

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 17 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

FOR THE PROMOTER:

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

FOR THE PETITIONERS:

Richard Fowler
Robert Berry
David Fellows
Paul Bennett

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(At 10.30 a.m.)

1. THE CHAIR: Good morning, and welcome to this, the 17th meeting of the Select Committee on the Malvern Hills Bill. Before we begin our session, there are one or two practical arrangements I have to draw to your attention. First of all, would those who have mobile phones be sure that they are on silent, so that we are not interrupted by extraneous noises? Anybody in the room behind the witnesses should be careful not to speak to distract them from what they are trying to say.

2. Then the question of the fire alarm: we do not have a bell in this building. We have instead a system of two-tone sirens, followed by a series of taped messages. Should the siren occur and an evacuation is needed, please follow the directions of the clerk as to where to go. Do not waste time by gathering up your papers, because that might create a risk for yourselves.

3. As these proceedings are being broadcast, I should mention that a full transcript is being taken. I encourage you to look at the transcript, when it comes out, to check that your evidence or statements have been correctly recorded. If there are any things you would like to check, please let us know and we will make sure that the Hansard record is corrected.

4. I think, Mr Fowler, it is for you to introduce your position on behalf of those who are with you. We have Mr Fellows online as well. Ms Lean, you will then reply. Is there anything you need to say before we start?

5. MS LEAN: Indeed, my Lord. Forgive me; I am afraid we have been handed a clip of documents just as we were walking into committee and I am afraid I am in a position of having to ask if I could have perhaps 10 minutes so I can actually look through those documents and take instructions on them. I notice, for example, that there is reference to a legal opinion that appears in there. I do need to perhaps check with my clients whether this might be something that has come from the Trust's archives, and, if so, there is any privilege that might attach to it. If I could just ask for a short adjournment for me to look at these documents and take any instructions in that regard, I would be grateful.

6. THE CHAIR: I think that that is a reasonable thing to do—10 minutes, but try to keep it as short as you can, please.

7. MS LEAN: Thank you, my Lord.
8. THE CHAIR: We will adjourn just now and come back when you are ready.
9. MS LEAN: Thank you.

Sitting suspended.

On resuming—

10. THE CHAIR: Ms Lean?
11. MS LEAN: My Lord, I am grateful for the time. There are some concerns I should flag about some of the documents in this clip that has come forward. Firstly, there are a number of documents that are said to be trustee skills analysis, nominated and elected. From what we have been able to work out, we think these will be documents that are not in the public domain. They may be available to trustees of the Trust potentially, as opposed to just being in the archives, but they are audits that have been completed by individuals, which, although their names have been redacted, do provide information that, potentially, taken with other information in the public domain, such as the information on the Trust website about background of particular trustees, would enable those individual trustees to be identified. Obviously, I just flag that we are not aware of whether those trustees whose names have been redacted have consented to their personal information being put in the public domain in this way.
12. THE CHAIR: On page 14, for example, he describes event management, city centre manager and so on. I suppose you could trace him very readily by looking at that and so on, so I think there is a point there.
13. MS LEAN: Indeed, my Lord. There are references to other offices that people may have held for specified periods of time on other bodies, for example. I thought it was right for me to highlight that.
14. The second point to flag is that there is another document from 1995, correspondence between MHDC and the Trust relating to the 1995 Act, starting at page 23. The particular concern here is the letter starting at 23. This was a communication by a then petitioner in respect of the Bill, which is headed “without prejudice”. Again, I

highlight that there may be some concerns there about that being in the public domain, given it was something that was coming under that heading from another body as part of discussions and negotiations about the then 1995 Bill.

15. The third document that I think I just had to highlight as well was a letter from the Charity Commission, starting at page 42 of the bundle, which is an email, it seems, or a letter, from the Charity Commission to the Trust, encapsulating discussions that happened at a meeting and communicating views from DCMS. Again, I just highlight that I think we are not aware of that document being a public document. It is something that appears to have come from, potentially, confidential papers from within the Trust, so again we would just highlight some caution there.

16. It does seem to go to the reason why a Section 73 scheme was or was not pursued. Obviously the fact it was not pursued is the reason we are in a Bill today. Your Lordship's committee does, of course, have the public statement that was made by the Charity Commission at the time about why it was not consenting to the Section 73 or would not be taking forward the Section 73 scheme. We just do raise a concern about whether this is a document that should properly be in the public domain, certainly without the views, potentially, of the authors or the persons referred to in it having been obtained.

17. THE CHAIR: Are you talking about 43 as well as 42, or is it just page 42?

18. MS LEAN: Page 43, my Lord, is the letter you already have in the bundle from the Charity Commission about the Section 74 consent for this Bill.

19. THE CHAIR: What is wrong with that?

20. MS LEAN: There is nothing wrong with the documents at 43 and 44, my Lord. We have already provided you with those documents and the confidential information has been redacted in them. It is specifically that one letter at 42, which is about the Section 73 scheme, not the Bill.

21. THE CHAIR: Is that because it is written by a legal adviser, or is there more to it than that?

22. MS LEAN: My Lord, the fact that it is written by the legal adviser, by legal services, does raise a flag there, but it is more that the content of it traverses views that have been

communicated to the Charity Commission by DCMS. There is reference to something that the commission has been advised by DCMS and referring back to discussions that had been had between, obviously, the recipient at the Trust, whose name has been removed, and the person writing the letter from the Charity Commission.

23. My Lord, I think, if nothing else, we would query the relevance, given it is all about the Section 73 scheme, which obviously was not taken forward in 2020. It is not clear what relevance that has to the provisions of the Bill that this committee is being asked to consider.

24. THE CHAIR: Well, Mr Fowler, do you need to use these documents?

25. MR FOWLER: I think we—

26. MR BERRY: Shall I respond to that?

27. MR FOWLER: Yes.

28. MR BERRY: My Lord, in terms of the three, the first element, the skills analysis, the answer to counsel's question is yes. Those trustees—if they are their skills analyses—are aware that those documents are before the committee today. I have redacted some names for obvious reasons, but, yes, those people are there. In fact, you may even find—

29. THE CHAIR: Can you just be more specific? Have you contacted each of them so that they know?

30. MR BERRY: Yes, absolutely. Yes.

31. THE CHAIR: I see.

32. MR BERRY: In terms of the second element, the correspondence between the district council and the county council, those were obtained in part from the public archives the Trust holds. In terms of the third item, the various letters, I am afraid we were not aware they were under any form of confidential disclosure when those were provided to us. We do think they are relevant, because clearly the journey that the Trust, the organisation, has undergone began some 10-plus years ago, as indeed the promoters have discussed and alluded to on many occasions.

33. THE CHAIR: If you look at page 23, you will see that that letter is marked “without prejudice”. That is invoking a protection that is well recognised that, if you put a letter without prejudice, it is—

34. MR BERRY: Sorry, I am struggling to hear you, my Lord. Sorry.

35. THE CHAIR: Yes. When you have a letter that is marked “without prejudice”, it is not for open discussion, and it is also preserving the rights of the writer to the letter.

36. MR BERRY: I agree with you, my Lord. However, that was discovered in a public archive.

37. THE CHAIR: I see. Whereabouts?

38. MR BERRY: In the Trust’s public archive.

39. THE CHAIR: Right. Ms Lean, what is your position then? We are assured, so far as the skills analysis is concerned, that the individuals have been consulted, in which case there is not much left in your objection, is there?

40. MS LEAN: As I said, my Lord, we were just concerned when we saw them to see whether these were documents that might have some reason why they should not be in the public domain. It is obviously for your Lordship’s committee to decide whether you are content to accept them, having heard the explanation that has been provided by the trustees. I am just generally of the view that the archives of the Trust are not generally public archives, as it were, but, my Lord, we are in your hands. If you think it is helpful to be able to have regard to that letter from 1995 from the Malvern Hills District Council, I am sure that your Lordship’s committee will do so.

41. THE CHAIR: I am sorry to ask you to adjourn. We will have to discuss, as a committee, what to do, because we have to take a decision and we cannot do that in public. I am going to adjourn the proceedings just for two or three minutes, but I am afraid you all have to leave the room, so we conduct this in private.

Sitting suspended.

On resuming—

42. THE CHAIR: Ms Lean, thank you very much for your submissions. We have given some attention to it, but we have decided not to sustain your objections. Mr Fowler, that means you can refer to them if you need to do so in the course of your submissions. Can I clarify one thing? Are you going to speak on behalf of Mr Rouse as well, or should we have a separate session for him about his commoner's rights?

43. MR FOWLER: No, in order to use brevity as far as we can, we are going to include Mr Rouse within our presentations.

44. THE CHAIR: That is very helpful. Thank you very much. It is over to you now to make your presentation.

Mr Richard Fowler and others

Evidence of Mr Fowler and Mr Berry

45. MR FOWLER: Sorry about the false starts. I am Richard Fowler, and I am assisted today by my fellow petitioners Robert Berry and Councillor Paul Bennett. Online is David Fellows, another fellow petitioner, and we are also talking for Chris Rouse on his commoner's rights only, who is unable to attend. Thank you. Thank you for inviting us back.

46. We are conscious that, in addition to developing the arguments set out in our petition, we will also seek to address matters arising from the instructions issued at Second Reading, which we understand was one of the reasons the committee asked us to return. It is our intention to co-present this morning and we will attempt to answer any questions as best we can. We would stress that none of us has legal training, nor have we had the benefit of legal advice or counsel in preparing our petition or today's submission. Where we touch on points of law, we simply do as laymen, doing our best to interpret the written word.

47. Last week, your Lordship asked several petitioners a simple question: what can the committee do for you? In response, we will attempt not only to identify the problems we see with the Bill—and I think most parties, aside from the promoters, accept that substantive issues exist—but also to suggest practical remedies for the committee's consideration.

48. My Lords, in essence, the issues we raise fall into three broad areas: first, the constitutional status of the organisation, whether it is properly a public body or a charity; second, the levy and representation arrangements; and third, the scope of the new powers proposed in the Bill.

49. THE CHAIR: Sorry, can you say that again, and could you keep your papers away from the microphone?

50. MR BERRY: Sorry. That was my fault.

51. THE CHAIR: Oh, sorry. I beg your pardon. I missed the third point, please.

52. MR FOWLER: The third point is the scope of the new powers proposed in the Bill. All of these issues are covered in our petition.

53. Our initial preference, if it were possible, would be for the Bill to be returned to the promoters with instructions to revisit several key issues. These include the levy-paying area, the organisation's constitutional status and concerns raised by a wide range of parties, including Malvern Hills District Council, Worcestershire County Council and Malvern Town Council, and several parish councils, as well as individual petitioners. As your Lordships have already heard, there have been repeated attempts by trustees, community groups, parish councils, district councils, Peers and even the local MP to engage with the promoters. However, there has been no meaningful engagement with the concerned parties or petitioners.

54. THE CHAIR: There was a public consultation though, was there not?

55. MR FOWLER: There was a very limited public consultation. Wimbledon Common has been mentioned as a similar example, so to speak. When they wanted to do a substantial change, they wrote to every levy payer and also put it out in the public. Many people today have not heard about these changes in Malvern. Fortunately, there are a few of us who have. That number is growing, as you have probably seen by the number of petitions and the number of people involved.

56. It may be that your Lordships are not minded or not able to take that course, so we respectfully ask that careful consideration is given to the arguments and evidence we present today. However, we note that Lord Hope suggested that, if the promoters were

willing to give the committee an undertaking to reconsider the Bill, that might be possible, subject to the advice of the clerk of the committee. We would therefore invite the promoter to consider such an undertaking.

57. We are also conscious that some matters have already been covered by other petitioners and responded to by the promoters to this committee. To avoid unnecessary repetition, we feel able simply to adopt and endorse arguments already made, and we will do so. Our intention is to assist the committee by focusing on the points where we believe we can add most value.

58. Therefore, turning to the specific clauses in the Bill, we believe it would be helpful to begin with a point of principle, namely the status of the organisation itself. We also hope to clarify several issues arising from the evidence the committee has heard so far. In particular, we believe it would assist the committee to understand why the Charity Commission imposed a prohibition on the use of the Trust's funds to alter the levy-paying area.

59. During earlier proceedings, Lord Hope asked an important question: what is the status of the charity in the context of this Bill? We believe this is central, particularly when considering the relationship between the Malvern Hills Acts and charity law. It is accepted that the organisation was registered as a charity in 1984. However, somewhat remarkably, the Trust has been unable to produce documentation explaining how or why that registration took place. The promoters have suggested that the purpose was to enable the Trust to receive legacies, but we have heard evidence from Ms Satchell indicating that the decision was not based on formal legal advice, nor was it a requirement of the Charity Commission. Those who have researched the history of the organisation suggest that the principal motivation may in fact have been VAT recovery.

60. Ultimately, however, the precise reason for registration may be less important than the question we should ask today: does it matter now and, if so, why? Perhaps more importantly, should the organisation continue to operate as a charity at all? We are asking, "Should the organisation continue to operate as a charity at all?"

61. THE CHAIR: It is difficult to escape from the fact that it is registered and that that has consequences because the statute applies to it. There is a fundamental point. I do not want to interrupt you too much, but it lies at the heart of this. I am looking at a paragraph

in the consultation document, which says that the position is that the trustees have to act solely and exclusively in the best interests of the charity, and not in the interests of those who appointed them. That is a crucial point, but the way it is put rather ignores the fact that we have, in this Bill, objects.

62. The levy payers, as I understand it, want to sustain the objects, which are very clearly stated in Clause 6 of the Bill, basically to keep the hills as they are, as an open space for recreation and public access. The question is: is there a division between the position of a charity and maintaining the objects of the Trust? Levy payers' interest is to maintain the objects of the Trust, and it may be that those who concentrate so rigidly on the idea of the charity are just saying, "Okay, we must maintain it", and no doubt, I think the argument is, make sure that the system is modernised. I think that it has been pointed out that that could lead to commercialisation and so on. Is that really the issue between you and the other side?

63. MR FOWLER: It is certainly a big part of the issue. The quotation that you made does not really even get close to mentioning the hills in a way.

64. THE CHAIR: No, it does not. That is the point.

65. MR FOWLER: That is what it is there for. The hills have been there for—I do not know how long the hills have been there for, but we expect them to be there for much longer than we will be alive, and we want them to be the same in a hundred years' time, not exactly the same obviously, but in the same manner, and looked after in the same way as they are now.

66. THE CHAIR: Yes. All I am suggesting is that there is a suggestion in that sentence that there is a conflict between keeping the hills the same as they are, basically, and the interests of the charity, and that may be something we have to look at more carefully.

67. MR FOWLER: Yes, that is certainly something we feel. When we talk about easements, that is something where we feel that—because there are certain restrictions on what can be done with—we will develop that a bit later on.

68. THE CHAIR: Yes, of course. I am sorry to interrupt you.

69. MR FOWLER: No, that is fine.

70. THE CHAIR: I just wanted to be sure that this point, which seems very troubling to us, the way it is being presented on behalf of the Trust, is missing a point.

71. MR FOWLER: We agree with you. We believe that this question matters because there have already been points of tension between charity law and the statutory Acts governing the conservators. Indeed, this was one of the reasons we felt it necessary, in our capacity as board members, to petition this House. Earlier in the proceedings, Lord Inglewood asked whether conflicts had ever arisen between charity law and the Acts. The response was given at the time that no such conflict existed. With respect, we would suggest that conflicts have arisen and will likely continue unless this issue is properly resolved.

72. In our view, this is something the promoters ought to have resolved long before depositing the present Bill. Doing so would have avoided considerable time, effort and public expense now associated with this process. Indeed, we previously encouraged fellow trustees and the then secretary to the board, now governance change officer, Ms Satchell, to investigate this issue. However, being in a minority, these suggestions were not pursued.

73. We can also demonstrate that the organisation itself recognised this issue internally. For example, at a meeting held on 11 July 2013, the board agreed that the matter should be investigated further. This evidence is in the minutes at page 7 of our bundle.

74. MR BERRY: Can I just point out, my Lords, that the page numbers in this document are at the bottom for pages 1 to 11, and then they appear at the top after that? There is an amalgamation of documents, so I apologise for that.

75. THE CHAIR: Thank you. Which part of this document should we look at, page 7?

76. MR FOWLER: There is a paragraph just after “matters arising”: present charitable status of MHC.

77. THE CHAIR: An amendment was accepted. At the bottom of the page it says that the governance committee will propose to the board that MHC acknowledges its present charity status potentially conflicts. The conflicts, rather, will be examined in the long-term objectives.

78. MR FOWLER: Yes, that is correct. Yes.

79. THE CHAIR: That is correct. Thank you.

80. MR FOWLER: We can also show that the issue was later consciously parked, as indicated by board minutes of 2017. This leads us to the central question: what difference does it actually make? In our view, the distinction is extremely important. Public bodies are expected to operate according to principles such as transparency, consistent decision-making and adherence to such as the Nolan principles. More importantly, they must operate for the benefit of the public. That brings us to the key question: should this organisation exist primarily to benefit the public or to advance its own institutional interests? That is at the heart of the question that you raised with me, Lord Hope.

81. We would respectfully suggest that, over time, the promoters have lost sight of the original purpose of the Malvern Hills Acts, which was fundamentally to preserve the hills and maintain public access for the enjoyment of the public. Can I direct the committee to pages 2 to 6 of our bundle? We reject the proposition that charity law in some way trumps the Malvern Hills Acts. Rather, as articulated by counsel for MEPG last week, we strongly advocate that the organisation ought to be classified and operate as a public body, as it historically considered itself to be. That principle, we suggest, should be clearly recognised in the new Bill.

82. We consider the Malvern Hills and Commons to be a public asset. They have been funded by a subset of the public—levy payers—through what is effectively a statutory form of taxation, for the quiet recreational enjoyment of the public. The organisation should not, therefore, exist to further its own institutional interests, nor should the Bill enable any form of empire building.

83. When considering the organisation's purposes, we would urge the committee to examine carefully the ancillary purposes of the Bill, which we will return to shortly. Our position is that, following the passage of any new legislation, the organisation should operate clearly under the primacy of its Acts of Parliament, with no ambiguity regarding its obligations elsewhere. Perhaps the clearest example of why this matters was outlined last week by Ms Jessica Jones in relation to easements, an argument we will not repeat.

84. You also heard Mr Huskinson's concerns regarding easements, including the

Chance Lane refusal in March 2019. Some believe that that matter may be connected to the motivations behind aspects of this Bill and the proposed reduction in elected trustees. Receiving a cheque for £2 million for a small parcel of land is understandably an attractive proposition.

85. Another example of the tension can be seen in the current code of conduct, which does not mirror that of local authorities and is considerably more restrictive. It instructs trustees that they must act solely in the best interests of the Trust and its charitable objects. The question therefore arises: why refer specifically to the charitable objects, rather than simply the statutory objects under the Acts? That appears inconsistent with the provisions of the Malvern Hills Acts.

86. If we turn to the “Good Neighbours” leaflet at page 2 of the bundle, the public are introduced to their representative on the board. A further document on the next page of the bundle states clearly that “29 members are appointed or elected to represent you”. The document dates from 2006-07, well after the most recent Malvern Acts. Today, however, trustees, including elected trustees, are informed they cannot represent the levy payers. That guidance relies solely on Charity Commission interpretation and makes no reference to the statutory Acts. The circumstances surrounding this are summarised in the newspaper article on page 10 of our bundle.

87. Recognition of the conservators as a public body continued well beyond that period in the land management plan of 2016 to 2021. The conservators stated, “As a public body with land in the AONB, MHC has a statutory duty under the National Parks and Access to the Countryside Act 1949”. That appears in the bundle at page 5. The same document identifies further legislation applying because the organisation is a public body, including the Countryside and Rights of Way Act 2000, the Equality Act 2010, and the Natural Environment and Rural Communities Act 2006. If the conservators were not a public body, those obligations would not apply.

88. If the committee turns to page 4 of the bundle, you will see that even the Charity Commission referred to the conservators as a public body. It is not very easy to see, but there is a block with a line around it, about halfway down the wording on the right-hand side: “The charity is a public body administered by a board known as the conservators”. A further email, dated 16 October 2012, records that trustees’ behaviour had fallen below

the standard expected of a public body.

89. Around 2014 to 2015, however, this description began to change. During the failed Section 73 governance proposals, the organisation's website began describing the conservators as a quasi-public body. This appears to have been the first attempt to soften the clear recognition that the organisation was and is a public body. By 2021, the description had shifted again to a charity that exercises some public functions. As shown in the 2021 to 2026 land management plan at page 6 of the bundle, references to the organisation being a public body largely disappeared.

90. We have attempted to identify who authorised this significant constitutional shift. A detailed review of the board minutes between December 2014 and the end of 2021 reveals no record of trustees formally considering or approving such a change.

91. We accept that there is no single definitive legal definition of a public body. However, the Cabinet Office describes a public body as "a formally established organisation that is publicly funded to deliver a public or government service, though not as a ministerial department". Even the conservators' own governance handbook today refers to the organisation as a public body. In section 5, it states, "As a public body responsible for the environment, the public are entitled to inspect, with some restrictions, a wide range of information held by MHT".

92. Your Lordships will also be aware that Lord Attlee tabled a written question asking whether the organisation was a public body and received the response that it was not. A Malvern resident subsequently sought clarification from various departments. Eventually, in May last year, the Office for National Statistics classified Malvern Hills conservators as part of the local government subsector. The promoter suggests that this classification is purely statistical. However, when asked directly whether this meant the organisation was recognised as a public body, the ONS response was simply yes.

93. Correspondence contained in pages 31 to 37 of our bundle details enquiries made through the local MP regarding oversight of the organisation. At page 31 of that bundle the Cabinet Office suggested that responsibility lay with the local authority. This illustrates the current uncertainty surrounding the organisation's status. On page 31, it is the last substantive paragraph that you need to view.

94. The promoters state that the Bill does not alter the status, functions or duties of the statutory corporation known as the Malvern Hills Conservators. If that is correct, it is difficult to understand why the proposed Bill contains 17 references to the word “charity” whereas the 1995 Act contains none, and yet that Act was 10 years after the registration in 1984.

95. Charities are normally funded by voluntary donations given by individuals or organisations who support their aims and believe their money will be used wisely. If those supporters change their minds for any reason, they are free to simply stop donating. For example, if we chose to stop supporting the National Trust, we could do so without penalty. In absolute contrast, if I were to withhold the portion of my council tax attributable to the Malvern Hills Conservators, it would not be charity law that applied; it would be civil law. In certain circumstances, a person refusing to pay could ultimately face imprisonment. We provide further material at pages 60 and 61 of our bundle, including a paper written by a retired member of the legal profession with relevant expertise. That is followed by a Court of Appeal paper considering the definitions of public authority and private act for your consideration, my Lords.

96. THE CHAIR: That is an example of a situation where a body was being challenged under the Human Rights Act. The question was: was it a public authority for the purposes of the Human Rights Act?

97. MR FOWLER: Indeed.

98. THE CHAIR: The same question could be asked about the Trust, but that is quite a difficult issue. It is an issue that might trouble a lawyer to decide which side of the margin the Trust was. I do not think it is the function of our committee, with respect, to declare that the Trust is a public authority for the purposes of the Human Rights Act. That has to be taken before a court and it requires a decision by a court, rather than by us.

99. It is a very specific example. There are others that we have been referred to—freedom of information, for example. There is a statute, of course, that deals with that and the question is: is the Trust subject to that statute? It is not for us to say. That is a question for a court to decide if it is disputed.

100. MR FOWLER: No, I understand.

101. THE CHAIR: That is the problem. I can quite see you would like it to be declared as a public authority, but one has to realise there are particular provisions in statute that impose obligations on a body that satisfies the definition of the particular statute in question.

102. MR FOWLER: I understand. We just bring that to your attention because there are so many aspects of the Trust that are public. There are public functions and the ECHR does in fact apply to the Trust because they had to produce an ECHR report for this Bill to—

103. THE CHAIR: Yes. All I am really saying is that one can very reasonably talk about it as a public body in a sort of commonsense description but there is a statutory regime underlying this, or in the background, which we cannot enter into.

104. MR FOWLER: I understand.

105. THE CHAIR: That is all.

106. MR FOWLER: Our proposals are that, in the light of this, we would advocate that the Trust be instructed to investigate either deregistration as a charity or restructuring of its current arrangements. For example, the charity might become simply the land or asset owner, while oversight and management of the hills will be carried out by a properly constituted public body.

107. THE CHAIR: There is another way possibly of dealing with this, and that is by an amendment to the Bill. Clause 6 deals with the objects and perhaps we should put something in to declare that these are the objects for the purposes of the Charities Act or something like that, so that it anchors down what are the objects of preserving the hills and so on and being unbuilt on, to make quite clear that those who are talking about charity objects are directed to what Clause 6 says and that is what the levy payers wish to maintain. I am just exploring this as a possibility by amendment because we cannot really return this, having reached this stage, back to the Trust to rethink and withdraw its Bill. We are not in that position. It is a question of what we can do with the Bill that is before us and whether we can put something in that is directed to the point you are making.

108. MR FOWLER: I understand your difficulty. We are in the same difficulty and I

guess it is like the question of when you ask for directions and the person says, “I wouldn’t start from here”. I think that that is very much where we are at the moment. We also consider the possibilities and I do not envy your task. You have a difficult task ahead.

109. THE CHAIR: It is open to us to make amendments to the Bill to clarify matters that are not sufficiently clear in the Bill as it stands.

110. MR FOWLER: I think that there is a fundamental issue here between the charity and public body status, and I think inserting amendments in various parts of the Bill does not deal with that fundamental issue. It might deal with some aspects now but will it cover every aspect in the future? I do not know. It does not cover, for example, that there is a levy. Is that even a charitable exercise? How can a charity be entitled to make a levy?

111. THE CHAIR: I think that not all charities, for obvious reasons, do that. It is a very special situation, but that is why it is something that needs to be clarified. We are obviously thinking very carefully about amendments we might make to do that.

112. MR FOWLER: You see, the Charity Commission is not really set up to deal with an organisation or to be accountable for the expenditure of public funds. At a very simple level, if you look on the Charity Commission’s website it says that—I will get the percentage slightly wrong—something like 98% of it comes from charitable activities.

113. I certainly do not mind paying the levy. We all love the hills. We do not mind paying the levy, but we feel that there should be an accountability. Although a relatively small number pay the levy, many thousands, many millions perhaps, come to the hills. That is great, but we feel that there should be some accountability at a local level if we are going to have to fund what is a national asset. As I say, on the Charity Commission website, the pie chart shows that 98% is charitable activities. I feel slightly resentful that the tax that I pay is just shown as a charitable activity. It is not. It is a tax.

114. MR BENNETT: Can I just say something? Basically, there was a regulator for this organisation. It was called the Department of Health apparently. Then it was not passed on to any organisation beyond that point in one of the Acts a long, long time ago. That is the reason why all of this has happened because, when it was registered as a charity, there was no regulator to go and see, and make sure that that was okay. We represent taxpayers, as councillors who are on this body. We are now being told—and we are being excluded

from debates, from information. The reason is because there is no regulator to protect us.

115. THE CHAIR: Mr Bennett, if you will forgive me, two things. First of all, it is more helpful if Mr Fowler continues to make the presentation, but you have raised a question. Is there somewhere in the older statutes that mentions a regulator? If so, could you tell us where it is? Not now, but at some point we need to find it, please. Yes, carry on, Mr Fowler.

116. MR FOWLER: Thank you.

117. THE CHAIR: I am sorry, Mr Bennett. I know you feel quite strongly—

118. MR BENNETT: No, I just wanted to try to help.

119. THE CHAIR: —but I think it is easier when we have one speaker.

120. MR FOWLER: We anticipate that the promoters may argue that deregistration as a charity is impossible, or at least very difficult. However, given that we know this option has never been properly explored, because we have asked, such a claim would be premature.

121. At page 9 of the bundle we provide examples of organisations performing similar functions. It can be observed that many are not charities. In many cases, they are not funded through a statutory levy either.

122. Two final points as to why we believe it is inappropriate for the organisation to operate as a charity in its current form. First, the Charity Commission is not designed or empowered to provide the level of regulatory oversight required for a body exercising statutory powers of this kind. In practice, unless a trustee does something illegal, the commission has very limited ability to intervene, even if it might wish to do so. For public confidence, it is essential that both individual board members and the board are properly accountable. Substantive irregularities in respect of this Trust have been brought to the attention of the Charity Commission in recent years, both by board members and by members of the public, yet the commission has been unable to hold the organisation to account.

123. Our second and final point concerns the nature of charitable purposes themselves.

It is our understanding that, to qualify for charitable status, all of the organisation's functions should be charitable, meaning they are carried out for the public benefit and for charitable purposes. It is difficult to see how the imposition of a statutory levy could fall properly within this category.

124. We therefore ask the committee to consider whether it would have been appropriate in 1984, when the charity was registered, and indeed whether it is appropriate today, to remain registered. Caring for the hills for the public's enjoyment clearly serves the public benefit, but activities such as encroachment control or the provision of car parking raise more complex questions. We suggest that these matters are best considered by those with greater legal expertise than ours, and they may provide a route for redesignating the organisation appropriately.

125. If your Lordships are not persuaded that this avenue should be explored, we ask that the legislation makes clear that the Malvern Hills Conservators operate as a hybrid public body, not simply as a charity. That would ensure the organisation remains subject to public law obligations designed to maintain confidence in public institutions. Those principles include the duty to act transparently, to consult widely at a formative stage, to take full account of representations received, to act consistently with previous decisions, unless there are good reasons not to, to continue acting in the public interest and to act without bias or the appearance of bias.

126. Finally, subclause (8) refers to charitable objects. We suggest that the wording is unnecessarily and potentially confusing. As the Chair has already indicated, the word "objects" alone would suffice.

127. THE CHAIR: Sorry, I am looking this up. You say subclause (8). Subclause of what?

128. MR FOWLER: It is in the section above—I think it has already been queried once. It is on the second page of the Bill as deposited, before you get to the Part 1 introductory. Subclause (8).

129. THE CHAIR: The Bill begins, or the print we have in front of us has an explanatory—

130. MR FOWLER: It is in the preamble then.

131. THE CHAIR: Oh, in the preamble. I see. Subclause?

132. MR FOWLER: Subclause (8). Well, it was on mine.

133. THE CHAIR: Yes, I see. Thank you.

134. MR FOWLER: Thank you. I now hand over to Robert Berry.

135. MR BERRY: Good morning. The levy is mentioned in the Bill, but the skeleton that is left in the cupboard is the levy-paying area. This issue is clearly not addressed. Many petitioners, along with the majority of existing levy payers, are left wondering why this issue has once again been deferred as being too difficult to resolve. We know, based on a little bit of research, that this was clearly looked at in 1993 and 1994, leading to the 1995 Act, and parked. We ask ourselves the question: if it is not addressed this time around in this private Bill, when will it be? Clearly the Trust wishes to continue to have its power to keep buying land and adding to its portfolio, which clearly increases the cost.

136. We would suggest that there are two principal reasons for this omission. First, regardless of how many people contribute to the levy, the total amount raised by the levy does not change under the current arrangements. In other words, if you have 10 households paying the levy and the Trust still has an ability to levy, let us say—I am making these numbers up to make it easy for the maths today—£10, they pay a pound each. If the levy is £10 and there are 20 households, each household pays half that. Therefore, as the levy-paying area expands, there is no direct financial benefit to the Trust.

137. Attempts have previously been made to extend the levy in 1965, when Castlemorton Common was purchased, and again in 1995. MHDC, the council, as a condition of withdrawing its petition, we believe, engaged in correspondence with the Trust, as we have detailed on pages 23 to 30. On both occasions, however, no meaningful action followed. There was not an agreement, we believe, between MHDC and the Trust.

138. The omission in the current Bill is particularly difficult to understand. When we consider the Charity Commission letter—and, my Lords, this is in our bundle, which we will come to shortly—of 4 March 2020, at page 42, so if we can refer to page 42 in the bundle, it was written following the collapse of the Section 73 Charity Commission

scheme and just prior to the initiation of the private Bill process. The letter contains a number of statements that may help answer questions raised by the committee during last week's sessions. For example, at the end of paragraph 2, the letter states, "Opposition to a number of the proposals became more apparent following public consultation and a private Bill would therefore allow greater scrutiny and debate". I do not think that there is any argument about that.

139. At the start of paragraph 3, the commission states that a private Bill would also allow the Trust to address other matters previously outside the scope of Section 73, including the precept and electoral arrangements. In other words, the mechanism now being used was explicitly suggested as a way of resolving these issues, my Lords. This provides another example of the tension between charity law and the statutory Acts as they currently stand. From a charity perspective, the argument may be made that expanding the levy area produces no financial gain, so there is little incentive to pursue it. However, from the representative of fairness and just common sense—democracy, one might say—the issue is clearly far more significant.

140. The second reason for the omission, which Lord Hope has already identified as part of these hearings, is that any proposal to alter the levy area would almost certainly prove controversial and could result in delay and further opposition. We accept that it is not easy to solve. It is not easy to solve.

141. As I have already alluded to, my Lords, we must also remember the Trust wishes to retain the power to purchase land within a nine-mile radius of the Great Malvern Priory. That landmass covers—and here is a bit of maths for us all—130,000 acres—I am sure we can all remember Pi R squared—which is 60,000 hectares. In our region, roughly 80% of the land is open land, including agricultural land, woodland, and common. We do not propose, my Lords, to come here today and simply present a set of solutions. We would love to be able to, but we certainly wish to, or hope it would be helpful to, present some things that could be given further thought.

142. No thought that we are aware of has been given, for example, to redefining that area of the landmass to possibly contain it. Clearly, mechanisms, which could be very, very accurately detailed, might well be available. In the Trust's 2019 consultation document, it acknowledged that, and I quote, "There is no doubt that the present arrangement

whereby some parishes in which the Trust has land pay the precept and others do not is out of date, illogical and unfair”.

143. The board will, if permitted, continue to acquire additional land. There is good reason to do that while passing the financial burden to a limited subset of residents. When we come to consider board representation later on this morning, we will show the committee just how many parishes contain Trust land that do not contribute to the levy. This is because, clearly, there is a very close cohesion between representation and levy-paying arrangements. They are connected.

144. It has been suggested by the promoters that their hands were tied by the Charity Commission, preventing them from addressing the levy-paying area, my Lords. That is simply not correct. The sequence of events is clearly set out in the documents including point 8 at page 40 of our bundle. The board itself decided not to pursue the levy-paying area at its governance meeting on 26 October 2017. All of those resolutions from the governance meeting were then adopted without amendment at the board’s AGM in November of the same year.

145. We know from the Charity Commission letter I have already referred to on page 42 that the commission later went on to explicitly state that the levy-paying area could be addressed through a private Bill. There is a freedom of information request confirming that the Trust never asked permission to amend the levy-paying area. I think that that is at page 42A of our bundles today.

146. When the Trust subsequently applied to the Charity Commission for funding to promote this private Bill, as it is required to do and as it correctly did, it included within that its ambitions and what it wished to do. Therefore, at that point, the Trust stated that it did not intend to pursue altering the levy-paying area. The Charity Commission then, in effect, approved that request in its response back to the committee, pages 43 to 45 of our bundle.

147. Clearly, further requests have since been submitted by the conservators to the Charity Commission for further funding requests as costs have spiralled with regard to this process. There was also clearly a request to the Charity Commission because of the instructions issued to this committee at Second Reading, which required the Trust to return to the Charity Commission to seek permission to use funds to respond to any

inquiries that your Lordships might have with regard to this issue of the levy-paying area.

148. The matters have also been complicated by uncertainty surrounding Section 31 of the 1924 Act, which relates to the power to levy. As we understand it—and I hasten to add we are not lawyers—this clause or a clause that would replace that was omitted from the draft Bill. Observers quickly pointed out that reducing any powers with regard to levying would constitute just as much of an amendment as increasing the powers to levy, meaning that the provision could not simply be ignored. I believe we find that that power has returned in the filled-up Bill.

149. It seems clear to us that the original legislation assumed that the conservators would continue to acquire land over time and that those living close to the land would both contribute to its upkeep and benefit from the Trust looking after that land, as well as being represented on the Board. It follows that some mechanism must exist to adjust the levy-paying area as landholdings expand, yet those powers appear to have been either misunderstood or never exercised, or improperly exercised over the years. If the committee were to request from the promoters—and I would have brought it if I could find it, and I apologise I could not, but I am sure Ms Satchell will be able to find it far quicker than I—a list of the lands that have been acquired during the history of the organisation, you will see there are frequent acquisitions of land, some purpose land, common land and hill land, and the ancillary land that we will come on to later, which is slightly more controversial.

150. The point is that it has been purchased for good reason and we do not disagree that the power to purchase should exist. We are suggesting it should be reconsidered and perhaps limited slightly and, if somebody can suggest a mechanism to sort the levy-paying area out, it all becomes tied together and is fair and sensible and reasonable, so that people are not sat in this room in 35 years' time with exactly the same problem.

151. It is also relevant, my Lords, to consider the 1968 agreement, which is in the bundle from the promoters, between Worcestershire County Council and the conservators. That agreement, as I say, is 1968, so three years after the Trust acquired Castlemorton Common, which is a very large percentage of the landholding, from the Ecclesiastical Commissioners. Now, interestingly, under that arrangement, Worcestershire County Council agreed to pay a sum of £10,000 in return for the right to nominate three additional

board members. Now, I do not think anybody would argue. In principle that arrangement is not unreasonable. It reflects the idea that financial contribution should be linked to representation.

152. Forgive me, my Lords; I do not know how well you are aware of the area itself. I certainly invite you all to spend a weekend having a wander round, if you have not had the privilege and the pleasure to do so, but Castlemorton Common is sort of slightly down from the hills and to one side, and it is a discrete area of its own wonderful character.

153. However, the implications of this arrangement as far as we are aware—and helpfully we do have a Worcestershire County Council councillor with us in a minute who we will come to. The implications of culling that contract have never been discussed formally with the leadership of Worcestershire County Council or its councillors despite the fact that, obviously, the proposals in the Bill would effectively nullify that agreement.

154. An interesting point here—because we ourselves only became even aware of this agreement in January of this year. As a board considering the composition of the board, nobody flagged this up to us. It was an interesting find one day when presented to us by a member of a parish council, interestingly. Ten thousand pounds in 1968 would today be worth £225,000. The Trust will make a request from Worcestershire County Council of £15,000. This clearly has not quite gone to plan, has it? Yet the land area in question represents 32.3% of the land owned by the Trust. I am using the Trust's own figures. We are using the figures that they publish. I have no reason to believe they are not accurate. We will leave your Lordships to draw their own conclusions with regard to that imbalance.

155. Whilst we accept the issue is complex in terms of levying, we do implore your Lordships to present us with a solution or help us find a solution. In our view, the boards of the conservators—and I include myself, as a member of the current board—have been insufficiently diligent in attempting to resolve this problem. The problem has been recognised for decades. Minutes from 1965, which are in our bundle somewhere—I am sure we will come to a page reference later in the script—record discussions when this was on people's minds, how works on Castlemorton Common and the Old Hills were going to be funded. The levy was raised again during the passage of the 1995 Act, as I have already alluded to. Indeed, MHDC insisted on the creation of a working group to

examine the issue before withdrawing its petition. Correspondence relating to that is on page 23.

156. Our proposed thoughts on this and remedies are therefore reasonably straightforward. We would suggest that the Trust follow the Charity Commission's advice in the letter dated 4 March 2020, which we have referred to twice, and therefore properly examine this issue of the levy-paying area; that legislation be introduced enabling the levy-paying area to be introduced where the Trust owns land, including, for example, the parishes of Castlemorton, Powick, Newland and Welland.

157. Indeed, just to go to a related point, my Lords, if you turn to the last page in your bundle, you will see a graph. These are the facts in terms of percentage of council tax increases vis-à-vis the conservators increases over almost the last decade. You have heard an explanation as to why there was an anomaly this year, I would accept. MHDC set its council tax at zero. It clearly starts to rise, does it not? The Trust's cost ought to be pretty similar, given it is doing a similar sort of job to that. Fifty or sixty per cent is wages. Those costs have spiralled, and yet the landmass that is owned by the Trust between 2017 and 2025 simply does not reflect those figures. What else is the Trust doing that suggests it needs to generate cash in this way?

158. Some have suggested that the Trust actually has spent the last five or six or seven years building a war chest to fund this Bill. Others suggest it reflects activities beyond the original remit of the Act. In other words, people are doing things that might be jolly good things to be doing but were not actually originally intended for the organisation to pursue. Whatever the explanation, we would suggest that appropriate balances and checks need to be there with regard to the quantum of this levy.

159. Now turning to the specific governance issues and clauses detailed in what I accept was quite a long petition, quite a broad-ranging petition, and one that has been discussed, let us start with the objects and the purposes. Now, as the Bill currently stands, it proposes to override past actions and precedents, and introduces changes that go well beyond simply modernising or consolidating the legislation, which is what we—I, Mr Fowler, Mr Bennett with two Ts, and 28,000 to 30,000 other people in the area—thought was the ambition.

160. The framework that has governed the landmass in question has been developed over

140 years. I fully accept that when Mr Ballard and his friends back in 1882 and beyond got involved in this, it was not straightforward trying to put all this together and protect—I think that is probably the right word—that landmass. In our view, for the last 140 years, those Acts of legislation have been largely successful in maintaining the natural aspect of the Malvern Hills and Commons for the benefit of the public.

161. As outlined in our petition, we believe the objects and purposes should remain entirely unchanged. In particular, the current wording should be preserved so that the organisation’s purposes remain absolutely crystal-clear to all, especially the inclusion of the phrases “natural aspect” and “unenclosed”. “Unenclosed” even I can understand. I accept that the words “natural aspect” are not part of our natural parlance, as perhaps might be the case, but it does not take very long to go and find plenty of government documents, and documents written by academics in this area and other organisations looking after land, where this phrase is used, and we have heard it already in this room.

162. “Natural appearance”, which is the suggestion, is what something looks like. With “natural aspect” we consider what it looks like and how it looks when one looks from the hills. As somebody who goes up on the hills at least two or three times a week, it is just very clear to see that we benefit from our predecessors having done an excellent job, in correspondence and consultation with other people, of looking after that. Lord Hope, as you observed last week, this Bill is fronted by its objects, which is why they are so important.

163. We also need to consider the ancillary purposes brought forward in this Bill, which are detailed in our petition. Effectively, this Bill gives credence to the Trust, the organisation, to pursue those auxiliary activities. We detail a list of things that we simply do not think the organisation should exist to pursue in section 2(k) of our petition and suggest that all clauses related to that are removed. Our rationale is quite simple. None of the powers is necessary to fulfil the organisation’s primary purpose. There is still a job to be done, my Lords, and I hope that the board can constitute itself or allow itself to be constituted and continue for another 140 years and well beyond.

164. Now, we have heard from Ms Satchell areas where the current Acts are silent because it appears the Trust has already granted itself some additional powers. Examples include licensing and watering points. This illustrates to us the importance of ensuring

that any new legislation clearly limits the scope for future officers or trustees to expand their remit beyond what Parliament intends. For that reason, we do strongly advocate retaining the phrase “natural aspect”. We also adopt the arguments put forward by Ms Jessica Jones last week in support of retaining the wording.

165. The promoters have repeatedly stated that it is not their intention to change the fundamental purposes of the organisation. If that is genuinely the case, it is difficult to understand why there needs to be any change to the objects at all. The proposal to amend the objects has generated, as you have heard, considerable concern and distrust locally. We therefore invite the promoter to withdraw these proposed amendments.

166. Now we turn our attention to the constitution of the board. Before we get to individual clauses, we think it is helpful to address some underlying principles, and we will put forward some thoughts that we hope will be helpful to the committee. We are at a loss to understand why the promoters appear to reject the representative nature of the board’s constitution. We can only assume this arises from perceived tensions with charity law, which have been prioritised over historical precedent, the principle of no taxation without representation, as well as clear documentary evidence regarding how the board was intended to function.

167. Indeed, when the 1884 Act received Royal Assent, contemporary reports made it clear that one of the central purposes of the legislation was representation. Indeed, a report in the *Times* stated that “the ratepayers of all the parishes contributing common land be fairly represented on the board of conservators”. The intention could hardly have been clearer, my Lords.

168. Section 8 of the proposed Bill introduces the concept of the constitution of the Trust and the status of trustees as charity trustees. This concept has never appeared in previous Malvern Hills legislation and it significantly alters the status of conservators. Historically, conservators were appointed or elected to represent those who selected them, whether that be an authority or the local electorate, and the historic minutes support this interpretation.

169. Examples from the 1960s appear at pages 56 and 58 of our bundle and, having had a glance through these, there are many, many, many more examples. In the 1995 Malvern Hills Act, which was enacted, as we have already heard, 10 years after the charity registration, the same representative structure was adopted. Part 7(2) of the 1924 Act

clearly—I do not think we need to turn to that necessarily. That is where, effectively, we start hearing about parishes, and the 11 parishes and wards whose representatives must be elected on to the board, principally because, as I understand it, in 1884 parish councils did not exist so we can see why there was an amendment in 1924. That structure continues through subsequent legislation and interacts with the Representation of the People Act 1983, as we understand it.

170. If I invite the committee to turn to page 59 of our bundle, it will see that Schedule 1 of the 1995 Act refers to the Local Government Act, and effectively what we have done there is substitute the wording. The 1995 Act refers to the Local Government Act. Again, the point is that it just gives us further indication that the word “represent” or “representatives” appears. As my colleague Mr Fowler has alluded to, that public body status was accepted and never really argued about. We do have the benefit of a trustee who was on the board some 20 years ago with us this afternoon. I am sure, if the Trust wants to verify this fact, it can. As I understand it, it just was not a point of contention. It was not forced upon people. It just happily coexisted because people had not forced the point, as seems to be the case today.

171. The representative model has clear practical advantages. Each conservator tends to be local to the parish they represent, and I say that because, whilst I represent the parish I live in, as does Mr Fowler, some elected trustees actually live in a different parish, but they are not very far away from each other, and therefore these elected individuals have local knowledge and interest. I do not mean self-interest. I just mean that they are around. You bump into people. You cannot get away from it. You heard from Mr Gardner last week. I can tell you he is not the only person who gets a call when his cows wander into Welland parish green. I also get a call as well. I am just not as expert at shooing them down the lane as he is. It is, I am going to say, a welcome distraction. My wife’s begonias have not been eaten recently, so I am okay.

172. Where was I? I was distracted. We saw this three board meetings ago. There was an application made by a parish council to replace a bus shelter that was on Trust land. It was a formality. It all went through nicely. The trustee from that parish was able to explain the precise location. He knew all about it. He had been to the parish meeting. It was just dead easy. He knew all the detail—fantastic. It just would not have happened if, with all due respect, somebody had joined a Zoom call from Chester and just read the papers. This

person knew what was going on and had an interest. There was context. It just worked.

173. Now, the scale of electoral areas also matters. Here we refer, we think, to Section 23 of the new Bill. We are used to a system where everybody stands and represents their own parish, their own ward. We accept that the size of those wards or parishes varies, and I will come to that shortly. Under those arrangements, candidates can realistically engage directly with voters, canvassing and delivering election material personally. Certainly, when I stood, I was summoned by the parish council and dutifully asked to present for five minutes as to what the reasons were against my fellow candidate, and indeed I did. I was asked questions, as one might expect. As a system of local democracy, it seemed to work reasonably well. Mr Fowler has done exactly the same. This is very much a democratic process we value in this country. We can see many areas in the world that do not enjoy those levels of democracy. We should cherish ours.

174. By contrast, the proposal that the trustees should merely act as a point of contact—this is a point that was added later to the deposited Bill—we suggest appears to be largely symbolic. No duties are defined and there is no mechanism to ensure the role would actually function effectively. We think basically it is a fob-off, and someone is trying to pay lip service to the concept. We understand Mr Myatt will develop this further this afternoon.

175. To the constitution of the board, we begin by rejecting the proposal for the necessity or existence of a nomination panel and for individuals to be nominated at all. We suggest that trustees should only be nominated by relevant democratically elected local authorities or those that succeed them. I say that, my Lord, because you are aware that the district council is going to merge with the county council, we think, next year or the year after. That is beyond my level of knowledge, but clearly there will be some something there to replace them.

176. In our view, if it were to happen today, the nomination should be from—and you will not be surprised with this list—Worcestershire County Council, Malvern Hills District Council, Herefordshire Council and Malvern Town Council. I have spoken to either the leadership of each of those bodies or a member of the executive in the case of Worcestershire County Council to ask a very simple question. “Do you think this is a good idea? If this was available to you as a proposal in this Bill, would you snap the

committee's hand off?" They have all said, without exception, "Yes, we would. We would like to continue to engage in this process". On that note, helpfully, I have, two to my left, the vice-chair of the county council as well as a district councillor, Mr Bennett.

177. THE CHAIR: There is a problem about your point about the nomination committee. If you look at Clause 14, that tells you about the qualifications that the appointed trustees are supposed to have.

178. MR BERRY: Are we talking about the filled-up Bill now, my Lord?

179. THE CHAIR: The nomination committee is Clause 15, but it has to be read with Clause 14, which is the reason why the nomination committee is supposed to exist. I just wonder whether doing it through the mechanism you are suggesting, simply nominated by a district council, will achieve what Clause 14 is seeking to do.

180. MR BERRY: If I refer to the skills audits, which, if we have not mentioned, we will—

181. THE CHAIR: All right, yes.

182. MR BERRY: I will cover the point now. That is why I included some of them in the bundle. Those skills audits are from a sample of nominated as well as elected. There is no lack of skill.

183. THE CHAIR: I do not want to take you out of order. I am sorry. I just wanted to make that point, but please carry on according to your own plan.

184. MR BERRY: I certainly agree with the promoter's assertion that the required skills are there. They are required; we would all agree that. I am going to simply make the point that they are already there. Whether they are well used is a completely different discussion.

185. My Lord, the promoters have argued—here we go—that they have struggled to attract the necessary skills. Well, as I have said, we simply do not accept this assertion and the evidence is there for you to see, my Lords. I have also seen a table that listed 20-odd trustees and various categories, and there are plenty of ticks in most of the boxes there that exist. If you were to come to a board meeting, you would quickly ascertain those

people with an interest in land management and those people who have a skillset in finance or operations, all the various things that come, no different to any board.

186. Let us not forget that we also employ professional officers to deal with specific—there is a land manager with the prerequisite professional qualifications. You have heard from Mr Bills, with more qualifications than I have had hot dinners. The right people are in place to offer the board that skill set and expertise, and I suggest that the suggestion that we heard from counsel to the promoter that we need a lawyer on the board to interpret legal advice simply does not follow through, or a surveyor. Yes, I think we would accept a lawyer on the board. We would accept a surveyor and an accountant—they are always jolly helpful people—but we also have our accounts audited. We speak to the auditors. It is a very simple, straightforward process. It is widely understood. However many thousands of charities in the nation do it annually. It is not a difficult process. It is very well regulated. I think that covers that element off.

187. LORD EVANS OF GUISBOROUGH: Excuse me. What would you say to the argument that some of the appointed positions from local authorities, which you have now, have not been filled in the past?

188. MR BERRY: If we look at the table—we have a table we are going to come to—I would agree. It is there; it is documented. MHDC required—“asked”, I think, is the right word—to provide eight. That is a bit of an ask. Eight out of—how many district councillors are there—30-odd?

189. MR BENNETT: Thirty-one.

190. MR BERRY: Thirty-one. It is quite a large ask, is it not, given they also have quite a lot to do? If we reduce that number to one or two, which is what we are going to propose, I do not think we will have a problem. Specifically, MHDC can only nominate themselves. They have to be councillors. If we look at Herefordshire and Worcestershire County Council, and the three that are part of that agreement from 1968, they can be anybody. They could nominate your good self, if you would accept the position. There we go.

191. We do accept that, as we look at this issue of the areas, the number of voters, the landholding and the current board, it is all intertwined. We accept 29 is a bit silly, frankly.

It is a historical carryover. I have never sat on a board of 29. I have sat on effective boards of three, six, eight, but 29 is a bit daft.

192. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Mr Berry, can I just interrupt you a moment to go back to the skills audit that you have in front of us, which is excellent? I have just had a quick flick through. For some of the skills that I personally might expect somebody looking after an AONB or similar to have, there is no particular expertise or it is not filled in, for instance ecology, habitat and land management. Would you accept that there is a need to try to attract people who have a real interest in those areas in order to make sure that the Malvern Hills survive?

193. MR BERRY: If I had the board lined up in the corridor with their skills audit for you to inspect, I would be 100% confident that you would go to four or five people and you would see exactly that. We have many people who have professionally worked for Natural England, the Worcestershire Wildlife Trust. We had a trustee who was a chief exec of Herefordshire Wildlife Trust. We are loaded with them; we are blessed with them. There is absolutely no problem at all there. I have gone through a list of people I could get hold of quickly and said, “Can I have yours and can I use it today, please?”

194. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: If you were recruiting new trustees, those skills would definitely be on the list.

195. MR BERRY: Absolutely. The conservators has attracted those sort of—if you go back to 1884, landowners, fundamentally, were those people on the board. There are some wonderful photographs where they go out and survey their hills and work out what they are going to do. “More sheep over there, please. Less sheep over there”—the usual sort of stuff. “That is working well. That is not. There is a clash. We have somebody encroaching over there. You go and sort them out”. We have benefited from that.

196. The trust has traditionally, I am afraid, not done itself any favours in terms of its PR, which is one of the reasons, I suspect—I cannot evidence this to you, but having lived around the area for a long time—it has not had the greatest of PR records. It needs to do something about that and get better at that. At the moment, the trust is clearly going through this period of—there is concern about what we are talking about today. Therefore, it brings other skill sets to the fore. I am absolutely certain, my Lady, like I say, if I were to line those people up, you would be delighted by what you saw.

197. Twenty-nine, we agree with the promoters, is a bit daft. As I pointed out when Lord Evans asked me a question, MHDC having to offer eight is too much of an ask.

198. We accept that we have some weird weightings going on when we get to the paperwork. In Colwall and Mathon, the other side of the hill—they would say the right side of the hill, obviously; I live on the other side—there are about 2,500 people. It is historical that they have five representatives on the board. That is partly to do with just where the estates were and where some of the controlling interests were back in 1884 that these have come through. I do not think it has been a conspiracy. I just think that is the way it was. That is just what happened.

199. If you go back—and I am no expert on the history of the Trust, as I should be, but there was a move by the folk of Malvern to start something and they fell out with the people the other side of the hill, and then they got together and it moved on. You have those historical quirks. I do hope that this is an opportunity for us to iron some of those quirks out a little bit. The best example is, if you go to the ridgeline of an evening when it is dark—I like to think of Worcestershire as being quite rural—and you look towards the Worcestershire side, lights galore. If you look towards the Herefordshire side, not even 10% of the light pollution. Now, I am not a planning expert, but it is pretty obvious what lights indicate in terms of population. They are slightly different, and hence both parties need to come to the table to be represented.

200. As we sat down to think about this, we came up with three very simple principles. First, representation should remain central. I do not just mean representation from those people footing the Bill. I mean representation because this is a national asset, as well as a local asset, as well as a county asset. Second, there should be more elected than appointed members. Third, each electoral area should elect its own representative. This one global area piece falls apart for one simple reason. All we would see on the board would be the local smiley faces we see on the front of the *Malvern Gazette* every week. If I take away our local MP, who is usually there, it is usually then followed by a county councillor or district councillor. I am saying nothing against them, but we also want to attract, I would suggest, another subset of the populace, not just an interested group of councillors.

201. To page 46 of the bundle, I am going to need a copy of this to walk through it. We are going to need to look at this, I think.

202. THE CHAIR: Mr Berry, how are we getting on? It is nearly 12.20.

203. MR BERRY: We are over half way through. We are on the downhill schuss section of the slopes, my Lord.

204. THE CHAIR: It would be good if you could finish your bit by lunchtime, by 1 pm.

205. MR BERRY: I will guarantee that, my Lord. I have attempted to bring with me just the relevant data and bring it together. These are all the Trust's figures and, if I have made any mistakes, I humbly apologise and will obviously stand corrected. Other petitioners and the promoters have talked about the current composition—you will see that at the top of page 46—and the proposal.

206. I have listed the current arrangements, and we can see that there are the weird anomalies. Colwall and Mathon, what they elect just does not make any sense, really.

207. If we look at Guarlford—Mr Fellows on our screen currently represents Guarlford—and Mathon, they are the tiny ones at 241, 207. The others are sort of 2,000 and 3,000. They are at least in the thousands to get to our figure of 30,000. That is the number of electors for 2025.

208. What we are suggesting as a first option, potentially, is that actually, if we were to amalgamate Mathon and Colwall, we get to still not a huge number. This data is further in our table later on. We reduce those elected members down because we combine a ward, if that makes sense, an electoral area. We can do the same with Guarlford by adding that on to the next electoral area. We get down to the concept of—we are not wedded to this figure of 12. I sat in all of the workshops and I listened to various people come up with different reasons. I do not think anybody put a better argument together for 12, 13, 14 or 15. I think 12 was settled at in truth because the Charity Commission had written it somewhere and the chair clearly decided that is what he was going to have. Fair enough.

209. Looking at page 47, my Lords, you will see there are an awful lot of areas—this is the longer table where I include the landmass area, the number of hectares, and then I detail what that is as a percentage. You will see that there are an awful lot of parishes that hold a bit of land. I am going to give you an example. This does need to be looked at in context, my Lords, not just pure numbers.

210. We will look at Mr Fellows' parish: 14.2 hectares, 1.2% of the holding, which is only half of Berrow, which is at the top of the page. We own twice as much land in their area. Importantly, my Lords—and we will come to this—a lot of the land in Guarlford somehow landed in the Trust's ownership, arguably a mixed blessing, and it has lots of fingers of sides of roads and bits and pieces, hence this rather nitty-gritty nutty issue of easements. We are not talking big blobs of land, as we are when we get to Castlemorton, for example. As I have already alluded to, 30% of the land that we own and the land that we pay to maintain is in a parish that contributes by and large—well, I am not going to say “nothing” because there is £15,000 that comes from Worcestershire County Council and clearly it is contributing to that, but I have also illustrated that that figure is way out of date and needs some form of revision.

211. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Excuse me. You would therefore expound that only the levy-paying area should vote for the trustees rather than the whole of the Malvern Hills area.

212. MR BERRY: I am, my Lady. I am also coming at this in sort of two ways. I am trying to look at this problem of how to constitute a board if your Lordships are amenable to investigating or instructing the Trust to investigate the levy-paying area as well as if you are not. Does that make sense? I can see that at some point you are going to make a ruling decision and it could go one way or another, but we still need a solution one way or another. I have tried to look at the data to see where that would lead us to and where it is helpful.

213. Now, it is obvious that, where you have Colwall and Mathon electing two and nominating one and all the rest of it, you just cull that to one. It is very straightforward. Again, I am leaving all of that data for you to take away and look at, and you are going to have to look at it, I would suggest, with a map to put it in context. Like I say, with all due respect to the CEO and Ms Satchell, if I have got any of those figures wrong, I am happy to stand corrected, but they are the Trust's figures, as I understand them to be.

214. LORD EVANS OF GUISBOROUGH: You suggested the amalgamation of two wards in a couple of cases.

215. MR BERRY: Yes, my Lord.

216. LORD EVANS OF GUISBOROUGH: I am just checking, because I do not have the benefit of a map. Are those areas adjacent?

217. MR BERRY: They are, my Lord. If I could turn to page 48—this is table 4—I have highlighted rows 3 and 6 on the table. Hopefully they come out on your copy. Colwall and Mathon, 2,036 plus 241, and then later on Pickersleigh and Guarlford. In the case of Colwall and Mathon, they are the Herefordshire parishes. They are right next to each other; they abut, and the same with Guarlford and Pickersleigh. Guarlford I do not think warrants standing on its own. I know Mr Fellows will shoot me, but the point is that we have to find a sensible solution here. They abut as well. By reducing Colwall and Mathon down from five to one and keeping those other areas—Colwall and Mathon is still only 2,500. Mr Fowler’s electorate here is about 5,000.

218. They are not perfect. I grant you they are not perfect, but equally we need a mechanism that might last longer than next week. We do know that the Boundary Commission has a habit of turning up and causing chaos, and we will come to that. It has recently been in our area and made some changes. I am presenting those numbers, but we get to a sensible number that geographically works, ticks the box of representation and makes sense.

219. Proposition 2 assumes, my Lords and my Lady, that you reject the concept of the levy-paying area being amended. I would like to bolt on to the side there that there is still this issue of what was £10,000 in 1968, which ought to be the best part of £250,000 today. Now, I can guarantee you that, were we to have the leader of Worcestershire County Council in the chamber, she would weep if she saw that figure of £225,000. I am not going into that, but it is very well documented why in the newspapers at the moment.

220. Even if we then say, “Okay, let us levy those areas; let us levy our areas”, the solution still holds because we can go from 12 to 15. That is not an unreasonable position to be in. As I have also alluded to, my Lords, we currently have this clause, which is just what was there from the start, with this nine-mile radius. We could block it off differently to make sure that, actually, I and my fellow trustees do not have the ability of then purchasing a back garden or a little orchard off a property that might have some lovely fruit trees in it that is 8.99 miles away and causing chaos in a different parish. The whole thing has to be looked at with a map, with the numbers together.

221. Now, my Lords, proposition 4, again, is just something that we mused about because we are aware that the Boundary Commission can appear and did appear, and we are also aware of the merging of the district council and the county council in 2027, I think. I looked at the Malvern-based county council wards, and that is table 4. Now, interestingly, that rather helpfully totals to eight wards and, rather helpfully, most of those land masses—again, it is going to need a map in front of you to have a look at this. On the next few pages I do provide some maps for you to have a look at in terms of the district council wards. We can start to play with these numbers and we can get to some sensible positions, if that makes sense. Now, it does need a bit of further detailed analysis, but this is something that the promoters simply have not looked at and I would suggest is well worthy of being looked at to get to a sensible solution. I will park that there, if that is okay.

222. The next sections—we gave you two bundles, my Lords and my Lady. There was the big bundle. There was also a bundle of seven or eight pieces of paper, a smaller bundle, that hopefully the clerk shared with you, and it starts with Clause 18, eligibility criteria. That was there because we were hoping to spin through these as quickly as possible. Some of these clauses we have already swept up in some general principles, but we thought they were worth pulling out. Over to you, Mr Fowler.

223. MR FOWLER: I certainly would like to go through Clause 18, eligibility criteria. Clause 18 proposes changes to the eligibility criteria for standing as an elected trustee. Under the proposal wording, individuals will be eligible to stand for election simply because they live in a parish where the trust owns land. In fact, the Bill uses an even more vague term: “where land is located”. That includes areas such as Castlemorton, Old Hills and Powick, which currently do not contribute to the levy. The Bill then extends eligibility further to include individuals living within one mile of those areas, so this would include residents of Welland, a parish with a substantial population.

224. The result is that individuals who do not contribute to the levy at all may nevertheless stand as elected trustees, serve on the nomination panel or even become appointed trustees. This effectively creates a class of individuals who enjoy greater rights than levy payers themselves despite contributing nothing to the Trust’s funding. Residents of Castlemorton, Old Hills and Powick, for example, would be able to exercise these rights even though they have avoided paying the levy for decades. The likely consequence

is that any future attempt to introduce fair levy arrangements in these areas would face significant resistance as the benefits would already have been granted without the associated obligations.

225. There are also potential unintended consequences. A small land purchase extending across a parish boundary could suddenly make residents of an entirely new parish eligible to stand for election even though that parish does not contribute to the levy. Under Clause 73, the disposal provisions, if land were later sold within the two-year period that is allowed for ensuring that land that is bought for purpose reasons is suitable, it is unclear whether those newly created rights would automatically fall away. The Bill is silent on this point.

226. Term of office of trustees—Clause 9 deals with this. The Bill proposes that elections for elected trustees should be held every two years. We believe this would impose a significant administrative and financial burden on the organisation. We propose instead that elections should be held every four years with trustees serving no more than two consecutive terms without a break. That is very similar to what is proposed. That arrangement would allow refreshment of the board, reduce administrative complexity and allow the electorate to replace the entire group of elected trustees if they wish, a point made by your Lordships at an earlier meeting. Appointed trustees could then rotate on a two-year cycle, ensuring that the board still benefits from regular renewal.

227. The Bill proposes changing the organisation's name to Malvern Hills Trust. However, locally the historic name "Malvern Hills Conservators" is still strongly valued. The hills themselves are intended to endure for generations. Many residents believe the name of the organisation responsible for them should endure in the same way. We therefore suggest that the organisation should retain the historic name while continuing to use the working title Malvern Hills Trust, if desired.

228. Clause 14 proposes the creation of a nomination panel to select appointed trustees. In our view, the proposed arrangements are unnecessarily complex and potentially costly. The Bill does not specify how the nomination panel will be funded nor whether the independent members will serve voluntarily or be remunerated. If remuneration were required to attract suitable candidates, the system could quickly become both expensive and administratively burdensome. Even under the modified arrangements proposed

earlier, the workload of such a panel would remain significant despite the number of appointed trustees being reduced.

229. The promoters have argued that appointed trustees are required in order to provide specific professional skills. However, the skills audit of existing trustees, examples which appear in the bundle, suggests that many relevant skills already exist within the board. Furthermore, the Trust already employs professional officers and external advisors. District and county councils operate in the same way. They rely on professional staff rather than requiring elected members to hold those qualifications.

230. We propose that, if the committee is not persuaded that democratic authority should retain sole responsibility for appointing trustees, we would suggest at least requiring that appointed trustees have a genuine connection to the Malvern Hills area. In practice, it is unlikely that anyone living more than 40 miles from Great Malvern Priory would be able to fulfil the role effectively. Under our proposal, one appointed trustee would be selected every two years and two local authority nominees would rotate on the same cycle. This would maintain continuity while allowing regular refreshment of the board.

231. The promoters have also suggested that the Trust struggles to fill elected trustee vacancies. That assertion is misleading. At present, there are no vacancies for elected trustees, whereas appointed trustee vacancies do exist. In practice, vacancies arising from resignations are usually quickly filled and, with the reduction in elected trustees proposed in our model, the number required will be smaller still, further reducing the likelihood of vacancies.

232. Clause 14, nomination committee. We would suggest that former employees of the Trust should be excluded from serving on the nomination committee. Simply, we propose that—

233. THE CHAIR: Is there a reason for that particular point?

234. MR FOWLER: Clause 14 at the moment excludes former trustees; it excludes employees. It seems sensible to exclude former employees.

235. THE CHAIR: You are not concerned about particular individuals.

236. MR FOWLER: Divisions, but also not allowing a natural change of thought and

new ideas coming in because you are using people who have already been involved. It seems sensible. If you are not allowing a trustee who maybe only served four years to be on the nomination panel, why would you maybe have someone on the nomination panel who has been an employee of the board for 20 years or more? It seems irrational.

237. Clause 20 deals with ordinary elections. Elections should be held every four years, allowing voters the opportunity to replace the entire group of elected trustees, if they wish, while significantly reducing the administrative burden and expense. Our view and the local view is that in-person and individual electoral areas run by MHDC under the current familiar rules are best retained.

238. Clause 24 deals with elections. Clause 24 proposes that the elections be administered internally by the Trust itself. Your Lordships have already raised concerns about the organisation effectively marking its own homework, particularly in relation to the audits. The proposal raises similar concerns. It replaces an independent electoral process governed by the Representation of the People Act 1983 with an entirely internal system lacking external scrutiny. At present, levy payers understand and trust the existing electoral system because it is the same process used for local government elections. Many levy payers feel that they are losing the ability to attend committee meetings, losing meaningful representation, losing any influence over the organisation funded through their levy, and that introducing an internal election system could further reduce and erode trust.

239. As proposed, meetings would or could often be online, and we feel that with so many things being—meetings could be online; the elections could be through an online system; and trustees do not represent an individual area—this will become a faceless organisation. As your Lordships have already observed, public confidence in the organisation has already been weakened. Our proposal is that we retain the existing elections under the Representation of the People Act.

240. MR BERRY: We now move to the general power and, as I think we have probably already hinted and certainly detailed in our petition, that is something we simply do not feel the case has been made for, my Lords.

241. This brings us to the concept of evidence and the lack of it that we feel has been presented to those people who petition your Lordships as well as an awful lot of people

in Malvern and beyond. Frequently, we are asked the question, “Why have the promoters provided so little evidence for many of their proposed changes?”

242. We have talked about difficulties with trustees, and we have frankly proven that that is not the case. The election turnout, 20% to 21%, mirrors other elections of that type. It is about right. It is not particularly exceptional or not. The two elections that took place on 18 September—Mr Myatt was one of them; you have heard about those two—got a 24% turnout. I am not going to go on, but it is about right for that. The need for fixed penalty powers—the case simply has not been made.

243. I now move to the issue of fencing and enclosure. We can adopt, really, the arguments presented by Mr Smallwood last week, but for the next two or three minutes I would like you to pretend I am Mr Chris Rouse, if that is okay, who would be with us, were he a bit more ambulant. As I think has already been articulated, he is a long-standing farmer in West Malvern. His family have farmed for I do not know how many decades. He has told me, but my memory does not hold all of the information. They have held commoners’ rights and put sheep all over the place over the years, Poolbrook Common and beyond.

244. He supports the submissions made by other commoners—I think we had Ms Barbara Wilkes last week as well—and does not propose to repeat those arguments today, but he would add two further points. He speaks as someone who has done this. You know he has got mud everywhere on his car seat, in his car seat. You get my drift.

245. Clause 49(1), he suggests, allows fencing to be erected for up to 60 days for the purpose of regulating grazing where in the Trust’s opinion this furthers its objectives. It is electric fencing. Let us be clear about that. Temporary fencing to enable land to recover its suitability for grazing or to regulate grazing represents a direct intrusion into commoners’ rights, it is suggested. Such decisions affect all graziers exercising rights on the land and therefore should not be taken unilaterally by one grazier or, indeed, the Trust—or, indeed, one grazier operating under licence, in effect not an employee of the Trust, but there is a vested financial interest there, and he is going to tug his forelock when the Trust pitches up and says, “Could you do that, please?”

246. Mr Rouse puts forward the proposition that it would be better to have a requirement, if we are going down the list of articulating everything in a Bill, that actually the Trust

consults all the active graziers holding rights, those people grazing or commoning on that land unit. For example, CL9, where I live—forgive me. I do not know the name of every single land unit, but I know they are on a map that Ms Satchell has helpfully provided us with. Before fencing goes up, there is a degree of consultation. He points out, as you have heard from the promoters, there are not very many people doing this. We are not looking for 50 people to say yes and no. It is only five or six. It is not overly difficult, and they are easy people to find, mainly shoeing their sheep up the road sometimes. This consultation would ensure that the Trust benefits from the practical experience of those actively grazing the land.

247. Clause 44, he suggests, states that the Trust may, by all lawful means, regulate the exercise of any rights of common exercised below the Malvern Hills. As currently drafted, the Trust appears to become both judge and jury, Mr Rouse suggests, in determining what is considered lawful. “If the Trust asserts that action is lawful, graziers such as me have very limited ability to challenge their decision”. In practical terms, he says, “I could not afford to take the Trust on with legal proceedings”, and there is no independent body as an ombudsman to which the commoners may appeal.

248. For that reason, it would be much clearer if the legislation included a defined list of the actions that may lawfully be taken by this clause. Such a list could be as objective as possible and should avoid wording such as “in the Trust’s opinion”. The clause should also require that active graziers are consulted and that the process for consultation is clearly defined. In the interests of transparency, the results of that consultation should be published. He points out that a solution would be a properly constituted committee comprising of graziers, trustees and officers.

249. There are the four Cs. Mr Rouse suggests that that committee does not function as he had suggested it would need to function, where it is primarily concerned with ensuring that commoners’ rights are maintained, all proposals for grazing are reviewed and decisions are made with regard to temporary fencing. In other words, he is suggesting the Trust not, I suppose, enforce its will on the landmass and enforce its will on the graziers.

250. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask you—in this clause at the top of page 29, “For that reason, it would be much easier if the legislation included a defined list of the actions that may lawfully be taken under this

clause”—are you suggesting that that list should be on the face of the Bill?

251. MR BERRY: Yes—or Mr Rouse is. I am not an expert in this.

252. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Mr Rouse is suggesting that should be on the face of the Bill.

253. MR BERRY: Yes. He is saying there are good reasons to do this sort of thing, but can we not give everybody *carte blanche* to make it up as they go? As we have already made the point, it is not necessarily the people who you see before you today. This legislation needs to last, I would suggest, a bit longer than 30 years. As we have clearly advocated, we adopt following local authority models and adopting the pace of change as they go down. “We are not trailblazers in Malvern” is probably one way of covering it.

254. LORD INGLEWOOD: One point on that. Mr Rouse is not suggesting that unlawful things are going on, is he? It is that the Trust does not have any special legal rights above other commons management elsewhere. It has to be like everybody else. Is that it?

255. MR BERRY: Yes. If there was, my Lord, he would know about it. He is always out and about.

256. Finally, in terms of access, which is clearly enshrined, this is principal to this, and I know that your Lordships all understand this. We do share the concerns expressed by both Mr Smallwood and Ms Dicks with regard to this issue of access to the hills, and clauses in this Bill that talk about charging people for this, that and the other. I can say, having sat in board meetings, some of my fellow trustees do see some of these. They see opportunities to raise revenue, and I urge your Lords to make sure that there is not an incentive to commercialise as part of this legislation, because there just need to be enough safeguards to ensure there are not institutional incentives.

257. To close, my Lords, in summary, we have raised a number of issues, and we are very grateful for your patience this morning: the unnecessary expansion of powers, the potential shift in the organisation’s purpose away from preserving the hills, the constitution of the board and its accountability. Are we there to furtherance the organisation or furtherance public benefit? The question of who funds the organisation through the levy-paying route, *et cetera*, *et cetera*, and the risks associated with the

proposed ancillary powers, which are listed in section 1(k), I believe.

258. My Lords, we fully recognise the importance of the Malvern Hills Conservators and the work they do—the ladies and gentlemen on the hill, and the ladies and gentlemen in the offices. Our concern is simply that the Bill, as currently drafted, risks weakening accountability and representation, and further weakening public confidence, which is already at a rock-bottom low.

259. We, therefore, respectfully ask the committee to consider the outcomes that we have alluded to—either that the Bill is returned to the promoters, or substantial amendment is negotiated to address the issues we and others have concerned, as well as including the very key point that it is a national asset. The landmass is owned by the public. It needs to be retained in its ownership and benefit for the public—both the people of Malvern, the levy payers, and everybody else, and your good selves and all your relatives and families, should you wish to visit.

260. We believe that there are proposals in this Bill that would erode that and, therefore, in association with everything else that you have had from us in writing, we will shut up, for want of a better phrase, my Lord.

261. THE CHAIR: Thank you very much, Mr Berry. Mr Fowler, do you wish to add anything in conclusion?

262. MR FOWLER: Only thank you for your forbearance over what seemed to be a mammoth session. I think we made it through to the end. Thank you very much.

263. THE CHAIR: Ms Lean, in view of the time we have reached, I think it would be sensible to adjourn now and come back at 2 pm.

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

265. THE CHAIR: Mr Fowler, you do have a right of reply. I am not urging you to exercise that once you have listened to Ms Lean, because we have to listen to another petitioner this afternoon, but just bear that in mind.

266. MR BENNETT: Can I just make one point? This has all happened without the three councils, which have 15 out of the 29 trustee nominations, being directly involved in

putting this Bill together. If they had been, a lot of this would be very different. What I would suggest to you is that, if you are unhappy with the way that this Bill is as it is at the moment, I would suggest that those councils, now that they are alerted to what has been going on—because I can assure you they were not—would now come together, have representatives, come to meet the Trust and the rest of the petitioners and all of the board, and make this Bill work. That could be part of the solution. That is why I am here.

267. THE CHAIR: Thank you very much. We will adjourn now and come back at 2 pm.