

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

**MALVERN HILLS BILL COMMITTEE**

PETITIONS AGAINST THE BILL

Thursday, 5 February 2026 (Morning)

In Committee Room 2

PRESENT:

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

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FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators  
Alastair Lewis, Roll A Parliamentary Agent  
Susan Satchell, Governance Change Officer, Malvern Hills Trust

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(At 10.25 a.m.)

1. THE CHAIR: Good morning and welcome to this, the 8th, or possibly the 9th, public meeting of the Select Committee on the Malvern Hills Bill. May I ask those who are sitting in the seats at the back of the room, particularly our new visitor, to be sure your mobile phone is off so that we are not interrupted by that, and also, if you have people who come and join you, to remain silent so as to not distract the witnesses who are in front of us?

2. I would also like to say a word about the fire alarm system. In this case, we do not have bells. What we do have is a two-tone siren, which is followed by a series of taped messages that tell you what to do. If an evacuation is necessary, please follow the instructions of the clerk. If you happen to be outside in the corridor at the time, then find the nearest security officer, who will tell you what to do.

3. These proceedings are being broadcast and a full transcript will be taken. If we wish to deliberate at any point, we will clear the room and the broadcast will cease so that we can go into private session, but I do not think that that will be necessary this morning.

4. The morning session is really devoted to you, Ms Satchell, to continue to address us, but I would like to pick up one or two points just before you go ahead. Could you go back just to look at the paper you gave us on the Charity Commission scheme about changing the precepted areas? You do not need to look at the paper itself. What interested me was the Charity Commission scheme. How does that come about? Is it your scheme or is it their scheme?

5. MS SATCHELL: My Lord, it would be a scheme that we put forward to the Charity Commission. It would have to be agreed with the Charity Commission and, indeed, DCMS. The proposals would originate from us, but would have to meet with their approval.

6. THE CHAIR: Yes. I think I understand that. It is just that it is your scheme, your ideas, and they have been approved. That clarifies that point.

7. The second point is that you have made it very clear that, in your understanding, the individual trustees do not represent the wards or parishes from whom they are

elected. I am not sure I understand the authority for that, because, when we look back at the very beginning, as I think Lord Inglewood mentioned to you earlier, way back in the very first Act, surely the arrangement that was set out there very carefully, and indeed for a number of decades since then, was, as we are familiar with in local authorities, that they were representing the particular wards or parishes from whom they were elected. Something has changed somewhere, if you are right, and I want to know what it was and what your authority is for the change.

8. MS SATCHELL: I am not very well versed in the history. My Lord, you have before you the Malvern Hills Acts and, if there were any changes, then they can only be what is incorporated in those Acts. The basis for saying, if we are a charity, then—I am just trying to remember where I could find it to—the basis is that, if you are a charity, then your obligation, in the charity law that has developed through trusts and all the other things since the 16th century, is that your obligation is to act solely in the interest of the trust or the charity to which you are appointed.

9. That phrase, effectively “solely and exclusively in the interests of the charity”, is one that runs through all of the charities recommendations. I will be referring to a letter that we had from the Charity Commission in December following the meeting, which was referred to, in October where Mr Myatt and Ms Burford were found to have a conflict of interest. The Charity Commission specifically wrote to all of the trustees, asking them to confirm that they recognised that their obligation was to act solely and exclusively in the interests of the charity, or the trust, and not the bodies that appointed them. We will come to that. I am not entirely sure where the phrase comes from, but it is a basic tenet of charity law that you must be pursuing the interests of the body to which you have been appointed.

10. THE CHAIR: I can follow you in almost every charity you can think of. You could take the Royal Society for the Protection of Birds, for example, and you are serving as a member on the board, or whatever it is, of that particular organisation. Obviously, you are concerned with the interests of the charity, but this is an unusual charity in the sense that you have got people being elected by people spread across the Malvern Hills area.

11. Presumably, going back to the original history, that had some attempt to make

sure that the various parishes and wards had somebody who was representing them. You do not need to look at the original Acts just to get the fact that that must have been the idea at the beginning, because they could have set it up by just having a series of, as it were, appointed trustees. That would be fine and it would be absolutely in the ballpark of what you are telling us. The situation at the beginning does not look like that and that is what makes me wonder what has changed. Is it the Charity Commission who are telling you this, or is it you who are just simply saying that you are deriving this from the idea that, because it is a charity, it must be that way?

12. MS SATCHELL: If we are a charity, my Lord, then it is that way.

13. THE CHAIR: We might disagree with you.

14. MS SATCHELL: You would be disagreeing with the Charity Commission in that case.

15. THE CHAIR: Sorry?

16. MS SATCHELL: You would be disagreeing with the Charity Commission in that case. I am going to ask Ms Lean if she can give me a steer on this.

17. MS LEAN: My Lord, I was going to say, I sense, along with some questions yesterday, we may be veering into matters that may be legal submission rather than evidence for the witness. I am very mindful that this is clearly a point of concern for the committee, along with also the questions raised by my Lord, Lord Inglewood, about the nature of the receiving body and whether that is driving duties or obligations.

18. What I was going to respectfully ask was whether perhaps we could return to those matters in submissions on Tuesday, perhaps after we had gone through Ms Satchell's evidence and gone through the provisions of the Bill. It may also be that some of the information or factual material that Ms Satchell provides as we go through helps to inform any submissions that may be made on that strict legal point.

19. My Lord, I do take the point about when—if you look at the Acts, it says that levy should be paid from here. There shall be conservators who shall be appointed in this way. I also have slightly in mind that that may be a product of the sorts of arrangements that were in place generally to set up these sorts of bodies as a practice back in the

1800s. It may be that we veer into more general drafting points or things like that, which I may need to bring to bear. It may be helpful for me to sweep all of that up together to deal with the nature of bodies as well, rather than attempting to deal with it now, if that would be acceptable.

20. THE CHAIR: Yes. I think that that would be very helpful indeed, Ms Lean. Could you have a look at the Wimbledon situation? We have been told several times that that is an analogy for what we have here. I have no idea. You can probably tell us how the board of the Wimbledon organisation is set up, whether it is similar to this, and are there any other examples of our kind of organisation, which draws its membership by election from particular areas? It is that characteristic that is very unusual for charities and that is why I wonder whether the Charity Commission really is being too, as it were, guided by the ordinary situation in dealing with this one. Ms Satchell, I think it is unfair to press you further on this, because it really is a technical point that Ms Lean is probably best able to address.

21. MS SATCHELL: Thank you, my Lord.

22. MS LEAN: Perhaps, my Lord, it would be helpful if we dig out the Acts that relate to the Wimbledon and Putney conservators, if it would be of assistance to the committee to actually have their governing framework as well, so perhaps there is a comparison with this one.

23. THE CHAIR: See what you can do to—but it is absolutely fundamental to us when we are considering the people who are arguing that there should be a different composition of the board. We do not want to be misdirected here. I can understand, if we were to take a different view about the composition of the board, that would have serious implications, so I am very anxious we are absolutely on sound ground on what we do, either in your favour or in favour of those who are arguing for a different situation. We look forward to your address next Tuesday. Thank you very much.

24. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask, do we have a copy in our various bundles of the letter that the Charity Commission wrote to all the trustees?

25. MS SATCHELL: Yes, and I am going to come to it shortly, my Lady.

26. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Lovely. Thank you.

27. MS LEAN: Could I just pick up on a point from a question that Baroness Bakewell asked yesterday about the Malvern Hills District Council?

28. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I have the document here and I can see that their council tax started off at 3.1% and then gradually decreased, but that was the first year, last year, that it was nil.

29. MS SATCHELL: I do have an explanation, my Lady, which is that Malvern Hills District Council is going to become part of the Worcestershire unitary authority within about two years. They have reserves and their view was that they would not increase their precept this year; they would just simply use their reserves.

30. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Lovely. Thank you very much.

31. MS LEAN: There was an explanation.

32. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: That explains it.

33. MS LEAN: My Lord, before turning back to Ms Satchell, may I just ask—public body was something that we said we would pick up on in the introductory section. Similarly, having reviewed it overnight, it seems that might be more submission than evidence for Ms Satchell. I am happy to briefly address you on it this morning, or, if you would be happy to hear that on Tuesday, I could pick that up on Tuesday.

34. THE CHAIR: I thought I understood it. It was a request by the Office for National Statistics purely for statistical purposes. That is my understanding.

35. MS LEAN: My Lord, it was just the query about, “Are you a public body or not?” in a wider point, because it is something that a lot of petitioners have raised, is what is the status of the trust, even perhaps leaving aside the ONS. I am happy not to get into that this morning if it is purely a factual question about the ONS, because Ms Satchell will deal with that. If it goes wider than that, then I was going to say I am happy to

address you on that, because it is probably more legal submission than evidence.

36. THE CHAIR: On Tuesday. Right. Thank you.

37. LORD INGLEWOOD: Going back to what the Lord Chairman was saying, do you have surviving minutes going right back to the start of the trust? I suspect it would be helpful for us to see the sorts of things that were going on right at the start, because that would reflect what was actually—the substance of what was established at that time.

38. MS SATCHELL: My Lord, we do. I think you possibly are going to need to narrow your request slightly in terms of what you would like me to find, because I think there is one year missing, but we have got a complete set of minutes going back to 1884, and it is a cupboard's worth.

39. LORD INGLEWOOD: I am afraid I suspected that. It seems to me that it would—and I am not being prescriptive about this. It seems to me that the kinds of things they were dealing with, particularly in respect of the interests of the people in the various affected parishes, would be a pretty clear pointer to what it is actually the thing was set up to do. How you find that, I am afraid, that is a needle in a haystack, arguably.

40. MS SATCHELL: I will see what I can find.

41. LORD INGLEWOOD: Can I just leave the thought in your mind? That would help me personally, certainly.

42. THE CHAIR: Right. I am sorry. We have bombarded you with things. If you would like to just resume your presentation in your own time and we will see how you get on.

### **Evidence of Ms Satchell**

43. MS SATCHELL: Thank you, my Lord. We have discussed coming on to the public body matter and Ms Lean is now going to pick that up. A number of members of the public have been trying to ensure that the Trust is noted down in various areas as a public body. We were somewhat surprised to find that there was a letter from the ONS saying that they were going to look into how the Trust should be classified, and indeed

then did classify the Trust as a public body for their purposes.

44. I provided this slide to make it clear that, when we wrote back to them, somewhat surprised, they pointed out that this classification is undertaken purely for statistical purposes—their statistical purposes—and does not impact on our activities. Similarly, on their website, it says that it should be clear that the decisions are taken purely for the statistical analysis and the classification does not affect the legal status or the onus of the body concerned.

45. THE CHAIR: I thought that that was quite understandable. I picked that up and assumed that was correct, and we need not really be too troubled with the public body point. I suppose, under the Human Rights Act, there may be an issue, because there are certain provisions that deal with public authorities there, but we need not get into that in this case, I think.

46. MS LEAN: No, my Lord. I am certainly happy to address you on how the public authority or public body may play out under different legislative regimes, or give a very brief overview.

47. THE CHAIR: Yes, a brief overview would be helpful on Tuesday.

48. MS LEAN: Thank you, my Lord.

49. MS SATCHELL: My Lord, I am going to take you back, perhaps, to the path to where we are today, and I have outlined already the Charity Commission's suggestion that we should have a Section 73 scheme, the issues around St Ann's Well and the fact that, after that, there was a governance review and the Trust did decide to apply for a Section 73 scheme.

50. There was a consultation on the main proposals in 2019 and the results then were overwhelmingly in favour of the Trust's proposals, apart from two matters that I would say, perhaps in hindsight, we could have explained slightly more clearly. Following the consultation, we then, to, I think, everyone's surprise, got an email from the Charity Commission saying that DCMS were no longer prepared to take the scheme forward and suggested that a Bill in Parliament would be the better option, I think probably because the consultation did raise some issues and DCMS had been very clear that they really

only wanted to do this if it was uncontroversial. The Trust was very disappointed, mainly because Section 73 had been enacted precisely to avoid charities having to go through the cost and jeopardy of promoting a Bill in Parliament.

51. There was then a bit of a pause because of Covid and everybody living with their disappointment, but then another event occurred that rather forced the Trust's hand. That is—again, I do not need you to refer to the document—the Malvern Hills (Electoral Changes) Order 2023, which changed the ward boundaries for Malvern Hills District Council. The department that was looking at the changes, we put our views forward in their consultation, but they were not taken up. Our MP very helpfully organised an appointment with us to see if the relevant department would promote an order clarifying the position following the changes to the local government boundaries, but we were told yet again that we would have to come forward with a parliamentary Bill.

52. This goes back to the problem that I have already alluded to, whereby the wards and the electoral areas are differently defined. A little bit of history here that I do know about. Malvern Urban District Council, which is referred to in the 1924 Act, was abolished in 1972 and became part of the much larger Malvern Hills District Council, which means that trustees can be appointed from much further away, whereas obviously the urban district council was really quite a small area within Malvern. We managed with that change because the seven wards of Malvern Hills District Council in the town area were exactly the same area as the old Malvern Urban District Council area.

53. The problem that we had following the Order was that two of those wards were expanded to include areas that did not pay the levy. The Trust was really concerned about what it should do. It took advice and the advice was that we would have to continue to run our elections within the old Malvern Urban District Council area, which meant that some of the new wards would elect trustees, but the parts that had been added would not start suddenly having to vote for a Malvern Hills conservator or trustee.

54. We went back to the district council, who run the elections on our behalf, and said, "Can you do this?" Initially, their software providers told them that they could not, but the officer from the Malvern Hills District Council doggedly pursued it and found that there was a way in which she could still continue to run our elections in the area referred to in the 1924 Act, notwithstanding that the district council wards had changed. That

was our first major scare, really.

55. That prompted us to start to make some progress on the Bill, but it is now apparent, as I have just mentioned in the response to Baroness Bakewell's question, that Worcestershire is to become a unitary authority in the next couple of years. That will undoubtedly lead to further boundary changes and, even if we could resolve the voting issue, if the council is subsumed into Worcestershire as a unitary authority, following what is in the Acts now, it would mean that trustees could be appointed from as far away as Redditch, or Kidderminster, or Broadway, and not that they are not very nice places but they do not have a lot of connection with the Malvern Hills, so the Trust decided it had to go ahead.

56. We had new trustees in 2023. We had three long induction sessions to get the trustees up to speed. We had obtained the Charity Commission consent that we needed under Section 74 of the Charities Act, which requires charities to obtain Charity Commission consent before spending their charity funds on promoting a Bill. That consent capped the cost and it also put some limitations and conditions on what we could do. When we come on to looking at the levying clauses I will explain a little bit further about how that affected our position, which is, in a nutshell, that we were told that we could not spend the money on promoting changes to the levy-paying area.

57. Briefly, we ran another consultation in May to July of 2024 and, at that stage, there was very organised opposition to the Bill. There were leaflets being delivered, a strong social media campaign, with perhaps some not entirely factual interpretations of what the provisions of the Bill would allow, and encouraging consultees to just simply say no to everything and make no comment. We did consider all of the responses very carefully in three board meetings and I believe you have got the minutes for those in the bundle of my evidence. P9B I have got down.

58. THE CHAIR: Is this the other bundle we need to look at?

59. MS SATCHELL: This is the bundle that you were given yesterday, my Lord. I have not got the page numbers.

60. MS LEAN: My Lord, if I can assist, in the large bundle from yesterday, you have minutes of the board meetings that considered the Bill after the consultation, starting at

page 345. There are board minutes there from meetings in September 2024, October 2024, a second one in October 2024 and then November 2024. You have, starting at page 382, the three papers that were prepared to inform decisions to be taken by the board following the consultation. The first one starts at page 382 and that is from September 2024. There is another one from 10 October 2024 at page 414. I think it may just be those two, but I will check. It is in that section, starting at 382 onwards, you have the papers that sit behind some of the decisions that the board was asked to take about potential changes or particular clauses of the Bill.

61. THE CHAIR: Will we be coming back to these minutes at some point in the course of the discussion with the petitioners?

62. MS LEAN: My Lord, we have certainly included the working papers, because there is some of the reasoning there that sits behind, so we may well, when we come to some of the petitioners, if there are specific points, take you to those papers to show how that response was considered or how that question was considered.

63. THE CHAIR: I ask the question because there is a lot of reading here and the question is whether we need to do that now or whether we can just proceed with Ms Satchell's presentation and, where the point really matters, we can go back to these minutes. Is that the way to deal with it?

64. MS LEAN: That would be my suggestion, my Lord. We have given you the papers on the basis that it may become helpful at some point to go specifically to those documents. We do not suggest you need to read them all before you hear anything, but, if there are particular passages it may be helpful to go to, we will seek to direct your attention to that as petitions go through.

65. THE CHAIR: Thank you very much.

66. MS SATCHELL: I updated my notes last night, my Lord, with the voting numbers from the November meeting, when the board decided to go ahead with the Bill, but unfortunately I have got a previous copy of my notes. I will come back to that. The board resolved in November 2024, by a substantial majority, to go forward with the Bill.

67. THE CHAIR: What about the 2024 consultation? You said that in 2019 there was

substantial public support for what you were proposing. We see the public consultation document in front of us on the screen. That is 2019, but you had another one in 2024, did you not?

68. MS SATCHELL: That is correct, yes. That is on the next slide.

69. THE CHAIR: What happened then?

70. MS SATCHELL: There was not the same degree of enthusiasm, my Lord. I have alluded to the fact that there was a very significant campaign encouraging people to respond in a negative way to that consultation.

71. THE CHAIR: Yes. Right.

72. LORD EVANS OF GUISBOROUGH: What were the principal concerns they raised?

73. MS SATCHELL: It fundamentally comes back to the charity versus the public body and the issues about representation. I think that that is a point that underlies the whole issue. Those responses were considered. We did make some amendments in response, but we come back to the point that the trustees have to make the decision in the best interests of the Trust. It is fair to say that I think the best interests of the Trust do not always coincide with the interests of the residents in certain areas, as they perceive it.

74. The Bill was lodged last year and this is how far we have progressed. You have heard a bit about disagreements within the board. It is evident that, since the Bill was deposited, there have been a number of changes on the board. If you could go to the next slide. They have got slightly out of order. Sorry. The slide that has just come up now is the public statement from the Charity Commission. I am very sorry.

75. LORD EVANS OF GUISBOROUGH: They are still in the same order as the ones you provided in the file, or certainly the same order as mine.

76. MS SATCHELL: Yes, they are. They absolutely are, but I have got out of order with the slides. Yes, this is taking us back to 2020, when the Charity Commission said that we had to proceed by way of a Bill, not by way of a scheme. Yes, and then there is

another slide with the 2024 consultation document on it. My recollection, although I will have to check the minutes, is that the decision to proceed with the Bill was something in the region of 17 votes to two or three.

77. THE CHAIR: Could you repeat that again, please?

78. MS SATCHELL: I would like to just check that before you make a note of it.

79. MS LEAN: My Lord, the document is in the large bundle, starting at page 378.

80. MS SATCHELL: Yes, my Lord. I am very sorry about having to look this back up again, but the resolution was 17 votes in favour of promoting the Bill and two against.

81. LORD EVANS OF GUISBOROUGH: Which page is that on?

82. MS SATCHELL: It is page 362-363, and I think it runs over to 364 as well.

83. LORD EVANS OF GUISBOROUGH: Seventeen versus two. Is that because there were abstentions or because there were vacancies?

84. MS SATCHELL: I think it was because some people did not attend the meeting.

85. THE CHAIR: I see that it was Robert Berry and Richard Fowler asked for their dissents to be recorded.

86. MS SATCHELL: Yes.

87. LORD INGLEWOOD: At that point there were no conservators who had been ruled to have conflict and could not take part.

88. MS SATCHELL: No, my Lord. Everybody got all the papers and were able to vote in all the meetings in relation to the Bill.

89. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Of the 29 conservators, only 19 were present.

90. MS SATCHELL: Without checking the detail, I suspect that there have been vacancies on the board for some time. Certainly church commissioners, Powick and I think probably some of the Malvern Hills District Council places were not filled. I

would have to check exactly how many conservators or trustees were appointed at that stage to answer the question.

91. MS LEAN: My Lady, if it assists, if this is the meeting of 17 October 2024 that we were just looking at, we were looking at the resolution on 362. If you go forward to 359, you have a list of those who were present, those who were absent and apologies for absence. We can probably tot up the maths, but you can see who were the conservators who were present, those who were absent with apologies and those who were absent, if that assists.

92. THE CHAIR: Yes. At page 378, there are some familiar names in the apologies for absence at that meeting.

93. MS LEAN: My Lords, 378 was a subsequent meeting on 20 November, where I understand there were two specific decisions that had to be taken. One was on the ECHR memorandum and one was on the approval of the draft Bill. Yes, my Lord, there will be some names there.

94. Perhaps, if I might respectfully suggest, having said that we did not need you to look at the documents, they are relatively short. Perhaps those two documents, if the committee had a few moments at a convenient juncture to look through, are probably the two key decision-makings in terms of the go-ahead. You will see who voted against. There are, also attached to one of those meetings I believe, statements that were made by members of the public who attended. The October meeting, so the one that starts at 359, has appended to it, as appendix A, public comments from a number of members of the public who said they wanted to speak about the Bill. It starts at 366 on the public comments. Some are for; some are against.

95. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: There were 40 members of the public present, according to the minutes, which is page 359.

96. MS LEAN: Yes, 40 members of the public in attendance.

97. MS SATCHELL: We have very variable public attendance, but because this matter has been of interest we have certainly had a lot more members of the public attending in the recent past.

98. THE CHAIR: We can go back to the slide, can we?

99. MS SATCHELL: Yes.

100. LORD INGLEWOOD: Could I please ask an explanatory question? At various times the draft Bill was considered, but presumably the draft Bill was being updated as it went along.

101. MS SATCHELL: It was.

102. LORD INGLEWOOD: In the most general terms, was the draft Bill that first received approval—how similar is it to the Bill that we are now looking at, in general terms?

103. MS SATCHELL: I believe that the Bill that we deposited in November 2024—and I think the changes are shown on the filled Bill as amendments in red. Is that right?

104. LORD INGLEWOOD: Right. That is fine. That is all I wanted to know. Thank you.

105. MS SATCHELL: They are evident on the face of the filled Bill, what the amendments are.

106. LORD INGLEWOOD: There were quite a lot. Some are just detail. I am just trying to see in terms of how the support for the process was evolving. It is one thing to agree to present a Bill, you will agree. It is quite a second thing to agree to the final version that is put forward. That is all. That is the only point I am trying to establish.

107. MS SATCHELL: My Lord, a lot of the changes are drafting changes rather than matters of substance.

108. LORD INGLEWOOD: Yes. No, I appreciate that. Fine.

109. MS SATCHELL: There were some changes in response to the county council's petition, which has now been resolved, but they were predominantly drafting changes. They were not substantive.

110. The Bill was deposited and five trustees petitioned against the Bill who were on the board at the time. It is then really quite noticeable from this list—the petitioner

trustees or trustees who are associated with a petitioning body, for example somebody who is a member of the Malvern District Council conservative group—they are all shown on the list in blue. I think it is fairly evident that there were a number of petitioners who made their way on to the board following the close of the petitioning period as a result of the way in which appointments are currently made. That is what has led to the situation that we are in now, in which there is a much more even spread of trustees opposed to the Bill and trustees in favour.

111. THE CHAIR: We know about Andrew Myatt, who is at the bottom of the list. He had not previously been a trustee. Is that right?

112. MS SATCHELL: He was a trustee until I think about—this was way back. It was in the early 2000s. I think he left in about 2010.

113. THE CHAIR: I see. He was off the board for a while and then he came back in again—

114. MS SATCHELL: He came back, yes.

115. THE CHAIR: —as we can see, in September 2025. What about some of the earlier ones? What about Paul Bennett? He is appointed. Has he been appointed earlier than that? I thought he was earlier than that, but it is here as September 2024.

116. MS SATCHELL: Yes, that is correct. He was a trustee shortly before the Bill was deposited. We will go into the way the appointments processes work at the various different councils when we get to going through the clauses.

117. THE CHAIR: Cynthia Palmer is mentioned, but she did not join with Mr Fowler on that particular petition, so she is not petitioning against as a trustee.

118. MS SATCHELL: She petitioned as an individual. I am just trying to remember my dates. She was on the board. Indeed, she was on one of the working groups way back when we were developing the provisions of the Bill, but she did have reservations about bringing the Bill forward in November 2024. She then subsequently resigned before the Bill was deposited.

119. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I am sorry;

there are quite a lot of dates that you have given us of board meetings. You said, on 17 October 2024, that was when the Bill was finally approved—well, the decision to go forward was final.

120. MS SATCHELL: That is exactly right. There was a decision to go forward. We had had, at that stage, a lot of iterations of the Bill, but we were still making drafting changes. I have to say I cannot remember exactly now what they were at that point. We were still making drafting changes, so the final form that came forward to Parliament was not approved until later on in November.

121. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Okay, but the trustees who made that decision on 17/10 had seen the Bill.

122. MS SATCHELL: They had seen something approaching a very final draft, but there were still changes coming forward. I do not think it is helpful for me to tell you which ones they were, but there were changes coming forward, probably in relation to the arrangements for the Trust administration and preparation of documents. There was not anything very exciting.

123. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Some of the petitioners have told us that the Bill was only sent to them the weekend before the meeting when they were expected to approve it and that was insufficient time to read such a detailed Bill.

124. MS SATCHELL: That is correct in so far as it goes, my Lady, but they had had a number of previous drafts. It was not that they saw the whole thing for the first time. They did only have the completed version shortly beforehand, but there had been drafts that kept coming forward to the board over the September-October period after the consultation had finished and we had made the final substantive changes.

125. LORD INGLEWOOD: Could I please ask one point? A number of new conservators were elected. Were the conservators who supported the Bill defeated, or did it not work like that?

126. MS SATCHELL: There is still a majority in favour of taking the Bill forward, but it is quite a slim majority now.

127. LORD INGLEWOOD: Yes, but, in terms of the elected conservators, did the ones who had previously supported the Bill get ousted or not?

128. MS SATCHELL: No. They did not get ousted, the trustees who left. One of them left because they left the area. No, they did not. Wait a minute. I am just trying to remember who it was that went at that stage. Sorry, can I just go back and clarify? Are we talking about when Jenny Burford and Andrew Myatt were appointed?

129. LORD INGLEWOOD: And in the slightly preceding period, while this was a contentious issue in the community.

130. MS SATCHELL: The trustees who were appointed after the Bill was deposited—

131. LORD INGLEWOOD: The appointed ones—it is slightly different, but not exactly the same. I am just particularly interested in the elected ones. Was there a sweeping out of the old guard?

132. MS SATCHELL: No, there was not so much a sweeping out of the old guard, but, as I say, there were two trustees who resigned for personal reasons who were in favour of the Bill, and we then had to hold elections to replace them.

133. LORD EVANS OF GUISBOROUGH: The elections were only created by the resignation of those people.

134. MS SATCHELL: By the vacancies.

135. LORD EVANS OF GUISBOROUGH: There was not a regular turnover in the sense that we would understand elections every four years or that type of thing.

136. MS SATCHELL: No, my Lord. The last turnover elections when the whole of the board is reappointed were November 2023. We are due to have some more in November 2027 at the moment.

137. LORD EVANS OF GUISBOROUGH: Yes, you have three people on that list, have you not, who were elected in November 2023, I think. Yes.

138. MS SATCHELL: Gosh. Right, elected ones? Yes, three new ones elected. When the elections and the appointments happen, on the four-yearly basis, it is a clean sweep.

Everybody has to be reappointed, so there were other trustees elected in November 2023 who had been on the board before. I think John Raine was elected at that point. Richard Bartholomew and David Core were all re-elected in November 2023.

139. I confess I have slightly lost my place. I am not sure whether Mr Myatt referred to the meeting on 9 October where there was a decision taken that he and Jenny Burford had a conflict of interest. You have the minutes in your bundle of that meeting. It is P11 437, if you want to refer to them. I am not asking you to refer to them now. Following that decision, there was a complaint made to the Charity Commission about that finding of a conflict of interest. The Charity Commission wrote out to all the trustees, and you have a copy of that letter at page 444, I think. It is an email.

140. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: This letter says that the Charity Commission received a complaint that two trustees appointed on 18 September, or elected rather, and the trustees, at a special board meeting on 9 October, were conflicted and therefore excluded. That would give the indication that they were not able to take present in the vote on 17 October.

141. MS LEAN: My Lady, if I may assist, this is 2025.

142. MS SATCHELL: They were in different years. We have moved into 2025.

143. MS LEAN: This is about a meeting in October 2025, as opposed to the resolution to go forward with the Bill in October 2024.

144. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I beg your pardon.

145. LORD EVANS OF GUISBOROUGH: That paragraph goes on, does it not, to say this decision follows on from the trustees' decision earlier this year to exclude those trustees who have petitioned against the Bill from decisions about the Malvern Hills Bill. You are working on the basis of a precedent set earlier.

146. MS SATCHELL: I am not quite sure I would use the word "precedent", because obviously, in theory, one would be taking these decisions on an individual basis. Yes, the people who had petitioned who were already trustees, there had been a decision made that they had a conflict of interest in relation to the Bill prior to the meeting that

took place on 9 October when the other newly appointed trustees were found to have a conflict of interest.

147. LORD EVANS OF GUISBOROUGH: You had excluded other people before for the same thing.

148. MS SATCHELL: Yes, everyone who has—I think the analogy was made, some weeks back, that the position is much like litigation and that, if you had a dispute with your neighbour that had gone to court, you would not be sharing your legal advice and your tactical considerations with your neighbour. That is the basis on which the exclusions occurred.

149. The letter from the Charity Commission on page 445 does confirm the position of which I have been trying to persuade you. The Charity Commission guidance is where the bullets are on page 445. Once appointed to a charity, new trustees must act together with the existing trustees and understand that trustees are responsible together for all decisions of their charity. Trustees do not act on behalf of a person or organisation that nominated or elected them. The trustees must, like all trustees, act only in the best interests of the charity.

150. Clearly, on a reasonable board, you can have discussions and differences about what is in the best interest of the charity, but, my Lords, the Trust having made the momentous decision to lodge the private Bill and all the cost implications that that carries—the Charity Commission had agreed that they would support the Trust in agreeing that they should pay for the cost of promoting a private Bill—it would clearly be, I would suggest, not in the best interests of the charity just simply to draw matters to a halt at this point.

151. LORD EVANS OF GUISBOROUGH: Just to be absolutely clear on that, your advice is that it is not in the interests of the charity to share your legal case with members of the board who are effectively on the other side.

152. MS SATCHELL: That is correct, my Lord, yes, because they do have a conflict and then clearly the legal advice is privileged.

153. LORD EVANS OF GUISBOROUGH: Yes, I can see the sense in that argument,

absolutely.

154. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: However, the fact that they disagreed with the decision that had been taken does not mean that they did not have the best interests of the Trust at heart.

155. MS SATCHELL: That is perfectly possible, but, nevertheless, the decision has been taken. As the Charity Commission letter makes clear, once you are on the board, you are responsible for abiding by the decisions of the board as a whole. There was a decision of the board as a whole to take the Bill forward and therefore, from a charity point of view, you would expect dissenting trustees to say that they did not agree with the decision but that they would have to go with it, because the majority are in favour.

156. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Had the Charity Commission not been funding the Bill—

157. MS SATCHELL: They are not funding it, if I may interrupt, my Lady.

158. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I know, but, had they not been funding the Bill, then would they have made the same decision?

159. MS SATCHELL: I am sorry, could you repeat the question?

160. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE It seems to me that the decision that those who were in disagreement with the decision of the board were conflicted because the Charity Commission said they were conflicted because the Charity Commission was funding the process of the Bill.

161. MS SATCHELL: My Lady, can I just correct you on two points? They were not conflicted because they disagreed when there was a decision to promote the Bill. They were conflicted because they petitioned against the Bill and that was what crossed the line.

162. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Was that because the Charity Commission had agreed that the board could spend this money? The Charity Commission would not have been involved if it was not for the fact that they needed to agree that the money could be spent on promoting the Bill.

163. MS SATCHELL: My Lady, they would have been involved because they have certain oversight in terms of charities and, for example, they have oversight over the objects of charities and, if we wanted to change our objects, they would have to agree to that. They also, from the good sense point of view, have had oversight. We gave them a huge amount of documentation at the stage where we applied for the Section 74 consent. I think they also saw a draft of the Bill, but certainly the Charity Commission have been consulted on whether they were content with the content of the Bill and have made suggestions through the process if they wanted to put forward amendments. They have been involved way beyond just simply giving the consent to spend the money, because, as I say, they know more about charity governance than anybody else.

164. The position was, after receipt of that letter, it went directly to the trustees and there was a board meeting on 26 January as a reply had been drafted for all the trustees to consider. Regrettably, the Charity Commission had asked the trustees to confirm that they understood their responsibilities as charity trustees and, when the reply was considered, there was again a split on the board: 13 of the trustees agreed with the response that had been drafted and 11 declined to endorse it.

165. THE CHAIR: That was this year, was it?

166. MS SATCHELL: That was this year, yes, last month. The response and the outcome—the way in which the board is divided—has been sent on to the Charity Commission. I think that, you will no doubt be somewhat relieved to hear, brings us to the end of my introduction and the proposal is now to go on to look at the clauses of the Bill, unless you have any more questions.

167. LORD INGLEWOOD: If I could just ask one point, charity can benefit the inhabitants of a particular area, and we are talking here about the Malvern Hills. I think you are telling us, that, while the actions of what I might call the dissenting trustees may well be in scope of the charity, it is because they disagreed with the policy adopted by the slightly larger number to present the Bill in this form that they are conflicted. It is not that their actions were outwith the terms of the charity more generally.

168. MS SATCHELL: My Lord, they are perfectly entitled to disagree with the decisions of the charity. That is in the nature of charities, councils, everything. There is a debate and people decide what is the best course of action. The proposal to deposit the

Bill was not by a narrow majority. It was that 17-2 vote.

169. It was the fact that, after that decision had been taken to deposit the Bill, those trustees decided that they were going to petition against it. It is the nailing their colours to the mast, if I may say that, and petitioning against the Bill that has given the conflict of interest and not the fact that they disagreed in the first place. It is the fact that they have stood up and made it clear that they are against the Bill that has given them the conflict of interest.

170. LORD INGLEWOOD: It is against the Bill as it is currently drafted, because, I think, if I have understood it right—and I may well not have done—you could argue that the action of the dissenting trustees is within the scope of the charity, because they are interested in the Malvern Hills, but it is merely that, because the previous decision had been taken, they were then ruled out of court. Is that fair?

171. MS SATCHELL: My Lord, once the decision has been made—

172. LORD INGLEWOOD: Yes, I get that.

173. MS SATCHELL: —the dissenting trustees should then go with the flow, rather than standing up against it in the parliamentary process.

174. LORD INGLEWOOD: There is no suggestion, I do not think, is there, that the actions of the dissenting trustees was outwith the terms of reference of the charity itself? It is an internal procedural consequence.

175. MS SATCHELL: I think it is a matter of individual understanding and conscience as to how you make a decision. If I understand you correct, it does not somehow put them outside—

176. LORD INGLEWOOD: You are not saying they have acted ultra vires.

177. MS SATCHELL: No, absolutely not.

178. LORD INGLEWOOD: No, good. That is what I wanted to establish.

179. MS SATCHELL: No, they are not acting ultra vires, but the best practice would be that, once they have been outvoted, they sit on their hands and just go with the flow.

180. LORD INGLEWOOD: Quite understandable. Thank you.

181. LORD EVANS OF GUISBOROUGH: If you had a board member who was opposed to the Bill but who had not petitioned against it, would they be excluded?

182. MS SATCHELL: No.

183. LORD EVANS OF GUISBOROUGH: Do you have anyone like that?

184. MS SATCHELL: I could not possibly comment. Honestly, I do not know. I will give you an example from another area, which is that, when we were considering an easement application, two trustees came in and spoke to the CEO, and said, “We can’t possibly vote in favour of this. We don’t think there should be any more development in Malvern”. By doing that, they made their—I am going to say—prejudged position very clear, said they could not look at the process they had to go through, according to the Act, with a clear head.

185. LORD EVANS OF GUISBOROUGH: That is slightly different, is it not? That is effectively analogous to a local authority planning committee where, if you are elected to oppose a planning application, you cannot vote on it because you are seen to have prejudged it, but you can still go to that planning committee and give evidence against it.

186. MS SATCHELL: I would go back to the point that the conflicts of interest for charities and conflicts of interests for councils are somewhat different. I do not know that it is necessarily helpful to go down into the differences of codes of conduct for councils and codes of conduct for charities.

187. LORD EVANS OF GUISBOROUGH: I am just pointing out the difference between the example you gave to me and the—

188. MS SATCHELL: There is a difference. Yes, what I am saying is that there are trustees on the board who did not vote on the original resolution. They are new on the board. They have not petitioned against the Bill. They have not come forward to Trust staff or to other trustees and said, “You know I am against the Bill”. There is no basis for us drawing that conclusion, unless they specifically say that that is their position.

189. LORD EVANS OF GUISBOROUGH: Thank you.

190. LORD PONSONBY OF SHULBREDE: In earlier hearings on standing, we have had some of the people say that they are not against the Bill but they are against elements of the Bill and they wanted to talk about that, but they could see the overarching purpose of the Bill. Do you know, of the people who did not want to endorse the response, is there a range of views, or are they united in opposing the Bill as a whole?

191. MS SATCHELL: My Lord, I cannot really answer that question. I was not at the meeting so I do not know exactly what was said or the basis on which it was said.

192. THE CHAIR: Where do we go from here? Are you going to look at the Bill now?

193. MS LEAN: We thought we might turn to the Bill, my Lord, if that was alright.

194. LORD EVANS OF GUISBOROUGH: We had a discussion yesterday on the back of a question I raised about what the objectives of the exercise were and you said you might go away and find something about that. If we are going to consider the Bill clause by clause, it might be a useful thing for us to be able to refer to.

195. MS LEAN: My Lord, we have not, I am afraid, been able to delve into the archives overnight to see what the thinking may have been, if we can find a list from when this first had been looked at in 2014. The best I can give you today would be the purposes set out in the resolution in late 2024, when it was decided to go ahead with the Bill for the following purposes.

196. LORD EVANS OF GUISBOROUGH: That is fine, for now.

197. MS LEAN: Yes, understood, my Lord. Forgive me; we have just not had time to go back through and trawl through the cupboard, as Ms Satchell referred to earlier.

198. LORD INGLEWOOD: Forgive me; following up from that, first of all, the way the thing has developed in the discussion, it has ended up at the last stage as Hobson's choice. You either support the Bill being deposited or you do not. It does not follow, I think, from what you have said, that every conservator who voted in favour of the Bill is necessarily in favour of every provision of the Bill. Presumably, that will have been part

of the understanding of the people when they took the decision whether or not to endorse its being deposited.

199. MS SATCHELL: My Lord, there would be a range of views, but, after all the discussions that we had, the members who were in favour of going ahead with the Bill would have come to the conclusion that, overall, it was the right thing to do. The example I will give is that, when we workshopped these things some years ago and we revisited the number of trustees, there were a range of views expressed. My recollection is that we had a—sticking Post-it notes on boards. The range of views was—the core was from 7 to 14 in terms of the number of board members, but everybody came to the conclusion, in order to get some progress, that 12 was about the right number. Given a free hand, they might not have gone for 12 themselves, but they were happy to agree that that was a sensible conclusion. I think that applies to all of the provisions. It might not be exactly what they would choose, but they are happy to go with it.

200. THE CHAIR: They would understand that the effect of the vote was to approve the Bill as it is. That must be so, must it not?

201. MS LEAN: My Lord, if I could maybe pick up on that in response to my Lord, Lord Inglewood's, question, there is an important distinction between the board as a legal person, being the legal person who decided to promote the Bill, and the individual views of people who make up that board. Much like in the standing hearings, I was drawing the distinction between the council as the legal person, who has got the right to appoint people or who has the right to represent the residents of an area, and the status of councillors being people who form part of that body, but they do not have a separate elevated status because of that.

202. In the same way, in my respectful submission, when you look at the Bill, this is the Bill that has been put forward by the Trust and really any particular personal views that individual trustees may have do not sit alongside that or have an elevated status or somehow affect whether the Bill in its entirety is proposed or not, because the decision of the body, which is the one who has the authority to make decisions for the Trust, said, “This is the Bill. This is what is being deposited. This is what we are asking Parliament to consider”.

203. LORD INGLEWOOD: It is “Parliament to consider” and it was not an

endorsement: this is what they were asking Parliament to give them.

204. MS LEAN: My Lord, I used the word “consider” perhaps out of respect and politeness to the fact that we are not asking—sadly, I do not think we can come to Parliament and say, “Could you please just stamp this off for us?” Necessarily, it will be subject to parliamentary scrutiny. “It is the Bill that Parliament is being asked to approve”, should have been the language.

205. LORD INGLEWOOD: They present this to us as the basis for the changes they want to see, recognising that we have capacity, if it is done in the right way, to make it different.

206. MS LEAN: Yes, my Lord. This is the Bill that the Trust puts forward with what the Trust considers is needed to put the Trust on the right footing going forward, but obviously that is always in the recognition that, because it has to go through a parliamentary process, it cannot be assumed that there will not be some changes or recommendations or amendments that are recommended as it goes through the process. This is what the Trust as a body, as the corporate body, has said: “Please, Parliament, these are the powers that we think we need and what we are asking you to approve”.

207. THE CHAIR: The effect of the vote was that your function is to persuade us that we should approve of the provisions you are going to take us through.

208. MS LEAN: The Bill—yes, my Lord.

209. THE CHAIR: That is your case. You are not, as it were, altering things at any stage in your presentation, are you? You are just simply saying, “This is what we have decided to put forward”, and you are going to satisfy us, because we have to be satisfied, that this is the right way to go.

210. MS LEAN: Yes, indeed, my Lord. The Bill in this form, subject to the additional typographical amendments and suchlike that have to come forward, is what we would be asking your Lordships’ committee to recommend be taken forward for Third Reading and what we would hope, at the end of the process, would become the Act. We are not saying, “Here are a couple of alternatives we are asking you to consider here” or, “In general terms, we think we need to do something about our governance. We think this

might be right, but it is up for discussion". This is what we are asking for, because this is what the Trust thinks is right for the Trust, but with obviously the recognition that it is going to be subject to parliamentary scrutiny and so there will be questions that will be asked about that and maybe matters on which your Lordships' committee takes a slightly different view and suggests needs to be looked at.

211. THE CHAIR: I think perhaps we can begin to look at the Bill, but we do not need to bother with the explanatory note, do we?

212. MS LEAN: No, my Lord. What we are proposing today, if this would be acceptable, is we have tried to divide the Bill up into what we hope are sensible sections. Forgive me; I just need to find my notes. What we are proposing to do today was to focus in the first instance on Part 2 of the Bill. I do not think that anything in Part 1 is particularly opposed. Part 2 is where we get to the changes to the constitution of the Trust, objects, things like that. We are proposing to focus today on clauses that we know are opposed or so bound up with points that are opposed that it is sensible to sweep them up together.

213. THE CHAIR: Can I interrupt you? I think I have picked up that Clauses 1, 2, 3 and 4 are the subject of submissions.

214. MS LEAN: Sorry, forgive me, my Lord. I did not quite catch that.

215. THE CHAIR: Perhaps I am looking at the wrong document here. Mr Watts has been disqualified, but he had a point on Clause 4, but no, I think you are in the clear because he has no right to petition. I agree that you can start at Part 2.

216. MS LEAN: Thank you, my Lord. On Part 2, we are proposing to deal first with Clauses 5 and 6, which are the change of name and the objects. Clause 7, we do not understand to have been put in issue specifically by current petitioners, so we will certainly have to deal with that in due course, but we were going to propose to go then to deal with the constitution and the trustees, which is obviously one of the very big topic issues of concern, if that is acceptable.

217. THE CHAIR: Against my own notes, as far as the objects clause is concerned, Guarlford Parish Council are objecting there, or got a point there. Also, Mr Rouse was

one of the—and indeed the trustees, we said, were allowed under Standing Order 111 to have a point on the objects clause.

218. MS LEAN: My Lord, we are proposing, because change of name and objects sort of sit together, to deal with those two and then move on and deal separately with the change to the trustee arrangements, if that was acceptable, and essentially leave Clause 7 for discussion at a later date. That is administration of the Trust. It is to do with making of rules and regulations about certain matters to do with the Trust as reconstituted. I think our notes did not indicate that it is a live clause amongst petitioners who either we have not challenged the standing of or who have been granted standing or found to have standing.

219. THE CHAIR: We may have to come back to it when we hear from the petitioners, but we take it that you are right that there is no point of substance, so far as you are concerned.

220. MS LEAN: Thank you. Firstly, how we are proposing to go through it, it may be that, if it is acceptable, Ms Satchell and I will tag team a bit, because it may be that some of the points are helpful for me to pull out with an overview of what is in the Bill and then turn to Ms Satchell to essentially say, “And why do you need that? Why have you asked for that? What is new?”

221. Firstly, my Lord, Clause 5 deals with the changes to the name of the Trust. My Lord, it is on page 6 of the filled Bill. Clause 5 provides, firstly, that the Malvern Hills Conservators are renamed the Malvern Hills Trust and, secondly, that the Trust will continue to be a body corporate with a common seal and having power to hold and manage land and other assets. Without prejudice to any other powers it has to hold and administer property, it may continue to hold and administer properties as a special trust within the meaning of Section 353(4) of the Charities Act 2011. Then some more standard provisions around, if there is a reference to the Malvern Hills Conservators in any other legislation, we will read it as meaning Trust and you have to exercise the functions in accordance with the provisions of this Act and, to the extent and in so far as they remain in force, those of the 1884 Act and 1995 Acts.

222. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask a question? The “and other assets”, which is added in Clause 5(2), does that refer to

what was in the consultation document as ancillary land?

223. MS LEAN: My Lady, if I could just look to my left, Mr Lewis is the one who has had the pen on this. My lady, Mr Lewis has confirmed my understanding, which is that “assets” would probably capture things like funds and income that it held because previously it just said you could hold and manage land.

224. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It is not the ancillary land.

225. MS LEAN: It is not specifically the ancillary land. My Lord, two points to pull out if I may. First is it provides that the Trust continues to be a body corporate with a seal. It retains that corporate status of the body that was first enshrined in the 1884 Act. Secondly, the key point, or perhaps the key point of controversy, is the change of name. Perhaps if I can ask Ms Satchell very briefly just to explain why the change of name is sought for all purposes.

226. MS SATCHELL: Thank you. The change of name is not a change of status of any sort. The Trust undertook a rebranding exercise in April 2017. The idea was to change the logo, get a corporate identity that was a little bit more modern than the one we were living with at that stage. The name change had not actually been planned, but it became apparent, when a little bit of research was done on how people identified the Trust, that the name “conservators” was one that many of the public found quite difficult to get a handle on, to use a colloquialism.

227. My understanding is it goes back to the setting up of a lot of conservator bodies in relation to managing commons in the 19th century. It has got the implication, conservator, of—you hear of documents conservators and stone conservators—sort of looking after and restoring objects, but that is not really what the Trust do. We are not trying to preserve the hills back to a certain date. We are managing a dynamic landscape for the benefit of the public.

228. The other reason why the name change was made was that people do not identify those words with it being a charity. The Trust is obviously very keen to be able to receive legacies et cetera and we wanted to make it apparent that we were similar to other bodies that use that sort of name, so the Wildlife Trusts, National Trust, Wildfowl

and Wetlands Trust.

229. The name has been widely adopted in the local area. It is what we are mainly called. The name “conservators” is held in some affection by, I would say, probably some of the older residents in the town and they do not particularly like the idea of it being changed, but nevertheless it is the name that we have been known by for a number of years now. All of the signage et cetera has been changed and it seems rather perverse, when we are using that as our working name—it is registered as a working name with the Charity Commission—if we are presenting a Bill to Parliament, not making that adaptation in the legislation. Otherwise, you have got everybody called conservators in the legislation and then everybody in the town knowing us as the Malvern Hills Trust. That was the basis for making this.

230. THE CHAIR: My understanding, having done my best to map out who is objecting to what, is that the only two names I have against Clause 5 are Mr Cameron, who is a commoner, and we have said that he cannot address us on points not related to commons, and he would not really be in play on this one, and Mr Watts, who we have said has no right to be heard. I think you have nobody, as far as I know, who is actually objecting to this.

231. MS SATCHELL: Thank you, my Lord. I am very pleased to hear that we can perhaps move on from that one.

232. MS LEAN: My Lord, if we could perhaps then move on to Clause 6, which is the objects of the Trust.

233. THE CHAIR: There is rather more opposition to this. I am afraid I have not done my research to be sure exactly which, but Guarlford Parish Council and the trustees.

234. LORD INGLEWOOD: Chairman, one quick point, please. On 2A, if it emerges it is not a charity, that presumably falls.

235. THE CHAIR: The trouble is it is actually registered as a charity under statute, so I think we cannot get away from that.

236. LORD INGLEWOOD: No, but if it is not a charity, then does it have to hold—should it hold money—is it in accordance with the provisions of the Charities Act?

237. MS LEAN: My Lord, I think this is a sort of belts and braces provision. It does not permit the Trust to do something it cannot do. I think this clause is really saying that, for the avoidance of doubt, if you are able to hold land as a special trust under the Charities Act, you may still hold it in that way.

238. LORD INGLEWOOD: That is fine. I just wanted to flag that up.

239. MS LEAN: Yes.

240. THE CHAIR: Right, the objects.

241. MS LEAN: The objects, my Lord. I outlined in opening that there is not a single objects clause or single duties clause that is found in one place in the existing Malvern Hills legislation. What this clause does is bring together and set out very clearly what are the objects of this body. You will see in 6(1), “The objects of the Trust are, for the benefit of the public, (a) to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills, and, (b) to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public”. I will ask Ms Satchell to address, from the Trust’s perspective, how those are thought to correlate with the existing duties and objects.

242. If I can highlight subsection (2), this is where the Sandford principle comes in. It identifies that, in the event of there being a conflict between the object in (1)(a), the conservation object, the preservation of the hills, flora, fauna, et cetera, and (b), the keeping it unbuilt on as an open space for recreation, then greater weight should be attached to the object specified in sub (1)(a). I stress there it does not say that you ignore (1)(b) and it has to be (1)(a), but greater weight is to be given to the (1)(a) principle. That is essentially putting into statutory form the Sandford principle to apply to this body. That is obviously subject to the proviso in sub (3) about, well, you have to consider health and safety of persons, a sensible inclusion.

243. Sub (4) gives a definition of what is meant by unbuilt on or essentially some carve-outs for the unbuilt on. You have to keep it unbuilt on, but that does not mean you have to get rid of the buildings that are there already or that you cannot replace a building, or, if the Act says you can build something, the objects do not stop you building it, but that is essentially what sub (4) does. Perhaps it might just be helpful here

obviously if I turn to Ms Satchell for a view on, from the Trust's perspective, how what is now in Clause 6(1)(a) and (1)(b) correlates to or departs from what the Trust's objects are today.

244. MS SATCHELL: My Lords, I would suggest, in terms of the second stem, the (1)(b), that keeping the Malvern Hills unbuilt on as an open space for recreation and enjoyment of the public is more or less a direct take from, I think it is, the wording in the 1930 Act.

245. THE CHAIR: Which Act?

246. MS SATCHELL: The 1930 Act.

247. MS LEAN: My Lord, if it assists, I think it might be Section 3 of the Malvern Hills Act 1930—I am going to look to Mr Lewis for the reference in the bundle—which says, “The Malvern Hills shall be regulated and managed by the conservators under and in accordance with the Malvern Hills Acts and there shall be imposed on the conservators the following duties (namely): (a) Except as in the Malvern Hills Acts otherwise provided, they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public”. I think, Ms Satchell, was that the provision you were referring to?

248. MS SATCHELL: Yes.

249. LORD EVANS OF GUISBOROUGH: You are removing the “unenclosed” bit.

250. MS SATCHELL: We have removed the “unenclosed” bit, but it has not disappeared. I would suggest that the objects are, in effect, the Trust's mission statement and how it achieves that is what is set out in the rest of the Bill. We have still got a provision at Clause 41: “except as otherwise provided in this Act, no enclosure may be made or building erected on the Malvern Hills”. It is retained. It has just not gone into the objects clause.

251. The reason why it was taken out of the objects clause is because, as I am sure you will have seen there, there are certain fencing provisions in the Bill, particularly the new one, to try to secure the open commons where the situation in Malvern is basically any stock that are on the common can wander up the roads into the villages as they wish. To

keep the objects fairly straightforward and without too many qualifications, we took the word “unenclosed” out from the wording in the old Section 30 and effectively put it into the new clause at Section 40, so it is still an obligation.

252. THE CHAIR: Are there any changes in the wording of Clause 6(1)(a)?

253. MS SATCHELL: There certainly are, my Lord. The previous reference is to preserving the natural aspect. Preserving the natural aspect is the 1924 Act, Section 21. That phrase is undefined. As I said before, the Charity Commission have some regulatory standing over charities objects and they have accepted the change that we have made. What we have done is, effectively, in clause (1)(a), broken down what we perceive the natural aspect to be and have included that list, so still maintaining the landscape and the natural appearance, which would appear to be fairly closely aligned to that word, “natural aspect”, but also spelling out that all of the flora and fauna is also coming within. We have always taken it as being within natural aspect, but it is not very clear.

254. THE CHAIR: It is not mentioned in the 1924 Act. Is that right?

255. MS SATCHELL: It is not mentioned in the 1924 Act, no. It is a breakout of what the trustees feel are the components of natural aspect. As I said, there is no definition of natural aspect. It is a matter that has come up for us as a conundrum and I will go into the reason why Guarlford Parish Council, I think, have probably objected, but there is a case, National Trust v Midlands Electricity Board, which I am rather hoping that somebody else has the reference for.

256. There was a discussion in that case. The National Trust took out clauses, covenants from landowners, requiring them, for the benefit of the National Trust, to maintain the natural aspect of some particular areas. That term was used in the covenant and there was a discussion in the case about what it meant, and the judge said, “Presumably the appearance, but viewed from what point? If a man chooses to stand with his eye against one of these poles, quite obviously he would be able to see nothing of the land, but that cannot be what is meant”. He said that, in his judgment, “The omission of any criterion by which these vague and uncertain words can be brought under some control is fatal to the validity of the restriction. I think it is void for uncertainty”. Such discussion as there is of that term, they did not find very much

favour, so that is the reason why we have tried to be more explicit in Clause (1)(a).

257. MS LEAN: My Lord, if it is helpful to have the reference, the case reference is 1952, Chancery 380, and it is at page 385 of that case report.

258. THE CHAIR: It is not easily found actually, because it does not have one of the modern—I have forgotten the phrase where you put the year and—

259. MS LEAN: The neutral citation.

260. THE CHAIR: You are referring to the law report thing, but not the new phraseology. Is it possible to detect it online? I rather doubt it because of the date.

261. MS LEAN: It is certainly available through the online legal resources. I have not looked to see whether it might be available through one of the more public source ones. My Lord, if it is helpful, we can provide a copy and we can put a copy up on the Trust's website.

262. THE CHAIR: Speaking entirely for myself, I do not have any difficulty with that particular paragraph, paragraph (a). It makes perfectly good sense to me and it is really in tune with the kind of modern approach to these things. It is mentioning all the things that you would expect to be mentioned, so I think it is an improvement, speaking for myself.

263. LORD EVANS OF GUISBOROUGH: It just comes to my mind that, as the precedent you are using is from 1952, other similar organisations must have grappled with this problem since then. Is this the form of wording that they have successfully used since then?

264. MS SATCHELL: I am afraid I cannot directly answer that question. I can say—because some of the Trust's land is subject to these National Trust covenants—that following this case they went round and did variations of their deed of covenant to cease to refer to natural aspect. I cannot remember what wording they used, but they did make a change following the case.

265. THE CHAIR: Can you give me the name of the case again? I might try to trace it. Unfortunately, it is not in the Weekly Law Reports. Weekly Law Reports started in

1953, so it misses it by one year. What is the name of the case?

266. MS LEAN: It is the National Trust v West Midlands Electricity Board. My Lord, just in case it assists, there is a reference and a bit of a discussion about it in one of the working papers, which you have at page 409 of Ms Satchell's bigger bundle, where this is picked up on as part of the discussion around the changes to the objects before the Bill was arrived at.

267. THE CHAIR: Thank you very much.

268. MS SATCHELL: If I might pre-empt the reason why I believe Guarlford and some of the other residents up there have a concern about this small change, it is because the words "natural aspect" are referred to in the 1995 Act, Section 8, where it grants the Trust the power to grant easements, and they are particularly exercised by the possible use of that power. They are concerned, I think—I am possibly putting words in their mouth. I cannot remember how it is spelled out in their petition, but that would be the nature of their concern: that the change from natural aspect in relation to the grant of easements to the application instead of the wording set out in Section 6, subparagraph 1—I think that is what their concern stems from, and whether it will make any difference to the Trust's power to grant the easements, but we will perhaps come on to that.

269. LORD INGLEWOOD: Could I please ask one quick question about this? You could not, I do not think, plant spruce trees up there, could you? Is that a natural aspect of the Malvern Hills?

270. MS SATCHELL: I think we would have to have a debate about that, my Lord.

271. LORD INGLEWOOD: I just raise it. It is not something I am favour of happening there personally.

272. MS SATCHELL: No, we certainly would not plant a forestry plantation. There is a large plantation on one side of the hills that was there before we acquired the land.

273. THE CHAIR: You would not put a monkey puzzle tree up there either, would you?

274. MS SATCHELL: No, we would not. Sitting underneath the Acts we have a land management plan, which is a very long document that spells out, in relation to all the areas of the Trust's land, what particular designations there are, what sort of land, what vegetation is on there, geology, etc, and how we are aiming to look after it for the next number of years.

275. LORD INGLEWOOD: Rewilding does change the natural appearance of land in quite a dramatic way, and it would inhibit access, I think, because you get thickets. I do not read this as allowing significant rewilding. Would that be your understanding?

276. MS SATCHELL: My Lord, I think the wording is open to interpretation, but my personal view is that it would not—the Trust has to look after what is there, and the thing that really would stop the rewilding, my Lord, is the fact that so much of the land is designated as SSSIs, and it is designated for things like the acid grassland or the mire. I think Natural England would have something to say if we started planting plantations on those areas.

277. LORD INGLEWOOD: I agree that rewilding covers a range of forms of land cover, and certainly in its extreme forms—a Knepp type thing—I cannot see it being either wanted or possible, but I just was concerned, because it is the kind of thing that might crop up. I do not say any more.

278. MS SATCHELL: I do not think that it would be compatible with the public access aspect. That is what I would say.

279. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Can I just clarify? Clause 4(c), “any buildings or structure which the Trust is empowered to provide, construct, replace, or erect by virtue of this Act”—was that something that the Charity Commission suggested?

280. MS SATCHELL: No.

281. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It looks like it from the slide that you gave us. You have not shown it, but we have it in our packs.

282. MS SATCHELL: No, we have not got to it. I am sorry. I have lost my place on the slides. Could you put the next slide up? I know that is what Baroness Bakewell is

alluding to.

283. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Yes, there at the bottom. It says “a Charity Commission comment”.

284. MS SATCHELL: Yes. My Lady, I think I said that one of the conditions on the Section 74 consent was that, if we made any further changes to the wording they had given them on the objects, we had to go back to them with it, so we did go back to them when Mr Lewis—shall we say—tightened up the definition in relation to the buildings. The definition was not tightened at the behest of the Charity Commission. The concern was that—you will see that subsection (4)(b) says, just at this stage, “any buildings which replace them”, and we included that wording in red to constrain what the replacement was, so we were not going to replace it with something strange. We were going to replace it with a building of similar size and character. It was a constraint that we put in in order to—

285. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Not the Charity Commission.

286. MS SATCHELL: No, but we sent it to the Charity Commission because we were required to do so, and then the following slide is just the Charity Commission confirming that they do not have any problems with the proposed amendment. I will just say very briefly about the Sandford principle. I can talk about it a bit more if you want me to, but—

287. THE CHAIR: What does it mean?

288. MS SATCHELL: It is broadly the wording that is in subsection (2). The Sandford principle came out of the 1974 National Parks Policy Review Committee, led by Lord Sandford, which was set up to advise the national park authorities on how to balance conservation and visitors, which is very much where we are. What he said was that “the national park authorities can do much to reconcile public enjoyment with the preservation of natural beauty by good planning and management, and the main emphasis must continue to be on this approach wherever possible, but even so, there will be situations where the two purposes are irreconcilable... Where this happens, priority must be given to conservation of natural beauty”.

289. That has been included in the wording in the objects clause, but it is not a new concept, because there are provisions in the 1995 Act at Section 15(3) which provide the Trust now with a power to close off certain areas to protect them. There are provisos to that section that put forward a requirement to consult and to reconsider if it is a long-term closure, and that particular clause is reproduced later in the Bill, but it is not a new idea that the Trust might, in certain circumstances, need to stop the public access element in order—for example, one of the features that we have had that springs to mind is the shire ditch. It is one of the ancient monuments on the hills. It is right on the ridge of the hills, and it does suffer sometimes from erosion, and so from time to time we have closed off small sections in order to let the natural vegetation regenerate, to try to cut the erosion down.

290. The idea that we have to do this balancing act—it must have been there from 1930, the last time that the principal duties were set out. This is just an expression that has been—I think the Sandford principle is incorporated in the national parks legislation, and we have just stolen it, so to speak, from them, just to make sure that, when considering these sorts of conflicts, the trustees have that in the back of their minds.

291. The real nub of the matter is that preservation of the hills and the special features should, at the end of the day, trump short-term demands for public access. The short-term disadvantage that the public might suffer would be outweighed by the need to protect some of these features for the future generations.

292. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Is this similar to the Cerne Abbas giant? The public visiting it and walking on it have caused it to be eroded, and so therefore the local area has now been—you can look at it from a distance, but you cannot walk on it. This is the giant I am talking about.

293. MS SATCHELL: Yes, I am aware, my Lady, of the Cerne Abbas giant. I do not know how it is looked after, really, but we have public access over the whole of the hills, and we have a number of really special scheduled monuments. I do not have the pack with me, but there is a map in the pack, if anybody has it.

294. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I was just trying to be helpful.

295. MS SATCHELL: No, that is fine. We have a number of scheduled monuments, and we have that public access obligation sitting against the requirement for us to look after the heritage assets. Most of the time, people are just allowed to wander about over, for example, the big hill fort at British Camp. Again, from time to time we get mountain bikers creating tracks down them, and we have to close them off to try to look after the asset.

296. MS LEAN: My Lady and my Lords, I am conscious that it might be something that we end up coming back to when we get to the land management and the fencing powers, because certainly the fencing powers and the ability to temporarily restrict access to areas—there is a clause that deals with doing that for certain purposes, including things like the protection of any ancient monuments or restoration of the natural beauty of the hills.

297. In terms of Clause 6 itself, the Sandford principle would be put on a statutory footing, essentially in the interests of making clear that, where there may be sometimes conflicting obligations or duties or things for bodies to have regard to, it can be difficult to know what you do where there is a conflict if the Act does not say anything. You can end up with a situation—forgive me for speaking slightly colloquially—where, when it has been looked at courts, courts have sometimes said, “You have to look at all of them and do the best you can”, but this obviously would make clear for the Trust and for trustees going forward that, “Where there is a conflict, this is the one that has the greater weight; this is how you go about structuring your decision-making if you find yourself in that situation”.

298. THE CHAIR: Can we move on to Clause 7?

299. LORD EVANS OF GUISBOROUGH: I recall in one of the earlier versions of the Act you had a specific clause preventing quarrying, because that seemed to be a problem at one point. Is that something that you now feel you do not need to specifically state?

300. MS SATCHELL: I have to confess I cannot quite remember where that is. Quite a lot of certainly the 1924 Act is very much directed to trying to stop the quarrying on the hills, and gave us the ability to acquire mineral rights and to acquire some of the quarries, although there was quarrying still going on at Castlemorton, I think, until the 1970s. We have to remember that our Acts sit above the private rights of individuals,

and there are certainly still mineral rights owned by third parties over quite considerable areas of the hills. The difference between now and the early years of the Trust is that I think it was probably the Wild West in terms of quarrying at the turn of the 19th to the 20th century, and if people had land, they could just quarry it if they fancied it, but now obviously all of that is overlain with planning requirements.

301. THE CHAIR: Clause 79 deals with quarrying, does it not? You have to have a notice. The Trust must be consulted if any attempt is made for quarrying in the future. We will no doubt come back to this later, but I think that protection, which was there in the 1930 Act as well, is built into this one.

302. MS LEAN: My Lord, I think the 1924 Act, which is the one Lord Evans referred to, gave power to the Trust to buy out, essentially, land to enable it to control quarrying that way, but it did also make provision for by-laws to regulate quarrying in or under the hills. My Lord, I have not yet traced it all the way through into the 1930 Act, but yes, there have certainly been provisions in the earlier Acts that enabled some degree of oversight, if I could put it in those terms, as well as the ability to buy out.

303. As the Chair had indicated, there are provisions in Clause 79 that require the Trust to be consulted before any application for planning permission is made for carrying out of quarrying in the Malvern Hills, so even before you want to do something about it, if you even want to do something about it and get planning permission to do it, you need to consult the Trust first.

304. THE CHAIR: There is useful guidance in subsection (4) of 79 about how any request for quarrying should be approached, really to preserve the hills. It goes back to the main object, does it not?

305. MS LEAN: It does, my Lord.

306. LORD INGLEWOOD: Just to be clear, the reference you made to the Malvern Hills—sometimes we are talking about the whole area, and sometimes we are just talking about the area that is under the control of the Malvern Hills Trust. Is that not right? The Malvern Hills Trust, simply, I do not think, given the objects in 6(1), could allow quarrying on its own land, so its real interest is as a consultee in respect of other land. Is that not right? Presumably it would object to that, but that is its decision.

307. MS LEAN: My Lord, I think if I may, there is a specific definition of the Malvern Hills for the purposes of the Act. That is in Clause 4(1). When you see the words “the Malvern Hills” anywhere in the Act, it means what 4(1) means, which is land under—

308. LORD INGLEWOOD: When we are talking about it, we need to be clear what we mean in the debate.

309. MS LEAN: The reference to quarrying in the Malvern Hills in Clause 79 would be a reference to the Malvern Hills being that which the Trust has management and control over the land, being the existing lands over which it has management and control, and any other lands it might get in. Where we see it in the Act, it is about the land that the Trust has control over. I think sometimes there is a colloquial reference to “the hills”. Sometimes “the hills” is meaning the ridge of the hills and it excludes the commons, and sometimes the Malvern Hills is talked about as the general area. We will try to stick to talking about—if we use the term “the Malvern Hills”, we will be tending to mean the land under the control and management of the Malvern Hills Trust, and we will try to differentiate where there may be a concern about broader areas.

310. LORD INGLEWOOD: Thank you. I just wanted to get that sorted.

311. THE CHAIR: Are we able to get to Clause 7?

312. MS LEAN: My Lord, I thought we were maybe passing over Clause 7 for this morning, if that was acceptable, because that is one that we think is not raised specifically by the petitioners. It is about the rules and regulation-making.

313. THE CHAIR: I missed your introduction. What were you saying?

314. MS LEAN: We understood that that was not one of the clauses that was being put in issue by remaining petitioners, and so we are proposing to deal with that perhaps with the unopposed clauses.

315. THE CHAIR: Schedules 1 and 2 are an issue, and Schedules 1 and 2 had to be read together with Clause 7, so what do you want to do? Do we take them at the end of the presentation, or do we take them together with the clause that refers to them? We normally read a schedule together with the clause which introduces them.

316. MS LEAN: Indeed, my Lord. I am mindful that Clause 7 is one of those where there are some drafting issues that are under discussion at the moment, so could I possibly ask that we maybe park Clause 7 for today, move on and deal with trustees and governance, and then perhaps we could pick up Clause 7 during the course of Tuesday, just because I think I am mindful of time, and I anticipate that the matters we are coming on to—there may be a number of questions from Ms Satchell.

317. THE CHAIR: Let us park Clause 7 and come back. We move to Clause 8 then, do we?

318. MS LEAN: Yes, my Lord. In terms of this section of the Bill, a bit of a roadmap—if I can do a very quick roadmap through the provisions, and then the way we thought it might be helpful to perhaps deal with them, which is not necessarily in complete chronological order, for which I apologise.

319. Clause 8 is the clause that deals specifically with the new constitution of the Trust's numbers and how the board is made up; Clause 9 is terms of offices; Clause 10 is some transitional arrangements to do with shifting from the current constitution to the new one if the Act is approved; 11 is declarations by trustees; 12 and 13 are to do with disqualification, resignation and disciplinary matters; 14 through to 17 deal with appointed trustees; 18 through to 23 deal with elected trustees and elections; 24 through 27 are some mechanics of elections; and 28 and 29 are interests of trustees; 30 through 31 are some mechanical provisions about indemnities; and 32 is about notices.

320. My Lord, the way we have suggested breaking things down amongst the opposed clauses—because not all of these are in issue—would be proposing to deal with Clause 8 first of all, because that is the big one that says it will be 12, not 29, and it will be six and six; then to go on to look at the provisions specifically to do with the elected trustees, so eligibility and who can vote for elected trustees; then to turn to appointed trustees and the nominations committee; then sweep up terms of offices, because they need to be read together for both the elected and the appointed; then deal with casual vacancies, the declaration, disqualification and disciplinary matters, and then benefits and interests.

321. That does not deal with Clauses 10, 25 to 27, and 30 to 32, but my understanding is those are unopposed clauses. They are really mechanics, but we have tried to structure

it in the way I have suggested, because that seems like it might be a sensible order.

322. THE CHAIR: If it is any help, my chart suggests that Clause 11 is not objected to. Clause 10 is not objected to. 11 was objected to by petitioners who have been disallowed, 12 by petitioners who have been disallowed except for Mr Myatt as a trustee. 13 is clear because that petitioner has been disallowed. 14 has quite a lot to think about, and 15 has a lot to think about. 18 the same, but 21 and 22—22 has the Malvern Hills District Council are the only ones objecting to that. 23 the same. 24 is objected to, but 26 and 25 are not. I do not know whether it is helpful to go through all of this, but I have been trying as best I can to shrink down the people who are objecting to things so that we know where we are going.

323. MS LEAN: I am grateful, my Lord. We have tried to do a similar exercise.

324. THE CHAIR: By next Tuesday, I should have a sheet that perhaps I can share with you, along with my colleagues on the committee.

325. MS LEAN: That would be very much appreciated, my Lord, if you had that. We have been trying to do our own exercise as we went through as things have changed.

326. THE CHAIR: Yes. This is welcome progress as far as I am concerned, but I could tighten it up and then we can see exactly where the things are. Certainly, as far as Clause 8 is concerned, that is something we do need to look at very carefully.

327. MS LEAN: Indeed, my Lord. My Lord, if we take it in that vein, on Clause 8 I can run through the provisions in the Bill very quickly before turning to Ms Satchell on what sits behind it. The first subclause is the one that says that, after the new constitution date, there will be a board of trustees of 12, being six trustees appointed by the trustees and six trustees elected by the electors of the Trust's electoral areas, each of whom is elected by the electors of the whole of the Trust electoral area. Pausing there, that is six trustees who come through the appointments processes that are set out in Clauses 14 and 15 of the Bill, and it is six trustees, all of whom are voted for by the entirety of the persons eligible to vote within the Trust area, so the levy payers.

328. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Given that the appointed trustees have to be appointed by the elected trustees, why are they not

reversed? Why are the elected ones not A, and the appointed ones B?

329. MS LEAN: My Lady, first, the appointed ones are elected by the trustees as a whole. There is a staggering of elections and appointments, so there is not a situation where the whole board is replaced at any one time, so when it refers to six trustees being appointed by the trustees, it means the board of trustees for the time being, comprising both appointed and elected trustees. I am afraid I do not know why the Bill has put the provisions to deal with appointed trustees before the elected ones. It is just that that reflects the structure. In the clauses of the Bill, 14 and 15 deal with appointed, and you do not get to the elected until Clause 18, so I think it is just a consistency of drafting point as opposed to suggesting any form of priority for one or the other.

330. LORD EVANS OF GUISBOROUGH: Are the six all elected at the same time or are the elections staggered?

331. MS LEAN: No, my Lord. The elections are staggered. If I may come on to those provisions in a bit, because it needs to jump between provisions, but in broad terms what you end up with is you have three appointed trustees who change in year 1; three elected who change in year 2; three appointed who change in year 3; three elected who change in year 4. There is a potential refreshing of a quarter of the board every year.

332. LORD EVANS OF GUISBOROUGH: You have an election every two years with three places up for grabs, and votes right across the area for those three. Your ballot paper would say, “Tick three boxes”.

333. MS LEAN: All three candidates’ names are on it. All candidates’ names on it to vote for would be available. Yes, my Lord. One way of looking at it is to say, at the moment, every person who can vote can vote for one trustee who is standing for that area—or I think in Colwall it is two—every four years. Under the arrangements under the Bill, everybody can vote every two years for three trustees, so ultimately they vote twice within the four-year period and can vote in the election of all of the elected trustees.

334. LORD EVANS OF GUISBOROUGH: Thank you.

335. MS LEAN: My Lords, going back to Clause 8, subclause 2 is just about saying

that the constitution date will be at some point where it decides that it is going to happen. If the Act goes through, it does not suddenly become a new board the day after Royal Assent. That provides for that time to put the new mechanisms in place.

336. Subclause 3—“The trustees are the charity trustees of the Trust and are the persons having the general control and management of the administration of the trust as mentioned in Section 177 of the Charities Act 2011”. My Lords, essentially that is reflecting what the current position is. As a matter of law, the current conservators are the charity trustees of the charity within the definitions in the Charities Act, so subclause 3 is essentially just saying that there is no difference between them. They are anyway, under charities legislation, the charity trustees that they still are.

337. THE CHAIR: That is a fundamental change, because if you look back at the 1924 Act, which I think is the current one, for the elected people the wording is “to be elected by the electors for the parish”, and that gets back to the discussion at the beginning of today—the difference of the way the trustees are—whether they are representing anybody. When you look at 3(a), that representation idea completely disappears. That is what it is designed to achieve, is it not?

338. MS LEAN: My Lord, in my submission, that is not the purpose of Clause 8(3). 8(3) essentially is reflecting the reality today, the legal position today, which is that the conservators who are elected by the parish of or the urban district of, to become conservators—because they are the conservators, because they are the persons responsible for the maintenance and the administration of the Trust, they are the charity trustees for the purposes of charity legislation under the definition under the charities legislation.

339. I do take my Lord’s point, and I will make sure I perhaps then come back to that. Forgive me, that was not a reading that had occurred to me when I read the clause, because I had understood it to be essentially just saying, “They are also the charity trustees”, because that is what the law provides for, but if I can take a note away of that point—

340. LORD EVANS OF GUISBOROUGH: You are changing their title from conservator to trustee.

341. MS LEAN: Yes. That is essentially done by Clause 8, which says there will be a board of trustees rather than a board of conservators, but that also reflects the fact that they tended to be referred to as trustees of the Trust today as opposed to conservators of the conservators.

342. LORD PONSONBY OF SHULBREDE: What is the position with co-ordinating the elections with the local elections, so you try to get elections on the same day? You are much more likely to get a reasonable turnout.

343. MS LEAN: My Lord, I know Ms Satchell is going to deal with this in her evidence when we get to Clause 24, but what is proposed under the Bill is a change from the current in-person arrangements of having to go to the ballot box, which is organised, as Ms Satchell mentioned, for the Trust by the Malvern Hills District Council, for example, to a system of postal and electronic voting, so there is not the need for that co-ordination. It also means that the Trust can run its own processes in the sense of it has its elections every two years, or if it has to have an election to fill a casual vacancy in one of the provisions I will come on to, that it can do that of its own accord. It is not necessarily tied into if things shift with local elections or things like that. I know Ms Satchell is primed and ready to say something on this, but I will ask her to deal with that when we deal with the electoral arrangements.

344. THE CHAIR: Did I mention that we are aiming to finish at about 12.45? We have 15 minutes left, just to give an idea of the target time which we should be working to.

345. MS LEAN: I am grateful, my Lord. Clause 8 also provides in 3(a) for the trustee to “exercise the powers and perform the functions that the trustee has in their capacity as a charity trustee in the way that the trustee decides … would be most likely to further the objects”. Could I perhaps ask, in light of time and that indication, that I park that particular subclause and I address that in my submissions on Tuesday, because I think it is bound up with the representation and the functions point?

346. Then 4 and 5 are essentially—if there happens to be a vacancy on the board of trustees, it does not mean that anything they do is invalid. The body corporate can still take valid decisions as a body corporate even if there is a vacancy or two. Five is the provision for, if it falls below a certain number, you should stop doing anything other than these things, because that is a critical mass. I am sorry to put it in such colloquial

terms.

347. Six is the point that we have previously mentioned that the Trust is required to select one or more trustees to act as a point of liaison between the inhabitants of any of the parishes and the Trust's electoral area, and that no trustee may be an employee of the Trust. I think this is the point at which I should turn to Ms Satchell to say, "Why is the board being replaced? From 29, why is it being reduced and why to 12?", if that would be acceptable.

348. LORD INGLEWOOD: Could I please raise what is rather related to this? In the organogram of the way the thing currently works, you described it as being slightly unusual because, at the top, you have effectively what, if you were thinking about it in commercial terms, looks like a board, and then the things underneath it. I do not know much about local authority organisations. If you are a local authority, is it the same kind of structure? Does this represent a change in the way in which the detail of the management of the—call them conservators just to keep it clear—operates, or is this simply a rebadging of what is going on now?

349. MS SATCHELL: My Lord, we are clearly aiming to change the number of trustees. It is for the trustees to decide how they are going to internally manage the workings of the Trust. I think I explained to you yesterday that the decision at present is that they have a lot of committees, because it is much easier to talk about things with a small number of people. Trying to talk about things in depth with 29 is a pretty hopeless task, to be honest, but it will be for the new board to decide whether they use committees or not.

350. I suspect and rather hope that the committee system is a construct to make discussions easier. If you only have a board of 12, you should be able to sit down and discuss most matters around the table as the board of 12, so the anticipation is that the committee system will, to a large extent, fall away. I am sure they will still have committees for specific purposes, perhaps an audit committee, as was referred to yesterday. They may have task and finish groups that do specific things, but I do not think they are going to need the number of committees that the Trust uses now.

351. LORD INGLEWOOD: From what we have heard already in some of the material that has been drawn to our attention, is the expression of a concern that the way in

which the whole approach to the management of the Malvern Hills may change. Now, I do not know whether that is fair or not, but my question is really these changes—are they likely to have any impact on those concerns?

352. MS SATCHELL: My Lord, I do not think they will, because the Trust has to be run in accordance with what is in the governing Act.

353. LORD INGLEWOOD: It is simple. There are more ways than one of skinning a dead cat—that is the point, and whether this is a way of changing the way this particular cat is going to be skinned.

354. MS SATCHELL: No, it is not. I do not think it is—not this element of it. There are some different provisions to the current provisions in this Bill, which we will go into in due course, but the fact that the Trust has to be managed for the natural landscape and the public access will not change.

355. LORD EVANS OF GUISBOROUGH: Can I flag a couple of technical governance issues at this point, please? You are going to reduce the size of the board, and consequentially the number of committees, but the amount of business you have to put through the board will necessarily remain the same. Does that mean you are expecting your Board to meet more often, or does it mean that you are expecting them to delegate more powers to your professional officers?

356. MS SATCHELL: My Lord, I think that is going to be a matter for the board to decide when it is created. I am just trying to remember whether we have a minimum number of meetings, but it would be for the board to decide how many meetings they were going to have—how many meetings they needed. I do not think that it is something that should necessarily be prescribed by the legislation. I am sure they will meet reasonably frequently. There is a limit to what you can delegate, I think.

357. LORD EVANS OF GUISBOROUGH: Are you going to go write a quorum into this, or are you saving that for your standing orders?

358. MS LEAN: My Lord, maybe I can assist. This is provided for in Schedule 1, which I am conscious we have not touched on. Clause 7, which I attempted to pass over earlier, talks about the administration of the Trust. It requires the trustees to make “rules

about matters that are specified in part 1 ... of Schedule 1”, and may make provision for other matters elsewhere in the schedule”.

359. In Schedule 1, part 1, the matters that must be covered by rules include, at 4, meetings of the trustees—forgive me, this is internal page 70—“the frequency of ordinary meetings, and the means by which they are to be held”, and over the page, at paragraph 7, quorum: “The quorum required for a vote at a meeting of trustees”—and at 10, bottom of that same page, committees and advisory panels, there must be rules about “the establishment and dissolution by the board of committees and advisory panels”, the composition of those panels, and “the delegation of functions to committees”, so if there is to be a delegation, “except”—and then there are some carveouts, as I understand it, of things that could not be delegated.

360. LORD EVANS OF GUISBOROUGH: Those things at (a) to (e) have to be decided by the full board.

361. MS LEAN: That is my understanding, my Lord.

362. LORD EVANS OF GUISBOROUGH: They cannot be delegated to officials either.

363. MS LEAN: No, my Lord. That is paragraph 11. Rules may be made about “the delegation ... of the trustees’ functions to such employees of the Trust as the trustees think fit, except the functions specified in subparagraphs 10(3)(a) to (d)” —that is the list that was above: the levy, the budget, the trustees, the power in Section 7—“and such other functions as may be specified in regulations”. Yes, the core exceptions—the levy, the budget, the appointed trustees, and exercising powers in Section 7, i.e. the power to make rules and regulations—it says that cannot be delegated to committee and that cannot be delegated to officers.

364. LORD EVANS OF GUISBOROUGH: Thank you.

365. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Can I just say at this stage that I think it is extremely difficult, if I were wanting to be an elected trustee or an appointed trustee, to think, “I am desperately passionate about the Malvern Hills, but actually I do not know what is expected of me. Am I going to be expected to

be at a meeting once a month, once a week? Is there going to be a sub-committee on which I could use my audit training or experience?”—not that I have any; I am just using that as an example. I think it is somewhat naïve to think that you will not need properly constituted committees.

366. MS LEAN: My Lady, I do not think it is suggested for a moment that they will not be properly constituted committees. The situation at the moment is that, as I mentioned, if this Bill receives approval and Royal Assent, it is not that on day one, the day after Royal Assent, all of these new arrangements come into force. That was the provision in Clause 8, Clause 2 of the Bill that I mentioned that said the new constitution date—i.e. the date when everything changes over—will be determined by resolution. It has to be within nine months of Royal Assent.

367. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I understand you have to work towards it.

368. MS LEAN: That is the period that gives the time. That would give time for identifying things like what needs to be done, what things might need to be put into place, and things like that, as I understand it, so it does allow for things to be worked up.

369. I am not quite sure—I will have to go and check this—what might be the position transitionally, but to take your Ladyship’s example, perhaps maybe not somebody who is going in 2027, if this all happens then, “Yes, I really want to be a trustee now”, but somebody may two, three or four years down the line. At that point, there will be the rules and regulations. There will be committees that have been established. There will be terms of reference as to what those committees are to be. There will be policies about recruitment and appointed trustees. There has to be a published policy about recruitment.

370. For somebody who, a few years down the line, comes to the Malvern Hills and is interested and wants to do something, there will be that framework in place, much like today for somebody who wants to be a trustee. There is the governance handbook. There is the information on the website. What the Bill does—it does not prescribe any of these matters. It provides the mechanism by which there will have to be these things, and how that is to be done.

371. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Okay. I will probably return to this because I am keen that, somewhere in all this, the seven principles of public life according to Nolan should appear somewhere on the face of the Bill, especially since you are referring to how you are going to deal with trustees' behaviour if they do not meet standards, but you are not exactly specific about standards, and that is later on in the Bill.

372. MS LEAN: Indeed, my Lady. I have made a note that we will need to address this when we come back to it.

373. THE CHAIR: Can I raise a point about the wording of Clause 8(6)? You will see that it says that trustees must elect one of their number to act as a point of contact between the Trust and the inhabitants. Do you need the words "any of"? Would it not be better as just the inhabitants of the parishes? I am not quite sure what the purpose of putting the word "any" in is there?

374. MS LEAN: My Lord, I understand that this may be where there may be a proposal for a drafting amendment to replace—

375. THE CHAIR: Yes. Would you just keep a note of that, because it would be clearer if it was just "the inhabitants"? It takes us back to one of the key issues about how there should be contact between the inhabitants and particular trustees, and the word "any" just causes some doubt in my mind as to exactly what it is intended to do.

376. MS LEAN: Indeed, my Lord. I think it is possible that the word that I have just seen in pencil, "each", may amend that—that it may clarify that "any of" was not necessarily "one can have it, but others cannot"; the purpose is to cover that.

377. THE CHAIR: I was wondering about "each" as an alternative. Anyway, can I leave that with you to think about?

378. MS LEAN: Indeed, my Lord.

379. THE CHAIR: Have we reached the point where really we should bring these proceedings to an end today?

380. MS LEAN: I think, my Lord, we are probably about to really get into the detail,

and the points that I anticipate there will be quite a lot of questions around the proposed arrangements, so this may be a sensible time to pause.

THE CHAIR: Yes, very well. Thank you both of you very much indeed for your assistance today. We will terminate the proceedings now, and we will meet again on Tuesday at 10.30 am.