IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 15

Attorney General's letter to the Corporation dated 5 May 2023

Attorney General's Office

Rt Hon Victoria Prentis KC MP
Attorney General

Attorney General's Office
102 Petty France
London
SW1H 9EA

Tel: 0207 271 2492

www.gov.uk/ago

Ian McCulloch
President
Royal Albert Hall
Kensington Gore
London
SW7 2AP

5 May 2023

Dear Ian,

Royal Albert Hall Bill

I am writing to you as President of the Corporation of the Hall of Arts and Sciences. This is further to the long-running discussions between my Office, the Corporation and the Charity Commission.

The Royal Albert Hall is one of our most important cultural institutions. I do not underestimate the challenge of running a world-class concert venue and am grateful for the leadership that the Council of Trustees provides. But I am also sympathetic to the concerns of the Charity Commission regarding the Corporation's governance arrangements, and in particular the influence of seat holders within the Council. These do not reflect the standards that the public now expects of charitable organisations.

My predecessors withheld permission from the Charity Commission to refer the Corporation to the Charity Tribunal. They took the position, with which I am sympathetic, that whilst the conflicts of interest that are inherent to the Corporation's constitution do not conform with current standards, these had been created by Act of Parliament and that, in practice, they did not cause significant difficulties. The Corporation no doubt welcomed this. But the expectation was that the Corporation and the Charity Commission would continue their efforts to resolve the issues between them by agreement.

I am disappointed that no such agreement has been reached. I am troubled that the Corporation should have missed an opportunity to effect meaningful change by promoting the Royal Albert Hall Bill. The Bill is to be welcomed to the extent that it seeks to improve the finances of the Corporation. But it would appear only to deepen the problem of apparent conflicts of interest by providing for the sale of further seats in Grand Tier boxes. It is one thing for the Corporation to want to maintain longstanding arrangements which have the sanction of Parliament, and which do not cause significant difficulties, but it is quite another to want to seek to expand those arrangements.

The Attorney General is responsible for protecting charity and charitable property on behalf of the Crown. To that end I am required by Standing Orders to present a report to the House of Commons on certain private Bills affecting charities or educational institutions. I doubt that I could give the House comfort that the Bill advances the objects of the Corporation were I asked to report on it. An adverse report could seriously affect the progress of the Bill through Parliament. You should therefore consider if you wish to continue promoting the Bill in its current form.

A copy of this letter goes to the Chair of the Charity Commission. Dialogue between the Corporation and the Charity Commission is the only way to ensure that the Royal Albert Hall continues to be run for the nation's benefit.

Yours,

Victoria Prentis

RT HON VICTORIA PRENTIS KC MP
ATTORNEY GENERAL

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 16

Corporation's letter to the Charity Commission dated 30 May 2023

Ian McCulloch
President of the Corporation
president@royalalberthall.com

Royal Albert Hall

Orlando Fraser Esq, KC
Chair
Charity Commission
102 Petty France
London
SW1H 9AJ

30 May 2023

Dear Mr Fraser,

Royal Albert Hall Bill

The Attorney General has copied to you her letter to me of 5 May 2023. I am therefore copying to you here my reply.

Prompted by this exchange, I am seeking to renew contact with the Commission in order to discuss the Royal Albert Hall, its constitution and our private Bill.

Although I did have one meeting with your predecessor, Baroness Stowell, the dialogue that followed was between our lawyers.

I am wondering whether this time you and I might meet? If you would welcome that, please would you suggest some dates and times that would work for you and I will do my best to make it work for me too.

Yours sincerely,

Ian McCulloch

Ian McCulloch
President

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 17

Corporation's letter to the Attorney General dated 30 May 2023

Ian McCulloch
President of the Corporation
president@royalalberthall.com

Royal Albert Hall

The Rt Hon Victoria Prentis KC MP
Attorney General
Attorney General's Office
102 Petty France
London
SW1H 9EA

30 May 2023

Dear Attorney General,

Royal Albert Hall Bill

Thank you for your letter of 5 May 2023. I had intended to reply sooner but I have been somewhat preoccupied with our Annual General Meeting, which took place last week.

Your letter gives me the opportunity, first, to assure you that the Council of the Royal Albert Hall is totally committed to maximising its delivery of public benefit and does not allow its form of governance to compromise its pursuit of its charitable objectives.

The Hall is also conscious of the special place it holds in the cultural life our nation and the need for its reputation to reflect this. The Hall therefore always aims to operate with probity and to the highest standards of governance.

Your letter is unexpected in that I am not aware of you or your predecessors ever previously expressing a view on the substance and merits of our difference with the Charity Commission over our governance. The letter dated 23 August 2021 from the Government Legal Service on behalf of your predecessor was inscrutably neutral on that issue.

For you now to express sympathy for the Commission's view that our governance does not reflect standards that the public expects of a charity and to imply, in the last sentence of your letter, that, without further dialogue between the Hall and the Charity Commission, there is a risk that the Hall may not continue to be run for the nation's benefit, are comments that we must strongly resist.

We acknowledge that, if a new charity were being created today for an equivalent purpose, it is unlikely that it would be established with a constitution equivalent to ours; but that does not mean that our constitution is flawed or inadequate or that we operate, as a consequence, to lower standards.

The difference between the Hall and the Commission is that we ensure that our constitution works without compromising standards and believe that it actually supports our paramount aim of maximising the delivery of public benefit (with over 150 years of history to demonstrate that this is so) whereas the Commission would dismantle our constitution for reasons which we consider to be doctrinaire and without proper regard to the potentially

irrevocable harm to the charity which fundamental change of the kind proposed by the Commission might well cause.

As Trustees, we also believe that we are right to be duly cautious of unintended consequences when considering major reform.

The difference arises, of course, from the view one takes of the authorised conflict of interest for Members elected to Council. We consider that, in forming a view, it is vital to factor into the equation the highly beneficial and enduring bond between the seatholders and the Hall that is embedded in our constitution in this way. It may be paradoxical but it is a unique strength, and the envy of other institutions. We do not wish to jeopardise it for the sake of form or perception.

We therefore regard it as our duty to uphold our constitution and to explain to critics why it remains sound. In doing so, we find ourselves having to contend with a largely confected or ill-informed negative perception about us. Indeed, it is 'perception' that has become the argument for change rather than anything more substantive. We do not consider the issue of perception to be a strong enough argument for constitutional upheaval. We are more concerned with truth. Not long ago, we did in fact commission an independent survey of public perception of the Hall. In the responses to the relevant questions, our governance was not an issue for respondents and we scored higher on the subject of trust than other arts institutions and the charitable sector generally.

We have, therefore, a genuine and respectable difference between us and the Commission. We have always been willing to explore the whole subject further with the Commission. I am therefore copying this letter to the Chair of the Charity Commission with an offer to meet him and resume the debate. Our earlier dialogue with the Commission was not unconstructive but no agreement had been reached by December 2018 when the decision of your predecessor was thought to be imminent. The Commission therefore proposed that the parties should await that decision. The matter rested there.

If we have a difference with yourself as well, we would welcome the opportunity to discuss our constitution and governance with you too.

Regarding our private Bill, there appears to be a misunderstanding, in that your predecessor seems to have formed the view that a private Bill would be the mechanism for reforming our constitution in the way that the Commission would wish.

It is, however, a requirement of promoting a private Bill that its purposes cannot be achieved by any other means. A statement to this effect has to be included in the preamble to every private Bill, the truth of which the Promoter has to declare on oath. The Hall therefore took advice from leading Counsel as to which kinds of reform could only be achieved in this way and we restricted the content of the Bill accordingly. We do not therefore think it is right to characterise the Bill as a missed opportunity.

The Charity Commission's wish was that we reform the composition of our Council. We are advised that a Bill is not needed to achieve this. A scheme under the Charities Act 2011 is not needed for it either. At one time, the Commission sought to impose change on us by scheme. We maintained that, given the probity by which we operate (which the Commission was not challenging), this would have amounted to regulatory overreach.

We have been completely open with the Commission. We consulted them on the draft Bill. We obtained their consent under the terms of the Charities Act 2011 to incur the expense of preparing and promoting the Bill. We have kept the Commission informed.

I therefore invite you to consider our Bill for what it contains, not for what it does not contain.

Clause 3 (Annual contribution) is essentially a rationalisation with which no-one has taken issue.

Clause 4 (Further powers to exclude members from the hall) is very important to us. For several years, the Members have been passing a resolution each year to relinquish their right to attend a large number of performances in the main auditorium. This is greatly to the benefit of the Hall but it only works if it can be binding on all Members. At present, there is no mechanism in our constitution which enables a majority vote in favour of doing this to be binding on all Members. This leaves the Hall exposed to the risk of legal challenge. Clause 4 addresses this by putting the current practice onto a proper legal footing.

Clause 5 (As to seats in Grand Tier boxes) is essentially a fund-raising provision. It provides a means for the Hall potentially to raise substantial new sums of money. The Charity Commission informed us that they had no objection to the provision. We do not agree that the provision serves to "deepen the problem of apparent conflicts of interest" because it has no bearing on the composition of Council, where the inherent, authorised, conflict of interest lies. It could result in there being a few more Members, which would be a good thing, as it would enlarge the pool from which Council members are elected. It could result in a few existing Members owning two more seats. In either case, they would have to pay full value for them (independently verified). It also addresses an anomaly where we have a few seats with no voting rights attaching to them. Again, an independently assessed sum would be charged for the voting rights.

The funds raised would cover the not inconsiderable costs of promoting the Bill. We have also said that, if new funds can be raised in this way, we would not be averse to hypothecating them to the repayment of the loan we obtained from the Culture Recovery Fund to help us survive the Covid-19 pandemic.

In our view, therefore, clause 5, and indeed all three substantive clauses, can only be of benefit to the Hall.

Please would you therefore give further consideration to our Bill before you express anything other than support for it in your report on the Bill to Parliament?

We are aware that misperception about our governance is causing some Parliamentarians to be negative about our Bill (largely for what it does not contain). This is unhelpful in a year when we are planning to launch a major capital appeal. We ask Parliamentarians to take a properly informed view of our Bill (and of our governance) and not to derail it on account of other issues.

Reverting to the wider subject of propriety in the way that the Hall operates, I would welcome the opportunity to explain the steps we take. For example, we maintain and keep under review a Conflict of Interests Policy, the operation of which is periodically reviewed by our auditors. The policy includes the establishment of a Conflict of Interests Committee which oversees all Council decisions, some of which have to be treated as "minded to" decisions only until the Committee has considered them. The Committee is made up of non-conflicted Trustees.

There are several other ways that we maintain our standards. For example, we have recently commissioned a Board Effectiveness Review by a respected external consultancy; and we believe that we observe all relevant guidance published by the Commission.

We believe that the Hall should be judged by the efficacy and success of these arrangements.

None of the above means that we do not see the value of reform. We conducted a constitutional review in 2015/16 which resulted in a provisional list of some thirty or so possible changes, subject to further evaluation. We shared this with the Commission but the exercise stalled when the Commission regarded a radical reform of Council as their priority when we were focussed on other changes.

We then concentrated on identifying and promoting the changes that could only be promoted by Bill. This has been our priority, with a view to resuming consideration of the other changes when the Bill was underway and we had the capacity to pick up the threads of the earlier review. We still aim to do this and will be glad to share the work with the Charity Commission.

Would you be receptive to meeting me and the Secretary to the Corporation, and perhaps also with my fellow Trustee, Lucinda Case, who chairs our Conflicts Committee and is also one of your constituents, in order to discuss these matters?

In any event, I am grateful to you for recognising the work of Council in running this very important institution in the face of many challenges. We take much selfless pride in doing so.

With kind regards,

Yours sincerely,

Ian McCulloch
President

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 18

Attorney General's letter to the Corporation dated 16 June 2023

Attorney General's Office

Rt Hon Victoria Prentis KC MP
Attorney General

Attorney General's Office
102 Petty France
London
SW1H 9EA

Tel: 0207 271 2492

www.gov.uk/ago

Ian McCulloch
President
Royal Albert Hall
Kensington Gore
London
SW7 2AP

16 June 2023

Dear Ian,

Royal Albert Hall Bill

Thank you for your letter of 30 May. I found it a helpful summary of the Hall's position.

I am encouraged that you are willing to meet the Chair of the Charity Commission to "*resume the debate*" that faltered several years ago. It would be appropriate for me to respond in substance to the points raised in your letter – including on the question of a meeting between us – after that discussion has taken place. It will then be clear how much distance remains between the Hall and the Commission.

Yours,

Victoria Prentis

RT HON VICTORIA PRENTIS KC MP
ATTORNEY GENERAL

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

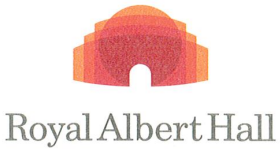
ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 19

Corporation's letter to the Charity Commission dated 16 December 2023

Ian McCulloch
President of the Corporation
president@royalalberthall.com



Orlando Fraser KC
Chair
Charity Commission
PO Box 2011
Bootle
Lancashire
L20 7YX

16 December 2023

By email to Chair@charitycommission.gov.uk

Dear Orlando,

Royal Albert Hall Bill

I thought I should renew contact with you about our private Bill for the Hall ('the charity').

The Bill was given a Second Reading in the First House on 19 October 2023.

We were disappointed to learn during the debate that, about a week earlier, the Commission had circulated to Peers a briefing note on the Bill without checking it with us or copying it to us. It contained a number of errors which we were not able to correct:

- It says that "the charity's position is that the conflict issues will be addressed in due course by future resolutions of the board of trustees", when the Commission knows from our correspondence that we think we manage conflicts well already and our position is that the benefits of our current form of governance greatly outweigh the disadvantages (the disadvantages being matters of perception, not of any failing in standards by the Trustees).

- It refers to the Bill giving "'backdated' permission in cases where a box has already been expanded". This is not true and it has led to confusion and unjustified doubt about the Trustees' motives. The Bill does not backdate anything.

- It refers to the Bill containing three provisions that are not in the Bill. (They were in a draft of the Bill but, after further consideration, were not included in the Bill as presented to Parliament, with the full knowledge of the Commission).

The Bill now awaits its committee stage. The committee has not yet been appointed but we are now preparing for it, as we hope this stage will take place early in the New Year.

We have listened to comments on our Bill. Clause 5 has been the subject of some criticism. This clause would authorise the charity to sell additional seats in Grand Tier boxes (with membership) and also to sell voting rights in respect of a small number of seats that do not carry them. Seats would not be sold at less than full value (to be determined independently).

This measure would provide a means of raising much-needed new capital for the charity (at no opportunity cost).

Notwithstanding the potential benefit to the charity from this clause, it has become increasingly apparent to us that some members of Parliament are opposed to it regardless of how much is paid for the new seats, because the owners will be able to sell tickets for them privately when the event is one which Members may attend (known as an 'Ordinary' letting), as existing Members can do now.

By contrast, clauses 3 and 4 have not drawn any material criticism. Clause 4, in particular, addresses a long-running concern. It provides a means by which Members may grant more 'Exclusive' lettings to the charity than are currently authorised by our 1966 Act (events where Members have forgone their right to attend). It should mean that the current practice by which Members do this will no longer be susceptible to legal challenge. The potential loss to the charity if this risk were to strike has been calculated by our Chief Operating Officer to fall in a range between £0.7m (best case) and £2.3m (worst case, if not even higher).

Clause 4 has therefore always been the most important provision for the charity. We do not see why anyone should reasonably object to it. Moreover, a logical consequence of it is that there are likely to be fewer events where Members may sell tickets on the open market than there would be if we fail to provide a lawful means for the current practice to continue.

There is a risk, however, that clause 4 could become a casualty of the opposition to clause 5. This would be illogical, because the two provisions are unconnected but we are concerned that this could be the outcome. We have therefore reluctantly decided to withdraw clause 5, in spite of its merit, in order to avoid such jeopardy to clause 4.

It has also become apparent that critics of our form of governance have chosen to conflate their concerns on that subject with the content of the Bill, when they are separate issues. This is undermining the Bill's prospects and adding to the expense of promoting it. We believe it would be perverse for members of Parliament to frustrate the enactment of the Bill for what it does not contain, when its content is plainly beneficial to the charity and when we are advised that any reforms that could be achieved by other means may not properly be included by us in the Bill.

We therefore invite the Commission to decouple from the Bill its concerns about our governance, which are contributing to a detrimental climate for our Bill in Parliament when they are not relevant to it, and to acknowledge in any further briefing or reporting to Parliament that, as the Bill can only be of considerable benefit to the charity, it deserves support.

Yours sincerely,

Ian McCulloch
President

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

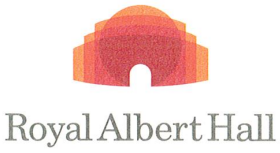
ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 20

Corporation's letter to the Attorney General dated 16 December 2023

Ian McCulloch
President of the Corporation
president@royalalberthall.com



Rt Hon Victoria Prentis KC
Attorney General
Attorney General's Office
102 Petty France
London
SW1H 9EA

16 December 2023

Dear Attorney General,

Royal Albert Hall Bill

I refer to our correspondence earlier this year about our Private Bill and in particular to my letter to you of 30 May 2023. I explained to you in that letter our position on the separate issue of our form of governance and why it is not the subject of the Bill. I invited you to support the Bill, whatever view you (or the Charity Commission) may hold concerning other matters.

You deferred a possible meeting with me, pending further discussion between the Hall and the Charity Commission. I duly met the Chair of the Commission on 4 July 2023. I would willingly share with you the substance of our discussion and our subsequent correspondence but he asked that they be conducted on a Confidential and Without Prejudice basis and he has since said that I may only inform you that we had met and that we had not reached agreement on Commission support for, or any changes to, the Bill.

The Bill was given a Second Reading in the First House on 19 October 2023. It now awaits its committee stage. The committee has not yet been appointed but we are now preparing for it, as we hope this stage will take place early in the New Year. I therefore thought I should renew contact with you, in case your office is preparing a report on the Bill for the committee.

We have listened to comments on our Bill. Clause 5 has been the subject of some criticism. This clause would authorise the charity to sell additional seats in Grand Tier boxes (with membership) and also to sell voting rights in respect of a small number of seats that do not carry them. Seats would not be sold at less than full value (to be determined independently). This measure would provide a means of raising much-needed new capital for the charity (at no opportunity cost).

Notwithstanding the potential benefit to the charity from this clause, it has become increasingly apparent to us that some members of Parliament are opposed to it regardless of how much is paid for the new seats, because the owners will be able to sell tickets for them privately when the event is one which Members may attend (known as an 'Ordinary' letting), as existing Members can do now.

By contrast, clauses 3 and 4 have not drawn any material criticism. Clause 4, in particular, addresses a long-running concern. It provides a means by which Members may grant more 'Exclusive' lettings to the charity than are currently authorised by our 1966 Act (events where Members have forgone their right to attend). It should mean that the current practice by which Members do this will no longer be susceptible to legal challenge. The potential loss to the charity if this risk were to strike has been calculated by our Chief Operating Officer to fall in a range between £0.7m (best case) and £2.3m (worst case, if not even higher).

Clause 4 has therefore always been the most important provision for the charity. We do not see why anyone should reasonably object to it. Moreover, a logical consequence of it is that there are likely to be fewer events where Members may sell tickets on the open market than there would be if we fail to provide a lawful means for the current practice to continue.

There is a risk, however, that clause 4 could become a casualty of the opposition to clause 5. This would be illogical, because the two provisions are unconnected but we are concerned that this could be the outcome. We have therefore reluctantly decided to withdraw clause 5, in spite of its merit, in order to avoid such jeopardy to clause 4.

It has also become apparent that critics of our form of governance have chosen to conflate their concerns on that subject with the content of the Bill, when they are separate issues. This is undermining the Bill's prospects and adding to the expense of promoting it. We believe it would be perverse for members of Parliament to frustrate the enactment of the Bill for what it does not contain, when its content is plainly beneficial to the charity and when we are advised that any reforms that could be achieved by other means may not properly be included by us in the Bill.

Our position, therefore, is that any concerns about our form of governance should be decoupled from the Bill. They are contributing to a detrimental climate for our Bill in Parliament when they are not relevant to it.

I therefore invite you to support our revised Bill and to acknowledge in any report to Parliament on it that, as the Bill can only be of considerable benefit to the charity, it deserves support. If, however, you still have any reservations about the Bill, I would be glad to meet you (or your officials).

Yours sincerely,

Ian McCulloch
President

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 21

Charity Commission's letter dated 3 June 2015 with the form of a scheme attached

Ms Julie Hope
Secretary to the Corporation
Royal Albert Hall

By e-mail only

Charity Commission
PO Box 1227
Liverpool
L69 3UG

T: 0300 065 1876

Your ref:
Our ref:

Date: 03/06/2015

Dear Julie

Royal Albert Hall: Follow up to meeting of 7 May

I refer to our meeting at the Hall on 7 May. I said that we would write to you following the meeting and following the Commission's May Board meeting to set out the Commission's position more formally.

I think it was evident at the 7 May meeting that the Commission was extremely disappointed that you had decided not to put proposals for constitutional change by way of a new Scheme to your AGM on 21 May. We believed, until we received your letter of 10 March, that the Council was working towards this position and that we had a shared understanding that this was the aim.

The Commission has now reviewed our engagement with the Charity over the last 16 months (correspondence and 5 meetings in person) and has concluded that it is clear that the requirement for a Scheme underlay the whole of our engagement with you, as is reflected in the correspondence and our notes of meetings. As long ago as18 February 2014, we wrote to you as follows:

> "We consider that the matter can only be resolved if the trusts of the charity are changed by Scheme to allow for a majority of independent trustees. Therefore we are of the opinion that the Council should apply for a Scheme to deal with this issue. It may be possible for this to be accomplished by (in consultation with the Privy Council Office) altering the original charter (using the power in section 68 Charities Act 2011). Otherwise it will be necessary to alter one of more of the Acts of Parliament (using the power in section 73 Charities Act 2011).….We would hope to receive an application for a Scheme from the Council and proceed consensually to prepare a draft…… These matters need to be dealt with in an acceptable timescale. We would ideally like to have the Board's application (or reasons for not applying) by the end of March [2014]".

To ensure that there are no further misunderstandings, I repeat below what action the Commission believes to be necessary and why.

Why we think change is needed

My e-mail of 8 December 2014 sets out the position in detail; for ease of reference, the principal content is set out in **Appendix** 1 to this letter. In summary:

- Charity trustees must act solely in the interests of their charity and take their decisions solely in the interests of furthering the charitable purposes. As we particularly stressed at the meeting, it is the duty of a trustee to avoid a conflict of interest – not just to seek to manage it.

- The Charity's current constitutional arrangements give rise to a clear risk of a conflict of interest that requires mitigating. There is a real risk that Council members could prefer their own interests (and the interests of seatholders generally) to those of the charity.

- It is clearly in the interests of the Charity that the risk of an actual breach of duty be minimised and the inherent conflict of interest in the current arrangements be removed.

We are of the opinion that this situation can only be resolved by re-constituting the Council to provide for a substantially independent body - meaning that seatholders would be in a minority.

How the change can be made

The Corporation's current constitution is provided for by Schedule 2 of the 1966 Act, as subsequently amended. That Act provides that it is to be deemed to be supplemental to the Royal Charter granted in 1866 (s.35 of the Constitution in Schedule 2) and that the Charter may be amended in any way provided for by the 1866 Charter. The 1866 Charter provides that the governing body for the time being of the Corporation may apply for a new charter, or for a modification of the 1866 Charter, provided this has been approved by a Special Resolution of the members. Where a Charter is so amendable, under s68 of the Charities Act 2011, the Commission has jurisdiction to make a Scheme to alter the constitution; the Scheme would not take effect until the Charter had been altered by an Order in Council made by the Privy Council's Office.

Constitutional Reform Group

The Council has recently set up the new Constitutional Reform Group but we do not consider that we can wait for its conclusions. Whilst you told us that setting up this new Group was not a delaying tactic, the Group has been set up to consider a comprehensive list of issues without any prioritisation between them and no timelines for completion. I regret that you failed to convince us that the Group would come up with proposals that tackled the fundamental underlying problem or that it would be resolved within a reasonable timeframe. In addition, as we said at the meeting, we think that many of the issues on the list will need to be addressed when there is an independent trustee body in place to do so.

Risk

We discussed risk generally: that change to the status quo in any charity brings risks, which need to be identified and, where possible, mitigated and the risks of reputational damage to the Charity if this issue is not resolved. We think that the risks will be mitigated by ensuring that the new independent trustees have the necessary skills and experience to administer and manage the Charity and by securing the support of stakeholders, including the members of the Corporation who make an invaluable contribution to the Hall - including through trusteeship.

Suspension of entry

We discussed the proceedings brought by a member and former president in the First-Tier Tribunal (Charity), which are likely to be stayed until July, applying to have the Charity removed from the register on the ground that it is no longer a charity or, alternatively, is not a charity. If the Tribunal accepts his standing to bring proceedings, there will be a hearing in the autumn on whether the Hall should be removed from the register of charities; in the meantime, we will be required to mark the register to the effect that the charity's entry is in suspense (s36 (4) Charities Act 2011). We have agreed to consider written submissions (which we have now received) to determine whether this is a case where we can exercise any discretion in not marking the entry in this way.

What we now require

We require the Council to:

- apply for a Scheme in the form of the outline Scheme set out in **Appendix 2** to this letter or
- provide the reasons for not applying to us for such a Scheme and supply a draft alternative Scheme, or the Council's proposals for incorporation into an alternative Scheme.

<u>We require this by 30 September 2015.</u>

We have not identified any provision in the Corporation's governing documents that would prevent the Council from applying for a Scheme without the ratification of members in general meeting.

We very much hope that we can proceed consensually and we are happy to discuss this letter and the way forward with you. We cannot however negotiate any further on the timetable.

Failure to comply with our request

If an application for the outline Scheme or an alternative Scheme acceptable to us is not forthcoming by the end of September, the Commission will formally decide, having taken into account any written submissions from you, whether it is satisfied that the Council as trustee:

- ought in the interests of the charity to apply for a Scheme; but
- has unreasonably refused or neglected to do so.

If the Commission is so satisfied, it will send you its own Scheme, giving you the opportunity to make representations within a reasonable timeframe (about six weeks). Then, subject again to consideration of any written submissions from you, we will proceed as though an application had been made to us using the power in section 70(5) Charities Act 2011. This would immediately open the statutory notice period to enable members, other stakeholders and the general public to make their own representations to us. We envisage that the statutory notice period would commence before the end of this year.

Any Scheme (with or without modification as a result of consultation) could be appealed to the First-tier Tribunal (Charity).

The procedure outlined above would not require the approval of your members. The Council could however call an extraordinary general meeting if it wanted to do so, particularly if members wished to make a composite representation during the statutory notice period.

I am copying this letter to Jonathan Bayliss at Charles Russell Speechlys who attended the 7 May meeting.

Yours sincerely

Neil Robertson
operationstaunton@charitycommission.gsi.gov.uk

Appendix 1 - Extract from our e-mail of 8 December 2014

"Conflict of interest – the legal position

The Corporation's governing documents provide that apart from the 5 independent Council members, only members of the Corporation can be on the Council. These Council members are charity trustees and fiduciaries and can only make decisions solely in the interests of furthering the Corporation's charitable purpose. If they have a conflict of interest in making any decision, or there is an appearance of conflict, then a fiduciary's duty is to avoid that conflict.

It is not clear whether the conflict between the interests of the Council and the interests of an individual member (who is a member of the Council) is impliedly authorised by the Corporation's governing documents in light of the arguments that there are starkly different benefits for members now compared with 1866 or even 1966.

In any event, the fact that a trust or other constitutional arrangement places charity trustees in a position of conflict may mean that they are not in breach of duty simply by allowing themselves to remain in that position but it does not absolve them from the responsibility to act in the best interests of the charity. In *Bristol and West Building Society v Mothew* [1998] Ch. 1, 19, for example, Millett LJ considered the case of a solicitor acting for both parties in a mortgage transaction:

> 'A fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of the obligation of undivided loyalty; he puts himself in a position where his duty to one principal *may* conflict with his duty to the other: see *Clark Boyce v. Mouat [1994] 1 A.C. 428* and the cases there cited. This is sometimes described as "the double employment rule." Breach of the rule automatically constitutes a breach of fiduciary duty. But this is not something of which the society can complain. It knew that the defendant was acting for the purchasers when it instructed him. Indeed, that was the very reason why it chose the defendant to act for it. The potential conflict was of the society's own making'.

The fact that the conflict has been authorised means that the fiduciary has not placed himself in a position of conflict, but his duty to act in the best interests of his principal remains:

> 'Even if a fiduciary is properly acting for two principals with potentially conflicting interests he must act in good faith in the interests of each and must not act with the intention of furthering the interests of one principal to the prejudice of those of the other: see *Finn*, p. 48. I shall call this "the duty of good faith." But it goes further than this. He must not allow the performance of his obligations to one principal to be influenced by his relationship with the other. He must serve each as faithfully and loyally as if he were his only principal.'

If an actual conflict arises he must cease to act for one or other of his Principals.

> 'Finally, the fiduciary must take care not to find him in a position where there is an *actual* conflict of duty so that he cannot fulfil his obligations to one principal without failing in his obligations to the other.'

That illustrates that a charity trustee whose potential conflict of interest has been authorised by the governing document must nonetheless further the interests of the charity rather than his own.

Conflict of interest – actual and perceived conflicts

An obvious instance of a conflict would arise in the determination of each year's programme of events. A Council member with a substantial seat holding, faced with the prospect of deciding between a programme including two substantial commercial concerts in one year and a programme which provides for only one commercial concert and, say, a less commercially successful scientific event might well be influenced by his/her financial interest in the former. Similarly, when determining the operation of section 14 or any modification of it, the Council will be making decisions as to whether to exclude members from popular events to the full extent of their power to do so, or to some lesser extent. The interests of the charity in being able to sell for it as many seats as possible are at odds with the personal financial interests of the Council members.

There are a number of other instances where the potential conflicts are evident:

- Clause 11 of the Schedule to the 1866 Charter has the effect of subjecting members' rights to tickets to regulations. While that clause appears to contemplate access otherwise than to a member's own seat it is at least arguable that this clause might permit regulations that could restrict the resale of the issued tickets at more than face value in particular circumstances. Such regulations would be subject to approval at a general meeting, but a Council which is predominantly comprised of seat-holding members will be conflicted when considering the scope of this clause and whether it can be used to justify eroding members' rights on the making of a scheme or can be employed to limit their right to re-sell tickets on any particular occasion.

- It appears that the Council in 2012 thought it best in the interests of the Corporation that, in response to the adverse publicity surrounding ticket sales by members, that they propose a resolution providing that members of the Council should not, during their term of office, re-sell tickets otherwise than through the Hall's own box office. This resolution was defeated by the membership. This is perhaps indicative of a belief among the members that membership of the Council has the potential to be of financial advantage.

Potential for profit-making

The trustees will recognise the significant profits that can now be derived from members' seat-holdings. Whilst it must always have been understood that the seatholders would receive some return on the re-sale of their tickets, the scale of the returns appear to have increased above that which would have been contemplated at the time of the 1866 Charter or 1966 amending Act. This problem has become as acute as to require the constitution of the charity to be updated so as to manage the conflict as effectively and transparently as possible and minimise the real risk that Council members will prefer their own interests to those of the charity. There is a reputational risk to the charity which may have the potential adversely to affect its charitable activities in future.

The charity trustees have themselves previously recognised that there is such a risk and that the reputation of the charity may be adversely affected. This was the basis on which the prohibition mentioned above on Council members selling tickets for more than face value was proposed in 2012, although it need hardly be said it did not eliminate the potential for conflict to arise. Having recognised that steps need to be taken to reduce the potential for conflict and having had their proposals for this defeated by the membership, it is incumbent on the charity trustees to seek to take steps to address the issue by Scheme. It cannot have ceased to be an issue which the trustees consider that they should address merely because the proposed method of addressing it has not been approved.

Avoiding the conflict of interest

The charity trustees should recognise that it is in the interests of the charity that the risk of actual breach of duty be minimised and that the potential for conflicts of interest to affect decision-making be monitored.

It is insufficient for there to be a self-denying ordinance preventing members from selling their tickets otherwise than via the Ticket Return Scheme during the currency of their membership of the Council. They still have the potential to receive a significant return from their seat-holding by selling them through the scheme. No doubt decisions that they will make will also have an impact on the value of their seat holding in the years after the end of their term of office and any such resolution preventing re-sale on the wider market could be dispensed with by subsequent resolution.

We consider that the only solution is for the constitution to provide for a substantially independent governing body, determining, among other things, questions of programming of events, the operation of any clause permitting exclusives and recommending a seat rate. This body should at least predominantly be comprised of non-seat-holders.

Another way of reducing the voice of the persons who are financially interested in the operation of the charity would be (as we mentioned at our last meeting) to amend the constitution more generally to provide for a wider membership of the Corporation from which Council members could be selected. The membership is, of course, currently restricted to those who can afford to purchase a seat, or have been given such a seat. Increasing eligibility for membership might allow for a constitution which provided for the Council to be comprised of elected seat-holding members, elected non-seat-holding members and appointees in equal numbers (i.e. one third each). The quorum would need to reflect this too so that no decision could be taken without a majority of not conflicted members. Although you expressed some reservations about this option, I nevertheless mention it for completeness.

Conclusion

The Commission consider that it would be in the interests of the charity for the constitution to be amended to manage the potential for conflicts that have arisen in recent years as effectively and transparently as possible. The most straightforward way to deal with this would be to provide for a Council with a majority of non-seat-holding members, either appointed or drawn from a wider membership, or both”.

Appendix 2

This draft is an example of how a Scheme might amend the existing constitution. The intention would be that, save as set out below, the existing constitution would be reproduced. It provides for the independent trustees to be treated as members at general meetings.

The Council

Replace paragraph 1 with:

1. The Government of the Corporation and the direction of its concerns shall be entrusted to a Council consisting of the President for the time being of the Corporation as an ex officio member, [x] appointed Members and [x] ordinary Members.

   Appointed members

   The appointed Members shall be appointed as follows:

   a. [Two] Members shall be appointed by the Secretary of State for Culture, Media and Sport

   b. [Two] Members shall be appointed by the Royal Commission for the Exhibition of 1851

   c. [Two] members shall be appointed by the Trustees of the Natural History Museum

   d. [Two] Members shall be appointed by the Royal College of Music

   e. [Two] Members shall be appointed by the Governors of the Imperial College of Science, Technology and Medicine

   An appointed Member shall hold office for a term of three years and shall be eligible for reappointment.

   An appointed Member shall not be required to be a seatholder or otherwise to be qualified as a member of the Corporation but shall be entitled to attend and vote at any general meeting of the Corporation as if he or she were a member registered as holding [x] seats and shall be treated as a member registered as holding such seats for the purposes of any provision herein relating to General Meetings and voting thereat.

   Ordinary Members

   Ordinary Members shall be elected by the members of the Corporation from among such members. Any individual member of the Corporation holding one or more seats and any member of director or other officer of any corporation or society holding not less than five seats in the Hall shall be eligible as a member of the Council provided that not more than two members, directors or officers of any such corporation shall be eligible, as such, to be ordinary Members of the Council at any one time.

Delete paragraphs 2 to 4.

Delete first two paragraphs of paragraph 6 and substitute:

> At each Annual General Meeting the two ordinary Members of the Council who have been longest in office shall retire. Retiring ordinary Members of the Council shall be re-eligible at the meeting at which they retire, or at any subsequent meeting.

Insert the word 'ordinary' before 'Member' in paragraph 7 and add a final sentence:

> An appointed Member may resign his office by giving notice to the person or body by which he was appointed.

Replace paragraph 9 with:

9. The Corporation in General Meeting may by a Resolution passed by a majority of two thirds of the votes recorded at the meeting remove any ordinary Member of the Council before the expiration of the period of his office and may by an ordinary Resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the Member of the Council in whose place he is appointed would have held the same if he had not been removed.

Delete the last sentence of paragraph 11(6).

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 22

Corporation's reply to Charity Commission dated 28 September 2015

28/09/2015

THE CORPORATION OF THE HALL OF ARTS AND SCIENCES

THE ROYAL ALBERT HALL

Response to the Charity Commission's letter to the Corporation dated 3 June 2015

1 Introduction

1.1 The Corporation of the Hall of Arts and Sciences (the Corporation) was established by Royal Charter on 8 April 1866. Its constitution and governance have since been revised by two Supplemental Charters, four private Acts of Parliament, one statutory order and one statutory instrument. The Corporation was registered as a charity in 1967 (Charity Registration Number 254543).

1.2 The purposes of the Corporation were (a) to build and maintain the hall that was to become named The Royal Albert Hall (the Hall) and (b) to use the Hall for specified kinds of events connected with Science and Art.[1] The continuing charitable purposes of the Corporation today are the maintenance of the Hall and the pursuit of the original objects, as modified by the Supplemental Charter dated 25 October 1887[2] and the Act of 1927.[3]

1.3 A proportion of the seats in the Hall is owned privately. Under its governing documents, the Corporation is governed by a Council consisting of a President (who must be a private seatholder), 18 other private seatholders and five members who are appointed by external bodies.

1.4 On 3 June 2015, the Charity Commission (the Commission) wrote to the Corporation 'requiring' it to apply to the Commission by 30 September 2015 for a scheme under the Charities Act 2011 in the form attached to the letter or in an alternative form that would provide for a majority of independent (i.e. non-seatholder) trustees. This paper is the Corporation's response to that letter. It is structured as follows:

Section 1: Introduction

Section 2: narrates the background

Section 3: analyses the Commission's reasons for its proposal

Section 4: considers the Commission's draft scheme

Section 5: sets out the contribution Members make to the charity

Section 6: considers the implications of impairing the Members' relationship with the Corporation and jeopardising the Corporation's financial independence

Section 7: considers the Commission's proposal in the context of the Corporation's own governance review

Section 8: sets out the Corporation's conclusions and response.

[1] 1866 Charter, article 3.
[2] 1887 Charter, article 9.
[3] Royal Albert Hall Act 1927, section 16.

1.5 In this paper, "Members" means the Members of the Corporation, as defined in the Corporation's governing documents, and "members of the Council" or "Council members" means members of the Council of the Corporation, whether or not they are Members.[4]

1.6 The subject matter of this document is complex. There has been widespread misapprehension, even falsehoods in some quarters, about the issues it covers. The Corporation welcomes the opportunity to clarify these matters.

2 Background

2.1 The original plan for the building of the Hall was that it should be funded by public subscription but the subscriptions fell well short of the anticipated building cost of £200,000. The solution was to sell, in advance of the Hall being built, a number of long term 'free admissions' for one-off payments.

2.2 The purchasers saw the public benefit that would be created by the Hall but were unwilling or unable just to donate the money needed without any form of benefit accruing to them. Originally, half of the privately owned seats were to last only for the lifetime of the subscriber but they all became, and remain today, 999 year sub-leases of individual numbered seats at the Hall (in the stalls and boxes) – indicating that the subscribers required properly transferable rights in consideration of their capital subscriptions. Moreover, of the seats originally issued, 300 seats were allocated to the builder of the Hall and 500 to the freeholder, further indicating that seats were seen as a commercial proposition.

2.3 The subscribers had, in effect, entered into a bargain, a permanent and essential feature of which was, from the outset, the ability of a seatholder to sell or transfer his or her leasehold for the remainder of the 999 year term like any other leasehold interest. This arrangement is acknowledged in the governing instruments of the Hall, which provide for Members' seats to be treated as their private property.[5] Around 1,300 seats remain in private ownership today.

2.4 This combination of charitable intent and commercial caution transformed an unachievable plan into a reality. The creation and reservation of private benefit was thus an essential precondition for the building of the Hall and therefore the establishment of the charity.

2.5 The original Charter provided that the seatholders would be its Members. No dividend would be payable to a Member. Any profit would be retained by the Corporation. The benefit to Members from owning seats is having tickets for (nowadays) some two-thirds of events in the main hall. When not attending an event, Members are free to sell the tickets for their seats privately at any price they choose, give them away, donate them to the charity running the event or return them to the Hall using the Hall's ticket return scheme. The seats are, therefore, both a form of investment for Members and a source of enjoyment.

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[4] Members of Council are trustees of the Corporation for the purposes of the Charities Act 2011 (Charities Act, 2011, section 177).

[5] See, for example, preamble and paragraphs 7 and 8 of the Schedule to the 1866 Charter.

2.6 Today, the Members comprise individuals, families, businesses and charities, whose seatholdings have been acquired through inheritance, purchase or gift as their private property. They own over one fifth of the total number of seats but, having voluntarily given up access to some 140 shows a year, therefore receive approximately 14% to 15% of the main auditorium tickets issued annually.

2.7 Upon completion of the Hall, the management was passed to the President (then the Prince of Wales) and a Council of 18 elected Members. In 1928, the Council was enlarged by five appointees. The appointors of these five additional Council members are The Natural History Museum, the Secretary of State for Culture, Media and Sport, Imperial College, the Royal College of Music and the Hall's landlord, the Commissioners of the 1851 Exhibition.

2.8 On 25 March 1872, a 999 year lease of the site of the Hall was granted to the Corporation by the 1851 Commissioners. The lease contains tenant's covenants generally expected in an arm's length commercial lease, e.g. to pay the specified rent, to keep the premises in good repair, not to make alterations without consent, not to assign or sub-let without consent and not to use the premises other than for specified purposes. The user covenant is to use the Hall only in accordance with its statutory (i.e. charitable) objects. The Members' seats are held on sub-leases, which are liable to forfeiture along with the head lease, in the event of a decisive and unremedied breach, for example, if the Corporation were to ignore its charitable objects.

2.9 Thus, the Members have formed an integral part of the governance of the Hall since its inception. By binding those who subscribed to the building of the Hall into its governance and long term future and to the obligations (a) to maintain the Hall and (b) use it only for its stated charitable purposes, it created an alignment of interest between the Hall and its seatholders that would ensure its viability and sustainability. If the Hall were to face failure, it would be in the interests of the Members to come to its rescue. If the Hall were to succeed, it would serve concomitantly both the charitable purposes of the Corporation and the private interests of the Members.

2.10 This governance model constitutes a construct of private enterprise for public benefit. It draws on philanthropy and private interest to share in the responsibility, risk and reward of maintaining and improving a building of national importance and of promoting in it, and from it, science and art for the public benefit.

2.11 For a legal analysis of these constitutional arrangements and how they uphold the charitable purposes of the Corporation, see the Opinion of Simon Taube QC dated 4 September 2015, which accompanies this response.

2.12 The Hall has no annual revenue subsidy from the public purse. In recent times it has generated an annual surplus. In 2014, this rose to approximately £5m. Such surpluses, by no means guaranteed, are used to fund the continuing maintenance and improvement of the Hall. The Corporation values this financial independence, which few other comparable venues enjoy, dependent as they are on public subsidy. Its surplus also enables it to operate an extensive public benefit programme, which includes education and 'outreach', in addition to delivering on the Corporation's

primary purposes as a charity. This success must be attributable in some measure to the dedication of the Members and their commitment to the Hall.

2.13 The Commission's proposal that Members be reduced to a minority on Council would amount to a fundamental change. Given (a) the Corporation's success as a performance venue (b) the public benefit it generates (c) the security it enjoys from its financial independence (d) that the Hall operates lawfully according to its governing instruments and (e) that the conduct of its Council members is exemplary, the radical change sought by the Commission and the reasons given for proposing it require careful consideration. This includes consideration of the attendant risks and potential disbenefits of proceeding with it as well as its potential benefit, as perceived by the Commission.

2.14 In giving the proposal such consideration, the Corporation has adopted as its overriding criterion whether the change would be in the best interests of the charity.

3 Commission's reasons for its proposal

Private benefit

3.1 The Commission first showed an interest in the Corporation's governance when the Corporation approached the Commission by letter of 16 June 2008 with a request in principle for a scheme to be made under the Charities Act 1993 to increase the Hall's powers to contract Exclusives (events from which Members are excluded from attending). This would have been achieved by amending section 14 of the Royal Albert Hall Act 1966. Although the proposal would have freed up to the general public Members' seats for more events each year than previously, bolstered the charity's finances, and made the Hall more attractive to promoters, the Commission were concerned either (it is not clear which) that the change might generate more private benefit for the Members as well as more benefit for the charity or that the private benefit enjoyed by Members already appeared to be excessive (it being a condition of charitable status in law that any private benefit expressly or impliedly authorised be incidental to the charity's public benefit).

3.2 After taking advice from leading Counsel, the Corporation clarified the position to the Commission - that the private interest of Members was not conferred on them by the charity. It derived from the pre-existing private rights of the seatholders. It did not therefore impinge upon the charitable status of the Corporation regardless of its magnitude or value.[6]

3.3 The Commission, however, harboured doubts about this and were unwilling to make a scheme to amend section 14 unless it also provided in some way for the Members' private benefit to be curtailed. They told the Corporation they believed that it would somehow be too controversial for a scheme that would require Parliamentary approval (because it would be amending an Act of Parliament).

[6] Letter to Commission dated 9 April 2009 and accompanying Opinion of Christopher McCall QC.

3.4 The Corporation found it difficult to accept the Commission's reasons for its unwillingness to make a scheme that was so obviously intended to improve the Hall's creative offer, bolster its finances, and increase public access to the Hall. The Corporation also thought that the pressure implicit in the Commission's response, even if inadvertent (that although the scheme was for the charity's benefit, it would not be acceptable unless it went farther) was an inappropriate response by a regulator. The scheme requested was therefore never made and the Corporation has had to 'make do' instead with a consensual arrangement between seatholders, which is less than ideal. The Corporation considers that the Commission should have been more willing to assist the Corporation on this issue, even though matters have now moved on.

3.5 The Commission seems to have formed the view that the scale of private benefit deriving (they assert) from the charity is of a different magnitude from any private benefit when the Corporation was established or when the Corporation was registered as a charity but the Corporation has not been shown any comparative analysis by the Commission. At a meeting held with the Commission on 1 September 2014, it seemed that the Commission had simply formed a subjective judgment about the capital value of seats and the income deriving from them and had concluded that they must somehow be excessive. Account should also be taken, however, of the successive reductions in the entitlements of Members and the increased obligations falling on them (originally, the Members could neither be excluded from the Hall nor made to pay any further sums to the Corporation). The Commission agreed that their view was based on statements by a Member which they had not verified. It is essential to distinguish between the legitimate private benefit deriving from seatholdings (whatever the scale) and private benefit (if any) deriving from the charity. The former is not subject to the incidental test. The latter is of course required to be incidental.

3.6 Since then, by formal decision dated 1 December 2014, in response to an application made to the Commission by a Member under section 36 of the Charities Act 2011, the Commission has determined that the Corporation is, and always has been, a charity. In other words, any private benefit flowing from the charity is 'incidental'.

3.7 It is also relevant to observe that there are other registered charities run by members, such as orchestras and charities for the advancement of professional practice, which benefit their members directly, albeit still incidentally.

3.8 The Corporation, for its part, has taken further legal advice on the issue of private benefit (see Opinion of Simon Taube QC, paragraphs 6 to 16). In short, the Corporation considers – as a result of this advice – that the Commission has, based on the relatively minimal information it had at the time, failed to interpret correctly the true position concerning private benefit. As a result, it has misdirected itself as to the correct application of charity law in such circumstances. In any event, by its own ruling, the Commission has concluded that any private benefit is incidental.

Change of circumstances

3.9 Although the Corporation's governing documents have not changed since the Corporation was registered as a charity, the Commission communicated to the Corporation that the Commission believed that the Corporation's governing arrangements had become "untenable" in the modern day as a consequence of "developments and perceptions" and that the Corporation's governance was "inconsistent with a more modern approach".[7] The Corporation, paying careful attention to these thoughts, concluded that it should regard them as generalisations with little meaning or substance if not amplified by further explanation. It may be that there is a greater awareness nowadays of conflicts of interest but nothing has changed in principle. The Corporation continues to act lawfully. The Corporation has addressed head-on the issue of conflicts of interest (see below). Respectfully, the Corporation fails to understand why "developments and perceptions" have made its entirely workable constitutional rules untenable such as to justify the Commission's intervention and demand for change.

Duty to act in the best interests of the charity

3.10 Although the charitable status of the Corporation has now been conclusively upheld, the issue of private benefit could still be relevant in the context of any alleged breach of duty, for example, if the Council were to subordinate the Corporation's charitable purposes to the seatholders' private interests. Presumably, this is why the Commission harbours 'regulatory doubts'[8] about the degree of private benefit enjoyed, or potentially enjoyed, by Members. Yet at no time has the Commission accused the Corporation or any individual members of Council of acting in breach of trust; nor has the Commission opened a statutory inquiry into the conduct of the charity under section 46 of the Charities Act 2011, which would be the usual course to take when the Commission is concerned about any apparent serious misconduct by charity trustees.

3.11 The Commission has gone as far as to say that the members of Council "are not able to comply with their duty to make decisions solely in the interests of the charity".[9] The Commission has not pointed to a single decision by the Corporation as evidence of any breach of trust and the Corporation's behaviour has, it is submitted, been impeccable in this respect.

3.12 The Corporation's response is that the manner in which the Council has managed the charity over many years demonstrates that the members of Council are more than capable of treating the interests of the charity as paramount. Their conduct is exemplary. If anything, it can be said that Council has shown itself over-zealous for the charity by cutting Members' allocation below their legal entitlement and calling on them to contribute financially beyond what is legally required.

[7] Quotations from meeting with the Commission on 7 May 2015.
[8] A term used by the Commission at a meeting between the Commission and the Corporation on 7 May 2015.
[9] Commission's decision letter to Payne Hicks Beach dated 1 December 2014.

3.13 It should also be noted that, as is acknowledged by the Commission itself[10], the Corporation is empowered by its founding charter to act in the interests of the Members provided any such action is subordinate to the Corporation's charitable purposes.[11]

Risk of breach of duty

3.14 Not having produced any evidence of any breach of duty, the Commission has rested its case on the *risk* of a breach of duty, claiming that the only way that the risk can be managed is to remove it by reducing Members on Council to a minority.[12]

3.15 The Corporation's response, using an approach that is common in both commercial and charitable organisations, is that the Corporation should be proportionate in the management of any risk. Completely eliminating a risk could be detrimental to the charity. Provided that a risk is effectively monitored and managed, it may be in the interests of the charity for a risk to continue.

Conflicts of interest

3.16 In response to the Commission's concerns about the Corporation's constitution, the Corporation set up a Constitutional Working Group. As the Commission's reasons for their proposal appeared to be shifting over time, the Corporation sought clarification of the Commission's position. The Commission replied by e-mail letter of 8 December 2014, which explained that the essence of the Commission's concern was "a risk of a conflict of interest that requires mitigating".[13]

3.17 The Constitutional Working Group therefore focussed its work on addressing the issue of actual or perceived conflicts of interest. The outcome was a conflicts of interest policy, which was subsequently endorsed by Council and put into effect. The policy allows participation by those with a vested interest on the basis that their decisions must be beyond reproach, subordinating their private interest to the public benefit it is their duty to promote, with complete transparency and subject to independent scrutiny.

3.18 The policy distinguishes different kinds of conflict and sets out how they are to be addressed. With regard to Members' 'collective' conflicts, it provides that any intended decision involving a designated collective conflict is to be referred to an independent conflicts of interest committee to check that Council, in making the decision, will not be subordinating the Corporation's charitable purposes to the private interests of the Members.

3.19 The Corporation's conflicts of interest policy was sent to the Commission and was followed by a full response to the Commission's letter of 8 December 2014.[14] The Corporation regards the operation of its conflicts of interest policy as a full and appropriate response to the issue of conflicts of interest. It has the added attraction

[10] Ibid.
[11] 1866 Charter, article 3.
[12] Commission's letters to the Corporation of 18 February 2014 and 3 June 2015.
[13] E-mail letter to Corporation dated 8 December 2014.
[14] E-mail by Charles Russell Speechlys to Commission dated 10 March 2015.

of addressing the Commission's central concern straightaway, without requiring constitutional change.

3.20 The Commission's response was that the policy does not go far enough because the recommendations of the independent conflicts of interest committee are not binding on the Council. The Corporation deliberately did not make recommendations of the conflicts of interest committee binding on Council because to do so would have resulted in charity trustees abrogating their responsibility to act as such. This would be even more problematic if the committee imposing its decision included any non-trustees (which it is allowed to do under the policy). The Corporation trusts that the Commission will see the force and significance of this viewpoint. In any event, the Commission seems to disregard or discount the power of a recommendation in these circumstances without legal enforceability. In making its request to the Corporation to change the composition of its Council, the Commission does not seem to have been willing to see first how the policy operates in practice. The Corporation suggests that the Commission could reconsider the value of the Corporation's work in producing and implementing its conflicts of interest policy. The Corporation remains willing to consider any proposed refinement of the policy.

3.21 The Commission should also take into account that three of the five appointed Council members are unconflicted by any seatholding. They too can warn the Council against any potential breach of duty. As with any normal board, the Executive is also there to advise Council and the Corporation's committees.

3.22 The Commission has concluded that an obvious instance of a conflict is the determination of the Hall's programme of events.[15] This is to imply that "commercial concerts" provide less scientific or artistic benefit than events which, say, attract lower attendance (and thus empty seats) or command lower ticket prices. The Corporation does not generally compare the relative artistic, scientific or indeed commercial value of one kind of event with another, e.g. 'highbrow' music with popular music. In the current calendar, Daniel Barenboim and Simon Rattle command higher ticket prices than Bob Dylan.

3.23 It also implies that the Corporation micro-manages the programme. The reality is that in large measure the programme is the product of the many varied requests made by promoters to hire the Hall. Except in the case of events promoted or co-promoted by the Corporation itself or by its wholly owned subsidiary, which form only a small proportion of the annual programme, it is the promoters who in practice largely determine the programme and who decide on the ticket prices.

3.24 The Corporation for its part oversees the operation of a policy that ensures a balanced and diversified programme consistent with the charity's objects and aimed overall at achieving a surplus. For example, in pursuit of the Corporation's charitable ethos, the policy for some years has been to allow, in addition to one free charity letting each year, some fifty other 'charity lets' where the charity hiring the Hall benefits from a substantial discount on the hire cost. Council has never made any attempt to reduce that number so as to move to greater 'commercialism'.

[15] Commission's letter of 3 June 2015.

3.25 The Commission in any event does not seem to have considered whether or how Members could in practice 'skew' decisions so as to advance their private interests ahead of those of the charity. Whilst the Council properly oversees an overall programming policy, it has no day-to-day input on the bookings made – this being delegated to the Executive team and subject to market conditions. Anyone who examines the annual calendar of events and how the programming operates in practice cannot reasonably argue that the Corporation is compromising the pursuit of its charitable objects by weighting the programme with events carrying higher attendance or ticket prices at the expense of artistic or scientific attainment.

3.26 Additionally, it is wrong to suppose a fundamental conflict between the Members' and the charity's 'commercialism'. To the extent that the Corporation must maintain both the Hall and its additional public benefit programmes (to which it applies surplus revenue) without state aid, it needs to operate commercially. Given also (a) the ongoing enormous cost of maintaining a nineteenth century Grade I listed building, and (b) the history of over a century of struggling finances for the Corporation (something that could recur), the Corporation's Council perceives it as crucial for the future of the charity that a suitably commercial approach be maintained.

3.27 A second area of conflict of interest in the view of the Commission is when the Council annually recommends to Members the seat rate. Pre-1966, there was no way for even an overwhelming majority of Members to compel additional funding by all in extremis – an Act was required every time. The 1966 Act introduced an open-ended facility, to enable Members collectively to fund the Corporation either in their mutual interests or charitably. While Council can propose any amount in excess of the mandatory £10 per annum, the Members make the final decision and in doing so are entitled to have regard to their private interests.

3.28 Any seat rate above this level continues to depend on the Members' willingness to contribute. While the Act lists appropriate uses for such funds, with an emphasis on the building, no statutory objective criterion for determining any particular amount for the seat rate exists – the overriding criterion being their willingness to contribute. In this respect, it is the role of the Council to assess and foster the Members' appetite to contribute, not to 'require' what are essentially (collectively) voluntary donations.

3.29 If, on the other hand, the seat rate could be determined by the Council alone, the seatholder members of Council would face a clear conflict of interest when setting the seat rate; but this (quite intentionally) is not, and has never been, the case. Nevertheless, Council recently made the seat rate recommendation a Designated Collective Conflict in its policy (requiring additional independent review). These measures were a respectful response to the Commission's (it is felt, exaggerated) *perception* of conflict.

3.30 Part of the Commission's argument for saying that the conflicts of interest policy is inadequate and that the issue can only be addressed properly by Members becoming a minority on Council is an assertion that the Corporation is under a duty to *avoid* conflicts (as opposed to manage them effectively).[16] The Commission appears to be saying that conflicts of interest must not be allowed to exist. The Corporation is

[16] Commission's e-mail letter of 8 December 2014.

advised that this is wrong in law. The Commission's own advice refers to charity trustees managing conflicts as an alternative to avoiding or eliminating them in properly administering charities.[17]

3.31 Embedded in law since the early nineteenth century and still relevant today is also the concept of a conflict being acceptable when 'authorised'. The Commission itself advises that conflicts of interest may be authorised in certain ways.[18] Trustees are not under a duty to remove a conflict when it is authorised. In the case of the Corporation, any perceived conflict between the seatholders and the charity (which will usually, in fact, be a congruence rather than a conflict of interest) has been sanctioned by Royal Charter and by Parliament. This conflict, when it is not a congruence of interest, was authorised and approved again by the 1966 Act of Parliament. It is a novel argument to say that the obligations of Council run to altering its governing documents approved by Her Majesty in Council and by Parliament – especially when the Hall, and with it the charity, could not have come into existence without such conflicts. It would imply that the Crown and Parliament were wrong to legislate as they did.

3.32 The Commission claims that it is unclear whether Members' collective conflicts are still authorised by the Corporation's governing documents "in light of the arguments that there are starkly different benefits for members now compared with 1866 or even 1966".[19] The Commission has not offered any evidence to support this conjectural claim (of stark difference) and it can be strongly argued that no such evidence exists. For the Corporation's response to this particular argument, see paragraph 44 of the Opinion of Simon Taube QC, in which he advises that the Commission's view is impossible to reconcile with the Corporation's governing instruments. The Corporation respectfully requests its regulator to review the legal position concerning the Corporation's obligations in this regard.

3.33 Furthermore, the Corporation is not subject to the provisions of section 175 of the Companies Act 2006 (duty to avoid conflicts of interest).

3.34 For all these reasons, therefore, the Corporation does not consider the Commission's stated position on conflicts of interest to be a sound reason for demanding that Members be reduced to a minority on Council.

3.35 The Corporation was also concerned when the Commission sought to influence the Corporation's consideration of the issue by reference to the completely separate claim brought by a Member regarding the charitable status of the Corporation. The Commission had suggested that it would assist the resolution of the appeal relating to that claim if the Corporation progressed an application for a scheme to change its constitution (even though the Commission had rejected the claim). As events turned out, the appeal was withdrawn immediately after the Corporation joined in the proceedings and threatened to apply to have it struck out on grounds of abuse of process, as the claim had provably been made with an ulterior motive.

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[17] Conflicts of interest: a guide to charity trustees – Legal underpinning: (http://forms.charitycommission.gov.uk/media/607023/cc29_legal_underpinning.pdf), pages 1 and 10.
[18] Ibid, page 9.
[19] Commission's e-mail letter of 8 December 2014.

Perception

3.36 The Commission has referred to the issue of perception of conflict even when there is no conflict. The Corporation acknowledges that perception, even misperception, can be relevant when it affects the reputation of the charity. Perception must, however, be regarded proportionately. First, greater regard should be paid to it if it is well informed perception rather than ill-informed. Secondly, the motives of those espousing a certain perception are relevant. Different weight should be attributed, for example, to the perception of a possible benefactor to that of the potentially confected perception of a journalist seeking to make a story.

3.37 Besides, the widest variety of perceptions can always be found whether among the public, the commentariat, promoters, those who perform at the Hall or even regulators. One person might profess to be outraged that a ticket is sold by a Council member above face value; another might see it as being a perfectly normal transaction, such as might occur when anyone, in exercise of their legitimate property right, sells to a willing buyer who is delighted to purchase the ticket. Trying to decide which of these or any other 'perceptions' is correct, significant or representative is not a worthwhile exercise. It is, in any event, inappropriate to seek to order a charity's affairs by reference to a particular perception. The Corporation considers that, in relation to the Corporation, the Commission has not kept perception in proper proportion. The Corporation respectfully submits that, by accepting and referring to his evidence before it was challenged, it has paid too much regard to the allegations of the aggrieved Member who brought the claim under section 36 of the 2011 Act. It has also paid too much regard to some misreporting by The Times about seatholders in 2012 – despite the generally desultory public response to these articles at the time they appeared – still referring to this in a meeting with the Corporation on 7 May 2015.

Risk associated with change

3.38 However well intended, any major constitutional reform should be tested for its attendant risks. In the case of the Commission's proposed reform of the Corporation's constitution such risks would include:

(i) a protracted period of uncertainty during the period of change;
(ii) a prolonged period of distraction while the body to whom the Executive team is accountable becomes preoccupied with its own future rather than focussing on the promotion of the Corporation's charitable purposes (a risk already caused by the Commission's intervention); and
(iii) disaffection of the Members.

3.39 At the meeting with the Commission on 7 May 2015, it seemed to the Corporation that the Commission was too readily inclined to view such risks with equanimity, not having sought to evaluate them properly before forming their provisional "red line" proposal. The Commission stated that it had conducted "a risk assessment of what we consider to be relevant". The Corporation has not been shown this assessment. The Commission did not consult the Corporation about it and the Corporation is not aware of it including any consultation with any of the Hall's principal stakeholders. The Commission appears to have taken a view of the matter regardless of any

proper assessment. The Corporation hopes that this submission and the President's letter of 12 July 2015 to Mr Shawcross show how serious the risk is and why the Commission's proposal is viewed with such concern by the Corporation.

3.40 The Commission considers that the risks associated with change will be mitigated by (a) ensuring that the proposed new independent Council members have the necessary skills and experience to administer and manage the charity and (b) securing the support of stakeholders, including the Members.[20] The Corporation does not consider (a) to be a genuine form of mitigation as it should be a condition of appointment anyway. In relation to (b), the Corporation finds it difficult to believe that this form of mitigation would be supported by a consensus of stakeholders.

Urgency and timescale

3.41 The Commission's proposal was first made by letter from the Commission dated 14 February 2014. Since then, the Commission has described the issue as "urgent". Whilst the Corporation is keen that this matter be resolved and is working diligently, not slowly, to do so, it does not see how it has become urgent.

3.42 As to timing, the Corporation believes that it has exceeded expectations by producing a solution (its conflicts of interest policy) which has already been implemented and is therefore operational much sooner than any scheme would come into effect.

Profit making

3.43 The Commission has referred to the potential for profit-making by Members from their seatholdings. It claims that this 'problem' has become 'acute'.[21] The Commission's concern seems to relate to the potential to sell tickets above their face value. It is not clear to the Corporation whether the Commission is concerned about *any* ticket being sold by a seatholding Council member above face value or whether it is only concerned if that Member's aggregate income from his/her seatholding exceeds the aggregate of face values over some period, say, a year (which the Corporation does not think will ever be the case).

3.44 Although tickets issued to Members bear a face value, which is the same as the ticket price for an equivalent seat, the Members do not buy their tickets. The tickets are simply the means by which Members are assured of their entitlement to gain access to their seats, whether for themselves or their assignees. As for selling tickets (not re-selling, and therefore not a secondary market activity), the Members are entitled to do so at any price by virtue of their private property interests, which were reserved to the Members first, with the charity then being formed subject to them. The Corporation therefore questions the relevance of face value in this context. It seems to be an arbitrary threshold or reference point by which the Commission is making a judgment and leads to a view that lawful behaviour by a seatholding Council member may nevertheless be wrong. On this basis, it would be wrong, for example, for a seatholding Council member to sell a few tickets above face value and give away many more to charity, or offer tickets for charity auction above face value.

[20] Commission's letter of 3 June 2015, page 3.
[21] Commission's e-mail letter of 8 December 2014.

3.45 Alternatively, the Commission has formed a view that a Council member's income from his/her seatholding can be too much, regardless of the face value of tickets - a position which the Corporation does not respectfully think stands up to logical scrutiny either, for there is no objective basis for forming such a view.

3.46 The only proper analysis, having regard to Members' reserved property rights, is that the income received from Members' seatholdings is, save for one issue, irrelevant to the charity.

3.47 The issue that is relevant is one of perception. The Corporation does appreciate that, although it is lawful for Members to sell tickets at any price, there is a negative perception of this in some quarters – at least in relation to some events - which potentially raises a reputational issue for the charity when the Member is also a Council member. The Council is sensitive to perception but believes that radical constitutional reform in order to eliminate the cause of the perception would be a disproportionate step to take.

3.48 The Commission has claimed (it says "it is at least arguable") that paragraph 11 of the Schedule to the 1866 charter "might permit" regulations to restrict the resale of Members' tickets at more than face value. It is hard to see any valid basis for this.

3.49 The Commission then claims that Members will be conflicted in deciding whether it is in fact so. The Corporation is concerned lest the Commission, in saying this, is searching (fruitlessly, the Corporation believes) for a basis for restricting Members' private property rights. This cannot be a proper role for the Commission because the matter concerns reserved and binding private property rights of Members, not incidental (or otherwise) private benefit from a charity.

Expectation of a scheme

3.50 The dialogue with the Commission has not been helped by the Commission mistakenly inferring that the Corporation has been in agreement all along that a scheme should be made to reduce to a minority the Members on Council and that this would be put to the AGM in May 2015 – a misapprehension that the Corporation very much regrets but did not in any way mean to imply. The Corporation believes that it had in fact expressed the view in meetings with the Commission that there might be other ways to address the Commission's concerns and believes that it had never in fact agreed to such a timetable. Whilst the Corporation was willing to consider the principle of such a change, it should, however, have avoided any possibility that the Commission might end up believing that the Corporation had assented in any way to it, and in particular that it had agreed to the May 2015 timetable for approval of a draft scheme. The Corporation hopes that the Commission will, on an examination of the record, see that there was no such commitment by the Corporation.

3.51 The Corporation sought clarification of the Commission's position so that it could tailor its response to the perceived problem. The perceived problem put to the Corporation was one of conflicts of interest. The Corporation's solution to this perceived problem is its conflicts of interest policy, which does not require a scheme to be made.

Commission's current position

3.52 The Commission appears to have developed its position into one that goes beyond the reasons it has given for its proposal for reconstituting the Corporation's Council. The Commission has said that the Corporation's "house has to be put in order" and that changing the Corporation's governance is the "way in" to pursue its "regulatory concern" about Members' private benefit.[22]

3.53 The Commission has gone as far as saying that it would like to see "a more purist set of objects" – presumably referring to article 3 of the 1866 charter which empowers the Corporation to act for the benefit of Members subject to the primacy of the Corporation's charitable purposes.

3.54 It seems to the Corporation that this is the reason for the Commission's preference for pursuing a change in the constitution of Council ahead of any other change rather than as part of a more comprehensive constitutional review.

3.55 The Commission's usual position is that it is for the trustees of a charity, not the Commission, to decide what is in the best interests of the charity and to act accordingly. In this case, the Commission is proposing to supplant the Council's views with its own. The Corporation suggests that such action is only appropriate where there is clearly serious wrongdoing by trustees or, in the words of the Chairman of the Commission "mismanagement, misconduct or negligence by the trustees…".[23] Plainly that is not the case here.

3.56 The Corporation respectfully submits that by pursuing the issue in this way, the Commission is exceeding its normal and proper regulatory function, which should be focussed on policing wrongdoing, not reducing legitimate, legally sanctioned diversity in charity governance arrangements.

Section 14

3.57 The Corporation may still wish to have section 14 of the 1966 Act modified in some way as an element of any constitutional change that may come from the Corporation's constitutional review, if only to codify legally the current consensual arrangements in a more flexible form. The Commission originally advised that a scheme could modify section 14 but was unwilling to present such a scheme to Parliament. The Commission subsequently retreated from its original interpretation of the scope of its jurisdiction in this matter. The Commission has since advised that a scheme could, after all, modify section 14, although it has implied at the same time that it would not necessarily be willing to support the charity by including such an amendment in any scheme.[24] The Corporation's counsel takes a different view. He has advised that an Act of Parliament would be required to amend section 14 because any such revision would affect the private property rights of Members (see Opinion of Simon Taube QC, paragraph 23). (The Corporation will consider this

[22] Expressions used at the meeting with the Commission on 7 May 2015.
[23] *Trustees bear responsibility for charities, not regulators*, article by William Shawcross, Financial Times, 24 August 2015.
[24] Letter from Commission dated 22 June 2015.

matter further as part of its review of the Corporation's constitution but it is not regarded as relevant to the issue of the composition of Council).

3.58 If any changes are to be progressed together, it may necessitate promoting a private Bill in Parliament in lieu of the making of a scheme under the Charities Act 2011. It is therefore premature for the Corporation to proceed with a scheme until these legal questions have been resolved.

4 The Commission's proposal

Commission's own draft scheme

4.1 The Commission's draft scheme seeks to address the single issue of the proportion of Council members who may be seatholders. It is in the nature of a 'work in progress'. To suggest that the Corporation should apply for such a scheme by 30 September 2015 when it leaves unanswered several questions is not a reasonable position for the Commission, as regulator, to adopt – and it would not be, even if the Corporation were to accept the principle of its underlying purpose.

4.2 For example, it leaves unclear the size of Council and how many Members will be left on Council. Simplistically, it proposes that the current appointors of the currently five unelected members of Council (who are not required to be seatholders) will double the Council members they appoint. There appears to have been no consultation with those bodies as to whether such a proposal would be acceptable to them. It ignores the fact that in the case of Imperial College, the Royal Commission for the Exhibition of 1851 and the Royal College of Music the current constitution requires that the appointment be from among the relevant governing body of the appointor. The Commission appears not to have considered whether other bodies might not be equally suitable appointors. The Commission appears not to have considered whether the current appointors are still the most suitable bodies to be appointing Council members. (The Corporation trusts that the Commission is aware that two of the appointing bodies are also themselves seatholders and therefore also conflicted).

4.3 The Commission's draft scheme impliedly allows an appointed Member to be a seatholder, which would defeat the purpose of the proposed change.

4.4 Whilst the Commission's intention is to reduce seatholders on Council to a minority, the Commission's draft scheme does not specify how many elected Members there should be; nor does it specify the term of office of an elected Member.

4.5 By making Members a minority on Council, the Commission appears not to have considered the risk that those Members will consider themselves to be representatives or delegates of the Members rather than, first and foremost, Council members.

4.6 The Commission contends that conflicts of interest pervade the affairs of Council by virtue of the Members' seatholdings. The Commission has not advised how it would regard the role of the seatholder Council members in its reconstituted Council. If its

published advice on conflicts of interest is followed[25] (and the implied authorisation disregarded, as the Commission would have it) the Commission would expect the seatholder members to absent themselves from much Council business. This is likely to create a second class category of Council member, with the seatholder members having to accept responsibility for the decisions of the other Council members without any involvement in the decision-making. This is likely to increase the risk that the seatholder members will come to see themselves, or be treated by others, as delegates of the seatholders. This in turn is likely to be divisive within Council. This governance model would not be conducive to acting cohesively and collaboratively, which is often a hallmark of a successful charity.

4.7 The Commission's draft scheme provides for non-seatholder Council members to vote at general meetings of the Corporation. No reasoning is offered as to the rationale for this proposal or how many votes each appointed Council member would carry. The Corporation is left speculating that this is a device to enable the non-seatholder Council members to negate any decision that the Members might take in general meeting with which the non-seatholders do not agree. The Corporation believes not only that it would be irresponsible to apply for a scheme with such a provision in it without properly understanding what is intended and how it would operate in practice but that in any event the seatholders would regard the proposal as devoid of any merit.

4.8 It also suggests that the Commission has not understood the limited scope for decisions by Members in general meeting and yet the potential for its scheme to enable property rights to be violated by the external imposition of a seat rate.

4.9 The transitional provisions for changing from the current constitution to the proposed new one have not been fully or adequately developed.

4.10 The stance adopted by the Commission that, in effect, if the Corporation finds shortcomings in the Commission's draft scheme, it should apply within the same timescale for its own scheme with the same overall intent is not a reasonable suggestion for the Commission, as regulator, to make.

5 Members' contribution

5.1 Against all of the above concerns about the Commission's proposal, the Corporation has to weigh the contribution of Members, the risk of that contribution diminishing if Members become a minority on Council and whether any such diminution in that contribution of Members could be made good in some other way under a constitution of the kind proposed by the Commission.

5.2 It is a feature of the Hall's history that Members have devoted their time, skills and experience to the Hall; they have supported the Hall financially; and they have raised substantial sums for the Hall.

[25] CC29: Conflicts of interest: a guide for charity trustees (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343408/CC29-_PDF.pdf), page 14.

5.3 For nearly 150 years, they and their management have piloted the Hall through financial instability, political controversy and war-time austerity to its current status as a premier, world renowned, performance space.

5.4 After the Hall had been built, the relationship between the Corporation and its Members was soon tested. From the start, the Hall's finances were precarious. The Hall failed to attract attendance on the scale and frequency required for it to be viable. It suffered from its remoteness from London's population, in spite of the railway to South Kensington. Its acoustics were poor. The purposes for which it could be used were restricted. Events were held only about once every fortnight. As early as 1874, Members were being asked to contribute to its running expenses. In 1876, seeing their interests as seatholdings aligned with the Hall's fortunes, the Members agreed to support the Hall by paying an annual seat rate. In 1887, the Members agreed to being excluded from the Hall for up to 10 days a year so that more tickets could be made available for general sale. Restrictions on the Hall's use were also relaxed, in spite of accusations that this 'vulgarised' it. In the ensuing forty years, in spite of the range of events hosted by the Hall, the Corporation's finances continued to struggle.

5.5 During the twentieth century, the members (a) progressively increased their financial support for the Hall and (b) significantly reduced their rights of attendance on the recommendations of Council from time to time, as these acts were in the best interests of the charity and the convergence of interests of the membership.

5.6 In 1996, the Chief Executive of the Corporation signed an agreement with the National Heritage Memorial Fund for a £20 million grant including a condition that, if the seat rate were to fall below £527 per annum, index linked to the general building cost index, the grant would become repayable. This was a contract between the National Heritage Memorial Fund and the Corporation. No alteration was made to the Members' seat rate obligation. The arrangement therefore depends on the continuing goodwill of the Members.

5.7 Today, Members contribute to the successful attainment of the Corporation's objectives in many ways. They devote time to operational governance of the Corporation, contributing to the work of the various committees as well as of Council itself. There are committees dealing with Finance (including the Hall's employee pension schemes), Programming and Marketing, Public Benefit, Building and Maintenance and Development Funding. Some Members are trustees of the Corporation's related charity, the Royal Albert Hall Trust. Some Members are directors of the Hall's wholly owned trading subsidiary, RAHDL.

5.8 Members contribute financially through the seat rate levied each year and, currently, a supplementary seat rate. The statutory obligation to pay a seat rate is £10 per annum. In fact, Members currently pay a combined rate of approximately £1,455 plus VAT per seat per annum. The Members have collectively agreed to do this. In aggregate, this amounts to approximately £2m per annum of additional benefit to the Corporation.

5.9 Members contribute further by releasing seats for use as 'Exclusives' for many more events each year than they are obliged to do under section 14 of the 1966 Act. Again, this is a collectively voluntary arrangement. It generates around £1m for the Corporation.

5.10 Ninety-seven per cent of the Members voluntarily use the ticket return scheme and every Council Member who qualifies to use it does so. This generates additional revenue for the Corporation of the order of £1.5m per annum.

5.11 Numerous Members have personally donated substantial sums to the Corporation. The Corporation's largest individual donors have been Members.

5.12 Members are active in fundraising for the Corporation, often facilitated by the fact that they are donors themselves.

5.13 Members regularly donate to charity their tickets for charity fundraising events at the Hall.

5.14 The Members are the Corporation's "lender of last resort". This means not only that, if the Corporation runs into financial difficulties, the Members are likely to support it financially by virtue of the mutuality of interest of the Members and the Corporation, but also that Members can be subject to a special levy to support the Corporation if the requisite majority so determines, for example in the event of a threatened forfeiture of the lease of the Hall.

5.15 By virtue of their diverse backgrounds, Members bring a range skills and experience to the governance of the Hall ranging from an entrepreneurial spirit and know-how in business and accounting to fundraising and public service.

5.16 The Corporation accepts that appointed trustees can bring their own considerable diversity of experience to a charity but whether they would do so with the same enduring commitment as seatholding Council members do in the case of the Hall with their financial stake in the long term success of the charity, is more questionable.

5.17 It is impossible to foresee how the financial contributions made by Members would ever be replaced by any other category of trustee.

6 Implications of impairing Members' relationship with the Hall and jeopardising the Hall's financial independence

6.1 A key question, therefore, is whether Members will continue to support the Corporation financially and in other ways if their role on Council is emasculated by the change proposed by the Commission.

6.2 The Corporation acknowledges that the long term 'bargain' that was struck in 1866, at the time of the Royal Charter, between the Crown, the 1851 Commissioners, the Members and the future Corporation (and reaffirmed as recently as 1966) is complex but it has worked harmoniously for well over a century. Seeking to alter radically the balance carefully struck would most likely threaten the bond between the Members and the Corporation, resulting in disaffection and dysfunction and the possibility of

some aspects of the relationship unravelling – all to the financial detriment of the charity.

6.3 The vast majority of Members are proud of their relationship with the Hall. By virtue of their involvement with the Hall and its governance, they see themselves as playing an important role in its success and its delivery of public benefit. If that role is taken from them, the eleemosynary element of their involvement is likely to diminish. Reduced to having a merely commercial relationship with the Hall, Members can be expected to react by settling into a purely commercial role and to withdraw (whether immediately or over time) the large benefits they currently give to the Hall.

6.4 Withdrawal of Member support would very likely result in turn in a loss of financial independence. Just as a business that is too dependent upon lending can become governed by its lender, so a charity that becomes dependent upon grant funding can find itself governed by its funder. When the funder is the State, it can become a form of political control. A hallmark of the charitable sector is charities' independence from government.

6.5 Being continuously reliant upon external funding for core activity also inhibits expansion and any consequent increase in the public benefit the charity provides. The Corporation currently has a £37m investment programme. All of this is being funded by its annual surplus, by donors and indeed by Members. Obtaining the donations is only really feasible when the Corporation can assure donors that its expansion is also being funded by the Corporation's own surpluses.

6.6 The Corporation is seriously concerned that removing the seatholders' majority on Council would, over time, change the Corporation's success into a culture of dependency and a much reduced public benefit output. The fact that this output is provided without recourse to the public purse increases the public benefit delivered (relative to subsidised venues) and the ability to grow the public benefit over time.

6.7 Such risks are real and substantial. They should be properly evaluated before any change to the current arrangements is sought. The Corporation has taken them into account in considering its response to the Commission and has concluded that the danger from these risks far outweighs any perceived benefit that may accrue from the Commission's proposed changes.

7 Governance Review

7.1 Separately from the intervention of the Commission, the Corporation had concluded that its constitution and governance would benefit from a review and some updating. It has therefore set up a formal review and has shown the terms of reference to the Commission. The composition of Council is listed as a topic for review. This is in conformity with the Commission's general advice that a governance review should generally be comprehensive.[26]

[26] See, for example, the Commission's Operational Case Report on the Priory of England and The Islands of the Order of St John, 20 January 2015.

7.2 The Corporation's preferred way of considering any proposed change to its governance is to do so holistically, in case some changes have implications for other proposed changes. For example, if a new category of Council member is to be created, it will have implications for the current appointed members and their appointing bodies as well as for the seatholder members; and a reduction in the size of Council may make staffing the many necessary committees problematic.

7.3 In the case of the Corporation, by contrast, the Commission has taken the view that the issue of Member majority on Council can be properly dealt with as a priority, by setting a time limit for it to be addressed ahead of all other matters, and in isolation of other possible changes without any adverse consequences.

7.4 Metaphorically, this amounts to a view that one can radically change the specification of the gear box of the motor car without considering whether the engine will still operate as effectively as it did before. The Corporation does not agree that this is the best or right approach to the subject of constitutional reform.

7.5 In order to respond to the Commission within the deadline imposed, the Corporation has effectively been forced to prioritise the formation of its view on this single issue, as set out in this paper, but the Corporation continues to maintain that this approach is not conducive to sound constitutional reform.

8 Conclusion

8.1 The involvement of the Members in the Council coupled with the Corporation's obligations under the lease of the Hall are a continuation of the permanent bargain that was entered into in 1866 between the Crown, the 1851 Commissioners, the Members and the future Corporation. In return for the obligations and liabilities falling on them, Members are given control over the maintenance of the Hall and the duty to carry out the Corporation's charitable objects. Such an arrangement may be unusual and not a familiar charitable model but that is not a reason to regard it as in any way unsatisfactory.

8.2 The Corporation believes that, on the contrary, the arrangement has served the charity well for over 145 years and that there is ample evidence to support this. It has been of benefit to the charity without any adverse consequences. There is no case to support the view that it will not continue to do so, far less that these arrangements are now untenable.

8.3 There is complete consistency between the Corporation's governance and modern charity law (as is confirmed in the Opinion of Simon Taube QC).

8.4 The Commission's attempt to reduce the involvement of Members in the governance of the Corporation demonstrates a failure to understand and appreciate the extent of the benefit that Members bring to the charity and the harm to the charity that would be caused if this benefit reduces.

8.5 The risk of disturbing the arrangement in order to address a perceived risk of a breach of duty and an ill-informed perception of potential conflict is not worth taking. Removing the Members' control over the affairs of the charity will be detrimental to

the charity in several ways. The greatest risk is that it would be divisive and the charity would lose the support of the Members. The Commission has not made out any proper case to justify taking on such a risk.

8.6 The mutuality of interest between the Corporation as a charity and the private interest of the Members has been a powerful force for the benefit of the charity. To dismantle it would imperil the charity.

8.7 Any issues of conflict of interest are properly and adequately addressed by the Corporation's conflicts of interest policy.

8.8 The Corporation submits that the Commission has misguided itself on the relevant issues and is not acting appropriately or proportionately as the charity regulator in this case.

8.9 The Corporation has taken legal advice throughout its consideration of these issues and is convinced of the reasonableness with which it has acted.

8.10 For the reasons set out in the paper, many of which are sufficient on their own, but together are overwhelming, the Corporation has concluded, and has so decided by a vote of Council and by approval of this document, that reducing Members to a minority on Council would not be in the best interests of the charity.

Dated: …….

Signed: ……

Ms J Hope
Secretary to the Corporation
For and on behalf of the Corporation of the Hall of the Arts and Sciences

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 23

NOT USED

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 24

Charity Commission's letter to the Corporation's solicitors dated 2 August 2017

CHARITY COMMISSION
FOR ENGLAND AND WALES

Lawrence Simanowitz

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T: 0300 065 2168

Date: 02 August 2017

Dear Mr Simanowitz,

Royal Albert Hall Constitutional Review

Charities Act 2011, section 74

Thank you for your letter dated 15 June 2017.

The Commission considers that it has engaged with the Corporation fully and properly during the period to which your letter refers.

The Corporation's letter dated 8 November 2016 was expressed to be a request under section 74 of the Charities Act ("CA") 2011 for consent to expenditure on preparing or promoting a Bill. However, until receipt of your letter of 15 June 2017 it had been left to the Commission to deduce the intended contents of the Bill from the papers we had been sent concerning the successive stages of the Corporation's governance review. Although we commented on some aspects of these papers, they were not sufficiently clear or complete to require the Commission to determine the application.

The Commission is now willing to treat your letter of 15 June 2107, together with the earlier letters referred to in it, as a request for the Commission's consent under CA 2011 section 74 to incur expenditure out of the property of the Corporation on the preparation and promotion of a Bill to give effect to the proposals set out in the schedule to your letter of 15 June 2017.

The Commission considers that the purpose of section 74 is to give the Commission and the court power to prevent the expenditure of charitable funds on the preparation and promotion of a Parliamentary Bill where such expenditure is not in the interests of the charity. One instance where such expenditure would not be in the interests of the charity is where the objects of the Bill could be achieved more efficiently by the exercise of the Commission's powers. Another is where the object of the Bill would not be in the interests of the charity. In considering whether the object of a Bill would be in the interests of the charity, the Commission and the court are entitled to form their own view of the merits of the proposal. They are entitled to take account of, but are not bound to accept, the views of the charity trustees, and they are not precluded from acting on their own view of the merits of the proposal by the principle of Parliamentary supremacy. The Commission's views on the merits have been reached having regard amongst other things to the use of Parliamentary time and the cost to the Corporation in pursuing a Parliamentary Bill.

We attach as **appendix 1** a copy of the schedule to your letter of 15 June 2017, to which we have added a further column. In that further column, we have labelled each of the proposals in the schedule A, B, C1, C2 or D. The Commission's observations on the Corporation's proposals are set out below by reference to these categories.

Category A

The Commission has no objection in principle to the proposals marked A.

It appears to the Commission that those proposals could be implemented by a special resolution of the Corporation approved by an Order in Council, pursuant to the Corporation's constitution. If for any reason that procedure was not appropriate, it appears to the Commission that those proposals could be implemented by a scheme of the Commission made under CA 2011 section 73 and brought into force as provided for by that section.

These proposals do not, therefore, require primary legislation.

Category B

The proposals marked B concern the composition of the Council. The Commission objects to these proposals on the ground that they are an inadequate response to the need to address the problem of conflicting interests which affects the governance of the Corporation. The Commission considers that it is essential that this problem is properly addressed as part of any reform of the Corporation's constitution, and it does not accept that the Corporation's

conflicts policy, the Corporation's proposal for the slight reduction in the number of elected members, and its proposal for the Council to be able to co-opt "New Class" members are a sufficient response. They would leave the governance of the Corporation with individuals who are personally conflicted on a range of important issues that will arise in the governance of the Corporation, and they do not provide for a viable body of un-conflicted persons capable of dealing with such issues, should the need arise.

The composition of the Council has been extensively discussed in previous correspondence. The Commission made a proposal to the Corporation as to the future composition of the Council by its letter dated 3 June 2015, to which the Corporation replied by way of a paper enclosed with its letter dated 28 September 2015. The Commission has given further consideration to this issue, and has formulated a revised proposal, which is set out in **appendix 2** to this letter.

The appendix is largely self-explanatory, but you will note that the Commission's revised proposal will leave elected members of the Council in a numerical majority on the Council (thus addressing one of the points the Corporation made in its paper), and that there will be a sufficient number of un-conflicted members of the Council to operate as a viable body if it is appropriate for members of the Corporation to be excluded from a discussion of or vote on any particular matter (thus sufficiently addressing the Commission's concerns).

The Commission would be willing in principle to see the size of the Council illustrated by this proposal reduced by a pro rata reduction of the numbers of elected and appointed members, but would wish to discuss that with the Corporation first.

The Commission's revised proposal does not include that appointed members of the Council should be able to vote at general meetings of the Corporation.

The Commission invites the Corporation's comments on this revised proposal.

It appears to the Commission that changes to the composition of the Council could be brought into force in the same manner as the proposals in category A. They do not, therefore, require primary legislation.

Category C

The proposals in category C concern members' seat rights. The Commission has no objection in principle to the proposals in category C2, but it will require further information and

explanation before it can express a view on the principle of the proposals in category C1. This can be dealt with in separate correspondence.

The Commission is of the view that the proposals in category C can be implemented by schemes made by the Commission under CA 2011 section 73, given the broad scope of that section, and brought into force as provided by that section.

Category D

The proposals in category D concern the proposed re-statement of the Corporation's purposes. The Corporation wrote to us about this on 14 October 2016 and it has been discussed in subsequent correspondence. We attach as **appendix 3** a paper setting out some observations on how the Corporation's purposes might be re-stated, and we invite your further comments.

It appears to the Commission that a re-statement of the Corporation's objects could be brought into force by a scheme made by the Commission under CA 2011 sections 68 and 69, supplemented (if necessary) by an order under CA 2011 section 73 revoking RAHA 1927 section 16. This does not, therefore, require primary legislation.

A single constitutional document

The Corporation informed the Commission by its letter dated 28 November 2016 that it wishes to have a single consolidated constitutional document, which can only be achieved by primary legislation. The Commission agrees that it would be conducive to the good governance of the Corporation if its constitution were set out in a small number of documents, rather than being contained in a long series of documents, as at present. However, much could be done to simplify the existing documents for everyday use if a set of "working" documents were prepared, omitting repealed provisions and re-arranging the remainder.

Decision

The Corporation's application made by your letter of 15 June 2107 and its schedule, together with the earlier letters referred to in it, for consent under CA 2011 section 74 to incur expenditure in preparing or promoting a Bill in Parliament is **refused.**

The Commission refuses consent on the ground that the proposed expenditure is not in the interests of the charity, for the following reasons:

1. All of the proposals in the schedule to your letter of 15 June 2017, if meritorious, could be implemented by schemes of the Commission made under CA 2011 sections 68, 69 and 73, and brought into force as provided for by those sections.

2. The Commission objects to the proposals in category B on the ground that they are an inadequate response to the need to address the problem of conflicting interests which affects the governance of the Corporation.

Charities Act 2011, section 115

In response to the final paragraph of your letter, the Commission considers that an application to the court under CA 2011 section 74 is "charity proceedings" within the meaning of CA 2011 section 115.

The Corporation's application made by your letter of 15 June 2017 for consent pursuant to CA 2011 section 115 to apply to the court for consent under CA 2011 section 74 to incur expenditure in preparing or promoting a Bill in Parliament is **refused**.

The Commission's reasons for refusing consent are that:

1. The Corporation's proposals can be dealt with, with or without modification, by the Commission under the powers of CA 2011. Section 115(3) provides that the Commission should not without special reason authorise the taking of charity proceedings where in its opinion the case can be dealt with by the Commission under its own powers.

2. The extent to which the Commission can fully implement the proposed changes and other changes the Commission considers necessary should be referred to the Charity Tribunal.

Charities Act 2011 section 325

As you will be aware, CA 2011 section 325 enables the Commission, with the consent of the Attorney General, to refer to the Charity Tribunal:

"(1) A question which—

(a) has arisen in connection with the exercise by the Commission of any of its functions, and

(b) involves either the operation of charity law in any respect or its application to a particular state of affairs".

"Charity law" is defined in CA 2011 section 331 (1).

The Commission is seeking the consent of the Attorney General to refer to the Charity Tribunal a number of questions concerning issues which have arisen in connection with the administration of the Corporation and the application of the Commission's own functions and powers. These questions will be provided to you in subsequent correspondence.

Yours faithfully

PP: Aarti Thakor

Gabi Dwyer
Legal Advisor

Appendices:

1. Copy of the schedule to your letter of 15 June 2017, with additional column.
2. Suggested revised proposal for composition of the Council of Corporation.
3. Paper on purposes of the Corporation.

Appendix 1 - Copy of the schedule to your letter of 15 June 2017, with additional column

No.	Change	Explanation	Comment
1.	If at any time there is a specific shortage of skill or experience in a particular field, or if the skills and experience on Council would be enhanced by the addition of a particular person, Council to be able to appoint up to two trustees who are neither seatholders nor appointees of an external body ('New Class' Council members.")	To ensure that Council is equipped with the range of skills and experience it requires	A
2.	New Class Council members (see 1 above) to be appointed by Council and take office from appointment, with continuation in office being subject to ratification at the next AGM.	To provide a method by which New Class Council member will be appointed	A
3.	(1) The composition of Council to comprise the President, 5 appointed members, 15 elected members (i.e. five elected each year instead of six) and up to two New Class members, making the total 21 to 23 (up to three fewer than at present). (2) Transitional provisions to achieve the above.	To reduce the overall size of Council in the interests of efficiency without compromising the ability to serve all committees and subcommittees whilst also making room for the 'New Class' members.	B
4.	The President to be elected for three years rather than for one, with the option of re-election.	To facilitate effective leadership – for example by allowing more time [to] initiate and oversee the implementation of policies	A

No.	Change	Explanation	Comment
5.	Members to have a formal right to remove a President at any time.	To bring the office of President into line with other elected positions.	A
6.	However many seats are held, a company to be able to nominate a member, director or other officer (but no more than one at any one time) to stand for election; and to be able to propose any other eligible person to stand.	To remove an apparent anachronism or anomaly concerning the rules for corporate entities to nominate Council members and to stand for election; and to align the position more closely to that for individuals.	A
7.	A quorum for Council meetings to be increased to a majority of the full Council.	To ensure that decisions of Council are more likely to reflect the views of all Council when not all Council members can attend.	B
8.	Council to be able to appoint a person who is not a Council member or seatholder (but not a member of the Executive) as a full member of a committee of Council (provided that the Chair of a committee shall continue to be a Council member).	To facilitate greater participation in the work of committees by persons who are not Council members.	A

No.	Change	Explanation	Comment
9.	(1) Drop the six year cap on increases in the seat rate. (2) Increase the threshold for agreeing the seat rate to 75%. (3) Members to be provided periodically with a seat rate projection.	To introduce, with revised safeguards, more flexibility in determining the seat rate.	C1
10.	Add a power to vary the current limits for Exclusives in section 14(1) temporarily for periods of (no more than) three years, subject to a 75% approval by Members	To regularise the position concerning section 14 which currently operates each year on a consensual basis but which some have argued is unsatisfactory and/or ultra vires.	C1
11.	The purposes of the Corporation to be maintaining the Hall, promoting the arts and sciences, hosting or convening public meetings of anybody or persons and hosting or promoting entertainments for the amusement and recreation of the public.	To modify and simply the Corporation's purposes in order to bring them into line with modern language and current practice, whilst ensuring that they remain charitable.	D
12.	Add powers to 'enhance' the Hall; to host private meetings of the Hall (in lieu of this being a purpose); to promote the arts and sciences elsewhere than at the Hall itself; and to do anything "in connection with" the promotion and advancement of the arts and sciences.	To modify and enlarge the powers of the Corporation in furthering the Corporation's purposes.	D

No.	Change	Explanation	Comment
13.	Widen the byelaw-making power to enable byelaws to cover election rules, subject to a 75% approval by Members.	To provide more flexibility in how elections may be conducted in the light of experience and changing circumstances without needing to promote a Bill in Parliament each time	A
14.	The Corporation to be able to relocate a Member from their own seats in spite of the Member's property rights, subject to the introduction of suitable and reasonable safeguards.	To enable the Corporation to accommodate the demands of a particular event, when they entail displacing a Member.	C2
15.	Widen the byelaw making power to enable the Corporation to deal appropriately with the conduct of a Member, in spite of the Member's property rights, who is not subject the Corporation's usual terms of admittance.	To enable the Hall to regulate the conduct of Members and non-Members at events at the Hall in a similar manner.	C2
16.	Drop the right of a person or group of persons with twenty or more seats to call a poll (leaving in place the right for any five Members to call a poll).	To reduce the risk of disproportionate influence on the affairs of the Hall by the rule that a single Member or group of connected persons holding twenty or more seats may demand a poll when a vote is being taken.	A

No.	Change	Explanation	Comment
17.	Introduce a cap on the number of seats that may be held by any person or group of connected persons, subject to the provision of fair and reasonable 'grandfathering' provisions.	To reduce the risk of disproportionate influence on the affairs of the Hall by a person or group of connected persons holding a large number of seats.	C2
18.	When the ownership of a seat is unclear, for example when the registered seatholder dies and no grant of probate to his/her will has yet been taken out, the Corporation to have the power to sell Members' tickets through its Ticket Return Scheme, and credit the seatholding member with the proceeds of sale.	For the more orderly management of a situation where the ability of the Corporation to act is unclear or its authority to act is not sufficient.	C2
19.	A casual vacancy to be subject to ratification by Members at the next AGM (unless the term is then expiring).	To correct an anomaly by ensuring that the filling of a casual vacancy by Council subsequently receives the endorsement of the Members that the Council member would receive if being elected.	A

No.	Change	Explanation	Comment
20.	Members to be able to debate any topic relating to the Hall and express a collective opinion by an advisory vote without being able to make an executive decision.	To clarify, if necessary, what is believed to be the current position when Members may call a Special General Meeting for the purpose of 'taking into consideration special matters relating to the business of the Corporation'.	If and so far as this is necessary, A
21.	To enable a Member with a sufficient number of supporters to add an item to the agenda for the AGM in the way that Members can demand the calling of a special general meeting.	To avoid the artificiality of adjourning and reconvening the AGM in order to accommodate a SGM to consider a subject raised by Members.	A
22.	(1) The auditors to have the right to attend the AGM and to speak at it either of their own volition or at Council's or a Member's request. (2) Council to be entitled to require the attendance of the auditors at the AGM.	To strengthen (a) the ability of the auditors to advise the Members direct on an issue and (b) the accountability of the auditors to the Members.	A
23.	Authorise the Corporation to offset the proceeds of tickets sold through the box office against fines due by a Member, subject to sufficient safeguards being introduced.	To facilitate the recovery of fines owed by Members.	C2

No.	Change	Explanation	Comment
24.	Council to be authorised to make up a shortfall in Council members where a candidate has failed to get elected or where there are insufficient candidates to fill the available places.	To ensure that a full complement of Council members is maintained.	A
25.	The Appointed Council members to have the right to attend the AGM and other general meetings and to speak at them.	To give more voice at general meetings to the Appointed Council members who currently attend by invitation.	A
26.	Council to be authorised to appoint a Treasurer from amongst their own number if the person proposed for election as Treasurer is unable for any reason to take up office or if a casual vacancy occurs.	To ensure that, in certain unexpected circumstances, the Corporation will not be without a Treasurer - without necessarily having to call a special general meeting in order to appoint one.	A
27.	(1) To modernise and simplify in several ways the current statutory rules for elections, which have become outmoded. (2) To enable election rules to be adjusted more easily according to experience and circumstances by allowing some of them to be made by byelaw, retaining only the fundamental elements in primary legislation.	The current election rules need to be updated. If future changes can be made by byelaw, it would obviate the need to promote a Bill each time to make the changes.	A

No.	Change	Explanation	Comment
28.	Widen the byelaw making power to enable the Corporation to establish by byelaw general rules for the conduct of meetings.	To provide more flexibility in how the rules for general meetings can be set in the light of experience and changing circumstances and thereby avoid the need to promote a Bill in Parliament each time.	If and so far as necessary, A
29.	Council to have the power to proceed with any or all of the following, provided there is unanimous consent of the seatholders in the relevant box: (a) offer for sale two more seats in each of the Grand Tier boxes where there are still 10 seats (up to 52 new seats) (b) provide for the current quasi- Membership in respect of the 12 existing additional seats so far created in GT boxes to become full Membership; (c) increase the cohort of quasi-Members from the current 12 to a maximum of 64 (up to 52 new seats) and provide for all 64 to become full Members.	To provide a means of raising additional funds for the Corporation and in so doing expand the Membership.	C1
30.	The content of the Register of Members to be modified to accommodate current requirements and practice and data protection legislation.	To update the requirements for the Register of Members	C2

No.	Change	Explanation	Comment
31.	Make provision for how Members who own the two extra Grand Tier box seats, introduced by the Hall in 2006-2008, may transfer their seats.	To clarify the means by which a new category of seatholding can be transferred.	C1
32.	Make provision for transfers of seats not to be recognised earlier than a certain time.	To enable the Corporation to deal properly with the consequences of a change of seat ownership for the issue to Members of tickets.	C2
33.	The Corporation to be authorised to charge a fee on the approval of a transfer.	To enable the Corporation to recover the administrative cost of dealing with seat transfers.	C2

Appendix 2 - Suggested revised proposal for composition of the Council of Corporation

1. The board to comprise the President, 12 elected members and 10 appointed members.

2. No more than two of the appointed members are to be seatholders or appointed by seatholders.

3. The appointors of the five new appointed members to be consulted on. The two current appointing bodies that are seatholders are not to be given powers to appoint further members.

4. The Council to have power to appoint the two proposed "New Class" members.

5. The quorum of the Council to be such number of members of the Council as will enable it to be quorate without the participation of seatholders or members appointed by seatholders. The number of appointed members who are not seatholders or appointed by seatholders would be eight, so (to allow for the possibility of absences among their number) the quorum should be six or seven.

6. The constitution of the Corporation to contain provisions on the following lines:

A Subject to B, a member of the Council who is, or who may reasonably be regarded as, subject to a conflict of interest or duty in relation to any matter must:

(1) declare the conflict;

(2) withdraw from the discussion of the matter;

(3) not be counted towards the quorum of the meeting in relation to that matter;

(4) not vote on the matter.

B The members of the Council who are unconflicted in relation to the matter may, if they form a quorum and are satisfied that it is in the best interests of the Corporation to do so, resolve to authorise a conflicted member of the Council to participate in the discussion of the matter and to vote on the matter.

7. Corresponding provisions to be applied to sub-committees of the Council and boards of subsidiaries of the Corporation.

8. Appointed members of the Council to be entitled to attend general meetings of the Council but not to vote.

Composition of the Council – summary			
	Current position	Corporation's proposal	Commission's revised proposal
President	1	1	1
Elected member of the Corporation	18	15	12
Appointed members	5, of whom two appointed by seat holders	5, of whom two appointed by seat holders	10, of whom two appointed by seat holders
"New Class" members		2	2
Total	24	21 to 23	23 to 25
Quorum	5	Majority	6

Appendix 3 - Paper on purposes of the Corporation

1. The Commission makes the following preliminary comments on the Corporation's proposal (discussed in its letter dated 14 October 2016) that its purposes should be re-stated:

2. If the purposes of the Hall are to be re-stated, the Commission would prefer them to be re-stated in contemporary language which should be given its contemporary meaning. We note that the Corporation thinks that the phrase "Science and Art", as used in the 1866 Charter, was understood differently in 1866 from the way it would be understood now. If that is the case, the Commission thinks that any language used to express this concept in the re-stated purposes should be selected with regard to its contemporary meaning: its accurate interpretation should not depend on the reader being able to discover and apply some different sense in which the phrase would have been understood at some point in the past. If the Corporation is concerned about historical continuity, the Commission's view is that this can be adequately achieved by preserving the Corporation's name.

3. There should be a purpose or purposes covering the use of the Hall for purposes within the description in the Charities Act 2011 section 3 (1) (f) ("the advancement of the arts, culture, heritage and science").

4. The preservation and maintenance of the Hall should be stated as a separate purpose. This would be a charitable purpose within either section 3 (1) (f) (see above) or (m) (other purposes). We do not think it would be appropriate to use the word "enhance" in this purpose: if the Hall is to be enhanced, this should be in furtherance of one of the Corporation's other purposes e.g. to enable the Corporation the better to advance the arts, culture, heritage and science.

5. We understand that the Hall is used to advance the work of other charities by hosting events by which those charities directly further their purposes (such as degree and prize-giving ceremonies for schools and universities). A charitable purpose to authorise these activities could be framed by reference to the purposes of the charities which are

accommodated (in the example given, the advancement of education by the provision of facilities for meetings of educational bodies), in which case the purpose would fall within the description of the purpose of the charity in question (in the example given, the advancement of education within section 3 (1) (b)). Alternatively, the Corporation may wish to consider proposing a more general purpose on the same lines (e.g. the advancement of the work of other charities by the provision of facilities for meetings which further their purposes), which would most naturally fall within section 3 (1) (m).

6. It appears that the Hall is also used to stage fundraising events such as concerts for charities and that it is let for such events on favourable terms. The Commission does not regard fundraising, as such, as a charitable purpose, and the Commission's provisional view is that it would not be possible to give the Corporation a charitable purposes of staging fundraising events for other charities on favourable terms.

7. We note that the Corporation may wish its re-stated purposes to include the provision of entertainment. In the Commission's view, the staging of entertainment with no educational, artistic or cultural value can only be a charitable purpose if brought within the scope of section 5 of the Charites Act 2011 (recreational trusts), which among other things requires the facilities to be provided in the interests of social welfare. You may find the Commissioner's decision on Fairfield (Croydon) Ltd (1995)[1] to be of assistance. We can provide a copy on request.

8. The Corporation's purposes cannot include the provision of benefits to members of the Corporation, since the members of the Corporation are not a section of the public for the purposes of charity law.

[1] Decisions of the Charity Commissioners, Vol 5 page 14.

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 25

Charity Commission's second request for a s 325 reference to the Attorney General dated 1 June 2018

Government Legal Department

Gwen Wright
Government Legal Department
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WC2B 4TS

Litigation Group
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Your ref: Z1722055
Our ref: Z1803576/SRW/B5

1 June 2018

Dear Sirs,

Royal Albert Hall

I write further to the letter from the Attorney General dated 26 February 2018 to Kenneth Dibble of the Charity Commission.

I write to inform you that the Charity Commission considers it desirable to refer to the First-tier Tribunal pursuant to the Charites Act 2011 section 325 (1) the questions set out in Enclosure A with this letter, which has two appendices. An explanation of the questions is set out in Enclosure B, in which reference is made to documents in the bundle which is Enclosure C.

Drafts of the documents which are Enclosures A and B were sent on 4 April 2018 to Bates Wells Braithwaite, the solicitors acting for the Corporation of the Hall of Arts and Sciences, for their comments. They replied by a letter dated 9 May 2018, and the Government Legal Department is responding today. Copies of these letters (without enclosures) are in Enclosure C.

On behalf of the Commission, I hereby request that the Attorney General gives his consent to the reference to the Tribunal of the questions set out in Enclosure A, pursuant to the Charities Act 2011 section 325 (2).

Yours faithfully

Sarah Wise
For the Treasury Solicitor

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E sarah.wise@governmentlegal.gov.uk

cc. Bates Wells Braithwaite, Solicitors

Enclosures:
A. Reference questions, and appendices 1 and 2
B. Memorandum
C. Bundle accompanying memorandum, comprising:
1. Charters and Acts comprising the constitution of the Corporation of the Hall of Arts and Sciences
2. Letter from the Corporation to the Commission dated 28 September 2015 and enclosed paper and Opinion dated 4 September 2015 of Simon Taube QC
3. Report and Accounts of the Corporation for the year ended 31 December 2016
4. Correspondence comprising:
Letter from GLD to Bates Wells Braithwaite dated 4 April 2018
Letter from Bates Wells Braithwaite to GLD dated 9 May 2018
Letter from GLD to Bates Wells Braithwaite dated 1 June 2018

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 26

Charity Commission's letter to Corporation's solicitors 1 June 2018

Government
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DX 123242 Kingsway 6

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Your ref: LHJ215220/0001
Our ref: Z1803576/SRW/B5

1 June 2018

Dear Sirs,

Charity Commission v the Corporation of the Hall of Arts and Sciences

Thank you for your letter of 9 May 2018, with your comments on the draft documents we sent to you relating to the Charity Commission's intended further request to the Attorney General for his consent to a reference to the Tribunal.

The Commission has considered your comments, and we reply using your headings.

Enclosure A – draft letter to the Attorney General

If the Corporation accepts the Commission's proposal for the reform of the Council, the matters raised by questions 1 and 5 of the reference would still have to be resolved. The statements you have quoted should not be understood as suggesting otherwise. The Commission naturally wishes the Corporation to agree to its proposal for the reform of the Council. By so stating, the Commission is not using the reference as a "bargaining tool".

The Commission has made clear that it considers that all the outcomes of the Corporation's constitutional review, other, possibly, than those in category C in the table which is now Appendix 2 to the reference questions, can, if meritorious, be implemented by a resolution of the Corporation approved by an Order in Council or by a scheme or schemes of the Commission made under sections 68, 69 or 73 of the Charities Act 2011, and brought into force as provided by those sections. Question 5 of the reference questions refers to the Tribunal the question whether the proposals in category C in the table can also be implemented by those means. The Corporation has not requested the Commission to settle a scheme or schemes to give effect to the outcomes of its constitutional review that are not dependent on the answer to question 5 of the reference questions.

The table which is now Appendix 2 to the reference questions makes clear which of the Corporation's proposals the Commission agrees to in principle and which it does not. The proposals the Commission does not agree to in principle are those in categories B, C1 and D. The merits of the proposals in category B are addressed by questions 2 to 4 in the proposed reference. The Commission is awaiting a reply to our letter of 8 May 2018 before giving further consideration to the proposals in category C1. In the case of the proposals in category D, the

Commission is awaiting a response to our letter of 4 April 2018. Following receipt of your replies to these letters we will write to you again.

Your criticisms that the Commission's proposal omits all the changes the Corporation wishes to make, and that Commission is not seeking to help the Corporation achieve its aspirations for a modernised constitution, are therefore misconceived. The Commission has taken matters as far as it can, and is available to help the Corporation take matters further, should its assistance be required.

The Commission's letter of 2 August 2017 refused consent for the Corporation to expend the funds of the charity on promoting legislation. If the Corporation was dissatisfied with that decision, it could have applied to the court for consent to incur the expenditure, but it did not do so.

Enclosure B – draft s 35 questions (and enclosure C - paras 41 – 67)

The Commission has considered all of your correspondence. If you consider any points made in that correspondence are insufficiently addressed by the Commission's memorandum for the Attorney General, it is open to you to seek to make those points to the Attorney General in such manner as he may agree.

Question 1

The Commission considers that the rationale for referring question 1 to the Tribunal is sufficiently explained in the draft memorandum. The draft memorandum also explains the relevance of the proposed re-statement of the Corporation's purposes (which it is accepted was initiated by the Corporation).

In the event of the Tribunal deciding that the Corporation is not correctly registered as a charity, it is to be expected, as stated in the draft memorandum, that the Tribunal's reasons would make clear what steps would be necessary to rectify the position, and the Commission would discuss the matter with the Corporation in that light of the Tribunal's ruling.

Question 2

The Commission considers that it is clear from both the drafting of the question and the draft memorandum that it refers to the Tribunal a question of general charity law, not one that relates solely to the Corporation.

The second paragraph of your comment under this question relates to question 5.

Question 3

The Commission does not agree with your comment that its proper course, in the circumstances of this case, is to proceed directly to impose a scheme on the Corporation and leave it for the Corporation to challenge it by judicial review. The Commission considers that the reference is the preferable course, for the reasons given in paragraph 62 of the draft memorandum.

Question 4

The Commission considers the wording of the question to be appropriate, for the reasons stated in paragraph 64 of the draft memorandum.

Question 5

The Commission considers the wording of the question to be appropriate, for the reasons stated in paragraph 65 to 67 of the draft memorandum.

Enclosure D

It is a matter for the Commission what materials it provides to the Attorney General to accompany its request for consent. The Commission does not waive privilege in its own legal advice.

Appendix 1 – Charity Commission's proposal

The proposal at Appendix 1 is not itself a draft scheme. It is a proposal as to the contents of a scheme.

The differences between the Commission's proposal of 2 August 2017 and Appendix 1 to the reference questions are very minor, and can be easily assimilated by any reader.

Many of your comments on the Commission's proposal are directed at the provisions in paragraph 5 of the proposal, which are that the constitution of the Corporation should contain provisions on the lines set out in sub-paragraphs A and B. Sub-paragraph A provides, in summary, for a member of the Council who is or may reasonably be regarded as subject to a conflict of interest in relation to any matter to be excluded from participation in the decision of that matter. This is, however, subject to sub-paragraph B, which provides, in summary, that the unconflicted members may authorise a conflicted member to participate in making the decision.

The Commission points out that the provisions in sub-paragraph B introduce a degree of flexibility to the operation of the provisions in sub-paragraph A. It would be open to a Council constituted in accordance with the Commission's proposal to employ a variety of approaches to the operation of the provisions in paragraph 5 of the proposal, depending on the questions the Council had to deal with, and the nature and extent of the conflicts to which members were exposed. The power of unconflicted members to decide whether conflicted members should be able to participate in the decision of a matter on which they were conflicted would be a fiduciary power, which the unconflicted members would be required to exercise in good faith and in a manner which, after proper consideration, they considered would be in the best interests of the Corporation. It would not be appropriate for the Commission to get drawn into detailed discussion of how the provisions would operate in particular instances, since that will necessarily be a matter for the members of the Council, rather than the Commission, to decide.

Turning to the specific points made in your letter, the Commission does not agree with your description of the Commission's proposal as creating a two-tier Council: all members of the Council would have equal status, and it is reasonable to assume that all the members of the Council would be able to contribute in a significant way to the conduct of the Corporation's affairs.

You refer to recusal as a method of addressing individual conflicts as being "commonplace" but challenge "whether it is common or appropriate where the proportion of decisions from which board members must recuse themselves is so high". The Commission's response to this observation is that provisions on the lines of paragraph A are indeed commonplace (for example, provisions to the same effect are found in the model charitable trust deeds published by the Commission and the Charity Law Association), but provisions on the lines of paragraph B are less common (thus, the model trust deeds just referred to do not contain provisions on those lines). The Commission included the provisions in paragraph B in the proposal made by its letter of 2 August 2017 after taking into account the Corporation's submissions, and they should be viewed as a response to the Corporation's particular circumstances. The Commission does not agree that its proposal is rendered any the less appropriate if members of the Council are likely to be conflicted in relation to a high proportion of decisions..

You also suggest that the Commission's proposal creates a problem concerning the responsibility of Council members for a decision which they are prevented from participating in. You appear to envisage a situation in which the Corporation's constitution contains provisions whereby Council members are unable to participate in decisions about matters on which they are conflicted unless the unconflicted members agree; the unconflicted members do not agree to allow a member to participate in making a decision on a matter on which he is conflicted; the unconflicted members make a decision; and it is then sought to make the conflicted member liable to the Corporation for loss resulting from the decision, or to make him the subject of regulatory action by the Commission in relation to that decision. Leaving aside the implausibility of that scenario, the Commission's response is that such a situation would fall to be decided under the general law and by reference to the particular circumstances, but that, subject to that qualification, it is difficult to see how the Council member who had not participated in making the decision could be considered to be in breach of duty, or be a proper subject of regulatory action, in those circumstances. The Commission does not, therefore, consider that its proposal gives rise to problems such as you suggest.

We will revert to you in due course on the steps to be taken to identify possible appointors of independent members.

Under the Commission's proposal, the President would be in the same position as any other elected Council member as regards matters on which he was conflicted. The Commission asks us to remind you that in its letter

dated 2 August 2017 it stated that it would be willing in principle to see the size of the Council illustrated by its proposal reduced by a pro rata reduction of the numbers of elected and appointed members, but that it would wish to discuss that with the Corporation first. This remains the Commission's position. Would you please let us know whether, if the Council were to be reformed on the lines of the Commission's proposal, the Corporation would wish the numbers to remain as proposed, or would the Corporation see benefit in a pro rata reduction, to produce a smaller council?

Conclusion

Having carefully considered your comments, the Commission intends to seek the Attorney General's consent to the reference to the Tribunal of the questions sent to you in draft on 4 April 2018. It has made no changes (other than typographical corrections) to the draft questions, the draft appendixes to the questions, or to the draft memorandum. The draft letter to the Attorney General and the draft bundle have been updated to refer to this correspondence.

We enclose with this letter a copy of our letter of today's date to the Attorney General and its enclosures.

Yours faithfully

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For the Treasury Solicitor

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Enclosure:
Letter to the Attorney General dated 1 June 2018 and enclosures

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 27

Charity Commission Draft Explanatory Memorandum dated October 2019

Draft Explanatory Memorandum

(October 2019)

1. This memorandum accompanies a revised version of the questions which the Charity Commission ("the Commission") considers it is desirable to refer to the First-tier Tribunal ("the Tribunal") arising out of the Commission's engagement with the Corporation of the Hall of Arts and Sciences ("the Corporation").

2. The Commission initially requested that the then Attorney General consent to the reference of questions in terms set out in a letter from the Commission to Bates Wells Braithwaite, the Corporation's solicitors, dated 2 October 2017. By a letter dated 10 January 2018 the then Attorney General gave his consent. By a letter dated 26 February 2018 the then Attorney General withdrew the consent he had given. That letter also commented on the then proposed questions 3 and 4.

3. By a letter dated 1 June 2018 the Commission made a further request to the then Attorney General for consent to the reference of questions to the Tribunal. The questions were the same as those for which consent had been sought previously, save that questions 3 and 4 were revised in the light of the then Attorney General's letter of 26 February 2018.

4. Following discussions with the Attorney General's officials, the Commission now wishes to replace question 1 of the questions for which consent was sought on 1 June 2018 with two new questions. Apart from being renumbered as 3 to 6, the former questions 2 to 5 are unchanged. The Commission seeks the consent of the Attorney General to refer the questions in the latest revised form ("the Questions").

5. This memorandum sets out the background to the request, and summarises the Commission's reasons for considering that it is desirable for it to refer the Questions to the Tribunal. It is prepared solely for the purpose of assisting the Attorney General to give consideration to the Commission's request for consent, and it is not intended to be

an exhaustive treatment of the facts and arguments relevant to the Commission's engagement with the Corporation. This memorandum refers to a bundle of documents.

The Corporation

6. The Corporation was incorporated by Royal Charter in 1866 ("the 1866 Charter"), and its governing instruments are the 1866 Charter, supplemental charters granted in 1887 ("the 1887 Charter") and 1928 ("the 1928 Charter"), and the Royal Albert Hall Acts of 1876, 1927, 1951 and 1966. Copies of these documents are in section 1 of the bundle.

7. The Corporation owns a 999-year lease of the Royal Albert Hall. The lease is a fully repairing lease at a nominal rent. A copy of the lease is in section 1 of the bundle

(1) The Corporation's objects

8. The Corporation's original purposes were set out in article 3 of the 1866 Charter. They were the building and maintaining of the Hall and its appropriation to objects directed to, broadly, the promotion of Science and Art.

9. The objects stated in the 1866 Charter have been expanded twice. Article 9 of the 1887 Charter provided:

"The Hall may, in addition to the objects in Our said Charter mentioned, be appropriated to all or any of the following objects (that is to say):

(a) Public or private meetings of any body or persons;

(b) Operettas, concerts, balls, or any other than theatrical entertainments for the amusement and recreation of the people".

10. The Royal Albert Hall Act ("RAHA") 1926 section 16 provided:

"Notwithstanding anything in the Charter or in article 9 of the Supplemental Charter the hall may be appropriated to the purposes of and used for theatrical entertainments and operatic performances."

(2) The Corporation's constitution

11. The Corporation's constitution was originally established pursuant to the 1866 Charter. Its current form is set out in RAHA 1966 Schedule 2.

12. By the 1866 Charter, rights to the use of seats were granted in return for contributions to the cost of building the Hall. The rights are assignable, and last for the duration of the Corporation's lease.

13. The owners of these rights are the only members of the Corporation. According to the Corporation's Report and Accounts for the year ended 31 December 2018 (in section 3 of the bundle), the members own 1,270 seats out of a total of 5,272. The members of the Corporation are not entitled to share in its profits.

14. The Corporation is governed by a Council of twenty-four persons: a President, who must be a member of the Corporation and is elected by the members, eighteen further persons, who must be members of the Corporation and are elected by the members, and (by virtue of a change made by the 1928 Charter) five persons, who need not be members, who are appointed by institutions, of which two are themselves members.

15. The Corporation was registered as a charity in 1967. The Commission considers that the members of its Council are its "charity trustees" for the purposes of the Charities Act ("CA") 2011.

16. RAHA 1876 introduced a requirement for members to pay an annual "seat rate" to contribute towards the costs of running the Hall. The current legislation relating to the seat rate is RAHA 1966 sections 3 to 10. Under these provisions, the seat rate is to be fixed annually by the Council, but it may not exceed an amount fixed every six years by a resolution of members passed by 75% of the votes cast, and it may not exceed £10 per annum unless authorised by a resolution of members passed by two thirds of the votes cast. According to the Corporation's Report and Accounts for the year to 31 December 2018, the seat rate for that year was £1,322 plus VAT.

17. The 1887 Charter introduced a power for the members, by a resolution passed by a majority of votes cast, to authorise the Council to exclude members from certain events, thereby increasing the rental income the Corporation can receive from such events. The current arrangements relating to such "exclusives" are in RAHA 1966 section 14. Under these, the Council may resolve to exclude members from specified numbers of lettings of specified descriptions. The additional rent received in respect of most of the lettings from which members are excluded is applied in reduction of the seat rate. According to the Corporation's Report and Accounts for the year to 31 December 2018, for that year these arrangements produced a credit of £564 plus VAT against the seat rate.

18. Members can sell tickets to their seats. The Corporation runs a ticket return scheme ("the TRS"), whereby the Hall's box office sells tickets returned to it by members at the same price as other similar seats and the proceeds of sale are, after certain deductions, shared by those who have returned tickets. The members are not obliged to use the TRS.

19. In the recent past, the seat rights have changed hands for substantial sums. The Sunday Times of 28 May 2017 reported the sale of the ten seats in a box in the Grand Tier for £2.7 million. The Commission assumes that the members' ability to sell tickets to their seats, both through the TRS and privately, influences the value of the seat rights.

20. In the Commission's view, the sale of tickets to members' seats otherwise than through the box office, and at prices that are above box office prices, causes reputational damage to the charity.

Conflicts of interest of members of the Council

21. The Commission considers that the seat rights create, or have the potential to create, a conflict between the interests of the members of the Corporation who are members of the Council and the charitable objects of the Corporation in the following, and possibly other, ways:

(1) Members of the Corporation have an interest in the price charged by the box office for tickets being high (so that if they sell tickets to their seats, whether through the TRS or otherwise, they receive more); the interest of the public is for the price charged by the box office for tickets to be low.

(2) In consequence, members of the Corporation have an interest in events being staged at the Hall which command high ticket prices; the interest of the public is for events to be staged at the Hall which further the Corporation's charitable objects.

(3) Members of the Corporation have an interest in being able to sell tickets to their seats privately; the interest of the public is for members to sell tickets through the TRS.

(4) Members of the Corporation have an interest in the seat rate being low; the public has an interest in it being high.

(5) The decision whether or not to designate an event as an "exclusive" affects the benefit a member of the Corporation derives from the staging of the event, and, if the event is one of a series, its designation as an "exclusive" may affect the benefit a member derives from other events in the same series.

Recent engagement between the Commission and the Corporation

22. The Commission's priority in its recent engagement with the Corporation has been to secure a reform of the composition of the Council, to enable the conflicts to which members of the Council who are seatholders are exposed to be properly managed. It would be for the reformed Council to consider, amongst its other business, whether any action to regulate the sale of tickets to members' seats was required.

23. The Commission's original proposal ("proposal 1"), made by a letter dated 3 June 2015, was for the elected members of the Council to be a minority. By a letter dated 28 September 2015 the Corporation rejected that proposal, giving reasons in an accompanying paper. The letter also enclosed an Opinion dated 4 September 2015 of

Simon Taube QC. The Corporation's letter dated 28 September 2015 and its enclosures are in section 2 of the bundle.

24. The Corporation, with the Commission's agreement, then conducted a governance review, albeit without apparent external input. The governance review produced 33 proposals. Those proposals are set out in the first three columns of the table which is Appendix 2 to the Questions ("the Table").

25. The Corporation sought the Commission's consent pursuant to CA 2011 section 74 to incur expenditure on a Parliamentary Bill to develop legislation to implement the outcome of its governance review.

26. The Commission refused consent by a letter to the Corporation's solicitors dated 2 August 2017. By the same letter, the Commission made a new proposal for the reform of the composition of the Council ("proposal 2") which, as described in paragraph 37 below, has since been superseded.

27. Following the Commission's refusal of consent for expenditure on a Parliamentary Bill, the Corporation could have applied to the court for consent, but it did not do so.

28. In stating its reasons for refusing section 74 consent, the Commission divided the 33 proposals of the Corporation's governance review into four categories. These categories are indicated by the letters A to D in the final column of the Table.

29. The Commission's position on the Corporation's proposals is as follows:

<u>Category A</u>

30. These proposals are for various changes to the Corporation's constitution. The Commission does not object to them in principle. They are not directly relevant to the Questions.

Category B

31. These proposals are to change the Corporation's constitution by (1) reducing the number of elected members of the Council from eighteen to fifteen and (2) increasing the quorum of the Council from the present five to a majority.

32. The Commission objects to these proposals on the ground that they are an inadequate response to the need to address the problem of the conflicting interests of the elected members of the Council. The Commission's position is further explained in paragraph 35 below.

Category C

33. These proposals affect the members' seat rights. The Commission has no objection to the proposals in category C2, but required further information or explanation before forming a view on the merits of the proposals in category C1. The Commission and the Corporation are in correspondence over the proposals in category C1, the merits of which are not relevant to the Questions.

Category D

34. These proposals concern a proposed restatement of the Corporation's objects. The Commission and the Corporation disagree over two aspects of the proposed restatement.

The Commission's position on reform of the Council

35. The Commission's position on the reform of the Council of the Corporation is that:

(1) The Council should contain a sufficient number of independent members, and its quorum should be set, to enable the Council to function effectively without the participation of the members who are, or are appointed by, seatholders, when considering business in respect of which the seatholder members are conflicted.

(2) The members of the Council who are conflicted on an issue should only be able to participate in a discussion of and vote on that issue to such extent as the unconflicted members see fit.

(3) The Commission has no objection to a proposal of the Corporation's governance review for the Council to be able to appoint up to two "New Class" members.

36. The Commission considers that points (1) and (2) above are no more than is required by contemporary standards of good governance, and the Commission sees no reason why such standards should not apply to the Corporation.

37. The Commission's current proposal for the reform of the composition of the Council ("proposal 3") is set out in Appendix 1 to the Questions. Proposal 3 is very similar to proposal 2. Its main features are that the Council should comprise between 23 and 25 members: the President (elected, as now, by the members of the Corporation), 12 further members elected by the members of the Corporation, 10 appointed members (two of whom, as now, would be appointed by seatholding bodies), and up to two "New Class" members appointed by the Council. The quorum would be six, and members of the Council who are conflicted on an issue would only be able to participate in a discussion of and vote on that issue to such extent as the unconflicted members see fit.

The Corporation's position on reform of the Council

38. The Corporation has rejected each of the Commission's proposals for the reform of the Council. Its reasons appear from the Corporation's paper enclosed with its letter dated 28 September 2015, the Opinion dated 4 September 2015 of Simon Taube QC (see paragraph 23 above), and other correspondence. Although the Corporation's letter of 28 September 2015 and its enclosures were produced in response to proposal 1, the arguments presented in them have been repeated in response to proposals 2 and 3.

39. The Commission does not intend this memorandum to deal comprehensively with all the arguments raised by the Corporation: these are matters to be dealt with in the

Tribunal proceedings so far as necessary. The purpose of this memorandum is limited to establishing that it is appropriate to refer the Questions to the Tribunal.

40. However, the Commission offers the following comments on five arguments raised by the Corporation:

(1) Analysis of seat rights

41. The Corporation contends that the members' seat rights were created by the 1866 Charter before the Corporation's lease was granted, so that the Corporation acquired the lease of the Hall "shorn of" of those rights: see in particular paragraphs 12 and 13 of the Opinion dated 4 September 2015 of Simon Taube QC. The Corporation therefore appears to contend that the charity consists of the Corporation minus the seat rights, and that the seat rights exist outside the charity.

42. The Commission disagrees: it considers that the establishment of the Corporation and the creation of the seat rights must be regarded as a whole. The charity is the Corporation, not the Corporation shorn of the seat rights. The seat rights were created out of the leasehold term which vested in the Corporation (the lease of the Hall expressly reserved out of the demise 800 seats for the Exhibition Commissioners, but not the seats for members: see page 15 of the copy of the lease in the bundle).

43. The Commission further understands the Corporation to contend that there is no legal requirement that the benefits that attach to those rights should be incidental to the charity's objects: see in particular paragraphs 3.2 and 3.5 of the Corporation's paper of 28 September 2015. The Commission therefore understands the Corporation to contend that the benefits to members that attach to the seat rights are to be left out of account when considering whether the Corporation is operating for the public benefit.

44. The Commission disagrees: it considers that the seat rights are part of the charity. The principal benefit which the seat rights confer is the right to attend events staged at the Hall, some of which are put on to further the Corporation's charitable objects and which are financed by the sale of tickets to the general public. Consequently, the Commission considers that the Council of the Corporation is under a continuing obligation to ensure

that the benefits derived from the seat rights are no more than are incidental to the advancement of the Corporation's charitable objects.

(2) Conflict authorised

45. The Corporation argues that the principle that a fiduciary must not put himself in a position where his personal interests conflict with his fiduciary duty is subject to the qualification that it is not applicable if the conflict is authorised by the terms of the arrangements creating the fiduciary obligation. The Corporation argues that its governing instruments authorise the conflicts to which they give rise.

46. The Commission accepts that it is arguable that the conflicts inherent in the current arrangements are authorised by the Corporation's governing instruments, most recently by RAHA 1966. However, since RAHA 1966, the Corporation has been registered as a charity; the Commission has been given statutory objectives, which its proposal for the reform of the composition of the Council will advance; standards of corporate governance have risen; and the prices at which seat rights change hands appear to have escalated.

47. The Commission considers that the Corporation's governing instruments do not absolve the Corporation from the need to manage effectively the conflict of interest to which members of the Council who are seatholders are exposed.

(3) No evidence of detriment

48. The Corporation contends that the Commission is unable to prove that any member of the Council has in fact made a decision that unduly favours the members. The Corporation accepts that in a review of the Corporation's governance it is appropriate to have regard to the need to protect against the risk of wrongdoing, and to matters of perception, but contends that the Commission's proposal is disproportionate.

49. The Commission considers that it is not necessary for it to justify its proposed reform of the Council by proof of malpractice by Council members. The law in this area is

"prophylactic": it is not limited to addressing the consequences of past wrongdoing but seeks to remove the risk of wrongdoing occurring in the future.

(4) Conflicts of interest policy

50. The Corporation has introduced a conflicts of interest policy, involving a Conflicts Committee, which it considers to be a full and appropriate response to the issue of conflicts of interest: see in particular paragraph 3.19 of the Corporation's paper of 28 September 2015.

51. The Commission recognises that the conflicts of interest policy is an improvement, but considers that it does not go far enough. For example, the views of the Conflicts Committee are not binding on the Council, and the policy has not produced a solution to the problem of the sale of tickets to members' seats otherwise than through the box office, and at prices that are above box office prices.

(5) Disruption

52. The Corporation contends that reducing the role of members on the Council risks disruption, which would be detrimental to the charity. The Corporation states that its members support it in numerous ways; that the Commission's proposal would imperil that support; and that implementing the proposal would lead to the elected members on the Council regarding themselves as delegates for the other members.

53. The Commission considers that its proposal will leave a sufficient role for members on the Council for members to continue to feel engaged with the Corporation's governance and activities. The Commission considers the Corporation's approach to the Commission's proposal lacks balance, being predicated on the need to defend the interests of the members.

Implementation of the outcomes of the Corporation's governance review

54. The Corporation wishes to implement the outcomes of its governance review by a private Bill. As already noted (see paragraphs 25 – 27 above), the Commission has refused to consent to expenditure on this, and the matter has not been pursued.

55. As explained in paragraphs 29 – 34 above, the Commission has divided the proposals of the Corporation's governance review into four categories. The Commission considers that the proposals in categories A, B and D (if meritorious) can be implemented without primary legislation. Those in category A can be implemented by a resolution of the Corporation affirmed by Order in Council (see article 24 of the 1866 Charter and clause 35 of the constitution in RAHA 1966 Schedule 2). Those in categories B and D (and if necessary also category A) can be implemented by a scheme or schemes made by the Commission under CA 2011 sections 68, 69 or 73 (and brought into force as provided by those sections).

56. Insofar as the Commission's participation is required, the Commission now envisages proceeding exclusively by way of a scheme under CA 2011 section 73, a so-called "Parliamentary scheme" (see further paragraphs 79 - 82 below), but wishes to keep open the option of proceeding under CA 2011 sections 68 and 69.

57. The Commission does not consider that the proposals in category C require primary legislation, and considers that they too (if meritorious) can be implemented by a Parliamentary scheme. The Commission accepts, however, that whether these proposals require primary legislation is uncertain.

The Questions

58. CA 2011 section 325 enables the Commission, if the Commission considers it desirable to do so, to refer to the Tribunal a question which has arisen in connection with the exercise by the Commission of any of its functions and involves either the operation of charity law in any respect or its application to a particular state of affairs. "Charity law" is broadly defined (section 331 (1)).

59. All of the Questions have arisen in connection with the exercise by the Commission of its functions, particularly its scheme-making function, and involve either the operation of charity law or its application to a particular state of affairs. The Commission considers it desirable to refer the Questions to the Tribunal, in order to facilitate the implementation of such of the outcomes of the Corporation's governance review as the Commission does not object to, to facilitate the resolution of issues on which the Commission and the Corporation are not agreed, and to facilitate the conclusion of the Commission's current involvement with the Corporation.

60. The Commission's specific reasons for considering that it is desirable to refer each Question to the Tribunal are as follows:

Question 1

Whether, with a view to ensuring that the Corporation of the Hall of Arts and Sciences ("the Corporation") continues to be registered as a charity, its objects should be revised:

(1) to limit the object stated in paragraph (a) of Article 9 of the Corporation's Supplemental Charter of 25 October 1887 to meetings which advance a charitable purpose; and

(2) to limit the object stated in paragraph (b) of the said Article (together with section 16 of the Royal Albert Hall Act 1927) to performances and entertainments which advance a charitable purpose.

61. A charity is an institution which is established for charitable purposes only. A charitable purpose is a purpose which is within specified descriptions of purposes and is for the public benefit: CA 2011 sections 1 – 3. Question 1 is directed to ensuring that the Corporation's objects (or purposes) continue to satisfy this test.

62. The Corporation's current objects are described at paragraphs 8 to 10 above. They include (by virtue of article 9 of the 1887 Charter) appropriating the Hall to public or private meetings of any body or persons. However, the Commission's understanding of the current law is that the hosting of meetings is not a charitable purpose, unless the purpose is confined by its express terms or the context to meetings which advance a charitable purpose (such as the advancement of education or the arts) or fall within the scope of CA 2011 section 5 (recreational trusts).

63. The Corporation's current objects also include (by the combined effect of article 9 of the 1887 Charter and RAHA 1927 section 16) appropriating the Hall to operas, operettas, concerts, balls, and other entertainments for the amusement and recreation of the people. However, the Commission's understanding of the current law is that the provision of entertainments is not a charitable purpose, unless the purpose is confined by its express terms or the context to entertainments which advance a charitable purpose (such as the examples given in paragraph 62 above).

64. The Commission considers that the Corporation is a charity: it registered the Corporation as a charity in 1967 and the Corporation remains on the register. The Corporation's charitable status can, however, only be reconciled with article 9 of the 1887 Charter and RAHA 1927 section 16 by a restrictive construction of those provisions.

65. Proposal 11 of the Corporation's governance review (see the Table) is to restate the Corporation's objects as "(i) maintaining the Hall, (ii) promoting the arts and sciences, (iii) hosting or convening public meetings of any body or persons and (iv) promoting entertainments for the amusement and recreation of the public" (numerals added).

66. The Commission supports the Corporation's desire to restate its objects. The Commission accepts that the proposed restated objects (i) and (ii) would be charitable.

67. The proposed restated objects (iii) and (iv) are derived from article 9 of the 1887 Charter. The Commission considers that, when the Corporation's objects are restated, objects (iii) and (iv) should be expressly limited so as to be charitable in accordance with the Commission's understanding of the current law. The charitable nature of the

Corporation's restated objects should not depend (as do the objects currently contained in article 9 of the 1887 Charter and RAHA 1927 section 16) on a process of construction.

68. The Commission has not been able to reach agreement with the Corporation on the manner in which the objects in article 9 of the 1887 Charter and RAHA 1927 section 16 should be restated. The Commission therefore wishes the Tribunal to decide whether the Commission's understanding of the law relevant to the proposed restated objects (iii) and (iv) is correct.

69. As explained in paragraphs 55 and 56 above, the Commission considers that the Corporation's objects can be restated in a scheme settled by the Commission under CA 2011 section 73, and that primary legislation is not needed to do this. If the Commission is to settle a scheme in which the Corporation's objects are restated (and indeed if, contrary to what the Commission considers to be the correct approach, those objects are to be restated in a private Bill), it is plainly desirable that there should be clarity about the permissible form of a restatement.

70. In previous discussion of this issue, the Corporation has expressed concern about the consequences of the Tribunal holding that the Corporation is not correctly registered as a charity. Question 1 is now drafted to enable the Tribunal to answer it without expressing a conclusion on whether the Corporation is correctly registered as a charity, so this concern should not persist.

71. The Commission accepts that, if the Corporation's objects are revised to restrict the purposes for which it may host or convene meetings or promote entertainments, the Corporation should continue to have power to let the Hall for meetings and entertainments which do not advance a charitable purpose, in order to generate income for the furtherance of the Corporation's charitable objects (for the present power see article 10 of the 1887 Charter).

72. The Commission hopes that it will be possible to resolve the subject-matter of question 1 by agreement before a hearing in the Tribunal. But unless and until that happens, the Commission considers that it is desirable to refer question 1 to the Tribunal, in order to

facilitate the implementation of the Corporation's governance review, and in order to facilitate the conclusion of the Commission's current involvement with the Corporation.

Question 2

Whether, and if so how, the rights of the members of the Corporation are relevant to whether the Corporation is carrying out its objects for the public benefit

73. Question 2 is intended to enable the Tribunal to clarify the relationship between the rights of the members of the Corporation and the obligation of the Corporation as a charity to carry out its objects for the public benefit[1]. The positions the Corporation and the Commission have taken on this issue to date are summarised in paragraphs 41 to 44 above. The Corporation's constitution is in a highly unusual and possibly unique form, and the interrelationship between the substantial personal and financial interests of the members of the Corporation and the Corporation's charitable status, objects and activities has been the cause of much difficulty during the Commission's engagement with the Corporation. It is also the subject of regular media interest. The Commission therefore considers that it is in the interests of the Corporation and the public interest that this issue be authoritatively clarified, irrespective of its relevance to the other Questions.

74. In any event, the Commission considers that it is necessary to know the answer to question 2 when addressing questions 4 to 6. Hence the Commission considers that it is desirable to refer question 2 to the Tribunal in order to clarify issues that have arisen in the course of the Commission's involvement with the Corporation, to assist in the resolution of questions 4 to 6, and thereby to facilitate the conclusion of the Commission's current involvement with the Corporation.

75. The Commission has considered the alternative of omitting question 2 from the Reference, leaving the Tribunal to deal with the subject-matter of that question as it

[1] See R (Independent Schools Council) v Charity Commission [2012] Ch 214 at [194]

sees fit when answering questions 4 to 6. In the Commission's view, that course would be highly unsatisfactory, as it would needlessly confuse and complicate the Tribunal proceedings. The reference will require the Tribunal to give careful consideration to the Corporation's legal structure; and to ask question 2 separately will facilitate the conduct of the reference in a systematic and transparent manner.

Questions 3 to 5 – overview

76. As explained above, the Commission and the Corporation are not agreed on the appropriate composition of the Council of the Corporation. A change to the composition of the Council would require a change to the 1928 Charter and to the constitution of the Corporation in RAHA 1966 Schedule 2.

77. The Corporation can change its constitution (but not the 1928 Charter) by a special resolution of the members, affirmed by an Order in Council (see paragraph 55 above). There is no indication that the Council intends to invite the members to approve the changes to the constitution that the Commission proposes, or indeed that the members would pass any such resolution. There is also no indication that the Council intends to apply to the Commission for a scheme to reform the composition of the Council, whether as proposed by the Commission or in any other manner.

78. In these circumstances, the issue has arisen whether the Commission can take action unilaterally to reform the composition of the Council. Questions 3 to 5 are intended to resolve particular aspects of that issue.

Question 3

Whether the Commission has jurisdiction to settle a scheme under CA 2011 section 73 in the circumstances specified in CA 2011 sub-sections 70 (4) and (5)

79. CA 2011 section 73 (1) provides:

(1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also—

(a) that it is necessary or desirable for the scheme—

(i) to alter the provision made by an Act establishing or regulating the charity, or

(ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or

(b) that it is for any reason proper for the scheme to be subject to parliamentary review,

the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.

80. Such a scheme may be brought into force by an order of the Secretary of State subject to a negative resolution of either House of Parliament.

81. CA 2011 section 73 further provides (so far as material to this question):

"(7) The Commission must not proceed under this section without the same application, and the same notice to the charity trustees, as would be required if the Commission was proceeding (without an order of the court) under section 69."

(8) But on any application for a scheme, or in a case where it acts by virtue of section 70 (5) or (6), the Commission may proceed under this section or section 69 as appears to it appropriate."

82. CA 2011 section 70 provides (so far as material to this question):

(2) Subject to the following subsections, the Commission must not exercise its jurisdiction under section 69 as respects any charity except—

(a) on the application of the charity,

(b) on an order of the court under section 69(3), or

(c) on the application of the Attorney General.

…

(4) Subsection (5) applies where in the case of a charity, other than an exempt charity, the Commission—

(a) is satisfied that the charity trustees—

(i) ought in the interests of the charity to apply for a scheme, but

(ii) have unreasonably refused or neglected to do so, and

(b) has given the charity trustees an opportunity to make representations to it.

(5) The Commission—

(a) may proceed as if an application for a scheme had been made by the charity, but

(b) [not relevant]

…"

83. The Commission could settle a scheme under CA 2011 section 73 (1) which altered the provisions in RAHA 1966 Schedule 2 and the 1928 Charter relating to the constitution of the Council. In circumstances where, as stated in paragraph 77 above, there is no indication that the Corporation will ask the Commission to settle a scheme giving effect to the Commission's proposal for the reform of the Council, question 3 is intended to resolve uncertainty as to whether the Commission can act on its own initiative under section 73.

84. The uncertainty which question 3 is intended to resolve arises as follows: Section 73 (7) provides that the Commission must not act without "the same application … as would be required if the Commission was proceeding (without an order of the court) under section 69". These words are apt to refer to a situation where the charity or the Attorney General apply to the Commission to make a scheme, as envisaged by section 70 (2), but it is less clear whether they also refer to the situation envisaged by sections 70 (4) and (5), whereby the Commission can, in the circumstances described in section 70 (4), proceed "as if an application for a scheme had been made by the charity".

85. If the wording of section 73 (7) is not apt to refer to the situation envisaged by sections 70 (4) and (5), the Commission will contend that the position is covered by section 73 (8).

86. The Commission considers that it is desirable to refer question 3 to the Tribunal, so that the Commission is aware of the scope of its own powers, and to remove any uncertainty as to the Commission's jurisdiction, should it decide to do so, to proceed to settle a Parliamentary scheme altering the composition of the Council without an application from the Corporation.

Question 4

Whether on the material before the Tribunal the Commission can be satisfied that the Council of the Corporation ought in the interests of the Corporation to apply for a scheme altering the composition of the Council of the Corporation but has unreasonably refused or neglected to do so.

87. Question 4 will only arise if the answer to question 3 is in the affirmative. Its purpose is to establish whether on the material before the Tribunal the Commission can be satisfied that it can proceed on its own initiative to settle a scheme to alter the composition of the Council.

88. The words "on the material before the Tribunal the Commission can be satisfied that" have been inserted into the original formulation of this question, in the light of the then Attorney General's comments in his letter dated 26 February 2018. In the Commission's view, the question would be most appropriately addressed on the basis of the material before the Tribunal, not on the basis of the material existing at some other time.

89. The Commission considers that it is desirable to refer this question to the Tribunal, in an attempt to reduce the scope for future disagreement as to the manner in which the composition of the Council should be reformed, and thereby to facilitate the conclusion of the Commission's current involvement with the Corporation. The Commission

considers that to do so would be an appropriate and innovative use of the Tribunal's reference jurisdiction.

90. An alternative approach would be for the Commission (if satisfied as to the matters specified in CA 2011 section 70 (4) (a)) to proceed to settle a scheme, leaving the Corporation to seek to challenge it by judicial review if it thought fit. The Commission considers that that approach would be liable to prolong the Commission's current involvement with the Corporation. The Commission considers that it is desirable to try to avoid doing so.

Question 5

Whether a scheme settled by the Commission under CA 2011 section 73 altering the composition of the Council of the Corporation should:

(1) correspond to Appendix 1 hereto; or

(2) contain some other, and if so what, provisions.

91. Question 5 will only arise if questions 3 and 4 are answered in the alternative. The question has been reformulated in the light of the then Attorney General's comments in his letter dated 26 February 2018. In the Commission's view, the Council of the Corporation should be reformed in the manner set out in Appendix 1 to the Questions: see paragraphs 35 - 37 above. Sub-paragraph (2) of the question covers the possibility that the Corporation may wish to advance an alternative proposal of its own (whether that produced by its constitutional review or some other).

92. The Commission considers that it is desirable to refer this question to the Tribunal in an attempt to facilitate the conclusion of the Commission's current involvement with the Corporation.

Question 6

Whether any, and if so which, of the proposed changes to the governing instruments of the Corporation labelled C in Appendix 2 hereto can be implemented by schemes made by the Commission under CA 2011 sections 68 and 69, or under CA 2011 section 73, and brought into force as provided by those sections.

93. The changes in category C concern the members' seat rights. The different approaches of the Commission and the Corporation to the member's seat rights are summarised at paragraphs 41 – 44 above. Question 2 is intended to enable the Tribunal to resolve that difference.

94. Allied with its view that the charity consists of the Corporation minus the seat rights, and that the seat rights exist outside the charity, the Corporation contends that primary legislation is required to alter these rights.

95. In the Commission's view, the proposed changes fall within the scope of "the court's jurisdiction with respect to charities" in CA 2011 section 68 (2) (a) and "the administration of a charity" within the meaning of CA 2011 sections 69 and 73. The Commission will contend that the "the charity" for these purposes is the whole of the undertaking established by the 1866 Charter, as varied by the subsequent charters and Royal Albert Hall Acts, including the provisions relating to members' rights. Accordingly the Commission will contend that the proposed changes in category C (assuming them to be meritorious) can be implemented by a scheme or schemes made by the Commission under CA 2011 sections 68 (1) and (2) and 69, or (as the Commission currently intends) under CA 2011 section 73, and brought into force as provided by those sections.

96. The Commission considers that it is desirable to refer this question to the Tribunal. An affirmative answer would mean that all of the outcomes of the Corporation's governance review could be implemented without primary legislation. This would save Parliamentary resources and save the Corporation the cost of promoting primary legislation, which, on any view would be substantial, the more so if there is opposition

(whether from the Commission or elsewhere) to any of the proposals the Corporation wishes Parliament to enact. CA 2011 section 73 is intended to provide charities with a means of obtaining amendments to their constitutions without primary legislation and it should be used in preference to primary legislation whenever possible.

Index to bundle accompanying memorandum

1. Charters and Acts comprising the constitution of the Corporation of the Hall of Arts and Sciences

2. Letter from the Corporation to the Commission dated 28 September 2015, and enclosed paper and Opinion dated 4 September 2015 of Simon Taube QC

3. Report and Accounts of the Corporation for the year ended 31 December 2018

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 28

Charity Commission's third request for a s 325 reference to the Attorney General dated 4 December 2019

Government
Legal Department

Gwen Wright
Government Legal Department
One Kemble Street
London
WC2B 4TS

Litigation Group **T 020 7210 3000**
102 Petty France
Westminster
London
SW1H 9GL

DX 123243, Westminster 12 **www.gov.uk/gld**

Your ref: Z1722055
Our ref: Z1803576/SRW/JD3

4 December 2019

Dear Ms Wright

Royal Albert Hall v Attorney General (IP: Charity Commission)

Following our recent engagement, the Commission has revised questions 1 and 2 of the set of questions which it considers it is desirable to refer to the Tribunal under Charities Act 2011 section 325, for which reference the consent of the Attorney General is required pursuant to Charities Act 2011 section 325 (2).

We enclose:
1. The revised questions, together with the two appendixes referred to therein.
2. A revised explanatory memorandum.
3. The bundle of documents referred to in the memorandum.

Consultation with the Corporation

By a letter dated 24 October 2019 we sent drafts of the revised questions and of the memorandum to Bates Wells, the solicitors acting for the Corporation, for their comments. They replied by letter dated 20 November 2019. Copies of these two letters are enclosed.

The Commission's comments on the points made by Bates Wells' letter of 20 November 2019 are as follows:

Question 1

Bates Wells' objections to this question, and the Commission's responses, are as follows:

1. The question still leaves it open to the Tribunal to consider whether the Corporation is correctly registered as a charity, and determine that it is not.

The Commission's response:

The question, as revised, does not ask the Tribunal to decide whether or not the Corporation is correctly registered as a charity.

The Commission accepts that when the Tribunal is charged with dealing with the reference it may conduct the proceedings (subject to any appeal) as it sees fit. The Commission therefore accepts that it would be open to the Tribunal, if it saw fit, to express the view that the Corporation was not correctly registered as a charity, and would not be correctly registered as a charity even if its objects were re-stated in the manner described in the question.

However, the Commission considers that this is an unlikely outcome in circumstances where both the Corporation and the Commission will be seeking to uphold the Corporation's charitable status.

Ultimately, however, if the Tribunal, as an independent judicial body with expertise in charity law, sees fit to hold that the Corporation is not correctly registered as a charity, the Corporation will have to take account of that holding and take such steps in the light of it as it sees fit.

The possibility of the Tribunal holding that the Corporation is not correctly registered as a charity is not, in the Commission's view, a reason for not referring question 1 to the Tribunal.

2. The question is not a question which "has arisen" in connection with the exercise of the Commission's functions.

The Commission's response:

The memorandum explains that the Corporation's governance review has produced proposals to restate the Corporation's objects. Short of proceeding by way of a private Act (which the Commission considers to be unnecessary), the Corporation needs the Commission's assistance to do this, because the Corporation will require the Commission to settle a scheme. The Commission and the Corporation are not agreed on the terms of a re-statement of the Corporation's objects, and the answer to question 1 will assist in resolving this.

Plainly, therefore, the question "has arisen" in connection with the exercise of the Commission's functions.

3. It is oppressive to join the Corporation into a reference to ask the Tribunal to answer academic questions.

The Commission's response:

The questions described as academic are the Commission's understanding of the law relevant to the additional objects of the Corporation conferred by article 9 of the 1887 Charter. These questions are not academic, as they arise out of the Corporation's desire to retain those objects in its restated objects. Nor, in the Commission's view, is it oppressive to ask the Tribunal to clarify the law relating to the additional objects of the Corporation conferred by article 9 of the 1887 Charter as part of the current reference: the clarification the Commission seeks will facilitate the restatement of the Corporation's objects and the conclusion of the Commission's current engagement with the Corporation.

Question 2

Bates Wells' objections to this question, and the Commission's responses, are as follows:

1. The Commission does not suggest that the Corporation is not carrying out its objects for the public benefit.

The Commission's response:

The Corporation is correct in stating that the Commission does not contend that the Corporation is not operating for the public benefit. The focus of the question is on the relationship between the members' seat rights and the obligation of the Corporation to operate for the public benefit. The Corporation does not appear to challenge the statement in paragraph 73 of the memorandum that this issue has been the cause of much difficulty and disagreement in the Commission's dealings with the Corporation over many years, and has also attracted public interest.

2. The question is vague and unfocused.

The Commission's response:

The contrasting positions taken by the Commission and the Corporation on this issue are outlined in paragraphs 41 – 44 of the memorandum. In the Commission's view, informed in part by experience in the two previous references to the Tribunal, it is preferable to refer an issue of this sort to the Tribunal by means of an open question rather than by more prescriptive questions, as to do so gives greater freedom to the parties and the Tribunal to develop their respective approaches.

3. The analysis provided in the memorandum is insufficient to enable the Tribunal to fully answer the question.

The Commission's response:

It is not the function of the memorandum to provide the Tribunal with all the material it would need to answer the reference questions. Its function, as it makes clear, is to assist the Attorney General to decide whether to consent to the reference.

Conclusion

Having considered the Corporation's comments, the Commission does not wish to make any changes to the proposed reference questions, and it remains of the view that it is desirable to refer the revised questions to the Tribunal. The Commission therefore seeks the Attorney's consent to the reference of questions to the Tribunal in the form of those enclosed.

We are sending a copy of this letter (without the enclosures) to Bates Wells.

Yours sincerely

Sarah Wise

Sarah Wise
For the Treasury Solicitor

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Enc.

1. The revised reference questions, together with the two appendixes referred to therein
2. A revised explanatory memorandum.
3. The bundle of documents referred to in the memorandum.
4. Letter from GLD to Bates Wells dated 24 October 2019
5. Letter from Bates Wells to GLD dated 20 November 2019

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 29

Government Legal Department's letter dated 23 August 2021
on behalf of Attorney General

Government
Legal Department

Charity Commission

By email only to Aarti Thakor
Director of Legal and Accountancy Services

Litigation Group **T 020 7210 3000**
102 Petty France
Westminster
London
SW1H 9GL

DX 123243, Westminster 12 **www.gov.uk/gld**

Your ref: **Corporation of the Hall of the Arts and Sciences**
Our ref: **Z1722055/GWW/HOI6**

23 August 2021

Dear Sirs

Corporation of the Hall of the Arts and Science

I write to inform you of the Attorney General's decision in respect of the Charity Commission's request to refer to the Tribunal under s. 325 of the Charities Act 2011 the six questions which were enclosed with your letter of 4 December 2019.

The Attorney General, with the assistance and advice of his officials, the Government Legal Department and counsel has carefully considered the request and the representations which have been made in respect of it.

The Attorney General has decided not to give his consent to the making of a reference under s.325 in respect of any of the 6 questions.

In making his decision, the Attorney General has acted in his quasi-parental role as representative of the Crown as "*parens patriae*" in relation to charities. He has considered whether it would be in the public interest in the due administration of charities for him to give his consent to the making of a reference on all, none or some, and if so, which of the six questions. Within that overarching consideration the Attorney General has considered, in particular and amongst other things:

- Whether specific questions are or are not within the scope of s.325. Clearly if a question is outside the scope of s.325 it would be against the interests of charity to allow time and money to be expended in attempting to put it before the Tribunal.
- The possible consequences of giving or refusing consent. In particular:
    - The possible downsides of disruption to the Corporation, its reputation and activities of giving consent. An important element in this regard is that the factual and legal analysis needed to answer questions 1, 2, 5 and 6 would in all probability require the Tribunal to consider the issues relating to the nature of the members' rights and hence directly or indirectly the question of whether the Corporation is correctly registered as a charity,

with the resultant possible adverse effects feared by the Corporation of disruption to the Corporation, its reputation and activities.

  - The possible effects of leaving the questions unanswered by a reference.

- The public interest in the Commission being able to function effectively and authoritatively as the regulator of charity and of generally being perceived as doing so.
- The benefits to charity generally of having answers to questions which affect more charities than the Corporation alone and, conversely, the more limited benefit to charity generally of having answers to questions which only affect the Corporation.
- The fact that there is no doubt that all the changes to the Corporation's constitution raised by the Commission could be made by an Act of Parliament.
- The possibility or desirability of the Commission making, at least in the first instance, its own decisions on some or all of the various issues.
- The more or less likely costs resulting from a reference balanced against the more or less likely cost of obtaining a private Act or of the Commission making, at least in the first instance, its own decisions on some or all of the various issues.
- The lack of substantial progress in reaching a consensual solution as between the Commission and the Corporation over at least 4 years and, conversely, the continued possibilities of a consensual solution, as most recently indicated in the letters from the Commission and the Corporation's solicitors to the GLD of 16 August 2021 and 17 August 2021 respectively.
- The impact of the Covid-19 pandemic on the operation of charities generally and, more particularly, on arts venues.
- The idiosyncratic nature of the Corporation and the Royal Albert Hall.
- The fact that the conflicts of interests which are of concern to the Commission are conflicts which were created and authorised by the Royal Charters and statutes which make up the constitution of the Corporation, coupled with the absence of evidence that historically these conflicts have actually caused loss to or maladministration of the Corporation.

Particular points which, in addition to the above, the Attorney General has taken into consideration in respect of individual questions are:

In respect of question 1:

- It is understood that the Commission considers that, even without the deeming effect of registration under s.37 Charities Act 2011, the Corporation is a charity. The Corporation also considers that it is a charity. The Attorney General agrees on the basis that, if the Commission had not considered the Corporation to be a charity, s.34(1) would have obliged the Commission to remove the Corporation from the register[1]. As the Commission considers that the Corporation is correctly registered as a charity, there is no need for its objects to be "revised" in order for it to continue to be registered as a charity. If it is only doubt as to the charitable nature of the existing objects which has caused the Commission to propose its amendment to the existing purposes, the question probably does not involve the operation of charity law within the meaning of s.325(1)(b).
- This question only refers to s.16 RAH Act 1927 and article 9 of the 1887 charter objects. It necessarily overlaps with question 2, if only for the purpose of establishing that the changes suggested in question 1 would "ensure" that the Corporation continued to be registered as a charity.

[1] The circumstances do not appear to have changed so as give rise to a cy-près occasion under s.62 Charities Act 2011.

In respect of question 2:

- It does not appear to be suggested that the Corporation is not operating correctly within the terms of its constitution and therefore, assuming it to be a charity, to be operating for the public benefit. It is therefore not strictly necessary for this question to be asked or answered, given the Commission's acceptance that the Corporation is correctly registered as a charity.
- This question raises the issue of the nature of the members' rights and hence almost unavoidably the issue of whether they arise under the Corporation's constitution or independently of it and, consequentially, their impact on the questions (a) whether the Commission or the Tribunal have jurisdiction to change them and (b) whether their existence impacts on the charitable nature of the Corporation. It therefore raises almost directly the same issue which the Commission has indicated by reference to question 1 that it is seeking to avoid: argument and/or a conclusion by the Tribunal as to the charitable nature of the Corporation.

In respect of question 3:

- This is a question of law as to the meaning of the relevant sections of the Charities Act and the Attorney General appreciates that there would be some value in this point being clarified. However, in its application to the Corporation, it is at present a future question because the Commission has not decided, and it has not otherwise been established, that the Corporation's charity trustees have unreasonably refused or neglected to apply for a scheme within the meaning of s.70(4) Charities Act 2011.
- On balance, the Attorney General considers that it would be contrary to the public interest in the due administration of charities to involve the Corporation in litigation by way of a reference on an issue such as this which, at present, does not directly affect it.

In respect of question 4:

- The Attorney General considers that this question is not within the scope of s.325:
    - Until the hearing before the Tribunal, it cannot be known what material will be before the Tribunal and hence the question asked cannot yet have arisen within the meaning of s.325(1)(a).
    - Further, the materials before the Tribunal may not represent all the material which the Commission has or ought to have in order for it to decide that it should be satisfied.
    - Moreover, the need for such a question to be answered cannot be known until the factual basis for it is known, and hence the desirability or otherwise of the question being referred to the Tribunal cannot be assessed.
- Even if the question was within s.325, the Attorney General considers that it would not be in the public interest in the due administration of charity for the Commission effectively to attempt pre-emptively to validate a determination that the Commission has not yet formally made.

In respect of question 5:

- This question is premature or may not arise in that the question of whether the members' rights can be changed by scheme would have to be answered first.
- No doubt an answer to this question would assist the Commission in deciding what form the scheme should take, but there are difficulties with both parts of the question because:
    - Part (1) leaves the loose ends of who the appointors are going to be and how close to "the lines" proposed by the Commission the provisions as to conflicts should be. How good the proposal is might depend on the availability and suitability of possible appointors;

- Part (2) is very open ended. It is difficult to say that any particular solution is the best – for example, if 5 additional "appointed members" is good, might not 4 or 6 be better?

- At least one and probably two representative members would almost certainly need to be joined as parties to the proposed reference so as to argue this question from the members' perspectives. Two would probably be required because the proposals discriminate between corporate and individual members. This would inevitably add significantly to the duration and cost of a reference to charitable funds and the public purse.

In respect of question 6:

- The proposed changes labelled "C" are changes which interfere with or affect the seat rights of members. It therefore unavoidably ties in with the questions which are raised in question 2 as to the nature and effect of the members' rights. The specific points made above in respect of questions 1 and 2 therefore also apply to this question.

- Until this and the related questions are resolved it will be uncertain whether amendments which interfere with or affect the seat rights of members can be effected in any way other than by Act of Parliament.

- An Act of Parliament may well be a more straightforward and less expensive way of amending the constitution, than attempting to do so by one or other of the scheme jurisdictions, and therefore is an avenue open to both parties to consider seeking. Attempting to establish that the amendments can be made by way of one or more of the scheme jurisdictions would potentially involve a very long and expensive process through the Tribunal and, quite possibly, the courts by way of appeal. The end result of that process might well be that the scheme jurisdictions did not extend to the changes which the Corporation and/or the Commission wish to make.

- As above, at least one and probably two representative members would almost certainly need to be joined as parties to the proposed reference so as to argue this question from the members' perspectives. Again, this would add significantly to the ultimate cost of a reference to charitable funds and the public purse.

In the circumstances the Attorney General has decided not to give his consent for these matters to be referred to the Charity Tribunal as he does not consider it to be in the public interest in the due administration of charities to do so.

Yours faithfully

Gwen Wright
For the Treasury Solicitor

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cc. Bates Wells for the Corporation of the Hall of Arts and Sciences

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 30

Populus survey, February 2018

Royal Albert Hall

Royal Albert Hall - Public Perceptions Research

FEBRUARY 2018

Populus

Key Findings

1. The UK public is highly aware of the Royal Albert Hall, nearly 4 in 10 (38%) visited the venue at least once in their lifetime. London location and ticket prices prevent the public from attending events held at the RAH more frequently.

2. Older demographics (55+ years old) are more likely to visit the RAH compared with younger segments of the public. Those who are under 35 years old are more likely to chose the O2 Arena or the Barbican Centre.

3. When asked what stops them from visiting the RAH, young people say that the venue is not conveniently located, they recently have not been able to find events that would appeal to them and do not feel that they know enough about the programme of events.

4. The RAH has a strong status of an iconic venue among the UK public, a visit is special occasion for most. Customers of the Hall also hold it in very high regard and believe that it offers something unique.

5. The RAH scores the highest out of all venues considered in the research on the Populus Reputation Score model. This framework assesses perceptions of a company on core reputation drivers of favourability, trust, respect, responsibility and affiliation.

6. Echoing the results of the Reputation Score analysis, both customers and the general public say that they trust the RAH more than they trust charities overall.

7. The negative press coverage in 2016/2017 had little impact on the overall opinion about the RAH. A significant majority of the general public and customers of the Hall say that their opinion of the venue has not changed since last year.

Contents

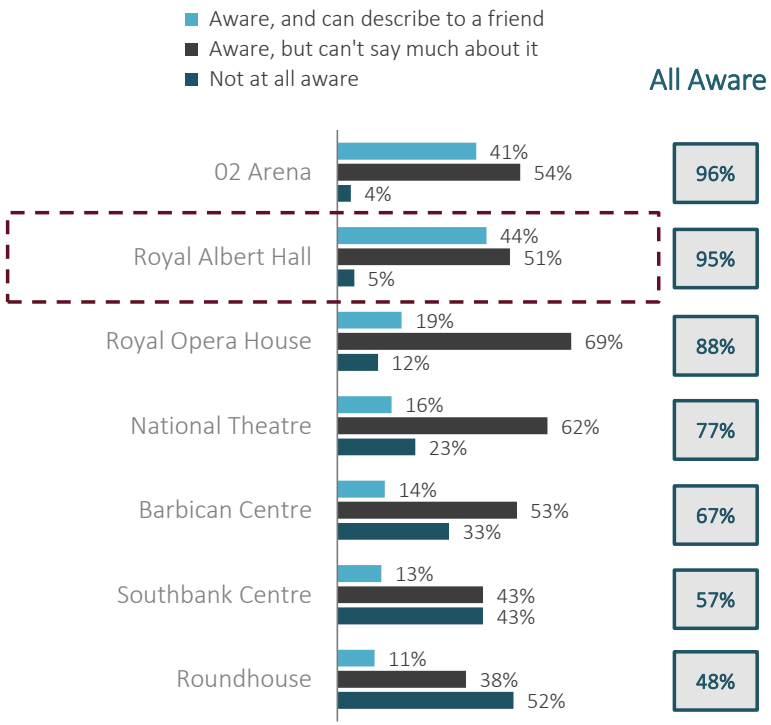
Populus

Awareness and Attendance

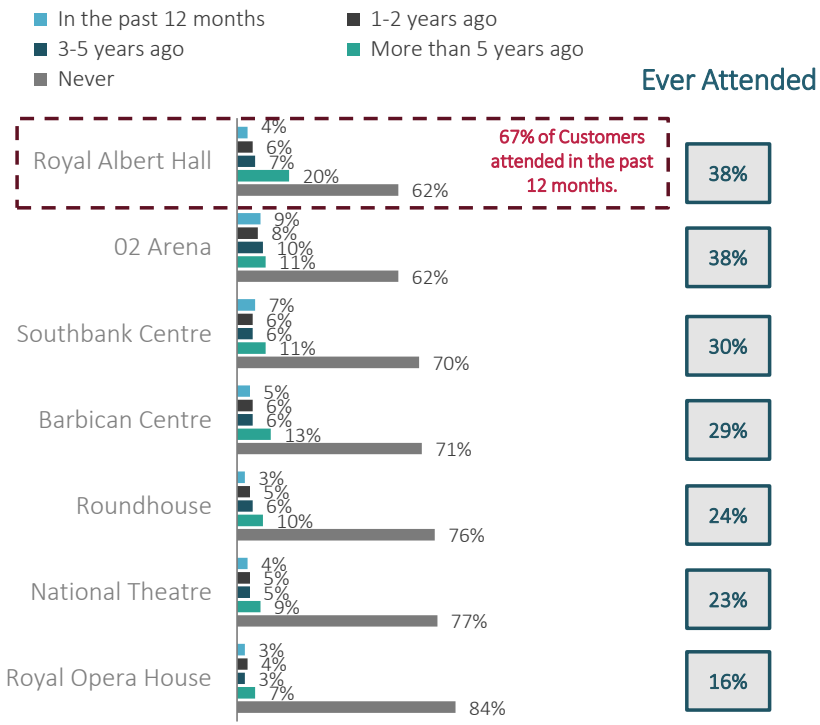
Populus

UK public is highly aware of the RAH, but over half (62%) have never visited the venue; attendance in the past 12 months slightly lags behind the competitors

Q7. Which of the following venues are you aware of and could describe to a friend? [General Public Poll]



Q8. When did you last attend a performance or event at the following venues? [General Public Poll]



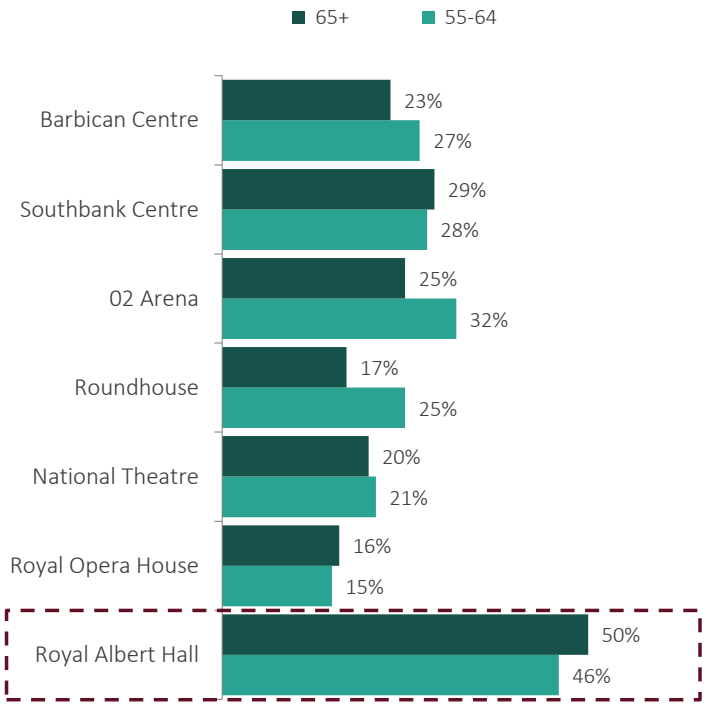
Populus

Royal Albert Hall

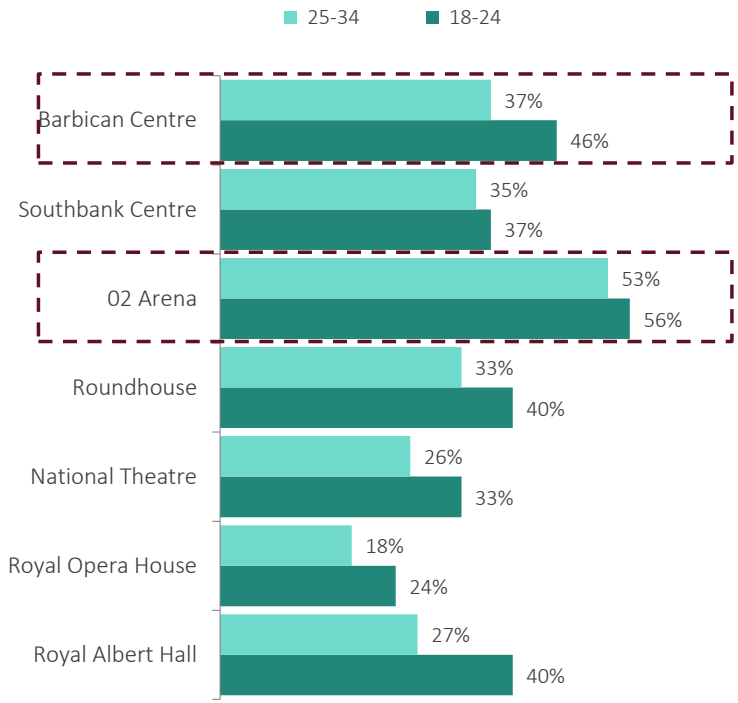
1. Base: All (2103)
2. Base: All aware of: Royal Albert Hall (1981), Royal Opera House (1844), The National Gallery (1622), Roundhouse (998), The 02 Arena (2004), Southbank Centre (1173), Barbican Centre (1396)

The RAH is the most likely to be visited by older demographics (55+ y.o); O2 Arena and Barbican centre attract the highest proportions of under 35s)

Q8. When did you last attend a performance or event at the following venues? [General Public Poll; 55+ y.o. - ever attended venues]



Q8. When did you last attend a performance or event at the following venues? [General Public Poll; Under 35 y.o. - ever attended venues]

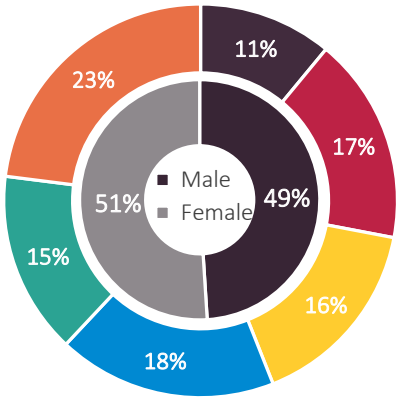


1. Base All aware of: RAH age 18-24 (205), 25-34 (334), 55-64 (274), 65+ (450); ROH age: 18-24 (200), 25-34 (310), 55-64(251), 65+ (425); NT age: 18-24 (174), 25-34 (244), 55-64(229), 65+ (403); Roundhouse age: 18-24 (102), 25-34 (167), 55-64 (143), 65+ (256); O2 Arena age 18-24 (225), 25-34 (357), 55-64 (270), 65+ (429); Southbank Centre age 18-24 (120), 25-34 (170), 55-64 (174), 65+ (311); Barbican Centre age 18-24 (105), 25-34 (170), 55-64 (236), 65+ (398).

Demographic profile of the RAH's Customers vs. General Public

General Population

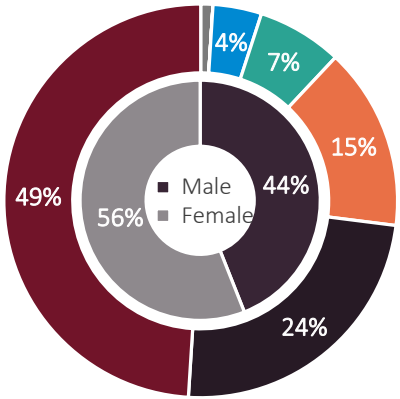
Q1. Gender / Q1a. Age [General Public]



18-24 25-34 35-44 45-54 55-64 65+

Customers of the Royal Albert Hall

Q1. Gender / Q1a. Age [Customer Poll Public]



Refused 16-17 18-24 25-34
35-44 45-54 55-64 65+

73% of RAH customers are 55+ years old

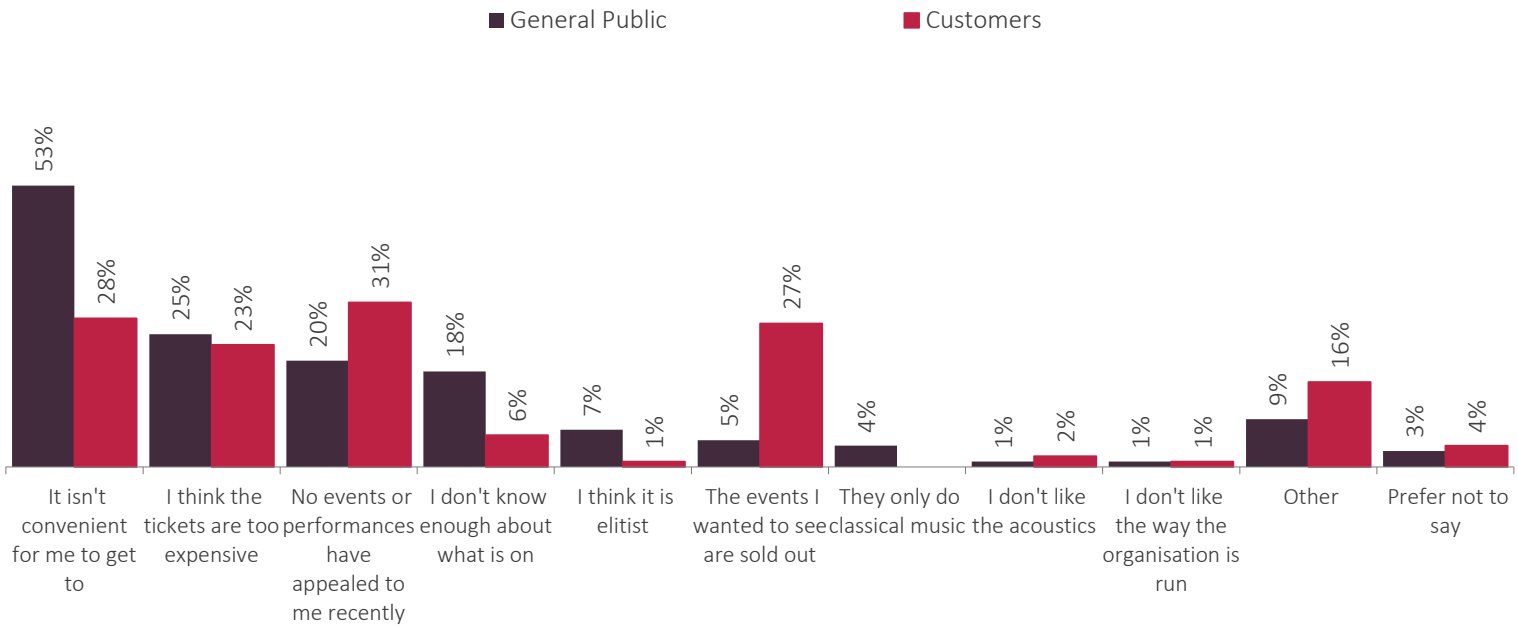
Populus

Royal Albert Hall

1. Base: All general public respondents (2103)
2. Base: All customers (3521); labels for values 1% and below are excluded

Location and ticket prices prevent the public from visiting the RAH more frequently; customers of the Hall struggle to find events that would appeal to them or miss out on tickets

Q8a. Are there any factors that have prevented you from ever visiting the Royal Albert Hall, or from visiting it more frequently? [General Public Poll; Customers Poll]



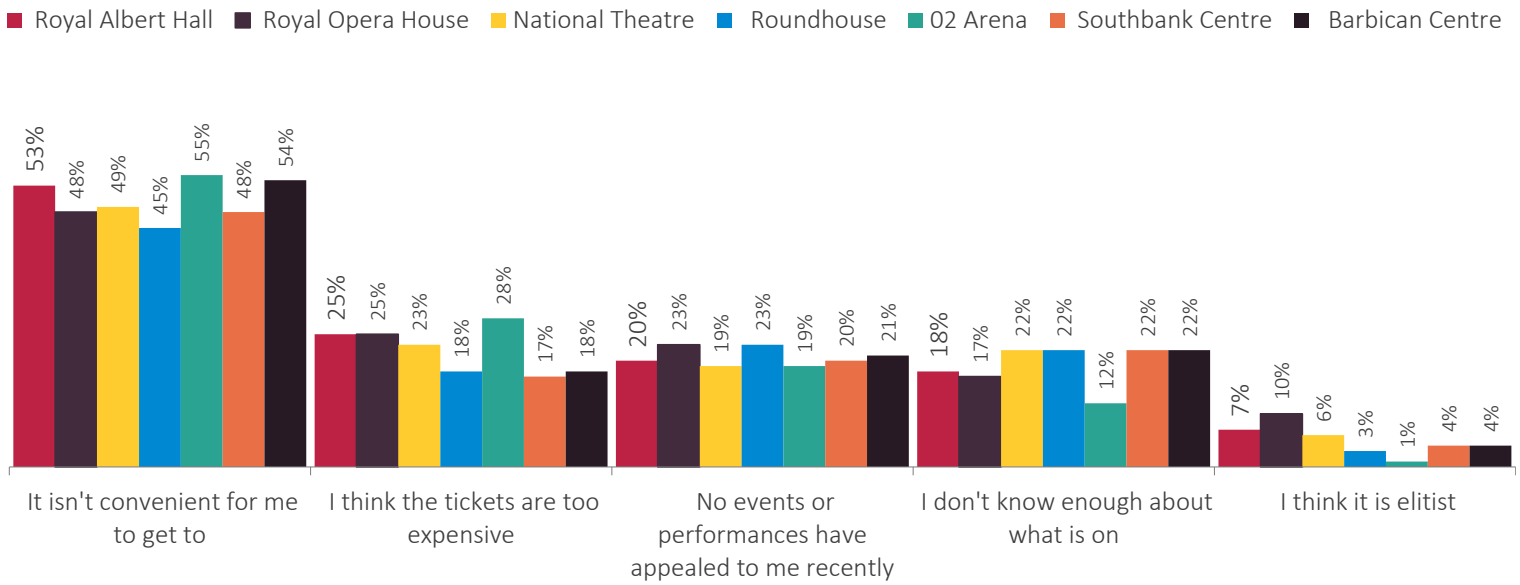
Populus

Royal Albert Hall

1. Base: All general public respondents who visited the Royal Albert Hall more than 12 months ago (1902);
2. Base: All customers who visited the Royal Albert Hall more than 12 months ago (1151)

Similar factors prevent the UK public from attending competitor venues

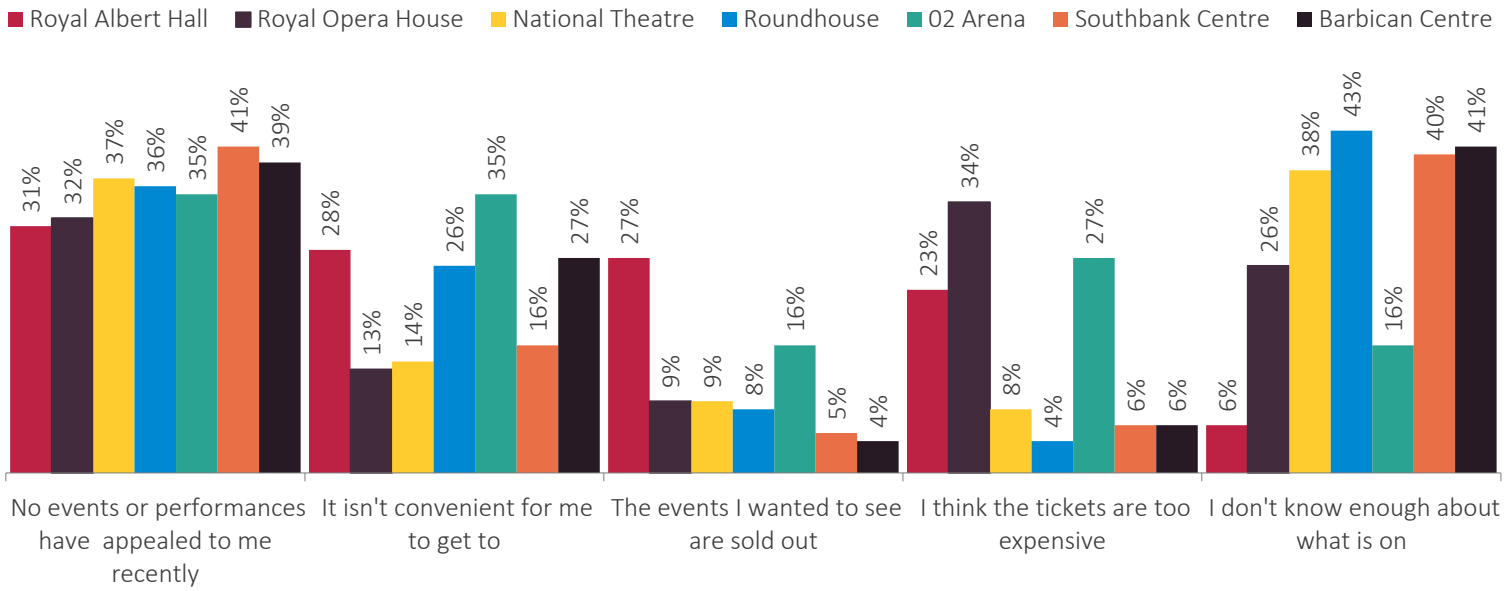
Q8a. Are there any factors that have prevented you from ever visiting these venues, or from visiting these venues more recently? [General Public Poll; Top 5 factors]



1. Base: All answering for: Royal Albert Hall (1902), Royal Opera House (673), The National Theatre (678), Roundhouse (678), The 02 Arena (677), Southbank Centre (677), Barbican Centre (675)

The lack of appealing events is less likely to prevent RAH customers from visiting the venue, compared with competitors

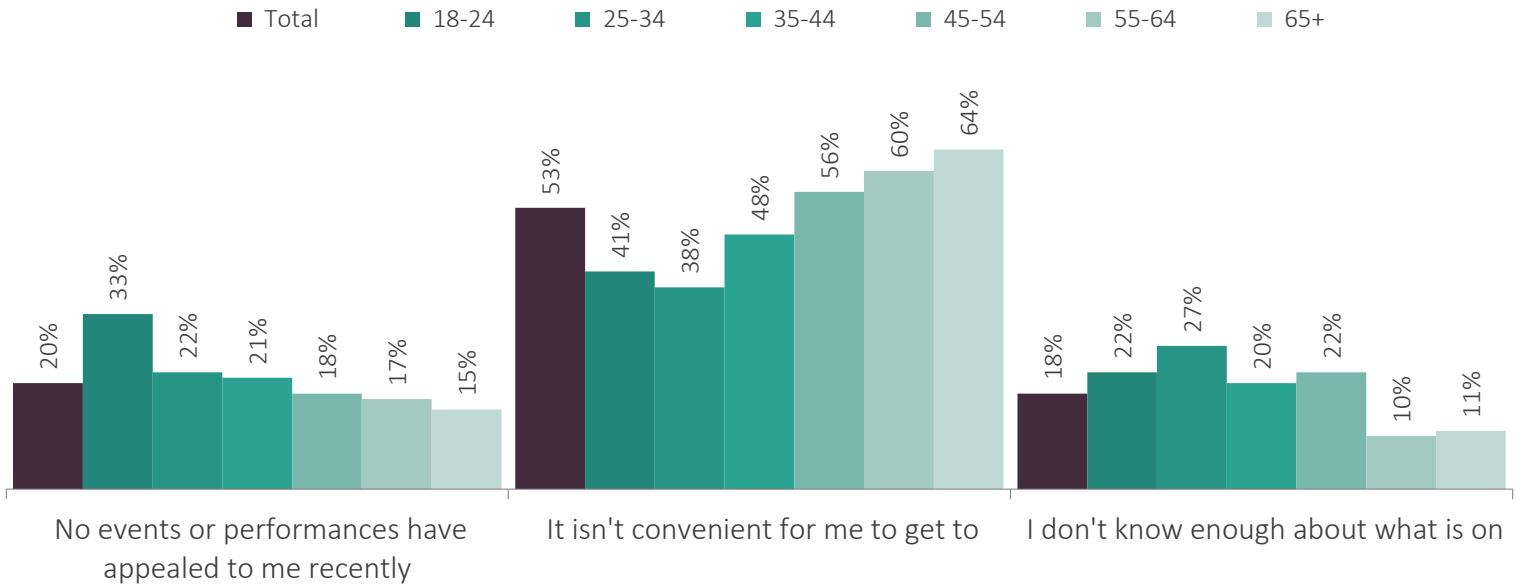
Q8a. Are there any factors that have prevented you from ever visiting these venues, or from visiting these venues more recently? [Customer Poll; Top 5 factors]]



1. Base: All answering for: Royal Albert Hall (1151), Royal Opera House (1432), The National Theatre (1422), Roundhouse (1427), The 02 Arena (1431), Southbank Centre (1429), Barbican Centre (1424)

Younger segments of the public are less familiar with the programme of events held at RAH and struggle to find performances that would appeal to them

Q8a. Are there any factors that have prevented you from ever visiting the Royal Albert Hall, or from visiting it more recently? [General Public Poll]



1. Base: All answering for: Royal Albert Hall age: 18-24 (192), 25-34 (318), 35-44 (321), 45-54 (375), 55-64 (263), 65+ (433)

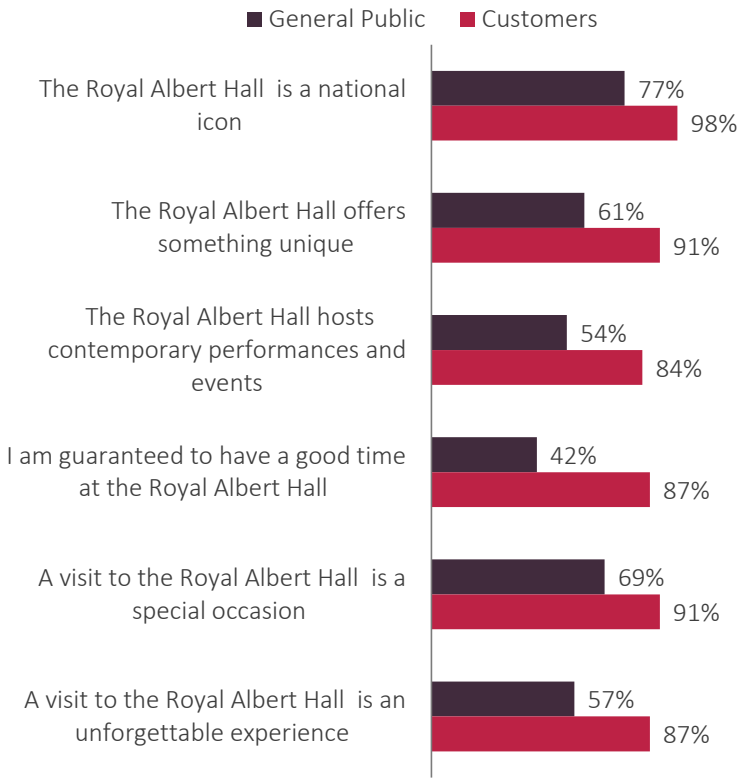
Brand Perceptions

Populus

The Royal Albert Hall is a national icon; a visit to the venue is a special occasion

- The RAH has a strong status of an iconic venue among the UK public (77%), a visit is special occasion for most (69%).
- The RAH customers also rate the venue highly; nearly all (98%) regard it as a national icon which offers unique performances (91%).
- However, both groups were somewhat less convinced that the RAH hosts contemporary performances and events.

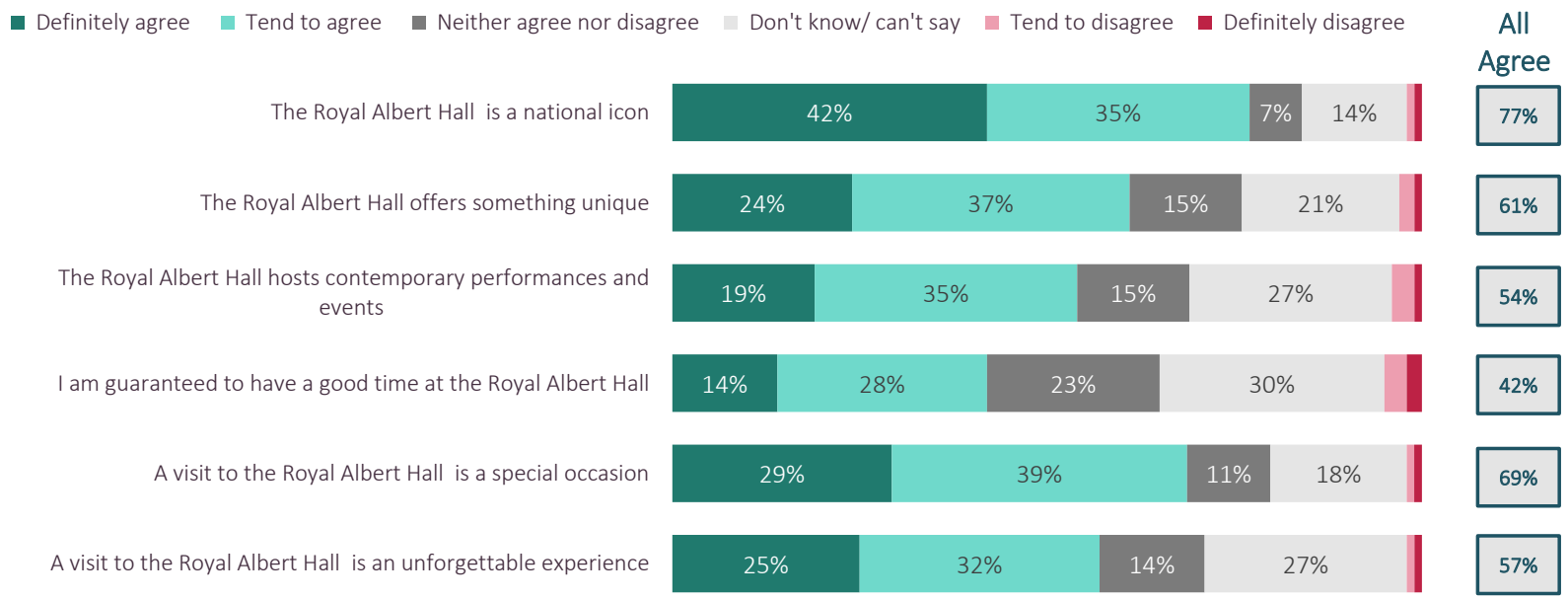
Q9. Please tell us the extent to which you agree or disagree with the following statements. [Definitely agree + tend to agree]



Although a lower proportion of the public agree that the RAH offers contemporary events, over 4 in 10 don't know what to think about it

Q9. Please tell us the extent to which you agree or disagree with the following statements. [General Public Poll]

Across all statements, positive perceptions are stronger among older demographics (45+ y.o.) See appendix for details.

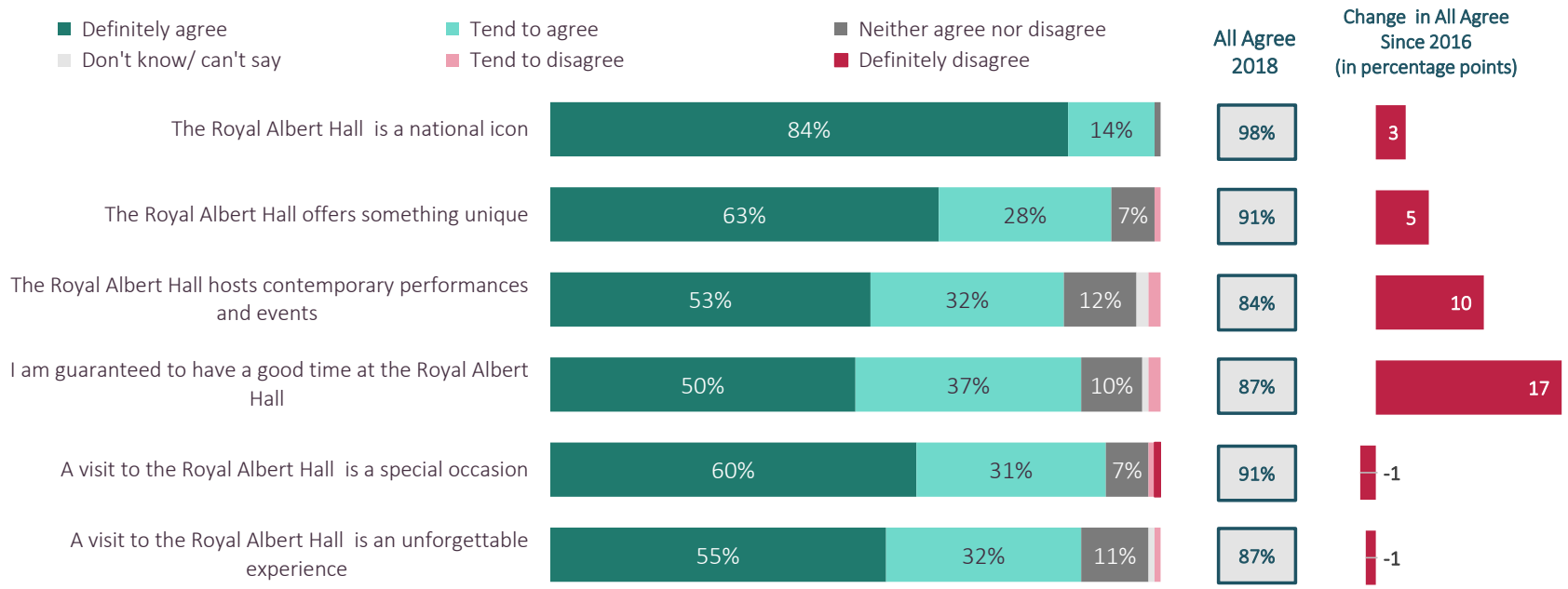


1. Base: All answering for the Royal Albert Hall (1981)
2. Note: Labels for values 3% or below are excluded

RAH customers rate the venue highly; most regard it as a national icon which offers unique performances. They also feel more assured that they are guaranteed to have a good time at the Hall compared with 2016

Q9. Please tell us the extent to which you agree or disagree with the following statements. [Customer Poll]

Across all statements, positive perceptions are stronger among 18-24 y.o. and older demographics (45+ y.o.) See appendix for details.



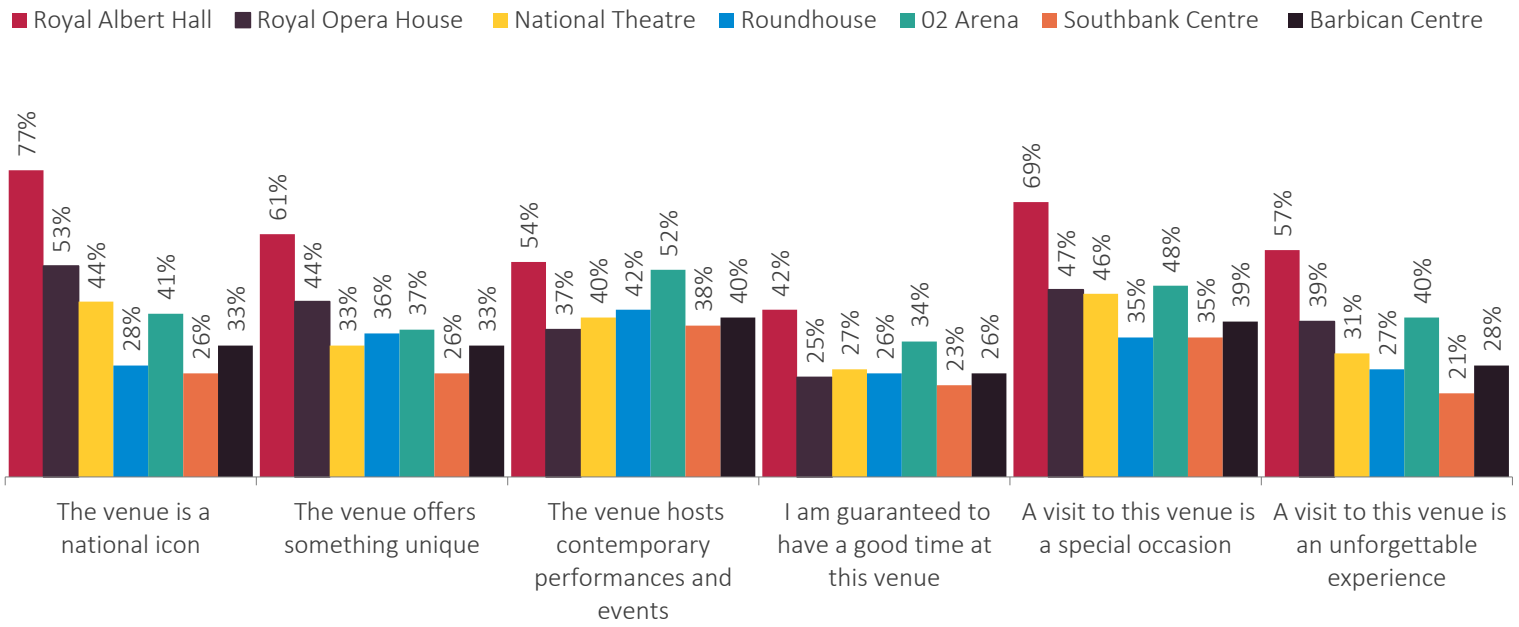
Populus

Royal Albert Hall

1. Base: All answering for the Royal Albert Hall (3520); All respondents 2016 (5168)
2. Note: Labels for values 3% and below are excluded

General public has a higher opinion of the RAH than other venues

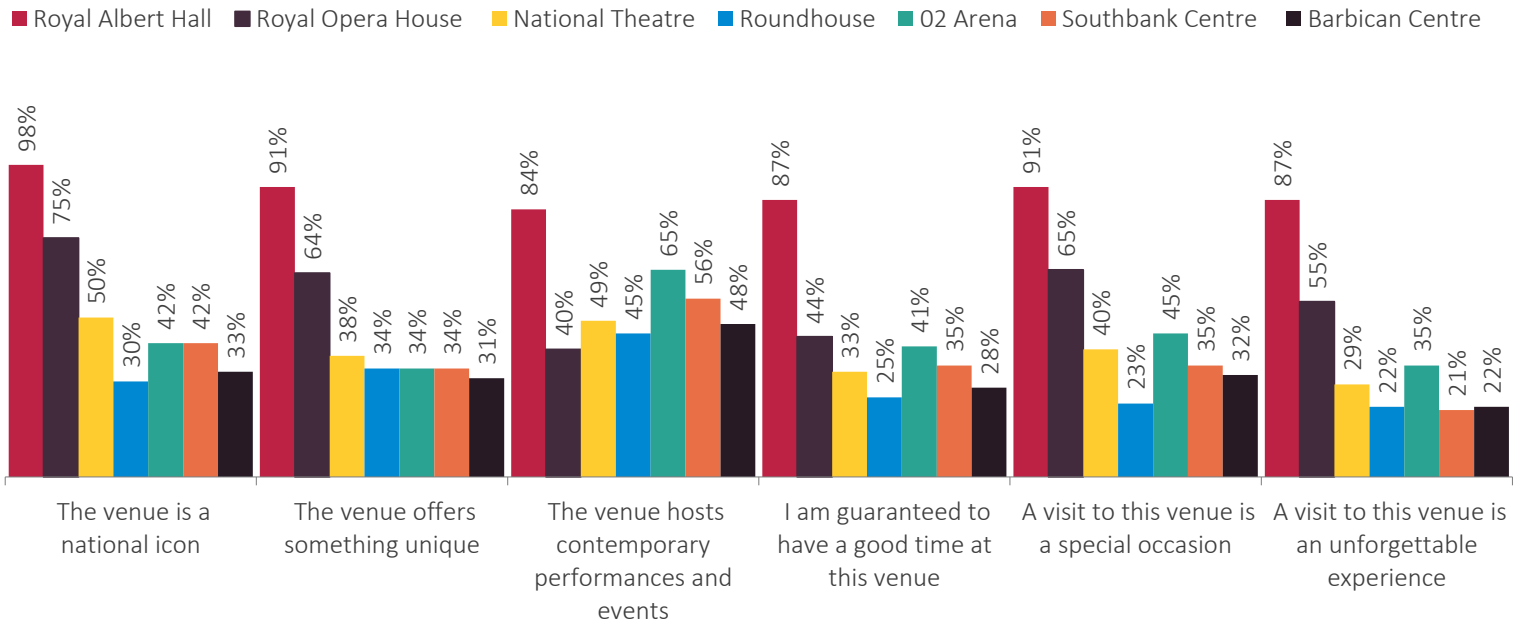
Q9. Please tell us the extent to which you agree or disagree with the following statements. [General Public Poll; Definitely agree + tend to agree]



1. Base: All answering for: Royal Albert Hall (1981), Royal Opera House (348), National Theatre (351), Roundhouse (348), 02 Arena (353), Southbank Centre (349), Barbican Centre (350)

Customers think about the RAH more positively compared with competitor venues

Q9. Please tell us the extent to which you agree or disagree with the following statements. [Customer Poll, Definitely agree + tend to agree]

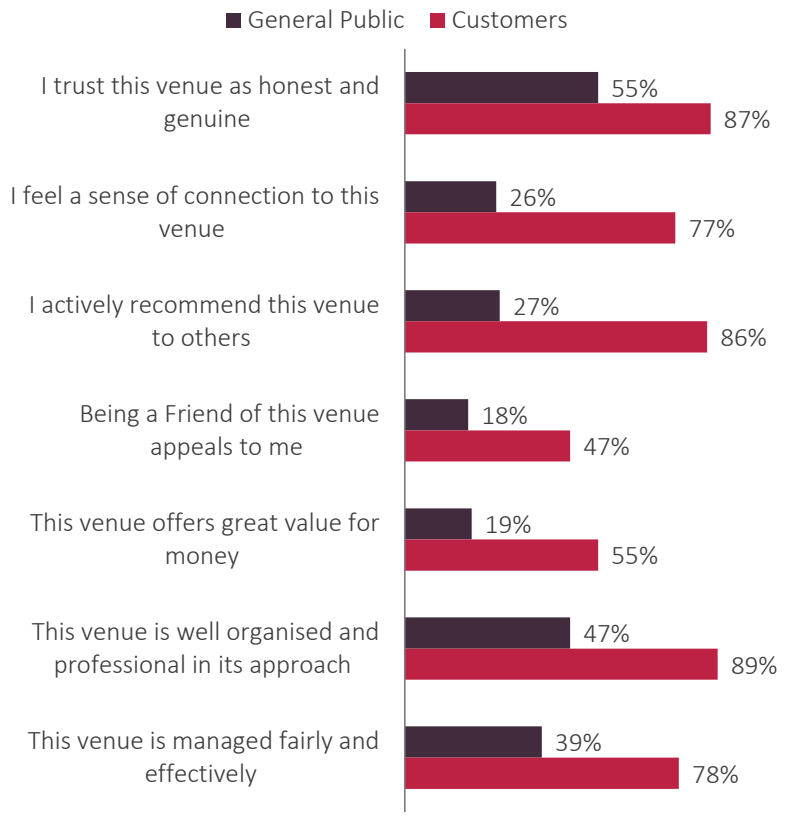


1. Base: All answering for: Royal Albert Hall (3520), Royal Opera House (583), National Theatre (574), Roundhouse (576), 02 Arena (577), Southbank Centre (578), Barbican Centre (577)

While over half of the general public perceive the RAH to be honest and genuine, there is less certainty that the venue is managed fairly and effectively.

- Over half of the general public (55%) think that the RAH is honest and genuine; another 47% agree that the venue is well organised and professional in its approach.
- Similarly, nearly 9 in 10 (89%) of the RAH customers agree that the RAH is well organised and professional in its approach. 87% think of the organisation as honest and genuine, and 86% say that they actively recommend it.
- However, both customers and the general public have some doubts about the way the venue is managed. Only 39% of the general public and 78% of Customers think that the RAH is managed fairly and effectively.
- Also, just 19% of the general public and 55% of Customers think that the RAH offers value for money.

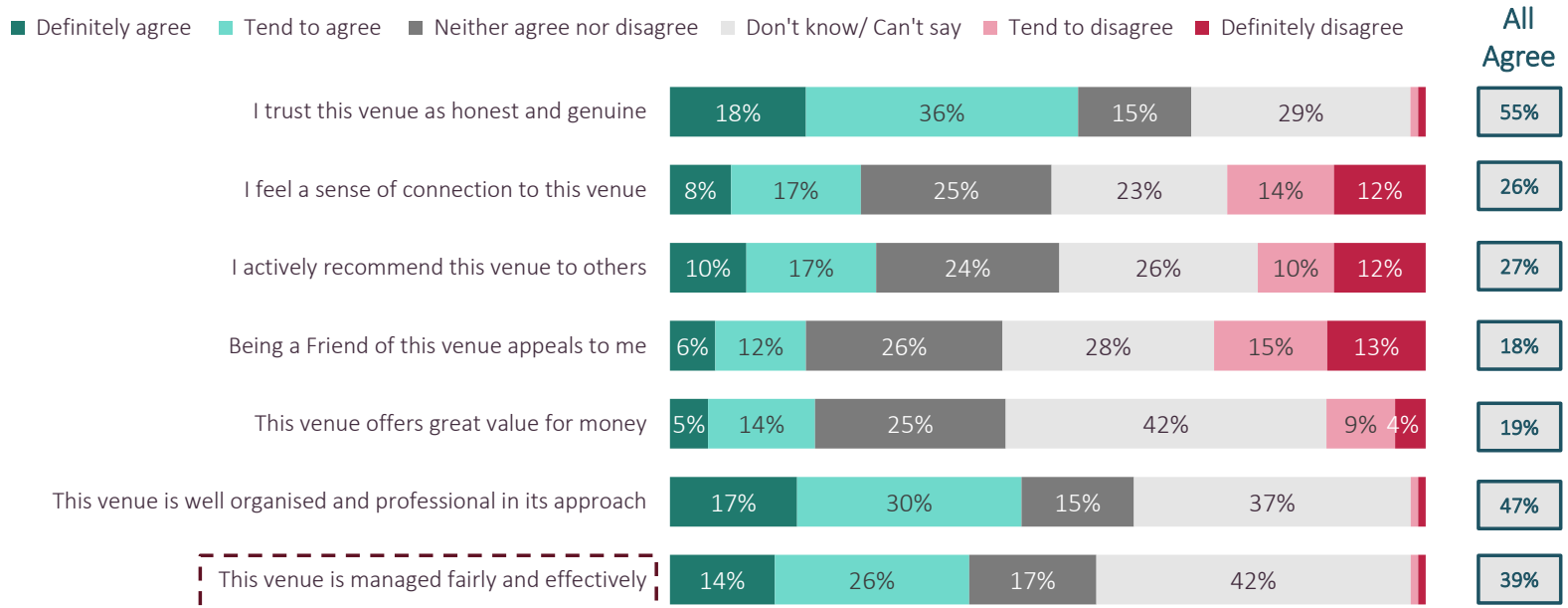
Q10. Please tell us the extent to which you agree or disagree with the following statements. [Definitely agree + tend to agree]



1. Base: All general public respondents answering for the Royal Albert Hall (1981)
2. Base: All customers answering for the Royal Albert Hall (3520)

Although a lower proportion of the general public agree that the RAH is managed fairly and effectively, over half (59%) admit that they cannot decide or simply don't know enough about it

Q10. Please tell us the extent to which you agree or disagree with the following statements about the Royal Albert Hall [General Public Poll]



Public perceptions of how well a performance venue is managed is likely to be influenced by their experience of visiting it; they are less likely to think about it as an organisation.

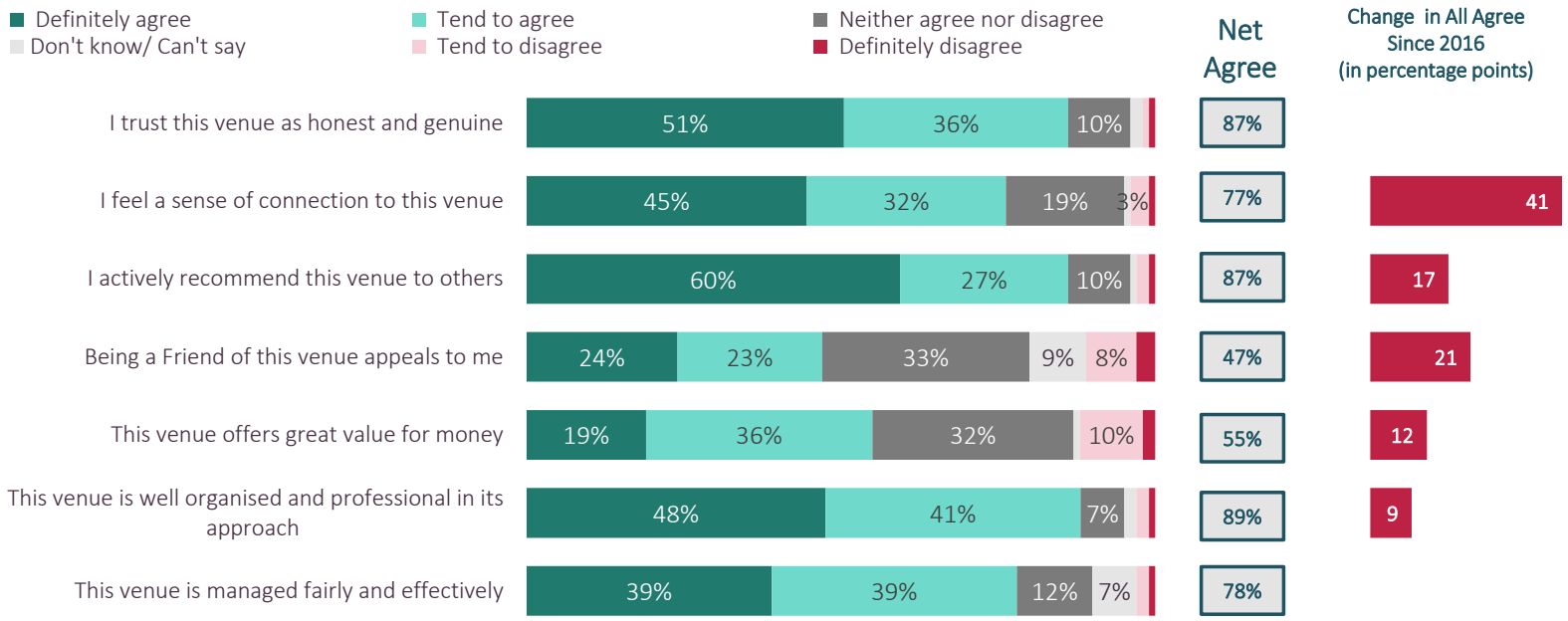
Populus

Royal Albert Hall

1. Base: All answering for the Royal Albert Hall (1981)
2. Note: Labels for values below 3% are excluded

Significant majority (89%) of Customers think that the RAH is well organised and professional in its approach. They also feel greater sense of connection to the venue compared with 2016

Q10. Please tell us the extent to which you agree or disagree with the following statements about the Royal Albert Hall [Customer Poll]



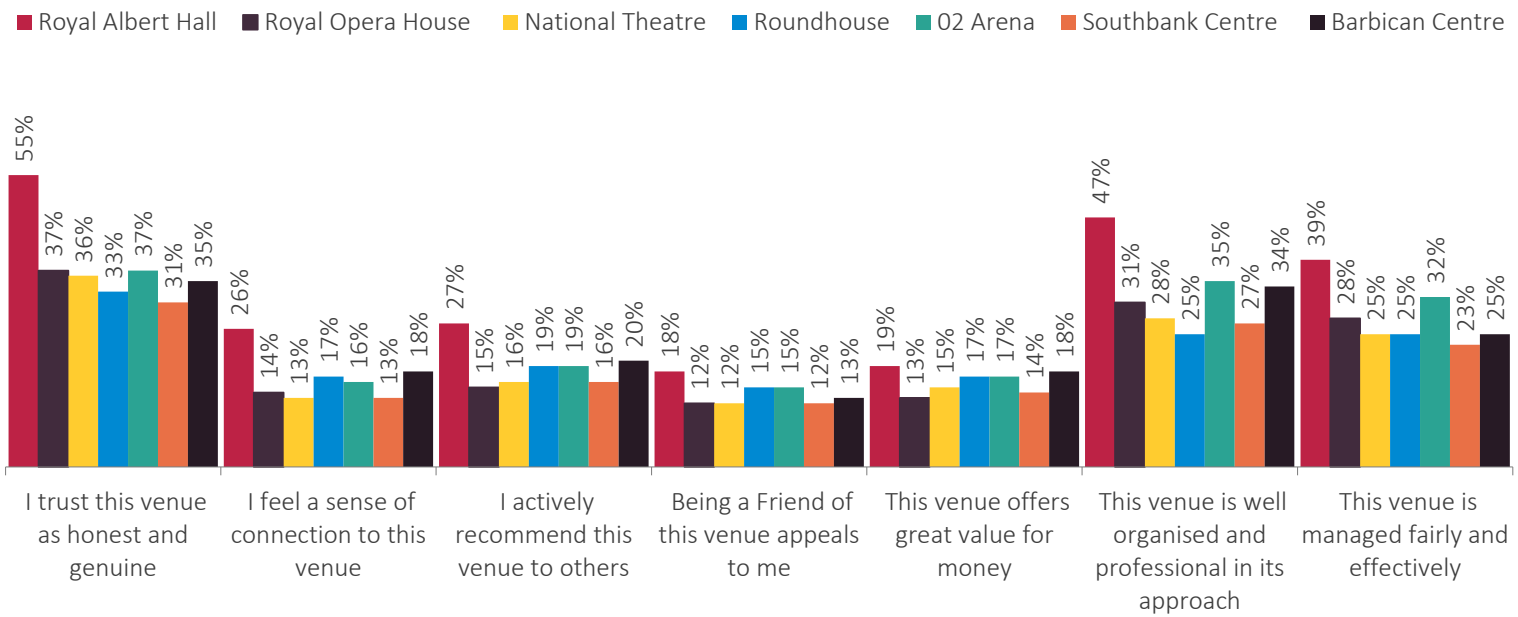
Populus

Royal Albert Hall

1. Base: All answering for the Royal Albert Hall 2018 (3520); All respondents 2016 (5168)
2. Note: Labels for values below 3% are excluded

General public has a higher opinion about the RAH compared with other venues

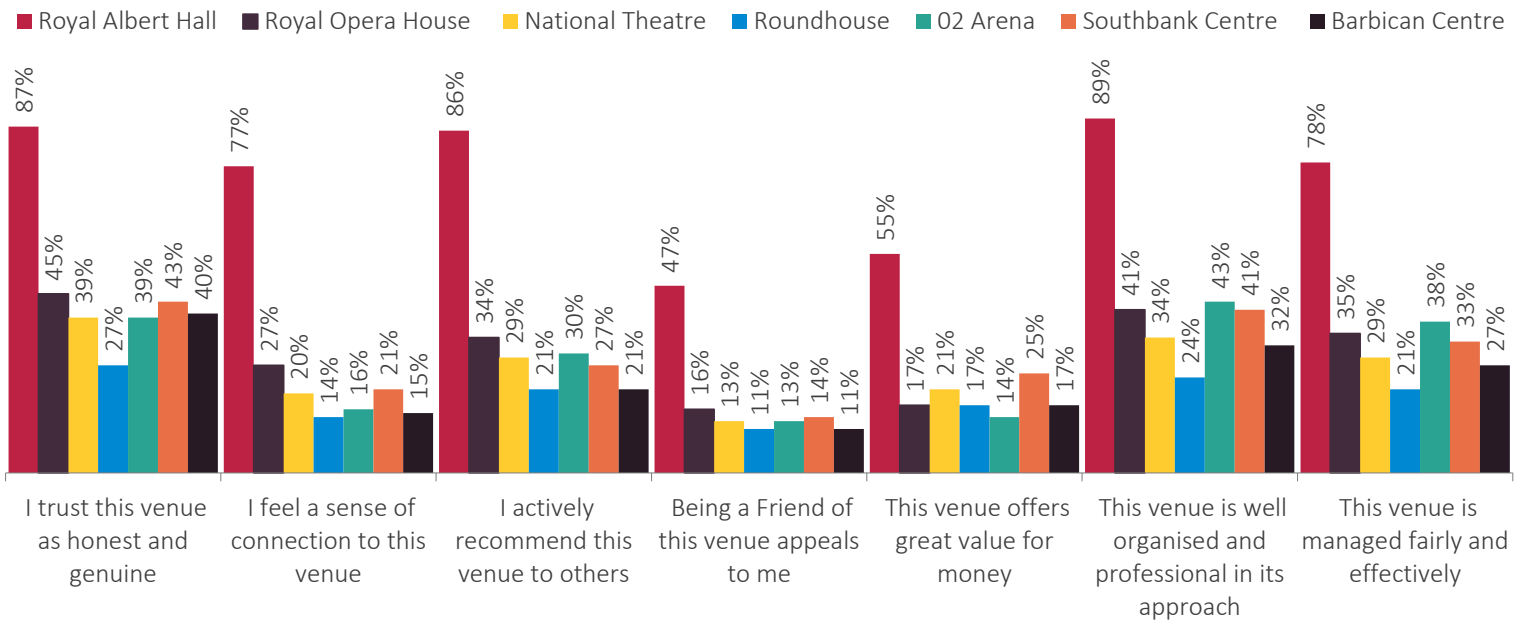
Q10. Please tell us the extent to which you agree or disagree with the following statements about the venues [General Public Poll, Definitely agree + tend to agree]



1. Base: All answering for: Royal Albert Hall (1981), Royal Opera House (348), National Theatre (351), Roundhouse (348), 02 Arena (353), Southbank Centre (349), Barbican Centre (350)

Customers think about the RAH more positively compared with competitor venues

Q10. Please tell us the extent to which you agree or disagree with the following statements about the venues [Definitely agree + tend to agree; Customer Poll]



Populus

Royal Albert Hall

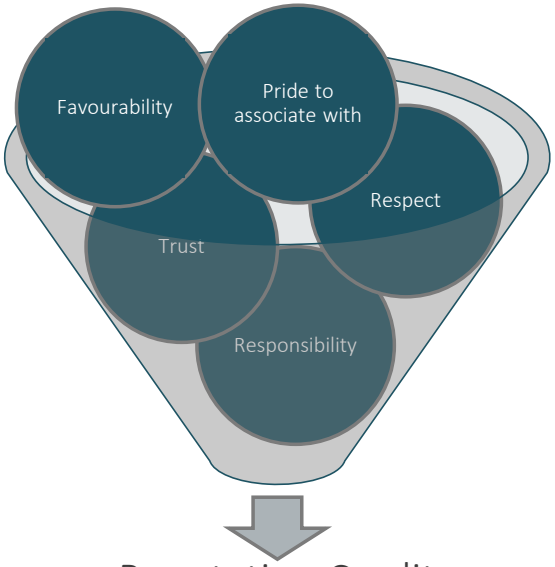
1. Base: All answering for: Royal Albert Hall (3520), Royal Opera House (583), National Theatre (574), Roundhouse (576), 02 Arena (577), Southbank Centre (578), Barbican Centre (577)

Reputation and Trust

Populus

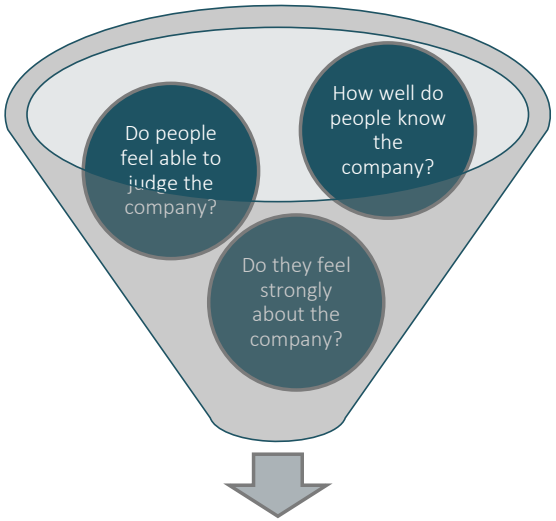
About Populus's Reputation Credit Score

In order to analyse reputations, Populus creates two bespoke scores from collected data: the Reputation Credit Score (a collation of core reputation measures); and the Intensity Score (a measure of how strongly people feel about a company). These two scores form a central part of Populus's reputation framework.



Reputation Credit Score

The higher the score, the more positive the reputation.



Intensity Score

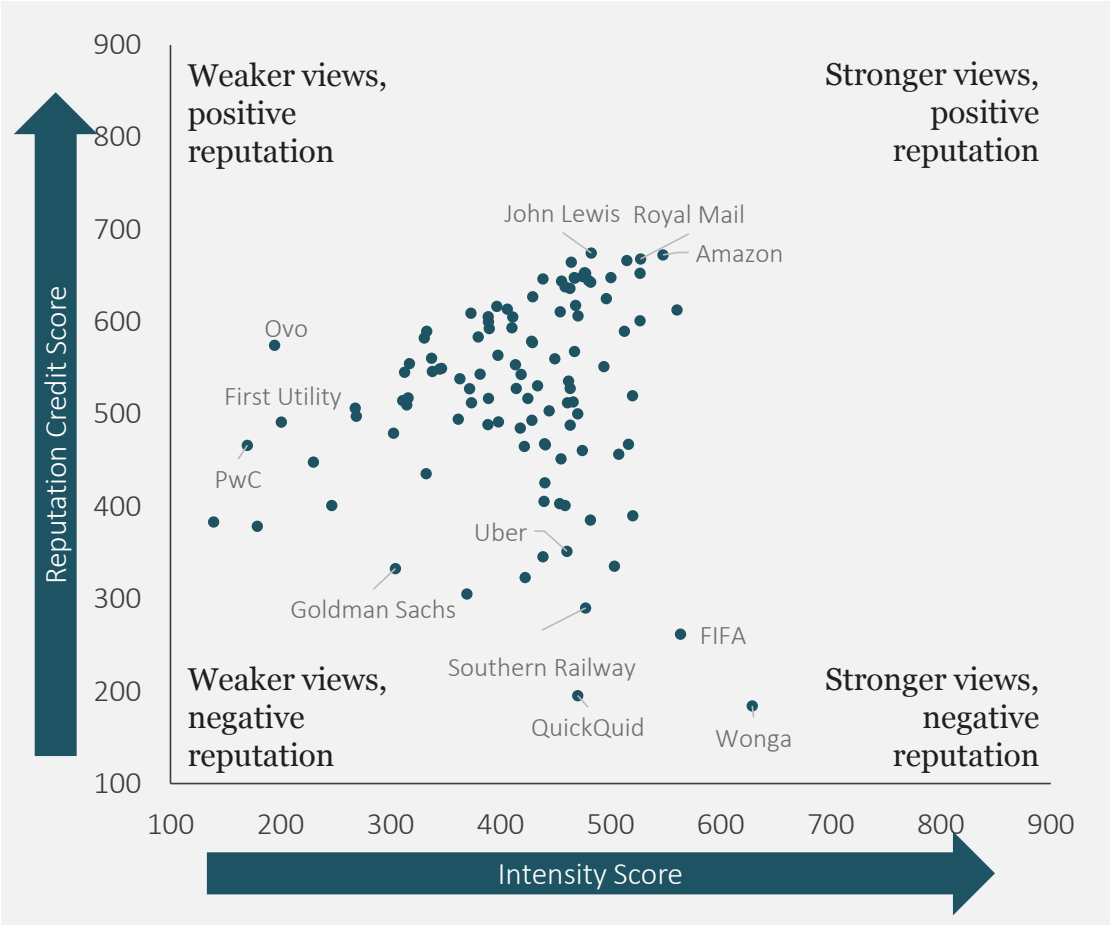
The higher the score, the more strongly people feel and the more sure people are of their view.

Analysing reputation: Reputation Credit Scores and Intensity Scores explained

Populus's Reputation Credit Score is Populus's established metric of topline corporate reputation, which assesses perceptions of a company on core reputation drivers: favourability, trust, respect, responsibility and pride to associate. The Intensity Score is a measure of how strongly people feel towards a company and how sure they are of their perceptions.

The higher the Reputation Credit Score, the more positive the reputation. The higher the Intensity Score, the stronger and more certain the views.

The graphic (right) shows the example Reputation Credit Scores and Intensity Scores – among the UK public – mapped for 109 companies.

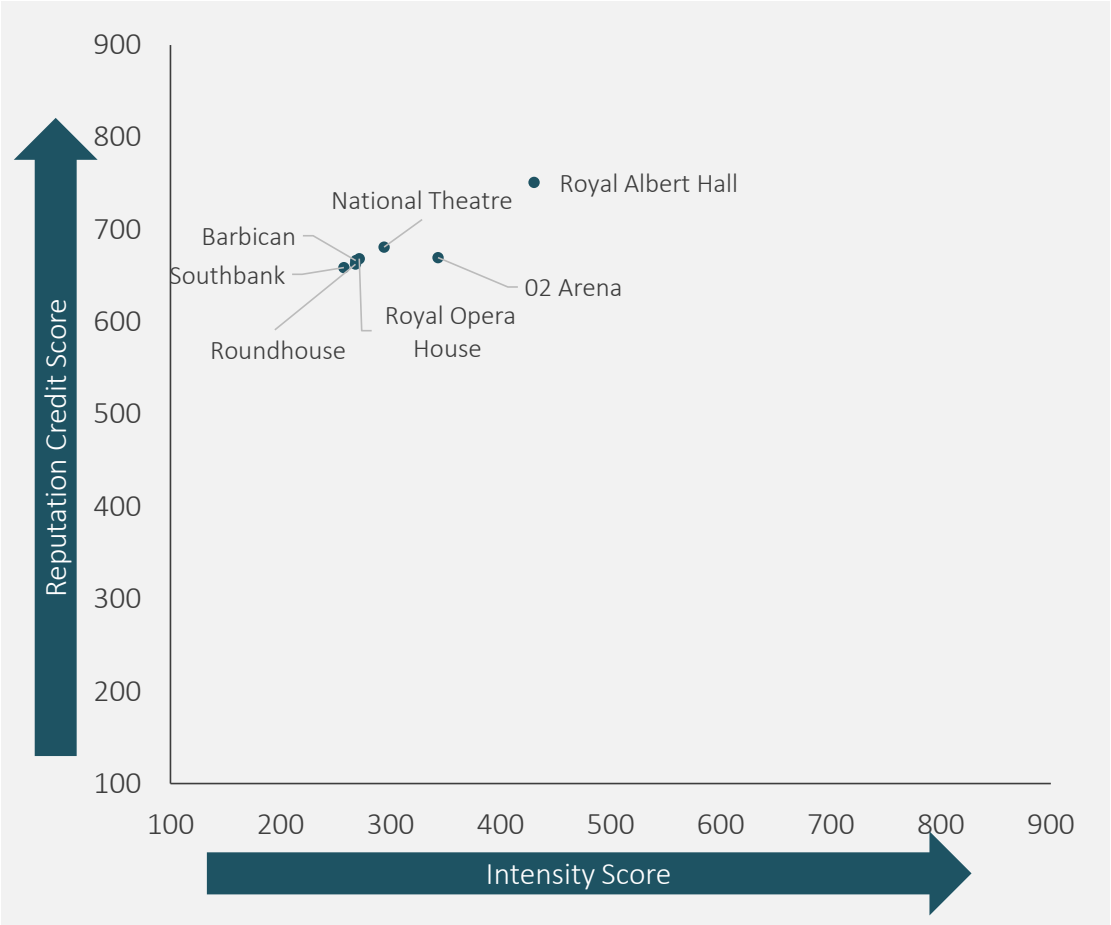


1. Base: various, c.1,000-2,000 UK adults

The RAH's reputation among general public: Comparing Reputation Credit Score with Intensity Score [General Public Poll]

The graphic (right) shows the Reputation Credit Scores and Intensity Scores – among the UK public – mapped for 7 venues that they are aware of.

The RAH, compared with other venues considered in this research, has a high Reputation Credit Score and a similarly high Intensity Score. This means that the general public think of the venue highly and are confident about their views.



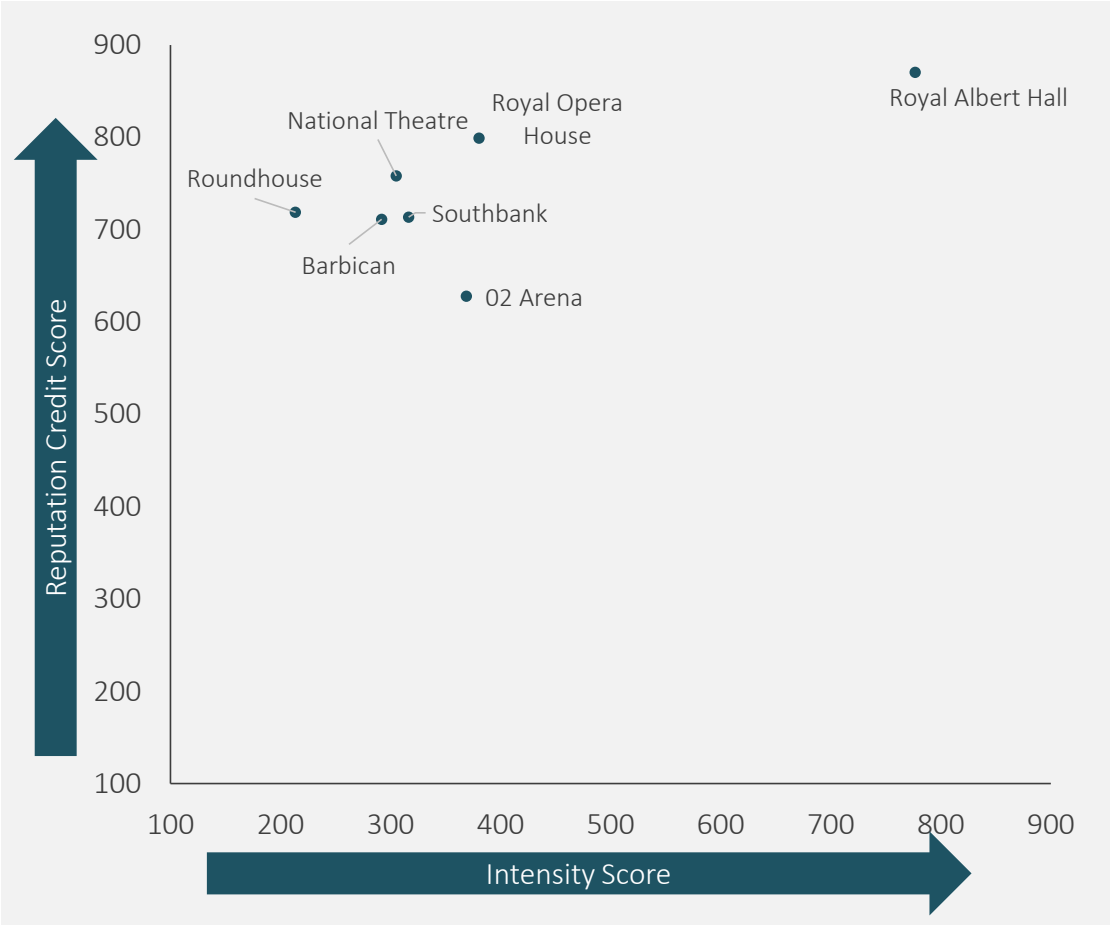
1. Base: All general public respondents answering for Royal Albert Hall (1981), Royal Opera House (670), National Theatre (675), Roundhouse (671), 02 Arena (675), Southbank Centre (670), Barbican Centre (673)

The RAH's reputation among its customers: Comparing Reputation Credit Score with Intensity Score [Customers Poll]

The graphic (right) shows the Reputation Credit Scores and Intensity Scores among Customers of the RAH.

The RAH, compared with its competitors has a very high Reputation Credit Score and a similarly high Intensity Score.

This is typical, reputation of a brand is always stronger among its core customer group as they engage with it on a regular basis.

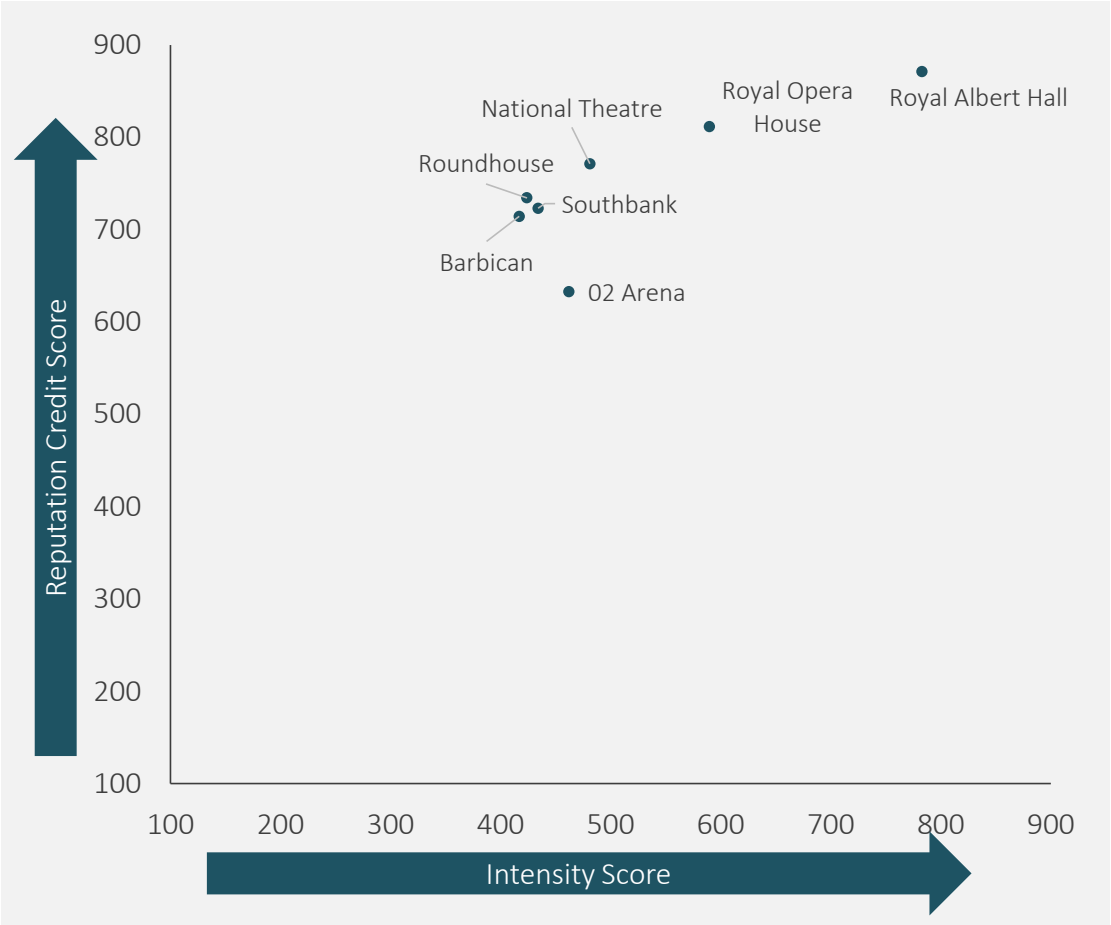


1. Base: All general public respondents answering for Royal Albert Hall (3520), Royal Opera House (1142), National Theatre (1130), Roundhouse (1138), 02 Arena (1136), Southbank Centre (1134), Barbican Centre (1141)

The RAH's reputation among its customers: Comparing Reputation Credit Score with Intensity Score [Customers Poll; customers who ever attended the venues]

The graphic (right) shows the Reputation Credit Scores and Intensity Scores among Customers of the RAH.

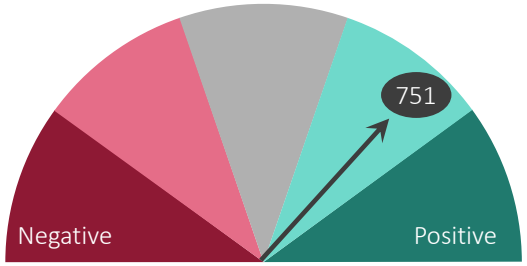
The RAH, compared with its competitors has a very high Reputation Credit Score and a similarly high Intensity Score.



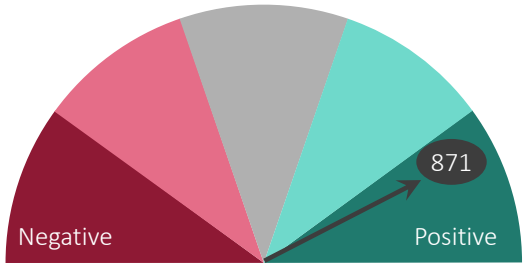
1. Base: All customers who have ever visited venues answering for: Royal Albert Hall (3454), Royal Opera House (626), National Theatre (621), Roundhouse (513), 02 Arena (853), Southbank Centre (780), Barbican Centre (746)

The RAH's reputation: what do we know?

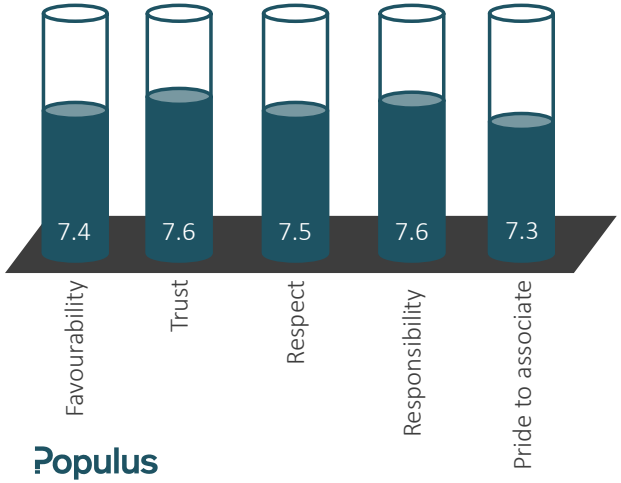
The RAH Reputation Credit Score: General Public



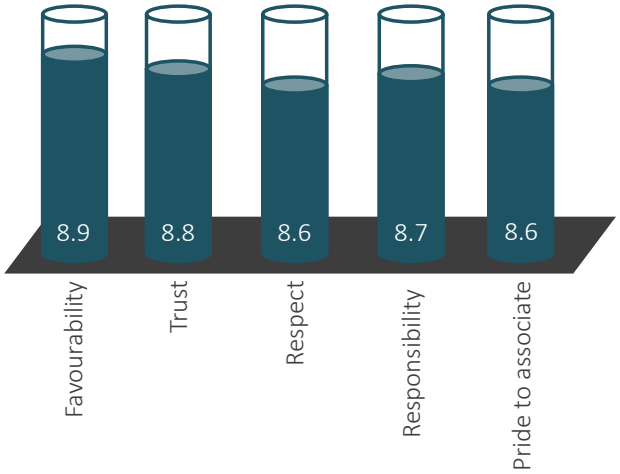
The RAH Reputation Credit Score: Customers



Constituent variables and the RAH's performance in each



Constituent variables and the RAH's performance in each

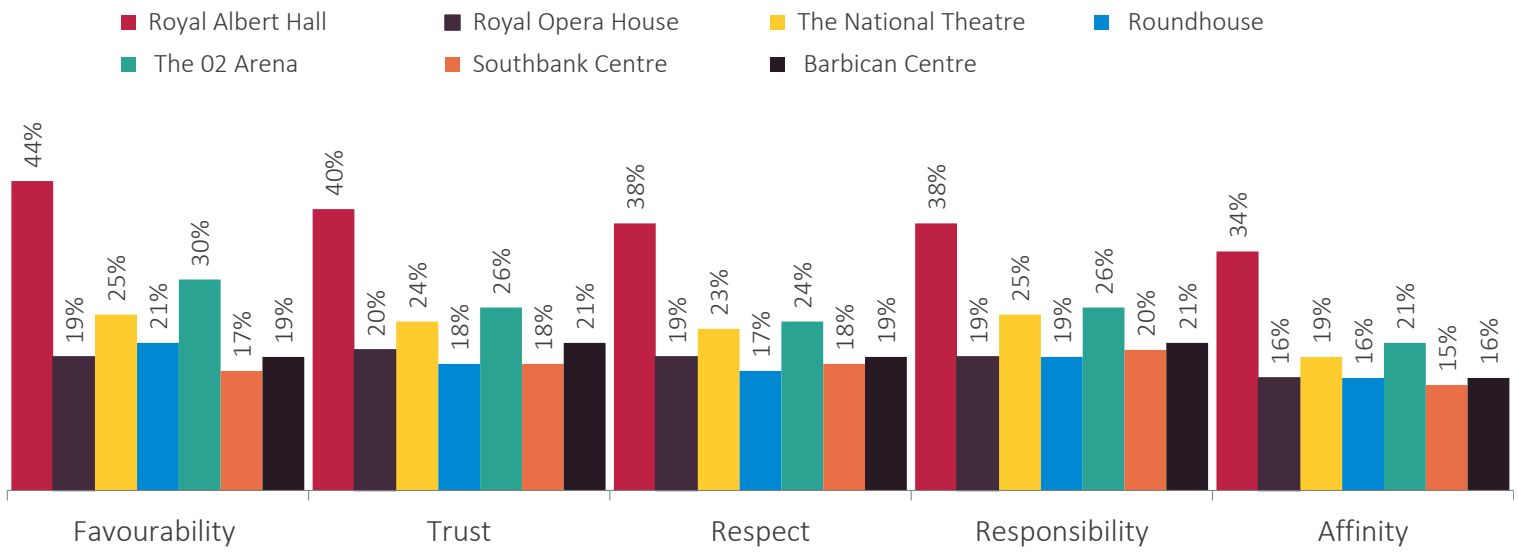


Populus

The RAH surpasses competitor venues on all core reputation metrics

SQ1. From everything you've read and heard and experienced, please rate the following venues on a scale of 0-10 where 0 means you view them highly unfavourably, 10 means you view them highly favourably and 5 that you view them neither favourably nor unfavourably [Scores 8-10; General Public Poll]

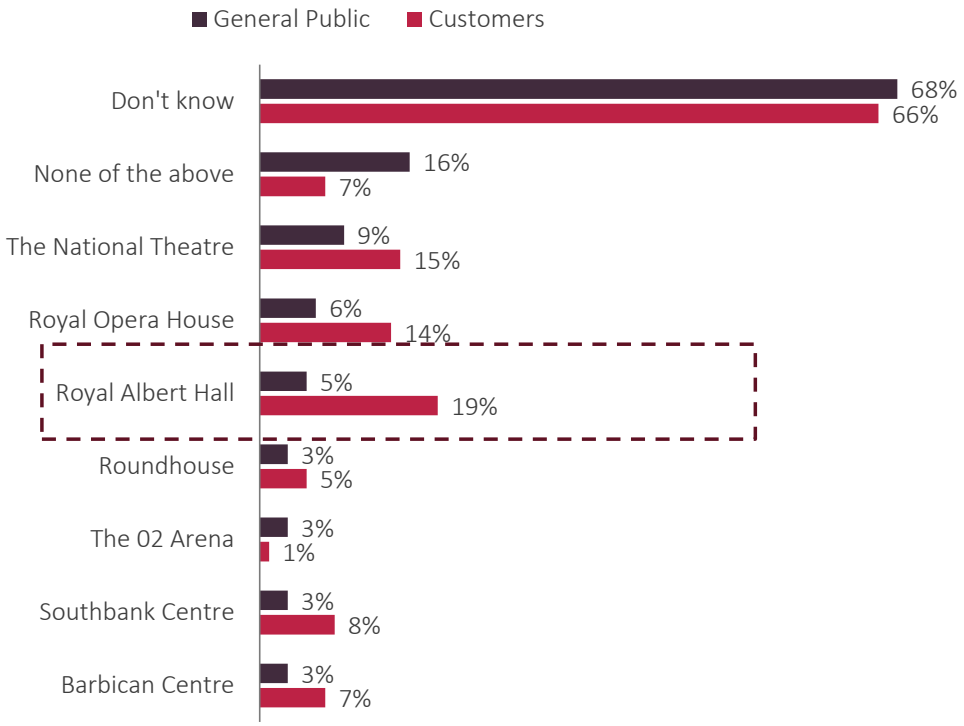
SQ2. Please rate the following venues on a scale of 0-10 for their performance in the following aspects, where 0 is very poor, 5 is average, and 10 is very good [Scores 8-10, General Public Poll]



1. Base: All answering for: Royal Albert Hall (1981), Royal Opera House (670), National Theatre (675), Roundhouse (671), 02 Arena (675), Southbank Centre (670), Barbican Centre (673)

Just 5% of the public are aware that the RAH is a charity

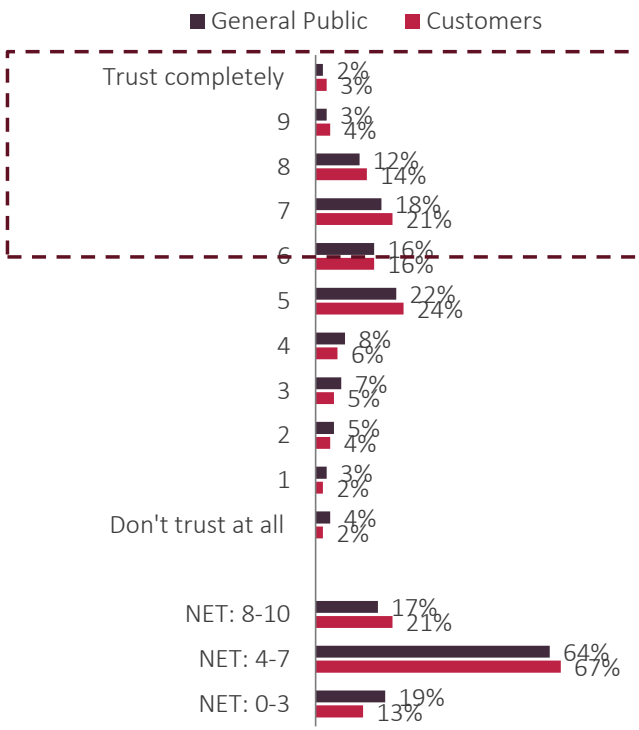
Q11. Which of the following organisations, if any, do you know to be charities?



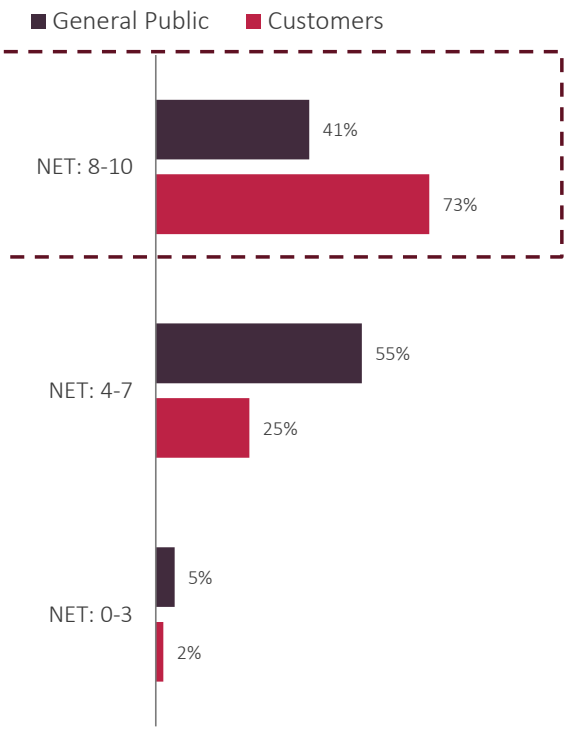
1. Base: All general public respondents aware of the organisations (2063)
2. All customers aware of the organisations (3521)

Both Customers and the general public trust the RAH more than they trust charities overall

Q12. How much trust and confidence do you have in charities? [on a scale 0-10; 10 = complete trust, 0 = no trust at all]



Q14. How much trust and confidence do you have in the Royal Albert Hall ? [on a scale 0-10; 10 = complete trust, 0 = no trust at all]



Populus

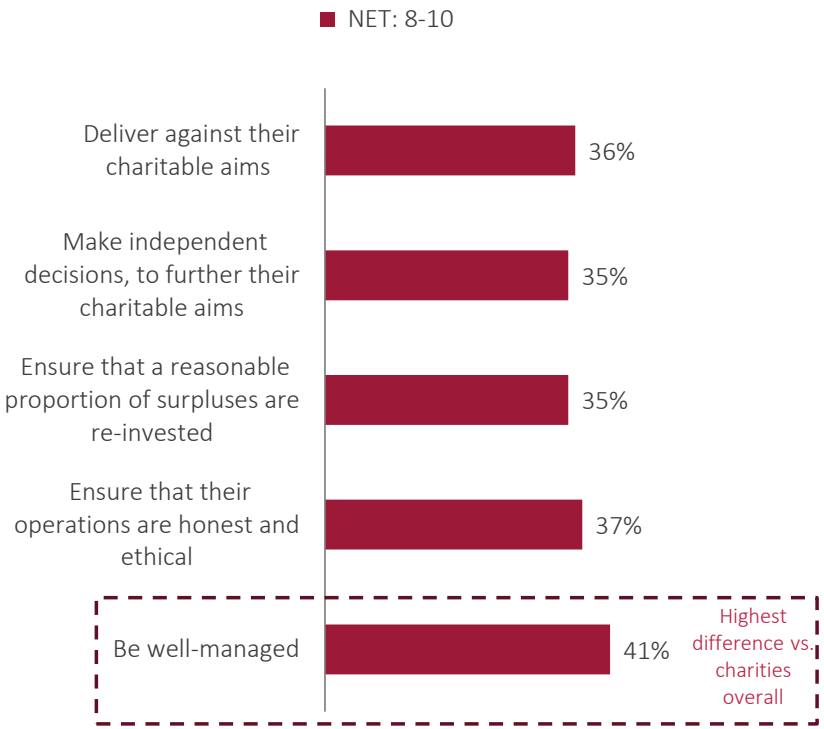
Royal Albert Hall

1. Base: All general public respondents aware of organisations (2063); All general public respondents aware of the Royal Albert Hall(1981);
2. Base: All customers aware of organisations (3521); All customers aware of the Royal Albert Hall (3520)

The public trust the RAH to be well-managed more than they trust charities overall

Q13. How much would you trust charities to: [on a scale 0-10; 10 = complete trust, 0= no trust at all]

Q15. How much would you trust the Royal Albert Hall to: [on a scale 0-10; 10 = complete trust, 0= no trust at all]



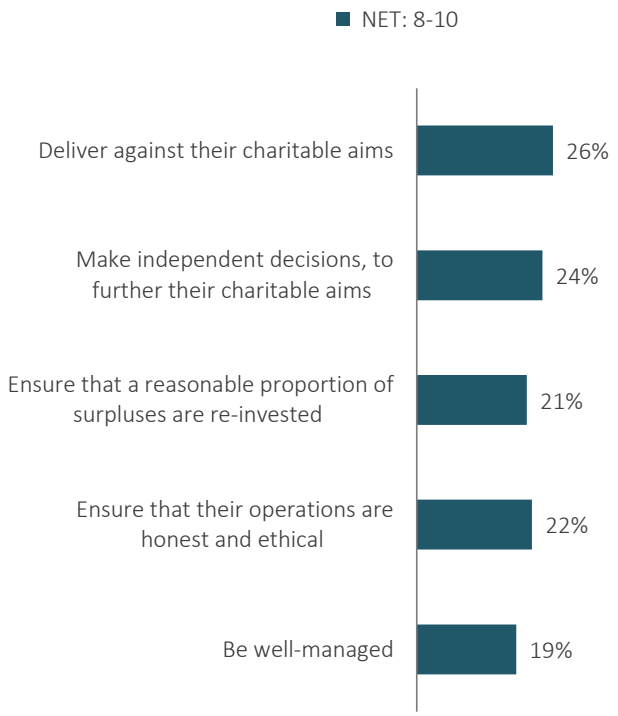
Populus

Royal Albert Hall

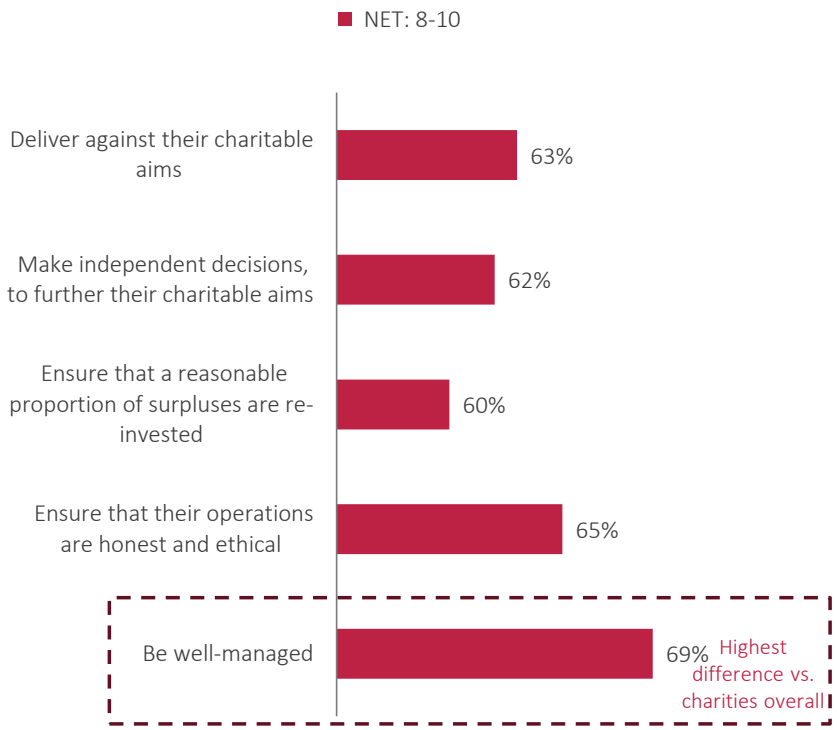
1. Base: All general public respondents aware of organisations (2063)
2. Base: All general public respondents aware of the Royal Albert Hall (1981)

Customers of the RAH trust it more to be well-managed than they trust charities overall

Q13. How much would you trust charities to: [on a scale 0-10; 10 = complete trust, 0= no trust at all]



Q15. How much would you trust the Royal Albert Hall to: [on a scale 0-10; 10 = complete trust, 0= no trust at all]



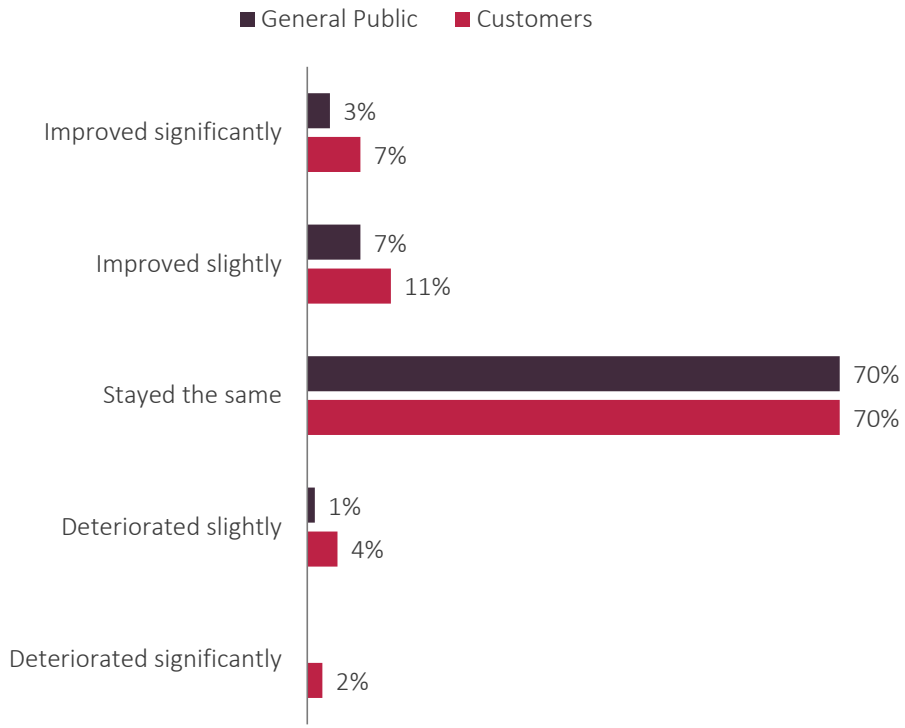
1. Base: All customers aware of the organisations considered in the research (3521)
2. Base: All customers aware of the Royal Albert Hall (3520)

Change in Reputation

Populus

The negative press coverage had little impact on the overall opinions about the RAH

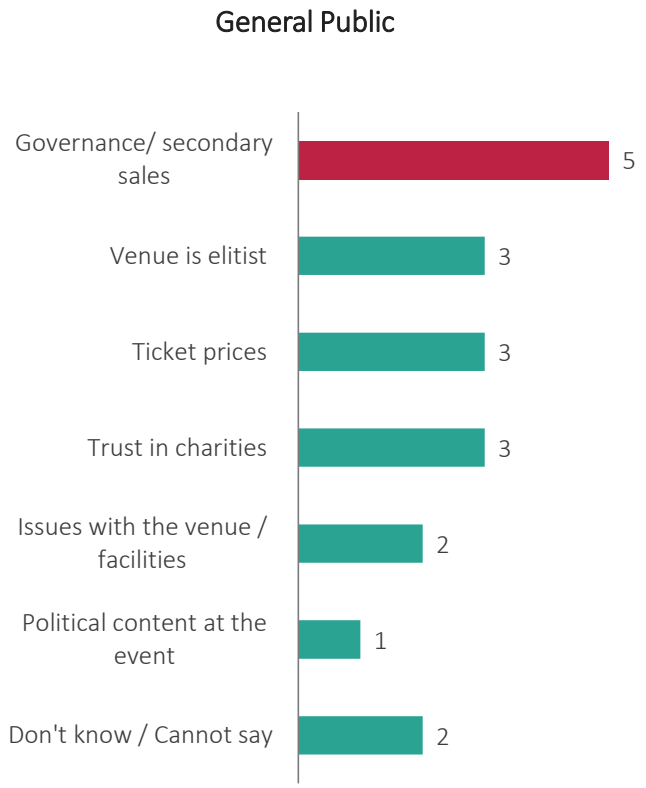
Q16. How has your overall opinion about the Royal Albert Hall changed over the past 12 months?

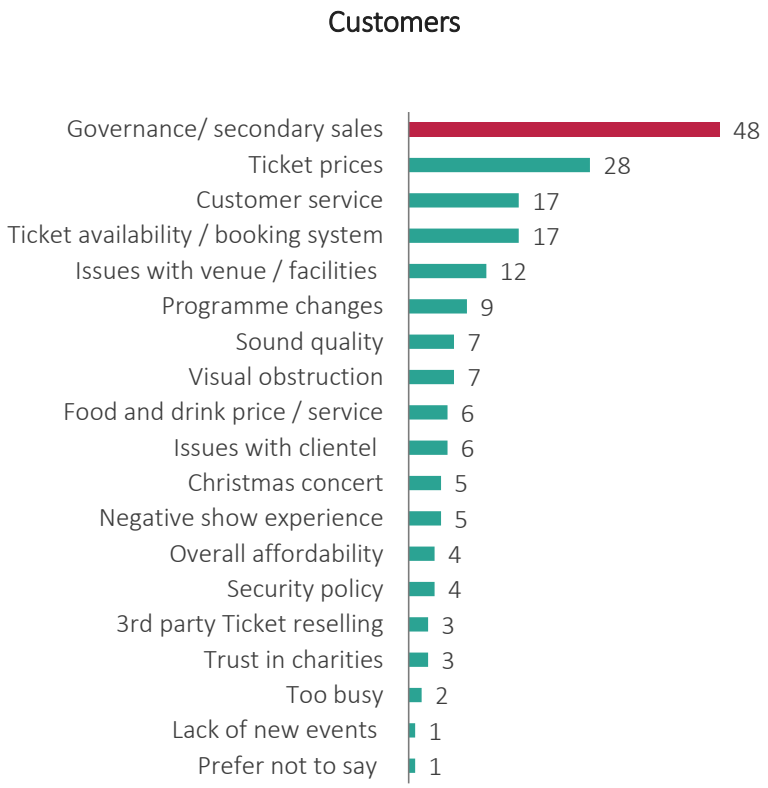


1. Base: All general public respondents aware of the Royal Albert Hall (1981);
2. Base: All customers aware of the Royal Albert Hall (3520)

The negative press coverage had little impact on the overall opinions about the RAH

Q16a. Why has your overall opinion of the Royal Albert Hall deteriorated? [count]



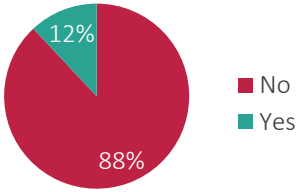


1. Base: All general public respondents who said their opinion deteriorated (19);
2. All customers who said their opinion deteriorated (185)

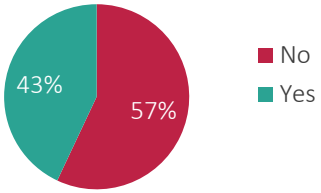
The negative press coverage was noticed by a relatively small proportions of the general public and Customers of the Hall

Q17. Have you seen, read or heard anything in the media about the Royal Albert Hall in the past 12 months?

General Public

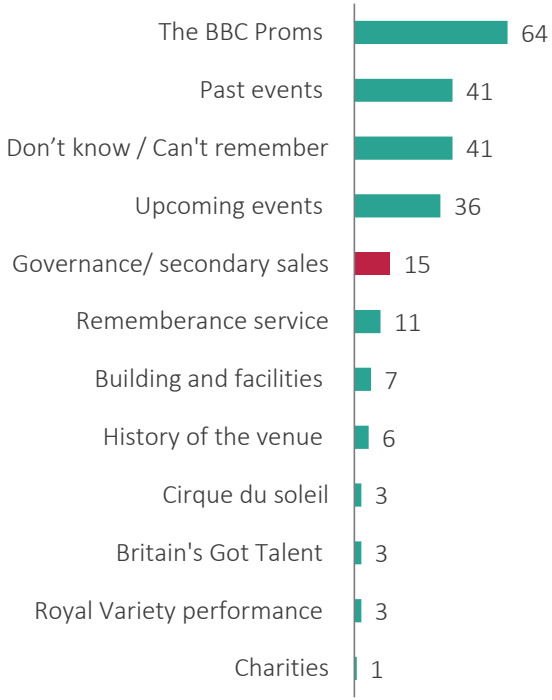


Customers



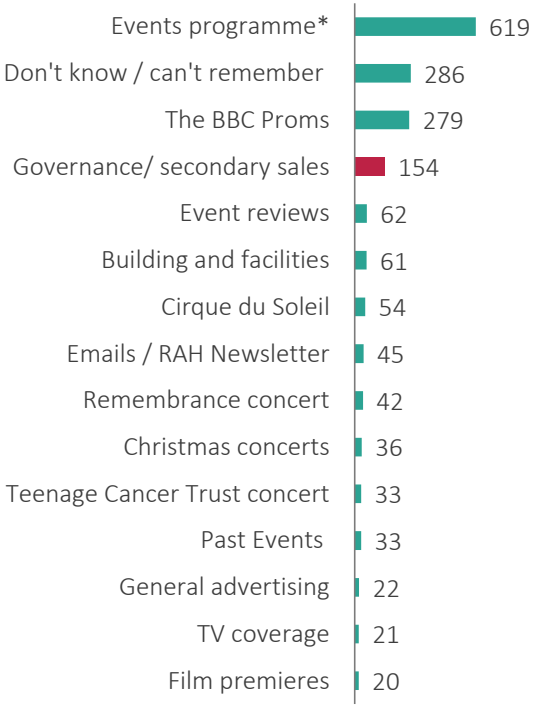
Q17a Can you recall what this coverage was about? [count]

General Public



Q17a Can you recall what this coverage was about? [count, top 15]

Customers



Populus

Royal Albert Hall

1. Base: All general public respondents aware of the RAH (1981); 2. Base: All customers aware of the RAH (3520)
3. Base: General public respondents who saw some coverage (231); Customers who saw some coverage (1999)
1. Note: *Events programme* code includes news and advertising about future events + any mention of events where their timing (i.e. past or future) or type of coverage (e.g. TV, press, social media) wasn't clear.

Methodology

Populus conducted two online surveys in February 2018:

- Nationally representative poll with a sample of 2,103 UK adults. Populus Omnibus service was used in order to contact the desired group. Data collected from this survey was weighted to be representative of the UK population.
- 3,521 engaged customers of the Royal Albert Hall. The Royal Albert Hall used their CRM database in order to distribute the survey among their customers.

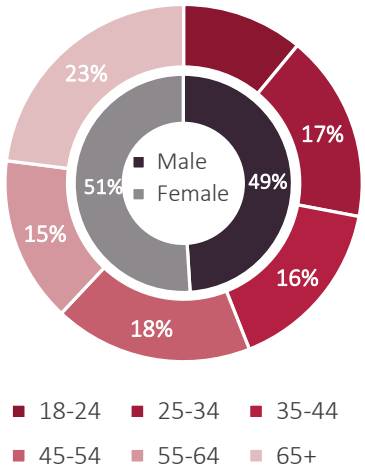
Both surveys were approximately 20 minutes long and aimed to measure the frequency of visits to the Royal Albert Hall as well as the perceptions and attitudes towards the brand. They were also designed to gauge the impact of media coverage since 2016 and highlight any significant changes in the reputation of the venue over time. The results were benchmarked against the charity industry as a whole as well as the Hall's key competitors.

Appendix

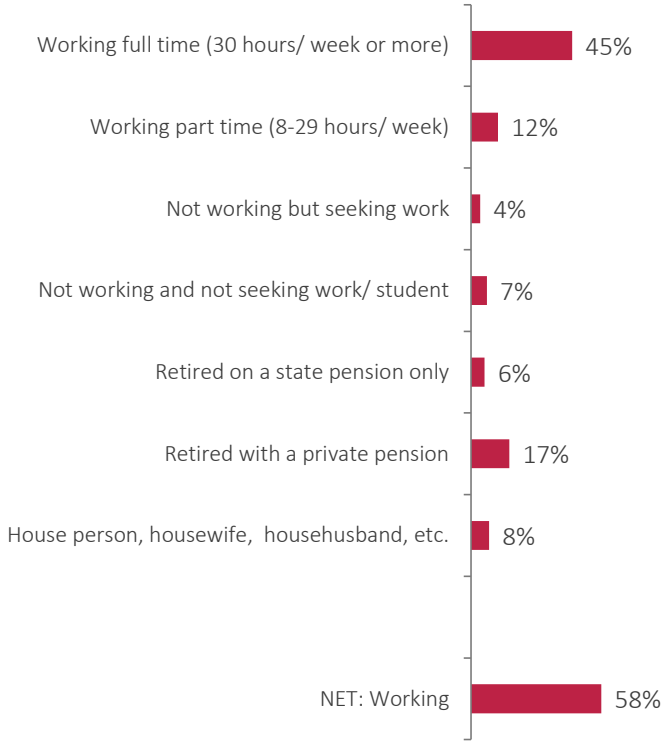
Populus

Audience profile: General Public

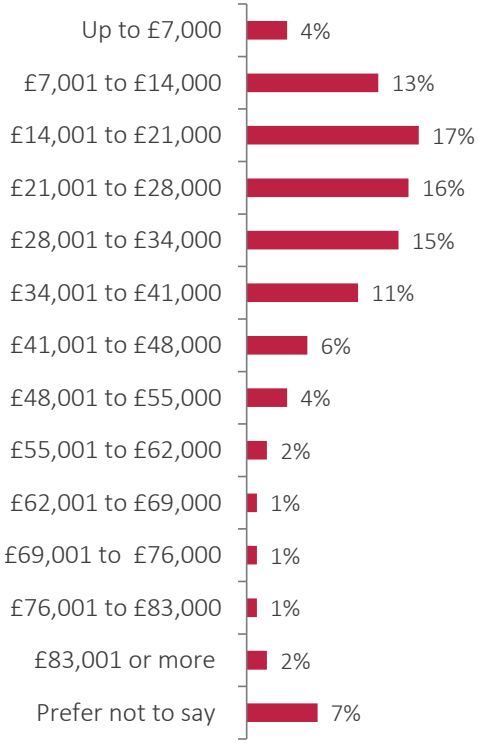
Q1. Gender / Q1a. Age



Q2. Which of the following best describes your current working status?



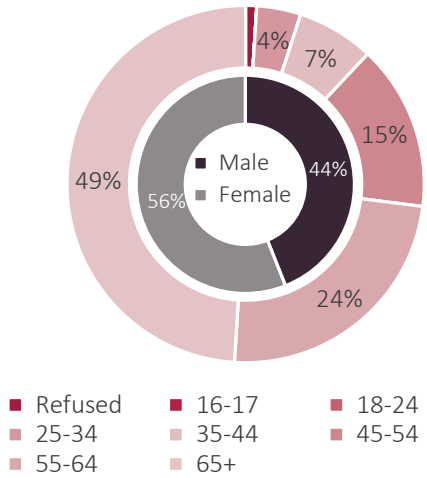
Q5. What is the combined annual income of your household, prior to tax being deducted?



1. Base: All (2103)

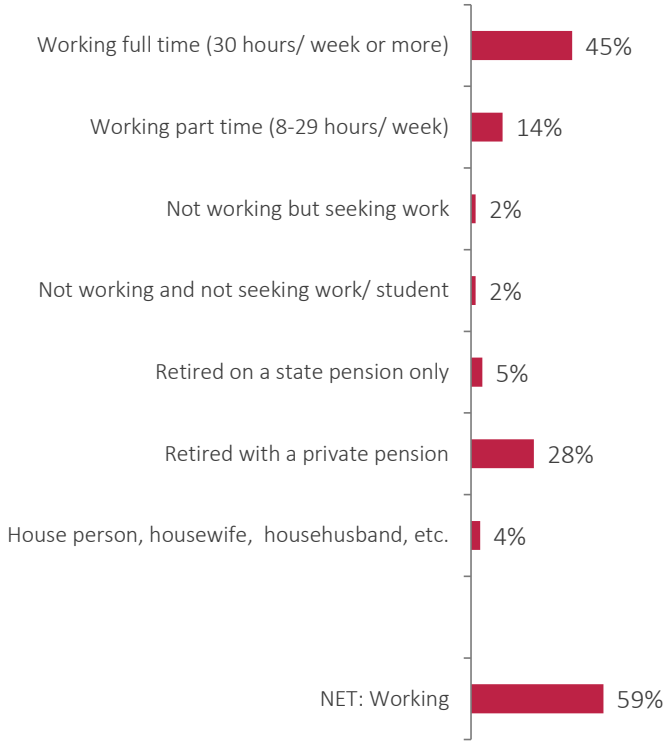
Audience profile: Customers of the RAH

Q1. Gender / Q1a. Age

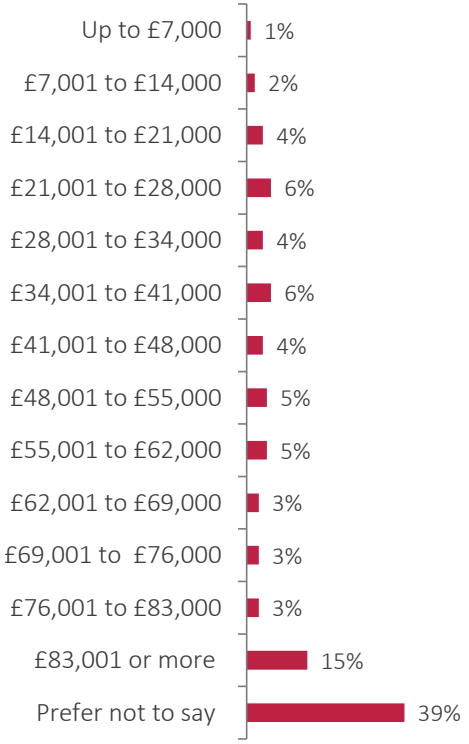


1. Note: Labels for values below 1% are excluded

Q2. Which of the following best describes your current working status?



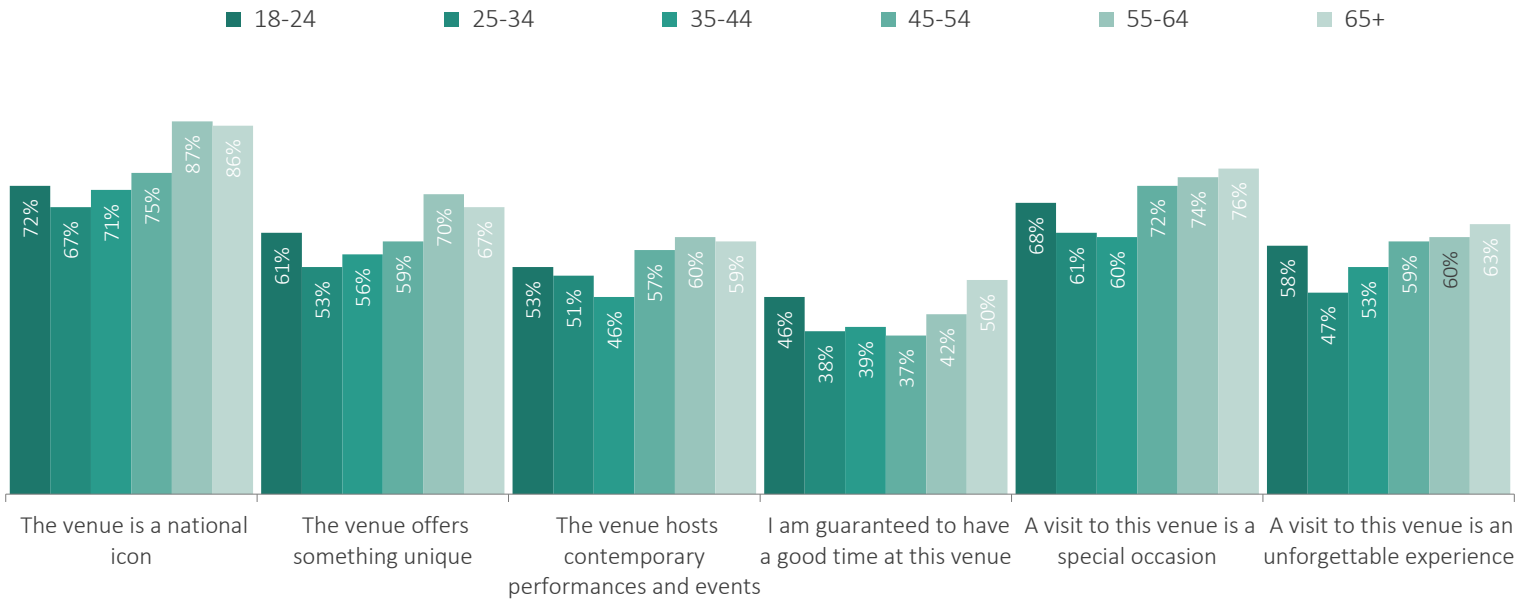
Q5. What is the combined annual income of your household, prior to tax being deducted?



1. Base: All (3521)

Across all statements, older demographics (45+ y.o.) hold stronger positive views about the RAH

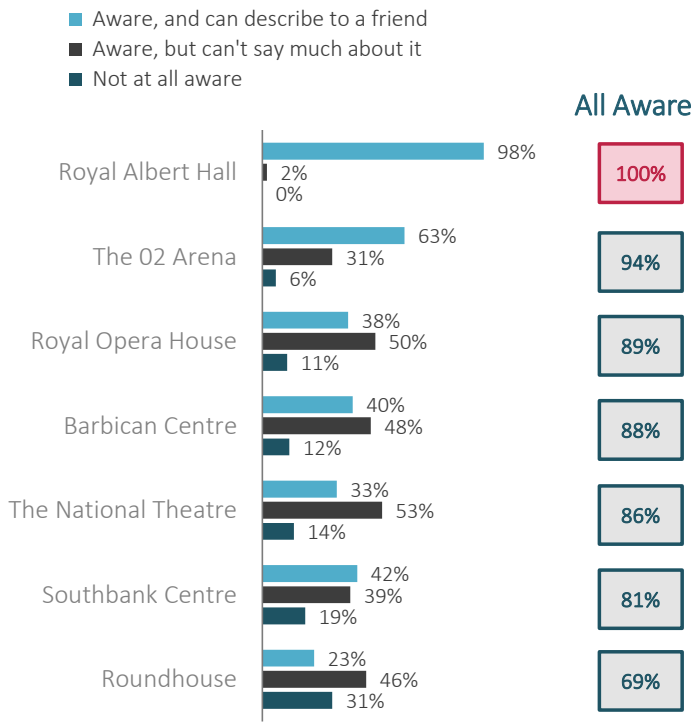
Q9. Please tell us the extent to which you agree or disagree with the following statements. [General Public Poll, Definitely agree + tend to agree]



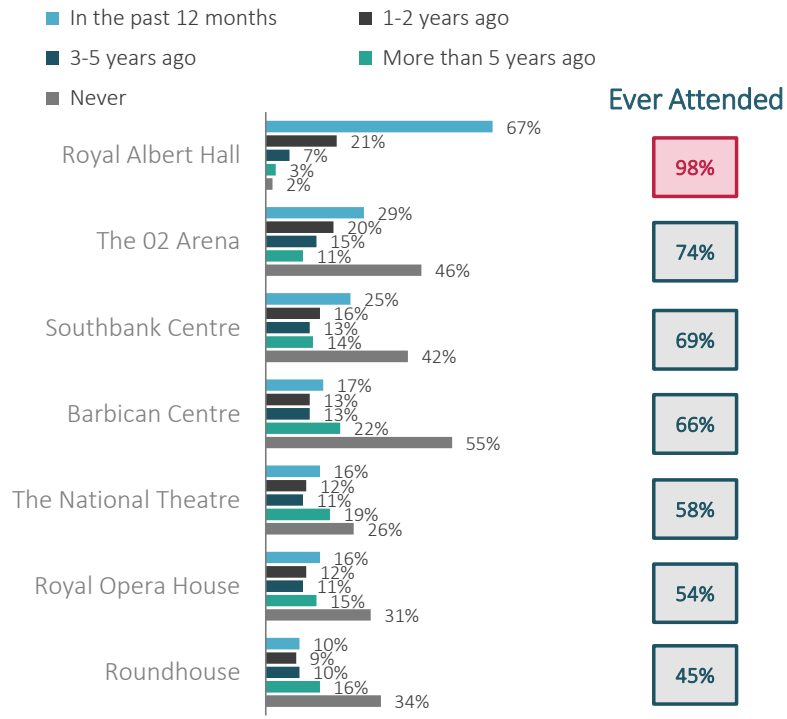
1. Base: All answering for the Royal Albert Hall age: 18-24 (205), 25-34 (334), 35-44 (334), 45-54 (384), 55-64 (274), 65+ (450)

Nearly 7 in 10 Customers visited the venue in the past 12 months

Q7. Which of the following venues are you aware of and could describe to a friend? [Customer Poll]



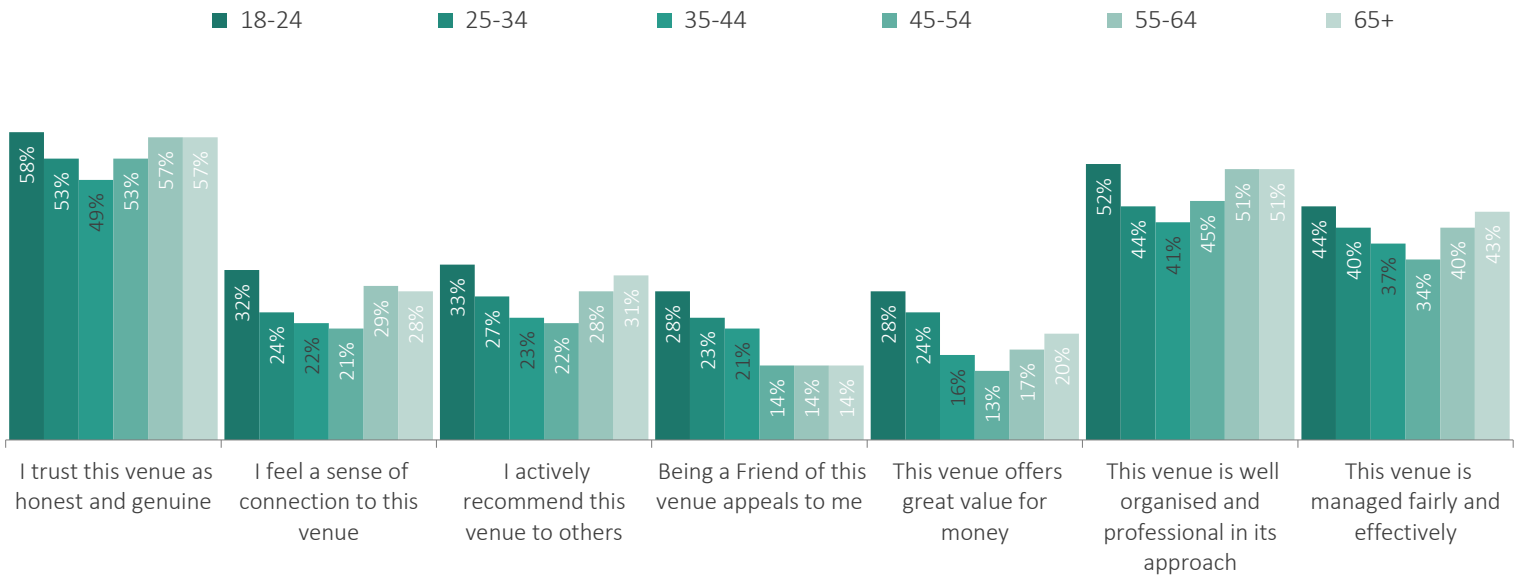
Q8. When did you last attend a performance or event at the following venues? [Customer Poll]



1. Base: All (3521)
2. Base: All aware of: Royal Albert Hall (3520), Royal Opera House (3119), The National Gallery (3017), Roundhouse (2431), The 02 Arena (3302), Southbank Centre (2869), Barbican Centre (3088)

18-24 and older demographics (45+ y.o.) hold stronger positive views about the RAH

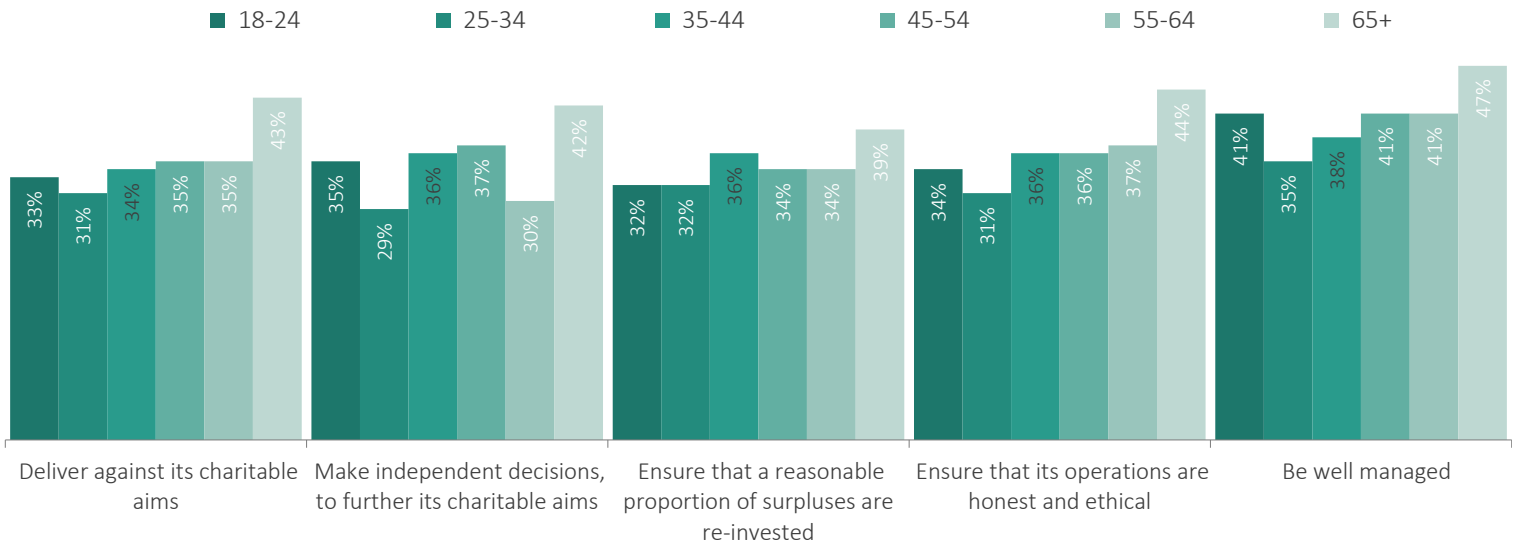
Q10. Please tell us the extent to which you agree or disagree with the following statements about the Royal Albert Hall [General Public Poll, Definitely agree + tend to agree]



1. Base: All answering for the Royal Albert Hall age: 18-24 (205), 25-34 (334), 35-44 (334), 45-54 (384), 55-64 (274), 65+ (450)

Older demographics (45+ y.o.) are more likely to trust the RAH to be well managed

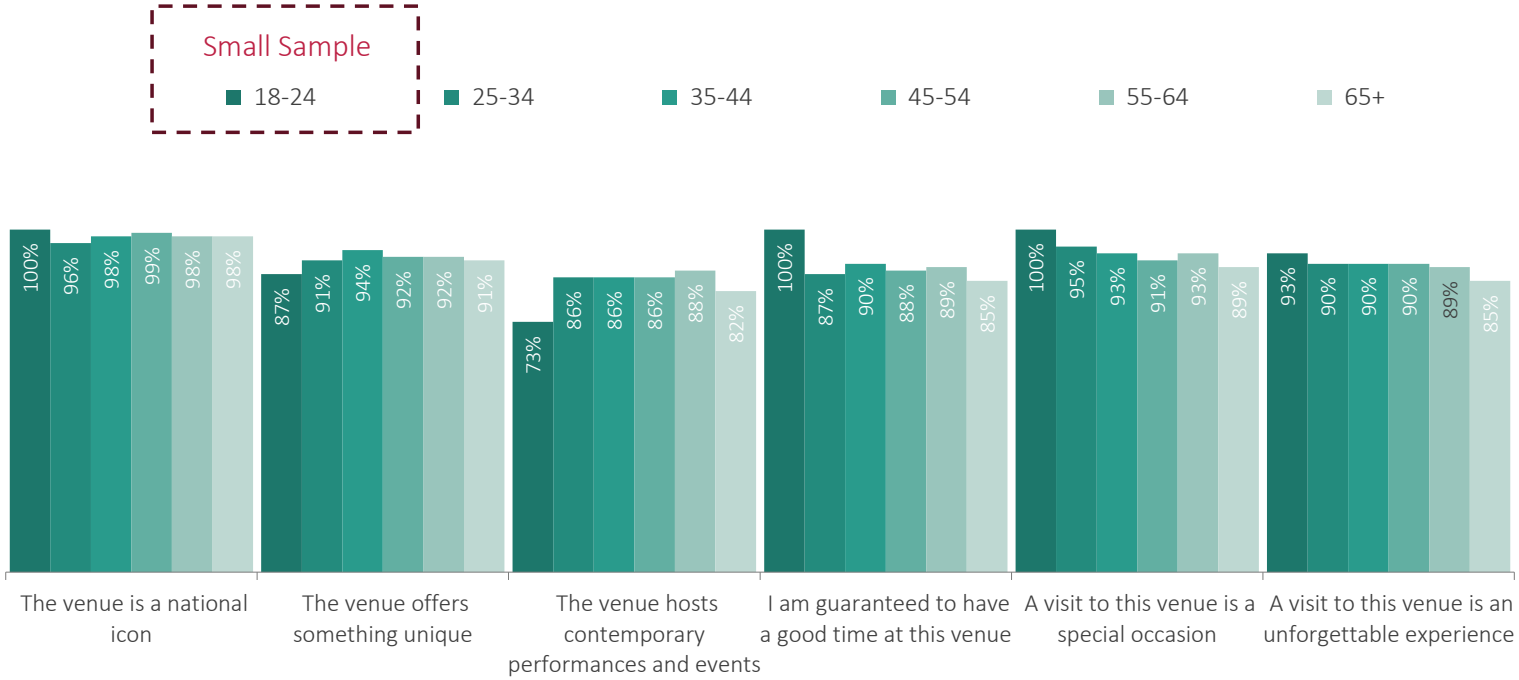
Q15. And how much would you trust the Royal Albert Hall to: (Please use a scale of 0-10, where 10 means you trust it completely and 0 means you don't trust) [Scored 8-10 Only]



1. Base: All answering for the Royal Albert Hall age: 18-24 (205), 25-34 (334), 35-44 (334), 45-54 (384), 55-64 (274), 65+ (450)

Customers across all age groups share similar views about the RAH

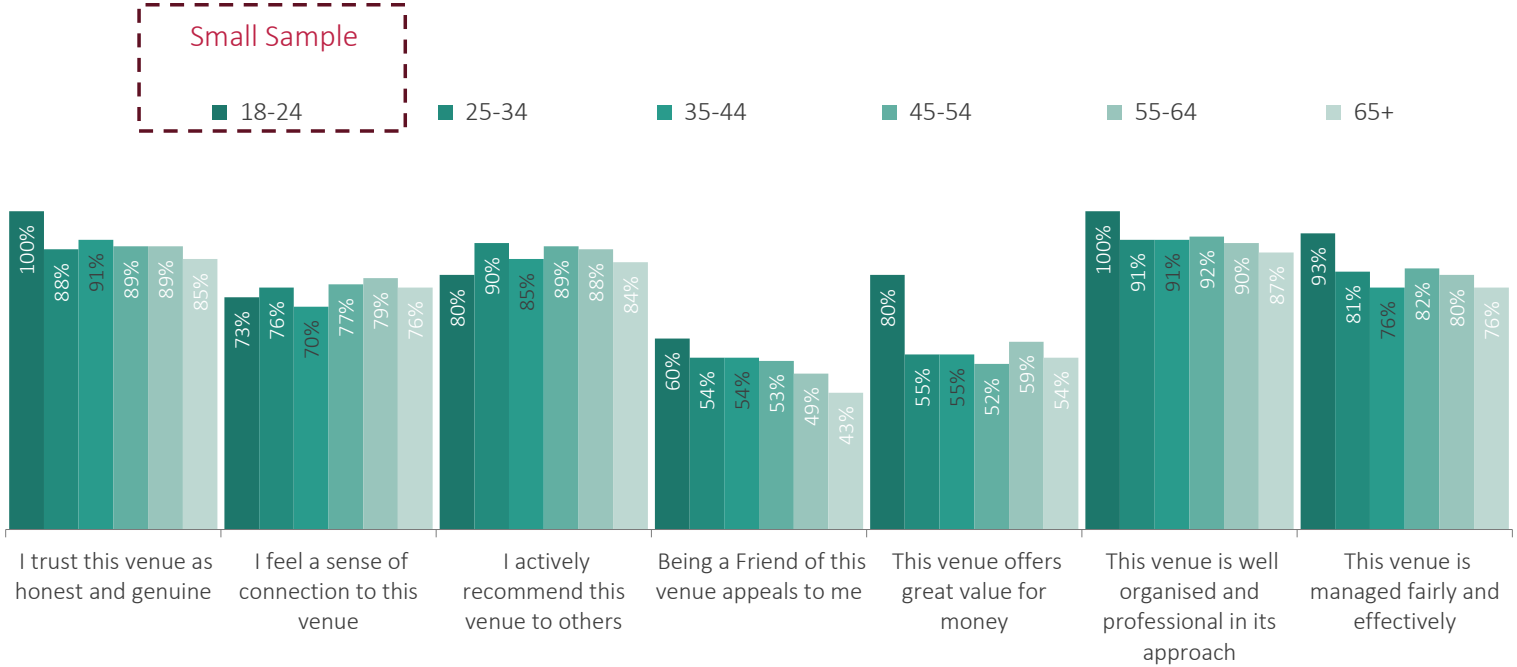
Q9. Please tell us the extent to which you agree or disagree with the following statements. [Customer Poll, Definitely agree + tend to agree]



1. Base: All answering for the Royal Albert Hall age: 18-24 (15), 25-34 (124), 35-44 (257), 45-54 (523), 55-64 (856), 65+ (1735)

Customers across all age groups share similar views about the RAH

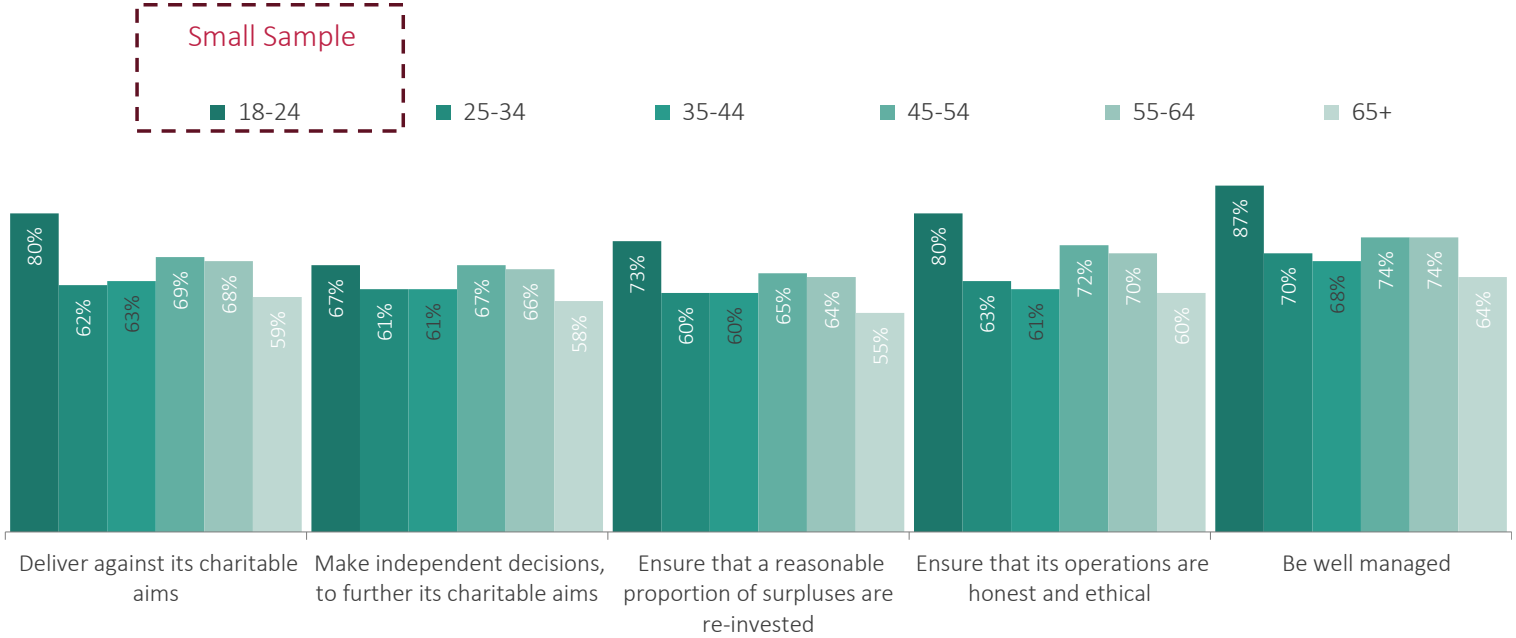
Q10. Please tell us the extent to which you agree or disagree with the following statements about the Royal Albert Hall [Customer Poll, Definitely agree + tend to agree]



1. Base: All answering for the Royal Albert Hall age: 18-24 (15), 25-34 (124), 35-44 (257), 45-54 (523), 55-64 (856), 65+ (1735)

Older demographics (45- 64 y.o.) are slightly more likely to trust the RAH to be well managed

Q15. And how much would you trust the Royal Albert Hall to: (Please use a scale of 0-10, where 10 means you trust it completely and 0 means you don't trust) [Scores 8-10 Only].



1. Base: All answering for the Royal Albert Hall age: 18-24 (15), 25-34 (124), 35-44 (257), 45-54 (523), 55-64 (856), 65+ (1735)

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Populus

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch

EXHIBIT 31

Extract from the Report of the Constitutional Review Group, November 2016

Extract from the Report of the Constitutional Review Group, November 2016

Issue 12: Should elected (i.e. seatholder) Council members be prohibited from selling their tickets above face value?

Comment

Members' seats are their own personal estate. Ownership of a seat entitles a Member to access to the Hall in order to use the seat. In practice, access by Members to their seats is arranged by issuing Members with tickets for the events that they are entitled to attend ('Ordinaries'). A Member may have purchased his seat but he/she does not purchase tickets for his/her seat. A ticket is simply the means by which access is granted, like an entry token. A Member is not therefore subject to the conditions of sale that the purchaser of a ticket through the box office is subject. In practice, tickets issued to Members bear a 'face value', being the price that would, in most cases, be payable if the ticket were sold through the box office. The exception is where the Promoter operates 'dynamic pricing', where the Promoter sets an initial price but the Promoter may raise or lower it according to ticket demand. Then the face value on the Member's ticket may not be the price at which the ticket would have been sold through the box office.

The upshot of all of this is that Members are free to dispose of their tickets in any way they please and at any price.

When Members do sell their tickets, they are not operating a secondary market or 'touting'; nor are they profiting in the sense of buying a ticket at one price and selling it at another, because they do not buy their tickets in the first place. They bought a seat which entitles them to the tickets.

Nevertheless, there is a view in some quarters - in essence those who consider that the secondary ticket market is wrong - that it is somehow wrong for Members to sell their tickets above face value, as if they were participating in that market. In other quarters, the secondary market is considered entirely acceptable. In May 2016, the Government published an independent review by Professor Michael Waterson of Online Secondary Ticketing. This expressly recommended against (a) banning the secondary ticketing market, acknowledging that the market has positive features (b) a cap on resale prices at a particular level.

Many seats in the Hall are owned by charities as an investment, who are under a duty to maximise the return on the investment. They are not criticised if they sell their tickets above face value. It would be difficult to introduce one rule for charities and another for others.

In the case of the Hall, such criticism is levelled at Council members rather than Members generally owing to the inherent conflict of interest or potential conflict between a Council Member's selfless fiduciary duty to the Hall as a charity, of which the Council member is a Trustee, and the Council Member's private interest in the financial return that he/she receives from his/her seatholding. There is or could be the perception that Council members run the charity for their private benefit at the expense of the charitable purposes of the Corporation.

In 2012, in order to address this negative perception, Council sought to introduce a byelaw prohibiting Council Members from selling tickets above face value – a sort of self-denying ordinance – but it was not approved by the Members principally on the ground that Council members should not be 'penalised' for being a Trustee by the imposition of a restriction on their lawful right to deal with their tickets as they please.

Some critics have gone so far as to contend that a Council member should sell all unwanted tickets through the Ticket Return Scheme - presumably to ensure that no tickets will be sold above face value. It does benefit the Hall when Members use the TRS both financially and in helping to fill the seats. Members are therefore generally encouraged to use the scheme. Members who are also Trustees may therefore feel inclined individually to support this practice but, in the Review Group's opinion, to introduce compulsion for Council members would be disproportionate to its objective; and there can be no legitimate objection to any Member choosing to sell privately to anyone at a price which is below face value but higher than would be achieved through the TRS.

In the view of the Review Group, the byelaw would have been ultra vires and, if so, it could not have been binding on subsequently elected Council members. Restricting a Council member's right to deal with his/her tickets would raise other complications. If it were to apply to 'connected persons', over whom the Council member had no control, it would leave the Council member in a difficult position. If a family member of the Council member were to sell tickets above face value, what should the Council member do?

The subject becomes further complicated if the test of acceptability hinges upon whether the seatholder benefits personally from a ticket sale above face value. No-one complains if a Council member auctions a ticket for charity and it sells well above face value. Is selling above face value for personal gain wrong when it enables a Council member to give away other tickets?

If it is acceptable for a seatholder to receive face value (but no more) for all his/her tickets, what is wrong with the seatholder receiving the same return by giving away or selling below face value some tickets and selling others above face value?

In the view of the Review Group:

(1) These questions serve to illustrate that calls for prohibitions or restrictions on how Council members may deal with their private property are too simplistic.

(2) There is no empirical evidence that Council members run the Hall in order to host or stage events that will sell above face value. The event most frequently referred to in this context is the Last Night of the Proms. Council cannot be accused of staging this in order to make gains above the face value of the tickets.

(3) In practice, the events that are in most demand are, more often than not, Exclusives (for which Members are not issued tickets).

(4) The number of occasions each year when Members could sell tickets above face value is few (fewer than ten) and exaggerated. The suggestion that these events are being organised by Council members for a higher level of private gain rather than for the benefit of the Corporation is unfounded.

(5) The Hall's conflicts of interest policy provides an effective means of checking, managing and regulating conflicts of interest.

The Review Group does acknowledge that the Hall should be mindful that negative perception can be damaging to a charity, even when it is misconceived, or confected by the media trying to create a story by relying upon misleading innuendo rather than truth or balance. The Group also acknowledges that a charity should take reasonable and proportionate steps to avoid such mistaken perception, even where there are also positive countervailing perceptions on the same issue.

Ways to address this can be to correct misperception when given the opportunity to do so and being transparent about the true position. It may be that steps should be taken to differentiate more clearly tickets bought through the box office and tickets issued to Members. Addressing it by curtailing a Council member's freedom to deal lawfully with his/her tickets in whatever way and at whatever price the Council member chooses, particularly where there is no evidence of any breach of fiduciary duty or other trustee wrongdoing, would, in the Review Group's opinion, be an unwarranted and disproportionate intrusion into the Member's private property rights, which remain distinct from his/her duties to the charity.

Recommendations:

(1) Suggestions that Council members should be prohibited from selling tickets above face value or required to sell their unused tickets through the TRS are unnecessary, disproportionate and should be laid to rest.

(2) Newly elected Council members, when being advised of their duties as Trustees of the charity, should be made aware of the sensitivity that currently surrounds this subject and the reputational damage to the charity that even mistaken perception can cause.

(3) Newly elected Council members should be advised of the purpose and value to the Hall of using the TRS without seeking to restrict or dictate how a Council member might act,

(4) The Hall should seek to correct mistaken perception and unbalanced negative reporting unless it is better ignored.

(5) The Hall should explore ways of differentiating more clearly Members' tickets from tickets sold through the box office in order to help dispel the perception that, when Members sell their tickets other than through the TRS, they are touting or operating a secondary market.