RESPONSE OF THE COMPULSORY PURCHASE ASSOCIATION TO THE CONSLUTATION ON HYBRID BILLS 2021

This response is submitted on behalf of the Compulsory Purchase Association ("CPA").

The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation.

The CPA has over 700 members practising in this field, including surveyors, lawyers, accountants, planners and officers of public authorities.

This consultation response has been formulated following discussions within the National Committee of CPA. The CPA would welcome further discussion on the responses should that be of use.

Question 1

"What should Parliament do to ensure that those who are directly and specially affected by a hybrid bill (that is, potential petitioners) know how to use the petitioning process effectively?"

Response 1

It is crucial that clear guidance is provided to petitioners but even then it may be insufficient to make the procedures accessible to a potential petitioner without professional advice. The private bill office guides are helpful and have been improved recently, removing some of the requirements for archaic language etc. It is now fairly easy to petition using the online form. The wider process beyond the making of petitions is more difficult to negotiate and understand for first time users, notwithstanding that the private bills officials are always very helpful if enquiries are made to them.

Our recommendation at the response to question 3 to place the examination of much of the public facing aspects of the hybrid bill into the hands of the Planning Inspectorate would mean allowing a body well equipped to handle public facing inquiries to deal with, and concentrate on, an examination on aspects of the bill in an accessible manner.

Question 2

"Is there an imbalance in the roles and resources of the promoters and petitioners that creates problems of unfairness and, if so, is there anything Parliament should do to remedy it?"

Response 2

There is a large imbalance in the roles and resources of promoters and petitioners. Schemes of the size that use hybrid bills are naturally well resourced on the promoter's side and with personnel experienced and well equipped to deal with the hybrid bill process. In contrast most petitioners are coming into the process with no prior knowledge about it and into an unfamiliar world of not only a major scheme but also the procedures associated with both Houses of Parliament. Those petitioners are then expected to outline their case centrally in London, to committee members who are regularly interrupted during sessions and in a very short allocated time. This often leaves petitioners feeling like they have had an inadequate hearing.

Those petitioners that are resourced to do so often spend considerable sums of unrecoverable money in petitioning against a Bill partly in order to best navigate the procedures involved with a hybrid bill and partly because the nature of the process does not encourage early engagement so that

unnecessary sums are spent having to prepare for a hearing when they could easily have been dealt with earlier in the process. Often petitions are settled in the corridor outside the select committee hearings because the promoter doesn't fully engage until the latest point, incurring abortive costs for petitioners who could have agreed assurances much earlier, had the promoters engaged. The absence of any costs sanctions on the promoter means there is no potential sanction which encourages them to engage early and proactively to minimise the petitioner's costs.

The CPA feels that a combination of rules/procedures concerning early engagement with affected parties as outlined in our response to question 4 and involvement of the Planning Inspectorate as outlined in the response to question 3 would assist.

Question 3

"Are there procedures and practices used in other systems for determining planning applications, such as planning inquiries for major construction projects, which could usefully be applied to the hybrid bill procedure when dealing with works bills?"

Response 3

Feedback to the CPA suggests that petitioners generally do not feel that sufficient attention has been paid to their case, both through the manner in which their case is heard (the select committee and the disruptions for voting etc) and the time allocated for their case to be heard (which is naturally constrained when connected with the parliamentary process).

In terms of those affected by compulsory acquisition powers, the CPA believes there would be merit in involving an independent party in hearing those petitions and then making recommendations to the select committee as to changes. This could be the Planning Inspectorate. The Planning Inspectorate is already well acquainted with considering issues surrounding compulsory purchase through various types of order including Compulsory Purchase Orders ("CPOs") and Development Consent Orders ("DCOs") and then making their recommendation to ministers. This would provide an independent voice to the process, allow sufficient time and space for appropriate hearings to be conducted into compulsory purchase issues, allow hearings to be conducted locally to those affected and free up select committee and parliamentary time.

Consideration needs to be given to how the political pressure that is brought to bear by a Select Committee Report can also be brought to bear where the Report is from PINS, such that there is a level of engagement from MPs around petitioners' concerns to ensure that the PINS report gets appropriate weight in the government's ultimate decision making process.

Where petitioners have compulsory acquisition issues as well as other wider issues, a difficulty might be disaggregating compulsory purchase issues from other issues in petitions. Also the issue of whether there would be only one opportunity or two (i.e. per house) to be heard would need to be addressed. If Additional Provision can be promoted in both houses, affected parties would presumably need the ability to petition/object at each stage and be heard accordingly.

Generally the CPA would make the point that there are a number of different regimes to facilitate orders for infrastructure delivery including CPOs, Transport and Works Act Orders, DCOs and Hybrid Bills. It would make sense and make it easier for affected parties to engage in these regimes and to ensure that they are treated equally by the regimes, if they were aligned as far as is possible.

Question 4

"Are there procedural, or any other, changes that could be made to promote negotiation between the promoters and petitioners (or potential petitioners) so that agreement might be reached at an earlier stage and in advance of committee hearings?"

Response 4

Early engagement is crucial to reaching early settlement on undertakings or assurances. Too often promoters leave their negotiations to the door of the petitioner's session when all the potential costs of the petitioner have been incurred. Procedures need to be in place to encourage early engagement and those procedures need bite and consequence if they are not complied with.

At present the Hybrid Bill Process is the only regime which allows compulsory acquisition of land without provision for payment of petitioners costs in circumstances where petitioners affected by compulsory acquisition powers successfully petition for the removal of land or rights from the Hybrid Bill (whether by agreement with the promoter or as a result of changes to the Hybrid Bill). Potential liability for petitioners costs would create an appropriate sanction for promoters and create a mindset which would ensure that promoters engaged early and were mindful not to unnecessarily waste petitioners costs. Such a change would bring the Hybrid Bill system in line with other compulsory acquisition regimes, preventing unfairness to petitioners whereby treatment and recovery of costs varies depending on the nature of the Order seeking compulsory acquisition powers.

The CPA are currently working on updated procedures for early engagement in the context of CPOs to ensure that there is a sufficient focus on understanding the impact and mitigation that can be put in place before a CPO is made even if it is not possible to agree an acquisition of an affected party's property. Requiring the promoters of Hybrid Bills to engage with affected parties and consider impacts and mitigation at an early stage may reduce the amount of petitions necessary to any Hybrid Bill, often the promoters of Hybrid Bill have only considered the impacts of the compulsory possession powers from their own perspectives and not the impacts on affected parties and businesses. It would help align the various compulsory acquisition approaches and ensure equity of treatment for affected parties (irrespective of project or process they are impacted by) if all processes shared a similar approach to early engagement.

Part of the problem is potentially that the Government try to drive through proposals which are not worked up enough at the start and on which the Promoters have not engaged sufficiently with likely affected parties in advance (hence the multiple additional provisions in the first House), with timescales to meet political decisions/perceived imperatives. Also the Select Committees do not want the proceedings to last longer than they think necessary and are working to a timetable which leads to insufficient time being allocated. Sitting on a hybrid bill Select Committee may not be members key priority also leading to proceedings being tightly timetabled and potentially insufficient time being allocated to understand the impacts on affected landowners.

The standing orders currently provide for public consultation on the environmental statement following 1st Reading of the Bill although this just leads to a summary of issues raised in response to the consultation by Parliament's independent assessor to inform MP's ahead of 2nd Reading. Consideration should be given to a standing orders requirement on the Promoters to consult (pre-deposit of the Bill) affected parties including all parties who will receive particular notices (eg notices to owners, bodies who receive other notices and who are statutory consultees in other procedures) and produce a report summarising the consultations that have taken place (DCO rules require pre-app consultation including with landowners and Transport and Works Act rules require a report on consultations to be submitted with the application). This might make the Promoters engage more

fully with potential petitioners at an earlier stage and avoid meaningful negotiations being left to the very last minute.

Question 5

"Should parties to hybrid bill proceedings (whether promoters, petitioners, witnesses, or Members of the hybrid bill select committee) be able to appear at and participate in meetings remotely?"

Response 5

The CPA are concerned that creating remote meetings within the context of the current rules will make it harder than it already is to convey a petitioner's message to the select committee. This may also reduce the face to face dialogue between promoters and petitioners.

The CPA would encourage the use of inspectors as outlined in the response to question 3, to examine compulsory purchase aspects of the scheme and in so doing could hold hearings for petitioners in their local area (not in London) and create an environment where petitioners feel they have had a sufficient hearing (whether in person or virtually).

Question 6

"Should the £20 petitioner's fees be retained? What are the arguments for and against its retention? If it is retained, what should govern the level of the fee?"

Response 6

No petitioner should be charged a fee for petitioning:

- The cost of administering the fee by professionals acting on behalf of the petitioner far exceeds the actual fee.
- If it is intended to act as a deterrent for vexatious petitions then it is not sufficient to do so and in any event the standing of petitioners is carefully examined.
- Other regimes involving compulsory purchase do not charge a fee to an affected party for objecting to an Order which affects their ownership/land rights/human rights. Instead an acquiring authority is required to pay the fees of the inspector to cover the cost of examining the scheme.

Question 7

"What further guidance might assist potential petitioners in understanding the concept of "right to be heard"?"

Response 7

It is not easy to locate the existing guidance on the "right to be heard". Guidance should be easily available. Where the objective of the government is to limit objections to only those parties with a genuine right to be heard, it would be helpful if the guidance included examples of successful challenges to the right to be heard/locus standi challenges in order that parties can see illustrations of the type of position which does not give rise to a right to be heard. Also helpful would be examples of situations which do give rise to a right to be heard. Furthermore the process needs to allow parties to defend their right to be heard on the basis of written submissions without having to attend the select committee in person. This reduces the cost and time burden to petitioners where there is a simple point to be rectified.

Question 8

"Should promoters be able to propose Additional Provision in the second House?"

Response 8

It would benefit both promoters and petitioners to allow Additional Provision in both Houses. This would allow further agreed mitigations to be included within a bill as they are agreed between promoter and petitioners throughout the whole of the hybrid bill process.

However the consequences of this would be a slower bill process due to more notices and additional environmental statement requirements. Furthermore landowners who had taken a view that they were not affected by the Bill could find themselves at high risk with limited consultation and little time to prepare for petitioning against an additional provision (and no opportunity to petition in the second house as a potential fall back). Accordingly where Additional Provision is introduced in the second house measures need to be put in place to ensure that affected landowners are given notice of the impact of the changes introduced by the Additional Provision and direct notice of petitioning periods.

Question 9

"Where promoters make undertakings to a hybrid bill select committee, or give assurances, how can Parliament most effectively ensure that they fulfil those obligations?"

Response 9

The concept of enforcement of undertakings or assurances is still little understood compared to enforcement of private treaties against acquiring authorities in the context of other compulsory purchase regimes. It would be useful for Parliament to publish statistics about the number of complaints received against promoters arising from hybrid bill schemes.

The CPA feel that if undertakings and assurances are to remain enforceable through Parliament then clear procedures should be in place for accountability, preferably through a specific select committee tasked with that purpose. The accountability and overview mechanism in relation to compliance with undertakings and assurances needs to be clear and accessible so that those benefitting have a route to access a remedy where there is a failure to comply with undertakings and assurances.

Question 10

"Are there any other changes to hybrid bill procedure and practice that are needed, or would be desirable, in order to promote the overall purpose of the review?"

Response 10

In general, the CPA does not feel that the hybrid bill process for infrastructure projects serves affected parties well in its current format. In particular the early stages of design on which a hybrid bill is based only creates issues later on for detailed design which have not been addressed at the bill stage.

Those advising affected parties on major infrastructure projects are now well versed in the Development Consent Order process and feel a level of reassurance in the procedure in place there and the independence of the Examining Authority in considering the issues at hand.

To the extent that hybrid bills for infrastructure projects continue to be promoted, the CPA's proposed high level recommendations in relation to the compulsory purchase aspects are currently covered in the responses already given.