Submission for Royal Albert Hall Bill [HL] Opposed Bill Committee

House of Lords Session 2022-23 | Monday 22 and Tuesday 23 April 2024

Petitioners:
(1) The Hon. Richard Lyttelton
(2) The Fanfair Alliance; and
(3) The Court of the Worshipful Company of Musicians

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INTRODUCTION

The Petitioners

1. My name is Richard Lyttelton. I am a Member of the Corporation of Arts and Sciences and the owner of two stalls seats in the Royal Albert Hall. I spent my working career in the entertainment industry, 20 years of which I was President of Classics and Jazz Worldwide for the EMI Group.

2. Since retiring from EMI in 2006 I have served as a trustee of the Royal College of Music (awarded Honorary Membership of the College in 2022), Chairman of English Touring Opera and Help Musicians (the Musicians Benevolent Fund) and a trustee of several other music charities including the EMI Archive Trust, Artis Foundation and Universal Music Sound Foundation. I am currently Master of the Worshipful Company of Musicians and have just retired as a trustee of another Albertopolis institution, Queen Alexandra's House.

3. My direct involvement with the Royal Albert Hall began when in 1998 Colin Clive, the Hall's long standing Treasurer asked EMI's Chairman, Sir Colin Southgate, to provide an experienced executive to help the Hall with programming. EMI was the owner of a second tier box in the Hall and in my role at EMI, I had promoted several concerts there including the World Premier of Sir Paul McCartney's *Standing Stone*. Knowing me to be well connected in the music industry, Sir Colin asked me to "volunteer".

4. I was invited to join the Royal Albert Hall's Council in 2004 and retired from EMI in 2006. When EMI was sold in 2007, to retain my involvement in the Hall, I bought my own seats and thus became a member of the Corporation in my own right. I was elected President in 2010.

5. Together with my co-petitioners I submitted a petition against the Royal Albert Hall Bill ("the Bill") dated 30 January 2023 ("the Petition").

6. My co-petitioners are The FanFair Alliance and the Court of the Worshipful Company of Musicians. I am speaking today on behalf of myself and my co-petitioners.

7. The FanFair Alliance is a music industry body set up by representatives of major international artists (including Arctic Monkeys, Mumford and Sons, Keane, Travis, Little Mix, Alison Moyet and many others of similar standing) to prevent their fans being exploited on secondary ticketing sites.

8. The Worshipful Company of Musicians is the only City of London Livery Company dedicated to the performing arts; it aims to nurture talent and share music through its concerns, outreach, awards and young artists' programme.

9. BDB Pitmans LLP have indicated that they question my standing as an individual to object to the Bill on the specific grounds that I am a member of the Corporation and did not vote against this proposal when it was being considered. The reason I did not

do so was that I had Covid-19 at the time of the relevant meeting and was absent. Whether or not BDB Pitmans LLP's objection to my standing has merit is academic in circumstances where they have raised no question about the standing of my co-petitioners, the Court of the Worshipful Company of Musicians and The Fanfair Alliance, each of whom has an obvious interest in the matter at hand and is an appropriate body to draw to the Committee's attention the points raised in this submission. Both the Court of The Worshipful Company of Musicians and The FanFair Alliance have formally authorised me to speak on their behalf. I present their letters of authority in the supporting exhibit to this submission.[1] [All page references within this Submission refer to the supporting exhibit.]

10. Being uniquely aware of the longstanding conflict of interest between the rights of Members and the obligations of charity trustees, I respectfully submit that the Bill should not be allowed to proceed in its current form as it leaves unresolved increasing public concerns about the Hall and the way it is run. I must make clear that I hold the Hall's CEO in the highest regard and make no criticism of the executive team.

Abstract

11. The Royal Albert Hall Bill (as proposed) serves the Members of the Corporation of the Hall of Arts and Sciences (known as the Royal Albert Hall), and goes against the interests of the Corporation as a charity, the creative community and the public at large. The Trustees of the Council of the Corporation, the registered charity responsible for the governance of the Hall, are operating *ultra vires* the Royal Albert Hall Act 1966 and are ignoring charity best practice as well as obligations under charity law. If allowed to progress un-amended, the Bill will strengthen Members' influence over the operation of the Hall's seats and legitimise their ability (as both members and trustees) to control the income derived from the sale of owned seats, of which the Hall sees none. As many of the Members are also trustees of the Corporation, there are conflicts of interest between the personal benefit to these individuals (arising from their private property rights as seat holders) and their charitable obligations. Progressing the Bill will provide statutory protection to the status quo, which sees seat holders making decisions on behalf of the charity and undermining the Hall's charitable status.

12. There are serious ramifications of favouring private interests in this way without consideration for the Hall as a charity first and foremost; there is a risk a of losing public trust in charitable organisations and a risk to the future of the Hall as we know it. Progressing the Bill un-amended may jeopardise the Hall, affecting its iconography as an anchor of arts and culture and its long-standing function as a top-level performance venue at a time when its industry needs it most.

[1] Letter of Authority (Worshipful Company of Musicians), page 1 (all page references are to the Exhibit attached to this Submission); Letter of Authority (FanFair Alliance), page 2

SECTION A: CONSTITUTIONAL CONTEXT AND ISSUES OF GOVERNANCE

History and governance structure of the Hall

13. The Corporation of the Hall of Arts and Sciences (known as the Royal Albert Hall) is a registered charity incorporated by Royal Charter. Its governing documents are contained within the "Blue Book" which contains the founding 19th-century constitution as amended by two Supplemental Charters and four Acts of Parliament (in 1876, 1927, 1951 and 1966).[2]

14. The Corporation of the Arts and Sciences Charter was established by Queen Victoria to build and manage the Hall of Arts and Sciences and to advance the arts and sciences for the public benefit. As a point of terminology, the Hall of Arts and Sciences was conceptualised in the constitution and is distinct from the building which stands in Kensington Gore. For the purposes of this submission, the "Hall" refers to the Royal Albert Hall governed by the Corporation of the Hall of Arts and Sciences, the "Corporation".

15. By the mid-1960s, it became apparent that the Hall was in need of refinancing. As a result, The Royal Albert Hall Act was introduced in 1966 (the "1966 Act"), enabling the Hall to operate commercially. The 1966 Act is introduced in the "Blue Book" with the following:

    An Act to make better provision for the improvement, repair, maintenance and equipment of the Royal Albert Hall; to provide additional funds for the Corporation of the Hall of Arts and Sciences and to extend the existing provisions as to seat rates and seatholders and the use and letting of the hall; and for other purposes.

16. For completeness, the Hall also operates two subsidiary companies for its non-charity trading activities (for example, to manage private lets of the Hall, merchandising and catering). This structure also allows charity events to be promoted through a subsidiary company in order to mitigate risk to the charity, and profits made by the subsidiary companies are covenanted to the Hall.

17. There is nothing problematic about a charitable body having a separate commercial entity. The issue lies in the fact that the Hall is no longer solely a charity operating in the public interest, it is also a highly lucrative business benefitting the trustees and parties related to them.

18. Today, the governing body of the Corporation of the Hall of Arts and Sciences is the Council (or board) comprising 23 Trustees and a President. The Council assembles five times each year. The trustees also delegate to committees under the Chairmanship of Members.

19. The Council of the Corporation is comprised of 19 members and five appointed non-members.

[2] The Blue Book, pages 3 - 133

20. There are 1268 seats currently privately owned by Members of the Corporation out of a total capacity of 5272. These are the best stalls and box seats in the Hall. The owners of these 1268 seats are Members of the Corporation.

21. The Hall's governance has always been tied to seat holdings. The Hall was originally part-owned by those who had funded its creation, the "subscribers" to the Hall: contributors were each awarded a seat as consideration and were given private rights to use or access the seats on 999-year leases. These individuals were considered an integral part of the Hall: seat-holders were able to attend performances in a private capacity and simultaneously bore the responsibility of running the Hall. To reflect appreciation for the original subscribers the Hall's governance is linked to seatholding on a one seat one vote basis. None of the original subscribers owned more than 10 seats. Seats were granted coterminously with the Hall's 999 year lease.

22. In the Second Reading of the debate for this Bill, this concept was aptly described as the Hall's "hybrid" model.[3] This dual model shaped the Hall's constitutional origins and still influences its governance today.[4]

23. Over the past 150 years, as some of the seats have been traded and others have been inherited, the original subscribers to the Hall have been gradually replaced by investors, some of whom have built up large holdings. There is a subtle distinction between successors to the original subscribers to the hall, and "investors", individuals who have since purchased seats in exchange for subscription to the Hall. As Members, Investors have been entrusted with the Hall's governance in the same way as successors of the original subscribers, and they receive the same benefit of the "hybrid" model.

24. A comparison has been drawn between debenture holders at Wimbledon and seat holders at the Hall.[5] Indeed, while the former category are simply investors, using private property rights for financial gain, the latter group may be conflicted if they also hold a role as a trustee. The members of the Corporation who fall into the "investor" category are not exempt from any additional charitable obligations. This parallel is illustrative of the Hall's unique issue as it highlights the grey zone arising from the conflict between personal rights and charitable interests: on the one hand, the problem arises the moment a member of the Hall becomes a trustee and intends to continue sell tickets to their seats on the open market; but on the other, a seatholder's personal property rights are always attached to additional charitable obligations by virtue of it being a seat of the Hall. What is clear is that the conflict of interest (which will be explored in greater depth later in this submission) cannot be ignored and must be rectified before any Bill is passed.

[3] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130
[4] Ibid.
[5] Ibid.

Members' control over the governance of the Hall

Members' election to Council

25. Members have a key role to play in the governance of the Hall, because they have to elect 19 of 24 trustees in total from amongst themselves. Therefore, there are individuals with overlapping roles as both trustees and seat holders (and by extension, conflicted interests) on the Council. These individuals have a substantial say in decisions about which concerts members are allowed to offer seats for and more general control of the seats in the Hall.

Voting at AGMs

26. Voting at Annual General Meetings (AGMs) is by seat on a one-seat-per-vote basis, as written in the constitution at paragraph 31 of the Schedule referred to in the Charter, "rights and obligations of subscribers and members" - every member shall have one vote for every seat of which he is registered as a holder.[6]

27. As with a typical shareholders annual general meeting it is rare that more than a few shareholders vote. Proxy votes are given to the Chairman so the vote only goes to a postal ballot for the entire complement of members if one is called. This allows for decisions easily to be passed by a small handful of individuals, specifically the majority seat holders. Therefore, the interests of Members on the Council will continue to be prioritised as long as the status quo remains unchanged because it is easy for seat holders to command a majority in the Council.

28. The Hall's governance is designed such that the power to run the Corporation is vested in its members, and the members own seats. The Corporation is no different to other businesses in that, naturally, the most interested seatholders are most likely to attend and vote at AGMs. However, what this means in practice for the Hall is that those voting are also likely to also be the most conflicted by virtue of occupying dual roles as members/trustees. Therefore, the most conflicted seatholders tend to have control over the decisions made as to the running of the Hall.

Conflicts of interest

29. As the Council is comprised of 23 Trustees (and a President), 19 of whom are seat-owning members, the Council is comprised of individuals who inevitably have an interest in the value of their seatholdings. In certain cases this constitutes a clear conflict of interest between personal interest and trustees' duties to act solely in the interests of the charity.

30. Charity law requires that a charity's objects are for the public benefit and that any benefit to individuals is subordinate to that of the public benefit. Therefore, trustees of a charity should not be exposing themselves to a situation in which their private property interests might conflict with the overriding obligation of charity law.

[6] The Blue Book, paragraph 31, pages 3 - 133

31. The Bill should not progress without due consideration for the issue at the heart of the Hall's governance.

Constitutionally "authorised conflict" and the Hall's recognition of the tension

32. As explained above, the Hall's constitution entitles Members of the Corporation to occupy and sell their seats while simultaneously being charged with the Hall's governance. In an attempt to appear to address the issue, the Hall has published on its website a detailed conflicts policy which studiously avoids what it describes on its website as an “authorised conflict of interest”.[7] This tension is ripe for exploitation by investors seeking to maximise their own returns without proper regard to the Hall's charitable status.

33. Since first recognised shortly after the 1966 Act there has been an issue of Members preferring their own interest at the expense of the charity. This issue has only worsened since the accumulation of large seat holdings and the introduction of the internet which has greatly facilitated the sale of tickets.

34. The debate has been thoroughly documented in the press and Council members have joined its discussion in the public forum. The debate has been raging for decades and has been joined by voices including Richard Morrison, Fay Schlesinger and Stephen Cook.[8]

Charity Commission Referral

35. Pursuant to section 325 of the then applicable Charities Act 2011, the Corporation was allowed to seek a judicial ruling on its functions, or on the law, from the first-tier Tribunal (Charity) pending receipt of consent from the Attorney General.

36. In 2017, the Charity Commission sought permission from the Attorney General to refer points of law to the First-tier Tribunal (Charity); this permission was granted.

37. The Charity Commission was asked to look into whether trustees had made proper financial disclosures. Labour MP Sharon Hodgson had campaigned for secondary ticketing reform and commented for The Guardian that the members of the Hall were in a position of privilege and that an abuse of that privilege "for the sake of greed" had been unveiled, revealing an "ongoing issue which must be addressed" by the Charity Commission.[9]

[7] Royal Albert Hall Conflict of Interests Policy, pages 138 - 145; "Governance" section of Royal Albert Hall website, pages 135 - 137.
[8] Selection of news articles from 2009 (*The Times,* 22 April 2009, page 146, *The Times,* 27 March 2012, page 147 - 149; *The Times,* 1 June 2012, page 150 - 152; *Third Sector,* dated 27 August 2015 and September 2015, pages 153 - 159; *The Times,* 1 September 2017, pages 160 - 162)
[9] *Guardian*, 18 January 2017, pages 131 - 134

38. The charities regulator has previously raised concerns about the potential for a conflict of interest affecting the way policy at the Hall is set."[10] Rob Davies discussed the Charity Commission's scrutiny of the Royal Albert Hall's governance for The Guardian, stating that the charity regulator had requested that the Hall "*examine its leadership structure as part of an ongoing governance review, highlighting that 19 of 25 members of the governing council are also seat owners with something to gain from permitting seat sales*". It was reported that "*the commission has made clear that the issue of conflicts of interest and the independence of the council from the seat owners should be dealt with as part of this review*".[11]

39. Writing for The Times, the then President of the Hall, Mr Jon Moynihan referred to the Hall's system of governance as being "*certainly idiosyncratic*", but that "*the unique way the hall is run is directly responsible for its unparalleled success*".[12] Moynihan criticised the Charity Commission's approach: "*Astonishingly, this national treasure is now under pressure, in what would seem like regrettable regulatory overreach, from the very body that should be applauding its success - the Charity Commission*".[13] Moynihan was concerned about the adverse impacts of a lack of regulation, predicting that "quangocrats" would become a majority on the Council should the Commission have its way, which would result in the loss of seat-holders' energy and financial contribution "*just to satisfy some currently politically correct, one-dimensional view of how a charity should be organised*."[14]

40. In response to Moynihan's comments, a spokeswoman from the Commission said, contemporaneously in 2017: "*Our position remains clear - we expect the charity to address serious concerns about its governance and management*."

41. That same year (2017), permission to refer the governance of the Hall to the tribunal was refused by the Attorney General, then Jeremy Wright QC. Wright did grant the permission to refer in 2018, but revoked his decision upon the Corporation indicating that it would seek to make an application for a judicial review.

42. A year later (2018), the Commission requested permission from the Attorney General again, which was refused in 2021 on the basis that it was not in the public interest.

43. Joshua Rozenberg has written an opinion piece for *The Law Society Gazette* in which he questions what authority a law officer has to regulate the Charity Commission, a regulator.[15] Rozenberg refers to his interview with Lord Hodgson of Astley Abbots CBE, when Lord Hodgson remarked that because it took successive law officers nearly 4 years to determine whether to refer the Royal Albert Hall case to tribunal, "this is a profoundly regrettable outcome in every sense" and "the underlying issue remains

[10] Ibid.
[11] Ibid.
[12] *The Times*, 14 May 2017,pages 163 - 170
[13] Ibid.
[14] *Third Sector*, 15 May 2017, page 171 - 174
[15] *Law Society Gazette* 1 April 2022, page 175

unresolved."[16] At the very least, this is a disappointing outcome for those concerned by the constitutional duality tainting the Hall's governance.

44. Nonetheless, the Commission have expressed eagerness to investigate the conflicts issue. The Commission provided comment for Rozenberg: "Even so, argues the Charity Commission, it would be better if seat-holders could not command a majority on the council. For some years now, the regulator (the Charity Commission) has been urging the hall to change its constitution. The hall strongly disagrees and has described this as "regulatory overreach".[17]

The practice of ticket abuse

45. Seat owners are members of the Corporation and form a majority on the governing Council. They are permitted to freely exercise their right to sell tickets and use their seats as investments, and are entitled to use the open market for seats they do not wish to attend in a personal capacity. The issue here is not with the proper resale of these tickets, but rather – as explained above - with the ability of Members to influence their personal profit in conflict with their obligations to the charity.

46. In 2017, a pamphlet was circulated to Members providing advice on how to sell tickets, and specifically how to "significantly improve income from unwanted tickets", using online ticketing platforms (for example, Viagogo and StubHub).

47. The publication of this pamphlet trigged an article by *The Guardian* reporting that members had "exchanged detailed advice on how to sell their seats on ticket touting sites, prompting the venue's former president to label its stewardship a "national disgrace"."[18] The author of the criticised document was a seat owner who requested anonymity and defended the circular on the basis that "seat owners are entitled to optimise their returns".

48. It can be inferred that the circular compared the return from secondary ticketing sites against the price for which tickets are sold using the Hall's Ticket Return Scheme ("TRS"). The pamphlet's author commented for *The Guardian,*

> "The [official] ticket return scheme is good, but what I do is sell some of my tickets online and get a slightly better return. It's simply a question of arithmetic."

49. The TRS was set up by the Hall to enable seat holders to return their tickets to the Box Office at face value less a 10% handling charge. Presumably to encourage Members to use the TRS, the handling charge was removed after the Lyttelton Presidency.

[16] Ibid.
[17] Ibid.
[18] *Guardian*,18 January 2017, pages 131 - 134

50. The pamphlet also referred to concert promoters as "greedy" and claimed that the TRS results in a "direct, unfair and unnecessary cost to members by paying significantly less than can be achieved in the open market".

51. I provided comment for *The Guardian* article: "*This interest [referring to the financial benefit to trustees in charge of the hall's policy, some of whom own multiple seats] is largely undeclared, and as trustees of the charity, their position of privilege and the advantages afforded by the hall's charitable status puts them in a position to profit personally. […] For this to have been unregulated, despite being in the public domain for so long, is a national disgrace.*"

52. The fact that the TRS might as well be redundant (as it provides a smaller return than alternative resale methods) is not the point in contention. The trustees, and members generally, who have the additional financial motivation arising from their interest as a seat-holding member of the Corporation should not be permitted such heavy influence in the governance of a charitable body.

Examples of ticket abuse

53. The inflation of tickets is obstructing access to concerts for some fans desperate to see their favourite artists perform. The charging of inflated ticket prices is abhorrent to artists because it interferes with the vital relationship between them and their fans by pricing their most loyal supporters out of the market (for which often the artists themselves are blamed).

54. In May 2022, Eric Clapton tickets were being sold for £1,185 each on an online ticket resale platform.[19] It is understood that Viagogo offered front row Clapton seats for £4,356.[20]

55. A £100 ticket for the Tickets to the BBC Last Night of the Proms was selling for £1,218."[21] Viagogo advertised tickets for 2017 Last Night of the Proms for over £1,500.[22]

56. A recent article in *Private Eye* magazine pulled from the discussion about ticket inflation that formed part of the Second Reading of the Bill: "*An Albert Hall seat-holder with a ticket of £200 face value could take it to a third-party website […] which would offload it, in extreme cases, for £6000. Kerching! Before the pandemic, seat-holders were making up to £20,000 a year from their little wheezes. Since the pandemic there had been "a rush" […] and values had doubled. To become a seat-holder you would have to pay £300,000."*[23]

[19] Viagogo screenshot (Eric Clapton), page 176
[20] *Law Society Gazette*, 1 April 2022, page 175
[21] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130
[22] *Guardian*, 18 January 2017, pages 131 - 134
[23] *Private Eye*, 3 November 2023, page 177

57. Tickets were being sold on the 18 March 2024 for the The Who's *Teenage Cancer Trust* concert online for £139.50.[24] This screenshot shows tickets being sold at an inflated value for a charity concert, for which all sale proceeds will accrue to the seat-holder directly.

58. In the Second Reading of the Bill, Members of Parliament also referenced the inflation of tickets for Ed Sheeran concerts, referencing an example of a ticket being inflated from £200 to £5,999-£6,000 on Viagogo.[25] Their Lordships also referred to a screenshot of a letter which Ed Sheeran and his promoters had requested be circulated, deploring the practice of selling tickets at inflated prices online. This has also been documented in the press.[26]

Hoorah Tickets - an abuse of privilege

59. Hoorah tickets advertises under the *About Us* section of their website that "*we act as a platform for official Seat Holders (Members) of the Royal Albert Hall to sell their unwanted tickets*."[27]

60. The FAQ section provides the answer to the question, "*Are you the Royal Albert Hall? No, we're an entirely different company. We sell tickets for events at the Royal Albert Hall."*[28]

61. There is concerning and great resemblance between the logo used for "Hoorah" and the vision of the building that stands in Kensington Gore. It sits somewhat uncomfortably that a website claiming to be a completely different company to the Hall is using such similar graphics to promote its business, which raises questions in relation to passing off, intellectual rights property rights and the like.

Impact on performers' relationships with the Hall

62. There are multiple records of performers opining on the adverse impact of ticket inflation on the open market.

63. Harvey Goldsmith, a British concert promoter responsible for promoting David Gilmour concerts at the Hall in 2017 complained to *Pollstar* about the inflation, commenting: "A small number of debenture holders who have been accumulating seats and boxes only for commercial gain by running a business of reselling those tickets to the highest bidder"… "We as promoters, currently cannot prevent these bad practises, even when we have put in place controls to prevent the secondary market having tickets that are put on general sale. **Our objection is to these unscrupulous debenture holders who use these tickets to support a system that we abhor."** [29]

[24] Hoorah Tickets screenshot (The Who), page 178
[25] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, page 114 - 130
[26] *Telegraph*, 18 October 2023, pages 179 - 181
[27] "About Us" section of Hoorah Tickets website, page 182
[28] Ibid.
[29] *Pollstar*, 12 January 2017, page [X]; *The Times*, 19 January 2017, pages 183 - 184

64. In response, the Hall released a statement: "*Members' seats are their own private property with their rights enshrined in the Hall's Royal Charter and Acts of Parliament; neither the Hall nor the promoter - who in this case has worked with the Hall for over 30 years and understands the arrangements perfectly well - has the ability to impose restrictions on how Members choose to use or dispose of their tickets."*

65. It is clear that performers, promoters and audience members alike will be detrimentally affected if the Hall continues with its current system of control.

Members' personal property rights

66. Members are obliged to pay a "seat rate", which can be likened to a property tax on their seats and is paid to the charity. In comparison to the services the Charity provides, particularly the not inconsiderable cost relating to what actually takes place on stage, which directly affects the value of their seats to say nothing of all the associated costs (management of the Hall administration, box office, cleaning, security etc). As matters stand, Members may choose whether to use the TRS or sell their tickets on the open market.

67. In an email from Ian McCulloch to Sharon Hodgson on 31st of August 2023, to which I was copied, he explained that "*with regard to Members lawfully exercising their right to sell tickets for the seats as they choose, this activity does not fall within the ambit of the Hall's functions and so the Hall neither condones it nor disapproves of it*."[30]

68. Drawing comparisons with other venues misses the point that the Hall is a charity.[31] For example, unlike debenture holders at Wimbledon, Members of the Hall actually own their seats on a lease and seats in other halls such as the Wigmore Hall are not in private ownership by trustees.

SECTION B: THE ROYAL ALBERT HALL BILL'S JOURNEY AND RECENT DEBATE

The withdrawal of clause 5

69. Clause 5 of the Bill, as initially proposed, would have provided powers to sell more seats in the boxes of the Hall and increase the number of members. The effect of clause 5 would have been to enable the Corporation to create and sell or let additional seats in Grand Tier boxes, in turn increasing the total of Grand Tier seats to 72. Increasing the number of seats appears to be a positive development as it would make the Hall more appealing to promoters and support the Hall's business in turn; however, the inclusion of clause 5 would have permitted new seats to be traded on the Hall's terms. During the Second Reading of the debate, Lord Harrington of Watford mentioned that: *"One noble Lord told me that some of these seats have already been allocated and sold. I am not aware of that, but I intend to find out. I would disapprove most strongly if that were the case, but I do not believe it is."*[32]

[30] Email from Ian McCulloch to Sharon Hodgson dated 31 August 2023, pages 187 - 190
[31] Ian McCulloch's Letter to the Editor of The Times, dated 1 April 2024, pages 191 - 192
[32] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130

70. BDB Pitmans LLP notified the Petitioners by letter dated 26 January 2024[33] of the Hall's decision to withdraw clause 5 from the Bill and that they would be notifying the House authorities accordingly prior to the Select Committee. The letter explained:

"*Clause 5 would have authorised the charity to sell additional seats in Grand Tier boxes with associated membership and to sell voting rights in respect of a number of seats which do not currently enjoy them. Provision is made to ensure that the seats would not be sold at an under value with valuations undertaken independently. The provision is intended simply to provide a means of raising capital for the charity."*

71. BDB Pitmans LLP acknowledged that clause 5 attracted criticism from Members of Parliament in the Second Reading debate as a result of, "*potential new owners being able to sell tickets for their seats privately for events which members may attend, as existing members currently do under the Hall's constitution*."

72. Clause 5 of the Bill has been withdrawn. The additional seats have already been installed, are already in use and have been for some years. This is evidenced by the availability of 12 seats within Grand Tier 11. [34]

The implications of clauses 3 and 4 as proposed

73. Clauses 3 and 4 of the Bill remain, and are problematic.

Clause 3: The "seat rate" in context

74. Clause 3 of the Bill as proposed fixes the annual contribution payable to the Hall by seat holders, known as the "seat rate". As introduced in the Second Reading debate,

> "Clause 3 seeks to remove the provision of the cap to the seat rate which, under the constitution, is set by the members every six years. As a quid pro quo, the voting threshold for agreeing the annual seat rate is being changed in the Bill from 66% to 75%, which is the threshold now for the six-year cap. Members were restricted by the six-year cap in how much they could contribute, and recent unexpected inflation has demonstrated the artificiality and the difficulty in forecasting a six-year cap. The restriction on how much the members may agree to contribute will no longer apply."[35]

75. The figure currently set for the "seat rate" is only a fraction of the return that a seatholder can generate from returning tickets to the TRS or selling them on the open market. Therefore, clause 3 is inconsequential: removing the cap may have a greater benefit to the charity, but as there is really no ceiling to the potential income that a seatowning member can generate from their holding, it would be better to first seek to control and resolve this issue poisoning the Hall's governance.

[33] Letter from BDB Pitmans dated 26 January 2024, pages 193 - 194
[34] Hoorah Tickets (Mike and the Mechanics), page 196
[35] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, page [X]

Clause 4: The significance of sections 14 and 15 of the 1996 Act

76. Clause 4 of the Bill as proposed makes provision for a resolution to be passed by "the council; or… not less than 20 members". It also allows for only "the resolution with the highest number of votes in favour" to be valid in cases where there is more than one resolution. This has the effect of increasing the control over the running of the hall for members.

77. In the Second Reading, this clause was introduced as follows:

> "*Clause 4 provides a mechanism for members to agree to exclusions over and above, and of a different form from those permitted by the Act of 1966. The current process by which members do this is of doubtful validity, but is well intentioned. It leaves the hall exposed to the risk of challenge of acting unlawfully, and the clause will put this on a proper legal footing*."[36]

78. As expounded in the Petition, one of the weaknesses of the Corporation's governance framework is that the Council does not have any power to make arrangements that are at variance with Section 14 of the 1966 Act with the support of Members, and therefore the Hall's present arrangements are not lawful and are not within the powers of the Corporation. Currently, the Hall are acting *ultra vires* the 1966 Act.

79. Section 14 of the 1966 Act was designed to give powers to the Council to exclude Members, whilst recognising Members' rights as seat holders.

80. The Hall's ability to grant Exclusive lettings enables Members to enjoy their seats and benefit from promotion opportunities including long runs and performances by major pop artists. Under section 14(2), Members receive a rebate from the Hall whenever they are excluded.

81. The designation of an Exclusive or Ordinary letting directly affects the value of seats, and as per the current arrangements, designations are made by a sub-committee of Council within guidelines set by Council.

82. **Therefore, section 14 lies at the root of the longstanding conflict of interest arising from the overlapping roles and duties for individuals who are both Members as seatholders and Members of Council (being Trustees of the Hall, a registered charity).**

83. For example, Cirque du Soleil falls under section 14(1), being "other than a concert, a recital or a boxing or wrestling entertainment". The letting takes place in January and February each year and typically comprises a total run of 71 performances. Members enjoy their seats for 18 of these performances (designated as Ordinary lets) and are excluded from the Hall for 53 (designated as Exclusive lets). Under the proviso of

[36] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130

section 14(1), Council is only empowered to exclude them from 35 performances (being “one-half of the functions included in any such series”).

84. It is disingenuous for Members to claim that they are disadvantaged by allowing more Exclusives than provided by the 1966 Act. The success of the Hall is in everyone’s interest and Cirque is a critically important and lucrative letting as it comes in January and February, widely known to be terrible months for the entertainment industry, a time the stage would otherwise be dark and there would be little bar take.

85. It is not the *quantity* of concert lettings that is important so much as their commercial value. For example, an Ed Sheeran or Eric Clapton concert is worth substantially more in income both for the Hall and for Members than any number of school concerts, amateur choir performances or other more humdrum events. Net income (after seat rate etc) from seats in 2023 was £6,400 per seat.[37]

86. Recent investors in the Hall hold that the original ownership of seats gave the holder the right to attend every event at the Hall and this right was diluted by mutual consent under Section 14 of the 1966 Act and has been further diluted since.

87. It cannot be said that Members are profiting from the charity (as their seats are private property) but they are profiting at the expense of the charity (by controlling the lettings policy). It is therefore essential to the interests of the charity and the creative community that any amendment to Section 14 only be made in conjunction with sanctions against selling tickets outside the box office (e.g. prosecuting Section 15). The Hall’s Council has consistently refused to introduce any sanctions on private ticket sales and condones the use of the Hall’s name and likeness on an independent website Hoorah Tickets, which advertises itself as “an official platform for members to sell their unwanted tickets” (see above).

88. Section 15 of the 1966 Act provided the Hall with statutory powers to protect against "ticket abuse" by empowering the Council to prohibit the sale of tickets.

> *15. (1) Byelaws made by the Council pursuant to clause 11 (General powers of the Council) of the constitution may include bye laws prohibiting the sale by or on behalf of members in the hall or in the "vicinity thereof" of tickets for seats.*

89. In February 1967, a byelaw was passed.[38] It provided that no person being a member or acting on behalf of a Member shall sell or attempt to sell in the Hall or in the vicinity thereof any tickets for a seat (or seats). The byelaw was not prosecuted because of the words “in the Hall or in the vicinity thereof” which Council takes as a measure to prevent affray.

90. The internet did not exist in 1966 (although being universal it is accessible both in the environs of the Hall and within the Hall itself) but this loophole is used to counter any obligation to control ticket abuse under Section 15.

[37] Members Biannual Invoice April and October 2023 (Lyttelton), pages 202 - 213
[38] Bye-Law dated February 1967, page 197 (also in 'The Blue Book', pages 3 - 133)

91. The Petition proposes a simple amendment to Clause 15. Without at least this or preferably fuller amendment the Bill should not go forward as it would serve to perpetuate Members modification of the 1966 Act against the public interest and in competition with the Hall's own box office.

Themes of the Second Reading of the Bill in Parliament

The conflict of interest

92. There is undoubtedly a conflict of interest where a trustee has overlapping roles; the affected trustees' decision-making on behalf of the Hall may be influenced by their personal interests as a seat holder. The Bill does not address the duality at the heart of the Hall's governance structure, and should therefore fail.

93. Baroness Barker encapsulated the tension by introducing a notion of "*the dual role: when you are a trustee of a charity, you are duty-bound by charity law to make decisions in the best interest of the charity*."[39] The Baroness stated that "*it is impossible for somebody who is a seat-holder to do that without simultaneously making decisions that have a direct benefit on what may be their business*."

94. The Lordships discussed the conflicts of interest issue at some length. Lord Etherton summarised what he described as an "extraordinary legal situation":

> "*The power to run the Albert Hall is vested in its members. The members are the seat-holders. The council of the corporation comprises 18 members and five appointed non-members. On the face of it the presence of the members on the council who have profited, intended to profit or wish to profit from their seats by selling tickets from them on the open market involves a clear potential conflict between personal interest and their duty to act solely in the interests of the charity*.[40]

95. Viscount Chandos commented that "*the commission's attempt to refer the issue to the charity tribunal was inexplicably refused by the Attorney-General at that time. Can the Minister explain why the Attorney-General concluded that such an obvious conflict did not justify referral*?" Baroness Stowell of Beeston continued to discuss the referral, providing further detail and echoing that "successive Attorney-Generals dodged the decision until, eventually, one of them rejected the Charity Commission's request." Lord Etherton echoed Baroness Stowell of Beeston's concerns as to what he described as the "limited oversight of the Charity Commissioners over the corporation", and summarised the issue for the House:

> "*The Charity Commissioners wanted to make a reference to the charity tribunal, but under the Charities Act 2011 they could do so only with the consent of the Attorney-General. Permission has been sought in the past, but on the last*

[39] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130
[40] Ibid.

occasion relating to the Albert Hall, after a number of years without any response whatever, permission was refused by the Attorney-General without any explanation at all. This was really quite a scandalous approach to a serious issue."[41]

96. The following statement from Baroness Stowell of Beeston encapsulates the reason why the Bill should fail:

> "*The hall has always maintained that what it wanted was a new Act of Parliament to modernise its governance and that there were outstanding issues that needed to be addressed. That is clear, as my noble friend has laid out, in the Bill that it has put forward, but the Bill fails to address the fundamental flaw in its model and any of the issues that have been of concern to the Charity Commission for the last 13 years*."[42]

97. Their Lordships also discussed potential solutions to the conflicts issue, which at the time of the Second Reading, still contained clause 5 in the proposed Bill. Lord Harrington of Watford introduced the issue as being "*in nearly all instances, […] in fact a shared interest, because in so many cases the interests of the hall and the interests of members are aligned*".[43] However, this shared sense of responsibility cannot be assumed, and evidence would suggest that trustees with overlapping roles are prioritising their private interests. Lord Hodgson of Astley Abbotts suggested that providing decision-making council members with powers over the seats of the Hall was contradictory and that the terms on which the seats are to be sold or let should, at the minimum, be valued externally and approved by the Charity Commission. Further, Lord Hodgson of Astley Abbotts went on to suggest that the fact we are unable to know whether those Grand Tier seats have already been allocated and are already being used for the financial gain of seat holders means that to approve the Bill would secure the trustees' positions retrospectively (please see paragraph 72 above).

Privilege of charitable status

98. The Council of the Hall is responsible for handling the repayment (and decisions around) the aid provided by the Government. In the previous reading of this Bill, their Lordships often returned to the way that the Hall handled the issuance of the £20 million loan by the DCMS during the Covid-19 relief fund. This is mentioned in passing here as an example of how the Bill is not addressing issues that need to be addressed.

99. The Hall has enjoyed charitable status since 1967, and has reaped financial and tax benefits as a result; the Hall received public funding in the form of a combined £40 million from the National Lottery and the Arts Council in 1996, which went towards successful refurbishment of the Hall.[44] There has been press coverage on the control

[41] Second Reading of Royal Albert Hall Bill [HL] - Hansard Transcript, pages 114 - 130
[42] Ibid.
[43] Ibid.
[44] *MailOnline*, 29 July 2018, pages 197 - 201

of the public funds by the Hall's Council, which contains seatholding members with conflicted interests. This subject has been heavily criticised in the press:

> *"As a charity the Royal Albert Hall is subsidised by the taxpayer. It saves £2 million-£3 million a year in corporation tax, pays no VAT, is not charged normal business rates, and leases the ground it stands on, a prime piece of London real estate, for rent of 5p per annum. It also received lottery grants totalling £40 million in recent years. The fact that such cash — from the pockets of ordinary Britons — is being spent on a venue which can be used by a collection of very wealthy people (and organisations) to generate money is, many believe, morally questionable."*

Other critiques

100. On 12 March 2024, Sharon Hodgson MP wrote a letter in her capacity as Chair of the Ticket Abuse APPG.[45] Drawing on her experience and knowledge of the secondary ticketing market, she explained her concerns that "*this Bill would allow individual private seat holders to increase their personal profits through this publicly subsidised institution*."[46] She expresses opposition to the Bill with the following: "*It is time that artists and the Hall are fairly compensated, so they can continue to enrich our creative sector, while attendees are provided with the best possible experience. This Bill fails to achieve this and fails to prevent private profiteering against our nationally beloved Royal Albert Hall*."[47]

101. This Bill has also been critiqued in Private Eye Magazine since it began its passage through Parliament.[48] The article's headline, "*Historic smelly practices at one of the country's best-loved concert venues were exposed when the Royal Albert Hall Bill was introduced in the House of Lords", established the tone for an exploration of issues raised by the Lords and Ladies during the second reading of the Bill. For example, "A former charity commission chair, Lady (Tina) Stowell (Con), accused the bill's movers of "audacity" and being "completely unacceptable*"."[49]

102. The article also refers to the comparison drawn by Viscount Chandos between the debenture seatholders at Wimbledon and those at the Hall, emphasising the crucial difference: "*the All England Lawn Tennis Club is not a charity, whereas the Albert Hall is*." Private Eye expands on the tension between private and charitable interests with the following:

> *A despairing Stowell recalled trying to introduce a compromise whereby seat-holders who actually sat on the charity's board would agree not to sell their tickets for a heavy mark-up. They refused to accept that idea. They didn't*

[45] Letter from Sharon Hodgson MP dated 12 March 2024, page 214
[46] Ibid.
[47] Ibid.
[48] *Private Eye*, 3 November 2023, page 177
[49] Ibid.

even declare their family financial interests in the way normal charitable trustees did. And yet the hall clung desperately to its charitable status.[50]

Conflict of Interest

103. The article is reinforcing the trustees' duties as 'custodians, not businessmen'. It comments that the existence of overlapping roles (members / trustees' is "*partially an accident of history*". While the financial responsibility to help in the theatre's upkeep which was initially exchanged for seat-ownership when the Hall was initially set up is partly maintained by successors of the initial subscribers to the Hall, debentures can now be traded and purchased by investors without any express obligation for the Hall's upkeep. *The Times* points to the 'dubious legality' and how charity law 'prohibits those who are part of a charity to profit beyond incidental income.' As well as how 'this is simply now what Britain's great institutions are for.' The article concludes with a wider observation about how the Hall was built to 'enhance public understanding and appreciation of the arts. When trustees profit at the expense of the public at large, a change is long overdue.'[51] This article was written in 2012, and little has changed in the right direction.

Costs

104. As a final example of the malpractice addressed in this submission, it should be understood that the members have not been invited to bear any of the costs of defending their business. This speaks to the point that the members are not governing the Hall in the interests of the charity.

CONCLUSION

105. I submit that contrary to charity law, the Council of the Corporation is deploying charitable resources to defend the private interests of trustees. The Bill, as framed, is misdirected.

106. Charity law and best practice dictates that charitable entities must be exclusively and wholly charitable, and while they may have a trading arm, any profits gained must be applied solely for the purposes of the charity.

107. There is a clear conflict of interest between private property interests and the charitable interests of the Hall and the governance structure of the Hall gives rise to an unresolved tension: individuals with overlapping roles as trustees and seat-holding members are acting in direct contravention of charity law.

108. The Bill does not seek to address the duality inherent to the governance of the Hall, and therefore cannot be said to improve on the status quo. The Bill should not be passed to adjust the constitution of the Hall before the issue of conflicting interests

[50] *Private Eye*, 3 November 2023, page 177
[51] *The Times*, dated 28 March 2012, page 215

is rectified formally. As proposed, the Bill will make changes to solidify members' control and give credence to questionable governance.

109. There are many issues that need to be resolved before any legislation is passed to give statutory protection to any part of the governance of the Hall. The implications of promoting a bill such as this are to jeopardise the longevity of the Royal Albert Hall as a cultural icon, smoothing cracks in the integrity of the charity for the sake of a few individual pockets. At a time when the arts need protecting more than ever, we should be acting with greater caution than normal and scrutinise any bill that purports to alter the way audiences can interact with artists.

110. The wider point is that the Hall has a key role to play in the country's national makeup, and that trustees should consider their responsibility to extend beyond an obligation to the charity, but to what it represents. The Hall must continue as an icon, and it is therefore essential that the governance of the institution is scrutinised and deemed beyond reproach.

111. I urge the Committee to dismiss the Bill.