

2016 Petition to House of Lords Select Committee: Property Compensation

Statement of evidence

Submission by Hilary Wharf, Director HS2AA

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Property blight: compensation scheme evidence for House of Lords SCs

This evidence statement is given by Hilary Wharf, a Director of HS2AA.

I have been closely involved in compensation issues since 11 March 2010, co-ordinating HS2AA's first EHS Compensation Consultation response, and six more such responses over the past 6 years. I have championed alternative mechanisms (the Property Bond), steered the successful High Court challenge on one consultation decision and worked to expose, clarify and improve the terms of the scheme that address generalised blight (EHS/Need to Sell). A prime objective of HS2AA from its outset has been to get a fair deal on compensation.

This evidence mainly concerns the Need to Sell (NtS) compensation scheme. Euston/Camden have raised construction compensation issues that we support, and will not repeat.

1 Goal

HS2AA seek to make the NtS Scheme a demonstrably fairer scheme, and to keep it fair when the Parliamentary Select Committees have ended.

We want NtS to be less reliant on discretion, not subject to arbitrary decisions, to operate through precedents, and be more accessible to potential applicants. There needs to be greater clarity and certainty.

Some of our concerns and asks are consistent with those of the HoC, but NtS has yet to change to reflect those concerns.

2 ASKS to the HoL Select Committee

Consistency and transparency

- 1 *Consolidated and articulated NtS Scheme rules and Guidance.* Greater clarity on the tests for meeting the 5 qualifying NtS criteria, with more examples and bringing together the analysis developed in other 'decision' documents. What "normally" meets the criteria should be more explicit to give greater transparency, so the scheme can operate with less reliance on discretion. Where discretion is exercised it should set a precedent others can subsequently rely upon, unless there is a sound reason for taking a different approach.
- 2 *Independent appeals process, with separate independent scrutiny* to ensure fairness and consistency in the operation of the scheme.
- 3 Publish *redacted decision summaries* (use as precedents)
- 4 Publish *precedents* and give access to the *Summary Sheet* that the Panel receive

Clearer fairer rules and guidelines

- 5 Inclusion of '*age and stage*', to give effect to what the HoC recommended for retirees, and what Mr Mould says is already included on retirement plans in the current rules (but in fact is not). To include examples of "normally" acceptable Compelling Reasons to Sell, which is currently confined to "winding up an estate".

- 6 Remove '*location criterion*'. It is unfair to applicants who prove they suffer blight under *actual* property market conditions ('effort to sell' criterion), and against the NtS purpose.
- 7 *Other elements*: lower 15% threshold for offers (eg in London); more safeguards in the valuation process; sort zero mortgage valuations; revisit post-2010 purchase rule that 'bakes the blight in' (and excludes people who buy before the construction routes are known); fast track for terminally ill cases.

Accessibility and engagement

- 8 *Help available* for preparation of an application (eg "HS2 clinics" and further support – "prisoners friend" for those least able).
- 9 Invite *comments on NtS Guidance* from previous applicants and prospective applicants.
- 10 Need *publicity about NtS*, in particular the new written assurance in current guidance that financial evidence is only required if finance is your compelling reason to sell. Should also cover the new health and mobility guidance.
- 11 HS2 Ltd to *proactively contact* all rejected cases to ensure they are aware of current NtS.
- 12 '*Sold and lost*' scheme for any past cases that were improperly rejected from the position of the current NtS. Some people will have had to sell and lost money in doing so. HoC recognised this circumstance, but HS2 Ltd has not acted to remedy the matter.

3 Background

3.1 Trust

It is important to recognise that there is a very low level of trust of DfT/HS2 Ltd. The consultation processes on compensation are regarded by residents as shams - urged by DfT to give their views, but with the great majority of these views then ignored. The operation of the scheme has clearly been unfair on occasions and the Commons Select Committee was gravely concerned about the approach taken by DfT/HS2 Ltd in some cases. HS2 Ltd's track record for public engagement has been so poor that they received damning criticism from the Parliamentary Ombudsman. HS2 Ltd's CEO Simon Kirby had to apologise for this to the Select Committee.

Most residents believe that HS2 Ltd cannot be trusted to behave reasonably unless there is some process to hold them to account. Currently that process is petitioning, but when the bill is passed, external scrutiny will effectively end. The worry is that the NtS rules that have been operated more reasonably over 2015/16 (with the acceptance rate for cases increasing from one third to around 60%) may revert to former practice. This underlies our requests on "Consistency and transparency" 1-4.

We would like to believe lessons have been learnt by HS2 Ltd, but feel changes are needed to keep the process 'honest'.

3.2 Past problematic performance

Sandy Trickett (ST), who was an assistant to Dan Byles MP, presented (on behalf of HS2AA) a catalogue of cases in which she alleged before the Commons Select Committee (on 20 November

2014) that HS2 Ltd/DfT had implemented the Exceptional Hardship Scheme (EHS) unreasonably. At the request of Mr Mould (for the Promoter), she provided a dossier on the cases afterwards (in February 2015).

The Promoter undertook to respond to the Select Committee and ST personally on the cases. The Promoter has responded to neither ST nor HS2AA, but did respond to the Commons Select Committee. DfT claimed that for confidentiality reasons the reply could not be forwarded. As the complaint was of unreasonable conduct, this is unsatisfactory. ST sets out the details at Annex 1. Given the individuals concerned had given permission for their cases to be raised, and for ST to include them in her dossier, confidentiality cannot be an adequate justification.

ST will be giving evidence to the Committee to ask that she be given access to the DfT response and that she might respond to the HoL on the DfT letter.

An important aspect that the cases illustrated was that intrusive financial evidence was being required by HS2 even when it was not the claimed reason for eligibility to EHS/Needing to Sell (the schemes did not differ on this aspect). This was a major concern of residents and undoubtedly contributed to the EHS getting a bad name. HS2AA dubbed the scheme “means tested” as in practice it was (even though DWP type criteria were not applied). But effectively you were asked to prove you did not have alternative financial resources you could call on. Guidance published by the DfT in 2016 (and its response to the HoC report) now corrects this and says that evidence of financial status is only requested when financial hardship is claimed to be the compelling reason for sale.

This single factor still puts people off applying. Many still do not know it has changed. Insufficient has been done to inform people of the change. It was omitted from the January 2015 published NtS rules (despite Nov 2014 statements to HS2AA. It then took 16 months for DfT to include it in their latest updated guidance (May 2016). This is unacceptable.

The HoC SC’s reports also observed that HS2 Ltd had not done enough to encourage applications. They reported that NtS was still viewed as too complex and off-putting for affected residents. Hence our asks on Accessibility and Engagement (8-12).

3.3 Changing the scheme (asks 1, 5 – 7)

Currently the various concerns that the Commons Select Committee had regarding NtS are to some degree being met by exercising discretionary powers to accept applications that do not meet the required criteria, or that match the May 2016 guidelines. The concern is that in the absence of changes or specific additions to the scheme’s rules, ‘reasonable’ conduct based on exercising discretionary powers may end when independent scrutiny does (i.e. when the hybrid bill is passed). As there is neither transparency that ensures consistency, nor independent scrutiny, there is currently no mechanism to ensure the continuation of this exercise of discretion, which can be a licence for arbitrary decision-making rather than precedent-setting which can be relied upon by others.

To prevent such a reversion and to establish a transparent and fair scheme, NtS needs rules that go **beyond the present ‘guidance notes’**. This does not prevent ‘special circumstances’ from applying,

as typical examples can be described. With over 6 years' experience since EHS began, and 2 years of NtS, most special circumstances will have arisen. Currently there is ONLY the NtS 'Guidance Notes and Application Form'¹ in place. There should be a set of **Consolidated and articulated NtS Scheme Rules and Guidance (ask 1)**. These should include:

- Details that already exist but are in other documents (eg the Consultation 'decision' documents): they should be drawn into one place
- What "normally" meets the criteria should be made clear
- Where "precedents" have been established they should be indicated
- Further examples should be included especially on 'Compelling reason to sell' and for retirees ('age and stage') that make up at least half the applicants
- Key phrases that HS2 Ltd now use in respect of health and mobility (i.e. 'your house being an unreasonable burden') should be stated in the guidance (but they are not)
- Details on the valuation process including the rules that RICs valuers must comply with (that are currently only separately available, on request)

Other examples of where the guidance can be improved are provided in this report.

3.4 Financial tests (ask 10)

Importantly, and helpfully, for the first time in the 2016 NtS Guidance applicants are told:

- *if the reason given is not financial (e.g. health issues) then financial evidence is not required*
Para 3.1.35 2016 guidance

This was in line with HoC recommendations and HS2AA's numerous consultation responses and presentation to the HoC SC (in Nov 2014) providing evidence that the previous EHS had virtually become a "means tested" scheme for applicants.

It is disappointing that the **2015** NtS guidance did not include this clarification and applicants had to wait a further 16 months until the Phase 1 & 2a version in May 2016.

Virtually no publicity has been given to this important new guidance on financial evidence – it was not even included in the May 2016 Consultation decision document, nor even within a circular sent to residents within 1km of the line. Given how many residents are still deterred from applying precisely because of its reputed financial intrusiveness, this point should be specifically emphasised in leaflets sent to homes

¹ The latest NtS Guidance is dated 2016 and was issued on 23 May 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525965/Need_to_sell_guidance_and_application_form.pdf

4 Consistency and Transparency

4.1 Discretion and scrutiny (ask 2 to 4)

Mr Mould has strongly argued to the HoL Select Committee that wide discretion allows cases to be accepted in circumstances not envisaged under specified rules. There is definitely a justification for allowing cases that have not been envisaged under the rules to be accepted, but this is different from having unfettered discretion where there are no clear rules of entitlement, as this allows arbitrary and biased decision-making to go unchecked.

It seems inherently ill conceived to have a scheme for which it is impossible to demonstrate that it operates in a fair and unbiased fashion, as it invites accusations of maladministration. There are certainly already cases where decisions have plainly been unreasonable (as evidenced in some volume before the HoC Select Committee). New cases are in the pipeline.

HS2AA seek **independent scrutiny** as part of the scheme and an **appeals procedure**

HS2 Ltd/DfT present the discretion that the panel has to recommend and the Secretary of State to exercise as a positive feature, overcoming limitations in the rules. However discretion without transparency and scrutiny allows arbitrary behaviour, discrimination and bias.

A government funded scheme should be capable of being shown not to have these issues. HS2 Ltd/DfT reject transparency on the grounds that making their decisions public would mean exposing the private circumstances of individuals. This is seemingly a reasonable argument, but could readily be overcome by producing **redacted Case Summaries** (based on the summaries already produced for panels- see Annex 1) and the appointment of independent person(s) to exercise scrutiny.

The general performance of the scheme is within the scope of the Resident's Commissioner – although conduct of individual cases is not. The Commissioner is an appointee of HS2 Ltd, and is a former panel member. Notwithstanding, she has called on HS2 Ltd to implement a number of improvements to bring them into compliance with HS2 Ltd's own 'Residents' Charter' commitments, but HS2 Ltd has failed to implement them. The Commissioner is neither sufficiently independent nor sufficiently empowered to provide the function of independent scrutiny. An appointee by Parliament, perhaps as an added duty of the Parliamentary Ombudsman, might be a more appropriate arrangement, given planning consent for HS2 is sought via a hybrid bill. The conduct of individual cases should be subject to scrutiny.

Clear fair rules, an appeal mechanism and independent scrutiny are means by which NtS could be made fair in operation.

HS2 Ltd have resisted introducing an appeals process, in preference to a re-application process and a complaints procedure. The appeal procedure could part of the First Tier Tribunal system that already covers a huge range of issues including property matters.

In the 2016 Guidance to Panel Members it explains that an HS2 Ltd administrator would inform the panel of any **relevant precedents (para 3.3.1 (g))**. However, the applicant is not made privy to such

advice. These should be published. In the absence of some external scrutiny there is no way to establish that Panels do behave consistently.

Similarly it is clear from the 2016 Guidance to Panel Members that a single **A4 Summary Sheet** is compiled for each case (as at Annex 2). This should be available to rejected applicants, as well as form the basis of the Redacted Case Summary.

5 Rules and guidance changes

5.1 Criteria

Under NtS, five criteria must be satisfied, though discretion can be exercised:

- Criterion 1: Property type
- Criterion 2: Location of property
- Criterion 3: Effort to sell and impact of blight
- Criterion 4: No prior knowledge
- Criterion 5: Compelling reason to sell

5.2 Rule changes sought:

5.2.1 More clarity over what qualifies under criterion 5: compelling reasons to sell. (ask 5)

This is the most common criterion that applicants fail. They must show they will suffer an *“unreasonable burden within the next 3 years if unable to sell their property except at a significant loss due to HS2”*

The NtS has said less and less about what qualifies under this criterion in each edition of the scheme guidance since 2010 (as EHS then NtS). Despite what it says about discretion the Guidance now says the circumstances are too widespread *“and it is not considered beneficial to provide specific examples”* as it *“could perversely restrict the panel with rigid evaluation criteria”*. **Para 3.1.30 2016 Guidance**

HS2 Ltd are unprepared to give clear criteria and guidance as to what will or will not count as a ‘compelling reason to sell’. More examples (based on precedent) as to what “normally” counts are needed. Some are mentioned in other consultation decision documents, but not in the current rules.

The Table summarises the first Jan 2015 NtS rules (also used for the 2016 consultation for Phase 2a), with the latest 2016 Guidance (which is the only document available), and what the website says.

Jan 2015 NtS (and EHS) Scheme	May 2016 NtS Scheme	Website summary of 2016 NtS Scheme	Comment
Unemployment	Unemployment	Unemployment	
Relocation for new job		Relocation for new job	
Divorce settlement	Divorce settlement		
Ill health	Health and mobility	Ill health	<i>“house being an unreasonable burden”</i> claimed by DfT but words not stated
Release capital for retirement			All reference to retirement vanished. Nothing on retirement plans
	Winding up estate		Only example that “normally” qualifies

Most importantly all references have been removed to people in/approaching retirement and needing to downsize etc, or expanding families now needing more space. Given the HoC wished to see ‘age and stage’ recognised, this deletion is unhelpful to applicants. In fact a current elderly retiree would see no relevant examples, and if generally healthy and mobile would see no point in even applying. This is not reasonable.

However HS2 Ltd now claim to the HoL Select Committee (in their evidence) that they include examples of “house being an unreasonable burden”. Yet these precise words are not actually within the 2016 NtS guidance wording.

DfT responded to HoC Feb 2016 report to say ‘age and stage’ was complex and they needed time to consider options, but would do so in their decision document on NtS for Phase 2a. But

- The DfT Phase 2a decision document (that accompanied the new NtS rules dated May 2016) only considered the physical burden of a property for older people² and the “age and stage” phrase was not used in the decision document nor made it into the latest NtS Guidance itself
- The DfT decision document did not say they would in the interim **remove** all references to retirees from the current May 2016 NtS guidance (for Phase 1 and 2a)
- Only if age is regarded as a health or mobility issue do the May 2016 Guidelines come close to saying anything new on age and retirement³ - what was said was more about the insensitive way the panel had previously treated people with mobility issues eg sleep downstairs, than “age and stage”. The Guidance also still says nothing about expanding young families (that used to be an example in the EHS).
- In the context of ‘age and stage’ DfT could have made reference to **“a property no longer being fit for purpose”** and refer to **downsizing and upsizing**, but they did not. They might have even have used the claimed phrase **“the house being an unreasonable burden”**, but they did not.

5.2.2 Make ‘age and stage’ qualify as a ‘compelling reason to sell’

HS2AA seek at minimum that

- ‘age and stage’ (including fulfilling retirement plans) should be explicitly recognised as a compelling reason to sell, i.e. be an acceptable basis for wishing to relocate (to be nearer family, the sea side, have more manageable house or gardens, etc);

² See DfT Decision Document HS2 Phase 2:West Midlands to Crewe, Property Consultation 2015 (dated May 2016) para 4.5.19 to 4.5.21.

³ Para 3.1.36 of May 2016 latest NtS guidance says they will take into consideration the following factors: “Applicant should not be expected to take on additional support to undertake routine maintenance that they cannot now undertake themselves”; and “Applicants should not be expected to incur significant additional expense in order to modify their property to meet the medical or mobility needs”.

These changes are also responding to comments made by the HoC Committee they did not wish to hear again about how people expected to sleep downstairs or employ gardeners. The words “the house being an unreasonable burden” do not appear.

- AND that it should be identified as a *different* reason from financial circumstances, (i.e. not as in the previous 2015 NtS rules that said “need to release capital for retirement”). There may still be cases where the reason is financial hardship, e.g. reduced income in retirement triggering the need to sell to release funds. But it may also be because of the need to release funds to get one’s children on the property ladder or fulfil other retirement dreams.

If a person has already reached or is nearing retirement, this in itself should be a sufficient basis for being a reason to sell. The Commons Select Committee favoured this, and said in their reports:

‘we wanted a more considerate, generous approach, including a recognition that people’s ‘age and stage’ in life might be good reason to want to move, para 271 2015 interim report

It is difficult to imagine justification of less than 90% acceptance on applications by those over 70 or who will be over 70 when the project commences. Para 279, 22 Feb 2016

Work remains to be done in addressing the greater needs of a higher proportion of older applicants para 296 conclusions, 22 Feb 2016

The HoC SC were not convinced that the 5% higher acceptance rate (for acceptances up to Feb 2016) for older applicants represented sufficient movement.

Without independent scrutiny and regular statistics, we have no way of knowing if more retirees are now being accepted and on what basis.

Importantly, Tim Mould QC appears to believe that the NtS has already been changed on ‘age and stage’ as we request. He told the Select Committee (on 11 October 2016) that provision had been made for ‘age and stage’ that could include planning for retiring to the seaside⁴. This is, with respect, simply false.

- The 2015 Guidance that Mr Mould incorrectly says is the latest (and which HS2 Ltd have provided as their latest evidence in October 2016) explains that retirement when associated with financial reasons (“need to release capital for retirement”) could qualify as a compelling reasons to sell. But there is nothing either about ‘age and stage’ separate from financial reasons, nor about your property being an unreasonable burden (albeit the guidance has now anyway been overtaken).
- **The 2016 Guidance – which is in fact the latest version - contains no mention of retirement plans or age as grounds for qualification at all, and certainly nothing about plans to move to the seaside. This is contrary to what Mr Mould believes the Promoter’s position to be.**

5.2.3 Drop the ‘location criterion’: (ask 6)

⁴ ‘67. There are other examples of personal circumstances identified in the guidance document, such as, for example, the need to move to another job, which requires the applicant to relocate their home, the onset of retirement in accordance with long-held plans of the applicant, their plan to move from their home to a smaller home for example, or to move from an urban location to a home by the seaside or something like that – the sort of things that people often aspire to do when they reach the stage of retirement and they want to enjoy their retirement years in a different living environment, as it were.’

This criterion asks “*if your property is in such close proximity to the route that it would be likely to be substantially adversely affected by either the construction or the operation of the new line?*”. It allows an application to be rejected if, in the panel’s view, a property should not be blighted given its location relative to HS2 – even though in reality it may be blighted by the market.

If HS2 has caused a property to be blighted in the marketplace, it is unfair to deny eligibility to NtS on the basis that a panel decide that the property market has got it wrong.

DfT have defended the ‘location criterion’ in writing to HS2AA on the basis that it is to “*ensure that the Government is not obliged to accept an application from an unreasonable distance away*”. (Letter from HS2 Ltd to HS2AA 12 March 2013)

But they also stress NtS has no distance limit. So if a property is blighted, the market must think that the home is not too distant and the Government has not convinced it that it is.

Significantly this was also the view of an independent court judgment in the Helstrip case⁵, where HS2 Ltd staff (the Head of EHS, Helen German) gave evidence on the EHS scheme.

The Judge concluded that the location criterion was being used as a means to control the extent of blight. In his decision on the case, he observed⁶ (see Annex 3) that this was inconsistent with the purpose of the EHS scheme – which was to compensate those who found themselves blighted. This logic applies equally to the long-term NtS scheme. It is hence against the purpose of the Scheme.

If HS2 Ltd are ineffective at persuading the market that HS2 will not have detrimental effects, why should individuals who have no control over the situation be disadvantaged?

This is the criterion most overridden by the panel (20% of accepted cases exceed 800m and this criterion is set aside). But this depends on discretion, and there is no guarantee it will continue.

5.2.4: Other criteria need revision (ask 7)

Other criteria need revision, in an expanded and consolidated update of NtS Rules and Guidance

- The **15% rule** on offers – this is increasingly inappropriate in London, and should be revised
- The **business rate cap** – we understand there is a statutory revision next year
- The ‘**no prior knowledge**’ rule that precludes eligibility for post 2010 purchases. Not only does this bake the blight in, but issues like construction routes will not have been known in 2010. As the Resident Commissioner has already said, as time moves on this rule becomes an increasing problem, and especially once construction begins. The Guidance should at minimum state that such cases could be eligible if the applicant can demonstrate their purchase was not at a blighted price and the details of HS2 have changed significantly.
- **Valuation issues** – while the right to select your own local RICS valuer was welcomed, many still feel they do not get an un-blighted price. Concerns include that only one “comparable” property must not be blighted (the others can be if an adjustment is declared); the valuer’s rules are not widely available (only on request); of greatest concern is the absence of a dispute mechanism (this could include the right to another valuation where there are clearly

⁵ First –Tier Tribunal Case, EA/2012/0201, 29 January 2013

⁶ Para 42 to 44 of decision as set out at Appendix 1

errors in the valuer's process - this would encourage surveyors to improve their performance). Residents would welcome an independent arbiter to resolve concerns.

- **Zero mortgage valuations.** Still evidence that mortgage companies declaring properties worth £0 due to proximity to HS2 (London Road, Wendover). Efforts with Council of Mortgage Lenders failed to date. We seek HoL support to intervene.
- **Terminally ill cases.** A fast track process should be offered in these circumstances (as is done by DWP and HMRC)
- **Distance expected to travel to a new job-** it was suggested to the HoC Select Committee by the Hs2 Ltd expert that an hour or more might qualify (see Annex 1). But no guidance is given.

6 Accessibility and engagement

6.1 Assistance (ask 8)

Engagement between HS2 Ltd and potential applicants for the scheme has been poor. The scheme must be accessible to all potential applicants. Currently it is not.

Many potential applicants have considerable difficulty in preparing an evidence-based application sufficient to justify that they are eligible for NtS. Advice is needed concerning whether there is a reasonable prospect of qualifying, which aspect of having a compelling reason to sell applies to them, and how best to marshal the required evidence.

In the absence of assistance, the ability to qualify is restricted by the competence of the applicant or their ability to afford professional assistance. Both these serve to limit applications from less qualified and affluent persons.

The chance of success increases with a well evidenced case. This is more easily achieved by some applicants.

The Residents' Charter says: "*We guarantee that:*

- *our public enquiries helpdesk team are available to answer your immediate questions;*
- *our dedicated property team are available to answer more detailed queries on the schemes;*
- *if you have any remaining questions, you will be offered the opportunity to meet in private with our property specialists; and*
- *you will be allocated a named HS2 Ltd case officer as your point of contact following application to any of the schemes."*

HS2AA ask that HS2 Ltd should provide:

- A "clinic" service, to explain the rules face to face and answer questions (this has been refused, yet would appear to be in line with the Charter). Currently is much easier to get answers once you have made an application, but not before.
- Assistance for those who cannot afford to employ a professional to organise their case – this might be financial support or the right to go to an independent body (funded by HS2 Ltd) to help such applicants.

6.2 Guidance (ask 9)

HS2 Ltd should **invite comments from past applicants** and potential ones to see how the guidance can be improved. It would show HS2 Ltd are willing to engage constructively with residents in affected areas.

There are examples where the guidance (for other criterions) needs improving:

- It must be marketed with “at least one recognised estate agent” – this suggests one will qualify, but it has been a cause of rejection under NtS.
- The only reference to reducing the price (under ‘effort to sell criterion’) is in the list of questions about possible evidence “has more than one asking price been tried?” Again this can be a cause of rejection and was much emphasised in earlier guidance.
- The guidance gives no indication that you can raise concerns about the valuation. Yet other DfT documents make this clear⁷. Some of our members have succeeded.

HS2AA believe HS2 Ltd should be more open to input from the groups at which the guidance is aimed.

6.3 Proactively contact rejected cases and support retrospective compensation for ‘sold and lost’ cases (ask 11 and 12)

If HS2 Ltd genuinely want to demonstrate the openness of the NtS arrangements, they should contact all who were previously rejected to see if they are aware of the current NtS scheme (that may well differ from when they applied) and to see if they **wish to re-apply**. For example, the guidance makes clear that those seeking help in ill health situations should not be expected to move their bed downstairs, when they can no longer use the stairs. However, applications were rejected in the past on this basis. It was exposing such cases to the HoC that in part led DfT to revisit their NtS guidance on this point (in May 2016).

Some people have been forced to move and have lost a considerable sum of money against the un-blighted value. Some of these cases came to the HoC. In some instances people never applied for EHS. The HOC in their final report in Feb 2016 said:

*‘We asked the Promoter to consider the **retrospective compensation cases** of property owners who had not applied under any scheme but who had already sold at substantial discount owing to blight, perhaps through an urgent need to move. **Para 271***

272. In several respects the Government responded positively. The Government said it believed there would be issues of equity with any broad policy of retrospective compensation, but that some exceptional cases might exist. Those cases would be considered on their merits.’

We note in the May 2016 NtS decision document⁸ that the DfT also respond to our request for a Sold and Lost scheme in the 2016 consultation and reiterate the above position.

⁷ Report on the Performance of the NtS scheme: early trends. DfT to HoC Select Committee November 2015. See para 61.

⁸ 4.5.6 The Government believes that the range of property schemes available deals well with the situations faced by residents living close to the HS2 line in a way that balances the interests of those individuals who will receive compensation

Despite this statement no effort was made to publicise their statement on “exceptional cases”, or explain how anyone might apply. We know of one person who has tried and been rejected by the Secretary of State, on the basis the original (EHS) decision was correct. But the case should be considered under the **current rules of qualification** – in particular on health and mobility issues, where discretion now applies. This case will go to the Parliamentary and Health Service Ombudsman.

If DfT intended a genuine response, at a minimum **the arrangements should be published** on their website, people should be told how to apply, and entitlement should include consideration under current rules not old ones, especially as someone might not have applied under any scheme. HS2AA are aware of several potential applicants. Some came before the HoC, others have pursued their case through their MP.

HS2AA believe there should be a **‘sold and lost’ scheme** for those who had to move and lost by it, and can provide the necessary evidence to justify retrospective compensation on the basis of the terms of the current scheme. They should be eligible for the loss to be made good. Worries about collusion do not apply as the price paid is now a matter of public record, and the sale was made without expectation of compensation. MPs know some of these cases, as residents have sought their support.

7 Documents on the NtS Scheme

Latest Scheme Guidance Notes and Application Form (dated 23 May 2016)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525965/Need_to_sell_guidance_and_application_form.pdf

Latest guidance to NtS Panel (25 May 2016)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525966/Need_to_sell_scheme_-_panel_guidance.pdf.pdf

HoC Select committee reports

March 2015 interim report (pages 28-32 on compensation schemes)

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhs2/338/338.pdf>

Dec 2015 HoC First report on compensation scheme

http://www.parliament.uk/documents/commons-committees/hs2/Report/HC_698_HS2_ONLINE_version.pdf

Feb 2016 DfT response

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497263/response-to-HS2-select-committee-first-special-report.pdf

22 Feb 2016 HoC final report – see pages 66 to 73 on compensation schemes

<http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>

while protecting the interests of the taxpayer. As reported by the hybrid Bill Select Committee’s report of 22nd February the Government also believes that there would be issues of equity with any broad policy of retrospective compensation¹⁴. The Government acknowledges though that some exceptional cases might exist and these cases will be considered on their merits.

Annex 1: Evidence by Sandra Trickett, caseworker to Dan Byles, former MP for North Warks.

1. I was the Senior Caseworker to Dan Byles, MP, from 2010 to 2015. In that capacity I handled over 50 individual EHS cases, managing 38 specific applications, holding discussions with HS2 Ltd, visiting applicants at their homes to discuss their circumstances and complete their applications with them, gather evidence on their behalf, and submit their cases. Over that period a number of serious concerns emerged that I brought to the HoC Select Committee (SC), as part of the HS2AA petition hearing on 20 November 2014
2. On hearing my evidence:
 - Mr Mould, QC asked that I provide the details to him in order that he could respond to me on the points made⁹. I provided a dossier to both the SC and Mr Mould on 28 February 2015.
 - The Hybrid Bill Committee concluded in their March 2015 Report that “There is a case to answer on these matters. On the face of it, some of what has happened is wrong and unjust” (their fuller response is at para 7 below).
3. We understand a response to my report was sent on 5 July 2015 to the Chair of the HoC SC, but neither myself nor HS2AA had a copy. I am hence unable to comment on their response. A copy did go to Dan Byles’s successor (Craig Tracey, MP). The DfT have said that because the letter contains confidential details about applicants it is for the MP and not myself to have a copy. However none of the applicants are his constituents any longer, and all gave their permission for me to have access to their personal details. Hilary Wharf of HS2AA has been in discussion with Michael Hamlyn, of the Private Bill Office, to get a copy and this too has failed.
4. Given Mr Mould’s promise was to myself we would have hoped it would be fulfilled and **I ask that the HoL SC request a copy and allow me to comment on it, in writing subsequently.**
5. While these cases were from 2014, I do not believe they have all been resolved, or importantly the lessons learnt. One case I know was raised with your Committee on October 26 2016 and so I will not cover it. But on the others I can add that:
 - I contacted the 5 most serious cases and none had had any further contact from HS2 Ltd.
 - In one case the individual who had failed EHS still had to move house and lost a £135,000 in doing so. A short time later their sold property was safeguarded, but they were never told this might happen and had no redress. This case would now fall under the ‘retrospective compensation’ (Sold and Lost) arrangements that HS2AA now raise
 - Only two of the 11 cases would be protected under the new financial arrangement rules.
 - Securing an unblighted valuation was a central issue. While being able to choose a local valuer is welcomed, people still suffer from valuations using the HS2 Ltd list and receive low offers. There needs to be a method of resolving disputes, as HS2AA have requested.
 - While other Government Departments have fast-tracked processes for terminally ill cases (DWP and HMRC), and despite the HoC SC recommendation, no process is in place. The case I dealt with took 9 weeks and 5 days to settle (longer than the average) and by

⁹ 376. MR MOULD QC (DfT): Mrs Trickett has given us details of a series of cases where she tells you that things have gone wrong. I am not aware of the circumstances of those particular cases. If she would like me to follow up those cases, I will. **She is very welcome to write to me and I will see what I can do to provide her with answers.** But in order for me to be able to do anything useful, I do need to have details of the cases in question.

the time the widow had moved her husband had passed away without the peace of mind of seeing his wife settled in a home near their daughter. This is morally reprehensible. I have spoken with the widow this week and she is still grieving and traumatised over the death of her husband who never got to sit with his wife in her new home, knowing his financial affairs were in order and she was settled and looked after, his one aim before he died.

- The issue of **long distance travel to a new job** remains. The current rules contain no guidance and yet Colin Smith (the HS2 Ltd expert) told the HoC SC (30 October 2014, para 154) that the NtS rules would include examples like “*they may be relocated to a new job where it demands driving an hour or more to a new job and they wish to move closer to their job.*” I have had two cases. One involved an individual who had to drive an extensive distance (2-3hrs each way) whilst worrying about his wife’s illness, which was not considered ‘exceptional’, but a life choice. After being rejected 4 times and after 2.5 years he was finally accepted after a personal plea to the Secretary of State. People have a right to better treatment.
 - **Guidance on upsizing.** Other Government departments have relevant rules, e.g. there are specific NICE and Housing guidelines regarding overcrowding of rooms and delineation of which sex child can share with another child. Yet when provided as evidence it appears to be disregarded. By discretion the Need to sell scheme might be more generous but surely not less generous?
6. I still hold 22 of the 38 case files I managed, including the 11 individual cases covered in the dossier and would welcome the opportunity to review the response from the DfT to the Committee, and provide my comments. I hope that this will be possible.
7. The HoC Select Committee reported on my evidence in their First Special Report (before they had seen the DfT response) as follows:

The First Special Report of Session 2014-15 (published March 2015) reported

121. On 28 February 2015, Dan Byles’ caseworker, Sandy Trickett, sent us a dossier of cases of alleged procedural defects in the valuation and compensation process. We have heard from Jeremy Lefroy MP about similar matters.³⁷

122. The dossier raised several matters. One was inconsistency between grounds of refusal for a sequence of applications under the Exceptional Hardship Scheme. The first applications were refused on one basis, with other grounds accepted. Later applications were refused on the basis of the previously accepted criteria. There may have been changes of circumstance, but if not this inconsistency cannot be right and requires investigation.

123. Another issue was the lack of an adequate expedited process in cases of terminal illness. The new scheme must rectify this. We expect urgent applications to be considered urgently.

124. A further issue was that of alleged defects in valuation procedure, including inadequate surveying, inadequacies in comparative valuation and alleged intransigence over appropriate valuation amounts.

125. In addition, there was the issue of the questionable sensitivity with which certain applications had been handled.

126. There is a case to answer on these matters. On the face of it, some of what has happened was wrong and unjust, and we are concerned that it may be symptomatic of an approach being adopted across the whole route. We do not intend to expose individual cases to public examination, but we have written to the Government asking for a report back.

Annex 2: Summary Report the Panel receive

Extract from Panel Guidance May 2016

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Annex A | Summary report template

Annex A – Summary report template

Case number:	
Initials:	
Address	
Date of application receipt	
Date of NTS panel meeting application is submitted to:	

NTS criteria	Applicability to applicant	Documentary evidence	Notes (for panel member)
Property type (HS2 Ltd summary)		•	
Location of property (HS2 Ltd description)		•	
Effort to sell and the impact of blight (HS2 Ltd summary)		•	
No prior knowledge (HS2 Ltd summary)		•	
Compelling reason to sell (applicant's own wording)		•	

Annex 3: Helstrip v HS2 Ltd

Extract from Appeal to Information Commissioner; Helstrip v HS2 Ltd; Case No EA/2012/0201, Decision dated 29 January 2013

Decision by Judge.

...

41. All parties accepted that:
- the EHS scheme was intended to help those who own a blighted property at a time when other circumstances are forcing them to sell;
 - the property market is not entirely rational and uncertainty about a planned project may temporarily undermine property values across an area that is much larger than that in which such values will be seen to have been permanently reduced, once the project has been completed.
42. We also received evidence, which was not seriously challenged by HS2, to the effect that estate agents in the area close to the Appellant's property considered that prices had been significantly reduced across an area extending up to three miles either side of the proposed route.
43. In those circumstances it may be said that the Location Criterion imposes an unnecessarily strict limitation on qualifying properties, in that it requires proof, not that the property in question is suffering a temporary price deterioration due to market perceptions of the likely effect on it of High Speed Two, but that it will actually be "substantially adversely affected" by it. This would seem to us to give rise to the real possibility that market misperception will lead to individuals, with an urgent need to sell a property (thus satisfying the Hardship Criterion), finding it impossible to sell a property (satisfying the Efforts to Sell Criterion), and yet not qualifying for EHS assistance because the panel decides that, ultimately, the adverse effect will not be as great as is currently assumed.
44. The evidence of the HS2 witnesses, as supplemented by the answers they gave to questions posed during the hearing, suggested to us that the terms of the Location Criterion assisted in maintaining what they perceived as a responsible attitude to not exacerbating blight. Yet it seems clear from the official explanation of the purpose of EHS that it was not created in order to control blight, but to provide redress wherever blight occurred, regardless of what may have caused it. Public misperceptions may cause blight to extend across a wider area than HS2 think is really necessary, but the harm suffered by those trapped within it at a time when they are forced to sell is no less real for that. All that is different is that HS2 will ultimately stand a much better

chance of recovering its outlay than in the case of properties closer to the planned route.