

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

**MALVERN HILLS BILL COMMITTEE**

PETITIONS AGAINST THE BILL

Thursday, 12 March 2026 (Morning)

In Committee Room 2

PRESENT:

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

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FOR THE PROMOTER:

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

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FOR THE PETITIONERS:

Jeremy Owenson  
John Gallagher

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**(At 10.30 a.m.)**

1. THE CHAIR: Welcome to this, the 16th day of the Select Committee on the Malvern Hills Bill. I would ask those who have mobile phones with them to be sure they are silent so that we are not interrupted in the course of the evidence.
2. I need to say a word about the fire alarm system. In case of fire, bells are not used on the parliamentary estate. Instead, a two-toned siren, followed by a series of taped messages, is broadcast. If evacuation is necessary, please follow the instructions of the clerk and leave your papers behind, because it is important to get out of the room as soon as possible. If you happen to be in the corridor at the time, find a security officer and follow instructions from them.
3. These proceedings are being broadcast and a full transcript is being taken. If you would be kind enough, look at the transcript afterwards to see that the evidence you are giving was correctly recorded. If there are errors, let us know and the transcript will be corrected. I think, Mr Owenson, it is for you to begin. Are you going to make an opening statement? I know that you are going to have Mr Gallagher with you, but he has not yet arrived.
4. MR OWENSON: Correct. John Gallagher is the leader of the Malvern Hills District Council. When I was presenting the right to speak on the petition, I was asked by the Lords if the leader of the district council would support what I was saying, and I thought the best way to do that was to bring him with me. He got a different train, so he has had a bit of a—I realise sometimes how long it takes to get across London. He perhaps did not, so he will be joining us.
5. THE CHAIR: Yes. You do not mind us proceeding with him.
6. MR OWENSON: I am happy to proceed without him. I will be doing the majority of the talking. It was really just for him to give me some advice and to give you some comfort that it was not just a lone voice.
7. THE CHAIR: All right. Let us proceed. Thank you very much.

**Mr Jeremy Owenson**

**Evidence of Mr Owenson**

8. MR OWENSON: The objections to the Bill fall into two areas. One is a reflection of the statement that Malvern Hills District Council has expressed in a motion some time back now, and I agree that those points merit some further discussion. Then, in addition to that, there were a couple of points that I put forward as leader of the Conservative group of the councillors on Malvern Hills District Council, where we were concerned that the electoral platform might not properly reflect the correct status of the electorate, effectively. I do not know how your Lords want to do it. I think that there are three main points. Do you want to take each in turn, or do you want me to run through all three in the first instance?

9. THE CHAIR: I think take them in turn and then Ms Lean will reply to them in turn. I think it is easier that way, rather than to break your address up.

10. MR OWENSON: Perfect. The first point was originally raised by MHDC, and is raised by me as well, around how the appointed trustees are nominated. This is in the context of the nomination committee. Within the new Bill, the nomination committee will consist of two nominated trustees, two appointed independent people and the chief executive of the Malvern Hills Trust. There is nothing in the Bill that says how those two independent people will be selected, and how people can put forward nominations.

11. At the moment, you will recognise that Worcestershire County Council, Malvern Hills District Council, Hereford unitary council and some of the other parish councils can put forward nominations. There is a clear procedure within the current Act that says, "This is somebody we would like to put forward as a potential for the Trust". If we go forward with six nominated trustees, how are those selected and how can external authorities put forward a suggestion for a nominee?

12. Within the Bill, the reason behind six elected and six nominated is to fulfil a specific purpose within the trustees or within the board. The Bill says that we should try to select people who can bring particular skills or value to the board. One of the challenges is that the area that consists of the Malvern Hills Trust is far larger than the area of the precept payers. At the moment, only the precept payers can nominate people to stand for the

Malvern Hills Trust. The purpose of having Malvern Hills District Council, Worcestershire County Council or some of the parish councils to nominate is to say that they want a representative who can represent the views of their area. That might include Trust property but not include the precept-paying area. How could, in the current Bill, the residents of Castlemorton, for example, put forward a nominee for one of the non-elected members of the Trust?

13. THE CHAIR: Do you have Clause 15 of the filled Bill in front of you? This is the clause that deals with the nomination committee. Is that what you are addressing us on?

14. MR OWENSON: That is exactly what I am addressing. There are two elements to this. The first point is: how are the two independent people nominated on to that selection board? Effectively, what you have is: the Malvern Hills Trust will nominate two trustees and two independent people, who will then nominate half of the Trust, six members of the Trust. Where is the democratic element in that? How can I influence one of those nominated trustees on that board? Is that a lot of power—the ability to appoint six trustees—resting with, effectively, two existing trustees and two independent members who are appointed by the existing trustees?

15. THE CHAIR: If you just look at the wording of subclause (3)(a), the two members must be trustees, either elected or appointed. Would it meet your point to say that they would have to be elected trustees?

16. MR OWENSON: I am happy for the Trust to come up with different ways to do it. One example could be that the appointed trustees on the nomination committee are appointed, one by Worcestershire County Council, or its subsequent unitary authority, and one by Herefordshire unitary. That would be a way of bringing in some independence into the constitution of the nominees. Another way to do it would be that there was a formal process by which the nominated trustees could be put forward to that committee. Again, if Worcestershire County Council could have a member on the nominations committee, that is one solution. An alternative solution could be that the county council and the unitary in Hereford put forward the nominees.

17. THE CHAIR: If you look at Clause 14, which sets out the criteria for appointment, there is not anything there about the democratic profile, as it were. If you look at what they are required to be, if you look at subclause (6), you are told that they have to be

people with experience of various things, but there is no reference to any relationship with the electorate.

18. MR OWENSON: That is my point. There is no way that the electorate can put forward a person for any of those appointed trustees unless we introduce the process as part of this Bill.

19. THE CHAIR: That is Clauses 14 and 15. Is there anything more you want to say on this particular problem? We will obviously have to look at the wording more carefully, but are these the points you want us to consider?

20. MR OWENSON: In terms of the nomination committee, those are the two key points that I want you to consider, yes.

21. THE CHAIR: Right, and your next point? We cannot take a decision just now. Obviously Ms Lean and—

22. MR OWENSON: No, I was not sure if you wanted to let the Malvern Hills Trust come back on those points first before I go on to the—

23. THE CHAIR: No, I think, as I said at the beginning, we will take your presentation and we will come back, and you will have a right to reply at the end.

24. MR OWENSON: Sure, no problem. Nominations committee was the first point. Then the second point was the number of elected trustees. Six elected members is insufficient and we would prefer to have more elected members. This is the concern that there are ways that an elected member can be excluded from standing. If you have six and six, then it is very easy for a majority to say, “At certain points, this person is no longer entitled to be a trustee because they have taken a decision that is not in line with the trustees’ rules”.

25. This is the example that, when you go to charitable status, you have to agree with the guiding principles of the charity, as opposed to in an election, where you can stand in contradiction to what the charity is saying. If the Trust decides that it is going to raise the precept or the levy by a certain amount and somebody stands on the basis that they do not want to agree that amount—they want to increase the levy by a lower amount—there is the ability for that person, if they continue to hold that view, subsequent to the Trust

deciding they are going to raise a levy, that they can be in breach of the Trust rules and therefore rejected as a member of the trustees.

26. THE CHAIR: That takes us to Clause 12, if you would like to look at that.

27. MR OWENSON: Correct.

28. THE CHAIR: This is the clause that deals with disqualification.

29. MR OWENSON: Correct.

30. THE CHAIR: If you look at subclause (1), headings (a), (b), (c), they really speak for themselves, do they not? If they fall within those descriptions, they are really not suitable to be a trustee, but what about (d)?

31. MR OWENSON: Sorry, I am jumping around on my laptop now. Can you remind me what (d) was?

32. THE CHAIR: Yes, “is otherwise unable or unwilling to discharge the functions of a trustee”.

33. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: That is very subjective.

34. MR OWENSON: Correct. This is my concern. Effectively, it is a vote by the trustees to exclude someone in a subjective way. If the majority of the trustees—and six of those are unelected—choose to exclude a member, then that effectively removes the democratic—at the moment, the argument is that it is a 50/50 balance between democratically elected and appointed, but it is very easy to remove that democratically elected person and therefore have an appointed Trust, particularly since interim vacancies will be filled, where required, by a further appointed person. We have a levy-raising, in my view, local authority that has the ability to remove the elected members to then replace them with appointed members and become a charity.

35. My other concern about the appointment of an interim is that what that effectively is doing is giving someone a free run at the election. In my experiences, people tend to vote for incumbents in political—you tend to vote for people you are aware of and you know of. If you have a democratic election, the incumbent is more likely to win. If you

can replace an incumbent with your preferred candidate six months before an election, that is a great way of leading the electorate to return the person you want to be returned.

36. THE CHAIR: Well, anyway, there is a (d) in subclause (1). What about subclause (3)?

37. MR OWENSON: This is Mr Gallagher.

38. THE CHAIR: Yes. Shall we just pause for a moment while Mr Gallagher comes in and takes a—sorry, he is being taken outside to be sworn in.

39. MR OWENSON: Being sworn in, yes.

40. THE CHAIR: Since we are dealing with Clause 12, if you look at subclause (3), what about that? If you look at it carefully, is there anything there that you would find either objectionable or imprecise, or opening the door to a majority view to exclude somebody?

41. MR OWENSON: I think I have spotted where I am looking in the wrong place. If I actually look at—the Bill is such a long Bill.

42. THE CHAIR: Sorry, I am rather taxing your ability to find things on screens.

43. MR OWENSON: Perhaps, if the Lords were happy, John could just quickly introduce himself while I find the relevant clause in the Bill.

44. THE CHAIR: We could try to find a paper copy if you prefer.

45. MR OWENSON: The document has the preamble, which describes all of the changes to the clauses.

46. THE CHAIR: Oh yes. No, you have to go right through.

47. MR OWENSON: Then I have to go into the main document. I was looking at the preamble. We were talking about Clause 12.

48. THE CHAIR: Subparagraph (3) or subclause (3).

49. LORD EVANS OF GUISBOROUGH: It is at the bottom of page 11.

50. MR OWENSON: I have it. Thank you. Clause (e) is the key one. That is the clause that effectively changes the membership of the Trust from being an elected individual to being a charity trustee, which to me is a contradiction in the whole Bill.

51. THE CHAIR: Yes, that is (e) at the top of the next page, but we also have (d), following the same language as in subclause (1)(d).

52. MR OWENSON: "Trustee is otherwise unfit to discharge adequately the functions of a trustee".

53. THE CHAIR: Anyway, I think we can take your point that we need to be very careful not to allow a situation to develop where appointed trustees can simply remove an elected trustee because they feel he is objectionable and causing problems, and so on and so forth.

54. MR OWENSON: I would love to do that with some of my councillors.

55. THE CHAIR: Mr Gallagher, good morning.

56. MR GALLAGHER: Morning.

57. THE CHAIR: I gather you are here as a witness, not representing the district council.

58. MR GALLAGHER: Correct, yes.

59. THE CHAIR: That is fine, yes. Good.

60. MR OWENSON: The purpose of bringing Councillor Gallagher along was, as part of the presentation previously, the Lords asked, if the leader was beside me, would the leader be agreeing with the majority of the statements that I was saying? I said that there is one way to prove that, which is to bring John along and have him support those statements.

61. We are speaking as two councillors who happen to be leader and deputy leader. We are leading a ruling group, so within our group we have the majority on the council, but we are not representing the views of Malvern Hills District Council. Their petition is a separate petition, but we are reflecting some of the things they have raised in their petition

as concerns that we have as councillors.

62. THE CHAIR: That is why we invited you to come here, so that we would hear your view. Yes, well, on you go. You have dealt with two points so far.

63. MR OWENSON: The concern around the vacancy. There is the democratic deficit. We think that there should be more than six elected—than six appointed. The majority should sit with the elected. If that was eight and four, for example, that would at least give the belief that the organisation is a democratic one, because the elected could overrule the appointed. There is the concern over how the person can be removed and how the person can be replaced by an appointed person that gives them the unfair advantage, potentially, in an election of standing as an incumbent going forward. Do you want me to go through the detail on how the appointed person takes over?

64. THE CHAIR: Yes, carry on.

65. MR OWENSON: Yes, so this is in the casual vacancies of Clause 21, and it is with particular reference to subclause (5), the vacancy filled by an appointment of the interim appointed trustees: the appointed trustee will “remain in office until the end of the day before the person elected in accordance with paragraph (a) takes office”. This is just the concern that it is better to run without someone if there is a vacancy than to appoint someone who, effectively, can stand as the incumbent.

66. This is the way of getting appointed trustees and stacking the decks on the democratic side to say, “I have six appointed. I am going to bring in a seventh appointed to fulfil the gap that I have presented by getting rid of one of the democratically elected people under the clause, and therefore that person is the incumbent and can carry on and stand as an elected person at the next election”. The concern is that it becomes a self-fulfilling prophecy. I know there are limits on how long somebody can be appointed for, but, if you switch from being an appointed into an elected and keep rolling through, that raises the risk that the Trust can take on a different form going forward than being simply a democratically elected body.

67. That brings me on to the point around the precedent around a charity raising taxes. I know when we were talking and presenting the status, I think there is a similar trust in Wimbledon that was set up in a similar way. It is a tax-raising body, and I think they are

going through a similar sort of arrangement where they are trying to convert to a full charity. There is a real concern that charities are charities and can appoint their board, and charities raise money through membership, whereas local authorities, who have the right to tax the local populace, have to be democratically accountable to that local populace. Therefore I believe that it is an oxymoron that you can have a charity that has tax-raising powers.

68. Any other body other than the Wimbledon example, there is a clear demarcation. If you take the BBC as an example, it is a statutory body that raises money through a TV licence. It is completely constituted separately. It does not have the levy-raising ability over a specific geographical area and then try to present itself as a charity.

69. That brings it back into the old conversation around “How do you change the democratic direction if it is a charity?” A classic example is that the charity must do everything in the best interests of the charity, effectively. The best interest of the charity is to raise as much levy as possible. If you therefore stand as a democratically elected person who says, “I don’t want to raise a levy”, that is not in the best interests of the charity.

70. THE CHAIR: The way this Bill is designed—and it occurs in various places—is that things must be conducted in accordance with the objects. There is an objects clause at the beginning of the Bill, which refers to, really, effectively, the preservation and enhancement of the environment of the Malvern Hills. I will not read it out, but that is what it is talking about, so that it is not about raising money. It is about protecting the environment.

71. MR OWENSON: That is a good example, though. If the charity, as constituted, could decide that, by raising more money, it could do more to protect the environment of the hills, at what point does it stop? There is public access to the hills et cetera, but, if the charity started to limit the access for whatever reason, how can the democratic element intervene in this and say, “This is not something that the public want”, if the status has changed from being a local authority to being a full charity?

72. THE CHAIR: That takes us back to things like the ability to make by-laws and what the by-laws should say, and so on and so forth. Anyway, I am just making the point that, the way this particular body is constructed, it has objects set out at the very beginning that

are the key to the way the following provisions are to be implemented. It is an unusual body in the sense that, yes, it is a charity because it is registered as such, but it has that particular function defined by the objects and it also has the levy-raising power. I think we have to take all these into account in looking at your arguments about the composition of the board and the necessary balance between appointed and elected trustees.

73. MR OWENSON: Again, I think the solution to that is to increase the number of elected trustees. That is one of the key elements. I am a great believer in democracy. If the majority of the people on the board are elected and therefore have a requirement to their electorate to at least inform them and the requirement to be standing for election—I know it is every two years, but it is a four-year term—then that at least enables the public to see some link between the levy that they are paying, that they are required to pay, and the delivery of the service that the Trust will offer in the future.

74. That brings me on to what I think is my last point: the block vote issue. Again, at the moment the directly elected trustees are elected by wards and the wards do have huge differences in populations. The population of Malvern vastly outnumbers the population of Mathon and Colwall, as an example. It is just the nature of democracy that people vote in numbers. In the original presentation I talked about the example of Scotland and England and why we went for devolved power in Scotland compared to England because, if you did not have a devolved authority in Scotland, every decision that the English took would be imposed on Scotland, without them feeling that they had democratic right to intervene.

75. Here we have two particularly sparsely populated areas, Mathon and Colwall, which, in population terms, are a fraction of what Malvern would be, but you could have the six councillors in Malvern put their names forward, currently—I would love more than six, but six currently who put their names forward—and get elected on a Malvern block ticket. That means that Colwall residents and Mathon residents therefore do not feel directly engaged in the democracy.

76. I know that the Trust are introducing a couple of suggestions that, once elected, the councillor is appointed to a particular area. That, to me, does not sound like a democratic elected. That sounds like a governor. I am going to say, “You from Malvern Link. You once had a nice weekend in Mathon, so you can be the governor for Mathon and deal with

all the problems there”, whereas the people of Mathon might think, “No, I would prefer to have a local person represent my views on my land”. The other element of the democratic deficit is those areas that have Malvern Hills Trust in their lands that probably at some point actually belonged to the parishes—so Castlemorton Common is a good example—that are not part of the levy-paying area and therefore do not have a say in how their own common land is effectively used by the Trust going forward.

77. THE CHAIR: I think there has been a problem, or is a problem at the moment, about finding people prepared to be elected and also attendance. There are practical issues that lie behind this suggestion.

78. MR OWENSON: I would not necessarily agree with that. John will correct me if I am wrong, but recent elections for Malvern Hills Trust positions have been hotly contested. That may be a factor. One of the things I find with elections is that the public only really get engaged when there is an issue that affects the individual members of the public. The classic in our experience is housing. When there is a new housing estate going in, everyone is wanting to have their views heard.

79. I think there is a level of engagement in the Malvern Hills Trust. There is a requirement to tidy up the Trust. I am not saying that we should not be tidying up the Trust Bills. My points are very specific in the governance element. That has led to a public debate about where the Trust goes in the future and the public do want to be involved in that debate, so I think we should allow them to have the democratic right to stand.

80. I also think, with the new unitary council coming in, it is effectively removing—our council will disappear and we will be subsumed into a single unitary. That local councillor relationship, be it parish or town council, which is going to remain, or the Malvern Hills Trust, is going to become a more important role going forward. At the time when local people are going to want local people—and the Trust is a very important consultee, for example in planning. If this is a way for local residents to have a voice in an organisation that has a statutory voice going forward, I think the democratic desire to stand is probably going to be higher rather than less.

81. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Councillor Owenson, you must know, because you have been elected on more than one occasion, that your boundaries and your electorate change because the Electoral Commission does

everything by numbers, not at all on the geography or the economics of the area. It is solely based on numbers. What you have at the moment is something that is completely inequitable in terms of numbers, where you have some parishes with very small numbers electing a trustee and then much bigger areas electing a trustee. It is not unknown for those boundaries to change frequently, because a big housing estate might come along or some other reason. How would you feel about that, where the trustees who are elected are elected on the basis of the number of electors, rather than on just the geography?

82. MR OWENSON: I agree that geography is a key factor, but, when the Electoral Commission decides on new boundaries, it does take into account local views.

83. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Not often.

84. MR OWENSON: It does. I was originally elected to Ripple, which was a very rural ward. When we reduced the number of wards in Malvern Hills District Council, the first view of the boundary commission was to merge Ripple with other rural boundaries on the other side of the river to maintain that rural feel. Following some feedback from the town of Upton that said that, actually, the bridge in Upton links my old ward of Ripple more with Upton, the Electoral Commission changed its mind and created a two-member ward that now is based on Upton and Ripple. My ward changed, but it changed in consultation with the public, who said, “We would rather have a bigger Upton ward than a single rural ward that included Ripple”.

85. In terms of the democratic deficit, absolutely, you cannot have one electorate with 2,000 people and one electorate with 8,000 people. That is where you need to increase the number of councillors or trustees. If you do that with six, dividing that number by six is a lot more difficult than dividing that number by eight or by 10. Then, when you come to those electoral boundaries, it could be that you say that Mathon and Colwall are a single one. I am not suggesting what those wards should be. I am just saying that the ward map should reflect the geographies.

86. Those two, particularly, are in Herefordshire. The others are predominantly in Worcestershire. The Electoral Commission might look at this and say, “Actually, we try to have our boundaries matching county boundaries anyway”, which is something that they do in the Malvern Hills electoral boundary review, and suggest differently there. All we are saying to the Committee is that we should not have a single ward with everyone

being elected. We should look at ways that we can more democratically allocate, based on geographies, to ensure that the rural voices are not drowned out by the urban voices.

87. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you.

88. THE CHAIR: You mentioned just a moment or two ago that the Trust is a consultee in planning matters. I think we have not really developed that point, but I can see that there is an important element there in considering who the trustees are. Could you develop that just a bit? Do you sit on the planning committee?

89. MR OWENSON: I do. At the moment, I think the majority of the Trust areas are in southern area. We have committee members who are also trustees and also planning committee members. Within our constitution, we have—you keep me straight on this, John—a specific allowance that says—normally, you would have a prejudicial interest. You would be a conflict of interest if you were a trustee and on the planning committee. We have it in the constitution that enables the trustee to discuss matters that are on the planning committee. Malvern Hills Trust would put forward objections or support for a planning application. It would then be considered by the planning committee and the committee would give some fair weight to it.

90. THE CHAIR: Does that happen in practice?

91. MR OWENSON: Yes. If the Malvern Hills Trust objected to a planning application within its area or adjacent to its area, that would carry significant weight with the planning officer and with the committee, even to the extent that we like the views from the hills so, in the past, we have made changes to planning applications in the valley that mean that the view from the top of the hills is prejudiced.

92. The example would be that we try not to use brightly coloured roofs, as an example. If you are looking from the hills down on a valley and you are seeing bright red corrugated iron, we do not like that. The Malvern Hills Trust would probably put a criticism of that design into its report. That would come to the committee and our planning officers would probably say that that is a good enough reason to either amend the application to a mat roof, a green roof, or to recommend refusal. It is a very important role.

93. LORD INGLEWOOD: Can I ask a point of clarification, please? In the context of

these planning applications, do you have a rule that says that you must seek comments of the Malvern Hills Trust, or is it a matter of the Malvern Hills Trust, if it feels strongly, coming to you like any other member of the public?

94. MR OWENSON: It is certainly on our standard consultation list. I would need to check and see if it was a statutory consultee.

95. LORD INGLEWOOD: Yes, that is where I was going towards.

96. MR OWENSON: We would be disappointed if the Trust did not put in a response on an application that was on its land or close to its land.

97. LORD INGLEWOOD: If you get no response, you do not wait till the next meeting in the cycle. You would go ahead without them. They do not have a right of veto or determination.

98. MR OWENSON: Our planning officers would chase for a response, definitely.

99. MR GALLAGHER: We have had responses where the Malvern Hills land or common areas were being affected. They have responded when we have a planning application that is impacted directly by that.

100. LORD INGLEWOOD: Anybody can respond to any planning and comment, but it is whether there is something here that is more structured and may even, under the rules, have certain mandatory consequences.

101. MR OWENSON: Even a statutory consultee does not need to respond. One of our big challenges in planning is highways, as an example, which is very slow at responding sometimes. The planning officer will strike a balance. If he knows or suspects that there is a highways issue, he will give highways as long as possible to respond. If there was an application that was impacting the Malvern Hills Trust area and the Malvern Hills Trust was slow in responding, he would give them as long as possible to respond, recognising that we have a statutory requirement to determine applications at certain points in time.

102. Our planning officers are very good in terms of landscape and would say, "I think this is something that the Trust would object to". We have other consultees out there. We have the AONB, as an example. They would say that we expect that this would be

something that the Trust would respond to, and we will remind them and give them every effort.

103. I will say, from a Trust perspective, they do not tend to hang around in their responses. They do tend to respond to these because they are a diligent body. Their role is to protect the views and the Malvern Hills. Where there is an application, generally they respond very promptly. They are more prompt than highways.

104. THE CHAIR: Am I putting words into your mouth to say that awareness of local issues is an important function of the trustees?

105. MR OWENSON: Absolutely.

106. THE CHAIR: Yes. Thank you. Is there anything more that you need to cover in support of your petition?

107. MR OWENSON: I will just double check. I think that that was it. I am just going go back to the original petition and see that I have covered everything. Yes, I think that that is it.

108. THE CHAIR: Mr Gallagher, do you have anything more to say?

109. MR GALLAGHER: All the things that Jeremy said are very valid. We have a whole lot of residents, precept payers, who are really, really very anxious about what is actually happening with this Bill. They feel disenfranchised, that they cannot influence the Trust, that they are excluded as a result of the democratic deficit that already exists. Their voice has not been heard.

110. There is the fact that the Trust acts as a charity and is not accountable to the precept payers who contribute 56% of the income into the Trust, and the charitable contributions, in contrast, are 0.6%, so there is an about 100 to one difference. They feel, as the precept payers, that the Trust should be accountable to the precept payers and should be able to explain to them and get their willingness for whatever changes they wish to put in. That, in actual fact, is what they feel has not happened in this particular instance. There is a very large number of residents who are very much opposed to the Bill in its current structure.

111. THE CHAIR: Yes. Thank you very much.

112. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: In your petition, under “What do you want to be done in response?”, under 3.2, “Our preference is to leave the levy raising actions with an authority such as MHDC or Hereford County Council is preferred”. Do you want to say a bit about how you think that might work?

113. MR OWENSON: This was a potential compromise that effectively left—so the Trust could effectively become a full charity if it disjoins itself from the levy-raising powers. In the same way that town councils currently set their own levy and then pass that on to Malvern Hills District Council for collection, the Trust could say, “This is the levy that we require” and ask MHDC, or a subsequent unitary, as the levy-raising authority, to raise that levy on their behalf. The levy is raised by the council and, if the public are not happy with that, they can contact their unitary or their district council members and say, “We are not happy with this levy”.

114. Then that leaves a conversation between the levy authority—the council—and the Trust to say, “These are the concerns that the public have. Can we come up with a way to address those concerns to continue”—and the Trust does add value, so to effectively act as the adjudicator between the electorate and the charity. The ultimate adjudication is the members of the public decide that the Trust has abused its position and therefore, if Malvern Hills continues to pay it a levy, they will withdraw their support for Malvern Hills district councillors. I doubt it would ever get that far, in the same way that nobody has ever overruled a town council raising the precept by 3% annually, year in, year out. Simply moving that element of levy paying to a unitary or district authority would restore the democratic deficit and enable the Trust to become a full charity.

115. THE CHAIR: Any questions from anybody else? Ms Lean, I think it is for you to reply, please.

#### **Response by Ms Lean**

116. MS LEAN: I am grateful, my Lord. I am conscious that we have traversed some clauses of the Bill today that you have not yet heard from us on because they were not down as being opposed clauses or specifically put in issue in the petition, so forgive me if I may have to take a little time on a couple of those clauses, because they are not the

easiest ones to navigate, but if I can firstly deal with the point about the nominations committee and what scope there is for input into either candidates for appointment as appointed trustees of the Trust or candidates for independent members.

117. THE CHAIR: Is this Clause 15 you want us to look at?

118. MS LEAN: Going to Clause 15 of the Bill, my Lord, for the nominations committee, but if I can start instead with Clause 14. Clause 14 is the selection of appointed trustees and interim appointed trustees. What I wish to highlight is subclause (2). For appointed trustees, appointments are to be made (a) on merit, and (b) in accordance with a published recruitment policy. My Lord, obviously there is not a policy as yet, but it seems that that would be where the mechanism would be for setting out the administrative procedures by which candidates to be appointed trustees could be put forward, either put forward themselves or if people wanted to put them forward on their behalf.

119. It is not that the nominations committee essentially goes out and handpicks some candidates. There will have to be a recruitment policy and that would seem to be where any provisos around how candidates should identify themselves or candidates should be identified for consideration by the nominations committee would seem to naturally sit.

120. LORD EVANS OF GUISBOROUGH: What happens at the moment?

121. MS LEAN: My Lord, as Ms Satchell outlined in her evidence, it varies between the different authorities. From recollection of her evidence, Malvern Hills District Council appoints seven. In practice, that is often by councillors of Malvern Hills District Council—sorry, eight. That is often by councillors putting themselves forward and saying they would like to be a trustee of the Malvern Hills Trust.

122. With regard to Worcestershire and Herefordshire, again, it is essentially, I think, if candidates identify themselves or come forward. The Trust is not aware of any particular recruitment or procedures that those trusts may operate, save for Worcestershire, where there has been the practice since the 1960s for the three additional conservators that came in, in respect of when the Castlemorton, Powick and Newland Commons came under the Trust's jurisdiction. In practice, Worcestershire has tended to appoint those three conservators by reference to people put forward by the parish council.

123. There is not as such a freestanding or general recruitment policy or process for the appointed trustees today. Under the Bill, I think we have mentioned, with a concern that was raised by some petitioners about, “If I live in X parish, am I allowed to be put forward? Can I stand as a candidate?”, yes, there is no geographical restriction or anything like that on who can put themselves forward or be put forward as a candidate to be an appointed trustee, but you do have to tick the box of being eligible to be a trustee and not being an undischarged bankrupt and things like that.

124. LORD EVANS OF GUISBOROUGH: Yes, so I note that you do not have a recruitment policy at the moment. I suspect it might reassure the committee to have some idea of how that policy might work. Otherwise, we are just giving the Trust carte blanche to decide. It could advertise extensively, or it could maybe not advertise extensively.

125. MS LEAN: Indeed, my Lord, if I can take that away. There would almost be no point in the Trust having a recruitment policy today, because the Trust has no ability to appoint, but I am certainly happy to take away and see if I can perhaps get some bones, as it were, of the sorts of things that would be anticipated to be in the recruitment policy.

126. LORD EVANS OF GUISBOROUGH: I suspect you will probably use as a base a recruitment policy used by other organisations that are charities, so you might actually have something that you could present to us that would be used to build the policy around.

127. MS LEAN: My Lord, we will take that away and see what we can pull out before next week. That is the point about who can become an appointed trustee. On the point about independent members, i.e. who the independent members of the nominations committee can be, there are criteria for that, which are specified in Clause 15(3), essentially by reference to who they must not be. They cannot be a current trustee, for perhaps obvious reasons. They cannot be a former trustee. They cannot be an individual who has been elected or appointed to be a trustee but not yet taken office. They cannot be a current employee of the Trust and they cannot be a person who would be entitled to vote at an election for an elected trustee if there was an election at that time.

128. I will put it in broad terms. There is not a provision for a levy payer, who is somebody who would be entitled to elect six of the trustees, to themselves stand to be an independent member of the nominations committee to appoint the appointed trustees. My Lord, again, you can see that that is perhaps sort of a safeguard. These are meant to be

independent members and the appointed trustees are meant to be appointed purely on merit.

129. By bringing in a position where you could have, say, a nominations committee that is made up entirely of people who would be entitled themselves to vote for elected trustees and perhaps two elected trustees, it becomes another means by which a particular group of individuals could then have control or drive the direction of travel of who was put forward as the appointed trustees. It is about trying to make this nominations committee sit as, essentially, quite an independent-type committee that is looking objectively at who are the best candidates by reference to skillset, things like that, what is needed in the best interests of the charity, without bringing in those additional considerations that might come into play if you are dealing with elected trustees.

130. THE CHAIR: Can you explain how this clause is supposed to work? In the filled Bill, if you look at subclause (3)—it is (3)(b)—the words “the independent members” are cut out.

131. MS LEAN: My Lord, that is one of the changes that is going back in. My Lord, that is going back in. That was the one where my Lord, Lord Hope, raised it at the end of February. This filled Bill was the amendments that we were proposing, I think, up until the end of the previous session’s hearing. You have the separate sheet of additional amendments that we were proposing, and this is one of those additional ones.

132. THE CHAIR: I am working off this version, because it is a bound volume, which is easier to manipulate, rather than a thing with tags. It goes back in.

133. MS LEAN: It goes back in there, my Lord.

134. THE CHAIR: The independent members are defined and then (4) tells you who they are.

135. MS LEAN: Yes, indeed, my Lord. Subclause (4) tells you who they cannot be and (5) tells you things that—because the independent members are appointed by the Trust board. Subclause (5) tells you that, when the board of trustees is selecting the independent members to sit on the nominations committee, they may take into account whether those candidates have any connection with Malvern Hills and the local area, and they must take

into account whether there is likely to be any conflict of interest. Although I have said that you cannot be a levy payer, because, as a levy payer, you can directly elect and so you should not also be able to sit on the nominations committee that identifies the appointed trustees, local connection is recognised as something that may be a relevant consideration when you are saying, “Who are the right people to be the independent members?”

136. THE CHAIR: Why is there the word “may” in subclause (5)(a)? One would have thought that they should take into account whether the candidate has any connection with Malvern Hills. Why “may”?

137. MS LEAN: My Lord, I would have to go back and take instructions on why “may” had gone in there rather than “must”. There will have obviously been a reason, given it is “must” in (b). I suggest that it provides that they are entitled to do so if they think it appropriate to do so, but perhaps I could take that specific point away.

138. THE CHAIR: Yes, I think we would just like to look at that. I would have thought it was rather an important point to take into account. Anyway, do not let us dwell on that, because there are many other things to think about.

139. MS LEAN: Indeed, my Lord. I am grateful. I do recognise that there is not anything else in the Bill specifically, at least that I have tracked down this morning, that says what might be the publication for vacancies for independent members or any recruitment policy there. Again, I have a note to ask. Perhaps I could take that away. Because, essentially, the Bill cannot provide for all of the mechanics, you do have, in my submission, the important thing, which are the criteria for who an independent member is to be. If the committee would like to hear more from us about how in practice you might go about advertising for recruiting independent members, I am certainly happy to take that away and bring it back with the other point around the recruitment policy for the appointed trustees themselves when we come back next week.

140. My Lord, I think that then brings us on to the second point, which is the concern about, with a six/six split, the potential for removal of elected trustees and Clause 12. Starting with Clause 12, my Lord, the starting point is that this clause is hemmed around with safeguards, if I can put it in those terms. There are very specific purposes identified in which trustees may remove a trustee from office, and they are separated out into ones

that are only a removal, which is in subclause (1), and situations that would be potentially a case for asking for resignation of a trustee, with the ability to then potentially vote to remove if considered appropriate. My Lord, starting in subclause (1), if we look at the reasons for which the trustees may remove a trustee from office, it is, in my submission, quite clear what they are there for and they should be relatively uncontroversial.

141. THE CHAIR: From (a) to (c), there is absolutely no problem about them at all.

142. MS LEAN: Indeed, my Lord.

143. THE CHAIR: It is (d) that does cause concern, because it could be used to cover all sorts of things. The point made by Mr Owenson is that, if you have the six appointed there and they do not like one of the elected trustees because he or she is being a nuisance, then they might find it attractive to use (d).

144. MS LEAN: Indeed, my Lord. My Lord, the purposes that are set out in Clause 12(1) are drawn from a variety of other places where you find these sorts of powers to remove individuals. “Unable or unwilling to discharge the functions of a trustee” is, for example, something that is picked up in the Charities Act 2011. My Lord, I am conscious you do not have this in your bundle at the moment. I have brought with me copies of Part 6 of the Charities Act in case it is helpful to have that.

145. THE CHAIR: Yes, I can look it up at home. You can just assume that we can access it in some way or other.

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

147. THE CHAIR: Give us a section number. That is the point.

148. MS LEAN: Indeed. In Section 80 of the Charities Act 2011, which is in a part that deals with various powers the Charity Commission may have to do things like remove a trustee, to appoint a trustee or to suspend people acting for a trust, one of the purposes there is that the trustee has not acted and will not make a declaration of willingness or unwillingness to act. Essentially, that is the unwillingness, which is that they are saying, “I am not willing to do what I should be doing as a trustee. Perhaps I am not going to come to the meetings. I am not going to vote on something. I will not act as a trustee”. The language follows that in the Charities Act. On “unable”, again, that is sort of captured

within that way. One of the things that is in Section 80 of the Charities Act in sub (e) is that the trustee “is outside England and Wales or cannot be found”—the mind boggles—“or does not act, and the trustee’s absence or failure to act impedes the proper administration of the charity”.

149. My Lord, that is perhaps where the echoes come from of “unable or unwilling to discharge the functions of a trustee”, bearing in mind that if you look at the purposes—the common theme in these is that, where the trust has a number of trustees, it needs all of its trustees. It needs to have a board of trustees to be able to operate. If there is somebody who is ineligible or unable to fulfil their functions as a trustee, the trust needs to be able to replace them with somebody who is able to do that.

150. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could that apply to somebody who was in hospital and was likely to be there for some time, perhaps three to six months, that they might find that they have been removed?

151. MS LEAN: My Lady, that would fall under 12(1)(c), I think, if it was physical: “is incapable due to physical or mental illness of discharging the functions of a trustee”. I am not saying that somebody being in hospital for some time and unable to do it—

152. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: That would also fit in with being unable to act as a trustee.

153. MS LEAN: My Lady, in my submission, no, because, if there is something that falls under a specific reason or a specific power, that would be the power. That should be the power on which you are acting, not seeing whether you could—

154. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: That would overrule the charity—under Section 80, which you read out to us.

155. MS LEAN: Being unable to act because of a physical disorder is not something that seems to feature in Section 80 of the Charities Act. There is a reference to being “incapable of acting because of mental disorder within the meaning of the Mental Health Act 1983”. There is not something there about “unable”. I was drawing attention more to that as giving the gist of the flavour of what is meant by unwillingness or unable in this sense. It is somebody who is not in a position to perform the functions of a trustee.

156. Why I was drawing the difference between subclause (1) and subclause (3), in particular in response to the concern raised about, “What about some trustees who just do not like the decisions the other trustee is making?”, is that that would seem to fall more naturally under subclause (3). That is a separate power to require resignation, or potentially removal, “if the trustees are satisfied that (a) a trustee has failed to comply, persistently or to a material extent, with the code of conduct for trustees, (b) a trustee has acted in a manner which has seriously impeded or has prejudiced the Trust or a trustee in the performance of its or their functions, (c) a trustee has acted in a manner which may bring the Trust into disrepute or which is otherwise inappropriate having regard to the functions of the Trust”.

157. The way they are phrased does set quite a high threshold, in my submission. This is not just that you dislike the fact that somebody constantly votes no. It is more about if somebody, having voted no and a majority decision being taken, perhaps then steps in and actually tries to impede the implementation of a decision, for example. That is potentially more the sort of situation you might be getting into in subclause (3). It is not just about a trustee who disagrees with the majority.

158. THE CHAIR: It is a problem of precision and definition.

159. MS LEAN: Indeed, my Lord.

160. THE CHAIR: I take your point that, if you look at subclause (3)(a) to (d), they are quite specific. When you get to subclause (e), it is back to the problem with (d) in subclause (1). Again, “there is other good reason”. Well, views can vary as to what is a good reason. If you have people who simply do not like each other, there is a temptation to say, “Let us get rid of X, Y or Z”. There is nothing very specific in (e) to prevent that. We will have to look at this in some way. Does that come from the Charities Act as well?

161. MS LEAN: My Lord, I do not know. I cannot put my hand specifically on something in the Charities Act on that at the moment, but I could perhaps just take that away and see whether there might be a precedent for that somewhere else.

162. My Lord, the very important point that I probably have not yet mentioned in terms of being hemmed around by safeguards is that, if this power is to be used, it requires a special resolution. It is one of those ones that needs a 75% vote. It is not a simple majority.

This is perhaps where it becomes quite important to look at the concern raised about the six-six split because, of course, six-six does not enable six appointed members to remove an elected trustee. It also does not enable six elected trustees to remove an appointed trustee.

163. My maths is not brilliant, but, looking at the 75%, if you are looking at 12 trustees, you would need nine of the 12 to vote. If you are looking at 11 trustees because maybe one of them is not voting, you would be needing nine of them to vote. If you are looking at 10, you would need eight of them to vote. If you had nine of them, you would need seven of them to vote. You can see that it takes quite a long time to get to the point where six-six would enable one block of six to be able to garner the percentage necessary to remove a trustee against the will, potentially, or the view of the other group.

164. That, in my submission, is a very important safeguard. It is not the case that the appointed trustees could say, “We do not like the fact that Mr X, who has been elected by the electorate, is very clear that he does not agree with the levy”. You would have to get at least three, if I could put it in those terms, of the elected trustees to agree with that, as well as being satisfied, no doubt, I am sure, taking appropriate advice and having gone through relevant disciplinary procedures, that those criteria were satisfied.

165. THE CHAIR: If you look at (e), the last few words are “taking into consideration its status as a charity”. Why is that there? Should it not be “having regard to the objects”? This is back to the thing that is hanging over this entire Bill, the feeling that it is moving it towards a charity under the control of the Charity Commission and away from the democratic element, which is inherent in the representation of the levy payers, and keeping it tied to the objects, which are carefully defined in Clause 5 at the beginning.

166. MS LEAN: Indeed, my Lord. I think the reality is, as my Lord has made clear and is well aware, the Trust is a charity today. It is the reality of the situation that it is a charity. Those are matters that have to be kept in mind, even today.

167. THE CHAIR: If I can interrupt you—I beg your pardon—it is a charity because of its objects, which fall within the ambit of environmental protection and that kind of thing, the charitable purpose that the National Trust and others have. It would be better if it would say “having regard to the objects” instead of “status as a charity”.

168. MS LEAN: Indeed, my Lord. Again, if I could just ask to take that wording away, I am sure there is a reason why that particular wording may have been put in. If I can burrow down into the reasons for that and come back to you next week, I would be grateful.

169. THE CHAIR: Yes, please do.

170. LORD INGLEWOOD: LORD INGLEWOOD: Chair, might I follow up that point with something that I think we have been talking about in a slightly different context? Clearly, the objects of the charity are the framework within which this whole project proceeds, but there are more ways than one of skinning a proverbial dead cat. You can take forward the objects in a number of different ways. That is the discretion that the trustees have. We have seen that a number of those who have been elected trustees have specifically campaigned on a platform that is at variance with what the trustees, in exercising their discretion, think the appropriate way to proceed might be. When they are elected, we have heard that all sorts of things have followed. Are they not simply exercising their legitimate judgment about the manner in which things should proceed? Criticism can be intra vires of the objects, but it still gets them into trouble in the context of their role as trustees. They feel they have a very specific democratic mandate behind them. This is causing a lot of the tension, is it not?

171. MS LEAN: Yes, I can certainly see my Lord's question there, but I think the point comes down to this. Criticism or disagreement internally is one thing, and that will happen in many bodies and many charities, but there is obviously the expectation—this is clear in the communication from the Charity Commission—that, once a decision has been taken by a majority of the board of a charity, the trustees will abide by that decision. Of course, you can abide by that decision while still saying, “I don't agree with this” or, “I don't think it is right”. It comes back to what I said about actively trying to impede the implementation of it. That is where, I think, things become a little bit more difficult because that might be a situation where you could say that trustees were not acting in the interest of the charity, if the expectation is that, once a decision has been taken, that decision shall be followed through and trustees should not actively try to stand in the way of the implementation of it, much as they may raise questions about it internally. That might be a point where you say, “Well, there is an issue emerging here”.

172. I can see that a particular conflict and tension has arisen where people have been elected on an opposing the Bill platform, for want of a better word. There seems to be a tension there. It may be that that is why, for example, what is in subclause (e) is so important to stress about acting in the best interests of the charity because it is reinforcing the notion of this collective responsibility. Once a decision has been taken, you are expected to stand by it and not stand in the way of it, much as you may internally raise disagreement or take issue with things.

173. THE CHAIR: One could add the words “in furtherance of the objects” instead of “status as a charity”.

174. MS LEAN: Do you mean “taking into consideration its status as a charity and in furtherance of the objects”, my Lord?

175. THE CHAIR: I am just trying to get more definition into this. It just seems to me that it begs the question. What is its status as a charity? What does it mean in the context of this Bill?

176. MS LEAN: My Lord, perhaps if I can take the wording of that away, I have heard the concerns and I think I probably need to burrow down into why exactly that language went in and then see, based on that, whether there is some suggested wording we could come up with that clarifies it for your Lordships’ Committee to consider, “Well, we don’t like it because we think it should not be that, but at least what was meant by it is clearer” or some wording that could be added to it that may address the concerns.

177. THE CHAIR: We have time later in this Session—next week, I think—to discuss all these things with you, so can that be put on your agenda, please?

178. MS LEAN: Indeed, my Lord. My Lord, that was what I had on the six-six point in the context of Clause 12. There was also then separately a concern raised about interim appointments and the six-six being able to get a majority of appointed by getting rid of a trustee under Clause 12 and then bringing on interim appointed trustees.

179. My Lord, I am afraid these are—forgive the colloquialism—provisions that need a bit of a wet towel around the head to traverse through them. If I can in very headline terms summarise, Clause 17 of the Bill deals with interim appointments or casual vacancies

where you have appointed trustees. I am not going to deal with that today, if I can, because I do not think that is the focus of particular concern, but you have then the provisions for dealing with casual vacancies in the office of elected trustees in Clauses 21 and 22.

180. Clause 21 deals with a situation where you have only one vacancy. Clause 22 deals with a situation where you have more than one vacancy and an office of an elected trustee has come up or you have had a vacancy, you have filled it with an interim appointed trustee, and then another vacancy has come up. In very headline terms, under Clause 21, if a vacancy comes up within nine months of the end of that individual's term of office—so he or she would be up for re-election in September 2027 and the vacancy comes up in the February—there is a discretion to leave that role vacant until that next election in the September of that year. If it is not within nine months of that trustee's term ending but is within nine months of the next cycle of two-year elections—so this individual's term would be up in 2029, they leave in January 2027, but you have an election of three coming up anyway in September 2029—you could leave the office vacant for that period, but you then have to elect for that role in the September. You would have an election of four rather than three candidates at that point.

181. If you are outside of that, you have to fill the appointment with an interim appointed trustee. That follows the same process as you have for the six standard appointed trustees, if I could put it in those terms. There has to be a recommendation from the nominations committee and approval by the Trust. It is not just the board of trustees being able to co-opt or handpick somebody; it goes through that formal process. Basically, that person will then hold office until the next election. That is not necessarily the 2029 election. They do not necessarily get the three years. If the election would have come up in the 2027 period, it will be four rather than three being elected at that point. That is what Clause 21 does, but that is only where you have that happening once in that period. You can only have at any point one interim appointed in replacement for an elected and only until, essentially, the next election comes up.

182. Clause 22 makes specific provision for the situation where either you have had a vacancy come up in January 2027 and then another one comes up in March 2027, so you have two gaps, or you have had one come up in January 2027, you have filled it with an interim appointed trustee, and then in the summer another elected trustee has to vacate their office for whatever reason. Essentially, then you are into elections. At that point, you

have to go into election for both of those roles. There are provisions in Clause 22 about when exactly those elections have to be. Perhaps for today, if I could just leave it here, you cannot essentially have a situation where you could keep losing or removing elected trustees and keep filling them with interim appointed trustees. When you get to two, you are into election territory.

183. In my submission, I can see the concern that has been raised, but I hope that in practice that illustrates why you are not going to have a situation where you could essentially have appointed trustees taking over the board of trustees by getting rid of elected trustees and filling them with additional appointments.

184. LORD EVANS OF GUISBOROUGH: It feels a little bit strange, certainly to someone who has been involved in democratic politics for a long time like me. Usually in a situation like this, whether you had one vacancy or two, you would cover it with a by-election. That is how you would fill it, if it was outside those time terms that you explained to us, which we are familiar with because they apply to council elections as well. Why is it that you have decided that you would still have effectively a by-election for two or more, but that if it was just one you would not?

185. MS LEAN: My Lord, I might have to ask Ms Satchell to address you on that possibly in evidence when we come to this. Forgive me. Because these were on the list of unopposed clauses, I did not ask her to give evidence on it at the time. If you are asking the Trust to explain why it has chosen that route, that probably comes from Ms Satchell rather than me. There is also an element here of practicality, as in running the elections. Again, perhaps I can respectfully ask for Ms Satchell to deal with that when we come to the unopposed clauses next week.

186. LORD EVANS OF GUISBOROUGH: I think you have overcomplicated the Bill, possibly, by adding this because it raises all sorts of questions and concerns that are outside the experience and, I would guess, actually the practical law that is applied elsewhere.

187. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Chair, given that Ms Satchell is here and we have petitioners here, surely we could ask her now to clarify that point.

188. THE CHAIR: We are going to be addressed next Wednesday on the unopposed clauses, which is one of these. There may be quite a lot of things that Ms Satchell is going to have to address so it may be more convenient to take it next week.

189. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: We will not have the petitioners here, then.

190. THE CHAIR: No, we will not. I am not quite sure what you are proposing to ask them. When we come back to Mr Owenson's reply, there is an opportunity to ask some questions, if you would like, certainly.

191. LORD EVANS OF GUISBOROUGH: Perhaps the question is, "What is the reason for there being a by-election if there are two but there not being a by-election if there is one?"

192. THE CHAIR: Yes. The reasoning, really, is for the promoter to establish.

193. LORD EVANS OF GUISBOROUGH: Indeed.

194. THE CHAIR: I am not quite sure how Mr Gallagher or Mr Owenson can help us on this because this is what is in the Bill. They may object to it, but they cannot explain why it is there.

195. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: So be it.

196. THE CHAIR: Yes. Keep it in mind, please, when we come back for the reply because you can ask questions then, of course. Yes, Ms Lean. Carry on.

197. MS LEAN: Thank you, my Lord. I fully anticipated that we would have to go through these clauses in some detail at the time, but I wanted to raise it today, because of the concern that had been raised specifically today about how the interim appointments could be used, to try to explain that there were mechanisms in the Bill that meant you could not have the particular scenario there was concern about, which was a whole-scale replacement of all the elected trustees.

198. My Lord, that probably comes on to the six-six generally. There are a number of themes and issues here that I know we have covered in some detail previously—I do not want to unduly repeat myself—around democratically elected body, local authority,

nature of representation, the suggestion that—I have noted it down—the elected trustees should be able to overrule the appointed trustees. My Lord, you have had submissions from me previously on what is expected of all of the trustees, regardless of whether they are elected or appointed, once they become trustees of the board, which is to act in the interests of the Trust. It is not a quasi-political body whereby the majority mandate should carry the day, as it were. It is about, objectively speaking, the trustees all considering what they consider is in the best interests of the Trust, not what the individuals who elect them might wish the Trust to do. I do not think it is helpful for me to go back through that.

199. What I would say about the six-six is the point about safeguards in the Bill. I have touched on that in connection with removal. You need the 75% vote to remove either an elected or an appointed trustee. If you start adjusting the proportions of trustees, if you went eight-four, for example, you have on my maths pretty much nearly built in that 75% already. I did jot this down. If you have a board of 12, you only need nine to get your 75% resolution. If you end up with only 10 members who are voting in a particular meeting, for whatever reason, you only need eight. If you have a board that is made up of eight-four, elected and appointed, you can see how much simpler it is to end up in a situation where that 75% threshold for either removal of another trustee or, indeed, to override a recommendation of the nominations committee as to who ought to be an appointed trustee is met.

200. I merely put it in those terms about safeguards built into the Bill. There is a concern that has been raised about one group being able to take control of the board or drive decisions through. Although I can see perfectly well why, from this petitioner's perspective and from other petitioners heard, they would like the elected trustees to have that position, the argument does go both ways. If it is an important safeguard to avoid one group being able to take control of the board or drive decisions through, that applies equally, in my submission, to the elected trustees as it does to the appointed trustees.

201. LORD EVANS OF GUISBOROUGH: What is the quorum?

202. MS LEAN: My Lord, the quorum has not yet been established. That would have to be established in rules to be made under Schedule 1 of the Bill, which I am conscious we also have not looked at yet because it was a—

203. THE CHAIR: Why should we not say what the quorum is to be? I know it is in

Schedule 1, but it is not a difficult thing to establish. Again, it is the point that so much in this Bill is vague and tying it down more precisely might be a function that we could perform.

204. MS LEAN: My Lord, from recollection, I do not recall any of the earlier Acts being that prescriptive. Forgive me. I am being told from behind. There is nothing in the Acts, I think, themselves. There is reference in the Commissioner Clauses Act to quorum, but, of course, my Lord, I suppose it just comes back to the point about how prescriptive the Bill should be at this stage about the mechanics of the Trust's business as opposed to essentially setting out all the powers the Trust needs to have and how things are to happen, leaving over the next level of detail that has to be filled in at that later stage. Again, my Lord, if I can again park that because I have in mind that there is something about quorum for committees. I would like to check the Commissioners Clauses Act before I respond to you on that.

205. My Lord, the next point I had then jotted down was about the levy and the suggestion, I think, that the Trust should lose its levy-raising power—

206. THE CHAIR: Yes, it is a basic change in the architecture of the raising of the levy.

207. MS LEAN: It is a fairly fundamental change in the levy-raising power—and it be passed instead to the Malvern Hills District Council and Herefordshire. My Lord, of course, even apart from it being a fundamental change to the existing legislation, it does of course raise the practical difficulty, which you have heard from Ms Satchell, of how the levy is in practice arrived at. It is looked at as part of that overall budgeting exercise, where the Trust looks at what it needs to do, what it needs to be able to fund, its likely sources of income, including stewardship grants, car parking and suchlike, and decides what the appropriate amount of the levy should be.

208. I think I drew your attention to the minutes from possibly the January 2025 meeting, where there was a debate about, “Should it be this or should it be this?” and the lower amount was chosen and some other adjustments had to be made.

209. THE CHAIR: Are we not moving into the risk of additional provision?

210. MS LEAN: We are certainly in additional provision, my Lord.

211. THE CHAIR: If it is going to change the architecture to that extent, the local authorities concerned would have to have an opportunity to say whether they are prepared to take this on.

212. MS LEAN: Indeed, my Lord. I was just making the point that obviously it does raise the issue that you give the control essentially of what income the Trust might need or is able to have to a separate body whose—I was going to say *raison d'être*; that is not quite what I meant—defining purpose is not to work out what is needed for the Trust. It is not quite clear, in my submission, how that levy would work. Would that put any contribution to the Trust in the mix of the other matters that the authority itself had to fund through the council tax provisions itself? In my submission, apart from being an additional provision, it seems it is very unclear how that would in practice work or how it would fulfil the primary reason for which a levy-giving power was given to the Trust back in 1884, which was to ensure that it could carry out the work that it needed to do.

213. Again, my Lord will have the point. I know there has been a lot made about the connection, for understandable reasons, between the levy and precept payers and democratic accountability, but, if I could just flag again, of course, the power to fund the management of or works to common land was not unprecedented in this Bill or, indeed, even the Malvern Hills and Wimbledon and Putney Conservators. There was a provision in, I think, the Commons Act 1876. I will have to double-check the specific statute, but it is in the note that we provided you with about commoners. If an order was made under one of those schemes, one thing that could be included was a power to fund the works of the body through a levy.

214. The sixth point I have, my Lord, is planning committees. I am told the Trust is not a statutory consultee on planning applications. In a sense, it is a consultee and no doubt in practice it may be told about applications happening and any representations it may have will be looked at in a particular way.

215. THE CHAIR: The way these things work, as I understand it, is that a planning application is advertised to those who are liable to be affected. A neighbouring landowner would come in simply as somebody to whom an advertisement would be addressed. They would come in because they have an interest to make representations. I do not want to go into great detail. The fact that it is not a statutory consultee does not in any way undermine

the point that Mr Owenson was making, that in practice the Trust is regularly involved in planning applications that affect its interests.

216. MS LEAN: Indeed, no, my Lord. My response to that was in response to my Lord, Lord Inglewood's, comment, which was about, "Is there a structural way that this is built in? Does the Trust have a particular formal status that is built into the process?" There may be in practice, on Malvern Hills District Council, lists of bodies that they would look to consult, but they are not enshrined in legislation as a body that must be consulted on certain types of applications in contradistinction, for example, to Natural England or Historic England, where it comes to applications that involve, for example, SSSIs or may impact on conservation areas or listed buildings.

217. My Lord, if I could just quickly check—I am afraid I have written myself a note so oblique even I cannot remember what it said I had to address. My Lord, I think that was probably all the points on my note. If I could just quickly turn to my left to check that I have not missed something. My Lord, that was all I had by way of response. I am sorry it has taken longer than I would usually look to take.

218. THE CHAIR: There are a lot of details to look at. Thank you very much indeed. Any further questions?

219. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask about the levy? Presumably, the finance committee sets the budget of the Malvern Hills Trust. Ms Satchell is shaking her head no.

220. MS LEAN: It has to be decided by the board.

221. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Somebody must prepare the budget; that is what I am trying to get at. Who is it? Which subcommittee or which conservators construct the budget for approval?

222. MS LEAN: My Lady, I am told that it will be a process that starts, perhaps unsurprisingly, with the staff. There is a finance manager. It will then go to the finance committee, which will look at it and will make a recommendation to the board. The decision on the budget and the levy rests with the board. It is not delegated to any individual or any subcommittee or group of trustees.

223. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you. The staff prepare the budget because they are the ones who have most of the information. That then goes to the finance committee, which may make amendments, and then that goes to the full board. At that point the levy is set. On that basis, if we were to look at a fundamental change in the funding, the board would still agree what money it needed and then it could tell Worcestershire and Hereford or whatever unitary how much it needed as opposed to setting the levy itself.

224. MS LEAN: Yes, my Lady, but, of course, the rest of the budget will be set or crystallised around what decision has been made around the levy. The two go hand in hand today.

225. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I am not saying that they will be separated.

226. MS LEAN: Indeed, but, of course, there is obviously a material difference between the Trust being able to sign off both at the same time because it knows that it can then get in the levy income that it has identified it needs and so it can sign off the rest of the budget because that income is essentially secured, as it were, to the Trust being in a situation where it has prepared its budget, it has identified what it thinks it would need through the levy to fund that budget, and it then has to go to an external body, which will make its own decision as to how much it is prepared to raise the levy. Of course, if it does not agree or is not prepared to raise the amount that the Trust has identified, that then puts the Trust in a very difficult situation and it has an unbalanced budget. I think that is just a practical perspective, my Lady, but that is why perhaps taking it away and giving it to an independent body puts the Trust in a very difficult situation.

227. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It would be fairer, though, inasmuch as all council tax payers in the area would then contribute to the funding of the Malvern Hills Trust.

228. MS LEAN: I think, my Lady, it might depend on how it is proposed to be done because, if the suggestion were to be that the levy would in practice be made by way of essentially a contribution from Malvern Hills District Council and Worcestershire Council, we are into the realms of, I think, if they were going to do that through council tax, I am not sure whether that would mean it would have to be collected from everybody

on whom they levied council tax in—

229. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: No, the two councils would make a contribution from their overall budget, but they would set their budget knowing that they had that commitment to fund the Malvern Hills Trust. It would not be like Mrs Bloggs at 1 Acacia Drive gives this much and somebody else in—it would be spread because it would be part of the unitary and the county council’s budgets.

230. MS LEAN: Indeed, my Lady. I appreciate that. It may be, then, that there are potentially two different models that may have come out of the discussion this morning.

231. One would be the one that my Lady has just referred to, which would essentially be the Worcestershire and Herefordshire contribution model that is currently available in the Acts, which would be that Worcestershire and Herefordshire may make a contribution to the Trust. Then, of course, it is entirely in the hands of Herefordshire and Worcestershire what they think an appropriate amount would be. If how this has to be raised is from their budget generally, that is obviously going to put any decision around a contribution to the Trust against their statutory obligations that they have to meet in terms of things like health and adult social care. The Trust is entirely, then, dependent on those bodies’ discretion in any particular year as to how much money they think they can spare from the budget for the Trust.

232. The alternative model, which—forgive me—I thought was maybe being suggested earlier, was that you essentially pass the levy-raising power over to those bodies on behalf of the Trust, but, again, I was not quite sure how that would work or, if it was suggested that you would add on an extra bit in the council tax, how you would differentiate then between the areas that should pay it and those that should not. If it was being done through the unitary authority or other council’s general council tax powers—I would have to go back and check the 1992 Act—I am not sure what provision there would be to say, “125% council tax shall be paid by those households within these areas”. Otherwise, it would seem that it would be paid by everybody across the entirety of the unitary areas or the district areas, even if it was a very long way away indeed in Worcestershire or Herefordshire that had never had any sort of historic connection with the hills at all.

233. Forgive me. I may have misunderstood the different models that are being suggested, but I hope I have illustrated the practical difficulties of making the Trust

entirely dependent on decisions by a separate body as to how much money could be made available to the Trust in any given year.

234. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It could be done on the same basis that parish and town councils' contributions are included in the council tax bill as it goes out. It would be quite discrete and quite separate to the Malvern Hills Trust area.

235. MS LEAN: I think, my Lady, that is how it is done today. That would be essentially the model today because, as My Lady may recall, we put in the sample council tax bill.

236. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I am sorry. That is not how it is done today because there are large areas within the Malvern Hills Trust that do not pay the levy.

237. MS LEAN: Forgive me, my Lady. What I was meaning was, you will see on the council tax bill that there will be something about the town council and the parish council. On the council tax bill that is what does appear today. The power to put that on the council tax bill sits in the Malvern Hills Act. My suggestion was—forgive me—that it was not clear to me how you would deal with it through the legislation. Where is the authority for the unitary authority or the Malvern Hills District Council, as part of their council tax, to levy for the Malvern Hills Trust in certain areas, if it is not the power of levy that is given to the Trust today that is in practice collected by those bodies on the Trust's behalf?

238. Forgive me. I may have just misunderstood, but it was just more to say that today, obviously, it is not a separate bill that goes out from the councils. It is listed in the same way that the Malvern Town Council one is.

239. THE CHAIR: What you get as a council tax payer is an account of what is in the package that you are having to pay. You can see an analysis and you can find out how much is the levy and so on.

240. MS LEAN: Indeed, My Lord.

241. LORD INGLEWOOD: God forbid that the Trust ran out of money. Is it treated like a charity going bust or is it treated like a local authority going bust?

242. MS LEAN: My Lord, I would have to go and look at that because it is not a scenario that, I think, had been envisaged.

243. LORD INGLEWOOD: It has a bearing on the perspective you might take about the financing. I do not want to elaborate further.

244. MS LEAN: The reason I say I would have to look at that is because I am conscious there are very specific provisions in the Local Government Acts or the Local Government Finance Acts that deal with an insolvency situation for local authorities. I would have to double-check exactly what the definition there is.

245. LORD INGLEWOOD: Since we are told that it is not a local authority but a charity, I just wonder what the implications might be.

246. THE CHAIR: Thank you very much.

247. LORD PONSONBY OF SHULBREDE: I have a short one. Mr Owenson raised the point about the possibility of rural voices being drowned out in the elections because the populations are in the urban areas. He seemed to say it was unsatisfactory from his point of view that the elected councillors might be appointed to a particular rural area that they may not represent. They represent the whole area. How confident are you that this proposal for six councillors elected, three every two years, will be able to adequately cover rural areas?

248. MS LEAN: My Lord, I suppose it is a question of putting the whole electoral area together. That is the practical way of being able to address the discrepancies that there are today between the elected conservators and the electoral area. One of the ways that concern might be addressed about the voices potentially not being heard of a particular area would be through the mechanism that is proposed in Clause 8(6) of the Bill. That is the provision that says there obviously has to be a trustee who would be appointed to be the point of contact for a particular parish. That is a mechanism by which you can ensure that the voice or concerns of particular areas would be heard by the Trust board.

249. Of course, then it comes back to the point that, once they have been elected or on the board, the obligation is to act in the interests of the Trust. It is not to act in the interests or views of the particular individuals who may have elected them. In that sense, although

there is the removal potentially of that direct link of, “This is the trustee who was elected by Mathon, and that is the trustee you would therefore expect to speak for Mathon”, a mechanism is provided by which you can ensure that particular concerns or issues that may affect a particular area or a rural area as opposed to an urban area can be heard.

250. Of course, my Lord, it has been alluded to earlier by Ms Satchell that historically turnout for elections has often been very low generally across the areas. As Councillor Owenson said, when people are particularly exercised about an issue, you tend to find that they turn out. It may be that one of the ways that this ends up playing out is that the urban electorate within the urban areas may be remarkably unconcerned about something that is happening in a particular area, but you will have a very strong feeling about it among those who may be in the rural areas or other particular areas, and that is then reflected in the candidates who put themselves forward for election as trustees, in the material that they put out when they are standing for election to raise the awareness of those issues, and in the turnout from particular areas because of the strength of feeling about those issues.

251. That was a slightly longwinded answer, and I am sorry for that. Essentially, it is not the same model as today, but there are means by which I would submit that that voice will not be lost.

252. THE CHAIR: Thank you very much. Mr Owenson, we have covered a lot of ground since you last spoke, but you have a right of reply. Is there anything you would like to say?

253. MR OWENSON: I have comments on each of the, I think, six points that I have summarised as. I can just run through and give a couple of comments on each of those six points, if that is okay.

254. In the context of the nominations committee, I thought it was interesting. The reality is that the nominations committee will be created by six nominated trustees and six elected trustees going forward. This idea that it is completely independent is not the case because six people who were selected by the nominations committee will then be selecting the next nominations committee going forward, including the independent members. If the Trust really wants that committee to be independent, the idea of forcing that independence by having an outside body like Worcestershire County Council or Herefordshire County

Council to nominate those two additional points really drives that point home and breaks this link between appointed members nominating their successors and leading to a democratic deficit.

255. I like the point around the published recruitment policy. I have employed people where I have written the job profile specifically for the person I wanted to get. Again, the opportunity to formalise the way that the institutions can put forward nominations, to me, is more real. Worcestershire County Council, for example, has a good mix of politicians over a wide-ranging area. I have every confidence that they would take that role correctly and put forward an independent member or an independent person based on criteria. There is no reason why the Trust could not say, "We would like to get people with this kind of background". I just think that independence needs to be in there to prevent this hereditariness potential of the independent members. I am reminded that when the Romans tried to close down the Coliseum they made the roles hereditary. It took 126 years to close the Coliseum because everybody just wanted their children to take over the role. It was a paid role.

256. LORD INGLEWOOD: Like the House of Lords.

257. MR OWENSON: Yes, there is an opportunity to put more independence into those independent people.

258. The Charities Act concentrates on charities, not in the context of raising levies. The challenge is: if you are complying with the Charities Act, what constitutes the unwillingness to act? I have mentioned before some examples, but some of those examples could be, "I disagree with the levy", which is the one that we keep coming to. It could be, "I disagree with car parking prices". It could be, "I disagree with the granting of an easement for housing". This kind of brings us back to how residents in Malvern might think they want to build all the houses in Colwall so they encourage the Malvern Hills Trust to grant an easement to allow more houses to be built in Colwall. If I, as an independently elected person, stand against that, so I stand on the basis of being elected to stop the easement, therefore when the charity decides to grant the easement I am then putting myself heads on against that. That is a problem.

259. A practical example of that is what some of the trustees are currently saying in the context of the current Bill. The costs of driving the Bill are increasing. It is a very

expensive process to take the Bill through the Lords. If I was a charity trustee, I would say, "It is my right as a trustee to challenge whether this money is being spent wisely by the charity". As I said when I presented the last time around, if you are against the Bill, even to the extent that you say, "Is it right to spend this money on the Bill?" you are not allowed to sit as chair of the finance committee. There are some intrinsic things in here that are preventing you from doing what I would say is good charity practice, challenging the charitable expenditure, but also enhancing the democratic deficit. This standing in the way is, to me, a big ogre standing in the middle of the room that says it is going to block off potentially legitimate dissent.

260. To the question about the elections on the interim appointments, MHDC runs the by-elections. We do that. We do lots of by-elections. There is quite high turnover in councillors. We do them for district; we do them for county. If there is exit at town council we will run by-elections. There is no problem running a by-election. It is a reasonably expensive exercise. It would be cheaper if you have these divided into smaller wards because you could have a by-election in Mathon rather than run one over the whole of the area, but it is easy to do a by-election, I would rather do a by-election and keep the democratic content there.

261. One of the comments that was made actually was that the Malvern Hills Trust is a quasi-democratic authority. It is a levy-raising body. It has elected members. It is not quasi-democratic; it should be a democratic elected body. The idea was said that, if you have eight democratically elected and four who are appointed, that would disrupt the ability to vote people on or off. Hang on a minute. The appointed are selected by the trustees in the first place. If the trustees did not want the appointed person, they would not have nominated them in the first place. The idea is that, if you have more democratically elected trustees, you therefore put the appointed ones at risk of getting voted off with 75%. That is the whole point of a democracy, to be able to deliver some change. I do not get this argument about, "If you go to eight to four, it makes it easier to get rid of an appointed person". It should be easier to get rid of an appointed person than a democratically elected person.

262. On the levy-raising power, MHDC is the levy-raising authority. What we do is we get the precept requests from all of the different organisations. We get fire; we get the police; we get county; and we get the Malvern Hills Trust. The Malvern Hills Trust is

added on to the parishes that pay the additional Malvern Hills Trust. It is all listed out. The issue here is not about budgeting within Malvern Hills Trust. The issue here is about timing. All it is saying is, if the levy-raising authority is sitting with the MHDC, all the Trust needs to do is to decide earlier in the year how much it wants to raise and then go to Malvern Hills District Council or Hereford County Council and say, “This is the amount that we want to raise. Do you have an issue with that or don’t you?” If they do have an issue, they can explain it and we can negotiate and resolve the problem, and then it just goes into the standard process.

263. We have this all the time in the towns. I am also mayor of Upton, you might remember, from last time. I do not know why. We have a finance committee that works out the budget in Q3, basically. We work out what we think we are going to spend the following year; we work out how much we need to raise and what other sources of income we have. We have income from the use of the facilities in the town, et cetera. We set our budget in the finance committee. We bring it to the town council for approval. Then that gets sent up to MHDC. If MHDC thought there was a problem, it would refer that back. More often than not, nobody complains; it just goes straight through.

264. The idea of enabling MHDC and Hereford to do the budget raising is a surmountable problem. It would require changes to the Act, but it is an easily surmountable problem because it is currently effectively done that way. MHDC still has to approve the precept. We did that last week. All of the precepts need to be approved anyway by our full council. We could reject them if we wanted. We never do.

265. The last element was on the geography. The simple argument from the House of Commons here is that, if you had this geographical set-up, you would have no SNP Members here; you would have no Northern Ireland Members here; you would have no Plaid Cymru Members here. Everyone would be voted by whoever was most popular in England at the moment. The idea is that the electoral warding—the people who are expert at doing that are the Boundary Commission. They have the processes; they have the maps; they have the statistical numbers, et cetera. The challenge here is that we are saying to the Boundary Commission, “We want one ward”. What we should be saying to them is, “What is the best way to deliver this? Is it six wards? Is it eight wards? Tell us”. Let us put the experts in charge. If you do not allow them to do that, there will just be one ward because it will be within the Bill. My recommendation there to the committee is to change

it to allow the Boundary Commission to come back with the best solution.

266. Other than that, I am happy to answer questions. Thank you for your time.

267. THE CHAIR: Any questions? Mr Owenson and Mr Gallagher, thank you for coming to see us. It has been a very interesting session and we are very grateful for your presentation. I think at this point we bring the proceedings to an end. The committee will sit again on Tuesday, 17 March at 10.30 a.m.