IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of Ian McCulloch for Opposed Bill Committee, 22 April 2024

PART A: EVIDENCE IN SUPPORT OF THE BILL

1 Introduction

1.1 My name is Ian Hammond McCulloch. It is my privilege to be President of the Corporation of the Hall of Arts and Sciences (otherwise known as The Royal Albert Hall), the promoter of this Bill. In this capacity, I act as Chair of the Council, which is the governing body of the Corporation.

1.2 When I refer to 'the Hall', it may be to the Corporation, the legal entity, or it may be to the building, according to the context. When I refer to the Members of the Corporation, I am referring to the successors to the persons who originally subscribed for permanent access to seats in the Hall (see **section 4** below). We commonly refer to the Members as 'seatholders' and to the 'owners' of seats. Strictly, the Members own a right of access to seats.

1.3 For ease of reference, I attach as **Appendix 2** a list of my Exhibits.

2 How the Hall was founded

2.1 An understanding of the Hall's history and the part played in it by the Corporation's Members assists an understanding of the purposes of the Bill.

2.2 The Hall was the brainchild of the late Prince Consort, Prince Albert before his untimely death in 1861 at forty-two years of age. The Great Exhibition of 1851 made a surplus of £186,000 which the Royal Commission for the 1851 Exhibition, under the guidance of Prince Albert, used to purchase an estate in South Kensington. This estate has developed to become a centre of scientific, cultural and educational excellence which now houses the Natural History, Science and V&A museums; Imperial College London; the Royal Colleges of Art and Music; and the Royal Albert Hall.

2.3 On 8 April 1867, the Corporation was established by Royal Charter under the chairmanship of the Prince of Wales in order to translate Prince Albert's vision into a reality and to oversee the building of the Hall.

2.4 I produce **Exhibit 9**: The "Blue Book", a volume containing the Hall's charters, private Acts, 999-year lease and byelaws.

2.5 Realising Prince Albert's vision faced considerable uncertainty. Initial funding came from the Commissioners of the Great Exhibition of 1851, who were also able to provide the site for it on a long lease at a nominal rent. This alone was insufficient. The builders of the Hall had to take part payment in the form of access to seats in the Hall, once built. The balance was raised by public subscription – also in return for access to 'permanent' transferable seats in the Hall, once built.

2.6 The public could subscribe for seats in a first tier box, a second tier box or in the amphitheatre. This gave a right to occupy a designated seat for the term for which the site for the Hall was to be leased to the Corporation by the 1851 Commission.

2.7 The right to access a seat was declared to be the 'personal estate' of the subscriber and its successors in title.[1]

2.8 In this way, the Hall was established subject to the pre-existing rights of access of the seat owners. The right of access was not granted by the Corporation and is distinct from the assets at the disposal of the Corporation. That remains the case today.

2.9 The lease was subsequently granted to the Corporation by the 1851 Commission on 25 March 1872 for a period of 999 years from 25 March 1867.

2.10 Seatholders were not to be, and are not, equivalent to shareholders in a company. They do not share in any surpluses. The original charter expressly prohibits any dividend being paid to a Member and provides that any profit will be retained by the Corporation for its undertaking.

2.11 Under the terms of the Charter of 1867, the Provisional Committee led by the Prince of Wales was replaced by a President and Council to be elected by the Members from among their number.

2.12 The President and Council were charged with the continuing management of the Hall. By electing the President and Council, the seatholders were given some control over the management of the Hall – partly, I believe, because they would have a direct interest in the Hall being a success and partly to enable them to manage the risk associated with their investment.

2.13 I produce **Exhibit 10**: A copy of the 1865 prospectus to potential subscribers for access to seats in the proposed Royal Albert Hall and refer in particular to paragraph 26 of that document, which states:

"There seems, then, little reason to doubt that the purchase of boxes or seats in the Hall may be looked upon as the acquisition of a property from the use of which constant enjoyment and instruction may be derived, and which, in a pecuniary point of view, will prove a remunerative investment, to be realised either partially by the letting of seats, or wholly by the sale of the entire interest of the purchaser".

[1] Royal Charter, 1867, Schedule, paragraph 8.

2.14 By a Supplemental Charter of 1928, the constitution was modified by the addition of five Council members – one appointed by each of The Secretary of State (then the President of the Board of Education), the Natural History Museum, Imperial College, the Royal College of Music and the Commissioners of the 1851 Exhibition, increasing the total number of Council members to 23 and the President.

2.15 This unique and, we say, ingenious, model has been the core of the Hall's constitution and governance ever since – a form of charitable/private partnership under which the seatholders and the Hall were constitutionally conjoined at birth with a concomitance or mutuality of interests. The original Members partially funded its construction, and the Members now oversee its governance and actively sustain it financially. Members are additionally incentivised to make the Hall succeed because, if it were to fail and the Hall's lease were to be forfeited, they would risk losing their private property rights or see them reduced to a nil value.

2.16 I produce as **Exhibit 11**, a Report by Sir Robert Owen dated 25 March 2014 on his review of the operation of section 14 of the 1966 Act (**'the Owen Report'**). At paragraph 19, he summarised the position as follows:

'Thus in summary the management of the Hall is vested in the Council; but under paragraph 11(2) of the Second Schedule to the 1966 Act, its power to let the Hall is expressed to be subject to the proprietary rights of the Members …. It follows that the seats in private ownership cannot be used for the pursuit by the Corporation of the purposes for which it was established, nor for its charitable objects, save to the extent to which the proprietary interest in such seats is limited by Act of Parliament, or by the agreement of Members to forgo or limit their rights to occupy their seats.'

2.17 The Hall took less than four years to build. It was opened by her late Majesty, Queen Victoria, on 29 March 1871 with the charitable objects of maintaining the Hall and appropriating it for promoting of the Arts and Sciences (as more specifically set out in article 3 of the charter of 1867). Queen Victoria remarked that it looked like the British Constitution.

2.18 From that moment, and now for over 150 years, the Hall has been a landmark in the cultural life of the nation, as a place of celebration, entertainment, enlightenment and commemoration. It has become one of the world's greatest and most recognised venues for the performing arts.

2.19 The Corporation was registered as a charity in 1967.

3 The Hall today

3.1 Unlike many historic buildings, where the emphasis is on capturing social history through preservation, the Hall has had to evolve constantly in order to retain its pre-eminence as a contemporary performance space whilst still protecting the historic integrity of its magnificent Grade I listed building.

3.2 Today, the Hall hosts a wide range of cultural activity - the BBC Proms, Cirque du Soleil, the Festival of Remembrance, film premieres, film with live orchestra, ballet,

opera, rock and pop music, sport, fashion, spoken word and schools and community performances - and prestigious red-carpet events such as the Royal Variety Performance, the Fashion Awards and the Olivier awards.

3.3 As at 31 December 2023, our staff headcount was 482.

3.4 Nearly 400 events take place each year in the main auditorium and many more in other spaces. These attract 1.7 million visitors each year.

3.5 The Hall encourages other institutions and charities to use the Hall, such as Imperial College for its graduation ceremonies, the Royal Navy for the Mountbatten Festival of Music and Teenage Cancer Trust for fundraising concerts.

3.6 In addition, the Hall operates an Engagement Programme, which reaches out to thousands of people of all ages each year in local communities and schools, giving opportunities to learn about the performing arts and experience live music.

3.7 The Hall actively pursues policies on accessibility, diversity and sustainability. It is actively facing the challenge of becoming carbon net zero.

3.8 To attain these high levels of public benefit and meet the cost of doing so, the Hall operates with a proper degree of commerciality in the delivery of its charitable purposes.

3.9 The Hall employs a Chief Executive and an Executive team to deliver its strategy and business plan.

3.10 The Hall usually manages to make an annual surplus through:

3.10.1 Operational activities (lettings, own-promotions and co-promotions, ticket commission, sponsorships, merchandise, catering and tours)

3.10.2 Philanthropy; and

3.10.3 the support of the private seat owners.

3.11 In this way the Hall operates with financial independence and is proud to be able to do so. The Hall does not receive any annual grant-funding from the Arts Council.

3.12 There have been only two exceptions to this financial independence. The first was when the Hall received a one-off £40m capital grant from the National Lottery and Arts Council England in the late 90s. The second was when the Hall was required by the Government to close for 16 months in response to the Covid-19 pandemic. The Hall's available reserves could only cover three months of turnover. The Hall therefore received furlough support from the Government, took a £5m loan from the Government's Coronavirus Business Interruption Loan Scheme (CBILS) and then took an interest-bearing £20.74m loan from the Government's Culture Recovery Fund, which it must repay over the next 20 years (and which was used to repay the CBILS loan).

4 Members

4.1 The Hall's usual capacity is 5,272 seats. The exact number depends upon how each event is configured. Of these seats, 1,268 are privately owned and belong to some 316 seatholders.

4.2 Under the Hall's constitution[2], these seatholders are the Members of the Corporation. They range from corporate entities, trusts and charities to private individuals, some of whom can trace their family ownership back to the original subscribers. It is the long-term nature of their ownership that has created an enduring bond between the Hall and its Members.

4.3 Under the constitution, the Members' powers and functions include:

(a) electing members of Council;

(b) electing the President;

(c) electing the Treasurer;

(d) approving applications for a new charter;

(e) approving the 'annual contribution' or 'Seat Rate' (see section 6 below);

(f) considering the annual report and accounts;

(g) approving byelaws made by Council;

(h) calling a Special General Meeting to take into consideration 'special matters' relating to the business of the Corporation;

(i) demanding a poll on any resolution put to a vote at a general meeting;

(j) electing the auditors; and

(k) prescribing regulations

5 How the Members support the Hall

5.1 There is a long history of Members supporting the Hall in several ways.

5.2 As well as supporting the Hall individually and privately, as they may choose, and by a number of Members devoting their time and experience to acting as Council members and serving on the Hall's various committees, the Members support the Hall collectively in the following ways:

(a) They pay an annual levy, known as the 'Annual Contribution' or 'Seat Rate', towards the cost of maintaining the Hall: see **section 6** below.

(b) They sometimes contribute additional amounts by a Supplementary Seat Rate for other purposes: see **section 7** below.

[2] See Royal Albert Hall Act 1966, section 16 and Schedule 2.

(c) In 1951, they agreed to pay a capital sum, payable by annual instalments for a period of forty years[3].

(d) They relinquish their right to attend events so that the seat manifest available to promoters of events is greater, enabling the Hall to earn a higher level of income from such events through additional ticket commission, known as 'Exclusive Lets': see **section 8** below.

(e) They commonly give their tickets to promoters of community performances, which are designated as 'Community Ordinaries' – events for charities and community organisations, for example children's concerts, amateur performances and degree ceremonies by our neighbouring institutions.

(f) They frequently use the Hall's Ticket Return Scheme, through which Members' unwanted tickets are sold through the Hall's box office, thereby enabling the Hall to derive a booking fee and levy from them and to have a direct communication channel with these ticket buyers. There is no obligation on them to use the Hall's Ticket Return Scheme, however, and many Members sell their unwanted tickets on the open market, as they are entitled to do.

(g) Members co-operate with the Hall on hundreds of occasions each year by allowing their seats to be swapped for other seats so that the seating can be reconfigured for particular events.

6 Annual Contribution or Seat Rate

6.1 Originally, Members were entitled to attend events without charge and without having to contribute to the Hall's running costs but it soon became apparent that the Hall needed financial support.

6.2 The Royal Albert Hall Act 1876 therefore created the concept of a 'Seat Rate' – an annual levy to be approved each year by the Members in general meeting, not exceeding £2 per seat per annum.[4]

6.3 By the Royal Albert Hall Act 1927, the Seat Rate was increased to £3 per annum per seat for a period of six years.[5]

6.4 By the Royal Albert Hall Act 1966, the cap on the Seat Rate was removed and the Hall could levy any amount in excess of a required £10 per annum by way of Seat Rate for its stated purposes, if approved by two-thirds of the Members in general meeting and subject to a six-year cap agreed by a three-quarters majority of the Members in general meeting.[6]

6.5 The annual assessment of how much to ask the Members to pay as Seat Rate is undertaken by a committee of Council members who are not themselves seatholders. They make a recommendation to Council, which in turn makes a

[3] See Royal Albert Hall Act 1951, section 4.

[4] Royal Albert Hall Act 1876, section 4.

[5] Royal Albert Hall Act 1927, section 3.

[6] Royal Albert Hall Act 1966, section 3.

recommendation to the Members. The Seat Rate for 2023 was £1,538.00 plus VAT. The process and Council's decision on the annual Seat Rate is expressly considered each time by the Hall's Conflict of Interests Committee, although the Seat Rate above £10 per annum is collectively voluntary. As I will explain, the process of setting the seat rate under section 3 (Annual contribution) of the 1966 Act can be improved and so the Hall seeks to amend section 3 by clause 3 of the Bill: see **section 10** below.

7 Supplementary Seat Rate

7.1 Periodically, the Members have collectively agreed to be levied a Supplementary Seat Rate to help the Hall in other ways. It has been used to raise extra money for capital improvements by relieving the Hall of some its maintenance costs. It is entirely voluntary in the sense that it is only payable if agreed to by the Members by a two thirds majority.

7.2 Most recently, in 2020, the Members agreed to pay a Supplementary Seat Rate of £1,660 plus VAT per seat in total, payable over a period of four years, to help the Hall through the Covid-19 pandemic and to support the Hall's recovery plan. This raised a sum in excess of £2m for the Hall.

7.3 The Hall was closed for 16 months for the Covid-19 lockdown. Although the Members' income from their seats fell to a very low level, the Members continued to pay the Seat Rate at the full recommended rate plus the four-year supplement.

8 Exclusive Lets

8.1 When the Members forgo their tickets for an event, it is known as an Exclusive Let.

8.2 When the Hall opened in 1871, Members were entitled to attend every event at the Hall (at that time some 34 events per year). Over time, in order to help the Hall through financial difficulties, and initially to allow the Hall to be rented out for private events, the Members began, collectively, to relinquish their entitlement to attend events for a stated number of days each year.

8.3 By the Supplemental Charter of 1887, provision was made for the Members to agree by a two-thirds majority to being excluded from the Hall when let for private events not exceeding ten in any one year.[7]

8.4 By the Royal Albert Hall Act 1927, the occasions when Members could exclude themselves from events was broadened and included events that were not necessarily private events.[8]

[7] Supplemental Charter, 1887, article 11.

[8] Royal Albert Hall 1927, section 18.

8.5 By the Royal Albert Hall Act 1951, the occasions when Members could exclude themselves was broadened further and for an additional eight days in any year for certain kinds of event.[9]

8.6 By the Royal Albert Hall Act 1966, section 14, the Council was empowered to exclude Members from:

- up to seventy-five days a year other than a concert, recital or boxing or wrestling event;
- an additional 12 days for any type of event; and
- one-third of a series of six or more events, which are consecutive and substantially the same,

provided that any additional rent received by the Hall for the above, but excluding the additional twelve days, is applied in reducing commensurately the annual Seat Rate.[10]

8.7 This self-exclusion now stands at over 100 days (and approximately 120 events) each year. It augments the manifest that the Hall can offer to a promoter. It helps the Hall to attract high-end artists who might not otherwise come to the Hall. This, in turn, enhances the Hall's reputation as a venue for the most renowned artists.

8.8 As I will explain, the process for setting Exclusive Lets in section 14 of the 1966 Act is no longer fit for purpose and the Hall seeks to introduce an additional mechanism for setting such events by clause 4 of the Bill: see **paragraph 10.6**, below.

8.9 This history of the Members supporting the Hall can be seen as both charitable and as a form of enlightened self-interest in that it demonstrates a mutuality of interest between the Hall and the Members. The higher number of successful events that the Hall can stage and the higher the Hall's reputation, the more the Members may also benefit, either by attending events from which they have not been excluded or by selling their tickets for the events they do not themselves attend (in spite of reducing the number of events they may attend).

8.10 The Chief Executive will testify as to the financial benefit to the Hall of these different forms of support by the Members.

9 Emergence of Bill proposals

9.1 As I have testified, the Hall's constitution and operative provisions are to be found in its original charter of 1867, as revised by a series of supplemental charters and Acts of Parliament, the last of which was the Royal Albert Hall Act 1966.

[9] Royal Albert Hall Act 1951, section 9.

[10] Royal Albert Hall Act 1966, section 14.

9.2 In 2008, it became apparent that, without the knowledge or agreement of the Members, the Corporation had for several years been exceeding its entitlement under section 14 of the 1966 Act to treat events as Exclusives.

9.3 When this was reported to the Members, they expressed a willingness in principle for this exceedance to continue, subject to some form of control. It led to a new arrangement whereby the Members would agree by resolution each year to a departure from the terms of section 14 to continue subject to the terms of a Memorandum and Guidelines governing the manner and extent to which Exclusives and Ordinaries would be allocated: **Exhibit 12** for the current version.

9.4 This arrangement has continued each year since then but it has always been on the understanding that it was a temporary or 'interim' arrangement pending a long-term solution.

9.5 In 2013, the Corporation commissioned Sir Robert Owen to review the operation of the interim arrangements for departing from the terms of section 14 (**Exhibit 11**). One of the questions on which Sir Robert was asked to advise was whether the Council, with the support of the Members, was acting properly in continuing to operate the variance to section 14. He advised at paragraph 93:

"As observed at paragraph 19 above, there does not appear to be any reason why a member should not agree to forgo the right to occupy a seat on occasions, either on a temporary or permanent basis. The Council has acted on the basis that it is open to the membership at a general meeting, to agree to modify the right of Members to occupy seats. That approach would appear to be valid, given that the Corporation which consists of the Members, is empowered under the Charter to " … do all such acts and things as they think conducive to the purposes of the Corporation …". I would simply add that it will be for the Council and Members to decide whether it is desirable, for the avoidance of any doubt to see a definitive opinion from Chancery counsel on the point, alternatively to seek an amending Act of Parliament notwithstanding the delay that such a step would inevitably involve, and the disadvantage in that course of action identified at paragraph 61 above."

9.6 This analysis was helpful so far as it went but it did not address the question whether a majority could bind a minority in taking such action or what level of majority would be required to do so. It left a concern that such a resolution would require the agreement of every Member for it to be valid.

9.7 In referring to paragraph 61 of his report, Sir Robert was also drawing attention to the potential difficulty of any new legislation becoming outdated:

"61 …The principal argument against a new Act is that the arrangements for exclusive lettings would either have to be couched in such general terms that it would continue to be necessary for the Members to address the arrangement from time to time so as to take account of changing financial circumstances, or if in detailed terms as in Section 14. would be likely sooner or later to become outdated, and that, on the

premise that it is open to the Members to modify the arrangement for exclusive lettings by resolution in general meeting, that is the better course to adopt."

9.8 Before the substantive form of change that would be needed was agreed (such as an amended section 14), the focus was on how the change could be properly achieved. It was originally thought that it could be achieved by a Charity Commission scheme under the Charities Act but there was doubt about this owing to the inevitable interference in the private rights of the seatholders.

9.9 In 2015, leading counsel advised that the private rights of the Members were distinct from the Corporation. It followed from this that the powers of the Corporation and the Charity Commission to make changes regarding the administration of the charity did not extend to interfering with the private rights of the Members. For this, legislation would be required.

9.10 In May 2015, the Charity Commission itself expressed reservations about proceeding by way of Charity Commission scheme and in May 2016 confirmed its view that section 14 could not be amended by this process. The Corporation then decided that, rather than seek to amend section 14, which would be difficult to do appropriately for the long term to the satisfaction of the Members, owing to changing circumstances over time, which might make changes outmoded, it would be preferable to validate the 'interim' process that had been taking place since 2008 and which Sir Robert Owen had advised was in the mutual interests of the Corporation and the Members.

9.11 Clause 4 of the Bill seeks to achieve this by (a) making it clear that on this issue a majority can bind the minority by special resolution, thereby ensuring a valid process, and (b) leaving the detail to be subject to the annual approval of the Members, as now, thereby avoiding the risk of a prescriptive measure in legislation becoming outmoded.

9.12 In 2015 and 2016, a working group of Council identified a range of other potential reforms during a review of the Hall's constitution. After consultation with the Members and the Charity Commission, they were developed further and those that withstood further scrutiny were categorised and separated between those that could only be achieved by legislation and those that could be achieved by other means.

9.13 The Hall has been advised that a feature of the private Bill process is that the promoter of a Bill must swear on oath that the purposes of the Bill cannot be attained without the authority of Parliament – in other words, they cannot be achieved by any other means. The Hall has been advised that the other reforms that have been identified can be achieved by other means. The Hall has also been advised that an Act of Parliament is not required to alter the governance of the Corporation (if that should be considered to be desirable).

9.14 The Bill is therefore confined to measures that cannot be achieved by any other means.

10 The Bill

10.1 The Bill as deposited (**Exhibit 2**) contains three substantive clauses.

10.2 **Clause 3** seeks to amend section 3 of the 1966 Act by removing the provision of a cap to the seat rate, which, under the constitution, the Members set every six years. The voting threshold for agreeing the annual seat rate is being changed in the Bill from 66% to 75% (which is the current threshold for the setting of the six-year cap and is therefore proposed to be carried over to the annual seat rate in order not to weaken the rights of Members).

10.3 The requirement to set a six-year cap on the Seat Rate has not assisted the Hall and it has been unscientific, as predicting the future cost of maintaining the building is inherently difficult.

10.4 Recently, the Members were restricted by the six-year cap in how much they could contribute by way of Supplementary Seat Rate in response to the Covid-19 pandemic and recent unexpected inflation has demonstrated the artificiality of a six-year cap by reference to predictions of inflation.

10.5 The Hall has therefore concluded that the six-year cap serves no useful purpose.

10.6 **Clause 4** provides an additional mechanism to section 14 of the 1966 Act for the Members to agree to Exclusives in excess of, and of a different kind from, those permitted by the Act of 1966.

10.7 As I have explained, in each year since 2008, the Members have agreed, at the request of the Hall, to provide additional support for the Hall by supplementing and varying the Exclusives that section 14 permits. This is done on a rolling three-year basis in accordance with an agreed Memorandum and Guidelines on the number of Exclusive Lets and how they may be allocated.

10.8 I refer to **Exhibit 12**: The Memorandum and Guidelines, last revised in 2023, concerning the award and allocation of Exclusive Lets in variance of section 14 of the 1966 Act and discussed at **paragraph 9.3**, above. The commitment is given on a three-year rolling basis in order to enable the Hall to forward plan its bookings. In 2022, the Members extended this to enable the Hall to contract two major bookings for a period of five years.

10.9 For this to work, the decision needs to be binding each time on all Members (including future Members) but there is no statutory basis for the Members collectively to agree to the arrangement. So far, the annual resolution to grant extra Exclusive Lets has been passed each year by a substantial majority of Members but the Hall is exposed to the risk of the whole practice failing if any Member declines to accept it or challenges its validity. The practice therefore needs to be regularised by being put onto a statutory footing.

10.10 If enacted, the Bill will authorise the Hall to put to the Members each year its proposed revised arrangement which must then be agreed to by not less than 75% of the Members voting on the proposal at the AGM or an SGM.

10.11 The clause can be regarded as a technical measure in that it is designed to authorise and regulate current practice.

10.12 Twenty members may propose an alternative arrangement but, even if it is passed, the Hall is not obliged to accept it. Section 14 of the 1966 Act is not being repealed and so the Hall can always revert to its terms applying in default.

10.13 **Clause 5** would enable the Hall to sell (with membership) two extra seats in Grand Tier boxes, with the consent of the existing seatholders in those boxes; and to sell membership to a few existing seatholders in Grand Tier boxes who do not have membership. The clause was intended to provide a means by which the Hall could raise substantial new capital. We have decided, however, to withdraw the clause.

10.14 During the Second Reading debate on the Bill on 19 October 2023 (see **Exhibit 6**), there was some criticism of clause 5. The objection seemed to be to the potential for the owners of the new seats to be able to sell tickets for them in the same way that existing Members may sell tickets for their seats, as permitted by the Hall's constitution, even though this would not be at the expense of the charity and in spite of the opportunity to raise new capital for the Hall and use it to reduce the Hall's debt.

10.15 The Hall considers the criticisms of clause 5 to be misplaced but is concerned that its retention may jeopardise the progress of the Bill and increase by too much the costs of promoting it. Accordingly, clause 5 is no longer pursued. A copy of the Filled-up Bill showing the removal of clause 5 and other minor amendments which do not affect the substance of the Bill is at **Exhibit 8**.

10.16 The Hall considers that the Bill, as so revised, is of substantial value to the Hall without detriment to anyone. It can only be of benefit to the Hall. Although the provisions impact on the private rights of the Members, they have approved the Bill with near unanimity in two meetings, including the meeting that is required under the Standing Orders of the House relating to Private Business. A minute entry confirming that the requirements of the meeting held in accordance with the Standing Orders is at **Exhibit 7**.

10.17 The Bill therefore constitutes another stage in the long history of the bond between the Members and the Hall and their mutual interest in seeing the Hall succeed.

11 Petition of the Hon R Lyttelton, The Fanfair Alliance and the Court of the Worshipful Company of Musicians

11.1 The Petition (**Exhibit 4**) seeks two forms of amendment to the Bill:

11.1.1 First, an amendment to clause 5 in order to ensure that the interests of the Hall take precedence over those of the Members in any sale of new Grand Tier box seats (**'the Grand Tier Box Proposal'**). .

11.1.2 Second, a new clause to remove the ability of Members to sell tickets on the open market for a profit (or what the petitioners deem to be an unacceptable profit) (**'the Ticket Sale Proposal'**).

11.2 As regards the first proposal, Clause 5, which would authorise the sale of additional seats in twenty-six Grand Tier Boxes with membership, is withdrawn. This ground of opposition and this purpose of the petition falls away. I say no more about it, save that Mr Lyttelton was notified on 26 January 2024 that the clause would be withdrawn

11.3 As regards the second proposal, section 15 of the 1966 Act empowers the Council to prohibit by byelaw the sale of tickets by or on behalf of Members in the Hall or in the vicinity of the Hall. This prohibition is given effect by the Bye-law dated February 1967 which I produce as **Exhibit 13**. This did not prevent Members at the time from selling their tickets privately, for example through ticket agents, at above face value. The Council has no other power to prohibit, restrict or regulate the sale of tickets by Members. The Petitioners seek to amend section 15 by a provision to prohibit Members from selling their tickets other than at face value through a new form of Ticket Return Scheme: Petition, paragraph 53.

11.4 The Ticket Sale Proposal is different from the current Ticket Return Scheme which was introduced by the Hall in the 1970s and is a voluntary scheme that acts as a form of 'co-operative' enabling ticket proceeds to be pooled and shared equally among the participants. Under the Petitioners' proposal, the Ticket Return Scheme would be fundamentally different in character from the current Ticket Return Scheme. It would be set by the five Appointed members of Council only, not by agreement between the Corporation and the Members and Members would be prohibited from making any private ticket sales, whether at their open market value or even at face value, if not conducted through the Ticket Return Scheme.

11.5 The Hall resists the Petition, specifically the Ticket Sale Proposal, on the grounds that:

11.5.1 the Petitioners do not have locus standi pursuant to Standing Orders 115 and 117 of the Standing Orders of the House of Lords relating to Private Business (2018);

11.5.2 the Ticket Sale Proposal is not relevant to the content of the Bill now proposed;

11.5.3 the Ticket Sale Proposal is misconceived; and

11.5.4 the Ticket Sale Proposal would, if passed, be incompatible with Members' human rights.

11.6 Counsel for the Corporation will make submissions on these issues to the extent necessary.

(1) The Petitioners lack locus standi pursuant to Standing Orders 115 and 117

11.7 The Corporation held two Special General Meetings of the Members in order to approve the promotion of the Bill, which included the meeting that is required to be held in accordance with the Standing Orders of the House relating to Private Business (**'the Wharncliffe meeting'**). Mr Lyttelton is a Member of the Corporation and attended those meetings. Mr Lyttelton did not dissent from the resolution at either of those meetings. He supported the promotion of the Bill. Mr Lyttelton is not specially and directly affected by the provisions of the Bill in a manner different from the way other Members are affected by it.

11.8 Mr Lyttelton was appointed as President of the Corporation in March 2010, following the untimely death of the then President, Mr John Ancliffe. Mr Lyttelton then served as President for one year from May 2010 to May 2011. He did not resign from the presidency, as is averred at paragraph 11 of the petition. At the expiry of his first year as President in May 2011, he withdrew from seeking re-election after learning that Council members would not support his re-election.

11.9 At paragraph 10(a) of his petition, Mr Lyttelton refers to current and other past positions in support of his standing to petition. I cannot see the relevance to the Bill of any of those positions.

11.10 I am advised that, in these circumstances, Mr Lyttelton has no right to be heard. The Corporation therefore challenges Mr Lyttelton's locus standi.

11.11 The Fanfair Alliance is a campaign by a group of music managers and businesses against unrestricted reselling of tickets. I do not know how it is constituted or how it makes decisions. The Hall has not received any communication about the Bill from the Alliance before receiving its petition. I cannot see how either the Alliance or its members are specially and directly affected by the Bill. When Members of the Corporation sell tickets privately, they are not resales and the Bill does not seek to authorise resales. The Alliance's cause is therefore irrelevant to the content of the Bill. I am advised that it in these circumstances, the Alliance has no right to be heard. The Corporation therefore challenges the Alliance's locus standi.

11.12 The Worshipful Company of Musicians is a city livery company. It is governed by an elected Court. Its current Master is Mr Lyttelton. The Hall has not received any communication about the Bill from the Company before receiving its petition. I do not have access to its governing instrument (its royal charter of 1950) but I cannot see how its publicised functions relate to the Bill or how the company or its members can be specially and directly affected by the content of the Bill. I am advised that in these circumstances, the Company has no right to be heard. The Corporation therefore challenges the Company's locus standi.

(2) The Ticket Sale Proposal is outside the scope of the Bill

11.13 The Ticket Sale Proposal was not raised by Mr. Lyttelton at the Wharncliffe meeting or a subsequent meeting required by the Hall's constitution; indeed, as I have noted, he supported the promotion of the Bill. The proposal is, however, consistent with a

personal campaign that Mr. Lyttelton has run since he ceased to be President against the Hall's current form of governance and the right of Members to dispose of tickets for their seats as they choose.

11.14 As part of this campaign, Mr Lyttelton applied to the Charity Commission in 2014 to have the Corporation deregistered as a charity. The Commission replied that, in its view, the Corporation was and always had been a charity. On 12 November 2014, Mr Lyttelton appealed to the Charity Tribunal. In 2015, the Corporation joined in the proceedings and invited Mr Lyttleton to withdraw his appeal on the ground that it was a vexatious complaint and an abuse of process, as Mr Lyttelton had admitted privately that the Hall "is and always has been" a charity. The appeal was subsequently withdrawn.

11.15 The Bill is not concerned in any way with the right of Members to deal with tickets for their seats as they please. The proposal therefore falls outside the scope of the Bill, which should not be used as a vehicle for Mr. Lyttelton to resume his personal campaign.

(3) The Ticket Sale Proposal is misconceived

11.16 In any event, I believe that the petitioners are mistaken in suggesting that the proposal is justified on the ground of a conflict between the Members' private right to sell their tickets as they choose and the Hall's charitable purposes: see Petition, para 49. The whole construct of the Corporation's constitution is founded upon a mutuality of interest between the Corporation and the Members (see **paragraph 2.15** above) and, on the relatively few instances where the respective interests may not be fully aligned, the Corporation has arrangements in place to ensure that the charitable purposes of the Corporation are not undermined.

11.17 I return to this issue of potential conflict below at **paragraph 14** when addressing the Charity Commission's concerns and their proposal for removing seatholders as Trustees or reducing their number on Council to a minority. Not even the Charity Commission's proposals seek to interfere with or curtail the Members' private rights. Their concern has been with how the exercise of such rights in some instances may be perceived negatively for the reputation of the charity. Even if (which I do not accept) the Charity Commission's concerns are well-founded, their reform proposals are concerned with the composition of the Council of the Corporation, not with the right, as such, of the Members to deal with their tickets as they choose. The Ticket Sale Proposal affects all seatholders, not just those who are members of the Council. It would constitute a radical interference with Members' private property rights.

11.18 The Ticket Sale Proposal also relies upon the five Appointed Council members to operate or approve a new form of Ticket Return Scheme. I am not aware of those Council members having been consulted on this proposal. I doubt whether they would welcome this additional function, separate from their general duties as Trustees of the Corporation, which I believe would be potentially divisive, as between the Appointed members of Council and the elected Council members and as between Council and Members generally.

11.19 By failing to make clear what is meant in this context by "for a profit", the purpose of the proposed new clause is ill-defined. It seems to be founded on the premise that it is acceptable to make a profit by selling a ticket at the promoter's equivalent of face value through the Ticket Return Scheme but not by selling the ticket at the same price by any other means.

11.20 Mr Lyttelton identifies himself with the aims of the Fanfair Alliance regarding ticket sales on the secondary market. Sales of tickets by Members are not secondary sales. Nevertheless, the Ticket Sale Proposal is more restrictive than the Alliance's proposals and any current public policy on the subject. It is therefore oppressive.

(4) The Ticket Sale Proposal would breach Members' human rights

11.21 The rights of seatholders include the right to sell their seat and any tickets to which they are entitled at open market value. I address this in more detail at **paragraph 15** below, should the Bill Committee consider this issue to be relevant. The Ticket Sale Proposal removes the right to sell tickets at their market value and would adversely affect the value of the property right in the seat. It would not be appropriate to legislate on such an issue by a private Bill without the consent of, or even consultation with, those affected. I am advised that in those circumstances the Bill containing the proposed new clause would not be compatible with the rights of Members under Article 1 of Protocol 1 of the European Convention on Human Rights. I note that Standing Order 38(3) of the Standing Orders of the House relating to Private Business requires a statement of opinion, by the promoters, as to the compatibility of the provisions of the Bill with the Convention rights. This statement was duly given when the Bill was deposited (a copy of the Bill as deposited is at **Exhibit 2**), based upon the Opinion of Leading Counsel (**Exhibit 1**). In accordance with Standing Order 98A of the Standing Orders of the House relating to Private Business, a report by a Minister of the Crown on the statement of opinion was published on 31 January 2023 (**Exhibit 3**).

12 Reports on the Bill by the Attorney General and the Charity Commission

12.1 I understand that the Attorney General's Report will not be provided until after the deadline for the Hall's evidence. It is not known whether this will include a contribution from the Charity Commission. Counsel for the Corporation may make legal submissions on the Report but if evidential issues arise the Hall respectfully requests the opportunity to file further evidence. This may necessitate a request for an adjournment or a further hearing.

12.2 I produce as **Exhibits 15 - 20** recent correspondence between the Hall and the Attorney General and the Charity Commission which is self-explanatory and to which I may need to refer further depending on the content of the Attorney General's Report.

PART B: EVIDENCE IN RESPONSE TO OTHER MATTERS THE HALL DOES NOT CONSIDER TO BE RELEVANT TO THE BILL

13 Introduction

13.1 I am aware that a number of criticisms have been made of the Bill, including by members of the House of Lords during the Second Reading debate on the Bill, as well as by the Charity Commission.

13.2 The purpose of this Part B is to address the gravamen of these criticisms, albeit only in short summary because these fall outside the scope of the Bill. If the Committee wishes to hear more fully from the Hall on these other issues, I would respectfully request an adjournment in order to allow for further evidence to be prepared.

13.3 I hope the Committee will agree that this is not necessary. It would also add significantly to the Hall's costs.

13.4 There appear to be three main issues, as follows.

14 Potential conflict of interest between seatholder Trustees and the Hall

14.1 The constitution of the Hall is said by the Charity Commission to create a 'clear conflict of interest' for elected seat-holders on Council between their duty, as Trustees, to the charity and their private interest as seat owner. That is said to be:

'*Because the trustees who are also seat-holders are in the majority, they have the opportunity to influence decisions on matters related to seat-holders – for example, the amount that the seatholders pay annually for their seats. It is also possible for seat-holders to sell their seat tickets on the open market, which creates a private benefit to these trustees*': see the Charity Commission Briefing Note for the debate on the Bill's Second Reading on 19 December 2023 at **Exhibit 5**.[11]

14.2 The potential for a conflict of interest was recognised during the passage of the Bill for the 1927 Act when the then Bill Committee recommended as a safeguard the addition of five Appointed (and therefore non-conflicted) Council members. That recommendation was implemented by the Hall in its Supplemental Charter of 1928 see **paragraph 2.14** above).

14.3 Since that time there have been eighteen elected Council members at any one time in addition to the five appointed Council members. Six are elected per year for a three-year term. Of these eighteen, fourteen are currently seatholders in their own right. Four were nominated to stand for election by a corporate Member holding seats. In practice, the potential conflict of interest currently applies mainly to the fourteen seatholding Council members (the number of conflicted members of Council varies according to how many personally own seats).

[11] This Briefing Note was not shared with the Corporation. It contains a number of errors.

14.4 The Charity Commission wishes the Hall to reform its constitution in a way that would effectively remove seatholders from holding a majority on the Council, a view it has held since at least 2015. The Commission has taken a number of steps to effect such a change, to date without success. In 2015, the Charity Commission required the Hall to apply by 30 September 2015 for a scheme under the Charities Act 2011 that would radically change its form of governance or to explain why it would not do so and supply an alternative scheme, failing which it would instigate the process for making a scheme under section 70(5) of the 2011 Act. The Hall, having obtained legal advice, declined to apply for a scheme. I produce **Exhibit 21,** the Commission's letter of 3 June 2015 with the form of a scheme attached and **Exhibit 22**, the Corporation's reply of 28 September 2015.

14.5 On 2 August 2017, the Charity Commission sought to refer the matter to the Charity Tribunal for its determination of certain questions relating to the Hall. The referral required the consent of the Attorney General under section 325 of the Charities Act 2011. Consent was originally given but, after complaint by the Corporation that it had not been consulted, it was withdrawn. The Commission applied twice more. I produce **Exhibit 24** the Charity Commission's letter to the Corporation's solicitors of 2 August 2017, **Exhibit 25** the Charity Commission's second request to the Attorney General of 1 June 2018 and **Exhibit 26** the Charity Commission's letter to the Corporation's solicitors of the same date, **Exhibit 27** a Draft Explanatory Memorandum by the Commission dated October 2019, **Exhibit 28** the Charity Commission's third request to the Attorney General of 4 December 2019 and **Exhibit 29**, the Government Legal Department's letter of 23 August 2021 explaining the Attorney General's reasons for declining to give consent to a section 325 reference on the ground that 'he does not consider it to be in the public interest in the due administration of charities to do so'.

14.6 The Commission appears to regard the Bill as a missed opportunity for making the changes to the Hall's constitution that it has previously sought to achieve through the 2011 Act. This view was also expressed by certain Members of the House of Lords who contributed to that debate at Second Reading of the Bill.

14.7 There are, I would respectfully suggest, three objections to the Bill being used in this way.

(1) Governance reform is outside the scope of the Bill

14.8 First, the Charity Commission's proposals fall outside the scope of the Bill. The Bill is concerned with constitutional amendments affecting the private rights of Members. It is not concerned with the Hall's form of governance. In the Hall's view, matters concerning the trusteeship of the Corporation are not within the proper scope of this private Bill. The Charter of 1867 provides the proper legal framework for those issues to be determined, which by paragraph 26 allows for constitutional changes (at least, those that do not affect private rights) to be made by way of an application to the Privy Council for an amendment to the Charter. The 2011 Act provides for the manner in which the Charity Commission may intervene, should it consider it

necessary to do so. A Bill is neither necessary nor appropriate for achieving the proposed reform.

14.9 The Attorney General, who is the guardian of the public interest for the purposes of the 2011 Act, gave a fully reasoned decision in the Treasury Solicitor's letter of 23 August 2021 as to why it was not in the public interest to make a section 325 reference to the Tribunal having considered submissions by the Hall and the Charity Commission.[12]

14.10 The current Attorney General will be filing her report for the Opposed Bill Committee on 15 April 2024. If the Attorney General proposes further amendments to the Bill or if, following receipt of that report, the Committee considers the Hall's governance to be relevant to its deliberations on the Bill, the Hall would wish to have an opportunity to address this by further evidence and legal submissions focussed on charity law which may require a request for an adjournment or a further hearing.

(2) Governance reform is unnecessary

14.11 Second, such reform is not in the public interest because it is unnecessary for the reasons which the Hall have previously outlined in their responses to the Charity Commission's proposals for reform of its governance: see, for example, the Hall's response of 28 September 2015: see **Exhibit 22**, at paragraphs 3.1-3.27 and 3.43-3.49. In short summary:

14.11.1 First, the private interests of Members are not conferred on them by the charity. They derive from the pre-existing private rights of the seatholders arising at the time of the Hall's creation. They therefore do not impinge upon the charitable status of the Corporation, regardless of their magnitude or value: ibid, 3.2, 3.5.

14.11.2 Second, any private benefit accruing to Members is incidental to the charitable objects of the Hall: ibid, 3.5-3.8 and Sir Robert Owen's view (**Exhibit 11**) at paragraph 20. This applies equally to Members who also act as Trustees.

14.11.3 Third, there are two specific examples identified by the Charity Commission of a conflict between the private interests of seatholder members of Council and their fiduciary duty as Trustees, neither of which on analysis bear scrutiny:

(i) Seatholder members have a private interest in setting a lower Seat Rate. The answer to this is that the Seat Rate (above £10 per annum) is a voluntary contribution decided upon each year by the Members as a whole, not by the Council: ibid, 3.27-3.29. In any event, the committee of the Council that recommends the Seat Rate to the Members is comprised of Council members who are not

[12] Contrary to the understanding given at Second Reading of the Bill, e.g. Lord Etherton stating that permission was refused by the Attorney General without any explanation at all and describing this as "really quite a scandalous approach to a serious issue": see Col 320, **Exhibit 6**.

seatholders: see **paragraph 6.5** above. Furthermore, recommendations on the Seat Rate by the Council are treated as a 'Designated Collective Conflict' which is automatically referred to the Conflicts Committee as a 'minded to' decision under para 21 of the Conflicts of Interest Policy at **Exhibit 14**, referred to below, paragraph 14.11.7.

(ii) Seatholder members have a private interest in setting a programme of events that is skewed towards more commercial events. There are a number of answers to this as set out in the Hall's 2015 Response (**Exhibit 22**) at 3.22-3.26.

14.11.4 Fourth, any so-called conflict of interest is, in reality, a mutuality or congruence of interest between Members and the Hall: ibid, 3.31.

14.11.5 Fifth, any conflict of interest is authorised by the governing Charter and statutes of the Hall and is therefore lawful: ibid, 3.31.

14.11.6 Sixth, any Trustee facing a conflict of interest owes a fiduciary duty to act in the best interests of the Hall, not him or herself.

14.11.7 Seventh, the Hall has responded to the risk – perhaps more accurately, the perception of risk - of any conflict of interest between seatholders who act as Trustees and the Hall, through the introduction of a Conflict of Interests policy: ibid, 3.15. I produce **Exhibit 14**, the Corporation's current (2022) Conflict of Interests Policy for Council members.

14.11.8 The policy includes a Conflict of Interests Committee made up of non-conflicted Council members who oversee at first hand all the decisions of Council and how they are reached. The Committee also reports annually to the Hall's auditors who are instructed periodically to review the operation of the policy. The Hall also has a Whistleblowing Policy that all staff including the Executive team can invoke if concerned about the management of the conflict of interests. Further evidence relating to these policies, and how they operate in practice, can be provided but may necessitate an adjournment or further hearing.

14.12 I accept that the Charity Commission does not accept the Hall's position and made detailed submissions to the Attorney General as to why its proposals for reform should be adopted by means of a section 325 reference: see, for example, its Explanatory Memorandum of October 2019 at **Exhibit 27**. As I have observed, the Attorney General did not accept such a reference to be in the public interest for reasons set out in the GLD's letter dated 23 August 2021 (**Exhibit 29**). If the Charity Commission wishes to reopen that issue, then the proper course is to make a further request for a reference to the Attorney General.

(3) Governance reform would be damaging to the Hall and its charitable objects

14.13 Third, such reform would not be in the public interest because it would be damaging to the Hall and its charitable objects for the reasons previously made by the Hall, see, for example, its 2015 response (**Exhibit 22**), paragraphs 3.38-3.40, sections 5 and 6.

14.14 In summary, it risks alienating the Members and thereby undermining their relationship with the Hall, which has underpinned the successful performance and independence of the Hall for 150 years. It would be divisive both between the Council and the Members and within Council when the current constitution has created a remarkably enduring unity between them. The current level of participation by the seat owners in the running of the Hall is hugely beneficial to the charity. They constitute a cohort of supporters bonded to the Hall for the long term by virtue of their permanent seat-owning interest. I have already explained how the Members have supported, and continue to support, the Hall in numerous ways, at their own cost, for the benefit of the Hall and its charitable purposes. Any change that risks undermining that support risks undermining the Hall and its charitable purposes.

(4) Conclusion

14.15 In conclusion, the Bill should not be used as an opportunity for the Charity Commission to sidestep the provisions of the Charities Act 2011. In any event, the reforms the Charity Commission proposes are unnecessary and potentially damaging and counterproductive. Where a conflict of interest between seatholder members of the Council and the Hall does arise, it is successfully managed by the Hall's Conflicts Policy and by other safeguards.

14.16 While the Hall is respectful of the views of its regulator, which is rightly concerned that even the perception of a conflict of interest may be damaging to the Hall and its charitable purposes, any such perception must be kept in perspective: see the Hall's 2015 Response (**Exhibit 22**), 3.36-3.37.

14.17 I produce **Exhibit 30**, an independent survey by Populus carried out in February 2018 which found that the Hall's reputation among its customers and the general public was higher than other comparable charitable institutions including the National Theatre and the Royal Opera House.

15 The sale of tickets at market value rather than face value is incompatible with the Hall's charitable objects

15.1 The subject was considered in November 2016, as part of the Corporation's constitutional review. I produce as **Exhibit 31** and reproduce as **Appendix 1** to this statement the relevant part of a Report and Recommendations of the review group, which were subsequently accepted by Council. I was a part of the review group along with Mr. Ainscough (then our Chief Financial Officer and now our Chief Executive) and the then Secretary to the Corporation. That still summarises the position and I adopt it as my evidence.

16 Coronavirus Loan

16.1 When the Government required the Hall and other performance venues to close their doors to the public in March 2020, without anyone knowing when they could reopen, the Hall's financial position looked bleak. The Hall's reserves would quickly run out. Its auditors might then have to conclude that it was no longer a going concern. The Hall could then have been facing long-term closure, if not insolvency. The

Government stepped in with its nationwide Coronavirus Job Retention Schemes (enabling furloughing) and gave a £5m loan from its Coronavirus Business Interruption Scheme (CBIL).

16.2 Then, on 5 July 2020, the Department for Digital, Culture, Media & Sport (DCMS) announced a £1.57bn Culture Recovery Fund rescue package for cultural organisations to help them survive and, when possible, reopen. A Culture Recovery Board, chaired independently by Sir Damon Buffini, was created to recommend how the Fund should be dispensed, partly by grants and partly by loans. On Monday 7 December 2020, the Culture Recovery Board approved a loan to the Hall of £20.74m on terms similar to those for loans to other cultural institutions (such as the National Theatre, the Royal Shakespeare Company and the Southbank Centre). With this loan, the Hall immediately repaid the initial £5m loan and was able to continue with critical maintenance work. The £20m loan will be repaid in due course in accordance with its terms. In the meantime, it is giving the Hall the time needed to rebuild its financial stability.

16.3 No-one criticised the loan at the time but I am aware that misgivings have been expressed by some, including some members of both Houses, that this loan is inappropriately subsidising, at public expense, the private interests of the seatholders who should have bailed out the Hall themselves.

16.4 My response to this is:

16.4.1 First, that the 316 Members did subsidise the Hall during the Covid-19 pandemic by continuing to pay the standard Seat Rate, despite the Hall's closure for 16 months, *and* by paying a Supplementary Seat Rate over the four years 2020 to 2023, which provided in excess of £2m for the Hall (as grants, not loans): see **paragraphs 7.2** and **7.3** above

16.4.2 Second, seatholders collectively own fewer than 25% of the seats in the Hall (1,268 out of 5,272), the great majority of which (4,000+) are owned by the Hall and applied exclusively for the purposes of its charitable objectives.

16.4.3 Third, seatholders continue to contribute to the ongoing operation of the Hall, including through the payment of the Seat Rate and by foregoing their right to seats for Exclusive Lets: see **section 5** above. The annual financial contribution of the Members, according to the Chief Executive, James Ainscough, may be conservatively calculated as £4.4 million per annum.

16.4.4 Fourth, the Hall received a loan, not a grant, which is to be paid back in accordance with its terms.

16.4.5 Fifth, Covid loans and indeed capital grants were not only paid to charities but to private corporations as well. I understand over 1.6 million businesses received Covid-19 loans totalling over £80 billion.[13]

[13] https://www.gov.uk/government/news/final-covid-loans-data-reveals-80-billion-of-government-support-through-the-pandemic#:~:text=Businesses%20were%20supported%20through%20the,today%20(6%20July)%20reveal

16.5 In those circumstances, I would respectfully suggest that any criticism of the Hall for seeking and accepting a Covid-19 recovery loan is misplaced.

17 Conclusion

17.1 The Opposed Bill Committee is humbly requested to approve the Bill, save in relation to clause 5, which is withdrawn. I will be happy to develop my evidence and to answer any questions orally.

Ian McCulloch
12 April 2024

APPENDIX 1

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.

APPENDIX 2

List of Exhibits

BILL DOCUMENTS

1. Opinion of Paul Bowen KC on compatibility of Bill provisions with the European Convention on Human Rights, dated 17 November 2022.

2. The Bill as deposited, 28 November 2022.

3. The report by a Minister of the Crown on the statement of opinion on Convention Rights dated 31 January 2023.

4. The petition of Hon. R Lyttelton, the FanFair Alliance and the Court of the Worshipful Company of Musicians, dated 30 January 2023.

5. Charity Commission's Briefing Note before the Bill's Second Reading in the House of Lords, 19 October 2023

6. Hansard Extract on the Second Reading debate on the Bill in the House of Lords on 19 October 2023.

7. Minute entry dated 22 November 2023 confirming compliance of the Wharncliffe meeting with Standing Orders.

8. Filled-up Bill, 18 April 2024

CORPORATION'S CONSTITUTIONAL DOCUMENTS

9. The "Blue Book", a volume containing the Hall's charters, private Acts, 999-year lease and byelaws.

10. Copy of the 1865 prospectus to potential subscribers for access to seats in the proposed Royal Albert Hall.

11. The Owen Report: Report by Sir Robert Owen dated 25 March 2014 on his review of the operation of section 14 of the 1966 Act.

12. Memorandum and Guidelines, 2023.

13. Bye-law dated February 1967.

14. Conflict of Interests Policy (2022 version).

CORRESPONDENCE BETWEEN THE HALL, THE ATTORNEY GENERAL AND THE CHARITY COMMISSION ON THE BILL

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

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

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

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

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

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

CORRESPONDENCE CONCERNING CHARITY COMMISSION'S REQUEST FOR A SECTION 325 REFERENCE TO THE ATTORNEY GENERAL

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

22. Corporation's reply dated 28 September 2015.

23. Not used.

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

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

26. Charity Commission's letter to the Corporation's solicitors dated 1 June 2018.

27. Draft Explanatory Memorandum by the Commission dated October 2019.

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

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

OTHER DOCUMENTS

30. Populus survey, February 2018.

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

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2023-24

ROYAL ALBERT HALL BILL

Witness Statement of James Ainscough for Opposed Bill Committee, 22 April 2024

PART A: EVIDENCE IN SUPPORT OF THE BILL

1 Introduction

1.1 My name is James Martin Ainscough. I have been Chief Executive of the Royal Albert Hall since May 2023. I also worked there between January 2008 and December 2017, first as Director of Finance and then Chief Operating Officer. My contribution to this Committee's deliberations relates to the financial relationship between the Hall and its Members, in particular the essential financial support which the Members provide to the Hall.

1.2 When I refer to Members I mean Members of the Corporation, who we also commonly refer to as 'Seatholders' – so I use the terms interchangeably.

2 The Hall's financial model

2.1 The measures in the Bill are intended to improve the way in which the Seatholders can support the Hall financially. This is vital.

2.2 The Hall receives no recurring financial support from Arts Council England or government. Our income must be generated from our activities, or raised from donors. In addition, our Seatholders contribute financially each year, directly and indirectly. Without their support we would generate much less public benefit, and in fact at various points in our history we would likely have gone bust.

2.3 In 2023 £54.4m of income was generated, of which £46.7m came from performances and related commercial activity, with £7.7m from other income lines such as philanthropic support and interest income. Both these parts of our income are higher thanks to the support of the Seatholders.

2.4 Total expenditure of £42.7m in 2023 led to a surplus of £11.7m for the year.

2.5 We estimate in our Annual Report and Accounts that the Hall's annual income benefitted by some £4.4m in 2023 thanks to the ongoing support of the Seatholders. This is a very conservative estimate, and relates to the seat rate, Exclusive lettings (lettings where Seatholders are excluded), and operation of the Ticket Return Scheme (TRS). In the next section of my statement, I will break down how this figure is calculated. But to emphasise: over 40% of our £11.7m surplus in 2023 was attributable to the support of the Seatholders.

2.6 Of course, for all charities, there is no such thing as a surplus in the long-term. All the money we receive is ploughed back into the charity's work in future years, in particular to maintain and enhance the Grade I listed building which can soak up £10m+ per year at the very least.

2.7 But in addition, we are rebuilding our reserves which were exhausted during Covid. And of course we must save in order to repay, with interest, the £20.7m Culture Recovery Fund loan that DCMS and Arts Council England provided in 2021, without which we would have had insufficient operating cash flow to re-open the Hall and progress the backlog of essential maintenance projects required to preserve and maintain our Grade I listed building. The first loan repayment is due in March 2025 and we will then be repaying £1.6m per year until 2041.

2.8 So the financial support from the Seatholders is critical.

2.9 There have been many long periods in our history, particularly in the first 100 years, when we have not been able to generate a surplus. We are of course blessed with a glorious building and enviable performance history, which helps attract an ever-more diverse array of artists and audiences to fill the auditorium across almost 400 events annually. But for most of the Hall's history reliable financial surpluses from operating as a venue were out of reach. Two major things happened to change this:

2.9.1 We received a one-off £40m capital grant from the National Lottery and Arts Council England in the late 90s which, along with £30m generated by the Hall and donated by supporters, enabled us to build an underground loading bay which increased the number of events we could load in and out each year from around 270 to more than 370. This transformed our ability to "sweat the asset" as it were.

2.9.2 The second major intervention which, over time, has changed the Hall's fortunes has come from the Seatholders. Via two supplemental Charters and four Acts of Parliament between 1887 and 1966, the Members agreed to reduce their private rights and increase their financial support, which enabled the Corporation to generate a higher annual financial return.

2.9.3 In addition, for most of the 60 years since the most recent Act in 1966, they have voluntarily agreed to go over and above what is required of them. It is these voluntary arrangements that we conservatively estimate are worth at least £4.4m per annum.

3 How the Members support the Hall financially

3.1 The President has already explained the ways in which the Members support the Hall collectively. The estimated financial impact of those methods in 2023, is as follows:

3.1.1 Seat Rate: £2m per annum

3.1.2 Supplementary Seat Rate: £0.5m per annum

3.1.3 TRS: £1.2m per annum.

3.1.4 Exclusive lettings voluntarily given by the Members each year, over and above those which Section 14 of the 1966 Act allows: a conservative average estimate of £1.5m per annum.

3.1.5 This adds up to £5.2m. Our estimated figure of £4.4m is net of the Rebate (which I will explain later).

3.2 The Seat Rate

3.2.1 The Seatholders are required, under section 3 (1) (a) of the 1966 Act, to pay a minimum seat rate of £10 per seat per year. Section 3 also provides a mechanism for the Council to propose to the AGM a seat rate above £10 – if two thirds of those voting consent, then the higher seat rate is binding on all Members.

3.2.2 For many decades the Members have consented to pay a higher seat rate than section 3 requires. The Seat Rate in 2023 was £1,538 plus VAT per seat. This generated an income for the Hall (net of VAT) of just under £2m.

3.2.3 The Seat Rate is set annually at the AGM as a contribution to the Hall's upkeep. In addition to attributable budgeted maintenance and overheads the seat rate includes an average of the ten-year costs to maintain the building, as set out in the Hall's 15-year Estate Plan. The averaging method is used simply to even out the amount Members pay each year, given the uneven nature of project spend on the building.

3.2.4 In total in 2023 trustee Council members and their related parties paid a seat rate to the Hall of approximately £260,000.

3.3 Supplementary Seat Rate.

3.3.1 Over the period 2020-2023 the Members contributed a supplementary seat rate, without which we would have had insufficient operating cash flow to survive our pandemic closure and re-open the Hall, or to progress the backlog of essential maintenance projects required to preserve and maintain our Grade I listed building.

3.3.2 Periodically, the Members have collectively agreed to be levied a Supplementary Seat Rate to help the Hall in other ways. In the past it has been used to raise extra money for capital improvements, both during the Hall's major development in the early 2000s (raising just over £1.5m), and more recently to support building projects between 2012-2017, raising £2.3m.

3.3.3 Most recently, in 2020, the Members agreed to pay a Supplementary Seat Rate of £1,660 plus VAT per seat in total, payable over a period of four years, to help the Hall through the Covid-19 pandemic and to support the Hall's recovery plan. This raised a sum in excess of £2m for the Hall across those four years, at a time when the Members were receiving few tickets due to the long period of time where putting on events was restricted. The final tranche was paid to the Hall in 2023, adding just over £0.5m to our income for the year.

3.3.4 In total trustee Council members and their related parties paid a supplementary seat rate to the Hall of approximately £70,000 in 2023.

3.4 The TRS.

3.4.1 The TRS was launched in 1983. Its purpose is to provide a means by which Seatholders can sell the tickets they do not want to use through the Hall's box office. This gives the public the best possible opportunity to purchase all available Seatholders' tickets for each "Ordinary let" performance from the Hall's own box office and in particular reduces the potential for empty seats in an otherwise sold-out concert. All tickets returned to the TRS are sold to the public at the same price as the Hall sells equivalent promoter tickets.

3.4.2 Today the TRS is used by most of the Membership, with around 67% of tickets issued to Seatholders returned to the Hall's box office each year, making it as easy as possible for the public to access events staged in the main auditorium. The features of the TRS are set by Council and the Scheme is entirely voluntary for Seatholders. The Hall operates as an agent for any Seatholders who choose to use the TRS (administering the Scheme through the ticketing system that the Hall already operates for Promoters' ticket sales).

3.4.3 The Hall does not charge any fee to the Seatholders for this service and is only an intermediary between the Seatholders and the public who are purchasing their tickets. But the Hall does generate a direct income by charging the standard booking fee and levy to the public who purchase tickets. And the Hall can establish a direct communication channel with these ticket buyers.

3.4.4 If the TRS did not exist, it is likely that there would be more empty seats in the auditorium and a higher portion of Seatholders' tickets would be put up for sale on third party websites, in some instances at prices greater than the equivalent promoter face value and in many cases at prices lower than the equivalent promoter face value.

3.4.5 The Members' TRS is advantageous to the charity not only because it fills Members' seats when they are not being used by the Members and enables the charity to generate a direct income via the standard booking fee and levy charged on the ticket sales, but also because the TRS buyout compensates promoters for sales of their tickets displaced by Members' ticket sales. The existence of the TRS encourages Promoters to bring their acts to the Hall.

3.4.6 We calculate that the operation of the TRS, from the direct booking fee and levy income and impact on rental revenue, was worth £1.2m to the charity in 2023 (£0.8m in 2022).

3.4.7 A Seatholder who returned all of their tickets to the TRS would have received a financial return of £8,648 per seat in 2023. In 2023, £6.6m was distributed to Seatholders through the TRS.

3.4.8 The Hall's Council members actively supported the operation of the TRS. For the 169 seats owned by the Hall's Council Members and their related parties, 25,112 tickets were returned to the TRS (being 65% of the total tickets they received). The sale of these tickets, within the TRS, generated a distribution of £770,299 (equivalent to approximately £4,558 per seat) during 2023, equivalent to £30.67 per ticket returned to the TRS.

3.5 Exclusives Lets

3.5.1 When the Hall opened, Seatholders had the right to attend all performances (34 in the opening year). Over time, in order to help the Hall generate the finances it needed, the Members began collectively to relinquish their entitlement to attend events – those occasions are referred to as "Exclusives" (as opposed to "Ordinaries" where Seatholders can attend).

3.5.2 Exclusives tend to attract the most high-profile artists, because in effect the auditorium we are offering is larger, by 1,268 seats. This enhances the Hall's reputation and generates more income for the Hall (through the ticket commission we charge the promoters, and the standard booking fee and restoration levy that is added to the ticket price when we sell the tickets to the general public through our box office).

3.5.3 Most Exclusive lets also generate a small amount of income for Members – it is called the rebate and represents the additional fixed rental that the Hall can charge the promoters. But this modest compensation for each Exclusive performance is much less than the value of the tickets foregone.

3.5.4 In 2022 there were 130 Exclusive lets. These generated a total 'rebate' that Seatholders were entitled to receive during 2023 of £580 per seat (plus VAT), meaning a total cost to the Hall of £735,000 plus VAT. £98,000 of this went to the seats of Council members and their related parties.

3.5.5 Seatholders now exclude themselves from performances on up to 110 days during the year, which amount to approximately 130 performances each year. This includes on average 40-50 more Exclusives per year more than the 1966 Act allows.

3.5.6 It is difficult to quantify the value of these additional 40-50 Exclusives, because it is likely that the pattern of events would be very different if the Hall were not able to offer them. But two very simple calculations can set a value range:

(a) The likely reduction on the Hall's operating surplus if, say, 40 Exclusives were switched to ordinaries (assuming no impact at all on the lettings pattern). The difference in "net margin gain" (i.e. income less variable costs – being a show's contribution towards our overheads) between an Ordinary and an Exclusive in 2023 was approximately £37,000. So, if there were 40 Exclusives that could not have happened had it not been for the Members' collectively agreeing to a higher number of Exclusives than the 1966 Act permits, this is worth £1.5m to the Hall's bottom line.

(b) Alternatively, we could value the cost of buying back all the Seatholders' tickets for the additional Exclusives (i.e. on the assumption that, to retain the current letting pattern, we would buy out the Seatholders from these additional Ordinaries in order to offer a full auditorium to the promoters). We first estimated this figure around 10 years ago and the inflation-adjusted figure for that is £2.3m per year. However, re-calculating based on the 2023 letting pattern shows we had approximately 55 Exclusive lets over and above those permitted by section 14 of the 1966 Act. In addition, due to the popular nature of the performances concerned (principally relating to Cirque du Soleil performances, our "films in concert" series and some high-profile one-off shows), the cost of buying back all Seatholders' tickets would have been £6.2m pounds.

3.6 So to summarise, the estimated financial impact of £4.4m comprises:

3.6.1 Seat Rate: £2m per annum

3.6.2 Supplementary Seat Rate: £0.5m per annum

3.6.3 TRS: £1.2m per annum.

3.6.4 Exclusive lettings over and above those which the 1966 Act currently allows: a conservative average estimate of £1.5m per annum.

3.6.5 Net of the rebate, this adds up to £4.4m.

3.7 And of this £4.4m, the amount contributed by the Hall's Council members and their related parties is in the range £500-600,000.

3.8 This figure of £4.4m is conservative because:

3.8.1 We assume a value of these additional Exclusives of only £1.5m, whereas you could value them as high as £6.2m i.e. we have taken the lowest, most prudent figure.

3.8.2 It only relates to those areas of support that are in the year-by-year control of the Seatholders i.e. it excludes those areas of support which they have permanently given up through the various supplemental Charters and Acts.

3.8.3 It nets off the entirety of the Rebate payable to the Members for Exclusive lets, even though the majority of the rebate relates to Exclusive lets permanently available to the Hall under section 14 of the 1966 Act, not only those voluntarily agreed by the Members year to year.

3.8.4 It excludes indirect support that the Members may voluntarily give (including giving up their tickets for use by community groups via our Community Ordinary lets, giving their tickets directly to charities who hire the Hall, and donating tickets or money directly to the Hall itself)

4 Concluding comments

4.1 By simplifying the process for approving the Seat Rate through removing the 6-year cap, which unnecessarily constrains what can be asked of the Members, and by creating a process to finally put on a formal footing the Members' generous granting of additional Exclusives to the Hall, the Hall can be more certain of the financial support that it enjoys from the Seatholders.

James Ainscough
12 April 2024