mar-14	11-Mar-14	08-Apr-14	04-Apr-14	Compliant
	20-Mar-14	22-Mar-14	18-Apr-14	17-Apr-14	Compliant
	20-Mar-14	22-Mar-14	18-Apr-14	17-Apr-14	Compliant
	20-Mar-14	22-Mar-14	18-Apr-14	17-Apr-14	Compliant
	27-Mar-14	27-Mar-14	28-Apr-14	23-Apr-14	Compliant
	27-Mar-14	27-Mar-14	28-Apr-14	23-Apr-14	Compliant

Formal Complaint:	Date Received:	Regarding:	Stage 2 Response Due Date:
No.15	06-Mar-14	Mischaracterisation of proposals as "compensation" rather than "mitigation".	03-Apr-14
No.16	31-Mar-14	Formal Complaint about preferential treatment given to a golf club.	30-Apr-14
No.17	21-Apr-14	Complaint handling	20-May-14
No.18	21-Apr-14	Issues around meeting of 11 April	20-May-14
No.19	21-Apr-14	Chair to visit community	20-May-14
No.20	21-Apr-14	Section 9 of the command paper/ECHR	20-May-14
No.21	28-Apr-14	General unfair treatment	28-May-14
No.22	08-May-14	Content of report/allegations	06-Jun-14
No.23	12-May-14	Mr K- report issues	10-Jun-14

	Stage 2 Response Sent:	Stage 3 Escalation Received:	Stage 3 Response Due Date:	Stage 3 Response Date Sent:	Compliance with procedure?
	01-Apr-14	01-Apr-14	30-Apr-14	06-May-14	3 working days late (Stage 3)
	23-Apr-14	24-Apr-14	22-May-14	21-May-14	Compliant
	n/a	n/a	n/a	21-May-14	Escalated straight to Stage 3 (Mr D requests response from Chair of HS2)
	20-May-14	22-Jul-14	19-Aug-14	12-Aug-14	Compliant
	n/a	n/a	n/a	21-May-14	Escalated straight to Stage 3 (complaint goes to behaviour of Chair)
	21-May-14	27-May-14	24-Jun-14	25-Jun-14	1 working day late (Stage 2 and 3)
	n/a	n/a	n/a	29-May-14	Escalated straight to Stage 3 as originating email was addressed to Ms W
	05-Jun-14	13-Jun-14	11-Jul-14	16-Jul-14	3 working days late (Stage 3)
	09-Jun-14	16-Jun-14	14-Jul-14	16-Jul-14	2 working days late (Stage 3)

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