

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 4 February 2026 (Afternoon)

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

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 2.00 p.m.)

1. THE CHAIR: Good afternoon and welcome to this, the eighth public meeting of the Select Committee on the Malvern Hills Bill. Those in the room are reminded to put their phones on silent and to refrain from having conversations in the committee room, as that can make it difficult for witnesses to hear what is being said. I think all of you are familiar with the fire arrangements, so I need not repeat that part of my introduction, but what I should like to do is outline the way the proceedings will go from now on.

2. Having concluded the majority of hearings on standing, we now turn to the petitions themselves. The promoter will begin by presenting evidence on the opposed clauses relating to governance, the levy and so on. Petitioners opposed to those clauses, and those clauses only, will then be heard on their petitions. In later sessions, the promoter will present evidence on the other opposed clauses. The remaining petitioners with the right to be heard will then be heard on their petitions.

3. The promoter has tabled a number of amendments to the Bill, which are set out in the filled Bill on our website and have been shared with the petitioners. We expect to receive further amendments from the promoter before we conclude our proceedings on the Bill.

4. As we do not yet have a complete set of amendments at this stage, I would be grateful if Ms Lean could begin by confirming that there is nothing in the amendments yet to be tabled that would affect the substance of the clauses and schedules to the Bill. Otherwise, we may be at a disadvantage in our discussion of them. Do you have any point to make on that, Ms Lean?

5. MS LEAN: My Lord, I can give you an assurance that there is nothing in the amendments yet to be tabled that would affect the substance of the clauses of and schedules to the Bill. A number of amendments have been suggested by your counsel and are under consideration. In line with a request that we have received through the committee's clerk, I can provide you with an idea of the approximate number of amendments likely to come forward for each of the clauses as we go through, if that would be helpful, the vast majority of which will be tidying-up and drafting amendments.

6. THE CHAIR: Yes, that would be helpful, but I take it we can proceed now with what we have. Thank you very much for providing us with a bound copy of the filled Bill as it now is. That is extremely helpful. I think it is for you to begin your presentation.

Statement by Ms Lean

7. MS LEAN: My Lord, I am grateful. If I may firstly just highlight the documents that I hope have reached the committee, firstly, there should be a small clip of slides, which are evidence slides that Ms Satchell will speak to. We have also provided a rather larger bundle, I am afraid, which is materials that may be referred to or which it may be helpful for the committee to have in connection with this first part of the Bill that we are dealing with in Ms Satchell's evidence at the moment. I confirm that those are uploaded on to the Malvern Hills Trust website on its House of Lords Select Committee business page so that, for petitioners or other people who are interested in seeing them, the documents are all available there.

8. THE CHAIR: What we have is a lever arch file. The first section is, I think, the complete set of slides that we are going to be shown, and the second part, which is much more bulky, is a collection of documents. That is in accordance with your understanding, is it?

9. MS LEAN: That is, my Lord. Forgive me. I have them separately just because that is how they have come to me. I had not realised they were in the same file, but I understand, yes, it is one ring binder with the slides in the front and then the reference material—they have P numbers, but the other documents sitting behind it.

10. THE CHAIR: That is fine. Thank you very much.

11. MS LEAN: My Lord, there is one further document, which by oversight was omitted from that larger bundle of documents. It is a paper prepared in 2017 that touches on levy arrangements or consideration of levy arrangements. I understand a copy has been provided to you over the lunch adjournment, and I confirm that that has also been uploaded on to the Malvern Hills Trust website with the other documents the promoter has provided. Just to highlight, that is a public document. It is a document that was discussed at a meeting of the Trust back in, I believe, 2017. It is not a document that has

been newly created for the purposes of these hearings.

12. THE CHAIR: At some point, are we going to be told how it came about that the Trust became a charity, why that happened, and how the interaction between the Trust's position as a charity and as a public body operates? You have heard various petitioners mention that in the course of their presentation in the right to standing, and we need to be very clear as to exactly what the position is.

13. MS LEAN: My Lord, in terms of the promoter's presentation to you over the next couple of days, our proposal had been for Ms Satchell to provide you with an introduction or an overview of the Trust as it is today and its operations, in a similar manner to how Mr Bills went through the land and the land management side of things during the opening. As part of that, she will be touching on the Trust as a charity and on the Trust as a public body.

14. There is also a note that we have provided at the back of the P materials to you on a few charity law matters, which I believe may pick up some of the legal points, but if there is anything further that is required from us on public body or charity, it may be that that becomes a bit of a tag team effort. Some points may be legal submissions; some may be things that Ms Satchell can speak to, but perhaps if we could pick that up—when Ms Satchell has gone through the points she was going to make, if there are things outstanding, we can make sure we sweep that up as part of this session.

15. THE CHAIR: Thank you very much. It is obviously going to come up later on, and we will follow that. Over to you then.

16. MS LEAN: Thank you, my Lord. As I intimated, our proposal would be to firstly ask Ms Satchell to give you an introduction to the Trust and its operations. Possibly there may be a few questions from me during the course of that. Then we would propose to move on to the substantive provisions of the Bill. If it is acceptable to the committee, the proposal there would be perhaps for me to outline the particular provision or any particular points, from a drafting perspective, as it were, and then for Ms Satchell to answer any questions that may go to why that clause is there or why certain provisions are the way they are.

17. If I can turn firstly to introducing Ms Satchell to the committee, Ms Satchell has a

law degree and she has been on the roll of solicitors for many years. She worked in private practice as a solicitor between 1983 and 1997. Between 2004 and 2016, she was a clerk to a parish council, and she has been employed by the Malvern Hills Conservators—the Malvern Hills Trust—since 2014, initially in a role of secretary to the board, and more recently, from 2024, in a newly created role of governance change officer, with a specific responsibility for supporting this Bill.

18. My Lord, I would highlight that, whilst Ms Satchell is a lawyer by background and by training, and indeed still on the roll of solicitors, she is not appointed as a lawyer for the Trust either internally or externally. I am sure that Ms Satchell would be happy to explain a little bit more of what her previous and current roles entailed as she goes through this initial presentation. Without further ado, if I could hand over to Ms Satchell to start with a presentation of who the Trust is today and broadly how it operates.

19. THE CHAIR: Thank you very much. Yes, Ms Satchell.

Evidence of Ms Satchell

20. MS SACHELL: My Lord, I am just going to start off by basically explaining how the Trust works in very general terms.

21. THE CHAIR: Is this in the bundle?

22. MS SACHELL: Yes, I think so, at the front of the lever arch folder. I am probably saying something that you are already aware of, but how the board is made up is, in itself, quite complex. The basic structure is in Section 7(2) of the 1924 Act. I do not think you need to look particularly to these sections, but I am just saying this to show you how the changes have been made on such a piecemeal basis that it has made it really difficult to follow, if you come to this fresh, how the board appointments came about.

23. Section 7(2) of the 1924 Act, as amended by the Malvern Hills (Amendment of Local Enactment) Order 1958—there is then the Hereford and Worcester (Structural, Boundary and Electoral Changes) Order 1996, and an agreement with Worcestershire County Council dated 22 July 1968. Between all of those documents, they provide for 29 trustees, split between 11 elected and 18 appointed. I think you have those

documents in the first bundle, but as I say, I am simply saying how messy things are at the moment rather than asking you to look at them.

24. The current position is that we have 25 appointed trustees. There is a long-standing vacancy at Powick and a long-standing vacancy with the church commissioner's appointment. Following our initial contact with them prior to the 2019 consultation, I asked them whether they would object to losing their power of appointment, and they broadly speaking said, "No, great. We don't think it's appropriate that we should appoint any more, and we are very happy to stop doing so right away". That vacancy, as I say, is a very long-standing one now.

25. The two outstanding vacancies at the moment—the ones that we are expecting to be filled—are a nomination from Castlemorton Parish Council, which goes through Worcestershire County Council, and we are waiting for Herefordshire Council to appoint as well.

26. THE CHAIR: Can I just be sure that I have picked this up correctly? I am looking at the first sheet in our bundle, which is a list of the trustees elected and appointed by electoral area. I have not counted it all up, but it looks as though that is the 11 people you mentioned as elected. Then we turn over, and these are the appointed ones. I think we do not get up to 25 on this list. This is 18, I think, is it?

27. MS SATCHELL: There are 11 on the first page, and then these are the council nominations and, notionally, the church commissioners. Sorry, there are more than 11 on the first—

28. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Satchell, there are 13 on the first page.

29. MS SATCHELL: Yes, that is right. I have gone through this by the electoral areas, so to speak, so as it says there, Guarlford elects one; Mathon elects one and appoints one; Colwall elects two and appoints one; and then all of the other wards each elect one person. There are 13 who are appointed in those different areas, and then we go on to the next page, where we have 16 more who are appointed by councils. Of those appointed by councils, it is only the ones appointed by Malvern Hills District Council who have to be councillors. The other appointments can be anybody, basically.

30. LORD EVANS OF GUISBOROUGH: What does that practically mean? Are those people going to be council officers, conservation officers, or people who are particularly experts in this field?

31. MS SATCHELL: No, my Lord, they are not. As I say, the district councillors have to be councillors. Worcestershire County Council—they have frequently appointed councillors for their own appointments—the two. Whilst it has always been our practice to write in and say, “We have the following skills gaps”, or, “We are very short of female trustees. If you have a female trustee, you can appoint”, we get what we are given, basically, and particularly with the—I think it is fair to say probably all of them—they tend to look for a volunteer rather than doing a skills audit and saying, “You would be a good person to sit on the board of the Malvern Hills Trust”.

32. THE CHAIR: Going back to the trustees who are elected, would it be right to say they are elected to represent the ward?

33. MS SATCHELL: No, my Lord. I am going to come on to the charity point at a later stage, but it is very clear that, no matter how you find your way on to the board of the Trust, once you are on there, your obligation is to act solely and exclusively in the best interests of securing the Trust’s objects, and other than other people’s perceptions, from my point of view they are not, in any sense, representatives, and there is nothing in the Acts that says they are representatives. I am very happy to take questions as I go along, because I appreciate it is really quite a complicated picture.

34. THE CHAIR: I hope you do not mind.

35. MS SATCHELL: No, I do not at all. Please go ahead. I would much rather you asked when it came to you.

36. THE CHAIR: That is very kind of you.

37. LORD INGLEWOOD: Could I please ask a question for clarification? Under the second entry for Worcestershire County Council, there is a sort of rider: “These have always been trustees nominated by the parishes of Castlemorton, Newland and Powick”. While they are nominated by Worcestershire, they are not included, obviously, in the list on the first page, but they have many of the characteristics, since they come out of those

three parishes. Is that correct or not?

38. MS SATCHELL: In general terms, yes. This particular agreement came about slightly after the Trust acquired the land at Castlemorton, and it also at the same time acquired Old Hills, which is in the parish of Powick, and some verges and a little bit of common in the parish of Newland. This is a bit of a generalisation, but those areas were previously looked after, shall we say, by the county council. They got sold to the Trust from various bodies, but the county council came to an agreement with the Trust that, in response to the acquisition of that extra land, there would be three further trustees appointed by Worcestershire County Council, and they would also pay the Trust some money to ostensibly cover the cost of maintaining particularly Castlemorton.

39. In fact, as is the way so often, that sum has not kept pace with inflation, and they do still make us a payment every year, but not quite as much as perhaps we had originally anticipated. The agreement simply says that there will be three further appointments from Worcestershire, but the practice ever since that agreement was made is that they take somebody nominated by the parish council from each of those three parishes.

40. LORD PONSONBY OF SHULBREDE: Can I ask a slightly separate question? You were very clear that, once you become on the Trust by either appointed or elected, then your responsibility is to overall the objectives of the Trust itself. However, the locally elected councillors will have been elected from their own wards or their own parishes. Do you measure or do you know how much casework they generate from their own areas, because they will be picking up their own casework, which they will be bringing to the attention of the Trust?

41. MS SATCHELL: That tends not to be how it works. The board are generally responsible for strategic decisions and overarching supervision, but it is actually the staff who tend to run the operational side and are responsible for operational matters. Generally, if there is an issue, the questions do come into the office and not to the trustee in question. I am not saying they never go to the trustee, but they generally come via the office.

42. If it is appropriate for me to make reference to one of the people who has appeared before you, Professor Tew, who was suggesting that Malvern Hills Trust was

responsible for his easement, and he had potholes in it, I would just correct that and say, first of all, the Trust is not responsible for the maintenance for the easement, but what we expect anyone who had a problem with their access would be for them to come to the office, because it is the office who will go out and look at it and talk to them about what an appropriate repair would be for them to carry out and that sort of thing.

43. LORD PONSONBY OF SHULBREDE: For them to carry out themselves.

44. MS SATCHELL: Yes, I do not want to get into complicated legal points about who is responsible for the maintenance of easements, but broadly speaking, it is the person who has the benefit of the easement who is responsible for its maintenance.

45. THE CHAIR: Where is your office?

46. MS SATCHELL: In central Malvern.

47. THE CHAIR: In Malvern itself.

48. MS SATCHELL: Yes, so we are fairly central to the area.

49. LORD INGLEWOOD: Is this an appropriate moment—tell me if it is not. Before you became a charity, did it work in the same way?

50. MS SATCHELL: Can I ask that I park that question, please, my Lord, for the time being? I will come on to the charity/not-charity issue a little bit later on.

51. Just picking up where I left off, we have the basics of how the board is made up. I have mentioned that the staff are the operational side and the trustees are the strategic side. I would just pick up at this point that 29 is really too big to have sensible discussions as a body. There was general agreement in both of the consultations that it is appropriate to reduce the size of the board. The discussion is just about how it is made up and exactly how big it is.

52. Because the board is so big, we run a committee structure, and the trustees can either go on to the land management committee or the finance, administration and resources committee, but not both. They can then put forward to be selected for two other committees: the governance committee and the staffing committee. There is also, as a side issue, a disciplinary committee, which sits as and when needed, but it is not a

regular event.

53. The reason, my understanding is, that we split into these committees and the way that it works is that, generally, matters if they are not urgent for decision, for example—I am just trying to think of an example now. The budget is a good one. That would initially go to the—we call it FAR—finance, administration and resources committee, for those members to have a general discussion, and they would then make a recommendation to the board. The same applies to the other committees. With a limited exception, which I will briefly refer to, they do not have any decision-making powers in their own right. They are used as a vehicle for discussion in small groups, and they then, as I say, make a recommendation to the board.

54. There are some small exceptions, as I say. There is delegated power to the finance, admin and resources committee to approve contracts at a certain level, and they can also approve unbudgeted expenditure. Also, there are some limited recruitment powers that sit with the staffing committee. They can set off the recruitment process, but the people they recommend have to go to the board for appointment. They are essentially set up as a talking shop in smaller groups.

55. A trustee does not have to be on the committee to sit in on those committee meetings. They can sit in on any of the committee meetings but, as I say, the final decision is with the board. That is not a very economical way of making decisions. It means that the meetings end up being rather long, and then matters can end up being discussed twice. They are discussed in the committee and then in the board. It is quite a cumbersome way of going on.

56. Notionally, in accordance with the governance handbook, there are six board meetings a year, but the reality is that there tend to be—in the last few years, there have been something like somewhere between 11 and 14 board meetings each year, which is quite burdensome. I think possibly some of that is because of the Bill. Obviously, there have been a lot more meetings than one would normally have expected.

57. One of those board meetings is the annual meeting where the chair is elected, the accounts are approved, and the auditors appointed. I will obviously come on to that when we get into the meat of the Bill, so to speak. Since Covid, we have cut down on the number of committee meetings. There tend to be two or three meetings of each

committee each year but, like the board, if something comes up that needs discussing, we call an extra meeting.

58. LORD EVANS OF GUISBOROUGH: It looks to me like you have more board members than you have staff.

59. MS SATCHELL: Yes, we have. I will just say a little bit more about the board, and then I will come on to the staff structure. There have been some references from the right to be heard hearings to secrecy or decision-making behind closed doors, but I would like to reassure you that all meetings are open to the public, unless we are dealing with matters that are confidential, which generally tend to be personnel matters, legal advice, or commercially sensitive matters. They are referred to as exempt information under the 1972 Local Government Act Schedule 12(a), which is applied to the Trust by the 1995 Act. The papers are available for the public in advance, and the minutes are published afterwards, apart, obviously, from any confidential papers or minutes.

60. Just to move on to the staff, in contrast to the number of trustees, we actually have 19 full-time equivalent staff. Quite a number of the office staff particularly are part-time, and the average headcount is around 21/22, just depending on who is doing what. In broad terms, there is the chief executive officer, and then there are the senior managers, the land and property manager, the secretary to the board, me as the governance change officer. Then the finance and admin manager has a team. She looks after the front office staff, so to speak, so she has another finance officer and the front office staff. The conservation manager looks after the conservation team. The operations manager manages the field staff team, and then there are the rangers, who are the people who are out and about on the hills, being helpful, looking for problems, etc.

61. Most of the staff are recruited by the chief executive officer, apart from the chief executive officer, obviously, and the secretary to the board, who for historic reasons, lost in the mists of time, are recruited directly by the board.

62. We manage roughly, as you have already heard, 3,000 acres of public access land, and that runs roughly from nine and a quarter miles north to south, and six and a quarter miles west to east. In addition to that public access land, we have sheds and offices—sheds obviously for storage of equipment and that sort of thing, which are—

63. THE CHAIR: Sorry to interrupt. Could you give that dimension again?
64. MS SATCHELL: Yes, certainly. It is approximately 9.25 miles north to south, and six and a quarter miles east to west.
65. THE CHAIR: Thank you.
66. MS SATCHELL: The offices and the shed for equipment are referred to as ancillary land in the Bill.
67. Just coming on to the Trust's finances, you can see on the slide—and I also have a table, which is the following slide—that for the last four years, the biggest slice of income is the levy, which varies between 40% and 46%—pretty steady—car parking income, which is 27% to 30%; grants, which are mainly Defra stewardship grants, which make up roughly 12% to 20%; legacies, which are incredibly variable; rents, wayleaves and licences—income from those is again quite variable, between 2% and 6%; and then we have investment income at around 2% to 4%. The next slide just sets out, in tabular form, the figures for the last four years on which those pie charts are based.
68. THE CHAIR: What is the explanation for increase in the levy over these four years?
69. MS SATCHELL: Inflation, primarily. I do have another slide, which I will come on to shortly, about the cap on the levy and the amount we have actually charged each year, so I will move on to that shortly if I may.
70. This is very broad brush, and I will come on to it in more detail later, but the different funds that the Trust holds are the general fund, which is primarily the operating fund from which all the day-to-day expenses are paid; the designated funds, which I will come on to later; and the restricted funds. Designated funds basically are amounts of money put aside for specific purposes, and they are under the Trust's control—the purposes for which they are used. The restricted funds are ones where there is some external restriction, and I will just go through that in a little bit more detail shortly.
71. LORD INGLEWOOD: Could I just ask a quick question about the levy in these figures? Does that include or not include the grants from Hereford and Worcester?

72. MS SATCHELL: It does not include it. There is not a grant from Hereford; there is only a grant from Worcestershire.

73. LORD INGLEWOOD: Right, and the purpose of the grant was to, as it were, replace the levy in those circumstances.

74. MS SATCHELL: Replace the levy, cover the maintenance—yes.

75. The levy itself is capped under the Levying Bodies (General) Regulations 1992. Broadly speaking, the way the cap works is the base was taken from the amount that was levied in 1988, when the basis for collecting the levy changed because of the change from collecting on the basis of rates or values to the poll tax. I cannot remember what the proper name for it was. The change in the way the levy was collected occurred then, and the basic figure was the amount collected. Then there is a provision in those regulations for an increase by reference to the RPI each year. That table sets out the maximum levy we could charge under that cap; the levy we actually set; and the way it was divided up between Colwall and Mathon in Herefordshire, and the district council areas in Malvern Hills District Council.

76. THE CHAIR: There is quite a shortfall in the levy actually set as compared with the maximum.

77. MS SATCHELL: Yes.

78. THE CHAIR: But you are not in control of that.

79. MS SATCHELL: Yes, we are, because we set the levy. I do have a slide explaining how we do that. We have a lot of councillors on the Trust, as you will probably have picked up, and there was a period—I cannot remember exactly when it was—when the councils were capped on how much they could increase their council tax by. The councillors on the board at that time were very keen for the board to be seen to be also restricting how much they increase the levy by, and therefore there were quite a number of years when the Trust did not increase the amount of the levy set by inflation. Consequently, the maximum amount that the board could levy carried on going up, but the levy set started to fall behind. That obviously has a knock-on effect on the Trust.

80. Over recent years, we have increased the levy by a higher percentage, but as you

can see, it still actually sits quite a way below the maximum that we could charge and indeed would have been charging had we increased the levy by inflation every year since the collecting arrangements changed.

81. LORD PONSONBY OF SHULBREDE: How much would an individual household actually pay a year? Would that vary with the rate the individual levy payers pay different authorities, if I can put it like that?

82. MS SATCHELL: I have a slide with a council tax bill shortly, so again, could I pick that up when we get to that slide? It might even be the next slide, please. There we are. That is somebody's band D council tax bill. It shows the bottom entry as the Malvern Hills Trust levy, so for a band D in that particular year, it was £50 basically. The increase that particular year, which is shown as the percentage increase on here, was 5.5%, and three of the other councils were also around 5%. I think that illustrates that we are not always as out of line as some suggestions have been made.

83. THE CHAIR: Does it vary according to the valuation band of the property?

84. MS SATCHELL: It depends on which band you are in, yes. I am going to get into the nitty-gritty of a little bit about how the levy works, but broadly speaking, as I am sure you know, houses fall into different council tax bands. Band D is somewhere in the middle, so some properties pay less than Band D, and some properties pay significantly more. It is worked out in accordance with exactly the same formula as the other charges on the council tax bill, so people who are in a higher band pay more than people in a lower band.

85. LORD EVANS OF GUISBOROUGH: Does Band D actually fall in the middle in the area that you are concerned with?

86. MS SATCHELL: I do not know the answer to that question.

87. LORD EVANS OF GUISBOROUGH: Surely it depends on the valuation. Quite often people look at council tax numbers and compare them, but if you are dealing with a tax that is based on your property value, that quite often just tells you that property is worth more in a particular area than it is elsewhere. Although you are giving us Band D numbers here, that may not be the experience of your residents in practical terms.

88. MS SATCHELL: I do not have the figures with me. I did ask. We get given the figure each year for the equivalent number of Band D properties within the area and interestingly that is, I am going to say, roughly 14,000 Band D equivalent. I might have that figure wrong, but in actual fact there are more properties than that Band D equivalent would indicate, so I think that probably means we have significantly more properties that are below Band D than above it. There are more households than there are the Band D equivalent. I am not an expert in the way local authorities set their rates.

89. I will talk a little bit more about how we set the levy in the hope that that will be helpful. The finance and administration manager and all of the senior staff and the CEO work together to prepare a draft budget for the following year during September to November or thereabouts. That budget—a paper on the budget then goes to the finance, administration and resources committee in December, and they discuss it. They make a recommendation to the board to agree the budget and also the levy that flows from it.

90. At the council tax base, which is the figure that is used under the Levying Bodies (General) Regulations to work out effectively what the split is between Herefordshire and Worcestershire, that is normally finalised in January. It is the figure that the local authority produce each year based on the number of houses liable for tax in a given area, and it is converted—the council tax base is the equivalent number of Band D properties, so they work some magic to come up with that Band D equivalent. That is used to, as I say, calculate the split between Herefordshire and Malvern Hills, and it also gives us some indication of how the levy increase that we set will play out in terms of a Band D property. We can work out whether it is going to be a 5% increase or a—

91. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Satchell, how usual is it for the Malvern Hills District Council to set a council tax rate exactly the same level as it was the year before?

92. MS SATCHELL: I cannot answer that question, I am afraid. I do not have a clue. I do not keep an eye on it. I am quite surprised.

93. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I am flabbergasted.

94. MS SATCHELL: Yes. I cannot answer that question, I am afraid.

95. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would it be possible to come back later and just look at a council tax bill without disclosing who it is—the property owner—over a couple of years and see whether Malvern Hills District Council always has a very low council tax rate increase?

96. MS LEAN: We will take that action away, my Lady.

97. MS SATCHELL: I have some other council tax bills from different years, so I will have a look. It should not be too difficult to get an answer on that.

98. Finance, admin and resources committee considers the position, makes a recommendation to the board, and the board passes a resolution in January to approve the budget and set the levy for the next financial year. Once that is approved, the two councils are notified and told the amount they should collect on behalf of the Trust. We actually receive the payment from both local authorities in two tranches, so Malvern Hills District Council pays half in June, half in December; and Herefordshire Council pays half in April and half in September. This is the slide we saw before, but just to talk a little bit—

99. LORD INGLEWOOD: Can I just ask a quick point of clarification? The board is all the conservators.

100. MS SATCHELL: Yes.

101. LORD INGLEWOOD: Whether or not they are allowed to participate in other matters, all of them take part in the budget process.

102. MS SATCHELL: Yes, they do. Yes, the board is effectively the decision-making body of the Trust.

103. LORD INGLEWOOD: Yes, but some members are currently excluded from certain decision-making and certain actions, but that does not relate to the budgetary side of it.

104. MS SATCHELL: It does not. It only relates to the Bill—the particular conflict of interest issues that you have been hearing about. There would be other conflict of interest issues. For example, if we were asked to grant an easement and one of the

trustees lived next to the site, they would have a conflict of interest because, clearly, they have a very personal interest in whether that easement is granted or not. I must make it absolutely clear that the conflicted trustees that we have been talking about in relation to the Bill—they are only excluded from decision-making on matters relating to the Bill, and nothing else. They can take part in all land management—everything else.

105. Yes, I was just going to talk a little bit more about the designated funds and the restricted funds. I did say briefly that the designated funds are where the Trust puts a pot of money aside, and they can set money aside for specific purposes. The big example that we have is we set up a fund to deal with ash dieback and tree diseases back in 2021, when we anticipated that we were going to end up spending about £350,000 over five years. We set some money aside to deal with that, but these funds can be undesignated by board resolution. There are no external limitations.

106. There are external limitations on the restricted funds, and those have a legal restriction on how the money can be spent. They tend to be invested on a long-term basis through the Trust's investment managers, and pursuant to—the Trust has an investment policy that the investment managers have to follow in terms of risk, and we do have one or two specifications about areas where we would not want investments to be placed on the Trust's behalf. The restricted funds that we have include restricted grants and donations, so where somebody gives us, for example, a legacy and says it has to be spent on trees, then we can only spend it on that particular qualification.

107. The parliamentary fund is the fund—I have no idea why it is called the parliamentary fund. If we receive money from the sale of an interest in land, for example, from an easement, that goes into the parliamentary fund, and we can only spend money from that fund on capital works. In other words, we could buy a piece of land with it, or we could make improvements to land or buildings, but not maintenance, which would come out of the general fund. It is only, effectively, buying land or capital improvements.

108. The next one down is the land purchase 1992 fund, and that one is—thereby hangs a bit of a tale. In the early 1990s, Malvern Hills District Council—Madresfield estate decided that they wanted to set up a big retail, light industrial, residential area on the east side of Malvern. You will remember that the Trust has land—lots of spidery little

bits of verges going out particularly on the east side, and it transpired that a very small area of Trust land was needed for their road improvements. At that point, the Trust could use the provision in the 1930 Act for land exchange for up to a quarter of an acre.

109. Whilst this particular area is not, I think, probably an area where the Trust would actually have sought to acquire land, the upshot of passing over a quarter of an acre to facilitate this development was that the Trust was given 30 acres of land opposite the retail park, which is now part verge and part woodland. It is referred to as the community woodland, and lots of people walk their dogs and things in it.

110. They also received a payment of £580,000, and that is what sits in the land purchase fund. In accordance with the 1930 Act, when the Trust does a land swap, the money it receives can only be used, under Section 8, for the purchase of land on or adjacent to the Malvern Hills. Whilst the parliamentary fund can be used to buy land and do capital improvements, the land purchase fund can only be used to buy other areas of land.

111. THE CHAIR: Can you just explain how these funds are funded? Obviously, grants and donations—they have a particular reason for them, but do you distribute to the other funds, which are not of that character, from a central budget according to a formula?

112. MS SATCHELL: No. The parliamentary fund—as I mentioned, that is the area where, if we receive a payment for the grant of an easement, the money goes into that pot, because it is effectively money we have received from the sale of an interest in land, so it goes into that pot so that we can—it is preserved, effectively. It is not used for general expenditure. It sits there for the next time we want to—

113. THE CHAIR: The land purchase obviously is sales of land and so on.

114. MS SATCHELL: Yes. The land purchase 1992 fund is purely that money that was received from the land exchange. That is the only source that has gone into that particular fund. Similarly, the lands maintenance fund—you might say that we did quite well out of this arrangement, because we also received a payment of £134,000, which we have to invest. We cannot touch the capital, but we have to invest that money and use it for the maintenance of the verges that we received as part of the deal.

115. Again, one of the petitioners mentioned the fact that they were having to pay for the maintenance of these verges. In fact, they do not actually, because it is paid from the land maintenance fund, but obviously this is all very much below the radar in terms of the people living in Malvern—just where we can source for—it is not just the levy; we do have other sources of funds.

116. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Satchell, I have understood, I think, what you say about the land maintenance fund—that some of it would be used to maintain the verges, but earlier you said that if a property owner had an easement over a verge, and there was an issue with it—badly maintained—you would come out and show them how to fix it, but you would not pay for the repair.

117. MS SACHELL: We would not show them how to fix it. What we ask is that, if people have a right of access over our land, the legal position is—perhaps I will go back a step here. Sometimes people have a right of access because we have granted them a right by deed, and when we do that, we always specify in there—we do now, anyway; I am not sure that some of the really historic ones do, but we always say that the access is for the purpose of the use of the land as a single dwelling house or an agricultural field or something like that. We specify what the use is for, and we also specify that they are responsible for the maintenance, because clearly it is not appropriate that the Trust as a charity should be maintaining people's private rights of way.

118. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: If I take you back to a property that has had an easement or right of access over your land going back a very long time, before the Trust was a charity, how would that be maintained?

119. MS SACHELL: That is referred to as a prescriptive right of access, so it is one from long historic use. This is a matter in which we had to take legal advice again, because the position was unclear, but the advice was that neither the owner of the land nor the user of the access in law is specifically responsible for its maintenance, but the householder or whatever who uses the access does have a liability for third parties—if the postman falls in a pothole or something on that access—so they do need to keep an eye, in the same way that we would if there was a hazard, on there.

120. There is no obligation on either party to do the maintenance, but it is in the interests of the householder to keep the access in a reasonable condition. Because we

own the land, and because in many instances—for example, in areas where the right is going across one of the sites of special scientific interest, we would want to specify what materials they use. For example, if they used the stone of the wrong pH, it might affect the SSSI immediately adjacent to the access way.

121. There is also—it comes back to the natural aspect. We would not be wanting people to use, for example, the bright yellowy coloured Cotswold stone to maintain an access on Trust land. We would be looking for them to use colours that were similar to the local stone so that it does not stand out. If people want to carry out maintenance, there is something called a good neighbours leaflet, which we do pass on to new owners, and we ask them to come in, say they want to carry out some maintenance, and one of the rangers will go out, or the land and property manager.

122. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: In effect it would be as if the property was a grade 2 listed building or in a conservation area. You would specify how the maintenance was to be carried out.

123. MS SACHELL: Yes. We would certainly ask them to use certain materials. I do not think we would be too exactly prescriptive, but we would set the limits on—

124. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you. I just have one other question. The general fund—does that pay your staff salaries?

125. MS SACHELL: Yes. All the day-to-day running comes out of the general fund, so filling the vehicles with fuel, and the staff salaries. I am sure the finance manager would be very quick to tell you the other things, but yes, all of those day-to-day, annual expenses.

126. LORD EVANS OF GUISBOROUGH: Can I just ask? Do you grant many easements? Is this a major part of your income?

127. MS SACHELL: My Lord, I am going to slightly split hairs on that and say it is money incoming, but it is not income in the sense of general fund income. We do not grant a huge number, no. The granting of easements is obviously driven by people coming in and asking. It probably generally would be one or two a year. It is quite a small number, and some of those are—I would say if somebody has a prescriptive

easement, we will sometimes confirm it in a deed, and we ask them to pay our legal expenses, but we do not charge them for it because they already have that right.

128. We sometimes get people—for example, we had a property that had a deed of easement, but it was for a single dwelling house, and they changed their garage into a holiday let. Technically, they did not have a right to pass and repass over our land for the purpose of the holiday let, so that was a slight adjustment, and there was a small payment.

129. We do not actually get that many requests for new easements. Some are very uncontroversial, for example the holiday let conversion, but some of them, as you will have picked up, are very controversial, and although I would not propose to go into the details now, you will appreciate that somebody has mentioned, I think yesterday, that there is a site very close to their house that has been included in the south Worcestershire development plan as a preferred options site. As I am sure you all know, local authorities have to set up a five-year housing allocation, so the Malvern Hills district councillors are all very busy trying to make sure they comply with their obligations in that regard. They are in the process of revising the south Worcestershire local plan, which is a group of councils that includes the Malvern Hills area. Because of the number of verges we have in Malvern, quite a number of those sites will require access from the Trust—so infrequent, but can be a very big deal when they come up.

130. LORD INGLEWOOD: Do you have a regular formula—the sort of *Stokes v Cambridge* rule approach?

131. MS SATCHELL: Yes, we do tend to do that.

132. LORD INGLEWOOD: It is a big development site. It is big money.

133. MS SATCHELL: It is indeed big money. As you may or may not have picked up, there was an existing power in the 1995 Act to grant easements, and that power is very closely constrained, and it says that the Trust may grant easements; that it has to have regard to the impact on the natural aspect, as it is now; and that they must also consider appropriate mitigation. They do not have to grant the easement, but obviously if an application comes in, we have to consider that application.

134. This is where, because the Trust owns so many verges, it is a bit of a hot potato for the Trust, really, but what I would say is the Trust has nothing to do with planning policy. The Trust is merely an innocent bystander in all this, and it is the genuine elected representatives on the district council who make their mind up where the sites are and where the developments are going to be. It is then a matter for the promoter of that particular site to come to the Trust and say, “We would like you to consider granting us an easement”. They have to provide us with all the appropriate paperwork, and we have to work out—we would instruct a land agent to come up with heads of terms, including a formula, which we do tend to base on *Stokes v Cambridge*, as you said.

135. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: When those development sites are being debated in the council meetings or at public meetings, and if it is close to your land, which is not a verge but a large area of land, would you go along and make your feelings known about whether it influenced the outlook from that land or spoilt the enjoyment of that land?

136. MS SACHELL: We do, on a fairly limited basis, because there is nothing in the Acts that says we need to do that. The district council, unless they forget, almost always do notify us if there is a development adjoining our land. We are not a statutory consultee—I think the AONB is—but we would look at it and, for example—this is a silly example because I do not think it would happen, but if all of a sudden there was an application not requiring access over our land, but for three blocks of flats immediately adjoining the hills, we would go along and put the point that this will impact the views that users of our land would otherwise enjoy.

137. We do that. There is no obligation for us to do it, but we keep an eye. We review the planning applications as they come through every week and just make sure that there is not anything that we need to be alert to. We also sometimes pick out planning applications that are going through that are going to require an easement, but they have not actually thought to ask us.

138. LORD INGLEWOOD: When you decide whether or not to grant the easement, the fact that it would benefit some land that is not yours but which would, in terms of its appearance and general characteristics, impact on both your own land and the Malvern Hills more generally—do you take those factors into account when determining what to

do?

139. MS SATCHELL: We only take into account the impact on the land under the management and control of the Trust. Section 8 of the 1995 Act—it requires us to look at the impact on, as I say, the natural aspect, so we do take that into account, but it is interesting, because if we have to grant a right of way for that particular development to come forward, we actually have more control over the impact of that development than the normal planning conditions. Because of that obligation to consider mitigating the impact, we can say, “We want you to put in a 30-metre buffer zone. We want you to plant a hedge”. We can specify things to make it better.

140. The frustration is that, for example, when a large site comes forward that does not require access—and this has happened in recent years where a big site has been developed adjacent to Malvern Common, which is an SSSI in the AONB, all the rest of it—it is going to impact massively on the number of dog walkers, and we have skylarks nesting there, so there are all sorts of implications for the Trust, but because we do not own the strip of land that controls the access, we are just the same as any other person making normal planning comments, although actually the impact can be very significant.

141. THE CHAIR: Yes. I am just wondering whether this particular issue arises out of the Bill.

142. MS SATCHELL: In general terms, I am going to say there is no change in the Bill. We have reproduced the existing provision to grant access, but—

143. THE CHAIR: Can we find the equivalent from the 1925 Act in the new Bill?

144. MS SATCHELL: You can. I am going to struggle to remember what the clause number is. Is anybody able to help me out on that one?

145. MS LEAN: If I may assist, I think it is Clause 55 in the Bill.

146. MS SATCHELL: Yes, 55, access roads. Page 75, I think, in the bundle.

147. THE CHAIR: Yes. That is subsection 2 then, 55(2).

148. MS SATCHELL: Yes, “must have regard to the effects of the works being

authorised”. The only change that we have had to make is because we are changing the way in which the Trust’s duties or charitable objects are expressed, and we hope to lose the words “natural aspect”, in the 1995 Act it says the Trust must have regard to the effects of the works being authorised on the natural aspect, whereas we have now had to change that to say “the matters mentioned in Section 6(1)(a)”. That is the only change, I think I am right in saying.

149. THE CHAIR: Thank you very much.

150. MS LEAN: My Lord, at risk of interposing—and I do apologise for that—I just wondered if I could also highlight Clause 55(1) whilst we are here, in light of my Lady Baroness Bakewell’s questions around the Trust getting involved in maintenance works or overseeing or wanting to have some degree of control over what people might do on rights of way. Section 55(1) is not limited to the grant of a new right of way, but it requires authorisation of any person to construct, maintain, alter, or improve roads or ways over the Malvern Hills.

151. THE CHAIR: Yes. Thank you. I think we have spent quite a lot of time on this particular slide, have we?

152. MS SATCHELL: It is a big issue for the petitioners, so I think probably that was very much justified. I am going to go on now just to talk a little bit about the Acts, which I think you are probably already very familiar with. They are in the bundle. There are five Malvern Hills Acts. They refer to other public Acts, parts of which are incorporated into the Malvern Hills governance. One of those examples is the Commissioners Clauses Act 1847, which has a number of administrative provisions in. I do not propose to say any more than that.

153. THE CHAIR: I am looking at a page that is called the governance page. It is immediately after the one that is sat on the screen just now.

154. MS SATCHELL: Yes, I am just going to talk without a slide for the time being. We are on a different topic, my Lord. Just talking a little bit about the problems with the current Acts, particularly the Commissioners Clauses Act, which is a Victorian Act—times were completely different. As I said, it has some administrative provisions in it. Those administrative provisions do not include a provision for removal of trustees, so at

present, ignoring issues of misconduct, if, for example, an elected trustee is seriously ill or injured in a way that makes it impossible for them to resign, there is no way that we can actually remove them and get another trustee appointed, even if there is absolutely no hope of them ever coming back to sit on the board again.

155. The provisions in the Commissioners Clauses Act are not what you would expect in modern times. One of the matters that has come up is the provision for the appointment of auditors in Section 92 of the Commissioners Clauses Act. At the moment, the ratepayers at the annual meeting appoint the Trust's auditors. I will just read a little summary of what it says. It says, "May appoint two or more persons, not being commissioners, to be auditors of the accounts", and if no person present at such a meeting proposes the names of two persons to be appointed auditors, it is the duty of the chair of the meeting to propose the auditors.

156. THE CHAIR: Is this in our file somewhere?

157. MS SATCHELL: It is, yes. Sorry. Somebody else is going to find the page for me. Yes, page 296 in the original bundle.

158. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: In the original or the ones we had today?

159. MS SATCHELL: Not the ones you had today, no—in the original bundle. I am very happy that you find the page and follow it. I was using it as an illustration of how this really does not work any more for the Trust. It says, "Persons so to be appointed auditors shall have the like qualification, and shall be subject to the like disqualification or disability, as the commissioners". The provisions that strictly govern the Trust say that it does not have to have auditors with any sort of qualification, and they get paid two guineas a day.

160. For years and years and years, we have gone on with levy payers not putting forward a proposal for the auditors. The chair has put forward the proposal. We have appointed the auditors, which is a requirement of charity law to have the Trust's accounts audited, because of the size of the charity. Then all of a sudden, when there started to be a little bit of concern around the Bill, we had a levy payer who was a petitioner come to our annual meeting, and when we came to the item on the

appointment of auditors, we were going to propose our existing auditors again. He said, “I want to propose PricewaterhouseCoopers”, and we said to him, “Have you asked them if they are prepared to act?” “No.” No quote, so we had to adjourn the meeting and go and speak to PricewaterhouseCoopers, who said, “We only audit international charities”.

161. If I may say, perhaps the proposals are not always entirely sensible, and that is one of the reasons why—we did a tender exercise, and we appointed another firm, who actually were several thousand pounds in fees more than our existing auditors, but that was a bit of a bump in the road, which perhaps it would be appropriate going forward if we could avoid. For example, councils appoint their own auditors. It is not their residents who put forward a proposal for the council’s auditors. I am not sure that it remains logical that the levy payers should be appointing the Trust’s auditors, but we will go into that when we come to the clause.

162. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Satchell, how long had you had the previous auditors for?

163. MS SACHELL: Probably—I am guessing—I would have to check. It would be in the order of—they were new auditors, I think, very shortly after I started, so it would probably be six or seven years, and they were very experienced charity auditors.

164. LORD EVANS OF GUISBOROUGH: Your committee structure, which you referred us to earlier, does not appear to have an audit committee.

165. MS SACHELL: It does not, no, but finance, admin and resources would pick up audit work, and the chair and the vice-chair would liaise directly with the auditors. The auditors always have a meeting without the staff present so that there is no suggestion of there being any influence from the staff. Similarly, the chair and the vice-chair of the finance, administration and resources committee would be the people who liaised with the investment managers.

166. LORD EVANS OF GUISBOROUGH: Those of us in local government would usually prefer a separation of responsibilities on that. Is that something that is not required in charity law? I am not so familiar with that.

167. MS SATCHELL: It is not required, my Lord, no.

168. THE CHAIR: It is a question of external controls, really. The criticism, I suppose, is that you are appointing your own auditor, and it should really have some sort of external supervision over who is to be appointed.

169. MS SATCHELL: We have to appoint auditors that can comply with the FRS auditing standards that the Charity Commission provide.

170. THE CHAIR: Do you consult with the Charity Commission?

171. MS SATCHELL: No, they do not take any part in it. It is not normal that external people appoint charity auditors in the way that they do in Malvern.

172. LORD EVANS OF GUISBOROUGH: What we would certainly do with organisations I have been involved with—and they are, to be fair, larger organisations—is run the audit through a committee, which was separate to the finance committee, because if you run it through the finance committee, that really is marking your own homework.

173. MS SATCHELL: I can see that, my Lord. It is not something that we do. I am not aware that it is common practice with charities, but it is certainly something that I can look into.

174. LORD EVANS OF GUISBOROUGH: It would be one benefit, of course, of having a large board—that you would be able to find people to serve on two committees without duplication.

175. MS SATCHELL: I take the point you are making. Yes, the other point I was going to make about the Commissioners Clauses Act is that the Charities Act would normally permit charity trustees to claim reasonable expenses in relation to the work that they are carrying out. One of the things that it does permit is, for example, if you have a trustee who has caring responsibilities of one sort or another, it does allow that trustee to have some support.

176. We have certainly had, in the past, trustees who are single parents and that sort of thing, and have a child, and have had to make private arrangements for care during

meetings, but the Commissioners Clauses Act—it is Section 48; again, I do not think you necessarily need to look at it—provides that the commissioners “shall defray their own expenses, except what may be incurred for the use of the room in which the meeting is held, and for books, stationery, and fire”. That is one area where—there was a suggestion earlier—is there a conflict between charity law and the Trust’s governing Acts? That is not a major conflict, but it is a conflict and is something we have sought to address in the Bill.

177. LORD EVANS OF GUISBOROUGH: Does being able to pay those expenses effectively mean that you would be able to appoint trustees from a wider variety of backgrounds?

178. MS SATCHELL: That is what one would hope. Obviously, the trustees have to come forward first, but it does give that opportunity. Again, we have a trustee at the moment—I think in fact we actually have two trustees who have caring responsibilities for older people, not just children, and it is a worry for them if they have to leave to come to a meeting, so it certainly does allow you to broaden your area of search, so to speak.

179. LORD EVANS OF GUISBOROUGH: Thank you.

180. LORD INGLEWOOD: Could I ask one quick question about that and the Commissioners Clauses Act—not a piece of legislation I have been familiar with? It says in Article 2 that “the commissioners’ shall mean the commissioners, trustees, undertakers, or other persons, or body corporate, constituted by the special Act, or thereby entrusted with powers for executing the undertaking”. The conservators are trustees for the purposes of this legislation, which is still on the statute book. Is that right?

181. MS SATCHELL: Yes, it is still on the statute book. You might perhaps muse as to why this piece of legislation is still on the statute book and has not been replaced by something more modern, but it has not. I know that Wimbledon and Putney Commons Conservators are similarly blessed with provisions from the Commissioners Clauses Act. I should say I am not quite sure what version you have in your bundle, but specific provisions from the Commissioners Clauses Act are incorporated by certainly the 1884 Act, and I think one of the others. It is not every single provision contained in the

Commissioners Clauses Act, but it is significant tranches of it.

182. The Trust, being a charity governed by statute, can only do the things that it is empowered to do under the statute or that might be reasonably implied. The question of exactly what the Trust can do and what might be reasonably implied is a constant issue for us. We have already discussed that we have an express power to grant easements. Wimbledon and Putney Common Conservators do not, and they found themselves in a similar situation and ended up having to go to court over the issue of granting easements. It was found that it was reasonably implied that they could grant easements in their capacity as landowner, but, honestly, one does not want to have to go to court to find out whether you can do something or not, so having Acts that are clear and cover all of the relevant areas in which the Trust needs to operate is really important.

183. One of the other things that has come up in the recent past is that, particularly in drought conditions, there are not sufficient watering points on the hills for the grazing stock. Can we install water troughs? It does not say that we can. It does not say that we cannot. We have taken that as being a power that is reasonably implied in our capacity as landowner, but it is something, again, that we have confirmed in the Bill. I think we have confirmed everything in the Bill that we can possibly think of.

184. Another issue that came up was that, under the Commissioners Clauses Act, we got a power to compromise court proceedings, but not to compromise a dispute before it reaches that stage. Again, in that particular instance, just to say very briefly, there was a piece of land that was conveyed to the conservators, as they then were, and it then transpired that another estate had purported to convey exactly the same piece of land to somebody else. It could not be registered. There was a complete impasse. We reached a compromise with the other interested parties, but we had to go to the Charity Commission to get permission to make that compromise, because it was not covered in the Acts.

185. Another thing that is not expressly covered in the Acts is whether we are allowed to acquire land and set up facilities to support grazing on the commons. Again, it is a moot point, but, particularly if the people exercising their grazing rights or the people currently grazing the hills under licence need somewhere to get their animals off that is proximate to the hills, can we support them with those facilities? It is not clear.

186. The other major issue that has come up with the Acts is how we are supposed to conduct elections when the references to the boundaries of the electoral area change. Again, I will come on to the fact that that was one of the major catalysts for eventually pushing forward with the Bill, the problems that we have had in that regard.

187. As an aside, I would point out—I think it has already been mentioned—that, in the existing Malvern Hills Acts, when they were originally made law, the area which pays the levy, or the people within the area which pays the levy, and the electoral area were—and, indeed, are—treated as the same, so you do not get to vote unless you pay the levy and, vice versa, you do not pay the levy and not have a vote.

188. The power to levy is defined under Section 19 of the 1884 Act and Section 33 of the 1994 Act, and is defined by reference to parishes. However, the voting areas are defined partly by parish and partly by wards of what was then the Malvern Urban District Council. Again, I will go into that in more detail, but that is a strange anomaly with which we have to live.

189. I am going to turn to the position of the Trust as a charity, which was something you have raised.

190. THE CHAIR: I am just trying to follow through the file that we have to be sure we are not missing something out. I have a page headed “governance”.

191. MS SATCHELL: Yes, I think we will have that slide now. That would fit in well.

192. THE CHAIR: Are we to look at that?

193. MS SATCHELL: Yes. This is merely an illustration of the webpage on the Charity Commission website that sets out that the Trust is a registered charity.

194. THE CHAIR: So this is your registration.

195. MS SATCHELL: It is, yes. It is what the public can access to find out. The website has different pages and all sorts of things, like our statutory accounts and whether we filed them on time, and the names of the trustees and all those sorts of things on the different sections.

196. THE CHAIR: It gives us the date when you became registered.

197. MS SATCHELL: Yes. It was 1984.

198. THE CHAIR: You get the benefit of gift aid.

199. MS SATCHELL: We do. It is not so much what is on there in detail. It is an illustration of the fact that we are shown on the Charity Commission website.

200. The Trust is unusual but not unique in the way that it is constituted and its power to levy. The starting point for the Trust is that it is a statutory body, and you must look first of all to the Acts to see what the powers and duties of the Trust are. The Trust is now also, unequivocally, a charity. That was not a choice. It comes from the application of general charity law to the Trust.

201. THE CHAIR: Are you a public body?

202. MS SATCHELL: I will follow on with that one, if I may, my Lord.

203. THE CHAIR: You are coming on to that.

204. MS SATCHELL: I am going to come on to that. The Trust got registered as a charity because its purposes are entirely charitable. The position is that being a charity provides a framework for the Trust's activity. It provides guidance for its internal arrangements. It provides an appropriate accounting framework, and also a regulator so that complaints can be addressed where, otherwise, there would be no option short of court proceedings.

205. I completely understand the confusion over all this, but, if I may, I will just outline what the background is to the registration. The Acts are as they are, and the Trust's purposes have not changed over the years. The Charities Act 1960 required charities that were not exempt to register with the then newly created register of charities. I do not know why the Trust did not do it at the time.

206. What is clear is that the Trust did register itself as a charity for income tax purposes and was holding itself out as a charity, but it was prompted to contact the Charity Commission in 1984 because it had not got a charity registration number and it was being asked for that number in connection with people incorporating legacies in their wills and that sort of thing. It became apparent that the Trust needed to register as a

charity and it made an application.

207. If the entirety of the Trust's functions at the point of application had not been charitable, then it would not have been registered. The organisation is there, as you know, to look after the hills for themselves and also for the benefit of the public access. The Acts do not refer to us as a charity, but the legal analysis is that that is what we are. I am sure that Ms Lean will be able to help me with the reference, but there is a provision in the Charities Act that says that registration as a charity is, basically, conclusive.

208. THE CHAIR: Does the Bill say anything about this?

209. MS SATCHELL: It does, my Lord, yes. We have, as with a number of things, made express in the Bill what the situation in relation to the Trust being a charity is. We will be going through the Bill clause by clause in due course, and going into the detail of what we put in might be best left until we do that.

210. LORD INGLEWOOD: I do not think there is any argument about the purposes of the Malvern Hills being charitable, but the question is, it seems to me, whether they have to be registered as such, which they do to get the tax benefits.

211. My concern throughout has been that they may be charitable in the sense that they are capable of being registered for charitable purposes, but, if the effect of the registration is to operate at variance with the provisions of the enabling statutes, that perhaps ought to be a bar for the charitable registration to take effect, because you have a conflict between the provisions of charities legislation and other statutory provisions because the purposes of the conservators are laid out in the various old pieces of legislation as they have evolved.

212. We have heard this debate about the role of the elected trustees. It seems to me, in my view, that there is a general proposition where you have people elected on this kind of basis. They have some sort of special relationship with their electors, which we have been told they cannot fulfil because of the provisions of the charity law that apply because they have successfully registered themselves. I think that is the heart of my concern with this.

213. MS SATCHELL: That was quite a long question. I am going to go back to the point that I made that we were required to register as a charity under the Charities Act 1960.

214. LORD INGLEWOOD: Why—because you were reclaiming money?

215. MS SATCHELL: No, it has nothing to do with reclaiming money. It is the purpose of our existence. Any issue about tax is entirely separate. We did not register as a charity for tax reasons. We registered because there was a requirement to do so.

216. LORD INGLEWOOD: I am not disputing what you are saying. I am just trying to be clear. The reason you registered was because you happened to be a body whose purposes were charitable, and the Charity Commission told you, “Come what may, regardless of any other consideration, if you are a body like that, you have to—i.e. must—register; otherwise you are in breach of the law of the land”.

217. MS SATCHELL: Yes. It was not so much the Charity Commission who told us as the legislation that told us we had to register.

218. LORD INGLEWOOD: The legislation stipulated that bodies of that sort had to register.

219. MS SATCHELL: Yes.

220. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Even though you were a levy-raising body bringing you into the local authority remit.

221. MS SATCHELL: My Lady, the definition of a charity is based on its purposes, not the way in which it raises its funds, and, similarly, not the way its trustees, board members or conservators, or whatever you want to call them, are appointed. As specified in the Acts, the requirements that the Trust has to fulfil are those that we have already spoken about—keeping the land open for public access and preserving the natural aspect—and that is what the statute says the trustees have to do.

222. I appreciate that we are unusual and there is a bit of a dichotomy, but it does not say anywhere that there is an obligation to promote the interests of the levy payers anywhere in that. It just simply says that the Trust must fulfil its duties under the

legislation.

223. THE CHAIR: Do we have the relevant Charities Act legislation in our bundle? If not, I think it might be helpful if you could provide a copy of it. We do not need the whole Act. It is just the relevant bits.

224. MS LEAN: My Lord, you do not have the legislation in your bundle. What we have provided as the last document in the bundle before you, starting at page 470, is what is called a note on charity law matters. I will put my hands up and say you will see my name at the end of it. It is something that I put together because it was more in the line of legal submissions than factual evidence, if I may.

225. What that note sets out is where the requirement was for there to be a register of charities, and for every charity not accepted to be entered on the register, where those requirements are now found. The provision that Ms Satchell referred to a little while ago is the provision in Section 31 of the Charities Act 2011 that “an institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register”.

226. What I have tried to do in the note then is try to outline where you see some of the definitions about what a charity is and what charitable purposes are, highlighting my Lord, Lord Inglewood’s question, on page 472, paragraph 11, about bodies established by statutes being registered charities, and highlighting some examples there of other bodies that were established by statute or any by royal charter that are able to be charities. The fact that they may be governed by Acts of Parliament does not preclude them from being a charity, given what I think was a concern: “What if there is a tension between what the Acts say and what might be required of a charity?”

227. THE CHAIR: So you cannot, under the law as it now is, simply set up a body and call it a charity.

228. MS LEAN: No.

229. THE CHAIR: In the same way as you cannot enact that it is to be a charity without going through the drill to be registered. It sweeps everything in, does it?

230. MS LEAN: My Lord, my understanding is that, even if there was an Act that said,

“This shall be a charity”, there would still be a requirement for it to be entered on the register of charities under Section 4, unless it met any more of the specific excepted requirements. If it assists, I am very happy to provide the clip of the legislation that has been referred to in this note, which shows the exceptions at the different points of time, if that would be helpful.

231. THE CHAIR: This is probably enough. It has the references in it.

232. LORD INGLEWOOD: Does paragraph 13 have any bearing on it?

233. MS LEAN: My Lord, paragraph 13 was included to show that the charities legislation itself makes express provision in respect of bodies that are registered charities that have been established or are governed by Acts. I know Ms Satchell will come on to this in a moment. It does provide a mechanism by which changes can be made to those charities, even though they were established by Acts of Parliament or by royal charter, about their governance or things like that, through a specific scheme that is approved by the Charity Commission and by the Secretary of State. That is the Section 73 scheme.

234. It is just seeking to highlight that the point that there might be the body established by statute and a charity is something that has been grappled with or engaged with, and recognised and provided for through the legislation. There is not a clear and obvious dichotomy that you cannot be a charity if you might have an Act, because there is possibly something there. The Charity Commission will have to satisfy itself when the application for registration comes forward that you do properly meet all of the criteria and tick the right boxes to be a charity as well.

235. LORD INGLEWOOD: I was wondering whether, given the, shall we say, unsatisfactory circumstances surrounding all this, it would be possible under Section 73 to go to the Charity Commission and say, “Look, these are the particular peculiar circumstances unique to this place”, or perhaps the conservators be allowed to take a full part in the proceedings that they are engaged in. Has that approach been looked at?

236. MS LEAN: My Lord, my understanding is that Section 73 is about changes to the structure, if I may, or the charity itself. It might be for things like if there was an amendment or a change to the objects or a change of powers.

237. LORD INGLEWOOD: You used the word “governance”, and that got me thinking. Maybe that was perhaps the wrong word, slightly.

238. MS LEAN: That was probably the wrong word. The provisions for the administration of the charity, in terms of meaning things like maybe how many trustees there should be or things like that. I meant it in those terms rather than the day-to-day operation of the charity or how the charity is operating its internal requirements.

239. My Lord, again, I am at risk of pre-empting Ms Satchell, who I know will touch on Section 73, but, as referred to during the standing hearings, there has been a reference made to the Charity Commission about the fact that certain trustees have not been permitted to participate in votes or see certain documents to do with the Bill. You have seen the minutes of the meeting—and we have re-provided those in this file as well—from 9 October for the new trustees, Mr Myatt and Ms Burford, who were elected in September.

240. The Charity Commission has written to the Trust and to the trustees about that. We have provided you with their letter, and we have also provided you with the Trust’s response to the Charity Commission. My Lord, in terms of what the interaction with the Charity Commission is and what involvement they have in whether trustees are allowed to participate, that process is happening and is running separately at the moment. We have given you the most up-to-date documents on that.

241. THE CHAIR: Where do we go from here?

242. MS SACHELL: I am sorry. It is really difficult because it is a very complicated set-up, and I thought it would be helpful just to try to give, as I say, a bit of an overview before we get into the clauses themselves.

243. THE CHAIR: It certainly is very helpful. I think we appreciate your taking time to do it for us.

244. MS SACHELL: You are very welcome, my Lord. The other point about charities is they have to have the charitable objects, and it is built into that that they have to operate for the benefit of the public as a whole. There has to be a public benefit element, and that is all the public, not any particular sector of the public.

245. Just to touch briefly back on whether there is a conflict between the statutory provisions and being a charity, I have given that some thought since it was asked. Really, I cannot identify anything apart from what I would call the vastly enhanced requirements for audit that being a charity produces, as opposed to just having two random people appointed at two guineas a day. The overlay of the charity audit requirements is, I think, probably the only thing that is a conflict, but I do not think anybody would suggest that we should be sticking by the Commissioners Clauses Act in this day and age.

246. We have alluded to the Trust's purposes. Currently, they are expressed as duties and they are scattered through the Act. I will just very briefly say that the duties are the preservation of the natural aspect of the Malvern Hills, which is in Section 21 of the 1924 Act; protecting and managing the trees, shrubs, turf and other vegetation, which, again, is in the same Section 21 of the 1924 Act; preventing unlawful digging and quarrying, which, again, is the same Section in the 1924 Act—and the quarrying was a big issue around 1924; keeping the hills open, unenclosed and unbuilt on as an open space for the recreation and enjoyment of the public, which is the 1930 Act, Section 3.

247. We have other statutory obligations, which are not part of our charitable purposes but in relation to conserving and enhancing biodiversity—and again, this is just a reference; it is not intended for you to necessarily seek it out, my Lords—under the Natural Environment and Rural Communities Act 2006, the sites of special scientific interest legislation that we have to comply with, and also the scheduled ancient monument legislation that we have to comply with. All of those things are ones that go towards making the Malvern Hills a very special place indeed.

248. As Ms Lean has just said, we are by no means unique in being a charity governed by statute. The number of times we have referred to Wimbledon and Putney Common Conservators now must be running into more than double figures. The PDSA, the National Trust, the RSPCA and the Shakespeare Birthplace Trust are all charities established by statute.

249. I am, you will be pleased to know, on the final slopes, to some extent, of this information. I am going to talk a little bit about the things that led us towards this application for a new Act of Parliament. It was clearly recognised that the 1995 Act had

not done all the things it might have done. By then, there were five Acts' worth of piecemeal amendments, which left a position where the Acts are really hard to follow and you need to know what you are looking for to find the full picture. In the Lords debate leading up to the making of the 1995 Act, there were a number of comments that the next thing that was needed was a consolidation of the existing Acts.

250. The Charity Commission carried out a review in 2002, and they recognised that the position was not satisfactory and recommended the making of an application for a parliamentary scheme, which is now the Section 73 Charities Act 2011 procedure. They said, ““It is recommended that [the conservators] consider applying to the commission for a [parliamentary scheme]. The conservators would need to make a case detailing the inadequacies of the current governance documents and the failings of the latest 1995 Act to provide an effective governance framework to run the charity in the most efficient manner””.

251. THE CHAIR: Could you give me the date of that Act? Was it Section 93, did you say, of the Charities Act? I wrote it down wrongly.

252. MS SATCHELL: Were you referring to the possibility of applying for a scheme?

253. THE CHAIR: You mentioned a Charities Act.

254. MS SATCHELL: There is the subsequent one, but the main Act is the Charities Act 2011.

255. THE CHAIR: Thank you.

256. MS SATCHELL: It is a Section 73 scheme under that Act.

257. THE CHAIR: That is what I was looking for. Thank you.

258. MS SATCHELL: That was highlighted as a key action point for the charity, which was a legal requirement that the Charities Commission believed the charity was not meeting. In fact, as is not perhaps uncommon with the conservators, nothing happened until around about 2010. There were events surrounding the renewal of the tenant's lease at St Ann's Well, and that led to the Charity Commission becoming involved again.

259. I have only read the summary. That is an inquiry report that is probably not quite too interesting, but it is jolly nearly. In general terms, the tenant at St Ann's Well had a protected business tenancy. The Malvern Hills Conservators took him to court when the lease was up for renewal, seeking possession of the property, with the intention themselves of running the café that is in that building, but failing to notice that they did not have a power to do that. One of the other issues raised in the inquiry report is that they also did not produce a viable business case, even if they could have done it.

260. The procedures that the then conservators were adhering to perhaps wanted a bit of formality and proper consideration. Matters relating to the tenancy were delegated to a committee, and the decisions were being, for want of a better expression, rubber-stamped rather than being properly examined by the board. The Trust had to withdraw from the court proceedings and was left with a significant bill to pay for, I think, both their and the tenants' costs.

261. This was reported as a serious incident to the Charity Commission in February 2012, and an inquiry was set up as to what had gone wrong. It was carried out internally. I think there was some debate as to whether it should be external, but the Charity Commission was happy that it should be carried out internally by trustees who were not involved in the original decision-making process. The committee was asked to address the Trust's governance, the costs of the litigation, and the costs of the inquiry.

262. The inquiry found really significant flaws in the way the conservators were conducting their affairs, and a governance review was carried out. It recognised that the Trust needed to properly note its obligations as a charity and have a proper internal documented governance structure. However, when carrying out this review, it was noted that there were certain changes that could not be made—for example, the size of the board—without changing the Acts.

263. As part of the inquiry, there was an obligation to consider whether the trustees were in breach of their duties, and that part of the inquiry was passed over to a firm of solicitors to consider. They found that a lack of information on and awareness of their responsibilities in charity law led to the Trust being risk-prone financially and reputationally. The advice concluded that the trustees were not personally liable, but I think the very fact that there was that research and a legal opinion on the position was a

wake-up call.

264. Flowing on from there, following the governance review, the then CEO got in touch with the Charity Commission and got an agreement from them that they would put forward a Section 73 scheme on behalf of the charity. I am perhaps not the best person to exactly explain this, but the arrangement within the legislation to allow for the Charity Commission to put forward a scheme is something that is agreed between the charity and the Charity Commission, and it is put forward to the relevant Minister to make an order confirming the changes that are needed.

265. We got that go-ahead, and really, since 2014, the Trust has been working on what they needed to change and what the best options were. Over that period, there were two working groups looking at this, which included trustees, who were both cautious about making the changes—indeed, one of whom is one of the petitioners—but we were very lucky to have at that time as board members. Dr David Bryer had very considerable experience in charity governance. He was a former chair of Oxfam International, trustee of Save the Children Fund and the World Wildlife Fund. We still have Professor John Raine on the board, who is an emeritus professor of public management and governance. They were really key to the development of the proposals, and Professor Raine particularly put in a huge amount of work, working up suggestions that we could incorporate into our governance changes.

266. Over the entirety of the period, we have run two public consultations, and I think both the consultation paper and the reports are in the bundles. I do not have any numbers. I do not know if anybody else has.

267. MS LEAN: My Lord, if it assists, you have the 2024 consultation document—that is the one on the Bill—in the original big bundle that we gave you in week one, so it is an R document. You have a couple of extracts from the 2019 Section 73 scheme consultation paper in the bundle we have given you today.

268. MS SACHELL: P6, 277 to 284.

269. MS LEAN: You also have, included in the bundle we have provided today, some of the papers from working groups that followed those two consultations. Those are, in broad terms, behind P7. I am conscious you may not have these tabs, but it is at page

285. That is for the 2019 Section 73 scheme consultation, and you have a series of background papers prepared by or following work by the working group for the Bill consultation in 2024, starting at page 382.

270. LORD EVANS OF GUISBOROUGH: Do you have a summary anywhere—and this is a key question, perhaps—of the objectives of the exercise? You have talked to us about how the exercise came about, but a list of things that you are trying to achieve with these changes.

271. MS SATCHELL: Not a list as such, my Lord. The consultation documents are quite an accessible summary. It is probably better to look at the 2024 consultation than the 2019, because we did make a few changes in between times. The 2024 consultation, I hope, sets out, reasonably clearly, the problems that the board had identified in the existing Acts, and then summarises what we considered and what the proposals are to address those problems. I would suggest that that is probably the most accessible way of approaching it, because, again, it is quite difficult to just simply put them in a list as such.

272. LORD EVANS OF GUISBOROUGH: I am not sure why it is difficult to put them in a list.

273. MS SATCHELL: We are guided by the existing Acts and by the Charity Commission guidance that is issued, and also the charity governance code, which is another document, which is in the bundle at P3, page 163.

274. LORD EVANS OF GUISBOROUGH: You are directing us to a number of sources that you have used to create this, but, surely, having consulted those sources, you would have a list, just for the sake of completeness of your own piece of work, of things that you were aiming to do. It would certainly assist me—I do not know about other members of the committee—if there was something I could look at that could say, “This is what this legislation is seeking to do”, and then we can look at the Bill and see if it actually does it.

275. MS SATCHELL: I can certainly turn my mind to producing a list, my Lord. At the very beginning, when we first started, way back, probably in 2014 or 2015, we did produce a list of about 20 things that we were going to look at initially, but that has

morphed somewhat over the time. That definitely is not in your bundle, but I can probably look that out as a historic starting point.

276. LORD EVANS OF GUISBOROUGH: When you say “morphed”, do you mean it has grown because the number of things you have spotted has increased, or it has shrunk because you have decided to limit the scope of this exercise to things that you think you can get through? For example, something you might consider is extending the levy payment to everyone in the area, but then you would look at that and think, “That is going to be more challenging than it is worth, so we will not do it in this legislation”.

277. MS SATCHELL: There are two aspects to that particular example, and it has been something that has been long-running.

278. LORD EVANS OF GUISBOROUGH: I am just using it as an example. I am sure we will come to it in due course, but I am not really wanting a detailed breakdown of that particular point. I am just making the point that you start with a list. It will grow longer as you find more things. People always suggest extra things, but it will also shrink because you will decide there are some things that, in an ideal world, you would correct, but they might put the wider process at risk or be too expensive or too time-consuming to form a part of it.

279. MS SATCHELL: I think, my Lord, that the key elements on the list are the same. It has expanded rather than contracted. The issue of the levy-paying area and changes to it, I know, is something that is to be considered under the instructions that were tabled at Second Reading. When we had our first meeting with DCMS and the Charity Commission to discuss what we might want to take forward, the representative from DCMS, because of the way the Section 73 process worked, made it very clear at that point that the Minister would not be happy to be putting forward recommendations that were going to be controversial, because they would not be suitable, effectively, for the Section 73 process.

280. LORD EVANS OF GUISBOROUGH: Thank you. I think I saw that outlined in the rather good report that you have put in front of us that you authored for the board in 2017. You have given an example there, but you go into a process with a list of things and you come out with a list at the other end. The question really that I have is why, because asking why is always a good thing to do on these occasions.

281. MS SATCHELL: Given that I have not really got the starting list, I am finding that one quite difficult to answer.

282. LORD EVANS OF GUISBOROUGH: All right. Can I leave you, because I do not want to detain the committee further?

283. MS LEAN: My Lord, forgive me for jumping in. If I may, could I ask perhaps if we could take that away to see if we can track back through from the early papers to see what there might have been when the process was started? My Lord asked about a list for maybe looking at what the Bill was trying to achieve as opposed to what is in the Bill. What we do have in the bundle in front of you is the resolution for the Trust when it decided to deposit the private Bill. You have that in the big part of the bundle we provided today, starting at page 362.

284. These are the minutes from the special board meeting of 17 October 2024, which resolved to promote the Bill. What you have at 363 in particular is, “Having considered”, and then the matter is set out, “resolve that it is expedient in the best interests of the Trust (and its charitable objects) to promote a Bill in November 2024 repealing the existing local legislation [...] and replacing it with a single enactment written in modern terms, including (but not restricted to) provisions effecting all or some of the purposes mentioned below and that such a Bill be promoted accordingly”.

285. Then it sets out a list of purposes that are sought to be picked up by the Bill. They include renaming the conservators, making provisions about finance, making provisions about rights of access, and the making and confirmation of byelaws.

286. My Lord, if I could perhaps just highlight that document for now, which may be perhaps the most up-to-date list of what the Trust was doing immediately prior to deciding to deposit the Bill, we will take away and see if we can trace back historic papers that might say, “In 2014, here are what our key objects were”. We will do what we can.

287. LORD EVANS OF GUISBOROUGH: Thank you.

288. THE CHAIR: Ms Satchell, we only have about five minutes left today. Is there a natural finishing point in your presentation? We can run on very slightly, but it is just a

question of the best way of presenting it. We are coming back tomorrow, but, once you have answered Baroness Bakewell's question, it may be we just come to an end and you come back tomorrow.

289. MS SATCHELL: Yes. I think a sensible break point would be very shortly, where I get to the end of my talking a little bit about the Trust as a charity, and then we can start tomorrow with the Trust as a public body.

290. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You referred us to the public consultation from 2024, which is at page 277 of the bundle that you have given us today, and that lists the contents, which go from page 4 down to page 94. We have the introduction, which is on page 6. We go to page 36, which is the levy, and that is it, so we do not have the public consultation document in full.

291. MS LEAN: My Lady, forgive me. The consultation document for the Bill, which is the 2024 document, you have in the bundle we provided a couple of weeks ago. That is what was called the R bundle, and that is document R16 at page 327 to page 404.

292. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It will look like this.

293. MS LEAN: It looks a bit like that. It has a different heading, but what we have given you in the bundle today is a clip from the 2019 consultation, when it was being looked at as a possible section 73 statutory scheme. There is quite a lot of overlap of the content of the two documents, so we have just provided the introduction, so the committee could see what it covered and compare, as it were, the issues that were covered in 2019 and now, and the bit on the levy, because we have this particular issue.

294. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: The papers that you gave us a while ago do contain the 2024 consultation in full.

295. MS LEAN: The full consultation paper from 2024. Yes, my Lady.

296. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you very much.

297. LORD INGLEWOOD: Very briefly, please, just to slightly go back to some

things I mentioned earlier, are we right in looking at this from the perspective of the purposes for which this land is held rather than from the rules that are necessary for people who own land who are charities like this? For example, if I was the landowner of all this land, and I gave to you all the land on the condition you did exactly what the purposes of the Malvern Trust are, it would not be charitable because the person owning it was not capable of being charitable. It was you as a private individual. What I am wondering is—in the context of this, the problem here is the statutory structure of the Trust, is it not? The roles of the Trustee are, arguably, in certain circumstances, incompatible with charitable status and, therefore, if you are in that problem, you cannot be acting in the public benefit according to the law. Is that right?

298. MS SATCHELL: I am not entirely sure I have completely followed the question. Could you repeat it?

299. LORD INGLEWOOD: Yes, certainly. We have looked at this from the perspective of the purposes of the Malvern Hills Trust as set out in the statute. The problem has arisen from the way the Malvern Hills Trust operates in the context of what is stipulated by the Charity Commission. As I said, if I was to give you the land subject to exactly the same conditions as the Malvern Hills Trust, that would not turn that gift of land into a charity, because the person who owned it and was running it did not satisfy the necessary criteria for the way in which the decisions were taken in respect of that land. Is that an analogy to where we are here? You would probably argue not, but I am posing the question.

300. MS SATCHELL: With the greatest respect, I think you are correct, so I am going to say not. We have a power to acquire land under Section 29 of the 1884 Act. If you sell me your very lovely piece of land, once that comes into the hands of the Malvern Hills Trust, we have to hold it for the charity's purposes. If, when you wanted to sell us the land, you specified something different, it might be that we would not be able to take the land, because we only have that power to acquire the land that is in the Act and then to hold it for the purposes of the Trust.

301. LORD INGLEWOOD: Philanthropists who own land do exactly what you do, and they do not have to be charities. It is difficult.

302. MS SATCHELL: I am not sure, but I think each individual piece of land that

might be passed over for public enjoyment is going to be subject completely separately to its own regime. Whether that is you as a landowner just saying, “I am going to throw this particular tranche of land open or have a permissive path over it”, I do not think that makes any difference. I think the position is quite different for the Trust, because, as I say, we can only hold land for our purposes, effectively.

303. LORD INGLEWOOD: I think I concede the point, but I do not want to labour it now. I am just wondering about this—which we will come back to—relationship between the statute and the Charity Commission.

304. MS SATCHELL: I will just say that I do not perceive there to be the conflict that, my Lord, you seem to think that there is.

305. LORD INGLEWOOD: Therein lies the conundrum at the centre of an awful lot of the debate we have had, does it not?

306. MS SATCHELL: Yes, but I think it is difficult to get away from, as I said, the fact that the Charity Commission would not have registered us as a charity if they had concerns about the purposes for which we were established, or things in the Acts. We can only be what we are.

307. LORD INGLEWOOD: I am just wondering whether it is your modus operandi that has caused a lot of trouble legally, rather than the up-front headline purposes.

308. MS SATCHELL: I do not think specifically it is either. It is not really for me to speculate why there is the issue that there is about the public body/charity, because, as I think I have made aware, my feeling is that the position is quite clear as a matter of law. Other people clearly have different views. This is from observation, not putting words in people’s mouths, but an element of the issue is the one about the grant of easements.

309. THE CHAIR: I suggest that you proceed to your natural stopping point. We will have to finish by 4.30 pm.

310. MS SATCHELL: I am very pleased to do that, my Lord, and I am sorry that I have gone on at quite such length. I think I am really, more or less, there for the end of this section.

311. I did say that we have been very much guided by the charity governance code and the Charity Commission guidance. The charity governance code, for example, says that the optimum number of trustees is between five and 12, and I did refer—I think it was in that 2019 consultation—to other non-charity guidance and research. For example, the Corporate Governance Institute has a statement that says, “Any number beyond 10 directors will be hard to justify in terms of the effort and cost to sustain them”. There is a quote in the 2019 consultation document—again, it was alluded to by Mrs Dicks—research by Bain and Co, which said the optimum number is seven with a reduction in efficiency of 10% for each extra person.

312. I am just going to finish off with a quote from Sally Atkinson, the director of planning, policy and communications at the Charity Commission.

313. THE CHAIR: This is in our bundle, is it?

314. MS SATCHELL: It is not, no. It is only a small sentence, and it says, “The bottom line is, good governance is no longer an optional extra”.

315. LORD EVANS OF GUISBOROUGH: My experience of the size of committees to run things is that the optimum number is six, so your seven is not far out. It depends on the purpose of the committee and, if the purpose of it is representation, rather than making tight executive decisions, it needs to be larger.

316. MS SATCHELL: My Lord, the purpose of the Trust, in my suggestion, is not representation, and I am going to go on to that when we get to the public body issue and the letter Ms Lean has already referred to, which we had only the month before last, in December, from the Charity Commission, which sets out the Charity Commission’s view on this very clearly that the charity trustees, however they came to be on the charity board, are not representative of the people who appointed them.

317. THE CHAIR: But there is a point that Lord Evans touched on earlier about the need to have enough members to have a separate audit committee from the finance committee, which you do not have.

318. MS SATCHELL: We do not have, no, my Lord.

319. THE CHAIR: Should you have?

320. MS SATCHELL: It is not a question that has been put to me before, and it is not a question that I could properly answer. The only thing I would say is that, were we to have the ability to appoint trustees for their relevant skills and knowledge, it would be much easier because we could then probably recruit people who were experts. We do occasionally have trustees who are experts in financial matters—I make that very clear—but we cannot specifically recruit them. They would be able to guide the board with views such as that expressed by Lord Evans.

321. THE CHAIR: I think we should finish at that point today. We will resume tomorrow at 10.30 am. Thank you very much indeed. You have been asked a lot of questions, but that is because your presentation raises very interesting questions for us, and it is important to get as far as into the detail as we can.

322. MS SATCHELL: My Lord, I am very happy to answer them.

323. THE CHAIR: Thank you very much indeed, and we will see you tomorrow.