

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 20 January 2026 (Afternoon)

In Committee Room 2

PRESENT:

Lord Hope of Craighead (Chair)
Baroness Bakewell of Hardington Mandeville
Lord Evans of Gwesborough
Lord Inglewood
Lord Ponsonby of Shulbrede

FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators
Alastair Lewis, Roll A Parliamentary Agent

FOR THE PETITIONERS:

Professor Malcolm McCrae
Philip Stubbings

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(At 2.05 p.m.)

1. THE CHAIR: Good afternoon. This session of the Select Committee on the Malvern Hills Bill is concerned with the issue of standing—that is to say whether petitioners have a right to be heard on the points mentioned in their petition. At the moment, that is the only issue we are dealing with. The petitioners raise a lot of issues, of course, which need to be considered separately, but we do not deal with them until we have got over the stage of deciding who is entitled to address us at all. Of course, we will have to deal with these points in any case, as counsel has explained, but it would be to our benefit to hear from petitioners if they have established that they have a right to be heard. If they have a right to be heard, then we will call them back to be heard in detail on the points mentioned in their petitions.

2. I think we begin, do we not, with you, Ms Lean, to address us as to the points you are wanting to make on standing, both generally and in particular to the particular petitions we are concerned with? We are concerned with four petitions: Professor McCrae's, and you are representing, as I understand it, Mr Spencer, Mr Stubbings and Mr Richardson.

3. PROFESSOR McCRAE: That is correct, my Lord.

4. THE CHAIR: It is those three petitioners. We will come back to the points that are relevant to them, but for the time being we will hear from Ms Lean as to the generality of the subject we are dealing with.

Statement by Ms Lean

5. MS LEAN: I am grateful, my Lord. Perhaps I can make some opening remarks which set out the promoter's general approach that it has taken to the standing challenges, and some of the precedents and authorities that are referred to in the note we have provided in the reference material behind you. May I just clarify, my Lord? Did you wish me to address the standing of all of the petitioners who are here this afternoon in one go, or to say a brief word before each one has their challenge considered in turn?

6. THE CHAIR: I think we are largely in your hands. I think there is a distinction between Professor McCrae, because you take a point against him that you do not take against the other three petitioners. Am I right? You say that he has not satisfied Standing

Order 111 because his petition does not identify particular points in the Bill which he wants to talk about, whereas the other petitioners do identify particular clauses, so there is a difference between the two.

7. MS LEAN: Indeed, my Lord, and I am happy to deal with them all together. I just wanted to confirm the running order.

8. THE CHAIR: Yes. I think we will do that, but recognising that there is a distinction between the two classes of petitioners.

9. MS LEAN: My Lord, I am grateful for the chance to provide a brief overview on the approach that we have taken to right-to-be-heard challenges and to outline the principles and practices that we have applied. The promoter has outlined its approach in a note dated 3 December 2025, a copy of which was sent to your committee's Clerk, and also that has been sent to all petitioners whom the promoter has challenged. Going back to the bundles that came in this morning, a copy of that is the first document you have behind the tab that says "3" in the A4 ring binder as opposed to the lever arch. It is that note, and the documents behind it, to which I will be referring this afternoon. I hope it is not necessary to go to the large reference bundle for any particular reason. I certainly do not have it in my note.

10. THE CHAIR: Sorry. Are we looking at the large bundle?

11. MS LEAN: In the small bundle this afternoon, my Lord.

12. THE CHAIR: The small bundle.

13. MS LEAN: There should be a single divider in there, so you will have the slides from this morning at the front and then, behind the divider, the material for this afternoon and the next few days of sitting.

14. My Lord, before I turn to the particulars of the note, if I could just outline two points of general application. First, at risk of slightly repeating myself from this morning, for which I apologise, the rules and applications of right to be heard or locus standi—I am afraid I started on this when it was still locus standi, and old habits die hard—they have a long-established history in both Houses of Parliament, and they continue to serve a vital role in determining who is entitled to be heard by a committee

of this House, a role that has been particularly stressed by the 1988 Joint Committee on Private Bill Procedure in its report of 1988. You have a copy of the relevant extracts from that report in that small bundle of materials, starting at page 40, and the relevant passages are at page 41. In particular it is paragraph 101, which is where we see the purpose and importance of locus standi or right-to-be-heard proceedings.

15. THE CHAIR: It would be helpful if members of the public would ensure their phones are on silent. Thank you.

16. MS LEAN: This is also the passage I touched on briefly in opening this morning at 101. It is the underlined passage: “The committee consider that it is a fundamental principle of private legislation procedure that only parties specifically affected should be entitled to be heard, and that the rules of locus standi must be upheld”. My Lord, there I did stress the word “rules”, because obviously there are Standing Orders and there are precedents, but broadly speaking, taken together, they are regarded as the rules of locus standi.

17. The second point I would highlight, if I may—and it sets the context for what is said in that 1988 report—is that, as this committee will be well aware, this Bill has been and will continue to be required to go through other necessary parliamentary stages required of a private Bill, and thus has been and will continue to be subject to scrutiny by Parliament. Thus, in terms of this stage of proceedings, specifically the consideration of petitions, it is really focused on those matters that specially and directly affect individuals over and above the generality of those persons who may be interested in or said to be, in broad terms, affected by the Bill.

18. That essentially is to stress the fundamental role of committees considering petitions against such a Bill, which is to look at those matters that are said to touch specifically and directly on individual interests in a manner differently to those who are more generally affected by it, so as to protract the provisions of the Standing Orders related to private business.

19. My Lord, to turn now back to the promoter’s note, which I will use as a framework for my submissions to you, if I may, this starts at page 3 of what I am going to call the locus bundle, just because I think we have given it L numbers. Starting at paragraph 6 on page 5 of the note, the promoter’s approach has been to identify petitions

for challenge where, having reviewed the petitions against Standing Orders, precedents and established practices, it does not appear to the promoter that the petitioner is clearly someone who enjoys a right to be heard as of right, or otherwise clearly falls within one of the Standing Orders under which your committee may exercise a broad discretion as to whether or not to hear a petitioner.

20. My Lord, to stress there that the discretion is broad once you are satisfied a petitioner is within one of those Standing Orders; it is not a broad discretion as to whether they fall within it or not. While some of the rules, precedents or practices may seem arcane—and in saying that, I am very conscious that you have in the bundle before you some reports going back to the 1800s—they are rules and practices or conventions that have been applied and carried through for many, many years, and there have been, at times, issues taken by petitioners, in particular where it is seen that there has been a change of approach between consideration of something in the other place and consideration by committees of this House. To just highlight in this context, given that this is a private Bill, any challenges to standing that may be made in the other House would fall for consideration by the Court of Referees, thus, I suppose, to urge slightly the desirability of ensuring a consistent approach.

21. To return to the note, at paragraph 1 of the note, which is on page 3 of the bundle, we have set out the general principle that, generally speaking, a petitioner is not entitled to be heard by a committee appointed to consider a private Bill unless it is proved that their interests are directly and specially affected by the Bill. My Lords, that position is encapsulated in *Erskine May*, the most recent edition, at 44.5, a copy of which you have as document 3 in this bundle. It starts at page 13, but the principle, if I may, on entitlement to have a petition heard, is at page 16 through 17.

22. My Lords, as considered by the House of Lords Select Committee on the HS2 Bill, a copy of whose report—or extracts from which—we have also provided you with at document 7, starting at page 42—that has conventionally been construed as meaning, “There is some prospect of direct and material interference with an individual’s property or private rights that would give rise to a private law cause of action if it was not authorised by statute”. Now, my Lord, in saying that, I am mindful of what the committee of this House said on the Holocaust Memorial Bill, which I will come to in a moment, but I do go back to that as the starting point, and the conventional

understanding of what is meant by “specially or directly affected” for the purposes of a right to be heard.

23. THE CHAIR: The conventional meaning makes a lot of sense if you are dealing with a Bill that is acquiring property. The HS2 example is a prime recent example where property owners were affected—people’s rights of access across land, use of land and so on and so forth—but we are well away from that in this case, are we not? We are not dealing with the acquisition of property. There are one or two cases where you might be able to say that rights of access—and indeed to commoners’ rights—but you accept that commoners have a right to then have standing anyway. Leaving them aside, we are dealing with interests of a quite different kind. The phrase itself is very broad—“specially or directly affected”—and by convention have added on this rejoinder about property rights and so on, but what I am suggesting to you is we are not really dealing with that in this kind of case.

24. MS LEAN: My Lord, if I may, certainly the authorities and the Acts—or a number of them—referred to in the earlier editions of *Erskine May* may well touch on works Bills, but it is by no means limited to works Bills. My Lord will have, for example, behind tab 18 of our reference bundle, the minutes of evidence before the Select Committee on the City of Westminster Bill in 2009. It starts at page 109 of that clip of materials. I am aware that Mr Lewis, who sits next to me, appeared as parliamentary agent on that Bill, so if I am stuck on any points of detail, I will look to my left if that is all right. In broad terms, this was a Bill that was making additional or amended provision for street trading in Westminster, so it was not a works Act or an Act to acquire land, and there was no suggestion in the report there that different rules failed to be applied because of the nature of the Bill.

25. In particular—and I was going to come to this authority, my Lord, in the context of consolidation Bills—if I may highlight paragraph 8 of the transcript, what was being identified there was that the petitioners’ interests were not affected, because it simply re-enacted the Westminster City Council Bill, and there were no changes in respect of the pedlars’ interests. There it was looking at matters such as licences.

26. My Lord, I do not say it is purely property interests in the sense of something being taken over land, but it is of the same ilk, which is a private interest—an interest in

a licence that would be protected at private law and that would be actionable if wrongly interfered with. Although the principle may commonly or most obviously have been seen in the early Bills to do with works powers, it is clear that, where this is considered, often there is something tangible that it attaches to in the form of some right or interest that would be protected at private law, as opposed to a more general interest in the sense of, say, enjoyment or suchlike.

27. THE CHAIR: This paragraph is talking about two things, perhaps, one of which is that there are no changes proposed in any event.

28. MS LEAN: Yes.

29. THE CHAIR: That is a point you take in some of the cases, but it does not really answer the point that the phrase needs to be construed generally in a case of this kind.

30. MS LEAN: My Lord, the reason I pulled up that authority was to illustrate a perhaps more modern, non-works-Act-related example of looking at the sort of interest, i.e. if there had been an interference with the pedlars' certificates or the pedlars' licence. That is some way removed from a works Bill that authorised the acquisition of land, but again, the sort of interest that is being talked about, which might be such as to give rise to locus had the Bill done something new that affected those interests, was still tied very much to this idea of a private right.

31. My Lord, it may be perhaps more helpful—because I am conscious that paragraph 8, which sets the scene, was particularly concerned with the idea that there was no change, but perhaps if My Lord would go through to page 117. There was a question raised about an earlier Bill, the Bournemouth and Manchester Bills, starting at paragraph 117 and 128 right down at the bottom, where it was considered that pedlars under that Bill were considered to be specially and directly affected for the purposes of standing, but that the difference in this case was that there was no change in the legislation, whereas there had been in the Bournemouth and Manchester Bills.

32. My Lord, if it assists, there is a submission on the previous page, 116, paragraph 99, which addresses this, and I believe this was a submission from somebody representing the pedlars at 99: "It is a fact that your petitioners may hold a pedlar's certificate to trade in Westminster. In this case a pedlar's certificate is regarded as

property affected by the Bill and therefore grants them special standing to present a case". Again, that was the basis on which it was alleged or contended.

33. THE CHAIR: If you had a certificate as a pedlar, then you would have standing, would you?

34. MS LEAN: Yes. It was on the basis that that gave them some particular interest or property in the non-tangible sense, if I could put it in those terms, that, if it was interfered with, would provide standing. I am sorry, my Lord. That was a very convoluted way of trying to say that what I am trying to do with these is that you can see the same principle being applied, the same nature of interest. It has to be something that would be protected at private law to get you into the category of directly and specially affected. That is a common theme that runs throughout the decisions that we have looked at.

35. THE CHAIR: I do not want to take you out of your line of argument, but when you look at somebody who is paying a levy—so he or she is parting with money to the conservators—do they not have an interest in how that money is being managed?

36. MS LEAN: My Lord, I will come to levy payers, but perhaps if I do go there now, the response to the levy payers would be twofold. First, a levy payer is not specially and directly affected vis-à-vis the entire category of others who pay that money to the Trust or the body as may be. There are some authorities that I will turn to slightly later in my note, if I may.

37. THE CHAIR: Can I understand? You are saying one levy payer cannot be given a right because they are no different from any other levy payer, but levy payers are quite different from ordinary members of the public living in the area who do not pay a levy.

38. MS LEAN: My Lord, I do not dispute that they are in a different category to persons living in the area who do not pay the levy. The question is what it is that makes a particular levy payer more specially or more directly affected or differentially affected than the thousands of other levy payers within the area. My Lord, why I said this is that there is a very long-established line of authority that is referred to in *Erskine May* in particular, which I will come to in a moment, that ratepayers do not generally have standing to petition against a Bill brought by the corporation authority to whom they are

the ratepayers.

39. My Lord, I take on board that surely those people who pay the money to a body should be thought to have some sort of particular interest in it, but it does come up against that historic position that those persons do not ordinarily have locus standi to appear before the committee. My Lord, why I was trying to differentiate that was I think I started with, to some degree, they are not specially and directly affected because they are not specially and directly affected any more than anybody else in that category.

40. Secondly, in respect of the interests on the levy, I highlight, of course, in this context, that no change to the levy is proposed by the Bill, so much like the City of Westminster Bill—and I will come on to this, bearing in mind my Lordship's question earlier about consolidation Bills.

41. **THE CHAIR:** My point was not about the amount of the levy; it was the way it was being used. I see your point. There is no change. At least we take it for granted that there are no changes to the amount of the levy or the calculations, but nevertheless the point does remain. My point is that somebody who is a levy payer is interested in seeing how the money that he or she is contributing is being used to the benefit of the Malvern Hills.

42. **MS LEAN:** My Lord, that is why I come back to the words “specially and directly affected”, this idea being it is somebody who is specially and directly affected in some sort of different way. My submission would be that a levy payer to the Malvern Hills Trust is really in no different a position to a ratepayer of the City of Westminster or the City of London in terms of a Bill that may be brought forward by either of those corporations, which may affect money that is paid in to that corporation for the corporation's purposes by them as ratepayers. That does not give them locus standi to appear on a private Bill merely by dint of the fact that, because they pay money to that body, they therefore have a sufficient interest in how it is spent to bring them within locus standi as of right.

43. That is the analogy that I draw here with levy payers: that they are in the same situation. The fact that they may pay the money and therefore have an interest is really no different than a ratepayer of the City of London or Westminster.

44. THE CHAIR: Have you authority for that? Can you give an example of that principle being applied? One might think that it all depends on what the Bill is about.

45. MS LEAN: Indeed, my Lord. I do have some authorities. If I may just take a moment and jump to where I was, where I may have some things written down in my note.

46. THE CHAIR: I am sorry to be giving you these questions. I do not want to take you out of your order, but it is just that these points trouble me.

47. MS LEAN: My Lord, the point about levy payers and ratepayers is picked up in 8(v) of our note, which is at page 8.

48. THE CHAIR: Yes.

49. MS LEAN: Now, my Lord, it may be helpful then if I do go to some of the points in *Erskine May*, because the cases that are referred to in *Erskine May* illustrate the sort of bodies and the sort of Bills where this point has come up.

50. In the current edition of *Erskine May*, it is at 44.6 on page 18, and it is the second paragraph up from the bottom. “Closely akin to the position of shareholders is that of petitioners who—in the capacity in which they petition—may be held to be represented by a local authority or other body. Electors, for example, have not been allowed to be heard, as such, against a Bill promoted by a corporation, or other local authority, to which they pay a charge. It should be noted, however, that this does not necessarily apply to cases where the Bill is promoted by another local authority of which the petitioners are not electors but which may affect them as local taxpayers or residents”. My Lord, that is the position as it is set out in *Erskine May* with regards to paying a charge to a local authority.

51. We then referred in our note to the earlier editions of *Erskine May*, which have a more detailed consideration of the locus standi reports. In the 1989 edition, which is document 4 starting at page 29—and what I wish to highlight was on page 30: that a case in which persons who are raised in a petition by reference to having to pay a charge have been granted a right to be heard, which is distinguished from the general position of not having locus standi, which is dealt with on page 29, is where a Bill promoted by a

corporation or a local authority would impose upon their property a new liability to rates. It gives an example there of a borough extension Bill where ratepayers who were proposed to be added to the Bill were entitled to petition.

52. My Lord, if I can highlight the last example that is given in this part of the 1989 edition, locus standi was granted to two railway companies that claimed to be heard as ratepayers against the Wolverhampton Corporation Bill, but on the grounds that they were affected differently from other ratepayers and they desired to ask for a differential rating.

53. My Lord, I know none of this is quite answering your specific question, which is do I have authority for the proposition about levy payers being in an analogous position to corporations, but I hope it is illustrating the different natures of different bodies, and different examples of where it has come up, and the sort of circumstances in which ratepayers or those who pay a charge have been—against the norm, as it were—granted locus standi because they are somehow differentially affected, or they will be newly affected where they were not previously.

54. My Lord, just for completeness, we have also included some extracts from the 20th edition back in 1983, because, again, there is a much more detailed consideration of previous authorities in the earlier *Erskine May* texts. At page 38, this is where there is the specific point made that, “Ratepayers, for example, have not been allowed to be heard, as such, against a Bill promoted by a corporation, or other local authority, of which they are electors”, and a bit further down in that paragraph, “by an analogy with ratepayers, individual members of bodies, whether corporate or unincorporated, have been refused a hearing against Bills promoted or approved by those bodies”. Again, the distinction appears in the next paragraph in contradistinction: where a new liability rate is imposed, that may be such as to give rise to a right to be heard.

55. My Lord, we have also included a couple of cases from two centuries ago that touch on this point. The first one you have behind; it is document 11, starting at page 61. This was the Bristol Corporation (Docks Purchase) Bill. The concern there was about the heavy rates, or the effect on rents that may result if heavy rates were passed as a result of the Bill. I am taking that, my Lord, from the submissions on page 63, but in that case, locus was disallowed.

56. On page 64—I apologise; it is a little bit faint—about a third of the way up, on the left-hand column, “The Chairman: In this petition, there seems to be no allegation of any injurious affecting of owners. The only approach to it is the allegation ‘that the ratepayers and owners of property in the said city will never authorise such additional taxation, which would be ruinous to the citizens’”. The Chairman then further below: “We cannot allow a locus standi in this case. We think the petition does not raise any separate question of ownership; it is really a ratepayers’ petition only”.

57. THE CHAIR: What was the Bill about in that case? Yes, it was a Bill to enable the mayor, alderman and so on to purchase undertakings of the Bristol port and the channel dock company and so forth, so it was about expenditure.

58. MS LEAN: It was, my Lord, but it was a Bill that would be likely, therefore, to increase the rates payable by the ratepayers. Even in that circumstance, it was not found that they had locus standi by reason of being ratepayers.

59. THE CHAIR: No standing to object to the way the money was being expended by the authority.

60. MS LEAN: What appears from the report is that a particular concern was this is going to essentially increase the rates that are levied in the area, and their status as ratepayers, even though it looked like it was going to put rates up, and it was about how the money was going to be expended by the corporation. It did not give them a right to be heard. Again, my Lord, that is not an exact example for my Lordship’s question, but I hope I have given a flavour that this is a fairly consistent principle that is carried through from very, very early times that is linked in part to, as a ratepayer, that does not give you locus standi to petition against a Bill promoted by the corporation or the authority to whom you pay those rates.

61. The corollary of that, in my submission, must be that the mere fact that you pay money to those bodies is not such to give you an entitlement to come before this committee, which is concerned with the interests of those who are specially and directly affected, not by people who are affected—as with every other ratepayer or every other charge payer in the same way—by what is proposed by the promoting authority.

62. THE CHAIR: At the end of the day, may it not depend on what the subject of the

Bill is? If it is something that is simply a proposal to acquire something or do something, which would involve the expenditure of money contributed by the ratepayers, that would be one thing, but in this case we are concerned with the reorganisation, consolidation and rearrangement of provisions about administration, many of which do not actually involve any expenditure of money, but simply the way in which the Malvern Hills are to be run and administered. It is a very different situation from the one we have in this example.

63. MS LEAN: My Lord, if I may, this may be where it brings us into consolidation Bills. My Lord did ask a question about that earlier. Again, it is a well-established principle that, where a Bill is effectively a consolidation Bill or—I did say in opening that it was in part consolidating, but I did not shy away from the fact that it did more than that. I am, for the time being, relying on the principles that are applicable to consolidation Bills.

64. My Lord has, in *Erskine May*, in the 1989 edition—it does not carry forward into the current edition—at page 31, the general principle that, “In the case of a consolidation Bill, the locus standi of a petitioner is not allowed where he is affected not by the Bill but by the provisions of a former Act, or where no fresh powers affecting the property of a petitioner are sought by the Bill”. It refers to something that appeared to be an exception in the Birmingham Corporation (Consolidation) Bill. “The injury alleged must not be one that is due to past legislation, untouched by the Bill, but injury which is or may be occasioned under the Bill, either for the first time, or in aggravation of injury already suffered”.

65. My Lord, that is why I draw attention, in particular with the levy provisions, that the levy, which is what it may be that could be said to particularly affect the private or the property rights of the levy payers, is not affected by the Bill. There is no change from the Bill to the levy. It continues to be subject to the general legislative provisions in the 1992 regulations that I referred to earlier.

66. My Lord, it does come to this situation that what it is that might give the petitioners locus standi in the ordinary sense, which is that interaction with their private rights through the levy—and what that means is a tax on their property—that is a poor form of words, but it is something that attaches to their property. It is linked to that. That

is not altered by the provisions contained in this Bill, and that is where you run up against the precedent about consolidation Bills.

67. In my submission, to extend the idea of somebody's interests being specially and directly affected into getting into exactly how their money is spent by the body to whom they pay it, I am not aware of any authority—and I will look to Mr Lewis, who has much more experience of these things than I have—that suggests that it has previously been found, say, for example, in a consolidation Bill for a local authority, that the mere fact that because you are a charge payer or a ratepayer or a levy payer gives you a stake in the decision-making of that body in such a way that that is enough, in and of itself, to give you locus standi before a committee of this House or on a private or a hybrid Bill.

68. THE CHAIR: In this case, as you have indicated, there are distinct changes about the body of trustees or conservators. We are dealing with a rearrangement of the administration as well as the expenditure of money. That, again, takes it into a different category. I quite accept, if it is a pure consolidation—nothing is changing—then one can see there is nothing to be petitioning about, but in a situation of this kind, where there is a distinct rearrangement of the body that is going to administer the funds, it might be thought to be different.

69. MS LEAN: My Lord, I suppose the analogy there may be with, say, a local authority reorganisation or a local authority Bill. If there is a change to local authority boundaries or organisations, that is not ordinarily something, although that will affect how monies paid for that area are spent or by whom, that would give rise, in Parliament, to a right for every individual who pays such monies to come before a committee of this House about the structural and governance changes that are proposed.

70. I know that is not an apt analogy here because this is a private Bill, and that would ordinarily be public legislation or secondary legislation, but it is, in my submission, helpful to understand why it is that that sort of thing has not ordinarily been such as to give regards to being specially or directly affected. You would not get it if it was a public Bill. The fact that was being changed would not make it a hybrid Bill, so why is it that, because it is a private Bill, suddenly those individuals are persons who are specially and directly affected such that they have a right to come before a committee such as your Lordship's to raise points that are really almost more—if this was a hybrid

Bill—public points than private points? They are not about particular powers that touch on individuals' lands or interests; they are really about the bigger points of policy that sit behind the Bill. Is this proposed reorganisation the right thing? That is not something that would ordinarily fall for consideration, in my submission, on a petition against a private Bill.

71. My Lord, I am just frankly looking, because there is an authority that I have flagged up, but I am afraid that I have almost abandoned my note. There is one authority where there is an example of a reorganisation of a commissioners' board, where it was going to reduce the number of commissioners who sat on the board, and the commissioners represented different trades and interests. A commissioner who represented one of those trades who would have been affected by the reduction in the number of commissioners, i.e. the trade whose interests he represented was no longer going to be represented—he was found not to have locus standi against the Bill.

72. My Lord, that is the Newport (Monmouthshire) Corporation Bill that you have as document 13 in your bundle, starting at page 72. My Lord will see it starts on the second column on page 73, right down at the bottom. The headnote: "Alteration in Constitution of Harbour Commission, petition of a single harbour commissioner, representation, petition of traders similarly affected, extension of borough, owner of property proposed to be included".

73. The description of the Bill was that the Bill was for the extension of the borough, and it proposed, amongst other things, "certain alterations in the constitution of the Newport harbour commission, whereby the number of members representing certain trades on that body would be reduced. The petitioner was himself one of the members of the commission representing the trades in question, and he claimed to be heard against the proposed reduction in their numbers"—directly on point, somebody who was taking issue with the governance structure of the board in question.

74. The Bill had been approved by the commissioners as a body, and the traders themselves had deposited a petition raising objections. Their locus standi had been conceded, and under the circumstances the petitioner could not, as a single commissioner, be heard against a Bill approved by the commission as a body.

75. Now, that was a case that had been included in the bundle to do with maybe when

we get to the trustees, but it is an illustration. There, although this commissioner was directly taking issue with, and could himself said to be specially and directly affected—he was one of the commissioners—by a Bill that was dealing with this, his locus standi was disallowed.

76. My Lord, I think that probably brings me to the end of what I was saying on that point. If I may just quickly look to Mr Lewis, because I am afraid I have temporarily lost my place in my note.

77. THE CHAIR: Lord Inglewood has a question.

78. LORD INGLEWOOD: In your remarks, you kept on referring to ratepayers and saying they were analogous to levy payers, but is there not a slight difference between a ratepayer who is paying a sum of money to an organisation, which does an absolute myriad of different things, and a levy payer, as in this instance, who is paying a sum of money into an organisation that is exclusively doing something that is very narrowly defined and circumscribed?

79. MS LEAN: In my submission, my Lord, no, in principle. The principle is the same. What is it about the fact that you are having to pay a levy or a rate that is required by an Act of Parliament, and you have to pay that along with hundreds or thousands of other people who have to pay it, assessed on the same basis, imposed by an Act of Parliament? What is it that means that you, as the levy payer or the ratepayer, are specially and directly affected to come before a committee such as your Lordship's House, just by virtue of the fact that the body is dealing with a smaller geographical area and has a particular set of ascribed functions rather than being a local authority corporation that has a wider range of functions?

80. My Lord, it goes to the principle of: what is it about your interests? If it is the fact that you pay the money that is what touches on your private or your property rights, which is what you need to get you into the locus standi as of right, as opposed to someone who is purely interested in how the Trust might be governed or what it might do because you are somebody who cares about the Malvern Hills, why is that really any different than the person who pays the money to the City of London or the City of Westminster, in the same way as all the other people who have to pay the rate or the levy to the City of London or the City of Westminster?

81. I am sorry to keep coming to this point, to which I feel I am, about thousands or hundreds of other people, but that is why I come back to the language about “specially and directly affected”. In my respectful submission, none of the individuals who come before you who say, “Because I am a levy payer, I should be heard before the committee”, are able to point, by reason of that alone, to a way in which they are differently or more specially and directly affected than any other payer of the levy within the Malvern Hills. If the mere fact that they are a person who pays the levy is sufficient then, in theory, every single levy payer within the Trust’s area would be entitled, as of right, to come to this committee and ask to be heard against the Bill.

82. That illustrates, my Lord, in my submission, why something more is needed. It is not about, necessarily, the nature of the Bill, or what the function is that the Trust may be performing here. It is the fact that, if it is found, as of right, that these individuals can come to this committee and petition, then every other levy payer has the same entitlement, and that comes squarely up against the admonition of what the Joint Committee on Private Bill Procedure was saying about policing the rules of locus standi, in terms of it has to be something more. It has to be something more special, more particular, more direct, to take you outside the norm of every other person who is affected in the same way by virtue of that particular reason.

83. THE CHAIR: Levy payers are different from ordinary members of the public. Looking at the photographs we have seen in the interesting presentation this morning, you can see visitors coming to enjoy the environment, to be photographed with the livestock and so forth. Ordinary members of the public have no standing, but a levy payer is different because the cost of management is contributed by what they contribute, so they do stand out from ordinary members of the public. You have to accept that, surely.

84. MS LEAN: Yes, my Lord, and that is why I said “persons in the same position” or “persons in the same category”. I do recognise the persons who pay the levy are not the same as the person who gets the train up from London to have a lovely weekend on the Malvern Hills, but, my Lord, in the same way—and I am sorry to keep coming back to this analogy—the ratepayers of the City of London or the ratepayers of the City of Westminster are in a different position to the members of the public who come to visit the sites in the City of London or the City of Westminster.

85. It is the council tax and the business rates of those who live in Westminster or the City of London that fund, to a degree or to a large degree, the management generally of the City of Westminster. The members of the public may pay for car parking or suchlike, in the same way that visitors to the Malvern Hills today will pay for car parking or suchlike. There will be some funds from there, but that is not enough to give the ratepayers of Westminster standing, as of right, to come along on a Bill promoted by the City of Westminster Corporation.

86. THE CHAIR: Lord Evans, you would like to ask a question.

87. LORD EVANS OF GUISBOROUGH: Thank you, Chair. I take the point that there is a difference between the levy payers and the ratepayers, and I just wonder if you have any case law around measures affecting national parks or fire authorities, for example, which are cases where the precepts paid are much more narrowly focused on provision of a particular service. They may be more similar to the case we are looking at here.

88. MS LEAN: I am not aware of any, my Lord, in the context of private Bills and right-to-be-heard challenges. I have slightly in mind it may be because precepts may be levied in a slightly different way or on slightly different persons. It is not through a private Bill that gives the power to levy. It is either through general legislation—I am having nodding to my left. I am not aware, off the top of my head, of any cases where they might have been considered. I am certainly very happy to go away and have another look overnight.

89. LORD EVANS OF GUISBOROUGH: Is a precept not levied through the rates or the council tax, and therefore it is analogous in some ways to the other examples that you have been giving us about the City of London Corporation or the City of Westminster?

90. MS LEAN: Indeed, my Lord. Yes, I can certainly see that a precept that is raised by its inclusion within a council tax payment or business rates payment—or whatever it might be for a particular area or an authority—would be a closer analogy in that way, because it is for a particular purpose, but I do not think I can give you any authorities that show how that has been considered by a committee of this House or by the Court of Referees, about what that means about the entitlement of somebody who contributes to

that through their council tax being entitled to come along and petition against it.

91. LORD EVANS OF GUISBOROUGH: I was attempting to be helpful, but it has not worked, has it?

92. MS LEAN: I am sorry, my Lord. I do appreciate the point. It comes back to my point that this comes back to something that feels like it is more general, as in it is not about the purpose for which the money is used or exactly which body it is used by. It comes back to this distinction: is the fact that you contribute enough to mean that you can come and have a say about anything that might affect how that money is spent?

93. I am sorry. As you asked me for case law, I am certainly happy to go and have a look. I have in mind that there have possibly been, say, judicial review challenges or suchlike where certain precepts have been levied, but I do not know that that was necessarily specifically on point. If I find something overnight, I will of course bring it to the committee's attention. My Lord, I think that brought me to an end, broadly, on levy payers.

94. THE CHAIR: You are objecting to a number of categories of people, are you not?

95. MS LEAN: Yes, my Lord.

96. THE CHAIR: Are you going to develop all of those as well, because I think we need to know where we are going. We could just deal with the levy payers, but so far as we are concerned, Professor McCrae is distinct because his petition, you say, does not satisfy Standing Order 111. That does not apply to the three he is representing. Is there anything else we need to know from you before we hear Professor McCrae.

97. MS LEAN: Yes, my Lord. Forgive me. I had a general note on our approach to locus standi to give a headline introduction to set the scene, as it were, going forward, but if I can just highlight one other point, which is a general point, but it is relevant to Professor McCrae's challenge, before I go on to Standing Order 111, because the two are linked. One of the other bases on which Professor McCrae claims a right to be heard relates to the proximity of his property to Trust land, and access, and the suggestion in his petition that—

98. THE CHAIR: Before you go there, can I just explain the position that we are in?

We are expected to give a ruling on standing on Thursday, and you have raised questions about seven different groups that need to be looked at. There is grounds for objection not distinctly specified; there is organisations with no formal decision to oppose the Bill; there is organisations not sufficiently representative; there is conservators whose interests are not distinct from those of the promoters; and then there is councillors whose private interests are not specifically directly affected; and those with no property or personal interests other than that as levy payers, which we are dealing with. Then there is property owners who have exercised rights of access that may be impeded by the provisions of the Bill.

99. These are all distinct groups, and we are going to have to make a ruling at some point that identifies who is entitled to be heard and who is not, so that we can plan ahead for future weeks. I think you need to cover the ground, really, as to how we deal with these various groups. You have dealt with levy payers, but what about the grounds of objection not distinctly specified? Are you really inviting us to look at each of these petitions one by one, and to decide for ourselves whether they are sufficiently specific or not?

100. MS LEAN: My Lord, if I just may step back momentarily, forgive me, I had intended to this afternoon provide you with an overview of our case on each of those grounds, on the assumption that I would probably then have to go into a little more detail as particular petitioners who we challenged on those grounds came forward. I am conscious that I have gone into rather more detail on levy and consolidation in my introductory remarks than I perhaps intended to. I am very mindful of time.

101. I wonder if I may respectfully suggest that this afternoon there are particular individuals who we have challenged on the grounds that they are a levy payer and that is not sufficient. Professor McCrae—we have raised a ground of challenge around access not being sufficient, and we have taken an issue on Standing Order 111. I believe tomorrow you have coming before you petitioners, one of whom is in the group capacity—the Upper Welland Action Group. There is a gentleman who is a councillor, so we would be addressing that then, and also, I believe—forgive me, I am going to check with Mr Lewis—a trustee.

102. THE CHAIR: To cut it short, I think we can park the other ones.

103. MS LEAN: That is what I was going to ask, if I could.

104. THE CHAIR: You can pick it up again tomorrow when we are dealing with a different ground. We are concentrating on these three groups: the access one, the Standing Order 111 case, and the levy payers.

105. MS LEAN: I am grateful, my Lord.

106. THE CHAIR: Are we really in a position to hear from Professor McCrae now?

107. MS LEAN: Indeed. My Lord, if I may just touch on the right of access, because that is part of what is relied on in Professor McCrae's petition, and leads me into the Section 111 point, the promoter has challenged those who claim standing by reason of enjoying a right of access over land owned by the promoter. This is addressed at 8(vii) of our note. That is because it is for the petitioners to prove that those rights of access are interfered with by the provisions of this Bill. It is our position that they are not, and certainly it has not been identified by petitioners what provision of this Bill it is they say somehow means there is an interference with the right of access they enjoy currently. In particular, what is it in this Bill that says there is an interference or an impact on the right of access they enjoy currently, which is new and different from the position as it may be today under the existing Acts?

108. My Lord, that, to some degree, brings us into the consolidation point, i.e. what must be shown by a petitioner to have standing in respect of this Bill is some fresh injury arising from this Bill that is new or different from the current position. It also leads into our Standing Order 111 point with regards to Professor McCrae, because Professor McCrae is one of those. Although he asserts standing by reference to a potential impact on his property, nothing in the petition itself discloses, "What is the particular provision or provisions of this Bill—and this Bill as distinct from the existing legislation—that you say gives rise to that injury?"

109. My Lord, that may have been a much quicker way of dealing with that particular ground than the other two, but the two are, to a degree, intertwined. We do not consider that the Bill, in and of itself, interferes with the legal rights of access that certain petitioners may enjoy over Trust land to access their property, and if the petitioners say there is, it is for the petitioner, in our respectful submission, to specify what that is so

that that can be considered, and that has not been done in the case of this petitioner.

110. THE CHAIR: Thank you very much. Mr McCrae, can I start by making a point I made at the very beginning? We are concerned with standing. You have shown us a paper that covers a good deal of extra ground, but we will come back to that once we are satisfied that you have a standing to address us, so could you concentrate on that point, please?

Professor Malcolm McCrae

Evidence of Professor McCrae

111. PROFESSOR McCRAE: Yes. Thank you, my Lord. I do quite understand the distinction between this appearance and a potential future appearance, should I be able to establish the right for my petition to be heard. I will try, as far as I can, to not cross that distinction line in what I have to say.

112. I should start by introducing who I am so that you can understand the position from which I have brought my petition. After a long career as a research scientist—my discipline was virology—I took early retirement approximately 11 years ago now, and moved to Malvern. My property lies on the upper western slopes of the Malvern Hills. We are surrounded essentially on all sides by Trust land. My western boundary abuts directly on to Trust land. I gain access to the hills through my back gate normally, when I am using the hills, which goes directly on to Trust land from my property.

113. THE CHAIR: Road access?

114. PROFESSOR McCRAE: Yes, I will just come to that.

115. THE CHAIR: You go across Trust land to get out.

116. PROFESSOR McCRAE: There are two ways of entering my property. One is directly off a public highway, but the main route that I use is over Trust land. It is over what I have always been told is a public right of way. I am certainly able to show, from the deeds of the property in which I live, that the particular track that is used was in existence at least 15 years before the Trust came into existence, so I have deeds that show a purchase of land sale where, quite clearly, the track on which I access the

property over Trust land is obviously in use. Now, it could have been in use, of course, for a great deal longer than that, but I am not able to demonstrate that at this point.

117. I make daily use of the Trust of the Malvern Hills. I am delighted to have moved to the Malvern Hills. I enjoy their aspect. It was one of the main reasons for moving there. We have two border collies that have to be exercised twice a day, so I probably walk between five and eight miles across the hills every day, gaining access directly from my property.

118. I think I should start by saying that the reason I brought this petition is because I value the activity that is done by the Trust on the hills to conserve them, but I found myself in the unusual position that, over almost a decade of trying to interact with the Trust, I have been unable to convince them or make them see what I regard as some fairly serious dysfunctions in the way that they operate their existing statutory acts.

119. THE CHAIR: You have made that very clear in your paper, but you are straying rather beyond the point we are dealing with now.

120. PROFESSOR McCRAE: Yes. I think it is important, though, that you do understand, my Lords, that I am trying to help here by raising the petition. I am not trying to make life difficult for the Trust. I hope, My Lords, that you can recognise that I suspect the same would be said to be true for the other 49 petitioners. It includes 25% of the current board of this organisation, two former chairs of the organisation, and several former trustees. I very interestingly heard this morning the lady say, “Well, you know, just because there are a lot of petitioners does not mean to say this is a bad Bill”, but I think I would ask you to draw thought about the fact that there are so many petitioners, and I think this does bring into question the provisions within the Bill. I will not say any more because I am making my case for standing here. I am not making objections to the Bill.

121. I would like to start by saying that I have no legal training whatsoever, so this is my first exposure to adversarial contest, if you like. I would make what I hope you can see is an amusing remark about it, in that I find myself in the unusual position of paying for both the litigants in this adversarial contest before a decision on its outcome has been reached, because we, as levy payers, are paying the costs of the promoter as well as our own costs in this activity.

122. I am being asked here, under *Erskine May*, to prove that my property or interests are directly and specifically affected by the Bill. For a scientist to prove something, they have to require that proof be based on evidence. I am trying to make a proof about something that has not yet happened. The Bill has not come into effect, so of course that places me in some difficulty here, because anything I would say would be an assertion, not a proof.

123. THE CHAIR: Can I just pick that up? It is an interesting point that you make. If we take the right of access, is there anything in the Bill that inhibits your right of access by your preferred route?

124. PROFESSOR McCRAE: The thing that inhibits my right of access by the route is that the Trust is currently not providing what it says in Clause 5 of the 1909 Act. Clause 5 in the 1909 Act says that the Trust should maintain the footpaths on the hills out of the money that they receive from the levy. When I first came to Malvern, I noticed that the track over which I gain access suffers from water erosion, so I contacted the Trust and said, “What is the position with regard to repairing this track over time to ensure that there is safe access?” I was told, after several attempts to get a response, that I was at perfect liberty to repair this track at my own expense. The Trust had no responsibility for this track whatsoever, but if I was to repair, at my cost, which is not an unreasonable request, I must get approval before it was put down.

125. I took umbrage at this last requirement, given that I was perfectly happy to cover the costs of the repair of this, as were my neighbours who also use this track, so I asked the Trust, “When you took over this land, part of your constitution was that you were set up as what I will refer to as a public body”. I note that, now, the Trust does not refer to itself as a public body. In fact, it goes to great lengths to avoid the use of the words “public body”, but you will see, in the bundle of documents that I have included in appendix 1, that they were perfectly happy to declare themselves to be a public body a decade ago, and I could find no meaningful definition of what is a corporate body.

126. THE CHAIR: I am still interested in this access point, if you will forgive me. In the Bill, at paragraph 54, there is a power to maintain paths and ways and so on, and there are other provisions about access and maintaining roads and so on. Are you inhibited by what is—

127. PROFESSOR McCRAE: No, I certainly do not want to concentrate on this point, my Lord. I simply make the point that here is a situation where the Trust is, at present, in its present legislation, not meeting the requirements of its Bill. It is saying that, going forward, there are no main changes. It is only “consolidating” is the expression.

128. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask for some clarification? You say that the access route that you use to gain access to the Malvern Hills was in a poor state of repair. You asked the Trust to repair it. They said that it was not their responsibility but that you could repair it, but they would need to authorise the repair before you started, even though it was not their responsibility.

129. PROFESSOR McCRAE: No, both. You are quite right. They would need to authorise whatever I put down, although they accept no responsibility for the track. I think they are not accepting responsibility in terms of their requirement to cover the cost of maintenance, which I think is perfectly reasonable on the part of the Trust. We were the major users of this track, so we would be the major causes of its requirement for maintenance.

130. Could I move on to the more substantive things I want to say?

131. THE CHAIR: Yes, of course.

132. PROFESSOR McCRAE: I am being asked to prove that I am being directly and specifically affected by the Bill, which, as I have tried to indicate, for a scientist, is problematic. I was very pleased to hear the promoter say, “We are not suggesting any change, so everything is going to be the same”, so I will base my remarks on the existing Act, if you like, in terms of trying to prove that I am being directly and specially affected. I cannot do otherwise, I do not think.

133. THE CHAIR: I am not sure that that is the question before us. The question is, “Are you specially or directly affected by the provisions of this Bill?” so we cannot avoid the fact that we have to examine your case against the background of the provisions of this Bill, not the pre-existing legislation.

134. PROFESSOR McCRAE: I will do that. I would like to make a few remarks at the beginning about the status of this organisation. It indicates that it is a public body or

corporate body with registered charity status. I think the question of its registered charity status and its bearing on this Bill bears some close examination.

135. The Trust applied for charitable status in 1984, in its centennial year. At that point, it was not engaged in any activities that were defined as being charitable in terms of the legislation defining what charity was at that time, which came from 1601. A key question for the charity commissioners had to be, “We are approached by this public body. We are going to give them charitable status. On what basis are we giving them charitable status?” In other words, there needed to be some evidence of due diligence being done at the point when registration was being offered, particularly because this organisation had tax-raising powers and was surviving on public funds, which is very different from a charity. In that case, the public funds come under a penalty of criminal prosecution.

136. If I do not pay my levy as part of my council tax, then I am opening myself up as being liable to prosecution. On the contrary, if I decide, in the case of a charity, that I am not happy with what the charity is spending the money that I am giving them on, I simply withdraw my donations and I am not subject to any criminal penalty. A charity has to survive, if you like, on its ability to convince people to donate to whatever cause it is pursuing. Normally, charities do not have elections of members to the board. They have appointments to members of the board, whereas, of course, a public body, quite rightly, has elected board members because taxes are being raised and you cannot have taxation without representation.

137. The Trust applied for charitable status. It was granted charitable status. It put itself into a category of many other charities that I am familiar with, or organisations that have registered charity status. All universities, for example, are registered charities and have registered charity status. But they only use their registered charity status in order to give them tax advantage. They do not use it as a matter of requiring them to obey charity law for all their activities.

138. What should have happened in 1984 was there should have been some due diligence documentation that indicated quite clearly why charitable status was given and what its boundaries were in respect of the public funds that the organisation was receiving by being a public body, or a corporate body, if you wish.

139. I have asked both the promoter and the Charity Commission, “What documentation do you have to show that due diligence was done?” There is none as far as I can gather. The Charity Commission looked in their own documents, which go back eight years, and the person in their law department very helpfully went to the National Archives and looked for documents. There are, as far as I understand it, none.

140. That this did not occur in 1984 did not really matter, although there were several subsequent opportunities for the problem to be rectified, most notably the last Malvern Hills Act of 1995, when you will find that none of the words “charity”, “charitable objectives” or “Charity Commission” appear in the Act. The Trust did not take that opportunity to rectify this omission. When the Charities Act of 2006 gained Royal Assent, which was the first time that, as I understand it, environmental activities and educational activities were considered in law now to be charitable activities, there was no mention of the Malvern Hills Conservators, nor when the Charities Act was amended in 2011.

141. THE CHAIR: Are we not drifting away from the question of standing? The point that you make is identified very clearly by paragraph 3.2 in your petition, when you say what you want to be done. In fact, at the end, you say that you submit that the Bill should be completely rejected because of the grounds that you make.

142. PROFESSOR McCRAE: This has an effect on my standing, because, subsequently, in 2015-16, the Trust started a campaign to morph itself from being a public body with charitable status through to being a charity that, under certain circumstances, undertook public service, to being an unincorporated charity, which, as far as I can understand, has no legal standing whatsoever because it cannot be pursued under the law, through to finally, in 2023-24, referring to itself solely as a charity.

143. The effectiveness of this campaign can be seen in the Attorney-General’s letter that is in your bundle of documents in fulfilment of Standing Order 142 for these processes, where the Attorney-General refers to this organisation solely as a charity. In the documents that have been put before you, the Trust talks now only in terms of it being a charity.

144. What has this meant in terms of affecting my interest directly? It would be perfectly reasonable for me to expect that, if the organisation moved from being a public

body to being a charity, the levy would disappear, elections would disappear because there would be no need for them, and the organisation would now go forward providing for its activity on the basis of true charitable giving.

145. Early on in this process, I told the Trust, “I have absolutely no objection whatsoever to you changing yourself from being a public body to being a charity, but you do realise, don’t you, that, if you do that, you need to move from having a levy to getting all of your money by proper charitable giving?” Of course, what you see now is this new Bill. In contrast to what was presented this morning that said, “It is just a consolidation Bill”, it is not just a consolidation Bill, because the effect of the Bill will be to dissolve the Malvern Hills Conservators as a legal entity, and to establish a new legal entity called the Malvern Hills Trust.

146. The new legal entity wishes to operate as a public body with charitable status, but wishes to only follow charity law. You will have seen—and you will, no doubt, hear from other petitioners—that, in the recent past, it has gone to great lengths to limit the access of its own trustees to things about this Bill, because it says that they are not complying with the requirement that they only act in the best interests of the organisation. There can be no sense whatsoever in which somebody is elected on to a board to serve the interests of their electorate, and then they are told by the organisation, “You are not allowed to serve the interests of your electorate. You only have to serve the interests of the organisation”. That defies natural justice.

147. Let me come back to the importance in terms of my property interests, in terms of this morphing of activity. It started in 2015-16, as far as I can establish. The first act of it was to change the name of the organisation—to change its working title. I have no problem with that whatsoever. It does not make any difference to what it is called. It did cost, as I am told, about £30,000 of levy payers’ money, amongst others’—public funds—to do something that is not contained in their governance mandate. Public bodies are supposed to operate, as I understand it, anyway, under the constraints of their governing mandate.

148. As a result of that, they need to set up some sort of accountability mechanism that is independent and is a way of ensuring that the public funds that they receive are only being spent on what they are supposed to be spent on, which is what is contained in the

governance mandate. If they want to do something that is not contained in the governance mandate, they need to go to whatever route by which accountability is determined and get tacit approval to do that.

149. Of course, it is perfectly reasonable for an organisation to wish to change its name. There is, built into the board structure of this organisation, a very obvious way of achieving reasonable independent accountability. The 1924 Act set up the existing board structure, where there is a minority of elected representatives and a majority of nominated.

150. **THE CHAIR:** You are covering a lot of ground, which you put in your petition, and what troubles me is that you are drifting away from the issue that affects us particularly. There are two particular points that I would like to focus on. One is your position as a levy payer, and I would like to hear what your position is about that.

151. The other is that I keep coming back to Standing Order 111, which says that a petition must distinctly specify the ground on which the petition objects to any provisions in the Bill. I do not find anything in your petition that identifies any particular provisions in the Bill that you object to. You say that you object to the whole lot—I follow that—but you do not identify any particular ones that you think need to be reconsidered, and that means that we would have difficulty in saying that you satisfy 111.

152. **PROFESSOR McCRAE:** The particular thing that I would object to, then, if that is what you wish me to focus on, is the fact that, as a charity, it is spending public funds on activity that I am having to pay—that I am forced to pay—under penalty of criminal prosecution, and on things that are not contained in its parliamentary mandate, in its statutory mandate. I am being disadvantaged by the fact that I am being forced to pay for services that I am not receiving, in effect.

153. **THE CHAIR:** I am still looking for provisions in the Bill that you are particularly identifying, and I do not think that you are, really. You are taking a much more general objection.

154. **PROFESSOR McCRAE:** Perhaps I could briefly continue with this business of morphing, because I think it is quite important to the specific points.

155. THE CHAIR: I think Lord Inglewood would like to come in.

156. LORD INGLEWOOD: Might I, please, just put to you that I have been trying to work out in my head precisely how what you have told us might bring you within the scope of the Standing Order. Am I right in saying that your argument is roughly as follows? You have a house that is on the boundary of the Malvern Hills. The character of your property and its amenities are intimately an integral part of its location there. Your property marches with the Malvern Hills and, on the basis that, to use John Donne's words, "no man is an island", this is like a party wall dispute, because the changes that will arise, or might arise, from the change of the character of the Trust, your position is—and I am paraphrasing using layman's language—that you are not a member of the general public. You are somebody who is affected by a party wall. Is that the basis of why you are saying that you fall into scope?

157. PROFESSOR McCRAE: I think it is, particularly in the context of the fact that there are other people who have a party wall—for example, the inhabitants in Castlemorton Common—but they do not pay the levy. The Trust, in its original Act, in Clause 31, if you want to view it, has had the opportunity to increase the area covered by the levy. They have the power to do that, but they have not exercised it.

158. If you consider what happened when they took over Old Hills and Castlemorton Common, as I understand that provision, what happened was that property was owned by the church commissioners, and Worcestershire County Council in the case of Old Hills. The Trust took over ownership on the understanding that they would, at least in the case of Worcestershire County Council, cover the maintenance costs for that area 100% for the first year, and then on a sliding scale. Currently, I believe the Trust gets about £15,000 to £20,000 for those areas, still from Worcestershire County Council. They represent 20% to 25% of the Trust land.

159. LORD INGLEWOOD: Might I interrupt you quickly? How does this affect you and your particular property, rather than more generally and other levy payers?

160. PROFESSOR McCRAE: It affects me and my particular property because I am being expected to pay, I suppose, more than other people—more than people who should also be paying. The Trust has had the power to do that. It affects me in the sense that, because the Trust now spends about £1.2 million, it should, pro rata, be spending

about £250,000 on Old Hills and Castlemorton Common, but it is not getting in £250,000 from those areas. It is relying on getting additional funds from me to cover the cost of those areas.

161. THE CHAIR: Where does that take us as to the provisions of this Bill, which is what we are here to discuss? I do not follow it at the moment. I follow the point about the party wall and all that point, and you have expressed yourself very fully in your petition, but I am still looking for something that identifies a provision in the Bill, other than the Bill itself as a whole, to which you take particular exception and that alters your position from what it is at present.

162. PROFESSOR McCRAE: The difficulty here, my Lord, is that the things that I am most affected by are what is not in the Bill, not what is in the Bill. Of course, that is a particular difficulty for me. For example, in this consolidation Bill, Clause 31 is one that is repealed, so now no longer does the Trust have the power under the Act that it is about to bring in to do that in the same way. In other words, what I am trying to say, although not very effectively, clearly, is that they are not carrying through the provisions of their existing legislation properly, and yet they are bringing forward new legislation that does not remedy the dysfunctionality that they have exhibited. If they continue in the way that they have up until now, then the dysfunctionality is not going to be alleviated.

163. THE CHAIR: I think I see exactly your point. I just want to be sure that I am right about this. In paragraph 3.2 of your petition, you end it by saying, “I want to see this new Bill completely rejected”. Is that your position, or are you prepared to see the Bill go ahead subject to alterations?

164. PROFESSOR McCRAE: I think what I would say is that I think it is perfectly reasonable for the Trust, after 30 years, to come forward with new legislation to modernise and to reflect the change in society that has occurred over those 30 years. I think that is perfectly reasonable, and I would be perfectly happy to see a Bill to modernise in the light of the change of affairs come forward.

165. The problem is that the Bill that is being brought forward has no accountability in it and contains lots of provisions. I do not want to stray into what is in the Bill, because it is not my purpose, but there was talk this morning about the requirement for a general

power, or the request for a general power. I am sure you will be aware of the problems that the provision of a general power, which is contained by most public authorities, has brought in recent years, where we have ratepayers in a large number of boroughs now having to clear up through the mess that has been caused by councils exercising their right under their power of general competency to invest taxpayers' funds in highly risky ventures like property development and electricity supply.

166. THE CHAIR: There is another problem here. A number of petitioners have addressed themselves to the general power, as you may know, so we are going to have to deal with that at some point when we get to it, but you do not deal with that particularly in your petition. There is another principle we have to apply, in that, under the rules we live under in these committees, a petitioner cannot argue a point that is not in his or her petition. You have not got the general power point in your petition, but you do have the Bill as a whole, and that is why I just want to be sure that you are standing by that as your position.

167. PROFESSOR McCRAE: Yes. I am trying to say that I have no objection to a Bill coming forward to modernise the Trust's legislation, but I think there is a need for it to be done in consultation with those who are going to have to live under it, and I do not believe that that has been done in this case. I can point to examples where the Trust has completely ignored suggestions from the people who will have to pay for this Bill about changes it should make in what is going forward. It argued, when first putting forward its proposals, that this was just a consolidation and just tidying up old language. What you see before you is a Bill that, as I say, will, in effect, dissolve the existing legal entity and create a new legal entity that, no doubt, 10 or 15 years down the road, the Trust will be arguing needs to be only subject to charity law, so you now have a charity that has got tax-raising powers and is able to set bylaws.

168. THE CHAIR: We have gone over that ground already, and I think perhaps I can bring this chapter to an end and ask you if you could address the question of levy payers. The three petitioners whom you represent have that characteristic in common. Indeed, you are a levy payer too. How do you justify your position as being specially and directly affected as a levy payer?

169. PROFESSOR McCRAE: I think that the one document I gave you this morning

probably does it better than any other. If you look at this, what you will see here is the percentage increase over the last eight years. This was not done by me, I should say. I wish I had thought of this idea. This was done by another levy payer called Ian Proudler, who is also a petitioner. What it shows is the annual increase in the levy compared to the annual increase in council tax for one of the two areas—Malvern Hills District Council—that is subject to the levy.

170. What immediately springs out, particularly if you look at the lower set of graphs, is that, over the last eight years, council tax for those people who are only liable to council tax has gone up about just over 20%, whereas the levy has gone up, essentially, double that. The levy payers, as a group—I accept it is as a group—are being materially more seriously affected than the general public here, because they have no right not to pay the levy. That is the point. If this is a charity, then it should be getting its money by voluntary contribution. I think the organisation would be mad to go down that route in the current economic climate, but that is a choice for the trustees. The trustees clearly know more about the business of the organisation than I do, but I have chaired charities in the past—charities that did get their money by voluntary contribution.

171. THE CHAIR: There is a problem about this, in that the document you show us, which is extremely interesting, is dealing with past performance to date, of course, but it is not looking into the future as it will be under the Bill. This brings me back to the point. To what extent can you say, as a levy payer, you are specially and directly affected by the Bill in a way that we could identify?

172. PROFESSOR McCRAE: To be honest, my Lord, I thought I had made my position clear at the beginning here. I am being asked to prove that I am going to be affected by something that has not yet happened. How can I do that?

173. THE CHAIR: Some people are doing it by saying, “Let’s look at the provisions about general power”. They are very specific. There are various things about fencing. If you go through the petitions, there are many points raised by various petitioners, saying there are provisions in this Bill that they object to, because they affect their interests. I am really searching for an argument in your favour, somehow, but I cannot find it.

174. PROFESSOR McCRAE: I understand you are trying to help, and I do apologise for the fact that I am not making a connection with what you are asking.

175. THE CHAIR: I am still searching for assistance.

176. PROFESSOR McCRAE: I wish I could provide it, but I cannot see how I can prove that I am going to be affected by something that has not yet happened. That seems to me a logical incongruity. I was pleased when, this morning, I heard from the proposer that they feel that there is not going to be any change in the way that they operate going forward, despite the fact that I feel that there are provisions in the Bill that will change it, particularly this one about what is being legislated here in the Bill is the creation of a new charity.

177. It does not have substantiated charitable status at present. It cannot point to any document, as I understand it, that is able to legitimise its assertion that it is a charity. I have asked the Trust, in a previous governance committee meeting, “In addition to your registration number, what documentation do you have to show that you are a charity?” The response I received from the Trust was, “When we were set up, we were doing public good”, which, undoubtedly, they are. “Therefore, we have been a charity since our inception”. That seems to be the view of some of the trustees and some of the senior officers.

178. That seems to me nonsensical, to be honest. It cannot be the case that you can claim to be a charity just because you are doing public good. The Treasury would claim to be a charity on that basis. It is collecting taxes, and it is using them to do public good. That argument is nonsensical. It relies on the Trust being able to show that they are the charity that they claim to be, and I am afraid they have not been able to do that. That is the basis of me feeling I am being materially affected here because I am demanded to pay a levy. If I do not pay it, I am subject to criminal prosecution, and yet I am paying it, ostensibly, to an organisation that says, “We are a charity and we are governed by charity law”. That is not correct.

179. THE CHAIR: I think we have got your point now because you have made it very clear. Is there anything else you would like to say in particular on behalf of the three petitioners whom you represent on the issue of standing?

180. PROFESSOR McCRAE: I think the final thing I would like to say, my Lord, concerns the cost of this activity. The Trust is funding this activity from its reserves through a mad economic policy that does cause a problem for us as levy payers. It is

loaning funds to itself and paying them back at 6% interest over a 25-year term. We, the levy payers, are paying the interest on this loan. Having paid levy to the Trust, the Trust is lending the money to itself and then requiring us to pay the interest on that loan. That, in effect, means we are paying twice for supporting the provisions in this Bill.

181. The Trust has already committed approximately £1.2 million of funding to reach this point in the process. It did a cost-benefit analysis at the beginning, where it indicated that the overall cost, including a contingency, should be about £430,000. It has already loaned itself, through a loan facility, £471,000, and that does not take account of the interest. There is no cap on this activity. It is at the beginning of the process.

182. Assuming that some form of Bill gets through the process in the Lords, it will then go to the House of Commons, where this whole process will start again, and we are paying for this process. We, the levy payers, are paying for it, twice in some senses. There is no accountability to the Trust for doing this. Nobody is saying to them, “Look, hang on a minute here. There needs to be some cap on this expenditure”.

183. THE CHAIR: With great respect, you are drifting away from matters that we can deal with at this committee, so I think, unless you have any other points to make—

184. PROFESSOR McCRAE: For that I apologise, my Lord.

185. THE CHAIR: I fully understand, and you have been able to make your point, but it is a question of what we can do for you within the very limited powers that we have.

186. PROFESSOR McCRAE: I quite understand, my Lord, and I do apologise that, in some cases where you have sought for me to give an answer, I do not feel I have been able to give an answer and I have strayed into areas of activity that, really, you are not able to deal with in this particular.

187. THE CHAIR: Thank you very much.

188. PROFESSOR McCRAE: Mr Stubbings, who is one of the petitioners, is asking me to present this morning the question of primacy when there is conflict here between the requirements of a public body and the requirements of a charity. That does make difficulties for a hybrid entity, although I have to observe that the organisation going forward does not wish to be the hybrid entity that it currently is. It wishes just to be a

charity. That is what it is saying in its Bill provision: “We are a charity and we want to go forward as a charity”. If it wants to go forward as a charity, it needs to drop the levy and drop the requirements of its elections. It does not need elections, with the costs associated with that. It can appoint people to the board. I think it would be absolutely mad, and would be to the great detriment of the provision of maintaining the hills, if that went forward.

189. You do also have to observe that, over the years, the hills have moved from being a local asset, being paid for locally, to being a national asset. Most of the people who use the hills do not come from within the bounds of the area that pays the levy. They come from much further afield now. For those, it is a free entity, effectively. I am not arguing against that. I am not saying that that is a bad thing. I am just saying that, somehow, within the way that this organisation meets its commitments, that has to be factored in, because to do otherwise is unfair to the levy payers. It is unfair to the local population. It does not follow natural justice.

190. THE CHAIR: Shall we leave it there?

191. PROFESSOR McCRAE: Yes.

192. THE CHAIR: We will hear from counsel as to what the answer is to the points you have raised. Ms Lean.

Response by Ms Lean

193. MS LEAN: I am grateful, my Lord. If I may, I will try to focus my response on those matters that I think go to the question of standing, because a lot has been covered. My Lord, firstly to highlight that Professor McCrae has identified, very fairly, that a lot of what he is concerned about or what he considers he is affected by is the current situation today—the track today, and whether the Trust is or is not, in his view, carrying out its statutory functions the way it should be today. There is nothing that has been identified that is specific to the Bill, in terms of things like the access track or suchlike, that is new or different from the position as it is at the moment.

194. Secondly, with regards to the status of the Malvern Hills Conservators and if or how that might be affected by the Bill, my Lord, as I said in opening, the Trust would

continue as a body corporate under seal and subject to the statutory powers and duties contained in the legislation that is preserved by Clause 5 of the Bill. My Lord, I am afraid I have it separately, so I do not have the page number immediately to hand. It is at page 36 of your reference bundle.

195. THE CHAIR: Clause 5(2) says, “The Trust is to continue to be a body corporate”. Is that the point?

196. MS LEAN: Yes, with a common seal and having power to hold and manage land and other assets. It separately remains as a registered charity, and there are some provisions later in the Bill, but the point is this Bill does not make the Malvern Hills Conservators or Malvern Hills Trust just a charity, which I understood to be a primary concern raised by Professor McCrae.

197. My Lord, if I may, it may be an unhelpful segue and I apologise for that. There is another example relatively recently of where there has been change to the means by which commons that are subject to a private Act of Parliament are to be held and managed going forward. It is the Monken Hadley Common Act of 2022. In that Act, responsibility for the commons under statute was with church wardens, but that expressly provided for land and suchlike to pass to a new body “on its incorporation as a charitable incorporated organisation”. There is no comparable provision at all in this Bill that suggests that any new particular body is being set up by this Bill to be a charity or to be a particular type of charitable body.

198. My Lord, I do not propose to go into what may or may not have happened back in 1984, mainly because I do not have that information in front of me at the moment, but the charity is a registered charity today. It will continue as a registered charity if this Bill goes forward, and it will remain a body established by statute that is subject to the powers and duties conferred by statute.

199. In terms of the levy, my Lord, again the concern there seems to be perhaps a power that has not been exercised and exists historically to extend the levy-paying area and, in that sense, what is not in the Bill rather than what is. I do highlight that, because what Professor McCrae may be said to be concerned with, with regards to the levy, is not what the Bill provisions are that specially and directly affect him, but what the Bill maybe could have done but does not do, and that is not what would ordinarily be looked

for in terms of locus standi—what could potentially have happened but has not. The focus is on the provisions of the particular Bill and what that Bill means for the petitioner's interests as a result of the provisions of that Bill.

200. Fourthly, my Lord, if I may pick up the analysis advanced by my Lord, Lord Inglewood, and the party wall analogy, clearly, Professor McCrae is a neighbour to the Malvern Hills, and a closer neighbour than others who live in and enjoy the Malverns area. However, at risk of going back to *Erskine May* and the principles there, it is at 44.6 in the most recent edition, which you find at page 17 of the locus standi bundle. Forgive me. I am conscious of not trying to go back to directly and specially affected where land is taken from works, but there is a recognition that, in certain cases, even if you do not have land taken from you, because, essentially, you are so close a neighbour, that may be sufficient, in some cases, to give rise to a right to be heard, but it needs something more than simply being a neighbour. It needs something more than merely being the person or the property owner who is close to or will overlook a new railway. It is exceptional cases of some sort of special damage or disturbance or injury through things like vibration or suchlike.

201. Again, I just come back to, with respect, that Professor McCrae has not advanced anything particular about the Bill that it is said will affect his property as a neighbour as a result of the provisions of the Bill. Again, I have listened carefully to my Lord, Lord Inglewood's suggestion about the change in the character of the Trust. My Lord, it is not necessarily the change in the character of the Trust that has a direct impact on Professor McCrae as a neighbour. It could only be some power that is exercised or something that can be done that could not be done previously that affects him, not just the fact that there are changes to the organisation that may be entrusted with those powers.

202. With respect, I have listened very carefully to Professor McCrae and understand and take on board a number of the points that he has said, but it does very much come back to the points about the Bill generally. There is nothing here, in my respectful submission, that discloses something particular, something special or direct in the Bill that has been specifically identified by this petitioner that we say we would give him—

203. THE CHAIR: He does, at one point in his petition, mention the general power. It is one reference to a clause that actually appears in his petition. If you look at paragraph

2.10, in the fifth line, “The most important new power being sought is that of general competency as set out in section 83 of the submission”. He then explains why he objects to that power, so he does identify one particular provision to which he takes exception.

204. MS LEAN: He does, my Lord, but not in any way that identifies why his interests are particularly and specially affected by that power. It is, again, a general concern or complaint about, by reference to other bodies that may have had similar powers, what could potentially happen in the future. I appreciate that, from Professor McCrae’s perspective, that must be, again, tied to the levy, in the sense of, if the use of a general power resulted in the levy going up, that is where the connection is, but, again, my Lord, that comes back to my points earlier about whether the mere fact that you are somebody who is liable to pay a levy and the mere fact that it could possibly go up at some point in the future because of something the Trust might do, as of yet unknown, and not something that is specifically identified or provided for as a result of this Bill, in my submission, that is not sufficient.

205. My Lord, if I give an illustration of that, if we were in a situation where, as part of the Bill, the Trust were actively promoting that they were going to buy a significant area of land and they specifically needed to raise funds, and a special levy was going to be included to realise the money for those purchases, in a manner analogous to what happened in the 1924 Act, I imagine either I might not be sitting here making the submissions to you today or it would be a different situation, because there, there would be something specifically in the Bill that was clearly and going to impose an additional levy or an additional level of levy on this petitioner. That would be a particular change or provision of the Bill that you could see had that direct and obvious connection. At most, all that is being advanced is that, “If they have a general power, it is possible that, at some point, they might do something with it that might possibly mean the amount I have to pay in a particular year goes up”. In my submission, that is not what has to be illustrated to show that there is a provision in the Bill that means that this petitioner’s interests are specially and directly affected.

206. THE CHAIR: What about his position that he wants the Bill to be completely rejected? Is that something that satisfies paragraph 111?

207. MS LEAN: My Lord, in my submission, no, because it is, “The Bill should be

rejected”. If we were in a hybrid situation now, I would be submitting that that goes to the public aspect or the policy aspect. That does not go to the private aspects of the Bill—i.e. particular provisions that have a particular impact on this particular petitioner for a reason. My Lord, I would respectfully say that looking at the remedies sought by the petitioner is enlightening in terms of understanding the issues that arise here with Standing Order 111 and why, in our submission, this petitioner is not directly and especially affected.

208. My Lord, I am conscious that other petitioners were addressed as well. I know I dealt at some length or covered some ground on levy payers in my opening remarks. There is one point that I realised I did not mention. I focused in my submissions on the position of individual ratepayers or levy payers. The practice or the precedent has been that that is not sufficient to give them standing to petition against a Bill or to be heard on their petition against a Bill.

209. There is also the representation element in there. As was picked up in the passages I referred to in *Erskine May*, there is the element of the doctrine of representation and ratepayers against the bodies that have elected them, but this is something that is also picked up in, in particular, Standing Order 118. My Lords, you have that in your small clip of locus material. It is document L2, page 12. This is the Standing Order that provides that it should be competent for the Select Committee to whom a Bill is committed, if they think fit, to permit petitioners “being the local authority of any area the whole or any part of which is alleged in the petition to be injuriously affected by a Bill or any provisions thereof, or being any of the inhabitants of such any area” to have their petition against the Bill or any other provisions thereof considered by the committee.

210. My Lord, I anticipate, at some point, you may ask me to address you on that “or any inhabitants thereof”, but if I could just focus for the moment on the local authority point, that does pick up on the principle that, ordinarily, a local authority or a local body is best placed to represent the interests of an area, rather than the individuals, where it raises matters that affect the generality of the area or the generality of the inhabitants within it.

211. I merely highlight in this context that one of the petitioners appearing before you,

who the promoter has not challenged in terms of their right to be heard, is Guarlford Parish Council. I do not suggest for a moment that they are directly, in that sense, representative of levy payers who live outside their parishes, but you will have appearing before you a parish councillor who does raise issues on the levy.

212. THE CHAIR: I thought they had withdrawn their petition. Am I wrong about that?

213. MS LEAN: I understand that may be Worcestershire County Council, not Guarlford Parish Council.

214. THE CHAIR: Warwickshire County Council?

215. MS LEAN: Sorry, Worcestershire County Council, I had understood, had withdrawn their petition, but it is one of the parish councils—Guarlford Parish Council—whose standing we have not challenged by reference to the fact that they are the local authority who are representative in terms of their area. Having gone back and checked their petition, the levy is something that they are raising, so your Lordships' committee will be hearing from a representative body whose inhabitants are subject to the levy about the levy.

216. THE CHAIR: So they are representing their inhabitants, really, in taking that point, are they?

217. MS LEAN: Yes, my Lord. The parish council does not itself, as I understand it, pay the levy, so it will be the parish council appearing to raise the fact that inhabitants within Guarlford parish are subject to the levy. One of the points they do raise in their petition, having gone back and checked, is the fact that the levy has not been extended across the whole of the area of all of the parishes who enjoy or have land within the Malvern Hills.

218. My Lord, I am conscious that I have not addressed everything that was raised by Professor McCrae, and I mean no disrespect to Professor McCrae or the committee in not doing so, but I have sought to respond to what I thought were possibly the four points that particularly went to the standing issue. If there is anything further you would like me to address that you feel I have not, I am, of course, happy to do so.

219. THE CHAIR: I think we are content with what you have said and you have given

us enough to think about. We will adjourn the proceedings now until tomorrow, but, before I close the proceedings, I will just make it clear that any decision we take on your position, Professor McCrae and those you represent, will have to be reserved until Thursday, when we will announce our decision. We are not giving a decision today. We will not give it tomorrow, but we will let you know on Thursday, and we will then take matters forward according to what we decide. On that point, I can draw today's proceedings to an end, and thank you very much for your submissions and your attendance. Thank you.