Parliamentary and Health Service Ombudsman

An investigation into HS2's failure to communicate with a family about acquiring their home

HC 211

Parliamentary
and Health Service
Ombudsman

An investigation into HS2's failure to communicate with a family about acquiring their home

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Foreword from the Ombudsman

This report is about how HS2 failed to properly engage and communicate with a complainant over the sale of their family home to make way for the trainline.

HS2 continuously let this person and their family down by misleading them and not following the proper process. This caused them severe stress and worry which impacted on their health and family life for over four years.

To add insult to injury, the complainant had already suffered from HS2 delays to his community's response to the original HS2 public consultation. We published a report in 2015 about this which found HS2 failed to appropriately engage with the same community near Lichfield when consulting about the proposals.

HS2 should have been repairing an already fractured relationship following our 2015 report. However when the complainant asked questions, HS2 failed to respond fully and promptly, sometimes giving incorrect information.

HS2's delay in responding and engaging with the complainant left his family in limbo for years. This exacerbated the already stressful situation of having to sell their family home and led to a deterioration in the complainant's health.

This report highlights the importance of proper engagement and communication by all government bodies with members of the public. Being open and transparent with the public is an essential component of good public service and administration.

The case directly links to our report about HS2 which was published in 2015. At the time we recommended improvements to ensure HS2 would be more customer focused, open and accountable when handling complaints. While these recommendations were accepted by HS2 and some improvements were made, this case suggests that problems remain in the communication and engagement with those affected by the trainline and there is still work to do.

We are laying this individual investigation report in Parliament today given the links it has to the systemic report we laid in 2015 and to help inform Parliament's ongoing scrutiny of HS2.

It is vital that HS2 implements our recommendations and considers the learning from this case so that further improvements to how it engages with the public can be made. This will help to ensure the same mistakes do not happen to others and they do not have to experience the distress that this family went through.

Rob Behrens CBE
Ombudsman and Chair,
Parliamentary and Health Service Ombudsman

Executive summary

1 Background

1.1 In 2010 the Government published plans for Phase One of the High Speed Two (HS2) railway route from London to Birmingham. Mr and Mrs D's property, business and smallholding fell within this proposed route.

1.2 In 2015 we published an investigation into a previous complaint from Mr and Mrs D[1]. In this we found HS2 failed to engage with Mr and Mrs D and their neighbours when consulting about the proposed railway.

1.3 In 2014, while Parliament were considering legislation to give HS2 powers to build the proposed railway, Mr and Mrs D submitted a petition to the Parliamentary Select Committees about HS2's handling of their case. In the months before they were due to appear in Parliament, Mr and Mrs D negotiated with HS2 for the purchase of their property. In December 2014 Mr and Mrs D signed a unique and bespoke contract with HS2 to purchase their property in exchange for withdrawing their petition.

1.4 In summer 2015 HS2 accepted Mr and Mrs D's blight notice[2] and began negotiating compensation with Mr and Mrs D's agents for the purchase of Mr and Mrs D's property.

2 The complaint

2.1 Mr and Mrs D complained to us about HS2's handling of the purchase of their property between 2015 and 2019, as well as about HS2's handling of their health concerns from 2013 onwards. They said HS2 failed to properly answer their questions about their processes and actions they had taken. These concerned:

- the price HS2 would pay for Mr and Mrs D's property
- HS2's handling of other aspects of their compensation
- the involvement of HS2 staff on their case
- surveys HS2's agents took of Mr and Mrs D's property
- responses to Mr and Mrs D's requests for measures to reduce negative impacts of the railway in their area (mitigation)
- requests to meet with HS2 to resolve aspects of their compensation concerns.

[1] https://www.ombudsman.org.uk/sites/default/files/Report_on_an_investigation_into_complaints_about_High_Speed_Two_Limited_report.pdf

[2] A legal notice that property owners can serve on HS2 to purchase their property (which is needed for development of the railway) so they can move away.

2.2 Mr and Mrs D said the two Independent Complaints Assessors (ICAs)[3] and the Residents' Commissioner[4] failed to provide adequate oversight following their complaints about HS2.

3 Findings

3.1 Despite hopes of starting afresh following our 2015 investigation, Mr and Mrs D's relationship with HS2 was fraught with problems and distrust which grew over a four-year period. We found serious and repeated instances of maladministration by HS2. The 12 areas we identified were:

- HS2 misled Mr and Mrs D about the first property manager's continued involvement in their case in spring 2016 when asked about it directly by Mr and Mrs D (complaint 1b). HS2 were not truthful or open and accountable
- HS2 failed to engage with Mr and Mrs D about the price they would pay for their property in spring and summer 2016 (complaint 1c). This meant they provided confusing and contradictory responses
- HS2 did not properly engage with Mr and Mrs D's concerns about the change in agents (complaint 2a)
- HS2 did not properly engage with Mr and Mrs D's query about the need for a further survey in autumn 2015 and 2016 (complaint 2a).
- HS2 initially tried to prevent Mr D from submitting a business loss claim in summer 2017 (complaint 1d).
- HS2 did not tell their contractor about Mr and Mrs D's mitigation request until April 2018 despite saying they would do so when the Contractor was appointed (July 2017) (complaint 1a)
- HS2 failed to fully communicate with Mr and Mrs D about attendance of contractors to their property for surveys in January and May 2018
- HS2 failed to follow the negotiation process for the business loss claim from May 2018 (complaint 1d). Instead, they used the complaints process to respond to matters
- while HS2's decisions to refuse Mr and Mrs D's meeting requests in 2018 were reasonable, they failed to be clear and consistent in communicating their decisions on meeting requests to Mr and Mrs D
- HS2 did not pay their final payment for professional fees on 1 October 2018 until prompted by Mr and Mrs D in November 2018 (complaint 1c).
- HS2's complaint handling (complaint 4) was poor because they did not engage with Mr and Mrs D fully, did not provide honest answers and did not adhere to the complaints process. This meant HS2 were unable to answer Mr and Mrs D's complaints in a straightforward way.
- HS2 did not act in accordance with their complaints process in March 2018. They failed to explain to Mr and Mrs D that they were trialling a new complaints process.

[3] The ICAs review complaints made against agencies and organisations overseen by the Department for Transport, including HS2.

[4] The Residents' Commissioner works with HS2 to help ensure they adhere to their commitments in the Residents Charter .

3.2 The Residents' Commissioner and the two ICAs acted reasonably, apart from one oversight by the second ICA. We found the second ICA (complaint 5a) did not make a finding on Mr and Mrs D's complaint about HS2's handling of their business loss claim.

3.3 We found HS2 acted appropriately when:

- allowing Mr and Mrs D to petition Parliament in 2017 about their mitigation concerns.
- responding to Mr and Mrs D's request for mitigation during 2017 and 2018. While we found errors regarding HS2 passing information to their contractors, in terms of HS2's approach to mitigation issues, we considered they acted reasonably.
- providing reasons to explain their decision not to replace a staff member working on Mr and Mrs D's case in 2018
- explaining why they did not believe meetings with Mr and Mrs D were warranted in 2018.

4 Injustice caused

4.1 We found the maladministration had a significant impact on Mr and Mrs D. Their actions caused delay as well as having emotional and health impacts.

Delay

4.2 Mr and Mrs D would have been in an informed position much earlier had HS2 responded to their concerns about agreeing a property price and claim for business loss:

a) had HS2 been able to provide clear and consistent messages about agreeing the property price (complaint 1c), Mr and Mrs D would have been in an informed position as to how to proceed in April 2016, when HS2 first responded to their query. This caused a delay of five months (April to September 2016)
b) if HS2 had followed their negotiation process, rather than the complaints process (complaint 1d), Mr and Mrs D would have been more certain about how their business loss claim was progressing. HS2's actions caused inconvenience and delayed Mr and Mrs D being in an informed position for seven months (May 2018 to December 2018).

4.3 HS2's failure to make payment to Mr and Mrs D for their remaining professional fees in October 2018 (complaint 1c) meant there was a one -month delay in receiving that payment.

4.4 HS2's hesitancy in applying their negotiation process (complaints 1d and 2f) caused delay when responding to Mr and Mrs D's meeting requests:

a) HS2 caused a two-month delay by not responding to Mr and Mrs D's request for a meeting until August 2018.

b) HS2 should have responded to Mr and Mrs D's agent's request for a meeting with Mr and Mrs D in January 2018. This caused a four-month delay in receiving a response to their request for a meeting.

Emotional and health impact

4.5 By failing to be honest or to provide clear responses HS2 created and fed a relationship of distrust with Mr and Mrs D which characterised their relationship between 2015 and 2018/19. Mr and Mrs D described how all their dealings with HS2 felt like a '*battle*'.

4.6 This affected Mr and Mrs D's health. Both described how their family life was negatively affected and Mr D was taking anxiety medication in 2015 and 2016, which was partly attributable to his dealings with HS2. HS2's unclear, and in some instances untruthful, responses to a number of questions caused Mr and Mrs D significant distress.

4.7 Many of HS2's failings happened at the same time, particularly during 2016 and 2018. We accept Mr and Mrs D's distrust of HS2 would have felt overwhelming at times. We can see it grew and intensified over a four-year period, which had a detrimental effect on all Mr and Mrs D's exchanges with HS2. We have seen Mr and Mrs D suspected HS2 were not being honest, for example when responding to concerns about how HS2 could use land for mitigation (complaint 1a), even when HS2 had acted reasonably. We are also conscious these events occurred at a stressful point in Mr and Mrs D's life. While HS2 were not responsible for Mr and Mrs D having to sell their family home to make way for the proposed railway, we can see HS2's actions exacerbated the impact on Mr and Mrs D's stress levels and health.

4.8 In summary, HS2's handling of Mr and Mrs D's case caused delay in progressing elements of their case, unnecessary levels of stress and anxiety as well as giving Mr and Mrs D cause to doubt HS2's honesty and sincerity when responding to their concerns. In our view, these are serious injustices that will have a lasting impact on Mr and Mrs D.

ICA

4.9 If the ICA had commented on Mr and Mrs D's concern about delay in payment of their business loss claim in October 2018, Mr and Mrs D would have had their complaint considered. Given HS2 offered to pay the business loss claim shortly after, we do not consider the ICA's oversight would have had a significant effect. However, it would have been frustrating for Mr and Mrs D, and is an injustice.

5 Recommendations

5.1 Mr and Mrs D are not asking PHSO to recommend compensation. To remedy the injustice that resulted from HS2's poor service and maladministration, and the ICA's failing, we recommend within eight weeks of this report:

a) HS2 should apologise in an appropriate manner to Mr and Mrs D for the delay, frustration, inconvenience and distress their serious maladministration caused Mr and Mrs D over a four year period
b) to promote transparency and fairness, HS2 should review and publish the learning from this case. This is so that in circumstances such as Mr and Mrs D faced, where a unique contract is signed outside routine processes, steps are taken to agree new and relevant processes at an early stage
c) HS2 should review and report on whether this learning has wider implications for how they can improve their approach to handling complaints. HS2 should share their learning with the Chairs of the Public and Constitutional Affairs Select Committee and the Transport Select Committee, as well as with the Secretary of State for Transport
d) the ICAs should apologise for the frustration caused to Mr and Mrs D by the maladministration identified.

Investigation report

The complaint we investigated

Mr and Mrs D said that:

1. From January 2015 to March 2019 HS2 failed to be honest, helpful and transparent in handling their case and failed to deal with matters in a timely, consistent and constructive way:

    a. from 2017 to 31 March 2019, HS2 staff were unhelpful and misleading in dealing with engagement about changes to the line and requests for measures to reduce negative effects of the railway (mitigation) in their local area
    b. HS2 misled them about who was working on their case from January 2016 to May 2016. Mr D said that HS2 used language in their correspondence to him that was intended to make him think the staff member who had previously worked on their case and who Mr and Mrs D had lost confidence in, was no longer involved in their case
    c. HS2 failed to respond properly to questions or to follow processes and procedures in relation to the Compensation Code, and
    d. HS2 failed to deal with their compensation claims in a timely, consistent and constructive manner.

2. HS2 abused their powers and demonstrated bullying behaviour. This included failing to recognise and respond appropriately to conflicts of interest in relation to their actions:

    a. HS2 singled them out for negative treatment because of complaints they had made
    b. in November 2014 HS2 included a clause in the contract for their house sale that prevented them from approaching the HS2 Select Committees about their mitigation concerns
    c. in January 2018 HS2 and their agent tried to push through Mr and Mrs D's compensation claims before they had been properly considered and negotiated. HS2 threatened Mr and Mrs D that they would have to pursue matters through the Lands Tribunal, (without an offer of alternative dispute resolution (ADR), or mediation or even a meeting) which would be a lengthy and costly process
    d. HS2 did not act independently by allowing the second property manager to consider Mr D's claim for business loss in light of their involvement in the poor handling of the valuation date
    e. from May/June 2018 HS2 instructed their agent not to respond to Mr and Mrs D's correspondence without good reason and then lied to Mr and Mrs D about the reasons for doing so, and
    f. from winter 2017 HS2 and their surveyors either refused to meet Mr and Mrs D or cancelled meetings and appointments at short notice without good reason for doing so.

3. HS2 demonstrated a lack of understanding or care regarding the stress, ill-health and lack of wellbeing that HS2's behaviour caused when dealing with their case. Mr and Mrs D complained it was the poor treatment they received from HS2 that caused the stress, rather than the impact of the rail project itself.

4. HS2 handled complaints poorly:

   a. throughout this process, HS2's complaints responses were simply '*tick box*' and did not deal with the substance of the complaints
   b. HS2 did not deal with complaints according to their own complaints procedures.

5. There was inadequate oversight of HS2's handling of their case:

   a. the Independent Complaints Assessor did not investigate complaints independently and in a thorough way
   b. the Residents' Commissioner's involvement was not helpful or independent
   c. there was no proper check and balance over how HS2 dealt with those affected by the scheme. Mr and Mrs D felt there was nowhere they could go to get assistance regarding the difficulties they were having with HS2.

Claimed injustice

6. Mr and Mrs D said that HS2's actions resulted in extensive delays and caused them unnecessary stress, inconvenience and financial uncertainty. Mr and Mrs D said that they spent a huge amount of time trying to deal with HS2 on these matters as they felt that everything to do with HS2 was a battle that significantly impacted their health and their family life. Mr and Mrs D said that all HS2's actions had negatively affected their health, wellbeing, family life and business.

7. Further, Mr and Mrs D said that HS2's actions meant they were prevented from exercising their right to petition Parliament about the appropriate design of the railway and mitigation in the vicinity of their new home. Mr and Mrs D claimed that because of the substandard engagement they received from HS2, it was likely that they and the local community would suffer because of inadequate mitigation from the railway line in the local area.

8. Mr and Mrs D said that the ICAs' and the Residents' Commissioner's actions showed that there was not an effective check and balance over the actions of HS2. This has led to further unnecessary stress, wasted time and frustration.

Outcome sought

9. Mr and Mrs D do not ask for financial compensation. Mr and Mrs D seek a thorough investigation into their complaints to ensure HS2's management is held to account and that systems are put in place to rectify matters. They say the systems need to ensure that those who are affected by HS2 and who have cause to complain about HS2's actions are treated fairly and appropriately. Mr and Mrs D would like an effective system of oversight and an adjudicator to give affected parties a timely means of redress. Mr and Mrs D said that they would like HS2's continued failings to be brought to the attention of the public and Parliament so HS2 could be properly held to account. Mr and Mrs D said that they would like HS2 to appropriately engage with them and with local communities, given the poor engagement received to date, and reassess the need for mitigation in the local area.

Our role and Principles

10. We investigate complaints from individuals who feel they have received unfair treatment or poor service from UK government departments and some UK public organisations. If we look at what the organisation did and find that something went wrong, we say this is maladministration. If we find maladministration, we consider whether it has caused injustice to the complainant, and whether anything should be done to put matters right for them.

11. The Upper Tribunal (Lands Chamber) is a specialist chamber that determines, among other things, disputes about compensation awarded for the compulsory acquisition of land. Therefore, we cannot comment on the amount of compensation offered[5] to Mr and Mrs D. However, we can consider the consistency of information passed by HS2 to Mr and Mrs D about how they approached compensation matters.

12. Our findings address the broader questions set out in the scope above. However, Mr and Mrs D provided many detailed examples to support their complaints. These are set out in our Annex and we have addressed them in our report. However, we do not intend to address every example raised with us if there is more relevant evidence elsewhere. We have carefully considered all the evidence provided to us through provision of papers, enquiry responses and interviews with all the parties. We are satisfied that relevant evidence is included in this report.

13. We are impartial and make decisions by looking at what happened and considering the evidence available to us. When we investigate a complaint, our approach is to consider whether the organisation complained about acted in accordance with the relevant standards and applicable guidance. *The Ombudsman's Principles of Good Administration*, *Principles of Good Complaint Handling* and *Principles for Remedy* are broad statements of

[5] Section 5(2)(a) of the *Parliamentary Commissioner Act 1967*.

what public organisations should do to deliver good administration and customer service, and how to respond when things go wrong. We will identify which Principles apply at the beginning of each section of the complaint.

Complaint 1: From January 2015 to March 2019 HS2 failed to be honest, helpful and transparent in handling Mr and Mrs D's case and failed to deal with matters in a timely, consistent and constructive way:

1a — From 2017 to 31 March 2019 HS2 staff were unhelpful and misleading in dealing with engagement about changes to the line and mitigation proposals in Mr and Mrs D's local area around negative impacts on the community from the proposed railway.

General standards

14. HS2's standards that apply to complaint 1a are:

- HS2's Annual Report from 2014/15[6] said they would be '*working in a fair, respectful and transparent way with the people who are affected*'.

15. Our Principles that apply to this aspect of the complaint are:

- *Being customer focused* — public bodies should tell customers about their entitlements and what they can and cannot expect from the public body. Public bodies should also do what they say they are going to do
- *Being open and accountable* — being transparent, open and truthful about decisions.

Background

16. Select Committees in both Houses of Parliament considered representations from those affected by HS2 as the legislation enabling HS2 to construct the railway progressed towards Royal Assent (becoming an Act of Parliament). The legislation to enable the construction of the railway was programmed to pass through Parliament in three stages — Phase One, Phase 2a and Phase 2b. The Select Committees held hearings to consider petitions (representations) from those who had a recognised interest in the proposed railway. Homeowners affected by the railway and who had concerns about how HS2 were handling their interests could appear before the Select Committees. Either before or after an appearance before the Select Committees, the Select Committee could ask HS2 to progress or resolve a petitioner's concerns.

[6] Page 5

17. The history of mitigation matters and HS2's approach is set out below:

November 2013 – HS2 produced a *London-West Midlands Environmental Statement – volume 2 Community Forum Area report*[7] (the Environmental Statement). Part of the report considered the probable noise, vibration, landscape and visual effects arising from construction and operation of the proposed railway. HS2 proposed some woodland planting in Mr and Mrs D's area[8]. HS2 said they would offer noise insulation to buildings that exceeded European regulations for the threshold of day and night-time noise in their dwelling as a result of the railway[9]. HS2 said Mr and Mrs D's area was sparsely populated. They identified two buildings (not the location of Mr and Mrs D's new house) that exceeded European thresholds. HS2 said these two buildings qualified for noise insulation. However, HS2 said:

> '*The avoidance and mitigation measures in this area will avoid noise and vibration adverse effects on the majority of receptors and all residential communities in this area.*
>
> …
>
> '*HS2 will continue to seek reasonably practicable measures to further reduce or avoid these significant effects. In doing so, HS2 will continue to engage with stakeholders to fully understand the* [impact] … '

February 2017 – The *High Speed Rail (London West Midlands) Act 2017* (the Phase One legislation) for the building of the High Speed Two railway received Royal Assent.

23 February 2017 – HS2 produced several policy papers (the 2017 Policy Papers) about the railway, which covered their understanding of their powers[10] and limits on their powers[11], as well as their approach to consultation, engagement[12], design[13], construction and disposal of surplus land[14]. These documents said:

- HS2 could not construct scheduled works outside Limits of Deviation (LOD), which HS2 said they had included in the plans submitted to Parliament

[7]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398116/Volume_2_CFA21_Drayton_BassettHints_and_Weeford.pdf

[8] Mr and Mrs D said the proposed planting was not for both sides of the railway line.

[9] Pages 205 and 206.

[10]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672188/B9_-_Introduction_to_hybrid_Bill_Powers_v1.1.pdf

[11]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672178/B2_-_Limits_on_Parliamentary_Plans_v1.4.pdf

[12]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672449/G1_-_Consultation_and_Engagement_v1.4.pdf

[13]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672456/G6_-_Design_Development_v1.4.pdf

[14]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672197/C6_-_Disposal_of_Surplus_Land_and_Over-Site_Development_v1.5.pdf

- HS2 had powers to carry out the scheduled works for the railway, but also ancillary works required in connection with the scheduled works. Ancillary works included environmental mitigation works
- Limits of Land to be Acquired or Used (LLAU) were used to show additional limits for other works (including ancillary works). The Phase One legislation only granted planning consent for construction work which was not scheduled works (that is, ancillary works) **if** it had been assessed in the Environmental Statement (from 2013)
- approval of additional works which were outside the LOD (scheduled works) and not covered by the LLAU (recognised ancillary works) was not covered by the Phase One legislation and required planning permission
- the design process for the railway would not be completed until after the Phase One legislation was passed
- HS2 would develop the design by engaging with people, and they were looking to achieve best value for money.

February 2017 – HS2 issued *Environmental Minimum Requirements General Principles*[15]. HS2 said they would use reasonable endeavours to adopt mitigation measures that would reduce environmental impacts caused by HS2 in so far as they did not add:

- unreasonable costs to the project or
- unreasonable delays to the construction programme.

Key events

18. From March 2017 onwards, Mr and Mrs D raised concerns about the negative impacts of the railway on their local area with HS2. Mr and Mrs D were concerned that inadequate mitigation measures were in place in their area. Mr and Mrs D thought a five-metre tree-lined bund (mounds of soil to block negative impacts) was required for the proposed railway line.

19. The key dates are:

2014 – Mr and Mrs D were planning to petition Parliament about their concerns over the proposed railway. They included their concerns about mitigation.

December 2014 – Mr and Mrs D signed a contract with HS2 for the purchase of their property. It allowed Mr and Mrs D to stay in their home while they built their new premises nearby. The contract included a clause that Mr and Mrs D would not lodge any future petitions against the proposed railway line with Parliamentary Select Committees.

March 2017 – Mr and Mrs D asked HS2 for information on mitigation in their area. HS2 told Mr and Mrs D they would tell them when HS2 appointed contractors. The

[15] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/618074/General_principles.pdf

contractors would take forward Mr and Mrs D's concerns about mitigation '*following their appointment*'.

July 2017 — HS2 appointed a contractor (the Contractor). The Contractor began completing the scheme design for the proposed railway, which HS2 anticipated would take over 12 months.

22 August 2017 — Mr and Mrs D noted HS2 had appointed the Contractor in July 2017 and asked for an update on progress for mitigation. Mr and Mrs D asked why HS2 would not do the constructive thing and agree to their mitigation request. Mr and Mrs D told HS2 they did not think mitigation decisions should rest with the contractors. Mr and Mrs D wanted HS2 to listen to their concerns and make a decision.

22 August 2017 — HS2 told Mr and Mrs D they would not treat ongoing correspondence about mitigation as a complaint because HS2 had already committed to reviewing mitigation when the Contractor was appointed.

25 August 2017 — HS2 said they would keep Mr and Mrs D updated about the anticipated timescale for their request to be considered as part of the construction programme review. Once they had a more definitive timescale, HS2 said they would let Mr and Mrs D know.

12 September 2017 — HS2's senior engagement manager told Mr and Mrs D:

- the Contractor was in week number six of a 16-month plan for reviewing the outline design for the railway
- HS2 would be in a more informed position early in 2018 to give a more detailed timescale as they had requested
- HS2 had already completed the Environmental Statement (2013), which included proposed planting for mitigation
- some form of mitigation through woodland planting might be needed on the section of the railway near Mr and Mrs D
- potential for additional planting would be looked at during the design period. However, HS2 said they:

  '*only have powers for land within the* [Phase One legislation] … *To confirm we do not have compulsory purchase powers to acquire any more land from other landowners immediately to the east of the mitigation site beyond the planned hedgerow … In addition, the area … will be used for construction activities and may not be permanently acquired for the scheme. Any additional planting outside of the Act powers and plans would require separate assessment including justification for additional powers to acquire the land and for the increased cost of implementing the additional planting.*'

September and October 2017 — Mr and Mrs D had a number of email exchanges with HS2's senior engagement manager. Mr and Mrs D said HS2:

- already owned the relevant land as HS2 had purchased it from the landowner
- had not properly engaged with the local community to design the height of the railway
- had arrived at their Environmental Statement on mitigation without proper consultation with the local community
- were able to make a decision on mitigation but had decided to *'simply kick the issue into the long grass'*
- appeared to have come to a decision not to include mitigation before the Contractor was given a chance to consider it.

1 November 2017 — HS2 told Mr and Mrs D they would be in an informed position by 8 December 2017, when HS2 had arranged to meet Mr and Mrs D and their MP.

4 November 2017 — Mr and Mrs D told HS2 they wanted HS2 to respond to their questions about mitigation so they could discuss them at the December 2017 meeting.

9 November 2017 — HS2's second Chief Executive[16] wrote to Mr and Mrs D's MP confirming Mr and Mrs D could petition the Parliamentary Select Committees about mitigation matters.

9 November 2017 — HS2's senior engagement manager emailed Mr and Mrs D saying the Contractor needed to consider the design and would consider Mr D's request for mitigation. The senior engagement manager also said:

> *' … I do not consider that a continuous exchange of emails is the best and most constructive use of our mutual time and hence the offer of a meeting* [on 8 December 2017] *in person.*
>
> *'Please be assured that I have always made every effort to be completely transparent in explaining how your request will be considered along with the associated and anticipated timescales. To qualify again for you, the main works contractor will need to consider your request in the context of undertaking the detailed design of the route, including planned mitigation measures, within* [Mr and Mrs D's area] *section of the line of route. I have obtained an update from the project team who have indicated that their programme review of* [Mr and Mrs D's area] *section of the route is unlikely to be concluded for at least 6 months. I will of course keep you updated as part of my regular engagement updates.*

[16] Over the course of this complaint HS2 had three chief executives – the first Chief Executive until December 2016, the interim Chief Executive from January to March 2017, and the second Chief Executive from April 2017 to present. For ease of reference I will refer to them as the 'first Chief Executive', 'the interim Chief Executive', and 'the second Chief Executive' respectively.

'I note you raised the issue of land ownership. As you will be aware, we may have acquired land within the area under different property schemes but its future ownership will be governed by the approaches set out in HS2 [information papers — key date 23 February 2017].

'[HS2's Local Engagement Delivery Plan] *will set out engagement opportunities for the local community and I have previously shared with you the details of our ongoing drop in surgeries within your area.'*

15 November 2017 — Mr D emailed HS2 after attending a local parish council meeting in his community. He said they had heard HS2 were considering lowering the height of the line and were keen to engage with local communities. Mr D said the additional surplus soil from lowering the height of the line could be used to create a bund. Mr D asked '*why HS2 could not insist on these mitigation proposals as part of the package*' the Contractor was quoting for.

29 November 2017 — HS2 held an engagement meeting about construction matters in Mr and Mrs D's area.

30 November 2017 — Mr D complained to HS2 about the behaviour of a member of their staff during the engagement meeting the day before. Mr D said he was talking to an environmental specialist when the HS2 staff member interrupted and refused to leave the conversation when Mr D asked them to. Mr D said the HS2 staff member told him he could not speak to the environmental specialist because Mr D was due to meet HS2 the following week. Mr D said he was, however, able to continue talking to the environmental specialist in another part of the room.

7 December 2017 — The MP cancelled the meeting with HS2 and Mr and Mrs D that had been planned for the following day. It was not rearranged.

December 2017 — Mr and Mrs D lodged their petition with the Parliamentary Select Committees (which were considering the legislation for Phase 2a of the railway) about HS2's actions around mitigation on Phase One of the railway in their area and about HS2 Ltd's general behaviour to those affected by the scheme.

11 December 2017 — HS2 wrote to the parish council in Mr and Mrs D's area. They said mitigation planting was proposed in the area. HS2 said the Contractor had begun detailed design and construction for their area, which would include reasonable endeavours to reduce impacts presented within the Environmental Statement. HS2 said:

'It is important to note that additional mitigation in this area is constrained as HS2 only have powers for land within the [Phase One legislation]. *HS2 has a general assurance not to buy more land than is needed for the construction and operation of the railway and moreover, does not have compulsory purchase powers to acquire any land from other landowners outside the Act limits. Any additional mitigation outside of the Act powers and plans would require separate assessment including*

justification for additional powers to acquire the land and for the increased cost of implementing additional mitigation.

'In addition, some of the land to the east of the line of route included within the Act will be used for construction activities and may not be permanently required for the scheme. Other land may have been purchased under what is termed 'discretionary property schemes' and in all cases, the land's future ownership will be governed by the approaches set out in HS2 Information paper [key date 23 February 2017] …

'Please be assured that the potential for additional mitigation to the east of the line of the route will be considered during this design period in the context of the above constraints.'

2 January 2018 — Mr and Mrs D complained to HS2 about mitigation. They said HS2 had not provided any meaningful engagement and had not provided maps of the Phase One legislation limits and land ownership in the area. Mr and Mrs D said

'It is a requirement of HS2 Ltd to use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts caused … The proposals we have suggested meet the criteria of mitigation HS2 Ltd should consider. Can HS2 Ltd confirm that they will comply with this requirement and adopt the mitigation we have suggested and, if not, confirm why not?'

Mr and Mrs D said HS2 were obliged to apply reasonable mitigation measures and decisions should not rest with the Contractor. Mr and Mrs D said they wanted to meet '*decision making powers*'. Mr and Mrs D said they had heard HS2 were proposing to lower the height of the line to facilitate the line going under a major road; they asked if HS2 would consider using the surplus soil for this to make a bund. Mr and Mrs D said building a bund and planting trees could be done at little or no cost.

February 2018 — Mr and Mrs D sent several chasing emails to HS2 about their complaint. Mr and Mrs D said they wanted to meet HS2 to discuss a number of issues relating to the handling of their property acquisition.

1 March 2018 — In response to a subject access request from Mr and Mrs D, HS2 told Mr and Mrs D they had not informed the Contractor about their request for a bund. HS2 said they stood by their earlier commitment to inform the Contractor of Mr and Mrs D's request for mitigation. However, HS2 said discussions with the Contractor to date were on wider-level issues. HS2 said they remained committed to discussing specific mitigation requests in further detail with the Contractor '*as we move towards the time when mitigation works are set to commence'*.

19 April 2018 — HS2 told the Contractor Mr and Mrs D were seeking a five-metre high tree-covered bund. HS2 said a five-metre bund was not part of the mitigation requirements in that area. HS2 told the Contractor they had committed to looking at Mr and Mrs D's concern about mitigation but at that point their focus was on:

'key structures and alignment options. Once these along with the mass haul are confirmed, then we are in a better position to firm up on any mitigation needs.'

4 May 2018 — Mr and Mrs D met HS2's second Chief Executive. Mr and Mrs D told the Chief Executive about their request for mitigation to the railway line.

7 May 2018 — Mr and Mrs D complained to HS2. They did not accept HS2 had offered a credible reason for disagreeing with their and their community's suggestion for a bund. Mr and Mrs D asked why HS2 could not agree to it. Mr and Mrs D told HS2 they were worried that if they did not reach agreement now, HS2 would procrastinate and ultimately abandon their suggestion.

10 May 2018 — HS2 and the Contractor met residents about the construction works in Mr and Mrs D's area.

14 May 2018 — Residents told Mr and Mrs D about the meeting with HS2 and their contractors. They reported HS2 saying they were unable to discuss proposals about mitigation because Mr and Mrs D had petitioned the Select Committee. The residents said HS2 had told them Mr D's appearance prevented further discussion on mitigation.

21 May 2018 — HS2's second Chief Executive wrote to Mr and Mrs D following the meeting on 4 May 2018. He said:

- the Contractor was working hard to enable detailed mitigation proposals to be communicated to them and their community
- the Contractor was considering lowering the line in their vicinity, which would generate extra excavated material. HS2 said the Contractor was considering reuse of that material, which could make construction of a bund possible
- HS2 anticipated announcing their mitigation decision within the next three to four months
- the area Mr and Mrs D had suggested for a bund was '*actually outside the Phase One limits. This means that any construction of an earth embankment would require a separate planning submission and be subject to approval by* [the local] *District Council.'*
- they held fortnightly drop-in sessions at the local council offices. HS2 said the next one was on 31 May 2018 and they were open to engagement from Mr and Mrs D's community
- in relation to Mr and Mrs D's particular area, HS2 said the next drop-in session was planned for 27 September 2018.

13 June 2018 — Mr and Mrs D appeared before the Select Committee hearing petitions in relation to the construction of Phase 2a of the railway (paragraph 16). Mr and Mrs D did not raise mitigation issues at the hearing. The Select Committee's subsequent report did not feature Mr and Mrs D's concerns about mitigation.

19 July 2018 — HS2 completed an internal review of Mr and Mrs D's complaint that HS2 had been rude to Mr D in November 2017 and had refused to discuss mitigation issues on 14 May 2018 because a petition was lodged with the Select Committee. HS2 said:

- in November 2017 the staff member joined a conversation with Mr D and gave further explanations from the general meeting. HS2 said they had not received any other complaints from anyone else present at the meeting. HS2 concluded there was no intent to cause upset to Mr D during the meeting
- on 14 May 2018 the HS2 staff member had not wanted to prejudice the outcome of the Select Committee hearing
- arranging a meeting with Mr and Mrs D about mitigation would not provide Mr and Mrs D with any new or detailed information, as there was no new information to share with the community.

31 July 2018 — HS2's second Chief Executive wrote to Mr and Mrs D reiterating there would be a drop-in session in their area to discuss mitigation matters on 27 September 2018.

3 August 2018 — Mr and Mrs D emailed HS2 saying the drop-in session was not appropriate to address extensive questions on mitigation because they could only discuss issues for five minutes. Mr and Mrs D said they wanted responses to some of their questions from 2 January 2018 before it was too late for decisions to be made.

27 September 2018 — HS2 and their contractors held a drop-in session for Mr and Mrs D's area.

31 May 2019 — HS2 wrote to Mr and Mrs D. They said:

- they planned to finalise the height of the railway at the end of 2019
- they would be prepared to pursue a bund of two and half metres high with potential for planting also. HS2 said this was over and above the mitigation requirement set out in the Phase One legislation and they had done this in response to listening to community concerns
- if the scheme design process changed, they would review the situation again. HS2 said once the scheme design process concluded, they would engage with the community
- it was too early in the design process to provide the assurance Mr and Mrs D sought about mitigation
- they held regular community events along the railway including in Mr and Mrs D's area. HS2 also included a five-page annex answering Mr and Mrs D's outstanding questions on mitigation from November 2017. Among other things, HS2 said a final decision on the technical environmental assessments would follow after completion of the scheme design, which was anticipated to be the end of 2019.

Evidence from Mr and Mrs D

20. Mr and Mrs D told us HS2:

- failed to consider their concerns about petitioning from 2013 onwards
- misinformed their community about whether they owned the land required for their request for a five-metre bund
- misinformed Mr and Mrs D about when the Contractor would be told about Mr and Mrs D's request for mitigation proposals. HS2 told them they would tell the Contractor after their appointment
- failed to openly respond to Mr and Mrs D's concerns about mitigation and refused to meet with their community
- staff were rude and obstructive at a community event in November 2017 but HS2 refused to investigate
- staff gave their community misleading reasons for not responding to concerns about mitigation in May 2018.

Evidence from HS2

21. HS2 said they hired seven contractors to complete the scheme design on 31 July 2017. HS2 told us there were two stages for the design. First, the scheme design developed the design concept (ideas about how to solve any design problems) and made high-level cost estimates. HS2 and their contractors would consider various options as long as the designs fell within the Phase One legislation. Second, the detailed design phase would then progress one design option to a fully detailed level of completeness, including quantities, detailed cost estimates and full specifications for what was to be constructed. HS2 said the detailed design phase and construction was put back because of the scale and complexities of the rail plans. HS2 said they were due to start mobilising resources in summer 2017 but the Contractor only completed the concept design in April 2020. HS2 said the Contractor's work was delayed and was focused on the overall deliverability of the scheme rather than specific mitigation. HS2 told us the proposed railway:

- will be 555 kilometres long, covering 40 per cent of the length of Britain
- requires 20 million tonnes of concrete, two million tonnes of steel and moving 130 million tonnes of earth.

22. HS2 said they received significant correspondence from Mr and Mrs D about mitigation. HS2 said they had to strike a balance between providing information to communities and stakeholders about the development of the design versus withholding information until it was more stable. At all times HS2 shared the best available information with Mr and Mrs D and there was no evidence that HS2 shared incorrect information with Mr and Mrs D at the time it was shared. HS2 said they shared information but there was potential for it to change because of the process of the design (above).

23. HS2 said they would acquire more land than was strictly necessary at some sections of the route, such as when they acquired an entire plot of land from a property owner that included more land than HS2 required for the railway. HS2 said this did not mean they could do anything they liked with the surplus land.

They said:

> *'In the context of* [Mr D's] *concern it should also be noted that HS2 Ltd has never said it would not create the mitigation that he requested. The position we have always maintained is that we will commit to everything that we are required to do in the Environmental Statement* [from November 2013] *but that we will not, and cannot, commit to anything over and above that.'*

24. HS2 said the Contractor would assess planting requirements on both sides of the line within the limitations of the Phase One legislation. Contractors had to meet Environmental Minimum Requirements, which included making reasonable attempts to adopt measures that would reduce adverse environmental impacts *'insofar as these mitigation measures do not add unreasonable costs or delays to the construction programme'*.

25. HS2 said they had agreed to construct a two-and-a-half-metre bund in Mr and Mrs D's area with the potential for planting to act as a barrier. They said this went beyond what was required under the Phase One legislation. In considering value/benefit, HS2 could not always agree to every mitigation a landowner might request.

26. HS2 said it was not simply a question of height for the bund, as every metre up meant around double that laterally to support the structure, which in Mr and Mrs D's area would necessitate a planning application. HS2 said that to a layperson it may not be clear what the difference is between three metres and five metres and what is constraining the choice. Therefore, when HS2 said they did not have powers to acquire the land, it may not be immediately apparent, particularly when the environmental impact at Mr and Mrs D's location never warranted that degree of mitigation (even a two-and-a-half-metre bund).

Our findings: complaint 1a

27. Mr and Mrs D complained HS2 were unhelpful and gave misleading information about mitigation proposals in their local area. In paragraph 20 Mr and Mrs D have provided more detail about why they believe HS2 were unhelpful and misleading. With regard to this complaint, we would expect HS2 to take account of their powers to acquire and use land, as well as their process for finalising decisions about any mitigations that would or would not be applied to the railway line (key date 23 February 2017). We would expect HS2 to adhere to commitments about consulting with

communities and being open and honest about their work (paragraph 14). We would also expect HS2 to act in line with our Principles (paragraph 15) in relation to being *customer focused* and being *open and accountable*. In particular, we would expect HS2 to be clear with Mr and Mrs D about what they could and could not expect from HS2, and explain reasons for any decisions they took. We will consider Mr and Mrs D's specific complaints about HS2 (paragraph 20) in the same order.

Failure to pass Mr and Mrs D's concerns to the Contractor

28. Mr and Mrs D complained HS2 had not passed their mitigation request to the Contractor by March 2018. HS2 said they would pass Mr and Mrs D's mitigation request to the Contractor '*following their appointment*'. HS2's response to Mr and Mrs D in March 2017 did not specify how long after the Contractor's appointment it would be before they passed on Mr and Mrs D's mitigation request, but HS2's communication gave the clear impression it would be done promptly. HS2 told us the Contractor was focused on deliverability of the overall scheme at this time rather than specific mitigation concerns such as those proposed by Mr and Mrs D. However, they did not tell Mr and Mrs D this, despite receiving their correspondence in August 2017 asking how the Contractor was progressing. Instead, HS2 did not tell the Contractor about Mr and Mrs D's mitigation request until April 2018, and only did so after Mr and Mrs D brought it to their attention following an information request in March 2018. For these reasons, we consider HS2's actions were not transparent as they did not do what they said they were going to do and did not properly inform Mr and Mrs D how their mitigation request would be handled. HS2 were not customer-focused. They acted maladministratively.

HS2's response to Mr and Mrs D's ongoing queries

29. Mr and Mrs D believed HS2 failed to respond openly to their written questions and concerns. While Mr and Mrs D say HS2 did not consider their ongoing concerns about mitigation from 2013 onwards, Mr and Mrs D signed a unique contract with HS2 in December 2014 following their plans to petition Parliament in 2014. We accept the contract was negotiated between parties to resolve Mr and Mrs D's concerns in their petition, and the clause preventing Mr and Mrs D petitioning in future alludes to that. Therefore, we have considered how HS2 handled Mr and Mrs D's concerns about mitigation after they raised the issue again in earnest in 2017.

30. During 2017 HS2 explained their design process to Mr and Mrs D and said the railway design would not be completed until at least mid-2018 (then extended until 2019), which prevented them making a final decision on mitigation issues. We have no reason to doubt HS2's explanation. It is supported by their information paper on their design work, which said the design process would not be completed until after the Phase One legislation had received Royal Assent (key date 23 February 2017). Therefore, we consider HS2 acted reasonably in telling Mr and Mrs D they

were not ready to make decisions on mitigation until their railway design scheme was complete.

31. During the design phase, between 2017 and 2019, HS2 set up regular meeting forums in Mr and Mrs D's area to discuss community concerns about the railway, including mitigation matters. While we appreciate Mr and Mrs D were seeking detailed updates and discussions with HS2 on mitigation matters, which HS2 were unable to provide at that time, we consider HS2's responses were reasonable. HS2 told Mr and Mrs D about meeting forums taking place in their area in November 2017, May 2018 and September 2018. We consider this was in keeping with HS2's design papers (key date 23 February 2017). The meeting forums allowed Mr and Mrs D to receive regular updates and enabled them and their community to contribute their views to the railway scheme design.

Behaviour of HS2 staff in November 2017

32. Mr D said a member of HS2's staff was rude to him in November 2017 and HS2 did not investigate it. HS2 did investigate, and responded to Mr D's concern on 30 July 2018. However, we cannot say that the HS2 staff member was rude in their exchange with Mr D. Both Mr D and HS2's staff member recalled having a discussion (see key date 30 November 2017 and 19 July 2018). Both recalled the HS2 staff member providing Mr D with explanations during their discussion. While Mr D was unhappy with the HS2's staff member's behaviour, HS2 said they had received no other complaints about their staff member. With two competing views of what occurred and the passage of time since the events, it is difficult for us to establish which party's account reflects the HS2 staff member's behaviour. For these reasons, we have insufficient evidence to reach a finding.

HS2's ownership of the land requested for mitigation

33. Mr and Mrs D made requests to HS2 for mitigation to the railway in their area — for a five-metre bund. HS2's email and letters to Mr and Mrs D of 12 September 2017, 9 November 2017 and 21 May 2018 and to the community on 11 December 2017 said:

- they did not have powers to acquire any more land to the east of the line
- the matter of mitigation was a complex issue in relation to Mr and Mrs D's request for mitigation.
- limits on their powers meant there were restrictions on how HS2 could use the land in the long term. HS2 also referred to their information papers (see key date 23 February 2017
- they would revisit the issue of mitigation once the design of the railway was more developed.

34. Broadly, HS2 provided the relevant information. They appropriately referred to their powers and offered to revisit and consider Mr and Mrs D's request for a five-metre bund at a later date. However, HS2 gave Mr and Mrs D the wrong impression about the ownership of the land. While HS2 were correct that there were limits on how much land they could acquire under the Phase One legislation, HS2 would not need to make further acquisitions for additional land in relation to Mr and Mrs D's mitigation request. Therefore, HS2's comment about land ownership, while technically correct, was a generic point and not relevant to Mr and Mrs D's situation.

35. We have considered how HS2 responded to Mr and Mrs D's request for a five-metre bund. HS2 offered to reconsider Mr and Mrs D's mitigation request when the design for the railway was more developed, they explained the issue of mitigation was complex and they might not be able to retain land indefinitely without further planning permission (key date 23 February 2017). Given HS2's answers were technically correct and their overall answers were reasonable, we do not consider HS2's unhelpful comment on the issue of ownership meant their actions overall fell below a reasonable standard.

HS2's update at a community event in May 2018

36. Mr and Mrs D say HS2 gave misleading reasons for not providing an update to their community in May 2018. HS2 told Mr and Mrs D's community they did not want to comment on mitigation matters because Mr and Mrs D were due to petition the Select Committee on mitigation in June 2018 (key date 13 June 2018). We recognise the Select Committee could have asked HS2 to undertake some further work following Mr and Mrs D's appearance (paragraph 16). Therefore, what HS2 said reflected the possibility that the Select Committee could have taken a view on mitigation that they would have needed to consider or resolve. Therefore, HS2 were not wrong. We can see HS2 could have told the community in May 2018, as they told Mr and Mrs D in July 2018, that there was no update to give on mitigation matters because their design work was not complete. In our view, HS2 could have provided a more focused update to Mr and Mrs D's community in May 2018 as they had no progress to report to Mr and Mrs D's community. However, we do not consider HS2 provided the community with inaccurate information. For these reasons, we do not consider their actions were so poor as to be maladministrative.

1b — HS2 misled Mr and Mrs D about who was working on their case from January 2016 to May 2016. Mr and Mrs D said HS2 used language in their correspondence that was intended to make them think the staff member who had previously worked on their case and who Mr and Mrs D had lost confidence in, was no longer involved in their case.

General standards

37. HS2's standards that apply to this aspect of Mr and Mrs D's concerns are:

- HS2's Annual Report from 2014/15 said they would be '*working with people in a fair, respectful and transparent way*'
- Residents' Charter 2015 said *'HS2 wants to ensure that we deal with residents in a fair, clear, competent and reasonable manner'*.

38. Our Principle that applies to this aspect of the complaint is:

- *Being open and accountable* — public bodies should be transparent, open and truthful about decisions.

Key events

39. The key dates are:

13 December 2015 — Mr and Mrs D raised concerns with HS2's first Chief Executive about the individuals working on their case. They were concerned their previous complaint and PHSO's 2015 investigation report into their earlier complaint had resulted in a lack of progress. Mr and Mrs D said it was not fair or correct for HS2 to allow the involvement of the same individuals who were subject to serious complaints. This included the first property manager, who was overseeing Mr and Mrs D's property acquisition at HS2.

21 December 2015 — HS2 said they were handling Mr and Mrs D's compensation claim correctly and consistently. However, HS2 recognised Mr and Mrs D's concerns. HS2 said:

> '*We have a dedicated and highly qualified land and property team and we are currently establishing who is best placed to be your named case officer to handle any queries outside of your claim. This will be someone who has not previously worked on your case but will have the relevant expertise to support it through to conclusion. …* '

29 January 2016 — HS2 wrote to Mr and Mrs D saying the second property manager was their named case officer and should be contacted with any queries.

16 and 29 March 2016 — Mr and Mrs D wrote to HS2 saying they were concerned that previous staff involved in their case were still working on their property acquisition. They told HS2 they were concerned it was hampering progress. Mr and Mrs D asked HS2 to provide assurance that those involved in their case previously were not involved going forward.

17 March 2016 — HS2's agents (surveyors helping negotiate Mr and Mrs D's compensation claims) exchanged emails with the first property manager about the valuation date for Mr and Mrs D's property. While the second property manager was copied in, the email showed the first property manager addressed the issue of

valuation and compensation for Mr and Mrs D's property. In particular, the first property manager said they were happy with the valuation report and they were:

> *'prepared to recommend our Commercial Panel and Department to approve this and agree the amounts you recommend, but we would normally only do this upon final and full claim having been negotiated.'*

19 April 2016 — HS2's first Chief Executive wrote to Mr and Mrs D. The Chief Executive said the second property manager was managing their case and was the point of contact for any issues related to it. The first Chief Executive said that the first property manager had been:

> '*managing the relationship with suppliers*[17] *dealing with the settlement of your compensation claims and the acquisition of your premises to ensure continuity and avoid further delays. However, I can confirm that* [the second property manager] *will be doing this going forward.'*

27 May 2016 — HS2's first Chief Executive wrote to Mr and Mrs D following their meeting with HS2's Director of Engagement on 25 May 2016. Among other things, HS2 told Mr and Mrs D:

> '[The first property manager] *does not, and never had, the influence of whether your case would go to Commercial Panel or not. As previously stated,* [the second property manager] *in our Land & Property Team is solely managing the progress of your case … '*

<u>Evidence from HS2</u>

40. HS2 told us they moved the first property manager off Mr and Mrs D's case in early 2016. HS2 said the first property manager provided a handover and advice for the second property manager to avoid delays in the case and this was entirely appropriate. HS2 said the first property manager stepped completely away from the case on 25 May 2016 and prior to that was '*involved in giving information and advice*' to the second property manager. HS2 said:

> *'This was normal and sensible to ensure that we kept the process moving given a)* [the second property manager] *was new to it b) was shortly going on pre-booked leave and c) given the complex nature of the case.*
>
> …
>
> *'We accept we could have explained this more clearly to Mr* [D] *but were trying to ensure a smooth handover for reasons above and there was no intention to mislead.*
>
> …
>
> *'Prior to the previous PHSO investigation Mr* [D] *had made a number of allegations about the behaviour and actions of* [the first property manager] *(who was the lead case officer at the time) and it was clear that their*

[17] This appears to refer to HS2's agents.

professional relationship had broken down. Therefore, following publication of the [first] *Ombudsman report in November 2015, in a bid to try to establish a more cordial relationship with Mr* [D]*, it was felt best to move* [the first property manager] *away from working on Mr* [D's] *case. …*
…
'From handover to [the second property manager] *in January 2016,* [the first property manager] *was not acting in a decision-making capacity and had no further direct contact with* [Mr D]*.'*

Our findings: complaint 1b

41. Mr and Mrs D complained HS2 misled them about who was working on their case. In communicating with Mr and Mrs D about who was working on their case at HS2, we would expect HS2 to act in accordance with their Annual Report and Residents' Charter (paragraph 37), which said they would treat people respectfully and they would be transparent. We would also expect them to take account of our Principles in relation to being *open and accountable* (paragraph 38). In particular, we would expect HS2 to give clear, accurate and timely information.

42. We consider HS2 misled Mr and Mrs D about the involvement of the first property manager when responding to Mr and Mrs D's direct question in March 2016. HS2 avoided answering Mr and Mrs D's question and used unclear language to respond to their queries. Mr and Mrs D had to repeatedly ask HS2 to clarify the first property manager's involvement in their case.

43. Specifically, HS2 told Mr and Mrs D the first property manager had no influence on whether Mr and Mrs D's case would be put to the Commercial Panel in May 2016 (to approve the valuation of their property). They also told us the first property manager was not acting in a decision-making capacity (paragraph 40). Both HS2's statements may be technically correct. However, they were not straightforwardly honest answers. The first property manager was clearly contributing to and involved in discussions about how Mr and Mrs D's property acquisition would proceed, even if they were '*not acting in a decision-making capacity*' and did not '*influence*' their case.

44. HS2 appointed the second property manager to rebuild their problematic relationship with Mr and Mrs D after PHSO's first investigation report. HS2 acknowledge they could have been clearer about the handover (paragraph 40). However, HS2 should still have responded openly and honestly to Mr and Mrs D's questions about who was involved in their case and provided reasons for their actions. HS2 did not do so.

45. Instead, HS2 misled Mr and Mrs D about the first property manager's continued involvement in their case when asked about it directly by Mr and Mrs D. HS2 were not truthful. They were not *'open and accountable'*, which is maladministration.

1c — HS2 failed to respond properly to questions or to follow processes and procedures in relation to the Compensation Code.

General standards

46. HS2's standards for this aspect of Mr and Mrs D's concerns are:

- HS2's Annual Report from 2014/15 said they would be '*working with people in a fair, respectful and transparent way*'
- HS2's Corporate Business Plan 2015-18 said they were '*Forging partnerships based on fairness and openness with all*'
- The Residents' Charter 2015 said HS2 would communicate '*in the plainest, non-technical language possible*'.

47. Our Principles that apply to this aspect of the complaint are:

- *Being customer-focused* — public bodies should communicate effectively, using clear language that people can understand; treating people with sensitivity, bearing in mind their individual needs, responding flexibly to the circumstances of the case, if public bodies make a commitment to do something they should do it or explain why they cannot. Public bodies should be clear with customers about their entitlements and about their own responsibilities
- *Acting fairly and proportionately* — public bodies should be prepared to listen to their customers and avoid being defensive when things go wrong
- *Being open and accountable* — public bodies should be transparent, open and truthful about decisions. Public bodies should provide clear, accurate, complete, relevant and timely information; public bodies should be open and truthful when accounting for their decisions and actions and state their criteria for decision making and give reasons for their decisions.

HS2 processes

Administrative background

48. The acquisition of properties for the High Speed Two railway is underpinned by the Compensation Code. This is a collective term for principles, derived from Acts of Parliament and case law spanning hundreds of years[18], about compensation for compulsory purchase of property/land. Compensation can be claimed for:

- the value of the land
- disturbance (costs of relocating a business and so on)
- fees (surveyors/agents' fees and solicitor/conveyancing fees).

49. HS2 will pay for land required for the railway using the property's unblighted price (as if there was no railway scheme reducing the market value of the property). The Compensation Code says the **valuation date** for the assessment of compensation[19] is the **earliest** of[20]:

   a. the date the body takes possession of the land (known as date of entry), or the date the title of the land vests in the acquiring body
   b. the **date values are agreed** (our emphasis) or
   c. the date of the Lands Chamber's decision.

50. HS2 can acquire properties through compulsory purchase (compelling homeowners to give up possession of their property). Homeowners can agree the terms of a property purchase with HS2 by submitting a **blight notice**[21]. If owners submit a blight notice to HS2 to purchase the property through agreement in advance, this will prevent the need for HS2 to take possession through compulsory purchase. HS2 introduced discretionary schemes for purchasing properties based on statutory blight and the principles in the Compensation Code. These schemes take account of the Compensation Code but the criteria are relaxed. For example, in June 2014 HS2 published details of their Express Purchase scheme, which enabled HS2 to purchase properties early (before HS2 needed them) that fell wholly within the safeguarded area for the proposed railway.

51. Meanwhile, Select Committees in both Houses of Parliament considered representations from those affected by HS2 as the Phase One legislation (known then as the hybrid Bill) progressed towards Royal Assent (becoming an Act of Parliament). These Select Committees held hearings to consider petitions (representations) from those who had a recognised interest in the

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[18] The main Acts are the *Land Compensation Acts* (1963 and 1973) and the *Compulsory Purchase Act 1965*.

[19] Section 103(2)5A of the *Planning and Compulsory Purchase Act 2004*.

[20] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571450/booklet2.pdf

[21] A legal notice that property owners can serve on HS2 to purchase their property (which is needed for development of the railway) so they can move away.

proposed railway. Homeowners affected by the railway and who had concerns about how HS2 were handling their interests could appear before the Select Committees. Either before or after an appearance before the Select Committees, HS2 would negotiate (or could be asked to negotiate by the Select Committees) a solution for the purchase of a homeowner's property on terms that both parties were happy with. In other words, a homeowner could negotiate a contract with HS2 to purchase their property outside HS2's discretionary property schemes (paragraph 50).

52. Separate to compensation for their properties, homeowners selling their property to HS2 were entitled to a home loss payment, which was usually 10 per cent of the value of the property up to a maximum set by legislation.

HS2's internal processes for agreeing a property's value

53. Whether an agreement to acquire a homeowner's property arose through HS2's property scheme or through negotiation flowing from a petition to Parliament, the homeowner had to submit a blight notice (paragraph 50) to HS2. After that, standard property processes applied:

- HS2 and property owners needed to **exchange** contracts to make the property transfer legally binding. HS2 usually paid <u>ten per cent of the property value</u> as deposit to the homeowner's solicitors at the point of exchange of contracts
- **completion** of the property transfer happened when HS2 paid the remaining <u>90 per cent</u> of monies and the homeowner physically moved from the property so HS2 could take possession. Completion was usually a matter of weeks after exchange of contracts.

54. HS2 required their **Commercial Panel** to approve compensation, including the property price. The Commercial Panel was composed of staff from HS2 and the Department for Transport. The Commercial Panel's Terms of Reference from March 2015 said it would:

- approve property-related policies and specific proposals for property acquisition. It said that it would also scrutinise and provide guidance on '***sensitive or controversial issues*** *arising from the land acquisition process*'
- make recommendations to the Secretary of State about the appropriate purchase price and associated compensation.

55. HS2 said they negotiated compensation with property owners and their agents. HS2 said they usually agreed a price with the homeowner and passed it for approval to the Commercial Panel before they exchanged contracts (paragraph 54). HS2 said when the Commercial Panel agreed the price/value, they placed it in the contract of the person whose property they were purchasing. The property price was binding when HS2 and the homeowner exchanged contracts. HS2 said that at the same time they

would ask the Commercial Panel to also approve the rest of the homeowner's disturbance/compensation claims if realistic estimates were available, so all aspects of a homeowner's claims could be dealt with together. HS2 refer to this as being *'full and final'* settlement of the compensation claims. However, sometimes HS2 said they would revert to the Commercial Panel at a later date for approval of the homeowner's remaining compensation/disturbance (full and final) costs.

Key events

HS2's internal process for agreeing a fixed price

56. Mr and Mrs D said HS2 failed to respond properly to questions or follow processes in relation to their compensation. In particular, they considered HS2 provided inconsistent and contradictory positions on how they would agree to confirm the price they would pay for Mr and Mrs D's property. The key events are set out below:

57. In 2014 Mr and Mrs D agreed to withdraw a petition to Parliament about the hybrid Bill in exchange for a unique conditional contract for the sale of their property. In particular, this allowed Mr and Mrs D's contract to go unconditional when **either** the Phase One legislation received Royal Assent (due in December 2016) **or** when Mr and Mrs D waived the condition of requiring Royal Assent. In other words, Mr and Mrs D could effectively choose to make their contract unconditional at any point between December 2014 (when they signed the contract with HS2) and when the Phase One legislation became an Act of Parliament. The purpose of the contract was to allow Mr and Mrs D to put their affairs in order — they wanted to obtain planning permission to build a new property near to their old property.

58. As part of the contract, HS2 agreed to reverse their usual process. HS2 said they would pay **90 per cent** rather than the usual 10 per cent of the value of the property at the point the contract went unconditional. Mr and Mrs D wanted to use the 90 per cent advance funds to build their new home whilst residing in and still being in possession of their old property. HS2 agreed to pay Mr and Mrs D the remaining 10 per cent of funds on completion of the property transfer, when HS2 took possession. The contract said completion of the property acquisition would take place in January 2018, but this could be extended if both parties agreed.

August and September 2014 — Before Mr and Mrs D signed the contract, HS2 exchanged emails with Mr and Mrs D's agent. Mr and Mrs D's agent noted HS2 would make a 90 per cent advance payment on the contract going unconditional. Mr and Mrs D's agent said: *'the 90% advance payment upon the contract going unconditional is acceptable, and we assume that is the date of valuation'*. The first property manager responded by saying *'Noted and agreed. … The value will be assessed and negotiated under the compensation code'*. Mr and Mrs D said HS2's email meant the Compensation Code would still apply (despite them having a

unique contract). They thought this meant the price HS2 would pay for their property would be fixed when their contract went unconditional.

7 October 2014 – HS2's Commercial Panel agreed Heads of Terms (general principles) for Mr and Mrs D's contract. While valuation for Mr and Mrs D's property was not agreed, the Heads of Terms included:

> *'Upon acceptance of the Blight Notice, SoS* [via HS2] *will appoint an Agent under its Property Services Framework, to negotiate the compensation claim with* [Mr and Mrs D's agent]. *Negotiations on the claim to commence upon such appointment and to proceed diligently in preparation for the Contract going unconditional.'*

7 October 2014 – HS2 emailed Mr and Mrs D's agent. They confirmed the Commercial Panel's agreement to the Heads of Terms. They also said:

> *'When we have received your client's Blight Notice, and subject to its acceptance, we will instruct our property consultants to commence the negotiation of the compensation claim with you.'*

November 2014 – HS2's agents (agent 1) completed a Schedule of Condition[22]. Mr and Mrs D said they assumed the Schedule of Condition would involve a valuation.

3 December 2014 – Mr and Mrs D signed the contract with HS2 for the sale of their property. In particular, clause 2.8.2 said:

> '***The Price for insertion into the Transfer*** [our emphasis] *(if not agreed in full by the Completion Date) will be determined by the Buyer* [HS2] *acting properly reasonably and* ***in accordance with the Compensation Code*** [our emphasis] *being a sum equivalent to 90% of the estimated amount of compensation due to the Seller, and Occupier 1 (if any), in respect of the value of the Property and disturbance costs in accordance with the Compensation Code.'*

30 April 2015 – Mr and Mrs D served HS2 with a blight notice (paragraph 50).

21 June 2015 – HS2 accepted Mr and Mrs D's blight notice.

July 2015 – HS2 appointed a second set of agents (agent 2) to complete a survey and valuation for Mr and Mrs D's property.

January 2016 – The second property manager took over handling the property transfer for Mr and Mrs D's case from the first property manager, although the first property manager contributed to discussions.

[22] Factual record of the condition of a property to ensure that the value of the house is retained upon possession.

9 February 2016 — Agent 2 provisionally agreed with Mr and Mrs D and their agent to an £800,000 price for Mr and Mrs D's property. Mr and Mrs D told us they thought this valuation meant compensation for the price of their home was fixed and agreed as per the Compensation Code (paragraph 49b). However, in the following weeks and months Mr and Mrs D and HS2 disagreed about how this '*provisional*' valuation fitted within the Compensation Code (paragraph 49b) and HS2's internal processes (paragraph 55).

17 March 2016 — The first property manager told agent 2 they were prepared to recommend the Commercial Panel approved the price. However: '*we would normally only do this upon final and full claim having been negotiated'*. The first property manager said the contract was conditional until Royal Assent or Mr and Mrs D waived that condition (paragraph 57). The first property manager said the next move was Mr and Mrs D's and if they waived the requirement for Royal Assent, HS2 would seek approval from the Commercial Panel for the valuation.

20 March 2016 — Agent 2 told Mr and Mrs D's agent compensation was provisionally agreed with HS2. Agent 2 also said:

> *'HS2 do not put matters to the Commercial Panel until we have reached* ***full and final including disturbance*** [our emphasis], *so it remains subject to that* [the Commercial] *Panel and* [Department for Transport] *approval and sign off. Any agreement also remain*[s] *subject to the usual due diligence on conveyance/completion.'*

17 April 2016 — Mr and Mrs D wrote to HS2 saying:

> *'HS2 has either agreed the valuation or they have not. At the time of writing they apparently have not.* […]
>
> *'The sudden and unfair assertion that values will not now be formally agreed until our disturbance compensation is "in full and final" is wrong, unfair and illogical.*
>
> '[…] *Therefore, the whole valuation process we have been through over the last 9 months has been a complete waste of our time* […] *this valuation exercise has been premature and pointless. This demonstrates a lack of regard by unnecessarily wasting our time and causing further unnecessary stress to our family.'*

19 April 2016 — HS2's first Chief Executive responded to Mr and Mrs D. He acknowledged Mr and Mrs D's disbursement (compensation and costs for their property move) might be finalised after the property transfer had taken place. However, he said:

> *'there does however need to be a transaction in the form of a transfer of land or a request for an advance payment before there is anything for the Commercial Panel to approve. …*

'Compensation for the value of your property is assessed at the date agreement is reached or the date when HS2 Ltd enters on the property to undertake the HS2 works whichever is the later date[23]. …

'… it would not go before our Commercial Panel until it is clear a transaction is close to being completed. Going through that process without this [is] *not an efficient use of time and resources because if we are not going ahead with a transaction until December 2016*[24] *at the earliest, we would need to review the valuation then and go to Commercial Panel once more.'*

24 April 2016 — Mr and Mrs D responded to the first Chief Executive. They said HS2 were suggesting Mr and Mrs D would be expected to enter into an unconditional contract before the valuation of their property was agreed. Mr and Mrs D asked HS2 to put the agreed price (£800,000) to the Commercial Panel so they could have an agreed price before they decided to waive the conditions in their contract.

9 May 2016 — Mr and Mrs D told HS2 they were confused about the different information HS2 gave them. They said they were considering whether to opt for their contract to become unconditional. This was so they could draw down on the 90 per cent advance payment to fund some of their planning and relocation costs. Before they took this enormous step, Mr and Mrs D told HS2 they wanted the Commercial Panel to properly document their agreed valuation of £800,000.

11 May 2016 — HS2 exchanged emails internally about Mr and Mrs D's concerns. They said their contract said payment would be made when Mr D waived the conditions. The second property manager said:

'One point I can see [sic] *now which seems relevant to me is how long does the agreed valuation figure of £800,000 hold? … After a certain date we would wish the valuation to be reviewed to current market value.'*

12 May 2016 — Agent 2 emailed HS2. They said the timeframe for the provisionally agreed valuation (from 9 February 2016) to remain open must depend on the volatility of the house market. Agent 2 thought six months after the initial valuation would be reasonable but if there was a market crash HS2 might not want to be held to that. The agents said the housing market was fairly stagnant but there was no definitive answer, particularly in light of the Brexit referendum (due to take place in June 2016). Agent 2 suggested HS2 could agree to fix the valuation for six months but both parties would be taking a risk of the market rising or falling.

[23] HS2 have acknowledged that this should have said *'earlier'* not *'later'* (paragraph 49b). Mr and Mrs D are concerned this was a deliberate mistake by HS2.
[24] When Royal Assent for the Phase One legislation was expected. This would mean that Mr D's contract would go unconditional anyway and the value of his property would be fixed to that date.

24 May 2016 — HS2 agreed via the Commercial Panel that Mr and Mrs D could be told '*the usual period for a valuation to remain valid before reviewing is 6 months* …' and HS2 would be prepared to offer to fix the valuation for nine months.

25 May 2016 — HS2 met Mr and Mrs D and told them about their approach to setting the value for six months. At the meeting Mr and Mrs D expressed concern they had not previously been told there was a six-month time limit to hold valuations.

6 June 2016 — Mr and Mrs D emailed HS2. They said their understanding of the Compensation Code was the valuation date was the earlier of the date possession was taken or the date values were agreed (paragraph 49b). Mr and Mrs D said if both parties agreed values, the valuation date was set. Mr and Mrs D did not consider it was fair for HS2 to '*"wriggle out" of this existing clear agreement*'. They said it was not fair or right for HS2 to expect them to enter into an unconditional contract without having agreement from the Commercial Panel about the value of their property. Mr and Mrs D said the Heads of Terms (7 October 2014) said clear valuation should be agreed in preparation for the contract going unconditional. They said their neighbour was able to have their values agreed by the Commercial Panel well before they had found a replacement property.

> '*We need to be very clear. We expect to make our contract unconditional and draw down funds as soon as practicable after Royal Assent. We do not expect to be discussing or renegotiating the agreed values at that stage. We expect HS2 Ltd to stand by the values they have agreed in accordance with the Compensation Code.*'

9 June 2016 — One of Mr and Mrs D's neighbours emailed HS2, copying Mr D into the email. The neighbour said HS2 agreed to the valuation of their property in November 2015 and this was agreed by the Commercial Panel in the same month. The neighbour asked HS2 to explain why members of the same community were being treated differently.

17 June 2016 — HS2's first Chief Executive responded to Mr and Mrs D saying:

- given Mr and Mrs D's property may not be acquired until January 2018, they did not believe it would be in their interests to fix the price until then
- it was not in line with the Compensation Code to agree a valuation in advance, as it assumed an up-to-date valuation when the property was acquired
- '*we treat the date values are finally agreed as the date on which the price is inserted into the Transfer document and the Transfer is completed because it is not market practice to hold property prices indefinitely as market positions change.*'
- HS2 were prepared to hold the valuation until 31 December 2016, which would mean they were holding it for 11 months (February 2016 to

December 2016). HS2 said this was longer than they would typically allow

- if Mr and Mrs D chose to make their contract unconditional and completed the property transfer before December 2016, they could do so
- HS2 were acquiring the property under compulsory purchase and not by agreement in advance under a blight notice. HS2 said this meant the valuation date for the property became fixed at the date entry was taken onto the property to commence public works (which would be 31 January 2018 when the property transfer was due to be completed)
- Mr and Mrs D's neighbour had exchanged contracts with HS2 and their agreed price was held for a shorter period than the period they were offering Mr and Mrs D
- should Mr and Mrs D decide to sell their property after 31December 2016, HS2 would expect to reassess the property value and agree a subsequent price with them.

22 June 2016 — Mr and Mrs D complained to HS2 about their failure to publicise the six-month rule for fixing valuations or to explain how it operated.

23 June 2016 — The UK voted to leave the European Union in the Brexit referendum. House prices in Mr and Mrs D's area continued to rise after the result.

30 June 2016 — HS2's first Chief Executive told Mr and Mrs D if they waived the conditions of their contract before 31 December 2016 their property price would be £800,000. HS2 confirmed the Commercial Panel had approved this offer. HS2 said the date a valuation is agreed in advance of compulsory purchase was set out in their letter of 17 June 2016. HS2 said they treated the date values which were finally agreed as the date on which the price was inserted into the transfer document and the transfer document was completed. HS2 said under Mr and Mrs D's contract, insertion of the values into the contract was the date the sale was completed.

25 July 2016 — The first Chief Executive of HS2 confirmed to Mr and Mrs D there was no six-month rule or clause around holding valuations. HS2 said they had not meant to imply that there was such a rule.

25 July 2016 — Mr and Mrs D's neighbour emailed HS2 again. They said that they had no alternative house in mind when their case went to the Commercial Panel and they knew they would take their time finding one. The neighbour said they had told HS2 this at the time. The neighbour said they proceeded with obtaining an agreed value to give themselves a budget to work with. The neighbour told HS2 they did not understand why HS2 had been able to put their case forward to the Commercial Panel, but not Mr and Mrs D's.

28 July 2016 — HS2's first Chief Executive said again the Commercial Panel had approved the £800,000 figure for Mr and Mrs D's property but this would only be the case if completion occurred on or before 31 December 2016.

15 August 2016 — Mr and Mrs D emailed HS2 saying they had found a site to build their new house on and had fixed a price for that land. Mr and Mrs D considered they had always agreed with HS2 that values would be agreed before the contract went unconditional, so Mr and Mrs D could progress with planning their build with a certain budget in place. Mr and Mrs D told HS2 they were upset HS2 were trying to delay the valuation date until completion (January 2018) as the valuation was always supposed to have been done before the contract went unconditional. Mr and Mrs D said their contract required them to pay for deterioration of the property from the date of the contract in December 2014 and it could not be fair or right the valuation date was completion (intended for January 2018), so they would have to pay for any deterioration from a date over three years earlier. Mr and Mrs D said other property owners had had their values agreed earlier. Mr and Mrs D said it was always envisaged and agreed with HS2 that they would complete the transaction of their property in January 2018.

August 2016 — Mr and Mrs D provided HS2 with HS2's email from September 2014, which said the valuation date was the date the contract went unconditional (not the date of completion).

7 September 2016 — HS2's first Chief Executive wrote to Mr and Mrs D saying the first property manager's email from September 2014 was not part of their records. HS2 said they had misgivings about holding the set price when there may be fluctuations in the property market when the actual completion date might not be for some time. They said, however, they were prepared to honour what they said in the September 2014 email. HS2 also said that if there was a delay in Royal Assent for the Phase One legislation, they would not seek further negotiations regarding property valuation. HS2 apologised for the time taken to get to that point but said they had acted in good faith.

February 2017 — The Phase One legislation received Royal Assent. Mr and Mrs D had not waived the conditions of their contract, so Royal Assent triggered Mr and Mrs D's contract with HS2 becoming unconditional. This meant HS2 were required to pay 90 per cent of the value of Mr and Mrs D's property within 30 days.

February 2017 — Mr and Mrs D asked HS2 to value their house using the date of Royal Assent for the Phase One Legislation which had triggered their contract as being unconditional (3 December 2014 key date). In other words, Mr and Mrs D did not want the February 2016 price which HS2 had agreed to honour on 7 September 2016. Mr and Mrs D wanted HS2 to revalue their property according to February 2017 prices, not February 2016 prices.

30 May 2017 — HS2 responded to Mr and Mrs D. They said Mr and Mrs D's property had been revalued using 2017 values and was £48,000 higher than the 2016 valuation. HS2 agreed to fix the value of Mr and Mrs D's property at £848,000.

22 March 2018 — Agent 2 exchanged correspondence with Mr and Mrs D's agent about the valuation date:

> *'Your client therefore expended time arguing for a valuation date that was both incorrect and not taken up* [by] *him. It is accepted that HS2 limited also erred by confirming a valuation date as being the date of completion instead of unconditional exchange, and HS2 was less than clear in its correspondence on the point.'*

Payment of professional fees/conveyancing costs

59. Mr and Mrs D complained HS2 failed to pay the remaining 10 per cent of their professional fees and conveyancing costs on completion of their property transfer. The key events are set out below:

March and July 2017 — HS2 made two payments to Mr and Mrs D totalling 90 per cent of the value of their home and conveyancing costs/professional services fees, in accordance with their December 2014 contract.

26 April 2017 — HS2 told Mr and Mrs D they would pay the remaining 10 per cent of the professional services fees/conveyancing costs (amounting to approximately £3,000) on completion of the property transfer.

1 October 2018 — Mr and Mrs D completed their property transfer. HS2 paid Mr and Mrs D the final 10 per cent for their property, but HS2 did not pay the remaining 10 per cent of fees for professional services fees/conveyancing costs.

3 November 2018 — Mr and Mrs D chased HS2 for payment of the final 10 per cent of fees. HS2 said it was an omission and they would make payment in 20 working days. When Mr and Mrs D complained, the second Chief Executive agreed that a 20-day timeframe for a response was '*unacceptable*'.

8 November 2018 — HS2 paid Mr and Mrs D £3,000 for their professional services fees/conveyancing costs.

Home loss payment

60. Mr and Mrs D complained HS2 evaded their questions and refused to confirm whether their home loss payment (paragraph 53) under the Compensation Code would be made on completion of their property transaction. The key events are set out below:

4 May 2018 — Mr and Mrs D met HS2's second Chief Executive. Mr and Mrs D asked HS2 to confirm '*our completion date to be moved to 30 September 2018 with the remaining 10% of our property claim and all the home loss payment of £61,000 being paid immediately on completion*'.

21 May 2018 — HS2 wrote to Mr and Mrs D about a number of issues including their compensation claims. HS2 confirmed '*other*' aspects of Mr and Mrs D's property payment would be made on completion of the property purchase. HS2 did not specifically refer to the home loss payment.

2 July 2018 – Mr and Mrs D again asked HS2 to confirm if they would receive the home loss payment.

19 July 2018 – HS2 emailed Mr D saying they had confirmed this in their letter of 21 May 2018 – HS2 would make the home loss payment on completion of the property transfer.

31 July 2018 – Following further exchanges, HS2 confirmed their letter of 21 May 2018 was conveying their agreement to pay Mr and Mrs D the home loss payment.

1 October 2018 – HS2 paid Mr and Mrs D their home loss payment, the day the property transfer to HS2 was completed.

Timescale for submitting disturbance claims

61. During exchanges with HS2 about their compensation claims in 2018, Mr and Mrs D considered HS2 made incorrect assertions about how long it would take for them to fully relocate their business and, therefore, submit their final disturbance claim[25]. The key events are set out below:

September 2018 – Mr D told HS2 the nature of his accountancy business meant it would be over 12 months after their house move before he could submit his final disturbance claim. He told HS2 he would have to undertake actions including updating marketing and promotional material and issuing engagement letters to clients.

1 October 2018 – Mr and Mrs D moved their home and business to their new property.

30 October 2018 – HS2 said they did not and could not control the timescales relating to disturbance claims for business losses. They said in their experience of handling disturbance claims from a variety of large and small businesses, most were settled within 12 months. They suggested Mr D aimed for that.

[25] Costs that HS2 would be asked to pay in relation to Mr and Mrs D's property move.

Evidence from HS2

HS2's internal process for agreeing a property price

62. In response to our investigation, HS2 told us:

'It can be seen that HS2 Ltd accepts [we were] *not as clear in* [our] *correspondence as* [we] *should have been on both of these aspects between April and September 2016.*
…

'In regards to the valuation date, this is an issue Mr [D] *has raised with us on many occasions. We would argue that any inconsistency over this matter falls into the realm of fair and reasonable discussions and negotiations between two parties engaged in a house sale. By way of an example is a letter sent by the then* [first] *Chief Executive … to Mr* [D] *in June 2016.*
…

'The [situation] *is inherently quite complex. However, it should be clear that in broad terms, the contract was generous to Mr* [D] *compared with other blight notices to address the petition points. In particular it met their request to be able to use the monies to build a new house to their own design from the compensation payable under the Compensation Code, whilst they remained in their current home.*
…

'There was much reference in Mr [D]*'s correspondence at the time to the £800,000 value agreed between the agents in February 2016 and that this should be the fixed price that was payable by HS2 Ltd. There was some confusion in HS2 Ltd as to what exactly Mr* [D] *was requesting. The contract enabled Mr* [D] *to waive the conditions and it was in his gift to bring the completion date forward and secure the figure of £800,000. It was therefore not clear if he wanted the £800,000 agreed price included as the sale price within the contract making the contract unconditional. Alternatively, did Mr* [D] *seek to merely fix the 'agreed' price at the figure agreed between agents for a period of time but subject to review thereafter?*

'As the correspondence progressed, Mr [D] *did not request the price agreed between respective agents be included as the sale price in the contract dated December 2014 and for the sale contract to go unconditional. Advice from our agents and supported by Land Registry property indices for residential property in* [Mr and Mrs D's area] *in 2016 showed property prices continuing to rise. HS2 Ltd did not believe it was in the best interest of Mr* [D] *to fix the price of the property (as agreed between agents) and suggested it be fixed for a limited period, enabling it to be reviewed thereafter.*
…

'Mr D pointed out that [in an email from September 2014] *… HS2 Ltd had previously said that the valuation date included within the contract terms would be the date the contract went unconditional. Therefore at that date, being Royal Assent as that was the last condition, the valuation would be fixed.*

'This is different from the valuation date being the date when the price is entered into the Transfer document because under that approach if the completion date occurred after December 2016 (the date to which HS2 Ltd had confirmed the £800,000 value would be held to) and property market had changed the valuation may be different on transfer. Whereas, if the valuation date is the date the contract goes unconditional (on Royal Assent) then, assuming Royal Assent was obtained in December 2016 (as assumed at the time) then the agreed valuation at that date (i.e. the valuation date) would be £800,000 as HS2 Ltd had agreed to 'fix' it until 31 December 2016.'

63. In response to our enquiries HS2 told us:

- Mr and Mrs D had a complicated contract. It was difficult to apply the usual process for agreeing valuations, as there were conditions on Mr and Mrs D's contract
- they did not envisage agreeing Mr and Mrs D's disturbance/other compensation claims for at least a couple of years from the point the contract went unconditional
- they considered the contract gave Mr and Mrs D flexibility to negotiate the valuation of their property at any time through Mr and Mrs D's ability to waive the conditions at any time of their choosing
- they could see property prices were rising and thought it was not in Mr and Mrs D's best interests to fix the valuation of their property
- when Mr and Mrs D did not waive the remaining condition (to wait for Royal Assent), HS2 expected the contract to go unconditional when Royal Assent was given to the legislation (estimated to be December 2016) and reach a valuation at that point
- they dealt with Mr and Mrs D fairly.

64. HS2 told us they were confused about what Mr and Mrs D wanted HS2 to do about the valuation during 2016. HS2 said they thought Mr and Mrs D wanted to obtain a minimum valuation for a time-limited period and they also wanted the option to renegotiate for a higher valuation at a later date. HS2 said they thought Mr and Mrs D were trying to renegotiate the terms of their contract with HS2. HS2 said this was shown by Mr and Mrs D's 6 June 2016 email (quote in key dates above):

- HS2 thought Mr and Mrs D's quote: '*We expect to make our contract unconditional and draw down funds as soon as practicable after Royal Assent.'* made clear that they were not expecting the £800,000 provisional agreed figure to go into the contract in spring 2016 and that they would wait until Royal Assent

- when Mr and Mrs D then said: '*We do not expect to be discussing or renegotiating the agreed values at that stage* [Royal Assent]' HS2 thought Mr and Mrs D wanted to renegotiate the house price if property prices had risen by then (December 2016)
- when Mr and Mrs D then said: '*We expect HS2 Ltd to stand by the values they have agreed in accordance with the Compensation Code.*' HS2 thought that meant Mr and Mrs D wanted assurance that HS2 would abide by the £800,000 valuation at the point of the contract going unconditional even if house prices had fallen.

Home loss payment

65. HS2 told us they agreed to extend the deadline for completion of the property transfer so Mr and Mrs D would have more time to move into their property. HS2 told us this resulted in an additional £2,000 being paid to Mr and Mrs D for their home loss payment on top of the anticipated £61,000 (due to a statutory increase which came into force on 1 October 2018).

Evidence from Mr and Mrs D

HS2's agreement to pay a particular property price

66. Mr and Mrs D told us HS2's approach was intended to put them to the trouble of appealing to the Lands Chamber Tribunal. Mr and Mrs D said:

> '*We repeatedly explained to HS2 Ltd that we need to fix our price to achieve certainty. They were aware that we needed to budget to build our replacement property and we explained that it was unreasonable and unfair to expect us to unconditional*[ly] *sell our old house without having the price fixed. HS2 Ltd completely ignored our requirements and stuck (wrongly) to the position that the valuation date was completion (knowing the affect this would have on us and the stress it would cause us). It is well known, out here in the real world, that it is a tactic of HS2 Ltd to refuse to agree values until as late as possible and until claimants are at the "weakest" to obtain leverage in negotiations.*
> …
>
> '*It is important to note that there was nothing in the contract that prevented an early valuation date. HS2 Ltd simply chose to ignore their earlier agreements and the heads of terms because they were not legally bin*[d]*ing.*
>
> '*In other words, we could not rely on anything HS2 told or agreed with us unless it was in a legally binding contract! This is an abuse of power and bullying.*'

67. Mr and Mrs D said:

- they were concerned the mistake in HS2's letter of 19 April 2016 was deliberate (where HS2 said mistakenly the valuation date was the later, rather than earlier, of date agreement was reached on price or when HS2 entered the property)
- they did not consider it was reasonable for HS2 to make a vague reference to compensation in their correspondence without specifying what they were proposing to pay Mr and Mrs D for the home loss payment. Mr and Mrs D said they had three separate areas of compensation and HS2 should have responded specifically to the issue of the home loss payment. They said they had to research the Compensation Code themselves on this issue because HS2 did not confirm the payment with them
- they could not refer their concerns about the home loss payment to their agent as agent 2 was not responding to their agent's correspondence at the time
- HS2's actions caused them unnecessary stress, inconvenience and financial uncertainty. Mr and Mrs D said all their dealings with HS2 felt like a '*battle*' and they spent a great deal of time dealing with HS2 matters, which impacted on their health and family life.

68. Mr D provided us with his medical records. These showed Mr D reported concerns about dealing with HS2 in spring 2015 and began taking anxiety medication. He again reported trouble sleeping, anxiety and depression in January 2016 as result of his stressful work situation and because of dealing with negotiations with HS2.

Our findings — complaint 1c

HS2's internal process for agreeing property prices

69. Mr and Mrs D complained that HS2 did not respond to questions and did not follow processes in relation to the Compensation Code. The crux of Mr and Mrs D's concern was that HS2's internal procedures were incompatible with the Compensation Code in the circumstance of their case. In particular, Mr and Mrs D considered HS2 were unclear about their internal process for agreeing a price they were prepared to pay for Mr and Mrs D's property, which was crucial for establishing a legal valuation date. It is not our role to comment on either party's interpretation of the Compensation Code as to what the valuation date was. These are matters for the Lands Chamber Tribunal. We recognise the term 'valuation date' is used interchangeably by both parties to address concerns about the price HS2 agreed to pay for the property as well as its legal status. However, we can consider if HS2 provided consistent explanations to Mr and Mrs D about their internal process for confirming what they would agree to pay Mr and Mrs D for their property. In order to establish the clarity of HS2's explanations, we will consider how open, transparent and consistent HS2 were when discussing their internal processes for agreeing a price. Did HS2 provide Mr and Mrs D

with an open and transparent process? Did they respond to Mr and Mrs D's concerns?

70. We can see by 9 February 2016 agent 2 and Mr and Mrs D's agent had negotiated a provisional price for Mr and Mrs D's property. In April and May 2016 Mr and Mrs D told HS2 they were seeking certainty for the price of their property because they were about to enter a binding commitment to transfer their house to HS2 and wanted to know what price they would receive. Mr and Mrs D considered they had signed the contract in 2014 so they could draw down on the 90 per cent advance payment to fund their planning and relocation costs. Therefore, Mr and Mrs D asked HS2 to confirm their agreement to a price HS2 would pay for their property before their contract became binding.

71. HS2's internal processes required their Commercial Panel to approve the property price HS2 would pay for property acquisitions. However, HS2's Commercial Panel's Terms of Reference (paragraph 54) are silent on **when** they confirm their agreement to a property price. HS2 told us (paragraph 55) in most property acquisitions they usually obtain approval for price from the Commercial Panel prior to exchange of contracts. We accept this usually makes sense. This allows HS2 to agree a price before entering into a binding agreement with the property owner for the sale of their property. Therefore, for the purposes of examining HS2's internal process for confirming their agreement to a price, we consider this reflects HS2's usual practice.

72. However, HS2 told us (paragraph 63) their usual process for agreeing a price was not going to apply in Mr and Mrs D's case. We accept this. Usually contracts for property purchases include an agreed purchase price and the date of exchange is known. But Mr and Mrs D's signed contract from December 2014 did not have these. In December 2014 HS2 committed to giving Mr and Mrs D 90 per cent of the value of their property at the point the contract went unconditional, at a date which was not set. Both parties accept the contract they agreed was unique. The only date both parties had agreed on was that completion of the property acquisition was intended to be January 2018, three years after the contract was signed by both parties, which was when HS2 could take possession of the property.

73. HS2's Annual Report and Residents' Charter said HS2 would behave fairly and that they would communicate in plain and non-technical language. Our Principles say public bodies should be *customer focused* – they should aim to ensure that customers are clear about their entitlements and they should treat people sensitively bearing in mind their individual needs. Public bodies should act *fairly and proportionately* – should listen to their customers and avoid being defensive when things go wrong. We consider public bodies should be *open and accountable* – they should provide clear, accurate and complete information.

74. We recognise HS2 had moved away from their usual approach in Mr and Mrs D's case. However, HS2 should have ensured they had a clear internal approach for confirming their agreement to a price they would pay for Mr and Mrs D's property. HS2 should have listened to Mr and Mrs D's concerns, engaged with them and taken steps to be open and transparent about their approach to ensure robustness and fairness in their decision making. This does not necessarily mean HS2 should have agreed to Mr and Mrs D's preference to adopt a particular approach to agreeing a price for their property. However, HS2 should have had a clear and reasoned understanding of their approach to agreeing a price they would pay for Mr and Mrs D's property and how that fitted with Mr and Mrs D's contract and circumstances. HS2 should have given Mr and Mrs D clear and transparent explanations about these.

75. Mr and Mrs D directly put their concerns to HS2 from April 2016 onwards. Mr and Mrs D were clear they sought to understand HS2's position on their contract in relation to agreeing a price on the property:

- Mr and Mrs D asked whether HS2 were agreeing to the property price from the survey in 2015. Mr and Mrs D asked what the purpose was of negotiating a price with HS2 over the previous 10 months if HS2 did not agree to pay it. They did not understand why HS2 were saying they would not agree a price until completion of their property transfer and considered it '*illogical*' in the circumstances (17 April 2016)
- Mr and Mrs D asked HS2 to seek agreement from the Commercial Panel to properly document the price and help them decide whether to waive the conditions of their contract (24 April, 9 May and 6 June 2016)
- Mr and Mrs D asked HS2 about their six-month limit for agreeing the price of the property (22 June 2016)
- Mr and Mrs D asked HS2 to explain the difference in HS2's approach to agreeing a property price on their case in comparison with their neighbour's (9 June and 25 July 2016)
- Mr and Mrs D said they considered it had always been understood HS2 would agree a property price before their contract went unconditional, so Mr and Mrs D could proceed with their property build (15 August 2016).

76. Mr and Mrs D asked HS2 a reasonable question — how could they plan the purchase of land and the building of a new property if they had no commitment on how many funds they would receive for their previous property? HS2 would have been aware of Mr and Mrs D's circumstances because they signed a contract to this effect in December 2014. The reasonableness of this question created an obligation on HS2 to engage with Mr and Mrs D's concerns and explain to them whether HS2 would agree to their request to agree a price, what HS2's position was and how it fitted with Mr and Mrs D's contract. This would allow Mr and Mrs D to have a clear understanding about what HS2 were going to do to agree the price for the property and when that would be.

77. So, what did HS2 do? HS2 explained on a number of occasions their preferred process was to agree the property price at the end of the property acquisition process (19 April, 17 and 30 June 2016). HS2 said under Mr and Mrs D's contract the property price would be agreed when the sale was complete (30 June 2016). To take account of the difficulties Mr and Mrs D described around obtaining certainty about price, HS2 offered to agree a property price via the Commercial Panel, but only if Mr and Mrs D completed the property transfer within six months. We recognise HS2 could have been clearer about their offer to agree a price in advance for a period of six months — they suggested this was part of their process rather than making it clear they were making an offer to take account of Mr and Mrs D's circumstances. However, HS2 confirmed their position on the six-month offer within one month of Mr and Mrs D querying it with them. For the reasons above, we consider HS2 set out their preferred approach and explained to Mr and Mrs D how they considered this fitted into their contract.

78. If Mr and Mrs D disagreed with HS2's description and understanding of their contract and how it affected HS2's agreement for the property price, Mr and Mrs D could challenge that via the Lands Chamber Tribunal (paragraph 11). We appreciate Mr and Mrs D may consider the Lands Chamber Tribunal is a disproportionate way to resolve this issue and could be used as a '*tactic*' by HS2 (paragraph 66). However, if HS2 were fixed to their position for agreeing a price and explained their reasons to Mr and Mrs D, we consider the Lands Chamber Tribunal was the appropriate route to dispute property and contractual matters.

79. That said, we consider HS2's communications with Mr and Mrs D about agreeing a price were difficult because of HS2's reference to the '*valuation date*' and responses about how it should be interpreted under the Compensation Code. As we have set out above, we do not consider Mr and Mrs D were seeking a valuation date from HS2, rather they were seeking HS2's agreement to agree the price for their property. Rather than focusing their responses on this question, HS2 allowed discussions to digress onto interpretations for the valuation date under the Compensation Code. Having done so, HS2 also provided inconsistent and confusing communications to Mr and Mrs D about what the valuation date was. HS2 and their agents said:

- the valuation date was the date the contract went unconditional (key date September 2014)
- the valuation date for the property became fixed at the date HS2 took possession, which was completion (key date 19 April, 17 and 30 June 2016)
- HS2 erred by confirming the valuation date was the date of completion instead of conditional exchange (March 2018).

Mr and Mrs D told us they were concerned HS2's error (second bullet point) was deliberate. We have seen HS2's five draft versions of the letter. These show the

error in HS2’s letter about the Compensation Code was in all five versions, so the mistake was included at the outset and not corrected/noticed by HS2 staff. While we appreciate Mr and Mrs D consider HS2’s mistake was deliberate, we do not consider the evidence is sufficient to establish that.

80. HS2 told us they did not understand what Mr and Mrs D wanted or what they were trying to achieve (paragraphs 62 and 64). We find this difficult to reconcile with Mr and Mrs D’s correspondence during spring 2016 (17 and 24 April 2016, and 9 May 2016), which was consistent in telling HS2 they wanted certainty around the price HS2 would agree to pay for their property to enable them to plan and proceed with the purchase of land and to build their new property. If HS2 did not understand what Mr and Mrs D wanted from them, HS2 should have engaged with Mr and Mrs D to understand. By not engaging properly, HS2’s responses were confusing and contradictory. For these reasons, we consider HS2’s actions were not customer-focused and their responses to Mr and Mrs D were not open and accountable, which was maladministration.

Payment for professional fees

81. Mr and Mrs D had additional complaints about HS2’s procedures in relation to the Compensation Code. Mr and Mrs D complained HS2 failed to follow procedures in relation to the Compensation Code, as they missed the agreed date for paying the final instalment of Mr and Mrs D’s professional fees. HS2 failed to make their final payment for Mr and Mrs D’s professional fees in October 2018. We appreciate Mr and Mrs D’s unusual contract terms meant there was a long lag between HS2’s initial 90 per cent payment (March 2017) and final 10 per cent payment (October 2018). However, HS2 have admitted they should have ensured they promptly completed payment of Mr and Mrs D’s professional fees in October 2017. HS2 did not pay Mr and Mrs D the final instalment of their professional fees until 8 November 2018, after being prompted by Mr and Mrs D. Therefore, HS2 did not fulfil their commitment. HS2 were not customer-focused and acted maladministratively.

Home loss payment

82. Mr and Mrs D complained HS2 failed to respond to their question about whether they would receive their home loss payment, and how much would be paid to them for the home loss payment, on completion of their property acquisition. Mr and Mrs D’s email of 7 May 2018 referred to the compensation they were expecting and the home loss payment of £61,000 specifically. Following Mr and Mrs D’s meeting with HS2’s second Chief Executive on 4 May 2018, HS2’s letter of 21 May 2018 confirmed ‘*other*’ aspects of their property payments would be made on completion. There was scope for HS2 to have specifically referred to the home loss in their initial response of 21 May 2018. However, we have not seen evidence HS2 suggested they would not pay the home loss payment or that HS2 were disputing the £61,000 amount. When Mr and Mrs D asked HS2 to clarify if

this included the home loss payment, HS2 confirmed Mr and Mrs D would receive the home loss payment on 19 July and 31 July 2018. Mr and Mrs D said they had to research the Compensation Code themselves on this matter and could not confer with their agent because HS2 were not corresponding with their agent (paragraph 67). However, we note Mr and Mrs D were professionally represented by their agent in May 2018 when they raised the issue with HS2 and could have asked their agent for information about the home loss payment, regardless of any communication issues between agent 2 and their own agent. We recognise that the lack of trust which had built up between Mr and Mrs D and HS2 by 2018 meant Mr and Mrs D found it difficult to believe HS2. However, we consider HS2 responded reasonably and we note Mr and Mrs D received their home loss payment on 1 October 2018, the day they completed their property transaction.

Mr and Mrs D's timescale for submitting disturbance claims

83. Mr and Mrs D said HS2 made unsupported assertions that they could complete their disturbance claim (under the Compensation Code) for relocating their business in less than 12 months. When Mr and Mrs D told HS2 they required 12 months to submit their final claim, HS2 said most claims were settled within 12 months and asked Mr and Mrs D to aim for that. We note HS2 did not oblige Mr and Mrs D to keep to a particular timeframe. After a long transaction for the property acquisition, December 2014 to October 2018, we consider it was reasonable for HS2 to take steps to ensure Mr and Mrs D's claims for compensation were finalised as early as possible. Therefore, we consider HS2 acted reasonably. While we do not criticise HS2's actions on this matter, they reflect the precarious and strained relationship between HS2 and Mr and Mrs D.

1d — HS2 failed to deal with Mr and Mrs D's compensation claims in a timely, consistent and constructive manner.

84. HS2's standards that apply to Mr and Mrs D's concerns are:

- HS2's Corporate Complaints Procedure from May 2016 said the complaints process did not cover matters to be dealt with under other proceedings such as alternative appeal or dispute processes
- HS2's Complaints Procedure from April 2018 said the complaints process did not cover compensation they were paying as a result of a property purchase.

85. Our relevant Principles are:

- *Getting it right* — public bodies should act in accordance with relevant policies and procedures
- *Open and accountable* — public bodies should be open and transparent about their decision making

- *Acting fairly and proportionately* – when taking decisions, public bodies should behave reasonably and ensure measures taken are proportionate, appropriate in the circumstances and fair to the individuals concerned. If applying the law, regulations or procedures would lead to an unfair result for an individual, the public body should seek to address it whilst bearing in mind the proper protection of public funds and ensuring they do not exceed their legal powers.

Administrative background

86. HS2 published guidance for claimants called *Selling your home or small business using the Statutory Blight or Express Purchase process*[26] in 2018. It said it was important for a claimant to receive the right professional advice and there was provision for HS2 to reimburse these fees when HS2 acquired a property. In particular:

- those whose businesses were affected by HS2's purchase of a property could make a claim of financial loss to their business as a result of lost time dealing with relocation matters
- professional fees should be reasonable in relation to the complexity of the claim.

87. On the '*rarest of occasions'* if agents were unable to reach agreement on costs, HS2 would offer a meeting with HS2's land and property team and their agents. This would explore why negotiations had broken down. If this meeting failed to achieve agreement, HS2 '*may*' suggest alternative dispute resolution (ADR) as a way of settling a dispute without going to court or tribunal. This could involve an independent party negotiating a mutually acceptable compromise or determining a fair figure. If agreement could not be reached, HS2 said either party could refer matters to the Lands Chamber Tribunal. The Lands Chamber resolves disputes about the amount of financial compensation awarded.

Key events

88. Mr D runs his accountancy business from his property. As a result of time spent in exchanges with HS2 about the issues around valuation (complaint 1c) Mr D said his business had suffered a financial loss. Mr D asked HS2 about making a claim for business loss on this basis.

November 2016 – Separately, the ICA issued their report on Mr and Mrs D's complaint about HS2's handling of their property acquisition around valuation issues. They recommended Mr and Mrs D should receive £500 compensation to reflect that HS2 could have resolved valuation issues earlier than they did.

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[26] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712127/Selling_your_home_-_Statutory_Blight.pdf

26 June 2017 – HS2's public response manager responded to Mr D's query about making a business loss claim. HS2 said issues around valuation were a historic matter. HS2 said they were aware Mr and Mrs D had asked PHSO to investigate a further complaint about HS2. HS2 said they would not enter into correspondence with Mr D about his business loss claim until PHSO had completed its investigation.

August 2017 – Mr D submitted a business loss claim to HS2 for £6,869 comprising his time liaising with HS2 about valuation issues.

August 2017 – HS2's public response manager said Mr D's time dealing with the valuation issues and historic matters would not be accepted as a reasonable and proper claim for compensation under the Compensation Code.

25 August 2017 – Mr D expressed concern about HS2's approach to his business loss claim. He said if HS2 refused to properly set out their position on the business loss claim, his agent had advised him to refer the matter to the Lands Chamber Tribunal. Mr D said any failure by HS2 to act transparently would not be lost on the Chairman of the Tribunal.

2 October 2017 – HS2's second property manager said HS2 would reserve judgment on the business loss claim as it closely mirrored his complaint to PHSO. They said determining the business loss claim would interfere with PHSO's work.

5 October 2017 – HS2 accepted PHSO's explanation that PHSO could not consider claims for compensation under the Compensation Code, which are for HS2 and ultimately the Lands Chamber to determine. HS2 agreed to consider and respond to Mr D's business loss claim.

4 January 2018 – Agent 2 wrote to Mr D's agent saying HS2 did not accept the entirety of Mr D's business loss claim. Agent 2 said HS2 offered to pay Mr D £3,992 of the £6,869 claimed. Agent 2 said they would not pay the remainder because:

- Mr and Mrs D had not, ultimately, received a valuation in keeping with the February 2016 prices they sought. Rather Mr and Mrs D had received a valuation in keeping with February 2017 prices, which increased the value by £48,560. Agent 2 said the matter of valuation was settled and any further complaints and time spent in relation to it would not be funded by HS2 under the Compensation Code
- some of the time claimed related to Mr D's time corresponding with the ICA during 2016 and the ICA recommended compensation of £500.

Agent 2 included a second letter to Mr and Mrs D's agent. This offered to settle the business loss claim *'without prejudice'* for £5,050. HS2 said they thought £3,992 was a reasonable offer but they had been instructed by their client to make the without prejudice offer. Agent 2 said if Mr D did not accept the offer, they reserved the right to bring their offer to the attention of the Lands Chamber Tribunal or a third party appointed to determine compensation.

9 January 2018 – Mr and Mrs D's agent responded to agent 2's letters. Mr and Mrs D's agent considered agent 2 had arbitrarily rejected part of Mr D's business loss claim when all Mr D's hours spent resolving valuation issues should have been compensated. Mr and Mrs D's agent said Mr D represented himself in the valuation matter as he was conversant in the Compensation Code and could mitigate his claim for professional fees.

15 January 2018 – Separately, HS2's second Chief Executive wrote to Mr and Mrs D about a number of ongoing concerns including: '*your contact for compensation issues should, in the first instance, be with your agent*'.

17 January 2018 – Agent 2 wrote to Mr and Mrs D's agent. Agent 2 said HS2 considered:

- they had resolved the valuation issue
- the valuation issue should have been settled in its infancy by agents
- by refusing to meet and involve agents, Mr and Mrs D bore some responsibility for the deadlock in summer 2016
- HS2 would not pay compensation under the Compensation Code for any further complaints regarding the valuation date or time spent by Mr and Mrs D and their agent in relation to it.

19 February 2018 – Mr and Mrs D complained about HS2's handling of their compensation claims. They forwarded a copy of their agent's recent email to HS2 to show agent 2 had not responded to their agent's representations about agent 2's offer of 4 January 2018.

March and April 2018 – Mr and Mrs D's agent exchanged emails with agent 2 about what was relevant to the business loss claim. Agent 2 said Mr D's position was based on the valuation of February 2016. Mr and Mrs D's agent said HS2 insisted the valuation was not from February 2016. Agent 2 noted both parties agreed the valuation was from February 2017. Agent 2 said if Mr D wished to vary the contract so both parties agreed for a valuation from February 2016 (when the valuation was £48,560 less than that agreed in February 2017), agent 2 said they would discuss this with HS2.

30 March 2018 – Mr and Mrs D's agent sent agent 2 a timesheet for the time they spent negotiating Mr D's business loss claim since August 2017.

4 May 2018 – Mr and Mrs D met HS2's second Chief Executive about Mr D's ongoing complaints. They discussed Mr D's business loss claim. After the meeting, HS2 began preparing a written response to address all of Mr and Mrs D's concerns.

9 May 2018 – Agent 2 wrote to Mr and Mrs D's agent about Mr D's claim for business loss. Agent 2 said they did not propose to enter into further historic correspondence about the valuation date. Agent 2 said:

> '*the claim for business losses also takes into account that your client has spent much time arguing for a valuation date* [made in February 2016]

which in the event he did not take up [because Mr and Mrs D asked HS2 to use the date of Royal Assent in February 2017 as the valuation date rather than February 2016. As a result of this HS2 added £48,000 to the valuation of Mr and Mrs D's property]*.'*

10 May 2018 – Mr and Mrs D's agent responded to agent 2 with a list of questions and sent an email chasing a response on 29 May 2018. There is no documentary record of this but HS2 told us agent 2 did not respond because the second property manager had asked them to cease communication. The second property manager said they asked agent 2 not to contact Mr and Mrs D's agent because they wanted to pull all matters together into their formal response to Mr and Mrs D following the meeting on 4 May 2018.

21 May 2018 – In relation to the meeting of 4 May 2018, HS2's second Chief Executive wrote to Mr and Mrs D saying:

> '*I understand that there is ongoing correspondence between our agents regarding this. Even though HS2 does not agree with all the items in your current claim, an agreement to meet your business loss claim in full is something HS2 Ltd is prepared to consider when all your future disturbance claim items are agreed in full and final settlement. Any claim for future disturbance would need to be assessed in line with the Compensation Code. Our agreement is also on the basis that you submit one composite claim covering all your separate disturbance items after you have moved to your new home* [intended for September 2018]. *This allows for ease and efficiency of dealing with your disturbance claim, allowing one payment to be made upon agreement and settlement of all current and future disturbance compensation items. You do not have to accept this proposal but I hope that on careful consideration you are able to do so in the spirit of attempting to reach agreement on the way forward. (This would effectively suspend the current correspondence between agents on your existing business loss claim until all other disturbance claim items have been agreed.)'*

22 May 2018 – Mr D responded the following day. He said his business loss claim resulted from HS2's actions in 2016 on valuation issues and was legally due. He said the matter was ongoing and requested agent 2 respond to his agent's queries from May 2018. Mr D said moving his business premises would mean he could not finalise his disturbance claims until around a year after completion (September 2019). Mr D told HS2 he wanted his claims dealt with as they arose.

11 June 2018 – HS2 acknowledged Mr D's refusal of their offer and said this would necessitate reverting to negotiations between agents.

26 June 2018 – Mr and Mrs D's agent chased agent 2 again for a response to their email of 10 May 2018. Mr D's agent received no response. Mr D said they asked their agent to stand down at the end of June 2018 because HS2 did not respond to their agent's emails and agent 2 had suggested that they would not pay their agent's fees in their letter of 16 January 2018.

19 July 2018 – HS2's public response team emailed Mr D and reiterated HS2's position:

> *'…which is that HS2 Ltd does not agree with all the items in your current business loss claim. Even so, agreement to your business loss claim is something that HS2 Ltd is prepared to consider when all your future disturbance claims items are agreed in full and final settlement. We will recognise the existing claim, along with the composite disturbance claims when received. …'*

July and September 2018 – HS2 told Mr and Mrs D they had instructed agent 2 not to correspond with Mr and Mrs D's agent in early May 2018 because they were working towards providing a resolution through their letter of 21 May 2018 following their meeting with the second Chief Executive on 4 May 2018. HS2 said they accepted they should have been clearer in conveying their decision to halt communication with Mr and Mrs D's agent.

15 August 2018 – HS2's second property manager noted Mr and Mrs D were no longer employing an agent. HS2 said:

- they would pay reasonable costs for them to employ an agent on the understanding that rates were agreed beforehand and their agent had permission to discuss matters with agent 2
- they would pay reasonable fees for Mr and Mrs D's agent to handle the business loss claim, but not for going over historic correspondence.

30 August and 9 November 2018 – HS2's property manager wrote to Mr D setting out why they would not pay Mr and Mrs D's agent's fees when negotiating the business loss claim. HS2 said Mr and Mrs D's agent had revisited unnecessary matters around valuation issues from 2016 following their offer of 4 January 2018. Therefore, HS2 agreed to pay Mr and Mrs D's agent's fees up to 4 January 2018, which was only £1,755 of Mr D's £2,730 agent's fees for negotiating the business loss claim. HS2 said costs deemed reasonable under the Compensation Code did not include time spent on *'historic correspondence or excessive time spent on correspondence out of proportion to the claim'*. HS2 said there was no benefit in reopening historic correspondence.

8 November 2018 – HS2 paid Mr D £3,593, 90 per cent[27] of the business loss claim they offered in January 2018 (£3,952).

6 December 2018 – Mr and Mrs D's MP wrote to HS2 seeking clarification on the second Chief Executive's letter of 21 May 2018. In particular, whether their comment that HS2 would consider the disturbance claim in future meant that HS2 were agreeing to accept their business loss claim.

[27] The remaining 10% was due when all Mr and Mrs D's claims were finalised. Mr and Mrs D expected to complete all their claims around October 2019, 12 months after they moved to their new property.

20 December 2018 — HS2's public response manager said their response of 4 January 2018 set out that they did not accept the business loss claim. In relation to their previous offer, HS2 added:

> '… *when all your disturbance claim items are settled in full and final settlement in accordance with the Compensation Code and there are not remaining claims or matters of dispute, HS2 Ltd is prepared to meet your business loss claim of £6,869, less the advanced payment of £3,593.11 already made* [key date 8 November 2018]. *In the meantime, no further advanced payment will be made in respect of your business loss claim.*
>
> '… *I can confirm that HS2 has made an advanced payment of £1,755.00 to cover your reasonable agent's fees* [in relation to the claim of £2,730 claimed for their agent's handling of the business loss claim above]. *HS2 does not consider the remaining fees to be reasonable and will not pay your fees in full.'*

<u>Evidence from HS2</u>

89. HS2 told us they acted fairly and in the best financial interests of Mr and Mrs D. HS2 said the unusual nature of Mr and Mrs D's contract meant the process took much longer than was normally the case. They considered the compensation claims had been dealt with in a timely, consistent and constructive matter as demonstrated by the payments made in response to the claims submitted.

90. HS2 said they did not immediately consider Mr and Mrs D's business loss claim because they wanted to be sure that their consideration would not prejudice our investigation. HS2 said when Mr and Mrs D rejected their offer for part of the business loss claim in January 2018, they offered to revisit the matter. HS2 said the delay only occurred because they could not agree the amount of the claim. They said:

> *'There has been significant volume of detailed correspondence and complaints from Mr* [D] *in relation to the compensation claims, despite him having a unique contract which contains flexible and generous terms compared with other blight cases. HS2 Ltd has investigated and responded to this correspondence in an overall timely and consistent manner.'*

91. HS2 said they dealt with Mr and Mrs D's business loss claim as a complaint because Mr and Mrs D were continuing to raise concerns about previous complaints and it was logical that the business loss claim was included in ongoing complaint correspondence. They said:

> *'By way of example in Spring 2018, with many of the issues raised by Mr* [D] *outstanding and with a house move imminent, it was decided that it was best for all parties to arrange a meeting with* [the second Chief Executive of] *HS2 Ltd. This meeting was held with a view to helping to resolve all those outstanding issues, including the matter of businesses. …*

Unfortunately, the meeting itself generated a number of new complaints from Mr [D]. *Some of these new complaints included complaints about the conduct of* [agent 2] *acting on our behalf and therefore it would have been wrong for us not to have considered them.*

'Mr [D] *had the opportunity should he so wish of taking his case to the Upper Chamber of the Lands Tribunal. Mr* [D] *was well of aware of this and for example referred to it in his email dated 25 August 2017 …*

'… we agree that HS2 Ltd did at times struggle with this claim. However, we would argue that this was mainly because of the large amounts of complicated and interwoven issues that were conflated by Mr [D]. *Despite this, all the decisions that we took were done so fairly and with his best financial interests at heart.'*

92. HS2 told us the second property manager told agent 2 to suspend correspondence with Mr and Mrs D's agent around 10 May 2018, but the second property manager did not tell HS2 colleagues about this until Mr and Mrs D complained on 26 June 2018. HS2 said they did not know agent 2 had ceased correspondence with Mr and Mrs D's agent during May 2018. However, the second property manager said they wanted to avoid having two parallel negotiations taking place at the same time through agent 2 and the second Chief Executive of HS2. The second property manager said they shared HS2's responses of 21 May and 11 June 2018 with agent 2, which meant agent 2 was aware HS2 wanted agent-to-agent contact resumed. The second property manager accepted agent 2 had not responded to Mr and Mrs D's agent's emails since 9 May 2018, however, they considered there was no need to negotiate further on the business loss claim as this was superseded by the second Chief Executive's offer of 21 May 2018 which:

'stated that HS2 Ltd agreed to meet the disturbance claim in full in order to conclude the matter so there was no immediate need for HS2 or [agent 2] *to respond further. The letter dated 11 June from the CEO acknowledged that Mr* [D] *did not wish to accept the offer and suggested that the agent-to-agent discussions should re-start. This was simply a mistake largely due to the sheer volume of correspondence we were dealing with as set out above. There was nothing further to negotiate on the claim. The fact that correspondence via agents was halted on the disturbance claim by HS2 Land & Property in April 2018 had no impact whatsoever on outcome of Mr* [D]*'s disturbance claim.'*

93. HS2 said at the same time as dealing with this correspondence in May 2018, they were preparing major and vital work on the Phase 2A Parliamentary Petition process (for the second stage of the railway). HS2 thought reference to this would outline why:

'*a small omission in not formally communicating a pause on agent-to-agent correspondence was regrettable but understandable given the vast amount*

of correspondence and communication taking place at this time in relation to [Mr D's] *many concerns.'*

94. HS2 told us they had not finalised Mr and Mrs D's compensation claims, so they had not yet paid the final instalment of Mr D's business loss claim.

Evidence from Mr and Mrs D

95. Mr and Mrs D said HS2 sent them a response on 6 December 2018 which *'might appear'* to agree the payment in full. However, HS2 had refused to pay their agent fees of £2,730 despite telling Mr and Mrs D that Mr D should step back from the process and defer to their agents to take matters up with HS2. Mr and Mrs D said HS2's approach to their business loss claim was unfair. They considered HS2 were not approaching negotiations fairly and were putting them to the trouble of preparing papers for the Lands Chamber Tribunal to consider the issue of their agent fees.

96. Mr D and Mrs D said HS2's handling of their business loss claim meant they stopped using an agent as they were not confident HS2 would pay future agent fees (26 June 2018). Mr and Mrs D say they were not professionally represented after that point.

Our findings — complaint 1d

97. Mr and Mrs D complained about HS2's actions in processing their compensation claims. It is not our role to determine whether HS2's decisions on compensation amounts are correct. These are matters for the Lands Chamber Tribunal, should individuals wish to dispute HS2's decisions on compensation. Therefore, we cannot comment on HS2's reasons for their decision not to pay all Mr and Mrs D's agent's fees (see key date August 2018). However, we can comment on whether HS2 acted in accordance with their process for progressing compensation claims. We will look at whether they followed their process, with a view to considering if HS2 acted in a timely, constructive and consistent way.

98. We appreciate Mr and Mrs D had a complex contract that involved many claims (property value, home loss, moving costs and so on) and the timescales for these overlapped. Claims were negotiated at different times between 2014 and 2018. Payments were also divided into a payment upfront (90 per cent) and another at the end of the property acquisition process (10 per cent). However, HS2's process for negotiating compensation claims was straightforward. HS2's guidance *Selling your home or small business using the Statutory Blight or Express Purchase process* (paragraphs 86 and 87) said that compensation claims should be determined through agent-to-agent contact and set out stages (meeting/ADR/tribunal) for concluding compensation claims. HS2's complaints procedure made it clear that the complaints procedure should not cover matters where there were alternative dispute processes.

99. In accordance with our Principle of *getting it right,* public bodies should follow their policy and guidance. Public bodies should be *customer focused,* by taking account of an individual's circumstances and by ensuring their customers are clear about their entitlements. When organisations act outside usual processes, we would expect them to be *open and accountable* about their decision, as well as *fair and proportionate* to ensure that individuals are not unfairly penalised by them.

100. As we have said above, the process for negotiating the business loss claim was simple. Therefore, we have to consider why it took from August 2017 to December 2018 for HS2 to reach a decision on whether to pay Mr D's business loss claim. In our view, HS2 did not follow their process (paragraphs 86 and 87). Instead, HS2 initially tried to deter Mr D from submitting a compensation claim and then departed from their published process for negotiating compensation claims, without a clear alternative path. This meant HS2's determination of the business loss claim took too long and they gave Mr and Mrs D unclear messages about how HS2's work on it would be concluded. In short, HS2 were not timely, constructive or consistent in their handling of Mr D's claim for business loss.

101. HS2 attempted to prevent Mr D submitting a claim from June to October 2017. Before considering the merits of the business loss claim in accordance with their negotiation process, HS2 told Mr D wrongly they wanted to defer considering his claim until PHSO had completed an investigation (June and October 2017). PHSO had no role in considering the merits of compensation claims. Once Mr D submitted his claim to HS2 in August 2017, HS2 did not consider the claim and said it could not be accepted as a reasonable and proper claim even though they eventually offered to pay it in its entirety. Therefore, HS2 initially obstructed Mr and Mrs D's access to the negotiation process. HS2 were not customer-focused because they did not provide Mr and Mrs D with appropriate information about their entitlements. Therefore, HS2's initial actions were maladministrative.

102. From October 2017 to April 2018, HS2 followed their negotiation process. Agent 2 corresponded with Mr and Mrs D's agent about the merits of the claim and made an offer on 4 January 2018. HS2's second Chief Executive told Mr D, reasonably, in January 2018 to direct his concerns about compensation matters to his agents. The agents continued negotiating around that offer between January and April 2018. However, by the end of spring both parties had reached an impasse. The agents could not agree on which elements of the business loss claim had merit.

103. According to HS2's process, where there is an impasse the next step in the negotiation process is for HS2 to consider whether they should arrange a meeting between the land and property team at HS2 and the agents, before considering the option of ADR and/or the Lands Chamber Tribunal (paragraphs 86 and 87). However, we have seen no evidence HS2

considered these options. Instead, in May 2018 HS2 began corresponding about the business loss claim through the complaints process. HS2 effectively abandoned the negotiation process. The second property manager told us he asked agent 2 to stop agent-to-agent negotiations with Mr and Mrs D's agent to prevent parallel negotiations (paragraph 92). Whilst HS2 said they were trying to be helpful (paragraph 91 and it was logical to include Mr D's business loss claim in the complaints correspondence, their own complaints process said this should not happen (paragraph 84). Therefore, HS2's actions on the business loss claim after May 2018 followed no recognisable process. HS2's actions were confusing and unfocused.

104. Following a clear process is important to ensure transparency and accountability when making decisions and provides a method for timely decisions. While Mr and Mrs D considered HS2 were behaving in way that consciously avoided negotiating the business loss claim and was intended to push them towards the Lands Chamber Tribunal, the evidence shows the opposite. HS2's use of the complaints process rather than the negotiation process did not provide a pathway to a clear decision which Mr D could either decide to accept or challenge by way of the established route (meeting, ADR, Lands Chamber Tribunal). By not following their own process for considering compensation claims, HS2's actions were not timely, they were not constructive, and they were not consistent. In short, HS2 did not get it right, they were not open and accountable or fair and proportionate. It was maladministration.

Complaint 2 — HS2 abused their powers and demonstrated bullying behaviour. This included failing to recognise and respond appropriately to conflicts of interest in relation to their actions.

2a — HS2 singled Mr and Mrs D out for negative treatment because of complaints they had made.

105. HS2's standards that apply are their:

- Annual Report from June 2015, which said HS2 would treat individuals fairly and transparently
- Business Plan 2015-18, which said HS2 wanted to forge partnerships with people and be an exemplar in engaging with communities.

106. Our Principles that apply are:

- *Acting fairly and proportionately* — we expect public bodies to ensure individuals are not treated differently after making a complaint
- *Being customer focused* — public bodies should consider making appropriate adjustments when warranted, they should have good reasons and provide explanations for their actions
- *Being open and accountable* — public bodies should be transparent, open and truthful about decisions.

Key events

Use of different agents by HS2

107. Mr and Mrs D's property underwent two surveys involving four different surveyor firms (agents). Mr and Mrs D considered this showed HS2 were subjecting them to negative treatment. The main events are as follows:

7 November 2014 — HS2 told Mr and Mrs D agent 1 would complete the survey and other related work on their property.

November 2014 — Agent 1 undertook a schedule of condition on Mr and Mrs D's property.

3 December 2014 — Mr and Mrs D signed a contract with HS2 for the acquisition of their property.

21 June 2015 — HS2 accepted Mr and Mrs D's blight notice.

9, 10 & 22 July 2015 — HS2 staff exchanged internal emails and said agent 2 and their contractors (agent 3) had been working on other cases in Mr and Mrs D's area. HS2's Head of Acquisitions decided work on Mr and Mrs D's property should be passed to agent 2. Agent 2 suggested using agent 3 but HS2 said Mr and Mrs D's case should be handled directly by a senior member of agent 2's team, although HS2 accepted agent 3 might be able to help with the valuation. HS2 said Mr and Mrs D's case had a conditional contract and it was not straightforward. HS2 said there were pitfalls and complexities that had to be managed. HS2 said:

> '*HS2 and* [agent 2] *must be seamless. A high level of political nous* [sic] *and sensitivity will be required along with regular interaction and hands on management. …*'

3 August 2015 — Mr and Mrs D's agent queried the use of agent 2. They said HS2 had told them agent 1 would handle the property compensation issues. Mr and Mrs D's agent told HS2 Mr and Mrs D had already had a survey carried out by agent 1 and were concerned about opening up their house again. Mr and Mrs D's agent said Mr and Mrs D were also concerned that including agent 3 might protract matters and they were being singled out as a special case.

4 August 2015 — HS2 responded. They confirmed they were using agent 2 and said:

> '*1. This case is now a negotiation of compensation under the compensation code … The negotiation will be conducted accordingly and it is open to each party to appoint whoever they wish to act on their behalf. We do not have to explain why we may choose one firm as opposed to another, just as your client does not have to do so to us.*

‘2. As it happens, we have appointed [agent 2] *on several cases in this particular area already and we therefore consider it entirely appropriate to use them here; so it is not singled out as a “special case” in that sense.* [agent 2] *are our appointed surveyor with responsibility for conduct of negotiations in all cases where they are instructed. They may choose to use a sub-consultant,* [agent 3]*, or indeed others, but that is their choice and I do not think it appropriate that you should seek to influence this or put pressure on us to change it.’*

August 2015 — Agent 2 undertook a survey of Mr and Mrs D’s property, accompanied by agent 3 and agent 4 (subconsultants of agent 3).

13 December 2015 — Mr and Mrs D complained HS2 were handling their compensation claim differently to other residents.

21 December 2015 — HS2 told Mr and Mrs D they were not receiving special treatment. HS2 said they had appointed different agents at different times. Before Mr and Mrs D’s contract was agreed in 2014, HS2 only needed to capture the physical appearance of the property, undertaken by agent 1. Following the signing of the contract and satisfaction of the contractual conditions, HS2 said they received Mr and Mrs D’s blight notice and required an agent to undertake the management and conduct of the acquisition process. This was agent 2, who HS2 said had worked on similar blight acquisitions on cases in Mr and Mrs D’s area. HS2 said they needed to re-establish the physical condition of Mr and Mrs D’s property to ascertain the current value, which was why they needed additional surveys and inspections. HS2 said this was their usual approach, following proper process and obtaining professional advice.

March 2016 — The first property manager handed over Mr and Mrs D’s case to the second property manager. The second property manager asked why HS2 used different agents and why a survey of Mr and Mrs D’s property had not been completed. The first property manager told the second property manager a survey had been done and a provisional value for Mr and Mrs D’s property was agreed, but it was subject to a final survey and approval by the Commercial Panel. The first property manager said:

‘There was no ulterior motive about using a “Harder” firm to lower the compensation package if that is what [Mr and Mrs D] *are thinking...*

‘There is nothing particularly unusual or suspicious about this and the seller had their own agent to advise and recommend them what to do so it really doesn’t matter who we used.’

19 April 2016 — HS2’s first Chief Executive wrote to Mr and Mrs D including: ‘*Finally, I must restate that there is no change in procedure involved in your case*’.

27 May 2016 — HS2's first Chief Executive wrote to Mr and Mrs D. The first Chief Executive said the two surveys served different purposes. The first survey obtained a schedule of condition while the second survey:

> *'was to establish a report in a standard format as provided on other HS2 acquisition cases which included a budget of costs for any works identified as being required at the property. The budget of costs enabled* [agent 2] *to consider whether there are works required that may not have been apparent to the valuer, on inspection but nevertheless would affect purchase price.'*

Mr D's disturbance claim for his business

108. Mr and Mrs D's December 2014 contract with HS2 for the purchase of their property included a condition that said Mr D could make a claim for compensation for the disruption to his business, which he operated from his property. This formed part of Mr D's disturbance claim for his business (and is unrelated to his claim for business loss in complaint 1d). Therefore, Mr and Mrs D expected HS2 to consider their disturbance claim for Mr D's business.

31 July 2015 — Agent 2 emailed Mr and Mrs D's agent. They said it was their view Mr and Mrs D's business was not eligible for compensation under the Compensation Code. Agent 2 said they would be happy to discuss this and review their current position upon receipt of further information.

3 August 2015 — Mr and Mrs D's agent emailed HS2 to inform them that agent 2 seemed to be under the impression Mr and Mrs D could not submit a disturbance payment for Mr D's business. Mr and Mrs D's agent said they would send evidence that Mr D's business was entitled to compensation.

4 **August 2015** — The first property manager emailed Mr and Mrs D's agent. Among other things, the first property manager said Mr and Mrs D's agent could *'substantiate and negotiate with'* agent 2 about Mr D's disturbance claim for his business.

21 September 2015 — Agent 2 emailed Mr and Mrs D's agent and discussed the merits of Mr and Mrs D's forthcoming claim for disturbance to Mr D's business.

11 February 2016 — Agent 2 said they would recommend compensation for disturbance to Mr D's business but seemed unsure if, in principle, HS2 would pay a claim such as this:

> *'this recommendation may be challenged by HS2 whereby I may need to review matters further. The recommendation confirms that there will be an additional claim for disturbance in due course.'*

March 2017 – Having exchanged contracts with Mr and Mrs D in February 2017, HS2 paid 90 per cent of the claim for disturbance of Mr D's business (at the same time they paid 90 per cent of the property value).

Evidence from Mr and Mrs D

109. Mr and Mrs D said HS2 treated them in a negative way compared to other residents. Mr and Mrs D said if HS2 were trying to ensure that they received good treatment through their appointment of different surveyors, then why did HS2 not tell them that?

110. Mr and Mrs D said HS2 tried to open up aspects of their claim previously agreed in their contract – that Mr D could submit a disturbance claim for his business. Mr and Mrs D said in August 2015 HS2 did not agree to abide by the contract and agent 2's first action in February 2016 was to query the claim. Mr and Mrs D said by doing this, HS2 were reneging on their contract to allow Mr D's business to submit a separate disturbance claim. Mr and Mrs D told us every aspect of their dealings with HS2 was a battle.

Evidence from HS2

111. HS2 told us:

'… rather than receiving negative treatment, Mr [D] *actually received a service that took into account his specific circumstances. This is further evidence of how HS2 Ltd has deployed additional resource to attempt to not only satisfy Mr* [D]*, but also in anticipation of the expectation that he would find fault with the approach and set off a further round of complaints. Deploying additional resource is expensive – but as is dealing with the complaint. As it was, we again ended up with extra cost in our reasonable actions and then in having to deal with the complaint that Mr* [D] *then raised.'*

112. HS2 told us the decision to change agents was taken at the same time PHSO was preparing to publish the investigation of Mr and Mrs D's previous complaint. HS2 said Mr and Mrs D's case had been running for some time, HS2 had just accepted their blight notice and their concerns about HS2 were escalating and becoming more complicated. HS2 said they were concerned agent 1 did not have capacity to deal with the case going forward and decided to appoint someone more experienced, with the right skills and sensitivity. They thought a fresh start with new people involved would be best, therefore, HS2 requested agent 2 take over. HS2 said they had taken this action in other cases.

113. HS2 told us Mr and Mrs D's case was different to others because the first survey was undertaken to address the separate contract they sought in 2014. Agent 2 told HS2 it would be highly unusual for a surveying firm to

rely on another firm's (agent 1's) previous survey. This was because it would give rise to issues such as professional indemnity and duty of care. HS2 concluded they:

'*… agree with the statements by* [PHSO] *that the requirement for repair costs to be assessed was not the overriding factor which was the appointment of new surveyors for the reasons outlined above.*'

114. HS2 told us:

'*The phrase* [political nous] *reflects where the Company, and the project, was at the time* [in August 2015]. *At this point, HS2 did not even have Royal Assent to build Phase One of the railway and therefore it was in a very precarious position.* [Mr and Mrs D's] *case already had many unusual elements to it, as highlighted in the contract and the fact that* [Mr D] *had already submitted 23 complaints about HS2 and we were aware that he was intending to progress his complaints to the PHSO.*

'*It was clear that* [Mr D] *was a committed individual and he had already engaged with other members of the local community, the Parish Council, District Council and County Council as well as his local M.P. to raise his concerns and build support for his claims. The case had already become very resource-intensive and the comment merely reflects the fact that many people internally and externally were taking an interest in his case, and we were trying to focus attention on trying to find a pragmatic solution to* [Mr D]*'s concerns and complaints having regard to the wider issues and acting with appropriate sensitivity.*'

Our findings — complaint 2a

115. Mr and Mrs D considered that HS2 treated them negatively on account of their previous complaints. In accordance with our Principles of Good Complaint Handling, we would expect HS2 to act *fairly and proportionately* in seeking to ensure Mr and Mrs D were not treated differently because of their previous complaint. We would expect HS2 to act in accordance with our Principles of Good Administration — to be *customer focused* in making appropriate adjustments in their handling of Mr and Mrs D's case, they would have to have good reasons for doing things differently. Public bodies should also be *open and accountable* by providing truthful explanations for their actions. This is in keeping with HS2's own expectations, as set out in their Annual Report from June 2015, which said that they would treat individuals fairly and transparently. Their 2015 to 18 Business Plan also said they wanted to forge partnerships with people and be an exemplar in engaging with communities.

HS2's appointment of surveyors and requirement for a second survey

116. HS2 treated Mr and Mrs D differently as they appointed a new agent after the property acquisition process had begun and after they had told Mr and Mrs D that agent 1 would be completing the property-related work for the acquisition (December 2014). That does not necessarily mean HS2 treated Mr and Mrs D negatively. Such an adjustment is not necessarily wrong if HS2 had legitimate reasons. However, the evidence supporting HS2's reasons for appointing a new agent is unclear. It was not unreasonable for HS2 to tell us, albeit retrospectively, that they were trying to recognise Mr and Mrs D's case involved a complex and unusual contract. Both parties acknowledged also that their relationship was strained at the point agent 2 was appointed (paragraphs 110 and 112). Therefore, we can understand why HS2 might have wanted a fresh start and to appoint an agent with a skill set that would aid management of Mr and Mrs D's case in these circumstances.

117. That said, we have seen no contemporaneous records to support this rationale. HS2's records refer to agent 2 completing work in Mr and Mrs D's area, but not why HS2 thought agent 2 was preferable to using agent 1 in Mr and Mrs D's case. HS2's records said agent 2 might be seen as a '*harder'* agent (key date March 2016) and referred to agent 2 needing '*political nous*' (key dates 9 and 10 July 2015). It is unclear what HS2 meant when referring to *'political nous'* in this context. HS2 told us political nous reflected where the case was at the time — PHSO's first report was being published, the Phase One legislation had not received Royal Assent and Mr and Mrs D's case was resource-intensive and was generating interest from a number of stakeholders (paragraph 114).

118. However, the context of HS2's email also referred to their agents being alive to the pitfalls and complexities of Mr and Mrs D's case (key date 9 and 10 July 2015). Political nous in this context could be interpreted as HS2 wanting agent 2 to protect their interests and prevent Mr and Mrs D from gaining an upper hand. This would not be in keeping with what HS2 told us — that they were trying to satisfy Mr and Mrs D (paragraph 111). HS2's internal comments are also contrary to what HS2 told Mr and Mrs D about appointing agent 2 and undertaking a further survey (December 2015). HS2 told Mr and Mrs D agent 2 worked in the locality and HS2 needed to establish the physical condition of Mr and Mrs D's property.

119. We recognise the strengths and weaknesses of the evidence supporting HS2's position on changing agents. On the basis of the available evidence, we cannot be sure what HS2's motives were for changing Mr and Mrs D's agents and if they had valid reasons when they took that decision. HS2's view, that they required a fresh start and the skill set of agent 2, could present reasonable grounds to change agents. However, HS2's language in their internal exchanges was troubling because it created doubts about their motives and was open to negative interpretation. In the face of inconclusive evidence, we cannot establish a balance of probability view as

to whether HS2's decision to change agents was reasonable. Therefore, we cannot say there was maladministration in HS2's decision to appoint agent 2.

120. However, we recognise that Mr and Mrs D's views about negative treatment would have been less likely to have arisen and grown if HS2 had properly engaged with Mr and Mrs D's concerns and communicated with them openly about their reasons for appointing agent 2 and about why a second survey was needed. In particular, HS2 did not answer Mr and Mrs D's central question of why HS2 originally said agent 1 would carry out the survey and then reneged on this. If HS2 wanted a fresh start and a highly skilled agent to manage the complexities of Mr and Mrs D's case, and if that agent wanted to undertake and rely on their own survey, HS2 should simply have communicated that to Mr and Mrs D. HS2 did not do this. Instead, HS2 insisted:

- it was not for Mr and Mrs D to question who HS2 appointed as their agent (August 2015) as they could appoint an agent of their choice in the same way Mr and Mrs D could be represented by their preferred agent
- Mr and Mrs D were not being treated differently and suggested it was usual practice to appoint agents for different parts of the process (21 December 2015)
- HS2 needed to re-establish the physical condition of Mr and Mrs D's property (21 December 2015). HS2 implied a second survey was always going to be required when that was not true.

121. HS2 did not properly engage with Mr and Mrs D's concerns about the change in agents and the need for a further survey, and HS2 did not tell them the truth. HS2's records did not provide a contemporaneous account for their decision to change agents and require a second survey. Nor were HS2 clear when they eventually acknowledged to us that a second survey was not required in itself but was undertaken because of the appointment of new agents (paragraph 113). In the absence of meaningful engagement, Mr and Mrs D believed HS2 were treating them in a negative way as a result of their earlier complaint. HS2 were not open and accountable. They acted maladministratively.

Disturbance to Mr D's business

122. Mr and Mrs D said in August 2015 the first property manager did not agree to abide by the contract clause for a disturbance claim to Mr D's business. In September 2015 and February 2016, agent 2's correspondence suggested to Mr and Mrs D that agent 2 was unaware Mr and Mrs D's contract allowed Mr D's business to make a disturbance claim. Mr and Mrs D interpreted that as HS2 trying to renegotiate matters they had previously agreed on.

123. We recognise there might be some ambiguity around whether the first property manager was suggesting Mr and Mrs D would have to justify the

claim itself or merely the amount with agent 2. However, we do not consider it is evidence that HS2 were refusing to consider or accept such a claim could be made. While it would have been more customer-focused if agent 2 had been aware of the terms of Mr and Mrs D's contract with HS2, agent 2's emails of September 2015 and February 2016 showed they accepted the claim. Agent 2's email of February 2016 was merely unsure if HS2 would agree to it. We have not seen evidence that HS2 or agent 2 tried to renegotiate the terms of Mr and Mrs D's contract. The evidence shows HS2 accepted Mr and Mrs D's disturbance cost and paid it in March 2017. For these reasons, we do not consider HS2 acted maladministratively. However, we recognise the incident was a reflection of the difficult relationship between the two parties. We have made findings about the cause of this in complaints 1a, 1b, 1c, 1d and 2a above.

2b — In November 2014 HS2 included a clause in the contract for Mr and Mrs D's house sale that prevented them from approaching the HS2 Select Committees about their concerns over improvements that should be made to the railway line to mitigate the negative impacts that would affect their new property.

General standards

124. HS2's standard that applies to this aspect of Mr and Mrs D's concerns is:

- HS2's Annual Report from 2014/15, which said HS2 would forge good relationships with those affected by the railway line.

125. Our Principles that apply to this aspect of the complaint are:

- *Acting fairly and proportionately* — public bodies should take actions that are proportionate and appropriate in the circumstances
- *Being customer focused* — public bodies should consider individual circumstances based on their particular merits.

Key events

126. Following the announcement of the route for HS2 in 2010, Mr and Mrs D consulted with HS2 about their property, including their business premises, and their intention to relocate somewhere nearby. Mr and Mrs D raised concerns with HS2 about mitigations that they thought were required for the railway in 2013 (see complaint 1a). The key events for this aspect of the complaint regarding Mr and Mrs D's ability to petition Parliament are set out below:

2014 — Mr and Mrs D planned to petition Parliament about their concerns regarding HS2's approach to purchasing their property.

December 2014 — Mr and Mrs D signed a contract with HS2 for the purchase of their property. Both parties were professionally represented in these negotiations.

The contract allowed Mr and Mrs D to stay in their home while they built their new premises nearby. The contract included a clause that Mr and Mrs D would **not** lodge any future petitions against the proposed railway line with the Parliamentary Select Committees.

15 December 2016 — the House of Lords Select Committee for HS2 published their report for HS2 matters. They commented:

'337.In one case we were credibly informed that a petitioner was told by telephone, shortly before the hearing of his petition, that an offer which the promoter had made to him would be withdrawn if he proceeded with his petition. This information reached us only after the hearing. It was, we hope, an isolated case of an over-zealous junior employee acting without instructions, since a threat of that sort may amount to a breach of parliamentary privilege. With most of the promoter's letters sent shortly before petition hearings it was not the tone, but the timing, of the letters that was unacceptable.'

March 2017 — Mr and Mrs D revisited their concerns about mitigation with HS2. HS2 told Mr and Mrs D they would ask their contractors to look at the mitigation once they were appointed (complaint 1a).

27 March 2017 — Mr and Mrs D told HS2 they were unhappy and wanted to appear before the Parliamentary Select Committees, who were due to hear representations about Phase 2a of the railway. Mr and Mrs D told HS2 they felt prevented by HS2 as a result of the clause in their contract for the purchase of their property.

8 May 2017 — HS2 responded to Mr and Mrs D's email of 27 March 2017. They said their contractors were undertaking surveys to inform the ecological situation for building the railway and asked if Mr and Mrs D wanted to attend future residents' meetings to *'discuss early enabling works'*.

June 2017 — Following further exchanges, HS2 repeated that they would ask contractors to contact Mr and Mrs D about mitigation issues when they were appointed.

9 November 2017 — After several exchanges of correspondence, the second Chief Executive of HS2 wrote to Mr and Mrs D's MP. The second Chief Executive recognised Mr and Mrs D felt they had no choice but to enter into a contract with HS2 in 2014 for the purchase of their property and also to agree not to appear before the Select Committee. The second Chief Executive said this clause was standard practice in hybrid Bill proceedings. However, the second Chief Executive said that HS2 would allow Mr and Mrs D to submit a petition to the Select Committee.

July 2018 — Mr and Mrs D appeared before the Select Committee. Their written submission to the Select Committee raised concerns about mitigations. Mr and Mrs D did not mention mitigations when they spoke to the Select Committee. They told the Select Committee they wanted to ensure there were proper checks and

balances on the actions of HS2. Mitigation issues did not form part of the Select Committee's subsequent report.

Evidence from HS2

127. HS2 said Mr and Mrs D's complaint about petitioning had no merit as:

- it was standard practice for the petitioners against the hybrid Bill to withdraw their petition when agreement was reached with HS2. HS2 said:

  'The position is … analogous to a court case where you settle in advance of a hearing the case and it is therefore not heard by the judge. It would make no sense to reach a settlement and then still have the case heard by the judge.'

- Mr and Mrs D could either have decided not to sign the contract with HS2, signed it after they had raised other matters with the Select Committee or sought an agreement that would have allowed them to appear on the separate matter of environmental mitigation. HS2 said Mr and Mrs D could have done this as they were professionally represented by agents throughout that period and could have been advised on this matter
- Mr and Mrs D were able to appear before the Select Committee in July 2018 and did not mention their concerns about mitigation
- It was Mr and Mrs D's choice to acquire land and build their new property in close proximity to the railway.

Our findings — complaint 2b

128. Mr and Mrs D considered it was unfair for HS2 to include a clause in their contract that prevented them from petitioning Parliament about matters unrelated to their property acquisition. We would expect HS2 to take account of their Annual Report and business plan that focused on forging good relationships with those affected by the railway line. We would expect organisations to take account of our Principles to ensure they acted *fairly and proportionately* so that measures are proportionate and appropriate in the circumstances. We expect organisations to be *customer-focused* so that the circumstances of individuals are considered on their particular merits.

129. Mr and Mrs D considered they were forced to sign the contract and pointed to separate instances where HS2 threatened to withdraw offers to purchase petitioners' properties (key date 15 December 2016). However, we have seen no evidence HS2 threatened to withdraw their offer of a unique contract to Mr and Mrs D because of their mitigation concerns. We recognise Mr and Mrs D's contract with HS2 was not intended to address future issues, such as mitigation for the construction of the railway line, which Mr and Mrs D retained an interest in. We do not consider HS2 acted

maladministratively by including the clause in Mr and Mrs D's contract. We accept the contract was intended to resolve the concerns set out in Mr and Mrs D's petition. Both parties were professionally represented during the contract negotiations. We have not seen evidence that either party foresaw Mr and Mrs D seeking to petition Parliament about mitigation three years later, which is why neither party seemed to consider placing a caveat in the contract. We will therefore consider what action HS2 took when Mr and Mrs D asked about petitioning Parliament on mitigation matters after signing the contract.

130. We consider HS2 acted appropriately in taking steps to try and resolve Mr and Mrs D's concerns about mitigation to the railway when they arose again in March 2017. HS2 wrote to Mr and Mrs D and offered to put them in touch with their contractors on appointment to discuss mitigation issues. When Mr and Mrs D remained unhappy following HS2's attempts to resolve matters, the second Chief Executive allowed Mr and Mrs D to submit a petition to Parliament about their mitigation concerns, and Mr and Mrs D were able to appear. For these reasons, we consider HS2 were customer-focused and acted reasonably and we do not consider HS2 prevented Mr and Mrs D from petitioning Parliament.

2c — In January 2018 HS2 and their agent tried to push through Mr and Mrs D's compensation claims before they had been properly considered and negotiated. HS2 threatened Mr and Mrs D that they would have to pursue matters through the Lands Tribunal, (without an offer of alternative dispute resolution (ADR), or mediation or even a meeting) which would be a lengthy and costly process.

131. We have addressed this aspect of the complaint at 1(d) above.

2d — *HS2 did not act independently by allowing* [the second property manager] *to consider Mr D's claim for business loss in light of* [the second property manager]*'s involvement in the poor handling of the valuation date.*

General standards

132. HS2's standards that apply to this aspect of Mr and Mrs D's concerns are their:

- Residents' Charter 2015 — '*HS2 wants to ensure that we deal with residents in a fair, clear, competent and reasonable manner.*'
- Community Engagement Strategy from 2017 — HS2 said that the legacy of HS2 would be judged by how communities up and down the route felt they had been treated by HS2 and their contractors.

133. Our Principle that applies to this aspect of the complaint is:

- *Acting fairly and proportionately* — public bodies should be free from any personal bias or interests that could prejudice decisions. Where a

complaint relates to an ongoing relationship between the public body and complainant, staff should not treat the complainant any differently. Public bodies should also ensure their handling is proportionate to the circumstances.

Key events

134. Following Mr and Mrs D's exchanges with HS2 about the valuation issues on their property (complaint 1c above), Mr D approached HS2 in early 2017 about obtaining compensation for his business losses in dealing with HS2 about this matter. Mr and Mrs D believed as the second property manager mishandled the valuation issues, the second property manager should not have considered Mr D's related claim for business loss. Mr D did not believe the second property manager could be impartial. Mr D believed someone not involved should have considered his claim for business loss.

135. The detailed events relating to decisions made around the valuation issues and HS2's handling of the business loss claim can be found under complaints 1c and 1d above. In summary, HS2 appointed the second property manager to oversee Mr and Mrs D's property acquisition in January 2016. Between February 2016 and September 2016, HS2's first Chief Executive sent numerous letters and decisions to Mr and Mrs D and their agent about HS2's position on the valuation date. At complaint 1c, in relation to valuation issues, we found HS2's correspondence (from their first Chief Executive):

- did not properly engage with Mr and Mrs D's queries on valuation issues, and
- provided confusing information to explain HS2's position.

136. Between October 2017 and January 2018, agent 2 completed their initial consideration of Mr D's business loss claim. On 4 January 2018 agent 2 wrote to Mr and Mrs D's agent with an offer to settle the amount for less than Mr D claimed. On 16 January 2018 Mr and Mrs D expressed concern to HS2's second Chief Executive about the second property manager's involvement in their case. On 22 January and 1 February 2018 Mr and Mrs D and their MP both asked for the second property manager to be removed from their case. Mr and Mrs D told HS2 the second property manager was involved in the problems around the valuation issues and was preventing them from legitimately claiming for their business loss. Mr and Mrs D told HS2 it went against natural justice for the second property manager to oversee the business loss claim and they had lost confidence in the second property manager.

137. HS2's second Chief Executive refused Mr and Mrs D's request to replace the second property manager on 21 February, 21 May and 11 June 2018. The second Chief Executive said:

- they had been briefed on the dialogue between Mr and Mrs D and the teams at HS2, and had every confidence HS2's teams would continue to engage closely with Mr and Mrs D
- they encouraged Mr and Mrs D to maintain their contact with the second property manager to best progress their case
- the issues that concerned Mr and Mrs D most were at an advanced stage of discussion and negotiation. HS2 thought it would be counter-productive and time-consuming to introduce a new team at that stage
- the best course of action was for those with advanced knowledge and experience of their case to continue working on it
- Mr and Mrs D had an assigned public response manager and the Director of Community Engagement kept a close eye on Mr and Mrs D's communications.

138. HS2's General Counsel and Company Secretary responded to Mr and Mrs D's concerns on 31 July 2018, which endorsed the second Chief Executive's view.

Evidence from Mr and Mrs D

139. Mr and Mrs D said the second property manager was involved in the *'debacle'* that gave rise to their business loss claim. They said the second property manager had been inconsistent and provided misinformation on valuation issues. Mr and Mrs D said the second property manager had drafted decisions for the first Chief Executive and they considered HS2's actions on valuation issues were determined by the second property manager. Mr and Mrs D also said the second property manager had initially refused to consider their business loss claim in summer 2017 and wrongly said PHSO would consider it. Mr and Mrs D said they asked HS2 to remove the second property manager from their case in January 2018 and for someone independent to deal with their business loss claim but HS2 refused. Mr D told us in his own business, he gave his clients a different staff member to work with if a client was unhappy with one of his staff, regardless of whether the client raised a valid issue, because it practically made sense. Mr and Mrs D thought HS2 should have done the same.

Evidence from HS2

140. HS2 said they made mistakes during the long process of acquiring Mr and Mrs D's property but there was no evidence the mistakes had a significant effect on the outcome. Given the uniqueness and complexity of Mr and Mrs D's case, HS2 considered it in the best interests of Mr and Mrs D to keep the appropriate staff members on their case rather than create another long handover period.

141. HS2 said the second property manager was a trusted and respected member of staff and no one other than Mr and Mrs D had complained about them. HS2 said the second property manager acknowledged HS2 had made

mistakes because their responses were not sufficiently clear on the valuation date.

142. HS2 said they sought advice from agent 2 on the business loss claim. They saw no reason for another HS2 property manager to manage the case as it was unique and complex.

Our findings — complaint 2d

143. Mr and Mrs D considered HS2 did not act independently by allowing the second property manager to be involved in handling Mr D's claim for business loss. We would expect HS2 to adhere to their Residents' Charter and their Community Engagement Strategy from 2017, which said that HS2 would behave fairly and act with integrity in their dealings with residents. Our Principles say also that public bodies should act *fairly and proportionately* as they should be free from any personal bias or interests that could prejudice decisions, and that where a complaint relates to an ongoing relationship between the public body and a complainant, staff do not treat the complainant any differently. Public bodies should also ensure their handling is proportionate to the circumstances.

144. We are not persuaded by Mr and Mrs D's reasons for saying HS2 should have acted to prevent the second property manager from staying involved in their case. Mr and Mrs D said the second property manager was involved in the '*debacle*' that gave rise to their business loss claim. Mr and Mrs D considered the second property manager directed decisions on valuation issues. However, we found HS2's failures on the valuation issues were corporate failures (complaint 1c) and not failings by an individual. The evidence shows key decisions on valuation matters were collaboratively taken and correspondence to Mr and Mrs D was sent by the first Chief Executive. We note also the second property manager did not directly consider the claim for business loss as agent 2 liaised with Mr and Mrs D's agent and responded to the claim in January 2018. We have addressed HS2's corporate handling of the business loss claim separately in complaint 1d.

145. Mr and Mrs D did not ask for the second property manager to be removed from their case until after agent 2 had completed their initial consideration of the business loss claim, although we recognise Mr and Mrs D expressed unhappiness with the second property manager's actions before this. We have considered Mr and Mrs D's representations to HS2 from January 2018 about the removal of the second property manager from their case. We would expect HS2 to consider properly Mr and Mrs D's concerns about the second property manager's involvement and inform Mr and Mrs D about their reasons whether to remove them. We consider HS2 did so in their letters of February, May and June 2018. HS2 considered Mr and Mrs D's case was complex with a long history, and the team handling their case (including the second property manager) had the knowledge, experience and expertise to address Mr and Mrs D's claims and concerns.

HS2 took account of Mr and Mrs D's concerns and provided grounds to support their decision in retaining the second property manager's involvement.

146. While it was open to HS2 to make a different decision, we have not seen evidence that shows HS2 should have prevented the second property manager considering the merits of Mr D's business loss claim, or that HS2 should have removed them from the case when Mr and Mrs D requested a new team handled their case. For these reasons, we consider that HS2 took their decisions reasonably.

2e – From May/June 2018 HS2 instructed their agent not to respond to Mr and Mrs D's correspondence without good reason and then lied to Mr and Mrs D about the reasons for doing so.

147. This aspect of the complaint has been covered in complaint 1d in relation to the business loss payment.

2f – From winter 2017/18, HS2 and their surveyors either refused to meet Mr and Mrs D or cancelled meetings and appointments at late notice without good reason for doing so.

148. HS2's standards that apply to this aspect of Mr and Mrs D's concerns are:

- HS2's Residents' Charter from 2017 said HS2 would respond to questions and complaints quickly and efficiently, within a maximum of 20 working days. It also said they would promote awareness of their property schemes so individuals were aware of the support available to them.

149. Our Principles that apply to this aspect of the complaint are:

- *Customer focus* – public bodies should be clear with customers about what they can and cannot expect, respond to the circumstances of the case and do what they say they are going to do
- *Open and accountable* – public bodies should provide clear, accurate, complete, relevant and timely information
- *Acting fairly and proportionately* – when taking decisions, public bodies should behave reasonably and ensure that measures taken are proportionate, appropriate in the circumstances and fair to the individuals concerned.

Administrative background

150. HS2 published guidance to residents called *Selling your home or small business using the Statutory Blight or Express Purchase process*[28] in 2018. This said it was important for a claimant to receive the right professional

[28] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712127/Selling_your_home_-_Statutory_Blight.pdf

advice and there was provision for HS2 to reimburse these fees when HS2 acquired a property.

151. HS2 expected agents to negotiate costs for individual claims. On the '*rarest of occasions*' that agents were unable to reach agreement on costs, HS2 would offer claimants a meeting with HS2's land and property team and their agents. This would explore why negotiations had broken down. If this meeting failed to achieve agreement, HS2 '*may*' suggest alternative dispute resolution (ADR) as a way of settling a dispute without going to court or tribunal. If agreement could not be reached, HS2 said either party could refer matters to the Lands Chamber for determination.

Background

152. From winter 2017/18 Mr and Mrs D and HS2 requested, arranged, cancelled and refused the following meetings:

First meeting

7 December 2017 — Mr and Mrs D's MP had other commitments and cancelled a meeting that was due to take place the following day with HS2 and Mr and Mrs D to discuss mitigation issues for the proposed railway. HS2 offered to reschedule it for 12 January 2018 but the MP was unable to attend. No party sought to reschedule it.

Second meeting

4 January 2018 — Agent 2 made an offer to Mr and Mrs D's agent about Mr D's claim for business loss. HS2 offered to pay £3,932 of the £6,869. HS2 did not consider the entirety claimed for Mr D's lost time should be fully paid.

17 January 2018 — Following an initial exchange of emails with Mr and Mrs D's agent, agent 2 said HS2 would not pay compensation under the Compensation Code for any further matters relating to complaints regarding the valuation date or time spent in relation to it (which was the basis of Mr and Mrs D's business loss claim).

18 January 2018 — Mr and Mrs D's agent said they did not agree with agent 2's position on the business loss claim. Mr and Mrs D's agent suggested a meeting with agent 2 and Mr and Mrs D to discuss HS2's offer (complaint 1d for more detail).

22 January 2018 — Agent 2 agreed to meet Mr and Mrs D's agent. Agent 2 said they did not think lengthy correspondence was helping resolve the claim for business loss and an agent-to-agent meeting without their clients present would be preferable.

Mr and Mrs D's agent replied to agent 2 the same day and said it was unfair not to include Mr and Mrs D in the meeting as it was their claim and they were most conversant with the facts of the case.

February 2018 — Mr and Mrs D's agent queried if agent 2 was going to take up their offer of a meeting. Agent 2 did not respond to the query about a meeting, but both agents continued corresponding about the business loss claim during March and April 2018.

March 2018 — Mr and Mrs D wrote separately to HS2 about their outstanding concerns about HS2's overall handling of their case. In particular, they said they wanted assurances about resolving their remaining property matters.

4 May 2018 — Mr and Mrs D met HS2's second Chief Executive to discuss their ongoing concerns about HS2's handling of their case. The second Chief Executive asked Mr and Mrs D what outstanding issues HS2 needed to deal with to enable Mr and Mrs D to move on. Among other things, Mr and Mrs D told HS2 they wanted HS2 to agree to pay their business loss claim in full.

9 May 2018 — Agent 2 responded to some of Mr and Mrs D's agent's questions about the ongoing business loss claim. Agent 2 stood by their offer of 4 January 2018.

May 2018 — HS2 requested agent 2 discontinue communication with Mr and Mrs D's agent while they formulated a response to Mr and Mrs D's concerns following their meeting with the second Chief Executive on 4 May 2018. HS2 told us they wanted to co-ordinate a response to Mr and Mrs D's concerns.

21 May 2018 — HS2 responded to Mr and Mrs D's complaint but did not ask agent 2 to resume contact with Mr and Mrs D's agent about the business loss claim.

26 June 2018 — Mr and Mrs D told HS2 they had asked their agent to stand down because HS2 threatened not to pay their agent fees (on 16 January 2018).

Third meeting

26 June 2018 — Mr and Mrs D asked to meet HS2 to discuss how to claim reasonable moving costs under the Compensation Code in relation to their house move on 1 October 2018. Mr and Mrs D said they were not employing an agent anymore because of HS2's refusal to pay their agent's costs. Mr and Mrs D said they thought it was improper for agent 2 and the second property manager to remain involved in their case (complaint 2d).

2 and 10 July, 7 and 10 August 2018 — Mr and Mrs D complained when HS2 did not respond. They said they were put to the trouble of chasing HS2 while they were on holiday.

15 August 2018 — HS2's second property manager wrote to Mr and Mrs D saying HS2 were willing to meet to discuss their enquiries about their house move. HS2 said any meeting would require agent 2 and the second property manager to be present. HS2 said they could not advise Mr and Mrs D about how to claim compensation in the absence of Mr and Mrs D having their own independent advice. HS2 said they would be open to accusations of conflict of interest. HS2 said it

would be in Mr and Mrs D's best interests to have their agent put forward itemised claims for them. HS2 said they would pay reasonable costs for an agent if rates were agreed beforehand and if Mr and Mrs D agreed that their agent could discuss matters directly with agent 2.

15 August 2018 — Mr and Mrs D complained to HS2. They said they wanted to discuss guidance for relocation costs. They also wanted to discuss matters relating to their claim for business loss. Mr and Mrs D said there was no question of them using an agent, given HS2 were not proposing to pay all their agent fees in relation to their business loss claim. Mr and Mrs D said on account of the bullying they received from HS2 they wanted their solicitors to be present at the meeting. Mr and Mrs D said they were seeking a meeting for the week commencing 3 September 2018.

27 August 2018 — Mr and Mrs D emailed HS2 to say HS2 had failed to give them dates for a meeting, despite agreeing to a meeting to discuss relocation, removals and associated disturbance claim issues.

30 August 2018 — HS2's second property manager wrote to Mr and Mrs D. They refused to meet Mr and Mrs D to discuss costs associated with their forthcoming house move. HS2 noted Mr and Mrs D no longer employed an agent. HS2 said they would pay reasonable agent costs and it was more independent for Mr and Mrs D and their agents to put together their compensation claim. HS2 also sent Mr and Mrs D links to information in relation to formulating reasonable compensation claims for property moves. HS2 said they had decided not to proceed with a meeting with Mr and Mrs D because *'all parties are best served by working towards the matters that directly affect your property move and I am content that I have addressed all the practical points herein'*.

August and September 2018 — Mr and Mrs D complained to HS2 about their handling of the meeting request and refusal to reallocate their case from HS2's second property manager and HS2's agent.

27 September and 30 October 2018 — HS2 responded to Mr and Mrs D's complaint, which reiterated HS2's position in their letter of 30 August 2018.

<u>Evidence from Mr and Mrs D</u>

153. Mr D said the first ICA's report in November 2016 had criticised him, unfairly in his view, for not attending meetings with the ICA and that face-to-face contact would be more productive for resolving concerns. However, Mr and Mrs D said it was HS2 who refused to meet them. Mr and Mrs D said that HS2's cancellation of the meeting in August 2018 was an illustration of why they could not trust HS2.

Evidence from HS2

154. HS2 told us:

- they advised property owners to seek professional representation and once the process was underway they found agent-to-agent communication was usually the most effective way to manage the property acquisition process
- when they had cancelled meetings, they had good reasons for doing so and they communicated the reasons to Mr and Mrs D
- they received voluminous email correspondence from Mr and Mrs D. They tried to provide answers to all the queries sent to them by Mr and Mrs D and they had met Mr and Mrs D on several occasions
- whilst the December 2017 meeting was not rescheduled, Mr and Mrs D met the second Chief Executive on 4 May 2018. Before then agent 2 exchanged lots of correspondence with Mr and Mrs D's agent.

155. HS2 said they considered Mr and Mrs D's agent was effectively rejecting an agent-to-agent meeting in January 2018 because Mr and Mrs D's agent insisted their clients were present. HS2 said Mr and Mrs D's agent did not live locally and due to health concerns, would require all parties to travel to their home in the north of England. HS2 said Mr and Mrs D required negotiations to be in writing with them whilst HS2 were also paying reasonable agent costs to negotiate the claim in the usual way.

156. HS2 said there were no problems relating to Mr and Mrs D's property move in summer 2018 and they did not consider a meeting was required. HS2 acknowledged that they had indicated to Mr and Mrs D that they would consider a meeting. HS2 said that meeting did not happen for a number of reasons:

- Mr D's request not to include HS2's agent and the second property manager (on 26 June 2018) would have made things difficult for those not involved in his case
- difficulty in finding a suitable time or venue
- Mr D's request to discuss his ongoing complaints.

Our findings — complaint 2f

157. Mr and Mrs D considered meeting requests were unreasonably refused or cancelled without good reason by HS2 from winter 2017 onwards. When arranging meetings with stakeholders about complaints or ongoing property issues, we would expect public bodies to be customer-focused — being clear about what customers can and cannot expect about their entitlements. Public bodies should act fairly and proportionately by ensuring measures are proportionate, appropriate in the circumstances and fair to the individuals concerned. Further, we would expect them to be open and accountable in explaining their decisions.

158. HS2's general handling of Mr and Mrs D's compensation claims was relevant to their handling of Mr and Mrs D's requests to meet about their compensation claims. At complaint 1d we found HS2 should not have considered compensation matters under the complaints process as they had a separate process to negotiate compensation claims. The events in complaint 1d and the failing we identified provide context to the events in this complaint. We do not intend to revisit the 1d findings here, but we will consider if there is further maladministration in addition to those findings.

159. In terms of HS2's decision-making alone, HS2 had reasonable grounds to refuse meetings with Mr and Mrs D about compensation matters:

- the MP was unable to attend the first meeting in December 2017, which meant it did not happen. HS2 played no role in the meeting's cancellation
- in January 2018, agent 2 said they preferred to arrange an agent-to-agent meeting without their clients being present. This reflected HS2's process for negotiating compensation through agent-to-agent discussion to resolve disagreement in the first instance (paragraphs 150 and 151)
- on 30 August 2018 HS2 refused to meet Mr and Mrs D to discuss moving costs as they had agreed to pay agent's fees to negotiate claims for moving costs if reasonable agent fees were agreed in advance. This again reflects HS2's approach to negotiating compensation claims. HS2 also provided links to information about moving costs that Mr and Mrs D could claim. Mr and Mrs D decided not to use an agent, which was their prerogative, but this does not make HS2's decision not to meet unreasonable.

160. At complaint 1d we found HS2 failed to follow their processes for negotiating compensation claims. We did not find that here. We considered HS2's decisions in meeting Mr and Mrs D about their compensation claims were in keeping with their process for negotiating compensation (above). However, we consider HS2's handling of Mr and Mrs D's meeting requests reflects their uncertainty in applying the process for negotiating compensation. In particular, HS2 failed to be clear and consistent in communicating their decisions about meeting requests to Mr and Mrs D:

- in early 2018 HS2 did not robustly maintain their initial position that was consistent with the established compensation process (paragraphs 150 and 151). After telling Mr and Mrs D that they thought agent-to-agent negotiations were more constructive, they stopped communicating when Mr and Mrs D pursued the matter. Agent 2 did not respond to Mr and Mrs D's agent's queries about arranging a meeting to discuss their business loss claim. In the end, Mr and Mrs D raised their concerns about the business loss claim with the second Chief Executive in a separate meeting about their ongoing complaints on 4 May 2018
- HS2 took too long to make a decision on Mr and Mrs D's third request for a meeting. Whilst HS2's grounds for refusing a meeting with Mr and

Mrs D in August 2018 were reasonable (paragraph 159), they took over two months to respond

- HS2 also provided inconsistent messages to Mr and Mrs D about their third request for a meeting. Even though HS2 had the information to consider Mr and Mrs D's request at the outset, they first agreed to meet Mr and Mrs D before reversing their decision approximately two weeks later.

161. HS2's handling of Mr and Mrs D's meeting was an extension of the failings we identified in 1d. HS2 failed to appropriately communicate with Mr and Mrs D even when they were following their processes. This meant their actions were not as customer-focused or as open and accountable as they should have been. It was maladministration.

Complaint 3 — HS2 demonstrated a lack of understanding or care regarding the stress, ill-health and lack of wellbeing that HS2's behaviours caused Mr and Mrs D in dealing with their case. Mr and Mrs D complained it was the poor treatment they received from HS2 that caused the stress, rather than the impact of the rail project itself.

162. We have addressed Mr and Mrs D's concerns about the **impact** HS2's actions had on their health with respect to the matter raised in complaints 1, 2 and 4. Our views are set out in our consideration of injustice for those sections. We have also set out our views on HS2's handling of Mr and Mrs D's concerns about health below. We have addressed many of Mr and Mrs D's particular concerns about the impact HS2's actions had on their health in complaints 1, 2 and 4. Our views are set out in our consideration of injustice (paragraphs 260 to 275) for those sections. Below we have considered HS2's administrative actions when responding to Mr and Mrs D's specific questions about health issues.

163. Mr and Mrs D told us part of this complaint involved their concern that (i) HS2 did not respond to Mr and Mrs D's MP about the health effects on their community in 2013 and that (ii) HS2 failed to carry out their duty of care to those affected in the community. We do not know whether HS2 responded to the MP's piece of correspondence, but we have not explored this further. It would be for the MP to raise this with HS2 directly. Similarly, it would be for Mr and Mrs D's neighbours/community to raise their own individual concerns. Therefore, we have not considered these two elements of this complaint.

General standards

164. Our Principles that apply to this aspect of the complaint are:

- *Getting it right* — public bodies should have regard to the relevant legislation and act in accordance with their policy and guidance. Complaint handling should focus on the outcomes for the complainant.

- *Being customer focused* – public bodies should treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case.
- *Being open and accountable* – public bodies should be open and honest when accounting for their decisions and actions. They should give clear, evidence-based explanations and reasons for their decisions.

Administrative background

165. The *Equality Act 2010* requires service providers such as HS2 to take steps to avoid those with disabilities being at a substantial disadvantage. Where individuals are considered to be disadvantaged, service providers should consider making a reasonable adjustment. Failure to take account of a reasonable request for an adjustment is a form of discrimination.

166. In May 2015 HS2 published their Health and Safety Policy. Among other things HS2 said:

We sincerely believe in the protection of our employees and others who may be affected by our activities. The prevention of injury and illness is an indispensable part of our business culture.

Our statement of general policy commits us to:
…
Providing effective control of the health and safety risk associated with all our activities'

167. In November 2013 HS2 published their Health Impact Assessment[29] for Phase 1 of the proposed railway. Among other things, the Health Impact Assessment:

- referred to duties under the Equality Act 2010 (paragraph 165). Among other things, it set out (section 1.2) that decision makers should make reasonable adjustments in certain circumstances to remove disadvantages for certain individuals
- said businesses required to relocate because of construction of the proposed scheme would be eligible for compensation
- said relocation of people from their homes involved significant disruption and uncertainty. However, the Government was committed to providing discretionary compensation packages going above and beyond the Compensation Code to address exceptional hardship
- said residents could experience adverse health effects from relocating. Those in rural communities were likely to have established local networks that could be weakened by relocation

[29]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/378711/Health_impact_assessment.pdf

- said mitigation measures to reduce the adverse health effect and enhance health benefits would continue to be developed. HS2 said they would put ongoing assessment, stakeholder engagement and communication in place to reduce the effects of the proposed railway.

168. In September 2017 HS2 published the Community Engagement Strategy, which said HS2 aspired to be a good neighbour, respecting people and communities' needs. It said HS2 would make equality, diversity and inclusion part of all their activities to prevent discrimination, harassment and bullying. HS2 said they would demonstrate their values of leadership, respect, integrity and safety in the way they and their suppliers behaved. HS2 said they would be open and accountable and show they understood the needs and views of local communities.

Key events

169. The main exchanges between HS2 and Mr and Mrs D in connection with their general health concerns are set out below:

December 2014 — Mr and Mrs D and their representatives negotiated a unique contract with HS2 to acquire their property. In exchange Mr and Mrs D agreed not to petition Parliament against HS2.

27 March 2017 — Mr and Mrs D emailed HS2 about a number of issues. Mr and Mrs D said HS2 had no idea or care about the effects their maladministration was having. Mr and Mrs D said they reserved the right to take legal action to recover their losses and seek damages if their concerns were not resolved.

26 April — 8 May 2017 — Internally, HS2 sought legal advice in relation to responding to Mr and Mrs D's concerns about stress. HS2 discussed whether Mr D had provided evidence of a specific health impact and whether they would require evidence in the form of medical notes. They agreed their final version would likely generate a further response from Mr and Mrs D and could *'potentially include medical evidence'*.

8 May 2017 — HS2 emailed Mr and Mrs D in response to their concerns that dealing with HS2 was causing them ill-health and Mr and Mrs D's question about what risk assessments were carried out. HS2 told Mr and Mrs D:

- they published a Health Impact Assessment in November 2013 (paragraph 167) that identified the potential effects on health resulting from construction and operation of the railway. HS2 provided a link to that assessment
- HS2 always acknowledged that the relocation of residents and homes could cause stress and anxiety
- HS2 had sought to make reasonable accommodations and engagement with Mr and Mrs D to make things less stressful. HS2 said they agreed to a conditional contract, offered to fix the valuation of Mr and Mrs D's

property, offered face-to-face engagement and kept them updated about their engagement plans

- '*Having reviewed previous correspondence, we are unable to identify instances of you providing medical details to HS2 Ltd of any specific contributory health impact caused to you and your family by your interaction with HS2 Ltd. Should you be in a position to confirm this then HS2 Ltd will, of course, consider this in how we engage with you.*'

29 May 2017 — Mr and Mrs D told HS2 that while they had not previously provided medical details to HS2, they had repeatedly warned HS2 of the effects their maladministration was having on their health. Mr and Mrs D said they did not believe it was appropriate to disclose medical details to HS2 and were shocked HS2 seem to only be willing to consider how they might operate after receipt of detailed medical evidence. Mr and Mrs D said a health impact assessment was not the same as a risk assessment such as those required under health and safety legislation. Mr and Mrs D said the accommodations offered by HS2 had come far too late, after protracted correspondence and the intervention of third parties such as PHSO and the ICAs.

31 May 2017 — HS2 responded to Mr and Mrs D's email. They said they would continue to engage with Mr and Mrs D on their compensation issues. However, they were suspending communication with Mr and Mrs D on historic issues or matters falling within PHSO's investigation. HS2 said this included health issues raised earlier that month because they had asked PHSO to examine them.

16 July and 6 August 2017 — Mr and Mrs D emailed HS2 in connection with their business loss claim (complaint 1d). Mr and Mrs D said if HS2 had responded positively to the valuation matters (complaint 1c) they could have been saved a summer of wasted time and stress-related health issues in 2016.

15 December 2017 — The second Chief Executive of HS2 wrote to Mr and Mrs D's MP. They repeated the explanations about the Health Impact Assessment and added:

> '*HS2 Ltd is also committed to addressing the needs of people and communities who have protected characteristics as specified by the* Equality Act 2010 … *by providing reasonable adjustments. For us to be able to explore and understand if reasonable adjustments may be appropriate for Mr and Mrs* [D] *it would be helpful to have further detail on the health issues they have raised. I assure you that this information would be handled both sensitively and confidentially.*'

14 January 2018 — Mr and Mrs D emailed HS2 about their concerns over stress and ill-health. Mr and Mrs D said they had been emailing HS2 about their concerns since 2013. Mr and Mrs D said stress and ill-health had been caused by HS2's dysfunctional behaviour and not from the relocation of residents from their homes. Mr and Mrs D said they did not believe reasonable adjustments needed to be made other than for them to be treated with respect, honesty and fairness. Among other things, they said they did not expect HS2 to mislead them about the Compensation

Code (complaint 1c), to have their compensation claims handled promptly (complaint 1d), not to be misled about ownership of land regarding mitigation requests (complaint 1a) and not to be misled about petitioning Parliament (complaint 2b). Mr and Mrs D said their health records would be lodged with their solicitor.

15 January 2018 — HS2 wrote to Mr and Mrs D. They said they were happy to make reasonable adjustments to support any specific health concerns they had. HS2 said their previous enquiries were made out of a wish to establish if there was any support HS2 could offer and that remained the situation.

16 January 2018 — Mr and Mrs D emailed HS2. Mr and Mrs D said they were shocked HS2 might feel it appropriate to hand over personal and confidential medical details to a non-medically qualified officer. They told HS2 their medical details had been lodged with their solicitor and would only be released following advice from the solicitor, and they expected HS2 to fund such advice.

4 May 2018 — Mr and Mrs D met HS2's second Chief Executive to discuss a number of their concerns, including their concerns about stress.

7 May 2018 — Mr and Mrs D emailed HS2's second Chief Executive following their meeting of 4 May 2018. Mr and Mrs D said they understood the second Chief Executive's concern over the wellbeing of HS2 staff. They said it was a shame HS2 did not extend the same level of concern to those losing their homes. Mr and Mrs D said the uncertainty and stress caused by HS2's dysfunctional behaviour over the previous six years had taken a toll on their health. Mr and Mrs D said achieving a prompt outcome and certainty on their request for mitigation (complaint 1a) and their compensation concerns (complaints 1c and 1d) *'would do a great deal to put this behind us'*.

13 June 2018 — Mr and Mrs D appeared before the Phase 2a Parliamentary Select Committee for HS2. Among other things, Mrs D said:

> *'..the last six years have taken a heavy toll on our family and the stress hasn't been caused by the scheme. Obviously, initially it was distressing but we got round that and we have accepted that fully. But, the stress caused by the way HS2 Ltd has handled our case going forward. As* [Mr D] *mentioned, he's suffered ill-health due to the maladministration and stress of dealing with HS2 Ltd and that time was an all-time low for our family as I had to arrange treatment for my husband and manage my business on our own, look after my children and, on top of that, take over the negotiations of our house and business valuation with the HS2 agent who is bullying in* [their] *approach and very difficult to deal with.'*

At the Select Committee hearing the Barrister for the Department for Transport commented on HS2's duties in relation to the impact on the health and well-being of Mr and Mrs D. They said:

'…that health and safety legislation obviously imposes requirement not only on employers, not only on their employees, but in short to ensure any members of the public that are affected by their activities are also given proper protection under health and safety. The particular concern about the impacts on mental health and wellbeing, as a matter of general law and practice, that is a less developed science. That applies to any organisation, public, private, as much as it does to HS2. But one of the techniques that has been developing over the last ten to 15 years, and is still in the process of developing, is the use of health impact assessment techniques whiles a scheme is being developed and following through its approval…

' … one has to consider the context in which the risk of their health being affected arises… you might say that where someone is required as part of their employment to go and do potentially risky things, there's a much more direct risk that they may suffer injury or damage to their health than a situation where members of a local community are finding themselves with a very unwelcome and, no doubt, unexpected prospect of a major public works scheme being constructed through their area. Now that's not to say at all that their expectations of fair and consideration treatment in order to seek to limit the degree of distress and impact on their wellbeing that flows from that that their expectation is any less but it is a slightly different relationship. What it come to is this. It emphasises the critical need for effective community relations because the more people know about what is going to happen in their area the better they're able to compute it, to sift through it and to work out how they're going to address it.

' … And what I've sought to explain to you, at least a little in part of the course of my short submissions, is that certainly systemically the company has sought to put in place procedures… for example, the community engagement plan …'

The Select Committee asked HS2 to undertake some work about their actions to help the Committee understand a bit more about the mental health infrastructure.

14 June 2018 — Mr and Mrs D emailed HS2 saying their refusal to remove the second property manager from their case was causing them stress.

12 July 2018 — HS2 wrote to the Select Committee in response to their request for understanding of HS2's work around the mental health infrastructure. HS2 rejected the assertion that they were not acting in compliance with relevant health and safety legislation. HS2 said existing checks and balances allowed HS2 to be held to account. Among other things HS2 referred to the:

- Residents' Commissioner
- PHSO/ICAs
- Director of Community Engagement/Community Engagement Strategy

- HS2 complaints process.

23 July 2018 — The Select Committee published its report following the hearings in June 2018. Among other things the Select Committee said:

> *'Some people told us that they had experienced mental health problems as a result of the project. At the moment, the only access to help is through local services. We direct HS2 to provide, fund and integrate an additional service.*[30]*'*

31 July 2018 — Mr and Mrs D emailed HS2 about the stress and ill-health HS2's actions had caused over the previous six years. Mr and Mrs D said they had gone to the trouble of making their medical records available to HS2 through their solicitor but HS2 had not taken steps to access them.

2 August 2018 — Mr and Mrs D emailed HS2 about their response to their meeting request. Mr and Mrs D said the dysfunctional behaviour of HS2 was causing them stress.

August 2018 — Mrs D exchanged emails with HS2 about her request to meet them regarding their moving and relocation costs. Mrs D told HS2 their handling of her request was causing her stress, as she was worried HS2 were gearing up to refusing to pay their costs.

30 August 2018 — HS2 responded to Mr and Mrs D's concerns about stress. HS2 said they appreciated moving a home and business remained one of the most stressful things anyone could experience. HS2 noted Mr and Mrs D had lodged their medical records with their solicitor and they had asked HS2 why no one had requested to see them. HS2 said they had never asked to see Mr and Mrs D's medical records as they would not be qualified to comment on them. HS2 said their requests for medical details were driven by their hope to gain a better understanding of Mr and Mrs D's wellbeing and so they could accommodate any specific requirement Mr and Mrs D had. HS2 said it was never their intention to cause Mr and Mrs D concern in their correspondence.

2 September 2018 — Mr and Mrs D emailed HS2 in response to their letter. Mr and Mrs D said they had repeatedly said it was not moving home that caused the majority of their stress but the dysfunctional behaviour of HS2 and their staff.

[30] Paragraph 75.

Surveys

170. Mr and Mrs D referred us to the second ICA's reports in relation to the non-attendance of HS2 contractors at their property for construction-related surveys in January 2018 and May 2018. The second ICA's report set out the main events:

15 January 2018 — Mr and Mrs D emailed HS2 to complain they had received six notices the previous week to confirm HS2 and/or their contractors would attend their property that day to carry out a survey of their property. Mr and Mrs D said they rearranged their diary to attend but nobody arrived and they were not updated. Mr and Mrs D said it was another wasted day for them as it was not the first time this had happened.

12 February 2018 — HS2 responded to Mr and Mrs D's complaint about non-attendance to their property for a survey. HS2 said there had been a miscommunication between them and their contractor. They apologised for the inconvenience caused and said it should never have happened. HS2 said their contractor had been told all correspondence with Mr and Mrs D should come from HS2 but the message had not been shared with the contractor's business. HS2 said they had been reassured by their contractor that Mr and Mrs D would not be contacted directly by them again.

19 February 2018 — Mr and Mrs D emailed HS2 to say they appreciated the apology but there had been other incidents. Mr and Mrs D said they had been told tree surveyors were attending on 22 January 2017 (the previous year) but no one arrived. Mr and Mrs D also asked why they were being treated as a special case with all correspondence from the contractor being channelled through HS2.

9 May 2018 — HS2 told Mr and Mrs D about an upcoming bat survey at dusk on 17 May.

15 May 2018 — Mr and Mrs D told HS2 about an unannounced survey — someone had arrived asking to survey their trees. Mr and Mrs D said their trees had already been surveyed and the individual who arrived at their home had no identification.

18 May 2018 — Mr and Mrs D emailed HS2 to ask why the bat survey had not taken place.

23 and 25 May 2018 — HS2 told Mr and Mrs D the bat survey had taken place but the surveyors attended the site later than expected and, as was their standard practice, did not want to disturb Mr and Mrs D. HS2 said some landowners were happy for surveys to go ahead without their knowledge or in their absence, but not everyone was comfortable with that approach. HS2 apologised for the inconvenience caused.

26 May 2018 — Mr and Mrs D asked HS2 for a full explanation — they said a survey of bats would have been impossible from the road, yet attending and roaming around private property after day raised health and safety issues.

June 2018 – HS2 responded to Mr and Mrs D's complaints. HS2 apologised Mr and Mrs D had not been told of the tree survey in advance. HS2 said the two bat surveys had taken place between 3am and 5am on the morning of 18 May 2018. HS2 said Mr and Mrs D should not have been told it would take place at dusk, but that it would be at dawn. HS2 apologised for the distress and inconvenience their recent errors had caused Mr and Mrs D. HS2 said they were working to make improvements and prevent further incidents.

2 July 2018 – Mr and Mrs D told HS2 they did not believe the bat survey had taken place, as they would have heard the sound of cars arriving/leaving. Mr and Mrs D said it was unacceptable that surveyors had entered their grounds at dead of night.

31 July 2018 – HS2 told Mr and Mrs D the bat survey had in fact taken place at dawn on 17 May not 18 May. Seven surveyors in six cars had attended. HS2 apologised to Mr and Mrs D. HS2 also agreed they should work with their contractors to improve communication and responsibilities, so landowners would have a clear understanding of timings around surveys.

<u>Evidence from Mr and Mrs D</u>

171. Mrs D said they spent years doing battle with HS2 to gain a relocation package to allow them to relocate their business, home and smallholding locally to allow them to continue their business and stay locally. Mrs D told us said they felt bullied by HS2 right from the start because they had to sign a confidentiality agreement in December 2014. Mrs D said signing the agreement left them anxious and nervous about discussing anything to do with their relocation agreement. Mrs D said she felt very isolated when discussing the valuation issue with HS2 (in 2016) as Mr D was ill with stress and it was down to her to decide whether to accept the valuation or not.

172. Mrs D said the stress of all HS2's actions had caused her to become ill with a stomach ulcer. Mr D said he had been very ill with stress that negotiating with HS2 caused. Mrs D said it had been frightening for her when her husband was ill because they depended on him working in their business. Mr and Mrs D said there was always a huge battle with HS2 to get what they reasonably needed but they achieved it at great personal cost.

173. Mr and Mrs D said they very much doubted the bat survey ever happened. They thought it was implausible that seven people in six cars could have attended their property in May 2018 without them knowing.

174. Mr and Mrs D said HS2:

- ignored the effect their actions were having on Mr and Mrs D despite being warned multiple times. Mr and Mrs D said HS2 failed to confirm the amount of home loss payment in summer 2018 (complaint 1c). Mr and Mrs D also said HS2 failed to tell them they had instructed agent 2 to suspend correspondence with them (complaint 1d)

- requested to see Mr and Mrs D's medical details but declined to access these records without explanation
- carried out surveys in the middle of the night with no appointment or did not turn up for surveys when appointments were made.

Evidence from HS2

175. HS2 told us:

- they accepted the building of the railway would impact on individuals and communities
- the community engagement strategy set out clearly how they aim to work with those affected by the railway
- there was no evidence to suggest their actions had an impact on Mr and Mrs D over and above that which could be expected given the nature of the railway
- they were planning to launch a new support service to provide expert help and manage support for people who were deemed vulnerable
- they recognised there were times Mr and Mrs D were caused upset but did not accept this was solely down to the actions of HS2
- Mr and Mrs D never requested reasonable adjustments or informed HS2 they were disadvantaged under the *Equality Act 2010*
- they did not consider they had failed to consider their duties under the *Equality Act 2010.*

Findings

176. Mr and Mrs D told us HS2 demonstrated a lack of understanding or care regarding stress and ill-health. In paragraph 174 Mr and Mrs D provided more detail about why they believe HS2 failed to take account of their stress and ill-health. With regard to this complaint, HS2 and the Barrister's evidence to the High Speed Rail Select Committee in June and July 2018 (see key dates) showed they considered HS2's legal responsibilities in relation to health and wellbeing were complicated. However, HS2 and their Barrister told the Select Committee that HS2 had processes and procedures to address health and wellbeing issues, such as the complaints process and HS2's engagement strategy. Therefore, we would expect HS2 to take account of relevant legislation (paragraph 165), and we will consider HS2's actions in relation to their policies and procedures, in particular their Health and Safety Policy (paragraph 166), their Health Impact Assessment (paragraph 167), their complaints process and their policies around engagement (paragraph 168). We would expect HS2 to act in accordance with our Principles (paragraph 164). We would expect HS2 to *get it right, be customer focused* and *open and accountable*. In particular, we would expect HS2 to consider relevant legislation and policies, consider individual circumstances and explain the reasons for actions they take. We will consider Mr and Mrs D's specific administrative complaints about HS2 (paragraph 174) in the same order he raised them with us.

Handling of Mr and Mrs D's warnings effects on their health

177. Mr and Mrs D complained HS2 ignored warnings about the effects their actions were having on Mr and Mrs D's mental health on multiple occasions. We recognise the process of acquisition of their property was stressful for Mr and Mrs D. We see no reason to question HS2's approach — that using the complaints process was the appropriate vehicle to address Mr and Mrs D's concerns about health and wellbeing (see key date 12 July 2018). Mr and Mrs D's comments to us and their letters to HS2 said the effects on their health would have been reduced if HS2 had agreed to their mitigation requests and compensation concerns (paragraph 171 and key date 7 May 2018). Our previous findings considered how HS2 tried to address Mr and Mrs D's complaints on particular issues, including these, and we have explained why we considered HS2 acted either reasonably or unreasonably in each instance. For example, paragraphs 29 to 31, 69 to 83 and 104. We have identified in this report that there was a breakdown of trust between the parties (paragraph 82) and how the failings we identified by HS2 impacted negatively (paragraph 273) on Mr and Mrs D's health. However, as we considered HS2 acted reasonably on a number of aspects, we cannot attribute responsibility to HS2 for the impact Mr and Mrs D's claimed from those (not upheld matters) on their health. We have not upheld Mr and Mrs D's other concerns about HS2's approach to health matters (above and below), apart from HS2's communication around surveys to Mr and Mrs D's property (paragraph 181).

178. We also note HS2 responded to Mr and Mrs D's expressions of concern about their health by asking Mr and Mrs D to tell them about any medical issues/reasonable adjustments they might be seeking from HS2 in dealing with their case. This is in keeping with their Health and Safety Policy from May 2015, Health Impact Assessment from November 2013 and their Community Engagement Strategy (paragraph 168). Mr and Mrs D told HS2 they were not seeking reasonable adjustments in January 2018, other than to be treated with honesty, respect and fairness. Having considered these factors in relation to Mr and Mrs D's general complaint about HS2's administrative handling of warnings about health impacts, we consider HS2 acted reasonably. For these reasons, we do not uphold this aspect of the complaint.

Handling of access to Mr and Mrs D's medical records

179. Mr and Mrs D said HS2 did not access their health records when they made them available to HS2 and HS2 did not explain why. The evidence shows this issue arose when Mr and Mrs D raised concerns with HS2 directly in early 2017 about HS2's handling of the stress and ill health their actions were causing. HS2's email of 8 May 2017 did not ask Mr and Mrs D to provide access to their medical records. They said '*Should you be in a position to confirm* [medical details … of any specific contributory health impact caused …. by your interaction with HS2 Ltd] *then HS2 Ltd will, of course, consider this in how we engage with you*'. We consider HS2 were

offering to engage with Mr and Mrs D about their needs, which takes account of their duties to make reasonable adjustments when appropriate (paragraph 165).

180. HS2's internal correspondence (see key date 26 April – 8 May 2017) showed they were not specifically looking for medical records, although evidence from Mr and Mrs D could involve medical records. We consider HS2 were trying to engage with Mr and Mrs D to understand their concerns. We do not consider HS2's use of the term '*medical details*' refers only to medical records. We accept the wording in HS2's correspondence of 8 May 2017 could have been clearer in explaining this, but we do not consider it was so poor as to have been maladministrative. In addition, we believe HS2 provided reasonable follow-up responses to Mr and Mrs D on 15 December 2017 and 15 January 2018 – they explained they were seeking an understanding of any reasonable adjustments or needs Mr and Mrs D had. For these reasons, we consider HS2 responded appropriately.

Handling of surveys

181. Mr and Mrs D complained HS2 undertook surveys in the middle of the night with no appointment and failed to turn up for surveys when there were appointments. Mr and Mrs D did not believe the bat survey took place and, if it did, were concerned about strangers roaming around their garden. With the passage of time it is not possible or proportionate to establish if this survey took place and where the contractors were located when they undertook it. That said, the evidence shows HS2 failed to fully and properly communicate with Mr and Mrs D about the surveys. For example, Mr and Mrs D were not told about the cancellation of a survey in January 2018 or about the timing of a bat survey in May 2018. HS2 acknowledged these failings and agreed the instances should not have occurred. HS2 were not customer-focused or open and accountable. It was maladministration.

Complaint 4 – HS2 handled complaints poorly:

a) throughout, HS2's complaints responses were simply 'tick box' and did not deal with the substance of the complaints
b) HS2 did not deal with complaints according to their own complaints procedures.

General standards

182. Our Principles that apply to this aspect of the complaint are:

- *Getting it right* – public bodies should have regard to the relevant legislation and act in accordance with their policy and guidance. Complaint handling should focus on the outcomes for the complainant. Public bodies should put in place policies and procedures to ensure complainants are treated fairly, to aid decision making and to ensure fair outcomes. Those policies and procedures should allow staff the

flexibility to resolve complaints promptly and in the most appropriate way while still learning from complaints

- *Being open and accountable* – public bodies should be open and honest when accounting for their decisions and actions. They should give clear, evidence-based explanations and reasons for their decisions.

Administrative background

183. HS2 said they:

- appointed a Director of Community and Stakeholder Engagement in December 2016 and a Community and Stakeholder Engagement Team
- introduced an eight-person public response team to deal with complaints in November 2017. This was composed of experienced complaint handling staff
- focused on getting their response right first time and that complaints could be escalated to their Chief Executive for a response
- aimed to handle complaints effectively and ensure they learnt lessons when mistakes were made. They took account of an independent review in 2016 of their complaint handling and community engagement
- were developing an unreasonable and persistent complaints policy and corporate respect policy.

184. HS2's complaints process from 2015[31] onwards has been a three-step process. However, on 11 April 2018 they rolled out an amended process. This said their public response team handled the step one response **instead** of the relevant head of division. At step two, a senior director provided a report for the second Chief Executive to consider, rather than the second Chief Executive sending a sole response[32]. In both processes, the ICAs responded at step three of the complaints process.

Key events

185. The chronology below summarises HS2's handling of complaints that Mr and Mrs D raised with HS2 between 2015 and March 2019. More detail of HS2's handling of Mr and Mrs D's key concerns can be found in the key events for complaints 1a, 1b, 1c, 1d, 2a, 2b and 2d.

2015

August and December 2015 – Mr and Mrs D raised concerns with HS2 about the appointment of agent 2 and the need for a second survey (complaint 2a).

2016

[31] https://webarchive.nationalarchives.gov.uk/20151010222153/https://www.gov.uk/government/organisations/high-speed-two-limited/about/complaints-procedure

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

January to May 2016 – HS2 continued to respond to Mr and Mrs D's concerns about the appointment of agent 2 and the second survey (complaint 2a).

February to September 2016 – Mr and Mrs D exchanged correspondence with HS2 about agreeing the price HS2 would pay for their property (complaint 1c).

February to May 2016 – Mr and Mrs D corresponded with HS2 about the involvement of the first property manager on their case (complaint 1b).

2017

March 2017 to present – Mr and Mrs D exchanged correspondence with HS2 about their concerns regarding mitigation (complaint 1a).

March to November 2017 – Mr and Mrs D asked HS2 to allow them to petition Parliament about their mitigation concerns (complaint 2b).

June 2017 to October 2017 – Mr and Mrs D raised concerns with HS2 about making a claim for business loss (complaint 1d) as a consequence of the valuation concerns (complaint 1c). The events in relation to the valuation issues (complaint 1c) were included as evidence in support of Mr D's compensation claim.

2018

January 2018 to present – Mr and Mrs D continued to correspond with HS2 on mitigation matters (complaint 1a), which had begun in March 2017.

January to July 2018 – Mr and Mrs D exchanged correspondence with HS2 about the second property manager overseeing their business loss claim.

January to July 2018 – Mr and Mrs D raised concerns about HS2's communication with them about contractors attending their property for surveys.

February to December 2018 – Mr and Mrs D raised concerns about HS2's January 2018 decision on their business loss claim (complaint 1d).

March 2018 – HS2 acknowledged a fresh complaint from Mr and Mrs D. HS2 told Mr and Mrs D they would receive a response from a public response manager at HS2. This was at odds with HS2's published procedure at the time, which said the head of the area complained about would provide a response to a complaint at step one of HS2's complaints process (paragraph 184). On 27 March the Residents' Commissioner told Mr and Mrs D HS2 were trialling a process whereby public response managers co-ordinated responses for complainants while liaising with the relevant head of the business area. HS2 published their new complaints process in April 2018.

21 May 2018 – HS2's second Chief Executive responded to Mr and Mrs D's concerns about (among other things) mitigation, their business loss claim, amendment of the complaints process and future engagement issues.

June to July 2018 — Mr and Mrs D complained to HS2 about the suspension of agent-to-agent communication.

August to October 2018 — Mr and Mrs D complained to HS2 about refusing to meet them about their forthcoming property move.

Evidence from Mr and Mrs D

186. Mr and Mrs D told us HS2's handling of their complaints sought to justify their own actions rather than really address the substance of the complaint. Mr and Mrs D considered HS2 failed to understand complaints from their point of view. Mr and Mrs D also considered HS2's acknowledgement about how they would handle their complaint in March 2018 was not in keeping with their published complaints process.

Evidence from HS2

187. HS2 said the proposed railway required an incomparable land acquisition programme. They said £2.6 billion had been spent on property and compensation programmes, which was unprecedented in scale and stretched the capacity of the industry. HS2 said this limited how much resource could be directed towards a single case. HS2 said one of their central concerns and difficulties was the disproportionate volume of correspondence and the large number of complaints they had received from Mr and Mrs D over the years. HS2 said:

- since 2014 they had received 2,342 emails from Mr D's email account in relation to the acquisition of his property and 524 emails to HS2's complaints inbox
- Mr and Mrs D asked for every member of staff allocated to their case to be removed
- Mr and Mrs D made personal criticisms[33] about HS2 staff
- they had received 50 formal complaints from Mr D and at least 12 of those had been escalated to step two of their complaints process (receiving responses from their Chief Executives). HS2 said Mr and Mrs D submitted 15 step one complaints in 2018
- 14 out of 25 complaints they had referred to the ICA (stage three of the complaints process) in 2017 and 2018 were from Mr and Mrs D[34]
- they located information relating to Mr and Mrs D's case within approximately 1,800 files, totalling 62.5GB of information which would fill 13 DVDs or 90 CDs.

188. HS2 told us handling and managing Mr and Mrs D's case took significant resources from their public response team:

[33] HS2 did not provide particular examples to us.

[34] Some of these bypassed step two of HS2's complaints process, receiving a response overseen by a senior member of HS2's staff at step one.

- it was a challenge for them to respond to the volume of correspondence and complaints raised by Mr and Mrs D. The amount of resources for handling Mr and Mrs D's case was disproportionate and was not productive for them or Mr and Mrs D
- they had tried to work towards a practical resolution of the many complaints raised by Mr and Mrs D, which often included proposing responses and potential solutions that sat outside the formal complaints procedure
- they had offered a single point of contact to ensure information about Mr and Mrs D's concerns was captured and addressed, as well as offering meetings with their Chief Executives. The meeting (May 2018) with the second Chief Executive had not provided a platform on which to build more fruitful dialogue
- they tried to provide a complaints service that went above and beyond services usually provided by public sector organisations
- they tried to accommodate Mr and Mrs D's requests wherever possible.

189. HS2 apologised for not explaining the trial of their new complaints process to Mr and Mrs D in March 2018.

Our findings — complaint 4

HS2's handling of substantive complaints

190. Mr and Mrs D complained HS2 handled complaints poorly because they failed to address the substance of their complaints. When they respond to complaints, we would expect public bodies to be *getting it right* and to be *open and accountable*. Complaint handling should focus on the outcomes for the complainant. Public bodies should have policies and procedures to flexibly resolve complaints in the most appropriate way. Public bodies should also be open and honest when accounting for their actions, and should provide evidence-based explanations.

191. Our views on HS2's handling of the substance of Mr and Mrs D's complaints are set out in complaints 1a, 1b, 1c, 1d, 2a, 2b, 2d,2f and 3 above. We do not intend to remake those findings here, but we will summarise them as a whole before considering HS2's overall approach to handling Mr and Mrs D's complaints.

192. Our consideration of HS2's handling of the substance of Mr and Mrs D's complaints shows a mixed picture. There were complaints where HS2 addressed the substance, failed to address the substance of the complaint and responded to matters that did not fall within the complaints process. We will consider these in turn.

193. We saw some evidence that HS2 handled Mr and Mrs D's substantive complaints reasonably. For instance, while we found errors with regard to HS2 passing information to their contractors, in terms of HS2's approach to

mitigation issues (complaint 1a), we considered they acted reasonably. We also considered that HS2 provided reasonable responses to Mr and Mrs D’s concerns about petitioning Parliament (complaint 2b), the second property manager (complaint 2d), and Mr and Mrs D’s requests for meetings (complaint 2f). We considered HS2’s response to Mr and Mrs D’s requests for meetings (complaint 2f) was reasonable, although we noted HS2 made errors in failing to respond, delaying responding and providing inconsistent responses. We considered HS2’s handling of Mr and Mrs D’s concern — that HS2 demonstrated a lack of understanding and care regarding the stress HS2’s actions had on them, were reasonable, however we noted HS2 failed to communicate effectively with Mr and Mrs D regarding surveys taking place on their property. These are all examples of HS2 addressing the substance of Mr and Mrs D’s complaints.

194. We have also identified instances where HS2 handled the substance of Mr and Mrs D’s complaints poorly. HS2 were not open and accountable and acted maladministratively when they addressed Mr and Mrs D’s concerns about agreeing the price of their property (complaint 1c), who was working on Mr and Mrs D’s case (complaint 1b), and their reasons for appointing a replacement agent/requiring a second survey for Mr and Mrs D’s case (complaint 2a). We found HS2:

- were not honest when they responded to Mr and Mrs D’s question about whether the first property manager was involved in their case (complaint 1b)
- did not engage with Mr and Mrs D’s query and provided confusing and contradictory responses to Mr and Mrs D about their valuation concerns (complaint 1c)
- did not properly engage with Mr and Mrs D’s question about the change in agents and the need for a further survey, and did not tell them the truth (complaint 2a).

195. In addition to HS2 not addressing the substance of Mr and Mrs D’s complaints, we also found instances where they used the complaints process inappropriately. HS2 negotiated Mr and Mrs D’s business loss claim (complaint 1d) through the complaints process when compensation matters fell outside HS2’s complaints procedure. We said by not adhering to the appropriate process, HS2 did not provide a pathway for Mr D towards a timely and clear decision.

196. We note HS2’s comments on the way they handled Mr and Mrs D’s complaints. HS2 told us they offered a complaints service to Mr and Mrs D which went above and beyond what a public sector organisation could usually offer (paragraph 188). HS2 considered the high levels of correspondence they received from Mr and Mrs D, and Mr and Mrs D’s criticisms of their staff, over a long period placed pressure on their service. HS2 said this affected their handling of Mr and Mrs D’s complaints. We understand what HS2 are saying. Mr and Mrs D’s correspondence with HS2 was voluminous and their working relationship with Mr and Mrs D was

strained. However, we consider HS2's own actions exacerbated the difficulties they experienced.

197. We recognise HS2 responded to overlapping complaints from Mr and Mrs D between 2015 and 2019. HS2 said they had received 2,342 emails from Mr and Mrs D since 2014 (paragraph 187). While we have not confirmed the accuracy of HS2's calculation, we accept they received a significant amount of correspondence from Mr and Mrs D over the course of four years. During 2018, for instance, we have seen HS2 fielded correspondence in relation to at least six separate complaints from Mr and Mrs D, which largely overlapped in time. We recognise handling high levels of communications on multiple issues presents challenges for public bodies and their complaints teams.

198. HS2 have not provided an example of Mr and Mrs D's approach towards HS2 that would justify HS2's failures in their handling of Mr and Mrs D's complaints. HS2's actions, by not engaging fully with Mr and Mrs D, by not providing honest answers to Mr and Mrs D's complaints and by not adhering to the complaints process, meant they were unable to address some of Mr and Mrs D's key concerns straightforwardly. If HS2 had done so, it would have saved them both time and resources. Mr and Mrs D were seeking direct responses to their questions. However, HS2's handling meant elements of their complaint handling identified above (paragraphs 194 and 195) were poor. To this extent, HS2 did not get it right and were not open and accountable. This was maladministration.

Adherence to the complaints process

199. Mr and Mrs D told us HS2's handling of their complaint in March 2018 was poor because it was not dealt with in accordance with their published process (paragraph 184). HS2's published procedure in March 2018 said the relevant head of division would respond at step one of the complaints process. Instead, HS2 told Mr and Mrs D a member of their public response team would reply to their complaint at step one. HS2 acknowledged (paragraph 189) they did not act in accordance with their complaints process and did not explain they were trialling a new complaints process to Mr and Mrs D. For these reasons, HS2 did not get it right and were not open and accountable. Their actions were maladministrative.

Complaint 5 — There was inadequate oversight of HS2's handling of their case

5a — The Independent Complaints Assessor did not investigate complaints independently and in a thorough way.

Complaint handling standards

200. Our Principles which apply to this aspect of the complaint are:

- *Getting it right* – public bodies should have regard to the relevant legislation and act in accordance with their policy and guidance
- *Being customer focused* – public bodies should bear in mind individual needs and respond flexibly to the circumstances of the case
- *Being open and accountable* – public bodies should be open and honest when accounting for their decisions and actions. They should give clear, evidence-based explanations, and reasons for their decisions
- *Acting fairly and proportionately* – the actions and decisions of a public body should be free from any personal bias or interests that could prejudice those actions and decisions.

Administrative background

201. Two ICAs were involved in Mr and Mrs D's complaints, the first ICA and the second ICA. The ICA's Terms of Reference from 2016 to 17[35] and 2017 to 18[36] say the ICA:

  - decides whether organisations falling under the Department for Transport (DfT) have handled a complaint appropriately, fairly, reasonably and proportionately
  - will address key facts in dispute
  - can raise queries with the DfT organisation about the complaint history, policy or legal background to answer the complaint to their satisfaction
  - has discretion to decide the extent to which any part of a complaint should be reviewed after considering information and documents. In doing so, the ICA can take account of whether it would be disproportionate to review a complaint in detail
  - will submit a draft review to the organisation for it to check accuracy, not for comment on conclusions or recommendations. Exceptionally, the ICAs may share a draft report with a complainant or organisation for comment to provide their representations before it is finalised
  - will make recommendations to restore the complainant to the position they would have been in had the poor service from the organisation not occurred.

202. The ICA's contract with the Department for Transport said they should avoid situations where their duties and private interests conflict or where there would be suspicion of conflict. Any such interests should be declared

[35] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655399/dft-ica-annual-report-2016-2017.pdf

[36] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821901/dft-independent-complaints-assessor-report-for-2017-to-2018.pdf

to the Department for Transport. The contract said in any particular matter which gave rise to a conflict of interest, the ICAs should withdraw from consideration of it.

Key events

203. Mr and Mrs D complained that the first ICA failed to provide oversight of HS2's handling of their complaints. They did not consider the first ICA was independent or thorough because they:

- blamed Mr and Mrs D for not accepting HS2's offer of a meeting
- accepted incorrect explanations from HS2 on valuation matters
- did not allow Mr and Mrs D to comment on their draft report.

204. We have set out the key events relating to the above aspects of the complaint in the same order:

HS2's offer of meeting Mr and Mrs D

February to **September 2016** — Mr and Mrs D exchanged correspondence with HS2 about their valuation concerns (complaint 1c).

25 July 2016 — HS2's first Chief Executive responded to Mr and Mrs D's further concerns about valuation matters. The first Chief Executive restated their offer to have the second property manager meet Mr and Mrs D to clarify any property or compensation matters.

27 July 2016 — Mr and Mrs D emailed HS2 and listed nine questions they would like responses to.

28 July 2016 — Mr and Mrs D emailed HS2 to say they would not meet them until HS2 responded to their questions.

Sharing of the draft report

8 October 2016 — Mr D emailed the first ICA. He said that '*we are anxious that the report is finalised ASAP so we can at least hold HS2 Ltd to account and stop them treating other people like this*'.

17 October 2016 — The first ICA shared their draft report with HS2.

7 November 2016 — The first ICA said they had received a raft of documents from HS2 and aimed to complete their report by the following week.

7 November 2016 — Mr D emailed the first ICA. He said:

> '*I am concerned that HS2 have miraculously now found a "raft of documents".*
>
> ...

- *Can we see these documents and be allowed to comment, and if not, why not?*

…
If you feel compelled to change your report either on a matter of (fact or conclusion) can you 'run it past' us first. We feel very much disadvantaged by the fact that HS2 Ltd appear to be "negotiating" your report at this late stage whilst we are kept in the dark.

…

My understanding is that the report should be normally finalised within 5 days of HS2 Ltd comments.

Can we talk?'

8 November 2016 — the first ICA emailed Mr D with a list of documents HS2 had sent.

8 November 2016 — Mr D emailed the first ICA again saying that he would like to see the documents that HS2 sent to the first ICA. He said that it was only fair and reasonable he should be able to comment on documents that may affect the first ICA's report that he may not have seen before. Mr D said that he had no confidence that HS2 would behave in a straightforward way.

9 November 2016 — The first ICA responded to Mr D's email. The first ICA said their Terms of Reference prohibited them from disclosing anything directly to individuals. The first ICA said they had to refer the request to HS2, which they would do '*first thing*'.

9 November 2016 — Mr D emailed the first ICA again. He told the first ICA their report was *'needed urgently'* and it was *'paramount that your report is dealt with as quickly as possible. Any update on timelines?'*.

9 November 2016 - the first ICA emailed HS2 with further information and requested an opportunity to talk through information in the draft report. The first ICA asked for HS2's comments if there were any errors, distortions or omissions. The first ICA spoke with HS2 later that day.

10 November 2016 - The first ICA emailed Mr D noting they had spoken earlier and acknowledging Mr D's recent communications. The first ICA said they had also spoken to HS2. The first ICA assured Mr D they were aiming to issue their final report the following week '*with a fair wind*'.

10 November 2016 – Mr D responded to the first ICA's email. Mr D asked if there was any news about releasing the documents HS2 had recently sent the first ICA.

The first ICA's report

16 November 2016 — The first ICA issued their report on Mr and Mrs D's complaint. The first ICA explained ICA reviews are predominantly desk-based and are not intended to be investigations. The first ICA said they did not obtain new evidence and they had reviewed HS2's and Mr and Mrs D's correspondence. The first ICA's report said they had shared two draft reports with HS2, on 17 October 2016 and 10 November 2016. The first ICA said their second draft encompassed two addition complaints HS2 had responded to. The first ICA also quoted HS2's explanations about agreeing a price for Mr and Mrs D's property in relation to their December 2014 contract (complaint 1c) and reflected Mr and Mrs D's position on valuation matters. The first ICA:

- noted Mr D refused to meet HS2 in July 2016 until all the points of his previous emails had been responded to. The first ICA considered it was unfortunate that Mr and Mrs D rejected the suggestion of resolving matters face-to-face with HS2 after many months of apparent deadlock. The first ICA appreciated Mr and Mrs D did not consider HS2 could be trusted in a meeting situation but the first ICA considered it was clear the complaints process was not a vehicle to resolve matters. In refusing to meet with HS2 and involve agents, the first ICA considered Mr and Mrs D bore some responsibility for the deadlock in summer 2016
- said it was not for ICAs to adjudicate on the parties' different interpretations of the Compensation Code
- considered HS2 should have established clearer lines for communication about the valuation. Although this could be hard to put into practice, HS2 should have maintained agent-to-agent discussions about the valuation
- considered HS2 did not address Mr and Mrs D's expectation that the price of their property would proceed to the Commercial Panel for agreement
- said HS2 erred when quoting the Compensation Code — they wrongly referred to the valuation date being the later of the two events cited by HS2 when they should have said the earlier. The first ICA said it introduced uncertainty for Mr and Mrs D about the reliability of HS2's account of their procedures. It also begged many questions for Mr and Mrs D about how the price of their property would be agreed and the status of the existing valuation
- HS2's view that agreeing the property price did not apply until HS2 took possession of the land did not accord with Mr and Mrs D's belief that the property price was agreed in February 2016. The first ICA considered HS2 needed to spell out the implications for valuation, exchange of contracts and completion more clearly to Mr and Mrs D
- HS2's explanations were incomplete, unclear and inconsistent. They did not spell out clearly enough HS2's application of the Compensation Code to Mr and Mrs D's specific circumstances.

The first ICA recommended that Mr and Mrs D should receive a consolatory payment of £500 to reflect that HS2 could have fixed their land compensation value earlier than they did, but balanced this with recognising that HS2 were paying for professional representation for Mr and Mrs D at each stage of the process.

Conflict of interest

205. Mr and Mrs D complained the first ICA was not independent and provided inadequate oversight because they failed to disclose a conflict of interest with a senior member of HS2's complaint handling team. The key events relating to this complaint are set out below:

7 October 2016 — the first ICA emailed Mr D. The first ICA said they had seen the interim complaints manager the day before in Swansea. The first ICA said the interim complaints manager was going to provide them with information about HS2's Commercial Panel and internal claim processes.

17 December 2017 — the first ICA provided a review on a work-related social media platform for HS2's interim complaints manager, who was leaving HS2 for another role. Both the first ICA and the interim complaints manager worked on Mr and Mrs D's complaint in relation to the first ICA's work on Mr and Mrs D's complaints.

The first ICA's social media review said:

> '*I have come across* [HS2's interim complaints manager's work] *in the governance and complaints fields for three organisations …* [At HS2 Ltd] *I worked closely with* [the interim complaints manager] *at the final tier of the internal complaints procedure. He was fully engaged with both technical complaint content and the bigger picture of governance assurance.* [The interim complaints manager] *is particularly skilled in handling complex and contentious casework.* [They] *facilitated full and frank consideration of dispute areas at my stage in a way that fostered mutual understanding, meaningful remedy and service development. At the time HS2 Ltd was changing very quickly and was subject to criticism from many directions as it moved towards the exercise of statutory powers.* [the interim complaints manager] *is also very personable and fun to work with.* [They] *challenge* [sic] *colleagues when necessary with humour and professionalism and is very obviously personally committed to instilling the highest standards of case handling.'*

5 February 2018 — Mr and Mrs D complained the first ICA's social media review reflected a conflict of interest, bias and collusion in the responses they received on their case from the first ICA.

13 February 2018 — HS2 responded to Mr D's complaint about collusion. HS2 said they were satisfied the social media review reflected professionals working in the

same sphere recognising that fact. HS2 said the professional networking caused them no concern. Further, they said the interim complaints manager had left HS2 in December 2017.

26 February 2018 — The first ICA told Mr and Mrs D they had never met HS2's interim complaints manager about ICA reviews although they had met them and other HS2 staff through regularly sponsored DfT meetings. The first ICA said their paths had also crossed when the first ICA had completed a piece of work for the interim complaints manager's former employer. When considering Mr and Mrs D's complaints, the first ICA said they spoke to both parties. The first ICA said they spent more time talking to Mr D than talking to HS2.

The second ICA's handling of substantive complaints

206. Mr and Mrs D complained the second ICA provided inadequate oversight of HS2 and was not independent or thorough because they mainly dealt with the procedure of handling complaints and ignored substantive issues. Mr and Mrs D said the second ICA did not address:

- mitigation concerns. In particular, HS2's '*lies*' about owning the land around the railway and the incident at the November 2017 community meeting
- the second property manager's continued involvement in their case and the behaviour of agent 2
- HS2's failure to clarify their actions on the business loss claim
- HS2's failure to answer their question about whether they would receive a home loss payment
- HS2 giving inconsistent statements about continuing agent-to-agent communication
- stress caused to them by HS2's handling of their complaints about stress. Mr and Mrs D considered the second ICA acted unfairly in saying HS2 did not consider having access to Mr D's medical details and ignored the issue. Mr and Mrs D also considered the second ICA treated their complaint about HS2's second Chief Executive as rhetorical.

207. The key events relating to this concern are set out below.

August 2018 —The second ICA offered to share their draft report with Mr and Mrs D. They told Mr and Mrs D:

> *'I am content that I have sufficient material to conduct a proportionate review, but if there is information you wish to share (either now or at fact-check step), I would of course be happy to receive it.'*

September 2018 — Mr and Mrs D provided detailed comments on the second ICA's draft report. Among other things, Mr and Mrs D said the second ICA had not considered:

- their concern about delay in HS2 processing their business loss claim; and
- correspondence from 2017. Mr and Mrs D said HS2 sent them letters, not included in the draft ICA report, where Mr and Mrs D considered HS2 had provided misleading information. Mr and Mrs D said HS2 '*gave us a number of clearly wrong and misleading pieces of information in autumn 2017*'. Mr and Mrs D did not specifically say this misleading information referred to ownership of land.

October 2018 — The second ICA issued their final report and made separate considerations and findings on a number of matters that are also covered in this investigation. We have referred to the relevant section of our report (above) for details of the underlying chronology of events. In their report, the second ICA referred to their Terms of Reference (paragraph 201), which set out the ICA's discretion to decide the extent to which a part of a complaint should be reviewed, in particular when it may be disproportionate to review a complaint in detail. The second ICA said they had applied this clause to Mr and Mrs D's case as a number of Mr and Mrs D's concerns were more significant than others, and they were conscious ICA reviews were conducted at the public expense and PHSO may be asked to investigate. The second ICA found:

Mitigation (complaint 1a)

- HS2 felt unable to discuss mitigation measures until plans for their main works were further developed. Whilst this was frustrating for residents, the second ICA did not consider it was maladministration
- HS2's plan to speak with Mr D at the community drop-in surgery in September 2018, with the contractors present, was a reasonable way for HS2 to engage about mitigations to the railway line
- '*I can come to no view myself about the conduct of the member of staff to whom* [Mr D] *referred* [at the Community event in November 2017] *but* [HS2] *could properly point to the absence of any other complaints as indicating that any offence to* [Mr D] *was unintended.'*

Delay in HS2's handling of business loss claim (complaint 1d)

- exchanges between Mr and Mrs D's agent and agent 2 on the business loss claim were matters for their professional bodies
- HS2 did not engage with the substance of Mr and Mrs D's complaint which was as much about the delay in payment as it was about the involvement of the second property manager and agent 2 (below)
- The second ICA was unsure how far the issue of delay would be covered in PHSO's ongoing investigation.

Involvement of the second property manager and agent 2 in their case (complaint 2d)

- HS2 provided reasonable grounds in response to Mr and Mrs D's concerns on this matter (paragraph 145)

- It was not possible to mount a detailed inquiry into all the contact Mr and Mrs D had with the second property manager and agent 2
- It was not for the second ICA to tell the second Chief Executive of HS2 how to deploy their staff
- It was a matter of judgment for senior staff at HS2 as to whether the relationship between Mr and Mrs D and the second property manager/agent 2 had become so fractured that they required fresh personnel and was not something on which an ICA could properly opine.

Home loss payment (complaint 1c)

- HS2 had provided reasonable and logical responses about Mr and Mrs D's request about their home loss payment (key dates 19 and 31 July 2018 at complaint 1c).

Stress

208. The events that gave rise to Mr and Mrs D's complaint about stress are set out below:

2013 to 2018 — Mr and Mrs D corresponded with HS2 about their various complaints. Several pieces of this correspondence included Mr and Mrs D telling HS2 their actions were impacting negatively on their and other residents' health.

8 May 2017 — HS2 emailed Mr and Mrs D in response to their concerns that dealing with HS2 was causing them ill-health and Mr and Mrs D's question about what risk assessments were carried out. HS2 told Mr and Mrs D:

- they published a Health Impact Assessment in November 2013 that identified the potential effects on health resulting from construction and operation of the railway
- HS2 always acknowledged that the relocation of residents and homes could cause stress and anxiety
- HS2 had sought to make reasonable accommodations and engagement with Mr and Mrs D to make things less stressful
- '*Having reviewed previous correspondence, we are unable to identify instances of you providing medical details to HS2 Ltd of any specific contributory health impact caused to you and your family by your interaction with HS2 Ltd. Should you be in a position to confirm this then HS2 Ltd will, of course, consider this in how we engage with you.*'

29 May 2017 — Mr and Mrs D told HS2 that while they had not previously provided medical details to HS2, they had repeatedly warned HS2 of the effects their maladministration was having on their health. Mr and Mrs D said they did not believe it was appropriate to disclose medical details to HS2 and were shocked HS2

seem to only be willing to consider how they might operate after receipt of detailed medical evidence.

15 December 2017 — The second Chief Executive of HS2 wrote to Mr and Mrs D's MP. They repeated the explanations about the Health Impact Assessment and added:

> *'HS2 Ltd is also committed to addressing the needs of people and communities who have protected characteristics as specified by the Equality Act 2010 … by providing reasonable adjustments. For us to be able to explore and understand if reasonable adjustments may be appropriate for Mr and Mrs* [D] *it would be helpful to have further detail on the health issues they have raised. I assure you that this information would be handled both sensitively and confidentially.'*

16 January 2018 — Mr and Mrs D emailed HS2. Mr and Mrs D said they were shocked HS2 might feel it appropriate to hand over personal and confidential medical details to a non-medically qualified officer. They told HS2 their medical details had been lodged with their solicitor and would only be released following advice from the solicitor, and they expected HS2 to fund such advice.

January 2019 — The second ICA issued their final report for Mr and Mrs D's complaints:

- HS2's actions over the previous six years had caused them stress over the previous six years and nothing had been done to alleviate it. Mr and Mrs D told HS2 and the second ICA they levelled this complaint personally against the second Chief Executive of HS2
- Mr and Mrs D complained HS2 halted agent-to-agent communication in May 2018 (complaint 1d).

209. The second ICA's report considered Mr and Mrs D's recent correspondence (paragraph 208) and found:

- So far as access to Mr D's medical records was concerned, the second ICA did not think HS2 envisaged having such access
- HS2's offer about medical evidence was an invitation to consider if Mr and Mrs D were formally seeking reasonable adjustments under equality legislation
- the fundamental issue was the extent to which the HS2 railway line would impact on those living along and adjacent to the route, as well as HS2's actions and inactions, in relation to Mr and Mrs D's health and well being and that of other residents
- they could not offer any views on the link between HS2 (the project itself, or the manner in which it was being delivered) and the health and well being of Mr and Mrs D's family
- this was not an issue that could be resolved through any complaints procedure, let alone a '*light-touch*' ICA process

- HS2 were alert to the issue of stress through their Health Impact Assessment, however, to encourage further progress, the ICA recommended HS2 commission their own research on the best ways of reducing anxiety and stress
- There were no specific behaviours on the part of the second Chief Executive, so HS2's choice to treat Mr and Mrs D's personal complaint as rhetorical was appropriate
- If Mr and Mrs D and their solicitor believed there was a claim for damages against HS2, the matter was in their own hands.

Consistency of statements on agent-to agent-communication (complaint 1d)

210. The second ICA found:

- HS2 did not handle the matter well and should have explained to Mr and Mrs D's agent why they halted communication.

<u>Evidence from the ICAs</u>

211. The ICAs told us they undertake a fair, light-touch and proportionate consideration of the complaint, which involves a review of the papers. The ICA will not explicitly give a complainant the opportunity to set out their complaint again, as it should be clearly contained in the information handed to the ICA by HS2. The ICAs are not expected to comment on legislation or policies.

The first ICA

212. The first ICA said that they did not opine on the merits of the correct interpretation of the valuation date. The first ICA did not believe that they went too far by expressing an opinion, directly or implicitly, on the merits of either party's interpretations of the Compensation Code.

213. The first ICA said that when they shared queries with organisations, they would set out the events and include questions and possible findings that they would often test with the organisations concerned. The first ICA said that this was an exploratory process. The first ICA said Mr D called them regularly and they had liaised far more extensively with Mr D during their first review in 2016 than with HS2.

214. The first ICA did not consider that Mr D's email correspondence was clear in asking to see a copy of the draft report. The first ICA said:

- if Mr D's request had been clearer, they would have responded by issuing Mr and Mrs D with a copy as they had done in the past when someone requested it.
- Mr D's email of 7 November 2016 should be seen within the context of his correspondence with the first ICA at the time. The first ICA said Mr D's emails were contradictory as he was also asking for the report

to be issued quickly and had been more focused on obtaining copies of papers HS2 had sent to the first ICA in early November 2016.

- they did not feel compelled to change their report by HS2 or that HS2 were negotiating an outcome with them.
- They shared their view on emerging findings with both parties. The first ICA said the fact Mr D had referred to running changes past him (in the email of 7 November 2016) showed that Mr D was aware of what the first ICA was proposing to say in their report. The first ICA said when they tested their views with Mr D, Mr D sent lengthy emails the following day in response.
- Their final report was clear they had shared two draft reports with HS2, but Mr and Mrs D had not complained about not seeing the first ICA's draft report Spring 2018, over a year after the first ICA issued their final report.

215. The first ICA said the '*working draft*' sent to HS2 in 2016 was '*just that*'. The first ICA said that there was no prescribed stage for sharing a draft with a complainant. In hindsight, the first ICA said that they had not shared Mr and Mrs D's report in draft because:

a. it was impossible to finalise a report when there were new complaints arriving continuously from Mr and Mrs D
b. the first ICA had already spent 88 hours on the report and considered 800 pages of correspondence
c. in 2016 there were lots of ICA cases backing up and requiring a review
d. both parties were keen for a steer on how to resolve matters and needed to achieve closure.

The second ICA

216. The second ICA told us thoroughness is not solely determined by the time devoted to a review. However, their review of Mr and Mrs D's first complaint in October 2018 took 51 hours to complete and the second took 18 hours. The second ICA said this was the longest time they had spent on a review in six years. The second ICA said that they did not believe they ignored the substantive issues of Mr and Mrs D's complaints. The second ICA said Mr and Mrs D's complaints needed deconstructing. The second ICA said their intention in sharing the draft with Mr and Mrs D was to see where the complainant disagreed with their draft view. The second ICA said they did not know the issue of ownership of land was an issue for Mr and Mrs D until it was raised in our investigation. The second ICA said it had not been raised with them in 2018 by HS2 or in their correspondence with Mr and Mrs D. The second ICA said it was not their practice to go back and forth between the organisation and complainant, which would be for a forensic investigation and not a '*light touch*' ICA review. The second ICA said it was not their role to adjudicate on appropriate mitigation measures HS2 would put in place and they were content that these remained an open question at the time of their review.

217. In relation to their handling of Mr and Mrs D's complaint regarding delay in HS2 paying their business loss claim, the second ICA said their report clearly set out their remit — they could not adjudicate disputes which were for the Lands Chamber Tribunal (paragraph 11). The second ICA said there was a degree of overlap between Mr and Mrs D's complaint and their findings on this issue that should be read in the context of the whole October 2018 report. The second ICA considered they had referred to their remit (not to get involved in compensation matters) in other sections of the report which considered HS2's handling of Mr and Mrs D's request for removal of the second property manager and agent 2. The second ICA said:

> '*In short,* [Mr D] *is right to say that I did not deal with his business loss claim (in the sense of adjudicating upon it), but that was in reflection of my terms of reference and the responsibilities of the Lands Tribunal. …*'

<u>Evidence from the interim complaints manager</u>

218. The interim complaints manager told us that before they started working at HS2, Mr and Mrs D's complaint had already been assigned to the first ICA. The interim complaints manager said Mr and Mrs D's case was one of a number of cases they liaised on with the first ICA. The interim complaints manager said although they had worked at two organisations which the first ICA had also worked at, both they and the first ICA had not worked for their mutual previous employer at the same time. The interim complaints manager said their first direct contact with the first ICA was at HS2. The interim complaints manager did not consider it was unusual for a departing employee to seek a recommendation or reference from an employer or colleague to assist in being successful in gaining further employment. The interim complaints manager said that this was why they had sought a recommendation from the first ICA on social media.

<u>Evidence from Mr and Mrs D</u>

219. Mr and Mrs D said the first ICA:

- allowed HS2 to comment on their draft report but did not allow them to comment, despite Mr and Mrs D having asked. Mr and Mrs D said they recalled asking the first ICA to see their draft report, but accepted it may have been made verbally and not documented. However, Mr and Mrs D considered their reference to feeling kept in the dark in their email of 7 November 2016 suggested they had already asked to see the draft report
- shared two draft reports with HS2 but did not share changes with them (Mr and Mrs D) even though they asked the first ICA for an opportunity to comment on any changes
- did not test views with them before issuing their final report
- incorrectly said Mr and Mrs D bore some responsibility for the deadlock on valuation matters by not meeting HS2 in July 2016

- erred when saying the valuation matters should have been settled by agents in their infancy
- accepted inaccurate explanations from HS2 on valuation matters
- failed to disclose a conflict of interest with HS2's interim complaints manager. Mr and Mrs D considered the first ICA was not transparent about not meeting to discuss ICA reviews, as shown by the first ICA's email of 7 October 2016 showing they met the interim complaints manager.

220. In responding to the second ICA's reports, Mr and Mrs D considered the second ICA had taken a '*narrow (and subsidiary) aspect of HS2 Ltd "complaints handling" while ignoring the serious and substantive issues of our underlying complaints*'. Mr and Mrs D said the second ICA did not take their concerns seriously. Mr and Mrs D told us the second ICA did not address:

- stress caused to them by HS2's handling of their complaints about stress. Mr and Mrs D considered the second ICA acted unfairly in saying HS2 did not envisage having access to Mr D's medical details and ignored this. Mr and Mrs D also considered the second ICA treated their complaint about HS2's second Chief Executive as rhetorical
- mitigation concerns. In particular, HS2's '*lies*' about owning the land around the railway and the incident at the November 2017 community meeting. Mr and Mrs D said the second ICA did not obtain witness evidence about what happened in November 2017
- the second property manager's continued involvement in their case and the behaviour of agent 2
- HS2's failure to clarify their actions on the business loss claim
- HS2's failure to answer their question about whether they would receive a home loss payment
- HS2 giving inconsistent statements about continuing agent-to-agent communication.

Our findings — complaint 5a

221. Mr and Mrs D complained the ICAs did not investigate complaints independently or thoroughly and, therefore, provided inadequate oversight of HS2. Our Principles say public bodies should be open and accountable, providing clear and evidence-based reasons for their decisions. We would expect organisations to be customer-focused — to respond to each situation on its merits and to be open and accountable by making clear, evidence-based decisions. Our Principles also say public bodies should act fairly and proportionately to ensure their actions and decisions are free from bias.

The first ICA's handling of valuation matters

222. Mr and Mrs D said the first ICA accepted incorrect explanations from HS2 on valuation matters and wrongly said valuation matters should have been settled in their infancy by agents. The first ICA's report reflected both HS2 and Mr and Mrs D's views on valuation matters, having sought clarification from both parties. The first ICA also said they had spoken to both parties about their views. Having done so, the first ICA's report explained they could not opine on interpreting the Compensation Code, therefore the first ICA did not accept or reject an explanation from HS2 about valuation matters. The first ICA found HS2 provided inconsistent and unclear explanations to Mr and Mrs D. The first ICA also considered HS2 did not properly engage with the query Mr and Mrs D raised about valuation matters. For these reasons, we consider the first ICA was open and transparent in reflecting the evidence they relied on in relation to valuation matters and provided reasons to support their view of HS2's handling of the matter. The first ICA's view on the role of agents also reflects HS2's process for agreeing compensation (paragraphs 86 and 87). Therefore, we see no grounds to question the independence or thoroughness of the first ICA's view.

The first ICA's view of meeting requests

223. Mr and Mrs D considered the first ICA unfairly apportioned blame to them for not meeting HS2 to resolve their concerns. The first ICA's report reflected HS2's agreement to a meeting and Mr and Mrs D's reasons for rejecting the meeting — that Mr and Mrs D wanted answers to their questions before meeting HS2. The first ICA said they could see Mr and Mrs D had concerns about trusting HS2 but thought a meeting between the parties might be a more constructive way to resolve matters. The first ICA considered Mr and Mrs D bore some responsibility for not meeting HS2 and their agents to resolve the valuation matters.

224. Whilst we appreciate Mr and Mrs D felt the ICA's position was unfair, the first ICA's report shows they weighed up relevant factors and took account of Mr and Mrs D's position. The first ICA considered a meeting between the parties might have helped resolve matters. We consider the first ICA considered relevant issues and explained their rationale for reaching their decision on HS2's offer of a meeting. For these reasons, we consider the first ICA reached a reasonable conclusion.

The first ICA's decision on sharing their draft report

225. Mr and Mrs D believed it was not independent or thorough for the first ICA not to have shared the draft report when they had asked the first ICA to do so. The ICA's terms of reference show they have discretion to share their draft reports, exceptionally, with complainants (paragraph 201). The first ICA said they would have shared the draft report with Mr D if they had received a clear request.

226. In isolation, Mr D’s email of 7 November 2016 asking the first ICA to run things past them and Mr D’s other comments, such as his concern about being kept in the dark, look like a request for sight of the first ICA’s draft report. It is clear in the sense that Mr D asked the ICA to share any changes with him, but it was not clear how Mr D wanted the changes communicated. It was not clear Mr D was asking for sight of the draft report. On the balance of probability we consider the first ICA did run things past Mr D after 7 November 2016, albeit not through sharing the draft report. This is because:

- The first ICA likely discussed their thoughts with Mr D after 7 November 2016. The first ICA had discussions and exchanged email evidence with Mr D after 7 November 2016 in connection with the draft report. On 10 November 2016 the first ICA emailed Mr D noting their recent telephone call and emails, and said they had also spoken to HS2. This supports the first ICA’s view that they had ongoing discussions with Mr D and Mr D’s email of 7 November 2016 was not a clear request.
- We have seen no evidence that after 7 November 2016 M D asked the first ICA to tell him about any changes, for sight of the draft report, or for information about its contents. While we do not know the content of the telephone conversations, their email exchanges and conversations did not lead to a further request from Mr D to share thinking or a clear request for sight of the draft report. In comparison, after 7 November 2018 Mr D continued asking the first ICA about timescales to finalise the report (9 November 2016) and for access to HS2’s ‘*raft*’ of documents (8 and 9 November 2016). The first ICA told Mr D on 10 November 2016 about their plans to finalise the report imminently. This is a strong indicator that the first ICA had run things past Mr D as it suggests the first ICA’s telephone calls and correspondence had addressed what Mr D was seeking. While we recognise that Mr D is now saying he was not satisfied, we consider the first ICA acted reasonably based on the information available to them at the time.

227. In summary, the request Mr D made on 7 November 2016 was not clearly a request to see the report but to know what the changes would be. The evidence shows that the first ICA and Mr D had a number of discussions about Mr D’s complaint, including after 7 November 2016. While we do not know what was said in those discussions we cannot say they did not include the content of the draft report. We also note Mr D’s other repeated requests around the same time and that there were no further requests for changes or sight of the draft report. Lastly, the ICA Terms of Reference does not require ICAs to routinely share draft reports. For these reasons, we consider the first ICA acted reasonably in not sharing their draft report with Mr and Mrs D.

228. We recognise many organisations consider it appropriate to share draft reports with all parties in order to help ensure transparency, fairness and accuracy. We consider this is good and appropriate policy for complaint handlers. Therefore, the ICAs, together with the Department for Transport, may want to consider their approach to sharing draft reports in order to be more open about ICA work and in keeping with modern practices.

Conflict of interest

229. Mr and Mrs D considered the first ICA failed to disclose a conflict of interest with the interim complaints manager at HS2. We would expect the ICAs to take account of our Principles, which also say public bodies should act fairly and proportionately to ensure their actions and decisions are free from bias.

230. Both the first ICA and HS2's interim complaints manager confirmed they worked at the some of the same organisations (key date 26 February 2018 and paragraph 218), but not at the same time. HS2's interim complaints manager said they had also worked together on a number of previous complaints, met professionally but held no personal relationship outside their professional roles. The first ICA's social media review focused on the interim complaints manager's abilities on work-related matters. In particular, we do not consider positive feedback is evidence of a personal relationship. There was no evidence the relationship was personal or anything other than professional. We realise Mr and Mrs D are concerned there was collusion in October 2016. The first ICA said they did not meet the interim complaints manager about ICA reviews but came across each other at Department for Transport events (paragraph 205 key date 26 February 2018). The first ICA was open with Mr and Mrs D that they had seen the interim complaints manager on 6 October 2016 and they asked for some records relating to Mr and Mrs D's case. We do not consider this is evidence of collusion. Therefore, we cannot say the first ICA acted unreasonably.

Second ICA's handling of Mr and Mrs D's mitigation concerns (complaint 1a)

231. Mr and Mrs D did not consider the second ICA was independent or thorough because they ignored Mr and Mrs D's substantive complaint about their mitigation concerns. In particular, Mr and Mrs D said the second ICA did not properly address their concern about HS2's ownership of the land and the incident with an HS2 staff member in November 2017.

232. The second ICA considered HS2 acted reasonably in saying they could not discuss mitigation issues until they had completed their detailed plans for the railway line, and community forums were an appropriate way for Mr and Mrs D to raise their concerns. While we appreciate Mr and Mrs D disagree, the second ICA provided reasons to support their view. Therefore, we consider the second ICA acted reasonably.

233. We accept the second ICA's reference to the incident in November 2017 – allegation of rudeness - between HS2 and Mr D (key date October 2018) was brief. It would have been more helpful if the second ICA had weighed up the evidence of both parties and the difficulties of adjudicating differing accounts of the same incident (paragraph 32). This would have helped Mr and Mrs D understand how they reached their view. However, the second ICA pointed to the lack of evidence available to HS2 on this matter. While Mr and Mrs D said the second ICA should have consulted witnesses, we note the ICA's terms of reference set out their role to review documents, rather than investigate complaints (paragraph 201). Therefore, we consider the ICA provided sufficient grounds to reach their decision on this matter and addressed the substantive issue.

234. The ICA's reasons for accepting HS2's approach to mitigation matters overlapped with our findings (complaint 1a). The second ICA had taken the step of seeking Mr and Mrs D's comments on their draft report to identify areas of disagreement and consequently, Mr and Mrs D had expressed concern about HS2 providing misleading information in correspondence in autumn 2017 when commenting on the second ICA's draft report in September 2018 (see key date). They later said this concern related to HS2's statements about ownership of land. However, Mr and Mrs D's annotated comments to the second ICA made no mention of ownership of land. The second ICA has told us (para 215) he was unaware at the time that Mr and Mrs D's concerns related to ownership of land.

235. That said, given Mr and Mrs D's concerns were about correspondence in 2017 they believed was missing from the second ICA's report, it raises the question about whether the second ICA should have gone back to Mr and Mrs D to explore further this missing correspondence and the misleading statements. The second ICA's review was open about being proportionate and that they intended to address Mr and Mrs D's key concerns. The second ICA told us they had considered Mr and Mrs D's comments (paragraph 216) but, essentially, did not consider they were significant to their finding, as the issue of mitigation was ongoing (HS2 had committed to considering Mr and Mrs D's mitigation matters with their contractor). This is similar to our finding on the issue of ownership of land (paragraphs 34 and 36). For the reasons above, while the second ICA could have been clearer about their thinking, we do not consider the second ICA's decision not to explicitly address Mr and Mrs D's comments in relation to misleading information was unreasonable.

Mr D's request to HS2 for clarity on his business loss claim (complaint 1d)

236. Mr and Mrs D complained the second ICA did not consider the substance of their complaints about HS2 failing to clarify their position on Mr D's business loss claim. The second ICA's report said Mr and Mrs D's exchanges between the agents (on the business loss claim) were a matter for their professional bodies. The second ICA said HS2 had not addressed the

substance of the complaint and referred to their uncertainty about how far the issue of delay (Mr and Mrs D refer to this as lack of clarity) in HS2's response to the business loss claim would be covered by PHSO's ongoing investigation into this matter (complaint 1d).

237. The second ICA's reference to agent-to-agent negotiations being outside the complaints remit is in keeping with our view (complaint 1d) that matters relating to compensation claims should not have been dealt with using the complaints process. However, the second ICA did not give a view on Mr and Mrs D's concern about the time taken for HS2 to provide clarity on Mr D's business loss claim. The second ICA clearly noted this was separate from issues relating to the second property manager and agent 2 (key date October 2018).

238. The second ICA told us (paragraph 216) they considered their report should be considered holistically and a number of Mr and Mrs D's complaints overlapped. However, the second ICA's report separated out Mr and Mrs D's various complaints and commented on each one individually. In the second ICA's findings on this matter, they did not comment on the issue of delay. Instead, the second ICA referred to uncertainty about PHSO's investigation without establishing PHSO's position or giving a view on the matter. The second ICA did not explain why they made no finding. For these reasons, we consider the ICA did not directly address the substance of Mr and Mrs D's complaint on this issue. We do not consider this was open or accountable, as the second ICA did not provide a clear and transparent view. We find maladministration to this extent.

The continued involvement of the second property manager and agent 2 in Mr and Mrs D's case

239. Mr and Mrs D said the second ICA did not address their concern about the continued involvement of the second property manager and agent 2 in their case (complaint 2d). We have already found the second ICA provided a confusing response (paragraph 239) and that may have given rise to Mr and Mrs D's concern that the second ICA had not acted independently or thoroughly.

240. We accept the second ICA communicated their considerations in an indirect way. Their retrospective explanations said it was not proportionate for them to undertake a root and branch review of Mr and Mrs D's concerns about the second property manager and agent 2. The second ICA also referred to not being able to instruct HS2 how to deploy their staff. While the second ICA's statements here were not incorrect or out of keeping with their Terms of Reference, they detracted from the fundamental point they were trying to convey to Mr and Mrs D. In particular, the second ICA believed HS2's conclusions were reasonable in not removing the second property manager and agent 2 from Mr and Mrs D's case. The second ICA pointed to HS2's reasons to support their view.

For these reasons, we consider the second ICA addressed the substance of Mr and Mrs D’s complaints.

Home loss payment

241. Mr and Mrs D said the second ICA failed to address their concern that HS2 did not answer their question about receiving the home loss payment for many months. The second ICA considered HS2 provided reasonable responses to Mr and Mrs D’s query about the home loss payment, and referred to the responses HS2 provided. Therefore, we consider the second ICA addressed the substance of Mr and Mrs D’s complaint on this matter.

The second ICA’s consideration of stress

242. Mr and Mrs D said the second ICA did not properly address HS2’s handling of their complaints about stress. Mr and Mrs D considered the second ICA acted unfairly in saying HS2 did not envisage having access to Mr D’s medical details and ignored their concerns about stress caused to them. Mr and Mrs D also considered the second ICA treated their complaint about HS2’s second Chief Executive as rhetorical.

243. In responding to Mr and Mrs D’s concern about their medical records, the second ICA pointed to evidence where HS2 explained they were seeking information about whether Mr and Mrs D were requesting a reasonable adjustment under equality legislation (see key date 15 December 2017). While we appreciate that Mr and Mrs D disagree with the second ICA’s view, they gave their view on the substantive complaint and pointed to the evidence that supported it. Therefore, we do not consider the second ICA acted unreasonably.

244. We recognise the second ICA’s report did not go into detail about Mr and Mrs D’s complaint about the stress HS2 caused them over six years. However, the ICAs’ Terms of Reference are clear that they have discretion about the extent to which they will consider a complaint in detail and have regard to proportionality (paragraph 201). The underlying events for Mr and Mrs D’s complaint about stress referred to six years of events and previous complaints, many of which had already completed the complaints process. Therefore, we consider it was reasonable for the second ICA to explain they did not consider that Mr and Mrs D’s concerns about stress could be resolved through a ‘*light touch*’ ICA review. We note the second ICA was open about this. The second ICA also explained how Mr and Mrs D could pursue matters if they considered they had a legitimate claim for damages.

245. We appreciate also that Mr and Mrs D held the second Chief Executive personally accountable for the stress they complained of. However, the second ICA pointed to HS2’s corporate responsibility, rather than a personal one resting with the second Chief Executive. The second ICA was open about the reasons for their decision and explained why they thought

it was helpful to ask HS2, corporately, to progress a more generic solution to the issue of stress. For these reasons, we consider the second ICA's report was open and accountable about their approach to the complaint and their reasons for approaching it in the way they did.

Suspension of agent-to-agent communication

246. Mr and Mrs D said the second ICA did not fully address HS2's suspension of communication between their agent and agent 2 from May 2018 (complaint 1d). However, the second ICA found HS2 failed to communicate with Mr and Mrs D on this matter and upheld the complaint. Therefore, we consider the second ICA addressed the substance of Mr and Mrs D's complaint on this matter.

Complaint 5b — The Residents' Commissioner's involvement was not helpful or independent

Our Principles

247. Our Principles that apply to this aspect of the complaint are:

- *Getting it right* — public bodies should have regard to the relevant legislation and act in accordance with their policy and guidance
- *Being customer focused* — public bodies should bear in mind individual needs and respond flexibly to the circumstances of the case
- *Being open and accountable* — public bodies should be open and honest when accounting for their decisions and actions. They should give clear, evidence-based explanations, and reasons for their decisions.

Administrative background

248. In April 2014 HS2 announced that a Residents' Commissioner would be appointed. The Residents' Commissioner was appointed in January 2015, at the same time the Residents' Charter was announced. The Residents' Charter said the Residents' Commissioner would provide reports about HS2's communications with residents and hold HS2 to account for commitments made in the Residents' Charter. This included HS2's commitment to respond to questions and complaints in a timely way. The Residents' Charter added that the Residents' Commissioner was not an arbitrator for individuals' property concerns. The Residents' Charter said complaints should be dealt with using the complaints process as the Residents' Commissioner was not an alternative to the complaints process.

249. HS2 commissioned a report into HS2's *Complaints Handling and Community Engagement*, which was published in April 2016. As a result of a recommendation in that report, the Residents' Commissioner began looking

at trends and emerging themes in HS2’s complaints in relation to communication.

Key events

250. The key events are set out below:

Handling of queries about HS2’s approach to the valuation date

22 June 2016 — Mr and Mrs D emailed HS2 in relation to their concerns about the valuation for their property (complaint 1c). They asked HS2 to forward their email to the Residents’ Commissioner for a response.

8 July 2016 — Mrs D emailed the Residents’ Commissioner on 8 July 2016. She said their family had already suffered four years of stress and uncertainty but HS2 were still placing obstructions, particularly on the issue of valuation (complaint 1c). Mrs D said she would like someone to see things from her point of view and deal with her with sensitivity, respectfully and with integrity. Mrs D said this was a hugely traumatic time and that she was at breaking point because of the pressure and worry that HS2 continued to load on them. Mrs D said that she would like to meet the Residents’ Commissioner to explain the effects of HS2’s actions on her family.

July 2016 — The Residents’ Commissioner exchanged emails with HS2’s first Chief Executive after speaking to HS2’s complaints team and Director of Engagement. The Residents’ Commissioner was concerned to see the problems between HS2 and Mr and Mrs D, and could understand Mr and Mrs D’s position. The Residents’ Commissioner offered HS2 options to consider that might resolve the valuation issue, and raised the option of mediation. The Residents’ Commissioner told HS2 that while they wanted to help Mr and Mrs D, it was not within their remit to deal with individual cases and intervening could adversely impact their role.

21 July 2016 — In the absence of a response to their email of 22 June 2016, Mr and Mrs D contacted the Residents’ Commissioner directly.

22 July 2016 — The Residents’ Commissioner replied to Mrs D explaining they had spent some time looking at recent correspondence Mr and Mrs D had exchanged with HS2. The Residents’ Commissioner said their remit was to look at how HS2 were communicating with residents over the property schemes they had introduced and their general communication. They said they had no remit over individual cases as per the Residents’ Charter. However, the Residents’ Commissioner said they were concerned about the lengthy correspondence taking place between the two parties and wanted to offer one suggestion to try and move the situation forward. The Residents’ Commissioner thought a mediator might be able to help. The Residents’ Commissioner provided Mrs D with information about mediator services that were available. The Residents’ Commissioner hoped that this would be of assistance and apologised that they could not be more actively involved.

12 September 2016 – Mr and Mrs D complained the Residents' Commissioner was turning their back on them. They said the Residents' Commissioner was content to talk to HS2 about their case and read correspondence, but refused a meeting with them. Mr and Mrs D said meetings allowed HS2 to tick the box for engagement, but at least what was expressed in writing was clearly documented for all to see. Mr and Mrs D raised concerns with the Residents' Commissioner about the time and expense of using a professional mediator, and said that the Residents' Commissioner was *'in cloud cuckoo land'*.

15 February 2017 – The first ICA did not uphold Mr and Mrs D's complaint about the Residents' Commissioner. The first ICA considered:

- the Residents' Commissioner was right to tell Mrs D they could not become involved in her individual case and their suggestion to Mrs D about mediation was their attempt to seek a solution to the issues with HS2
- Mrs D's genuine distress should have been more directly acknowledged by the Residents' Commissioner
- it would serve little or no purpose for the Residents' Commissioner to meet Mr and Mrs D, as the Residents' Commissioner could not influence the outcome of Mr and Mrs D's particular negotiations with HS2
- it was appropriate for the Residents' Commissioner to suggest mediation as it fell squarely within their role to promote communication standards (paragraph 249).

Handling of queries about HS2's complaints process

14 March 2018 – In response to a complaint from Mr and Mrs D, HS2 said stage one of the complaints process involved an investigation and response from the Public Response Team. This was different to HS2's published complaints process at that time, which said a stage 1 response would be completed by the head of the relevant directorate.

15 March 2018 – Mr and Mrs D told the Residents' Commissioner HS2 were not acting in accordance with their published complaints guidance. Mr and Mrs D said this meant the complaints process was not providing a check and balance on the actions of HS2. In particular, Mr and Mrs D said HS2's recent acknowledgment of their complaint said it was not acceptable or in accordance with the complaints process for a public response manager to respond to their complaint. Mr and Mrs D also said their complaints were either not responded to or were done so long after the deadline in the complaints process.

27 March 2018 – The Residents' Commissioner pointed Mr and Mrs D towards the 2016 report commissioned by HS2 about HS2's complaint handling and the need for central co-ordination. The Residents' Commissioner said since that time, considerable progress had been made on complaints tracking and handling, including the engagement of four new members of staff to the public response

team and the trial of new ways to better manage complaints. The Residents' Commissioner said HS2 were trialling a process where public response managers co-ordinated responses for complainants while liaising with the relevant head of the business area. The Residents' Commissioner said it was only by trialling new ways of working that improvements could be made, and the changes would be published shortly.

October 2018 — The second ICA upheld Mr and Mrs D's complaint about HS2, in relation to introducing a new complaints process before it was published.

December 2018 — Mr and Mrs D asked the Residents' Commissioner why they had justified HS2's action on the complaints process in February 2018.

January and February 2019 — The Residents' Commissioner said their role was not part of the complaints process and they could not investigate HS2's complaints process. The Residents' Commissioner said their email to Mr and Mrs D of March 2018 explained as factually as they could what complaints processes HS2 were trialling at the time. The Residents' Commissioner said it was the ICA's role to consider HS2's complaint handling, and concerns about their conduct could also be referred to the ICA. The Residents' Commissioner said their remit was to hold HS2 to account for commitments made within the Residents' Charter, for which they produced a periodic report. The Residents' Commissioner said they also met regularly with the HS2 Chairman about emerging trends and concerns.

March 2019 — The second ICA reviewed Mr and Mrs D's concern about the Residents' Commissioner's actions regarding HS2's complaints process. The second ICA considered the Residents' Commissioner had properly explained they were not responsible for the complaints process and had acted appropriately in passing information to Mr and Mrs D.

<u>**Evidence from the Residents' Commissioner**</u>

251. The Residents' Commissioner told us they tried to be helpful when corresponding with Mr and Mrs D about their concerns. The Residents' Commissioner said they had responded to Mr and Mrs D explaining their remit in July 2016. In particular, they were unable to become involved in their case and this was set out in the scope of their role as well as in the Residents' Charter.

252. While the Residents' Commissioner could not become involved in Mr and Mrs D's case, they wanted to be helpful. Therefore, the Residents' Commissioner said they noted communications with Mr and Mrs D were in writing and considered mediation could be a helpful alternative. The Residents' Commissioner said they wanted Mr and Mrs D to be aware of the mediation and dispute services that were available to them in the hope that this would resolve matters for them with HS2. The Residents' Commissioner said it was for Mr and Mrs D to then consider these options with their agent.

Our findings — complaint 5b

253. Mr and Mrs D complained that the Residents' Commissioner provided inadequate oversight of their case, as their involvement was not helpful or independent. We would expect the Residents' Commissioner to take account of their role in the Residents' Charter. In accordance with our Principles, we would expect public bodies to be *customer focused* — being clear about what they can and cannot do. We also expect public bodies to be *open and accountable* — that is, they should be open and truthful when accounting for their decisions and actions.

Handling of queries about HS2's approach to the valuation matters

254. Mr and Mrs D complained the Residents' Commissioner failed to intervene in their case during the summer of 2016. Mr and Mrs D also considered the Residents' Commissioner did not act in an independent way by discussing their case with HS2 but not with them. It is clear Mr and Mrs D tried to engage the Residents' Commissioner in their complaints and they were seeking support with the problems they were encountering with HS2. It was appropriate, therefore, for the Residents' Commissioner to explain their remit to Mr and Mrs D — that they could not resolve Mr and Mrs D's individual case. The Residents' Commissioner's position was supported by the Residents' Charter, which explained the limitations of their role. For these reasons, we consider that the Residents' Commissioner acted reasonably in their response to Mr and Mrs D.

255. That said, the evidence shows that the Residents' Commissioner read Mr and Mrs D's correspondence with HS2, spoke to a number of HS2 staff and directly contacted HS2's first Chief Executive to suggest options to resolve the valuation date issue, as well as mediation going forward. The Residents' Commissioner was not trying to arbitrate or provide a resolution themselves, in line with the Residents' Charter (paragraph 249). We accept the Residents' Commissioner was trying to help Mr and Mrs D and there is no suggestion in the papers that the Residents' Commissioner was colluding with HS2 to the detriment of Mr and Mrs D. The Residents' Commissioner's email to HS2 indicates they were sympathetic to Mr and Mrs D as they said they understood Mr and Mrs D's position. We do not consider the Residents' Commissioner's actions were maladministrative.

256. Mr and Mrs D considered it was unfair for the Residents' Commissioner to engage with HS2 but not with them. As we have said above, we do not consider the Residents' Commissioner's actions were maladministrative. The Residents' Commissioner made suggestions to HS2 about options they might wish to consider in order to resolve the complaint, but had no decision-making role. As we have said above, the Residents' Commissioner was aiming to help, not hinder. It is not clear what would be gained by the Residents' Commissioner engaging further with Mr and Mrs D. It would have been better if the Residents' Commissioner had recognised the sensitivity

of their actions when dealing with parties where trust had broken down. We agree it might have been better if the Residents' Commissioner had been open with Mr and Mrs D about their contact with HS2 and the first Chief Executive. However, in the context we have described, we are not persuaded this was so poor as to be maladministrative.

Handling of queries about HS2's complaints process

257. Mr and Mrs D complained the Residents' Commissioner was not helpful or independent because in March 2018 they sought to defend HS2's departure from their complaints process. Our Principles say that public bodies should be *customer focused* — recognising individual circumstances — as well as *fair and proportionate* — they should be free from bias.

258. We note the Residents' Commissioner could have acknowledged that it did not appear that HS2 had informed Mr and Mrs D that they were piloting a new complaints process. However, we do not consider that the Residents' Commissioner's failure to do so was maladministrative. While we note the Residents' Charter said the Residents' Commissioner would hold HS2 to account to its commitments in the Charter, which included HS2's assurance that they would provide timely responses to complaints, we cannot look at this part of the Residents' Charter in isolation. The Residents' Charter also said the Residents' Commissioner would **not** intervene in complaints. The Residents' Commissioner explained this to Mr and Mrs D. They told Mr and Mrs D that they met regularly with the HS2 Chairman about emerging trends and concerns, but it was not their role to oversee individual complaints. The Residents' Commissioner's emails to Mr and Mrs D were factual and informative about their role, and what was changing in HS2's complaints process. For these reasons, we consider there is insufficient evidence to show that the Residents' Commissioner failed to be independent or fair to Mr and Mrs D on this matter.

Injustice

259. Where we find an organisation has not acted as it should have done, we consider whether those failings link to the injustice claimed. We aim to establish what a complainant's personal circumstances would have been, on the balance of probabilities, if there had been no maladministration. We consider how events would probably have unfolded, if individuals took reasonable steps to put their affairs in order in light of an organisation's mistakes and if other factors contributed to the claimed injustice. Having done so, we make recommendations to put people back in the position they would probably have been in had the organisation not made their mistake. First, however, I will recap the maladministration we found.

Summary of maladministration — HS2

260. We find serious and repeated instances of maladministration over three years. These are:

Spring 2016

- HS2 misled Mr and Mrs D about the first property manager's continued involvement in their case in spring 2016 when asked about it directly by Mr and Mrs D (complaint 1b). HS2 were not truthful or open and accountable
- HS2 failed to engage with Mr and Mrs D about valuation matters in spring and summer 2016 (complaint 1c). This meant they provided confusing and contradictory responses
- HS2 did not properly engage with Mr and Mrs D's concerns about the change in agents or the need for a further survey in autumn 2015 and 2016 (complaint 2a).

2017

- HS2 initially tried to prevent Mr D from submitting a business loss claim in summer 2017 (complaint 1d).

2018

- HS2 did not tell the Contractor about Mr and Mrs D's mitigation request until April 2018 despite saying they would do so when the Contractor was appointed (July 2017) (complaint 1a)
- HS2 failed to fully communicate with Mr and Mrs D about attendance of contractors to their property for surveys in January and May 2018
- HS2 failed to follow the negotiation process for the business loss claim from May 2018 (complaint 1d). Instead, they used the complaints process to respond to matters
- while HS2's decisions to refuse Mr and Mrs D's meeting requests in 2018 were reasonable, HS2 were not customer-focused (complaint 2f). They failed to be clear and consistent in communicating their decisions on meeting requests to Mr and Mrs D
- HS2 did not pay their final payment for professional fees on 1 October 2018 until prompted by Mr and Mrs D in November 2018 (complaint 1c).

261. HS2's complaint handling (complaint 4) was poor because they did not engage with Mr and Mrs D fully, did not provide honest answers and did not adhere to the complaints process. This meant HS2 were unable to answer Mr and Mrs D's complaints in a straightforward way.

262. HS2 did not act in accordance with their complaints process in March 2018. They failed to explain to Mr and Mrs D that they were trialling a new complaints process.

263. We found the second ICA (complaint 5a) did not make a finding on Mr and Mrs D's substantive complaint about HS2's handling of their business loss claim.

What would have happened in the absence of maladministration?

Delay

264. But for maladministration, we consider some matters would have been resolved earlier.

265. Mr and Mrs D would have been in an informed position much earlier had HS2 responded to their concerns about agreeing a property price and claim for business loss:

- had HS2 been able to provide clear and consistent messages about agreeing the property price (complaint 1c), Mr and Mrs D would have been in an informed position as to how to proceed in April 2016, when HS2 first responded to their query. However, HS2's contradictory and inconsistent messages meant the two parties did not settle on a resolution until September 2016. This caused a delay of five months (April to September 2016) in reaching that informed position
- if HS2 had followed their negotiation process, rather than the complaints process (complaint 1d), Mr and Mrs D would have been more certain about how their business loss claim was progressing. They would not have been put to the trouble of repeatedly asking HS2 to clarify their offer to reconsider the compensation claim between May and December 2018. Therefore, we believe HS2's actions caused inconvenience and delayed Mr and Mrs D being in an informed position for seven months (May 2018 to December 2018).

266. HS2's failure to make payment to Mr and Mrs D for their remaining professional fees in October 2018 (complaint 1c) meant there was a one-month delay in receiving that payment.

267. HS2's hesitancy in applying their negotiation process (complaints 1d and 2f) caused delay when responding to Mr and Mrs D's meeting requests:

- HS2 could have responded to Mr and Mrs D's request for a meeting in June 2018 but they did not provide a substantive response until 15 August 2018. We consider this caused a two-month delay
- HS2 should have responded to Mr and Mrs D's agent's request for a meeting with Mr and Mrs D in January 2018. Instead, Mr and Mrs D were put to the trouble of raising it during a meeting with the second Chief Executive in May 2018. This caused a four-month delay in receiving a response to their request for a meeting.

268. In total, HS2's actions caused nineteen months of delay (paragraphs 266, 267 and 268), resulting in inconvenience and upset to Mr and Mrs D (below).

Emotional and health impact

269. We considered HS2's reasons for not being able to provide Mr and Mrs D with a finalised view on mitigation were reasonable, and therefore did not create a delay. However, by failing to be honest and not providing clear responses to who was working on Mr and Mrs D's case (complaint 1b), the reason for appointing agent 2 (complaint 2a), the need for a second survey, when surveys would be undertaken on their property (complaint 3) and when the Contractor would be informed of their request for mitigation (complaint 1a), HS2 created and fed a relationship of distrust with Mr and Mrs D which characterised their relationship between 2015 and 2018/19. Mr and Mrs D described to us how all their dealings with HS2 felt like a '*battle*'.

270. We have seen evidence this was affecting Mr and Mrs D's health. Both described how their family life was negatively affected and we have seen evidence Mr D was taking anxiety medication in 2015 and 2016, which was partly attributable, although not wholly attributable, to his dealings with HS2. Therefore, we accept that HS2's unclear, and in some instances untruthful, responses to a number of questions caused Mr and Mrs D significant distress.

271. Many of HS2's failings happened at the same time, particularly during 2016 and 2018:

- Mr and Mrs D's concerns about valuation matters (complaint 1c) overlapped with HS2's responses about replacing agent 1 (complaint 2a), the need for a second survey (complaint 2a) and whether the first property manager was still involved in Mr and Mrs D's case (complaint 1b)
- Mr and Mrs D's concerns about the business loss claim (complaint 1d) overlapped with Mr and Mrs D's concerns about non-attendance of contractors for surveys (complaint 3), HS2's handling of their meeting requests in summer 2018 (complaint 2f), and payment of professional fees in October 2018 (complaint 1c).

272. We accept Mr and Mrs D's distrust of HS2 would have felt overwhelming at times. We can see it grew and intensified over a four-year period, which had a detrimental effect on all Mr and Mrs D's exchanges with HS2. We have seen Mr and Mrs D suspected HS2 were not being honest, for example when responding to concerns about how HS2 could use land for mitigation (complaint 1a), even when HS2 had acted reasonably. We are also conscious these events occurred at a stressful point in Mr and Mrs D's life. Whilst HS2 were not responsible for Mr and Mrs D having to sell their family

home to make way for the proposed railway, we can see HS2's actions exacerbated the impact on Mr and Mrs D's stress levels and health.

273. In summary, HS2's handling of Mr and Mrs D's case caused delay in progressing elements of their case, unnecessary levels of stress and anxiety as well as giving Mr and Mrs D cause to doubt HS2's honesty and sincerity when responding to their concerns. In our view, these are serious injustices that will have a long-lasting impact on Mr and Mrs D.

Mr and Mrs D's decision to stop using an agent

274. Mr and Mrs D told their agent to '*stand down*' at the end of June 2018 because agent 2 had said they would not pay further agent fees in relation to the business loss claim and because HS2 had not responded to their agent during May and June 2018. Mr and Mrs D can challenge HS2's decision not to pay their agent fees via the Lands Chamber Tribunal (complaint 1d). In addition, HS2 told Mr and Mrs D on 15 August 2018 that they recommended the use of an agent and would pay those fees that were agreed with them in advance. Therefore, while we recognise HS2's actions on the business loss claim placed Mr and Mrs D in an uninformed position about their business loss claim, HS2 provided Mr and Mrs D with clarity about when they would pay their agent fees going forward. That being so, we do not consider HS2 were culpable for Mr and Mrs D not using an agent after August 2018.

ICA

275. If the ICA had commented on Mr and Mrs D's concern about delay in payment of their business loss claim in October 2018, Mr and Mrs D would have had their complaint considered. We cannot be sure this would have led to HS2 making an earlier decision on the business loss claim, before December 2018 when they offered to pay it in its entirety. Therefore, we do not consider the ICA's consideration would have had a significant effect in terms of preventing further delay. However, we recognise not having a response to their complaint would have been frustrating for Mr and Mrs D, and is an injustice.

Recommendations

276. In considering recommendations, we have referred to our Principles for Remedy. These state that where maladministration or poor service has led to injustice or hardship, the public body should take steps to provide an appropriate and proportionate remedy. Finally, our guidance states public organisations should '*put things right*' and, if possible, return the person affected to the position they would have been in if the poor service had not occurred. If that is not possible, they should compensate them appropriately.

277. Mr and Mrs D are not asking us to recommend compensation. Therefore, in order to remedy the injustice we have identified that resulted from HS2's poor service and maladministration, and the ICA's failing, we recommend within eight weeks of this report:

a) HS2 should apologise in an appropriate manner to Mr and Mrs D for the delay, frustration, inconvenience and distress their serious maladministration (paragraphs 261 to 274) caused Mr and Mrs D over a four-year period
b) to promote transparency and fairness, HS2 should review and publish the learning from this case. This is so that in circumstances such as Mr and Mrs D faced, where a unique contract is signed outside routine processes, steps are taken to agree new and relevant processes at an early stage
c) HS2 should review and report whether this learning has wider implications for how they can improve their approach to handling complaints. HS2 should share their learning with the Chairs of the Public Administration and Constitutional Affairs Select Committee and the Transport Select Committee, as well as with the Secretary of State for Transport
d) the ICAs should apologise for the frustration caused to Mr and Mrs D by the maladministration identified.

May 2021

Annex — Scope of complaint with detailed examples

Mr and Mrs D said that:

1. They believe that from January 2015 to the present, HS2 failed to be honest, helpful and transparent in handling their case and failed to deal with matters in a timely, consistent and constructive way:

    a. From 2017 to 31 March 2019 HS2 staff were unhelpful and misleading in dealing with engagement about changes to the line and requests for measures to reduce negative effects of the railway (mitigation) in their local area. For example:

        i. HS2 misinformed Mr D and other local communities about the ownership of land needed for the proposed mitigation
        ii. HS2 misinformed Mr and Mrs D that their contractors would be informed about the mitigation proposals in their local area '*following their appointment*'. It has since transpired that this was not true and the Main Works Contractors had not been informed as HS2 had indicated
        iii. HS2 refused to respond properly to the points made by Mr and Mrs D in a letter of 2 January 2018 (this response had not been received by 1/5/19)
        iv. HS2 refused to meet Mr and Mrs D and the local community regarding the proposed mitigation for many months, despite assurances they would do so
        v. in early 2018 HS2 staff were rude and obstructive at a community event in a village hall. HS2 have refused to investigate this incident
        vi. in May 2018 HS2 staff refused to discuss mitigation proposals for Mr and Mrs D's local area at a meeting and gave misleading reasons for not doing so.

    b. HS2 misled them about who was working on their case from January 2016 to May 2016. Mr and Mrs D said that HS2 used language in their correspondence to them that was intended to make them think the staff member who had previously worked on their case and who Mr and Mrs D had lost confidence in, was no longer involved in their case.
    c. HS2 failed to respond properly to questions or to follow processes and procedures in relation to the Compensation Code. For example:

        i. from January to September 2016 HS2 offered inconsistent and contradictory positions on the valuation date for their property and lost critical correspondence about agreements already

reached for the valuation date. HS2 eventually conceded they had made '*mistakes*' regarding the valuation date

ii. from April 2017, HS2 provided unclear and inconsistent information about what business losses could be claimed for
iii. from May to September 2018 HS2 evaded questions and refused to confirm that the home loss payment should be paid on completion
iv. in summer 2018 HS2 refused to clarify that an advance payment of 90 per cent was due in respect of aspects of their disturbance claim
v. in January 2018 and to date, HS2 have refused to give any logical reason for not agreeing to compensate Mr and Mrs D for their agent's fees. This is despite the second Chief Executive of HS2 advising Mr and Mrs D to use a professional agent and an indication that HS2 would meet the fees
vi. in late summer 2018, HS2 made unsupported and incorrect assertions about the time taken to relocate an accounting practice
vii. in September 2018, HS2 failed to pay the remaining 10 per cent of Mr and Mrs D's professional fees on completion as they had agreed in an earlier email.

d. HS2 failed to deal with their compensation claims in a timely, consistent and constructive manner. For example:

i. from June 2016 onwards, HS2 tried to mislead about what had been said in a meeting in May 2016 regarding the length of time valuations were held for
ii. from December 2017 onwards, HS2's agent offered conflicting and different reasons for not agreeing their disturbance claim
iii. from December 2017 onwards, HS2's agent failed to deal with the questions and points raised by Mr and Mrs D's agent in support of the claim for compensation
iv. from September 2017 onwards, Mr and Mrs D complained about the obstruction and slowness of HS2's agent in dealing with their claim
v. HS2 reneged on the second Chief Executive's offer in a letter of 11 June 2018 that Mr and Mrs D could continue to negotiate their disturbance claim
vi. from autumn 2017 HS2 used the PHSO complaint as an excuse for not processing the disturbance claim for costs caused by their mistakes. Further, HS2 refused to deal with the matter of elements of disturbance until the claim was in full and final settlement
vii. from June 2017 onwards HS2 took over six months to clarify an ambiguous comment in an email from the second Chief Executive of HS2. When the clarification was received it was inconsistent with the information already given to PHSO.

2. HS2 abused their powers and demonstrated bullying behaviour. This included failing to recognise and respond appropriately to conflicts of interest in relation to their actions.

   a. HS2 singled them out for negative treatment on account of complaints they had made. For example:

      i. in summer 2015 HS2 used a different agent to value their property than they had used for all their neighbours
      ii. in summer 2015 Mr and Mrs D were subject to three sets of agents/surveyors whilst others were not
      iii. in autumn 2017 HS2 repeatedly tried to use the ongoing PHSO investigation as a reason not to progress their compensation claims
      iv. in autumn 2015 HS2 opened up elements of their claim that had already been previously agreed, such as whether Mr D's company was eligible to submit a disturbance claim.

   b. In November 2014 HS2 included a clause in the contract for their house sale that prevented them from approaching the HS2 Select Committees about their concerns over the mitigation of the line as it affected their new property.
   c. In January 2018 HS2 and their agent tried to push through Mr and Mrs D's compensation claims before they had been properly considered and negotiated. HS2 threatened Mr and Mrs D that they would have to pursue matters through the Lands Tribunal, (without an offer of alternative dispute resolution (ADR), or mediation or even a meeting) which would be a lengthy and costly process;
   d. HS2 did not act independently by allowing the second property manager to consider Mr D's claim for business loss in light of the second property manager's involvement in the poor handling of the valuation date;
   e. From May/June 2018 HS2 instructed their agent not to respond to Mr and Mrs D's correspondence without good reason and then lied to Mr and Mrs D about the reasons for doing so; and
   f. From winter 2017 HS2 and their surveyors either refused to meet Mr and Mrs D or cancelled meetings and appointments at short notice without good reason for doing so.

3. HS2 demonstrated a lack of understanding or care regarding the stress, ill-health and lack of wellbeing that HS2's behaviours caused in dealing with their case. Mr and Mrs D complained it was the poor treatment they received from HS2 that caused the stress rather than the impact of the rail project itself. For example:

      i. HS2 ignored the effect that their actions were having on the health of Mr and Mrs D despite being warned of it on multiple occasions

ii. in 2013 Mr and Mrs D's MP wrote to HS2 about the health effects on members of the community but failed to receive any response
iii. in September to December 2016 HS2 requested Mr D's medical details. Mr D made his medical records available to HS2 but HS2 then declined to access these records and offered no proper explanation why not
iv. HS2 failed to properly carry out their duty of care to those affected by the scheme despite being aware of the mental health injuries their actions were causing
v. HS2 carried out surveys in the middle of the night at Mr and Mrs D's home with no appointment and failed to turn up for surveys for which appointments had been made.

4. HS2 handled complaints poorly:

   a. Throughout HS2's complaints process, responses were simply '*tick box*' and did not deal with the substance of the complaints
   b. HS2 did not deal with complaints according to their own complaints procedures.
      For example:

      i. in early 2018 HS2 stopped responding to complaints in a timely way. Some complaints were responded to months late
      ii. in early 2018 complaints were not dealt with by the correct grade of staff as required by the published complaints process.

5. There was inadequate oversight of HS2's handling of Mr and Mrs D's case:

   a. The Independent Complaints Assessors did not investigate complaints independently and in a thorough way. For example:

      i. the first ICA report accepted incorrect explanations from HS2
      ii. the first ICA report inaccurately and inappropriately apportioned blame to Mr D for actions of HS2
      iii. the first ICA allowed HS2 to comment on two draft reports while Mr and Mrs D were not allowed the same opportunity although they had asked
      iv. the first ICA failed to disclose a conflict of interest with a senior member of HS2's complaint handling team
      v. the second ICA's report dealt mainly with the procedure of handling complaints and ignored the substantive issues raised in complaints.

   b. The Residents' Commissioner's involvement was not helpful or independent. For example:

      i. in summer 2016 the Residents' Commissioner failed to intervene and provide assistance in the face of HS2's unfair actions in their case, despite Mr and Mrs D approaching the

Residents' Commissioner directly about difficulties they were having with HS2 on the Compensation Code and valuation date

ii. in May 2016 the first Chief Executive and Director of Engagement of HS2 either sought to mislead Mr and Mrs D or were not aware of who the HS2 Residents' Commissioner reported to[37].

iii. Mr and Mrs D also believed that, in summer 2016, the Residents' Commissioner did not act in an independent way by discussing the case in detail with HS2 while refusing to meet or properly discuss the case with them

iv. in spring 2018 the Residents' Commissioner wrote to Mr and Mrs D on 27 March 2018 seeking to justify HS2's departure from their own complaints process. Mr and Mrs D complained that the Residents' Commissioner's role was not independent in this matter and the Residents' Commissioner should not have sought to defend HS2's poor complaint handling.

c. There is no proper check and balance over the way HS2 deals with those affected by the scheme. Mr and Mrs D felt there was nowhere they could go to get assistance regarding the difficulties they were having with HS2.

Claimed injustice

Mr and Mrs D said that HS2's actions resulted in extensive delays and caused them unnecessary stress, inconvenience and financial uncertainty. Mr and Mrs D said that they spent a huge amount of time trying to deal with HS2 on these matters as they felt that everything with HS2 was a battle that significantly impacted their health and their family life. Mr and Mrs D said that all HS2's actions had negatively affected their health, wellbeing, family life and business.

Further, Mr and Mrs D said that HS2's actions meant they were prevented from exercising their right to petition Parliament about the appropriate design of the railway and mitigation in the vicinity of their new home. Mr and Mrs D claimed that because of the substandard engagement they have received from HS2 it was likely that they and the local community would suffer due to inadequate mitigations of the railway line in the local area.

Mr and Mrs D said that the ICAs' and the Residents' Commissioner's actions showed that there was not an effective check and balance over the actions of HS2. This has led to further unnecessary stress, wasted time and frustration.

[37] This example is not a complaint about the actions of the Residents' Commissioner so we have not addressed it in our report.

Outcome sought

Mr and Mrs D seek a thorough investigation into their complaints to ensure the management of HS2 is held to account and that systems are put in place to rectify matters. They say the systems need to ensure that those affected by HS2 and who have cause to complain about HS2's actions are treated fairly and appropriately. Mr and Mrs D would like an effective system of oversight and an adjudicator to give affected parties a timely means of redress. Mr and Mrs D say that they would like HS2's continued failings to be brought to the attention of the public and Parliament so HS2 can be properly held to account. Mr and Mrs D say that they would like HS2 to properly engage with local communities and with them, given the poor engagement received to date, and reassess the need for mitigation in the local area.

If you would like this document in a different format, such as Daisy or large print, please contact us.

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