

RM6240 Public Sector Legal Services

DLA Piper UK LLP

Lot 3 – Transport Rail Legal Services

VERSION 1 – AUTUMN 2022



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Disclaimer:

The use of information provided throughout (with particular regard to that given in case studies and key contact biographies) is not commercially sensitive, and where it is not a matter of public record then appropriate permission has been sought for inclusion.

Introduction

We are delighted to renew and strengthen our strategic relationship with the wider public sector through our appointment to Lot 3 (Transport Rail Legal Services) of the RM6240 Public Sector Legal Services Agreement.

What you can expect from DLA Piper

Breadth and depth: Whether it be dealing with protestor action, complex technology transformation programmes, strategic procurement litigation, response to COVID-19, complex infrastructure programmes such as HS2, East West Rail, or Tyne and Wear Metro or your everyday requirements, we have the capability and capacity to meet your needs.

Attitude: Through our long history advising central, regional and local government (over 20 years) on complex transport projects including rail, we understand what works for you; our job is to work as an extension of the client team and as a trusted advisor. We bring practical solutions and sector knowledge and expertise to complex problems through first class analysis.

Like you, we care about the transport projects that our work seeks to deliver. We care about diversity and inclusion in our workforce and are strong supporters of social mobility: one of our Partners was until recently Co-Chair of the Social Mobility Commission. We are concerned about the challenge of climate change (we were appointed as the exclusive legal provider to COP26) and are responding in a concrete way to this through our own science-based Net Zero Commitment. For more information see our Social Value page.

Investment: UK public sector represents our firm's single largest client. We have invested significantly in hiring new talent, appointing a dedicated account manager, training our team through our Government Academy and empowering our next generation through a multi-generational Steering Committee. We invest in our individual public sector clients, spending time to understand their needs through our client listening programme. We share our knowledge internally and with our public sector clients through training and knowledge transfer.

Innovation: We recognise the continuing pressure on you to deliver value for money legal services. In response to this, our tools include legal project management, business process improvement and volume legal service solutions. We use a range of legal technology including a document review platform, e-disclosure and e-preview tool, secure data management rooms, a transaction management platform and a legal document automation tool. We are ideally placed to support government to do more for less.

How are we different?

Our distinguishing feature is our ability to "get boots on the ground" quickly no matter the nature of the challenge and, sometimes, where other firms fail. Our collaborative, down to earth, "get the job done" approach puts government first, results in clients coming back to us.

The challenge

The rail sector faces significant challenges over the next four years, with significant industry change, commercial and political challenges and a changing passenger environment. However, there is a real opportunity to deliver significant benefits to the public where innovative solutions can be found to deliver projects on a value for money basis across the public sector. We look forward to working with you to deliver these exciting projects.

Robert and Howard

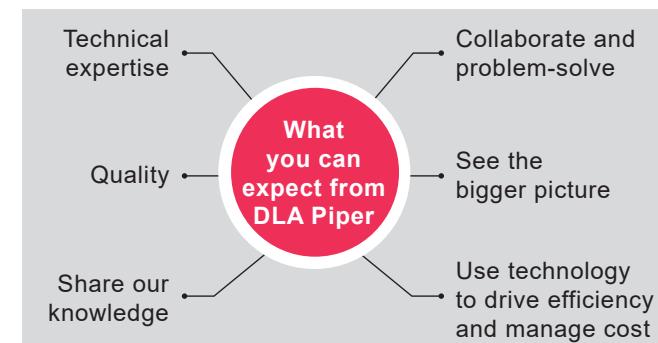
Your dedicated relationship management team



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Team Structure

Working in the rail and transport sector on behalf of public bodies is often challenging and always a privilege. Our dedicated rail and transport team, which combines practitioners at all levels of experience across our seven UK offices, is enthused to embark on this new framework. We have a reputation for our collaborative approach and look forward to the opportunity to working in partnership with rail and other transport clients alongside other advisors to ensure all of today's and tomorrow's challenges are met. With change afoot in the rail industry as a result of the Williams-Shapps review and the Government's 2022 Growth Paper, it has never been more important to have top-notch legal advice at your side.

Client Relationship Partners



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DLA Piper key facts

- 20+ years supporting the UK public sector
- 150+ Government specialists
- 400+ lawyers regularly undertaking Government work
- 850+ lawyer capacity in the UK where needed
- 20+ lawyers who have security clearance
- UK offices in Birmingham, Edinburgh, Leeds, Liverpool, London, Manchester, Sheffield
- Global law firm located in 40+ countries

Contact any member of the team directly or email us at
governmenttenders@dlapiper.com



Proactive advice can only be provided by people who have done this before. As one of the largest UK (and global) law firms, we draw upon a team of over 300 ICT lawyers which means you will benefit from one of the largest and most experienced transport teams in the UK with a real focus on delivery for the public sector. We can also call upon the strength of our wider pool of highly experienced UK and international lawyers across a range of practice areas, scaling to meet your demands.

Social Value

Our Responsible Business strategy focuses on understanding how our firm's operations impact our business and society from an environmental, social and corporate governance (ESG) lens. It means working openly and collaboratively with others to achieve these goals, leading where we can and being prepared to advocate for needed change.



Our Environment

Our environmental impact and opportunity is linked to the work we do for and with our clients, and the advice we give them. In our Sustainability Report for 2020/21 we've set a sector-leading science-based carbon reduction target to reduce our absolute carbon emissions by 50% by 2030. Additionally, by **2030**:

- We'll aim to reduce our supply chain emissions by 25%
- We'll aim to reduce our business travel footprint by 75%

By **2025**, 100% of our electricity in the UK will be sourced renewably and we'll divert 95% of waste away from landfill. We are concerned and vocal about the challenge of climate change and were honoured to be the exclusive legal services provider to **COP26**. We have committed a member of our Executive to delivering on ESG.



Our People

Our vision is to create a firmwide inclusive culture, where our people can thrive. Our Diversity and Inclusion strategy is based on three pillars:

- Our goal is for **30% of all Partners to be women by 2025** and 40% by 2030.
- A requirement that at least 50% of partnership promotions come from under-represented groups (we achieved 55.5% in our 2022 promotion round).
- Monitoring our Business Services population to ensure it remains inclusive and representative – where there are imbalances, address them head-on through proactive and targeted recruitment.



Our Society

We are committed to using the skills and experience of our people, working across networks and leveraging our influencing ability to make the world a fairer and better place for all. We take a holistic approach to addressing key social issues, which includes our partnerships, operations and advice.

We focus on empowering people from under-represented groups and in underserved regions to achieve their full potential through our Head Start and Global Scholarships Programs. In 2021, we achieved ranked in the **Top 20** of UK businesses for our Social Mobility efforts in the UK (Social Mobility Foundation, 2021)

We have, so far, have committed to 201,800 hours of **pro bono** work – more than any other law firm globally – helping to build a pro bono culture in the legal profession around the world.



Supporting Government

We actively work with our suppliers on minimising ESG risks and maximising positive impact. Our goal is for 100% of our key suppliers to have signed our updated **Sustainable Procurement Policy** and Supplier Code of Conduct.

We collaborate with government clients on social impact programmes and can support government with:

- ESG due diligence, audits, assessments and bench marking
- Policy reviews and developing ESG messaging
- Compliance frameworks
- Sustainable finance

Contact us at governmenttenders@dlapiper.com for further information or support on ESG initiatives.

Our commitments



Legal sector collaboration



Third party assessments



In 2020 we received a highly respectable **B** on our CDP Climate assessment, and a good score of **80/100** in the EcoVadis Environment category.



Mandatory Specialisms

Rail Transport Law

Introduction

We are fully conversant with the primary and secondary legislation and policy applicable to rail projects across the wider public sector, including the Transport Acts, Railways Acts; Regulation 1370/2007 and procurement regulations; access and safety regulations as well as the application of wider legal frameworks in a rail specific context. We have a deep familiarity with industry documentation including: franchising agreements and national rail contracts; access documentation for networks, stations and other facilities; asset protection and development arrangements. We have expertise in: drafting franchise and concession agreements and ancillary documentation, advising on rail specific issues, including devolution of rail services; the development and finalisation of procurement documentation and procurement assurance.

Examples of our experience include:

- **Rail North:** advising on the establishment of Rail North, a Joint Venture between 29 local transport authorities in Northern England to deliver effective rail strategy, relying on local government rail powers and managing two rail franchises through a partnership arrangement with the DfT. This included negotiation of a partnership agreement with the DfT relating to both rail regulatory powers and franchise management; drafting the Rail North members agreement covering franchise variation and Transport Act 1968 functions.
- **Transport for the North:** advising on the transfer of Rail North to Transport for the North, which occurred in April 2018, including advice on transfer of powers for continued performance of Rail North's franchise management and consultation role and transfer of rail management arrangements with the DfT.
- **MetroFutures:** advising on returning to in-house operation of the Metro system, a light rail system including operation on the national heavy rail network as part of a wider project relating to renewal of the network. This included advising on the application of regulation 1370/2007 to the in-housing of operations, and transfer or implementation of the regulatory requirements for an in-house rail operator
- **MetroFlow:** advising on the transfer of rail network from Network Rail to Nexus and the implementation of a bespoke access regime. This included advising on the network change process, and implementation of bespoke access arrangements to allow continued freight movements over an upgraded passenger line, as well as interfaces with the Network Rail network.
- **Rail franchising:** we have advised Department for Transport on a wide range of rail franchise and related matters, including franchise agreements for: **East Anglia rail franchise** (direct awards, competitions and emergency measures agreements); **South Eastern** (competition, direct awards and emergency measures agreements); and **Cross Country** (direct award), EMAs and ERMAs and National Rail Contracts for **East Midlands** and **Essex Thameside**. We are one of the firms that provided litigation support to DfT in their successful defence of litigation by Stagecoach and other operators in respect of the rail franchising process. Our advice has included a wide range of issues relating to rail franchising, including competition law advice, employment and pensions issues (including advice on railways pension issues); advice on fares and ticketing matters; advice on infrastructure matters; depot development; digital infrastructure; fleet cascades; and third party funding.
- **Devolution of services:** we advised on the devolution of rail services from the East Anglia franchise to TfL, both to the Overground operator and the Crossrail operator. This included advice on the establishment of a separate business unit within the franchised rail operator and transfer and associated funding arrangements.
- **Crossrail:** we have advised **Department for Transport** on operational matters relating to Crossrail, including access arrangements to the Heathrow Spur (owned by Heathrow Airport Limited (HAL)). We supported DfT through this process, working with TfL as Crossrail co-sponsor, providing commercial advice with awareness of the regulatory framework including regulations and related EU directives; the exemption order granted for the spur (providing relief from certain Railways Act 1993 (RA) obligations); the terms of a Deed of Undertaking (DoU) between DFT and HAL relating to revocation of that exemption order, advice upon potential HAL breach of the DoU and on right to revoke.
- Advising a number of **rail operators** on disputes under the Network Code and Access Disputes regime. This has included advising on claims arising from the Network Change process in particular where major infrastructure works have affected rail performance or caused loss.
- **Fares and ticketing:** we have advised on implementation of multi-modal and smart ticketing solutions, including advising on implementation of the SEFT project; advising Transport for the North on its IST programme; funding of ticketing infrastructure including PVALs and ticketing backends; and associated legal frameworks and procurement advice.



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Rolling Stock

Introduction

We have extensive experience in the rolling stock industry, with an understanding of the industry structures, and commercial positions of the parties having acted for procuring authorities, manufacturers and maintainers, owners and funders on deals funded both by public sector owners; and through both asset and project finance structures.

We can advise on:

- full fleet procurements/replacements;
- variations to existing supply arrangements;
- refinancings and restructurings;
- rolling stock cascades between operators;
- associated commercial arrangements including depot and maintenance arrangements; and
- direct agreements for newly introduced rolling stock both with major ROSCOs and newer leasing companies.

We have extensive experience engaging with all industry parties, including the ORR in respect of bespoke arrangements to support novel financing and other arrangements. We have experience of developing business cases for rolling stock transactions, advising on the full delivery of projects, including advice on frameworks for funding and financing of projects by devolved and local government bodies; the regulatory regimes applicable to the introduction of both heavy and light rail rolling stock and tram-trains; maintenance arrangements (including through depot access arrangements and TSA, TSSA and hybrid maintenance arrangements); issues relating to maintenance of legacy fleets; depot development; disputes under rolling stock agreements and associated supply chain; rolling stock testing; modifications to vehicles including implementation of ETCS

and other CCS systems; sales of existing fleets including public sector investment in privately owned fleets; public sector leasing of rolling stock. We have experience advising on multiple traction types including bi-mode and battery-electric fleets and managing interface and gauge clearing issues for fleets, including their interface with infrastructure developments.

Examples of our experience include:

- **MetroFutures:** we advised Nexus on the full fleet procurement of replacement rolling stock for the Metro system, with capability to operate on the local Network Rail network. Advice was provided from business case stage through to current implementation. This required advice on a bespoke acceptance regime reflecting the dual nature of the rolling stock. advice on procurement of vehicles with battery operation capability, including future upgradability; design of a procurement strategy to maximise the business case benefits of the rolling stock. In addition to rolling stock, this included procurement of a long term maintenance arrangement, including out-sourcing of existing fleet maintenance during transition.
- **South Yorkshire Tram-train:** we advised South Yorkshire PTE on taking over the procurement of a tram-train fleet from a rail operator and completing the procurement of the first tram-train rolling stock produced for UK use, including negotiation of supply and maintenance arrangements with both the manufacturer and operator of the proposed fleet.
- **Merseyrail & Merseytravel Fleet Procurement:** we advised on the GBP600m project for full replacement fleet during the long term Merseyrail concession, including procurement, structuring, and related depot and maintenance arrangements, including transfer of the existing maintenance teams to the manufacturer/maintainer. Our litigation team successfully defended a procurement challenge by an unsuccessful bidder.
- **Intercity Express Project:** we advised **Agility Trains** (a Hitachi/John Laing consortium) on their successful bid for this procurement by DfT of a PPP for a fleet of new express trains for the GWML and ECML, and have continued to advise on operational matters including major variations and a re-financing.
- **East Anglia** fleet procurements: we acted for the DfT in respect of the two fleet procurements (totalling in excess of GBP1bn) that were carried out as part of the East Anglia rail franchise procurement, both using novel financing structures.
- **Thameslink:** we have advised **DfT** since 2013 on operational issues arising from the TRSP PPP contracts for the manufacture, supply and long-term maintenance of 1,140 rolling stock vehicles for the Thameslink network, including negotiation of major variations to the fleets; implementation of ETCS; and two refinancings.
- **Caledonian Sleepers:** we advised Serco on the procurement of their new bespoke carriage fleet including lease financing arrangements, government support, on the acquisition and overhaul of the existing rolling stock and on the haulage arrangements for both new and old fleets.



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Projects and Infrastructure (Rail)

Introduction

We have substantial experience covering a wide range of (both heavy and light) rail including development of major infrastructure, and the regulatory and commercial implications of the changes that arise from both brownfield and greenfield development in the rail industry. This includes advising on new stations, depots and station developments; construction and maintenance of track and ancillary infrastructure; development of light rail systems; implementation of control and signalling systems including ECTS and financing of major infrastructure. On any rail project on which we advise, our integrated regulatory, procurement and commercial advice supports our clients' decision making and makes for an efficient and effective process. For local and regional government delivery it is also important to understand the wider funding context, which may include advice on subsidy control matters and associated prudential borrowing arrangements both from PWLB and infrastructure banks. Our wide experience of advising local and devolved administrations allows us to advise on appropriate funding and delivery routes.

Examples of our experience include:

- Acting for **Nexus** in respect of the Tyne & Wear Metro network, a network which uses its own and Network Rail (NR) infrastructure, including re-integration of operation and infrastructure following termination of the operating concession. In particular we have advised on **MetroFlow**; a project for the transfer of rail network from Network Rail to Nexus to increase capacity on the light rail network. This has included negotiation with existing freight operators using the transferring track, negotiation of revised access arrangements with adjoining facilities, the implementation of a new bespoke track access regime, advice on the planning requirements for track and station works associated with the project and procurement of a construction contract for carrying out the works.

- Advising **Merseytravel** on the re-development of stations, including new-build interchanges, and roll-out of ticketing and other infrastructure, and variations to the Merseyrail concession.
- Advising freight operators in respect of the network change relating to the transfer of the **Core Valleys Lines** from Network Rail to Welsh Government, as part of the TfW redevelopment of that network. This included advising on effective management of the risks of a new Network Code for the network to ensure that operators could support the transfer and policy approach without material risk.
- Advising **Nottingham City Council** on **Nottingham Express Transit** their light rail system. We supported the original hybrid PFI procurement of Phase 2 of this light rail system and have since advised on operational issues relating to the project.
- Advising in respect of elements of the **West Yorkshire Stations** package, including funding and development arrangements. This has included advice on public sector funding to Network Rail and Northern Rail in respect of delivery of works; advice on businesses cases for new stations and negotiations of section 106 related arrangements with third parties and developers.
- Advising **DfT** in respect of the **Thameslink Rolling Stock Project** including matters relating to depot development and in respect of the interface of the project with stations development and upgrades.
- Advising **Agility** in respect of the Intercity Express Project. This included advice on depot leasing and construction, works to existing depots and the implementation of bespoke depot access arrangements with modified access terms to support long-term project financing.

- Advising **developers and local authorities** planning **infrastructure works** on asset protection and development arrangements relating to work in the vicinity of the rail network, including funding of works by Network Rail, and direct delivery interfacing with Network Rail.

We also have wide international experience of light and heavy rail infrastructure concessions acting for both public and private sector clients, which allows us to draw on international best practice and proven models for delivery. Examples include acting for:

- the successful bidders on LIMA Metro line 2 & 4 PPP, a 35km underground infrastructure PPP project;
- the successful bidders for the Milan metro line 5 project;
- MRT Corporation on the implementation & management of the Klang Valley MRT project in Kuala Lumpur; and
- the sponsors on the Confederation line, a DBMO concession for a new light rail line in Ottawa.



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Planning and Authorisation (Rail)

Introduction

DLA Piper has a high quality infrastructure planning and development planning practice, with a large team having particular expertise in promoting large and complex public sector transport related projects throughout the UK, including:

- Development consent orders, transport and works act orders, planning permission and other orders to secure planning, compulsory acquisition and other regulatory consents for EIA Regulation level capital network projects.
- Advising on hybrid bill projects and their implementation, including appearances in select committee.
- Prior approvals and certificates of lawful use for network upgrade improvements utilising permitted development rights (PDR).
- Station development including airspace development and station concessions.
- Implementation of orders, planning permission, PDR, including discharge of conditions/requirements and negotiating statutory planning (section 106) obligations, highway and sewer agreements.
- Interface and asset protection agreements with third parties and other undertakers to facilitate delivery.
- Land compensation claims and Lands Tribunal determination.
- Planning enforcement and statutory nuisance claims.

Our lawyers advise Government and promoters of heavy and light rail projects alongside franchising and as standalone initiatives for the passenger and freight railway.

Examples of our experience include advising:

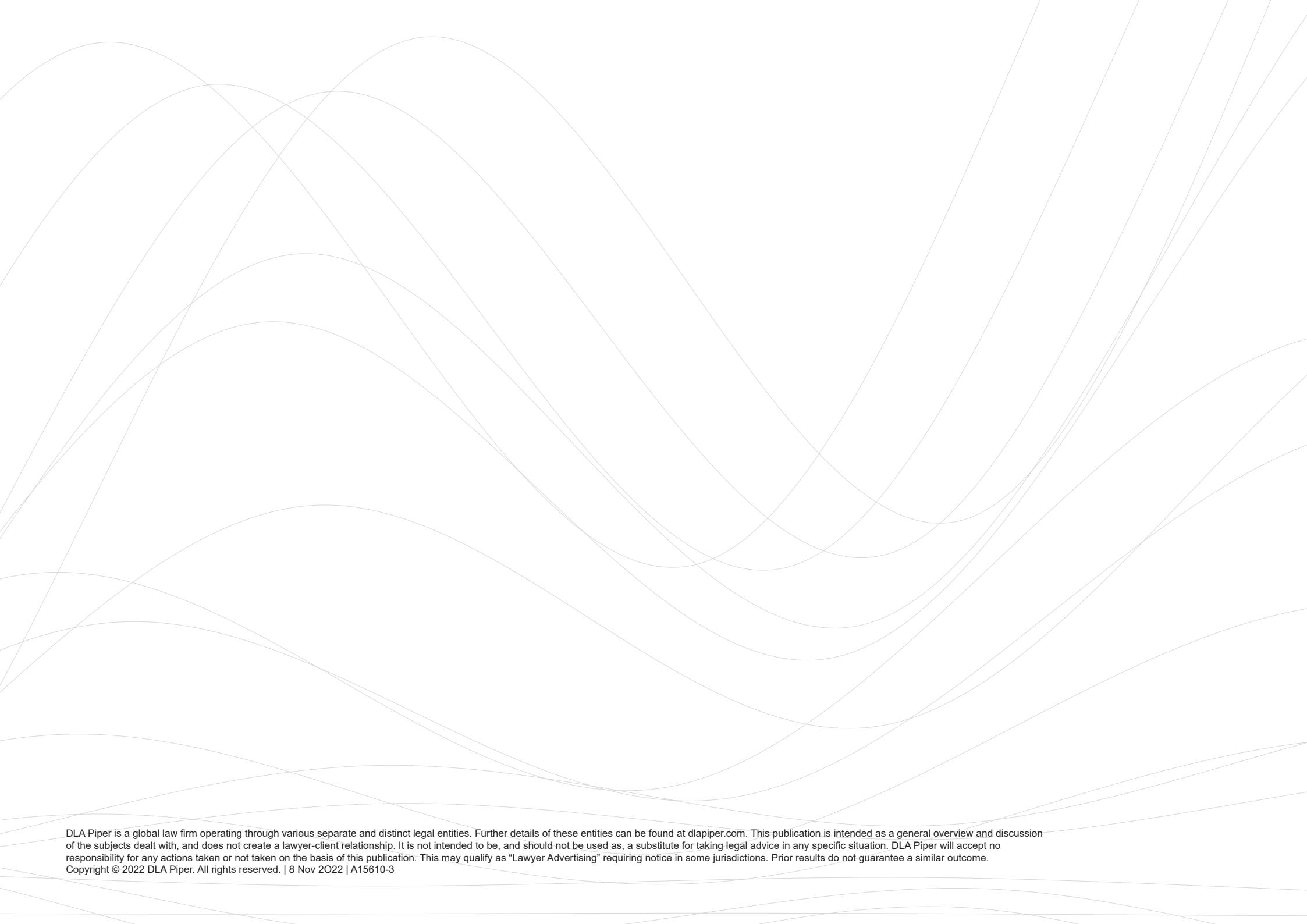
- **High Speed 2 (HS2) Limited** on its powers and land assembly on a routewide basis. This is the largest engineering project in the UK. Our advice includes the finalisation of consents under the authorising Act of Parliament; the powers of HS2 under the Act in relation to individual works; on compulsory purchase of land under the Act; and, notably, we have obtained a ground-breaking injunction against protesters for the whole of construction site. In relation to this we advise on the acquisition of the land as well as claims for compensation.
- **East West Rail – Western Section TWAO:** EWR Co is delivering proposals promoted by Network Rail under a Transport and Works Act 1992 Order (TWAO) to bring the railway line between Bicester and Cambridge back into use as part of a link connecting Oxford and Cambridge, as well as linking locations further afield. We advised EWR Co on its role in the application for and public inquiry relating to the Western section. We advised on the economic case for the project and the publication of economic analyses.
- **East West Rail – Central Section/routewide DCO:** The project will require a completely new railway between Bedford and Cambridge, the route of which is currently under consideration. There will also need to be further upgrades to the railway between Oxford and Bedford. EWR Co will promote this project itself under the Planning Act 2008. We are advising on the procedure under the 2008 Act, particularly on programme and the need for consultation on options prior to selection. We are advising on the sifting of options, interfaces with protected interests, the need for environmental assessments, consultation materials and have secured a certificate under s.35 Planning Act 2008 to enable an application to be made for a DCO.
- **High Speed 1** – This is the UK's first high speed new-build railway line. DLA Piper's lawyers advised on consenting and land assembly aspects of the initial delivery of the project and now advise on protection of the route between the Channel Tunnel and St Pancras from third party projects.
- **Felixstowe Branch Line** – we advise Hutchison Ports on its promotion and funding of improvements to the national railway network that support the Port of Felixstowe, the UK's main port for intermodal freight. This relates particularly to the main branch line serving the port where we secured a TWAO to enable its dualling.
- **Intercity Express Project** – Our team advised the supplier in relation to its train delivery programme for the UK Government, which included the delivery of new depots for the fleet of trains. Some were promoted under existing permitted development rights, whereas others required an application for planning permission. We advised on a third part judicial review in relation to planning permission for one of the sites. The new trains and depots are now in operation.
- **Tyne and Wear Metro** – we advised Metro in relation to its use of pre-existing railway powers on its own railway and devolved via Network Rail to delivery a major route upgrade. Our advice related to environmental considerations and the use of permitted development rights so as to remove the need for full planning applications or a TWAO.



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