

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 18 March 2026 (Afternoon)

In Committee Room 2

PRESENT:

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

FOR THE PROMOTER:

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

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(At 12.05 p.m.)

1. THE CHAIR: Good afternoon and welcome to this, the 18th meeting of the Malvern Hills Bill Select Committee. Ms Lean, I think it is up to you to explain to us what you are proposing to do in this session until 1 pm. You have two things really to deal with. It is to deal with the unopposed clauses and there is a question of when you would like to make your closing statement. Can you just explain to us how you would like to proceed?

2. MS LEAN: I am grateful, my Lord. Our intention was to start with the unopposed clauses, so to try to get through to the end of the Bill, and then, if there is time, to move on to some closing remarks later today.

3. THE CHAIR: Yes. You have handed in some proposed amendments, which we will think about obviously, but thank you very much. Later today, I will mention after lunch, we have some amendments of our own to send back to you to look at, but I think we will hold that back until after lunch and I will explain the position. So it is up to you now to proceed, if you would, and deal with the unopposed clauses.

Statement by Ms Lean

4. MS LEAN: My Lord, if I can just start with potentially some housekeeping-type points and to explain that it is going to be a tripartite effort during the course of this morning, because Mr Lewis is the one who has been holding the pen on this Bill and is responsible for an awful lot of its drafting, obviously with advice and input from your counsel and others, so he is probably closer to certain points of detail or if there are points about why changes have come in, and Ms Satchell—I have in mind that we left over the question of why the interim appointments or the casual vacancies provisions have gone in the way they did, and we parked that for Ms Satchell to speak to when we got to this session, so it will be a slight bench affair, if I can put it in those terms.

5. Firstly, in terms of housekeeping, just to clarify, a spiral-bound copy of the Bill hopefully reached the committee yesterday. That is the one that you had in paper form from 27 February. It is just a slightly differently bound copy. To be clear what this one has in it, it has in it both the amendments that were in the filled Bill that was deposited in December and then further amendments, primarily drafting, that have been made in discussions, in particular with your counsel, up to the end of February. There is of course,

separately, another sheet of suggested amendments that we provided, I think a couple of weeks ago, on a separate sheet of paper, which had proposed amendment to Clause 8(6), the point of contact for trustees and parishes provision, to Clause 15(3), the independent members, where the definition came in, and some changes to Schedule 4. Those are not in this spiral-bound copy of the Bill.

6. We have separately provided this morning some further suggested amendments in light of matters that were raised in the past couple of weeks. Firstly, there is a provision to include a new subsection into Clause 14, which is about the qualifications of appointed trustees, to add in a provision about having regard to whether or not an appointed trustee may have a connection to the Malvern Hills or the local area.

7. There is also then a suggested amendment for Clause 15 about the nominations committee, because of the query that was raised about, “How do the independent members get appointed?” There is the proposal there to bring in the same provisions that you have for appointed trustees and independent members: shall be appointed on merit and in accordance with the published appointments policy. That is a grouping, if I can, picking up on a couple of points that came together on the appointed trustees.

8. There is also, separately, a suggested amendment in the Clause 12 disqualifications clause. My Lord, I just wanted to turn to this one if I could, because I am conscious I have an outstanding action on this provision. On Clause 12(3)(e)—so these are, if I could put it in those words, sort of conduct issues that might lead to a trustee being able to be removed. Lord Hope had queried the language, “taking into consideration its status as a charity”. We think that that may have come in before some of the other amendments came into the Bill about more explicitly linking obligations as charity trustees and trustees under the Act. What we would suggest there would be to say, rather than “into consideration its status as a charity”, “into consideration the obligation on trustees under this Act”, which we hope sweeps up the point about objects, but it also captures the broader duties and suchlike that are elsewhere in the Act.

9. THE CHAIR: We have some amendments of our own rather to that effect, so thank you very much.

10. MS LEAN: If I could just clarify, I think there are two outstanding queries on Clause 12. In subclause (1), there was a query about point (d), declaring an office to be vacant if

the trustee is otherwise unable or unwilling to discharge the functions of a trustee. I think I gave an explanation as to how that might reflect back into what was in the charities legislation and possibly the trustee Act 2025, but I am told that the precedent for that language can be found in the Milford Haven Port Authorities Act of 2002 in Section 11, if you want to know where the precedent for that was, and that, similarly, some of the language for subclause (3) can be found in the Newlyn Pier and Harbour Revision (Constitution) Order 2010. These are not things that have just been drafted specifically for this Bill. They have been taken from some harbour revision orders and port orders to deal with where people have to be appointed to the governing boards.

11. My Lord, just to flag as well, one thing that we have provided with you is another outstanding action. Lord Evans asked about the recruitment policy for trustees and if there were examples of that. The Charity Commission has produced a guidance note on recruitment policies. We have provided you with copies of that and I think also a couple of examples of ones that we found from other charitable bodies, what their recruitment policies look like. In headline terms, they look an awful lot like what is in the Charity Commission guidance.

12. I think I also have an outstanding action for Lord Inglewood about, “In an insolvency situation, does it get governed under charity law or local government law?” From the look we have done at it, we cannot see that it obviously falls into the specific insolvency provisions that there are for local authority bodies. In the absence of something that generally applies to statutory bodies—because there are some specific provisions, for example about water companies and special administration regimes—the most obvious place to look to would seem to be any rules and regs there are around insolvency in the charity sphere, though we would anticipate that the Charity Commission might be quite worried quite early on if a charity that was a statutory body with a levy power looked like it was heading in that direction.

13. I think those were the outstanding actions there. Lord Inglewood, I understand that there is also a query about commons registers. I think we have provided some copies of commons registers for CL9 and there is a separate action that we have in hand about the number of people who may enjoy those rights today over MHT land.

14. Finally, I am reminded that, on our outstanding points, on the licensing provision in

Clause 63 there was concern about the policy that is proposed to be there. Ms Satchell had mentioned in her evidence that it was expected that the Trust would consult on any such policy. We have provided the draft form of an undertaking to the committee about consultation on that policy. I hope that is a very quick housekeeping of everything we think we have given you, items that we thought were outstanding and ones that we know are still there but we have it in hand.

15. THE CHAIR: I think you will find that we will come back to that when we are looking at our proposed amendments, covering some of the ground you have been talking about, but we will leave that over for the time being.

16. MS LEAN: Turning to the unopposed clauses of the Bill, we were proposing to run through them in in order. Hopefully we can take several of them very quickly. First one: Clause 1, the short title. We hope that that is self-explanatory and nothing further is required there, that the Act may be cited as the Malvern Hills Act whatever the year is, if and when it receives Royal Assent.

17. Clause 2: commencement. This spells out certain sections that come into force on the day the Act is passed. Section 2 and Section 3, which is interpretation, we hope is self-explanatory. Clause 5, that is the name of the Trust again. That is because nothing further is required. It is its working name today. We will just essentially be giving effect to that rebranding. Clause 8(2): this is so that the Trust can fix the constitution date for when the new body is to come into effect, without having to wait for three months or so to expire. Then there is Clause 10(1), which makes provision for transitional arrangements. I will come on to those in a moment. Clause 15, that is the nominations committee and what that means is that the Trust can get on with appointing a nominations committee from day one. It does not have to wait for three months to pass. Clauses 25(1) to 25(3) are about the returning officer, so you can get things in place, ready to start wheels moving towards elections for the new trustees. Clause 32, notices, is about notices served under the part.

18. My Lord, those are the provisions that would come into effect on Royal Assent. Everything else would come into effect three months after. It does not need any sort of statutory instrument or anything. It would be three months after Royal Assent the rest of the Act would come into effect.

19. My Lord, Clause 3: interpretation. I think that, where there are particular terms that

we have needed to address, we have tried to pick those up as we have gone through our evidence to date. One thing I would like to flag, if I may, is that there is a definition in Clause 3 of the trustees. That is on page 5 of the filled Bill and it is very much at the bottom of the list of definitions. I merely highlight that because, when we have been going through and looking at all of the unopposed clauses and looking at Section 3 again, we have identified that there are places or there are some clauses in the Act where it needs to make more explicit that the powers can be exercised by the current trustees, not only by the new trustees under the new provisions, the obvious ones being the power to hold an election, to appoint a nominations committee or to appoint trustees. None of the new trustees will take office until the constitution date so you need to make sure that they are all lined up ready to go before then.

20. There are a number of clauses that Mr Lewis has identified where there will need to be some suggested changes to wording to make clear that those powers can be exercised in the first period by the current trustees of the Bill. I understand that there is a sheet of amendments that Mr Lewis will wish to discuss with your counsel. We do not have that to give you today, but that is in hand. That is very much a drafting thing to clarify the position.

21. My Lord, Clause 4, I think, is technically down as an unopposed clause, but I think we have touched on it in respect of the provisions that we have dealt with already. This is the one that defines the Malvern Hills and, subclause (1), it is the land that the Trust has today and any land, essentially, that it acquires for certain purposes thereafter. Subclause (2) makes specific provision about ancillary land, that it may be treated as being part of the existing Malvern Hills if the public have a right of access to it. I know that that was a question Baroness Bakewell had raised when we were discussing the land acquisition powers earlier on in proceedings. Just to clarify that, obviously, the Bill as deposited did originally refer to something being shown for illustrative purposes on a deposited map, but I understand those provisions have been taken out, because it was felt that, if it is illustrative, it was better not to refer to it, because it begs the question: if it is illustrative, it is not definitive.

22. THE CHAIR: It is quite a complicated map to look at, actually.

23. MS LEAN: Indeed, my Lord, and, of course, there is an awful lot of land and there

are always issues around boundaries when you have lots of different bits of land that you have acquired at different times. It just does not create an issue that could arise in the future if, for some reason, there is a bit of a dispute about a particular bit of land or boundary and whether it was or was not shown on the deposited plan.

24. My Lord, I think then the next clause that we had left over to come back to was Clause 7, the administration of the Trust, which we need to take also with Schedule 1 and Schedule 2 of the filled Bill. By way of headline overview, Clause 7 is the one that sets out that the trustees have to have rules about certain things, and those rules are the ones that are specified in part 1 and paragraph 14(3) of Schedule 1 to the Bill. The committee will see from looking at Schedule 1—that is just page 72 of the filled Bill—the matters that the Trust will have to have rules about. It is perhaps unsurprising.

25. It includes benefits to trustees, so payment, transfer of income, of property or suchlike. That would include within it any expenses policy for trustees that you have heard referred to. Interests of trustees: so the declaration of interests of trustees or connected persons and the management and how any conflict of interest is going to be dealt with. My Lord, just to be clear, you have, for example, in the documents we have given you, things like the current conflicts policy in the governing documents. This is not something that is all new. It is just saying what there has to be. Meetings of the trustees: how often, how they are to be held, calling meetings, giving notice for the time and place of meetings. There could be different provisions for different types of meetings.

26. Chairing of meetings: there will have to be rules about the election of the chair and the vice-chair, their responsibilities, what happens if there is a vacancy, how you remove a chair or a vice-chair. Then, in paragraph 7, the quorum—I know that that is something that has been touched on—and what happens if you end up in a period where you have less than six trustees. Then, in 8, decisions of the trustees, so requirements for how decision-making is to be carried out, which may include provision for the chair to have a casting vote, how a decision is to be taken to elect a chair or vice chair where there is a tied vote and, where there have to be decisions on urgent business, how that is to be done otherwise than at a meeting.

27. At 9, there is the record keeping. I flag that because I know a particular concern was raised by Mr Myatt about records of the Trust, but there is provision there for rules of

keeping records of proceedings at meetings, committees and advisory panels, rules about the establishment or dissolution of committees. It also, importantly, specifies things that cannot be delegated to committees. I know we mentioned that a few weeks back. That is in subclause (10)(3). The Trust will not be able to delegate setting the levy, approving the Trust budget, appointing trustees or exercising the rule-making powers. Similarly, paragraph 11 says you are going to have to have rules about what can be delegated to employees, but, again, there is the carve-out for things that cannot be delegated that is set out in 11(1).

28. There have to be rules about financial controls and accounting policies and procedures. That is in paragraph 12. Then provision about authentication of documents. In terms of 14(3), which appears in part 3 of Schedule 1, which is about how you hold meetings, there will have to be rules made under Section 7 about meetings that fall within subparagraph 1(b), i.e. where you are dealing with meetings where not everybody is in the same place, how you are going to manage so that people can vote and how people can communicate with each other and suchlike. My Lord, that is broadly where there will have to be the mechanics set out for how the Trust would conduct its business on those important points.

29. THE CHAIR: There was a point taken about meetings held not in person. Do you remember? A quite forceful point was made, I think by the mayor. She was saying that you get so much by having a meeting in person. You can look at people's reactions and so on, which are not recorded electronically, but I think we have understood that you are really keeping abreast with the way things are being conducted now and looking to the future. Although it is opposed, I think it is fairly straightforward the way you have set this out.

30. MS LEAN: Thank you, my Lord. I am grateful. I was just trying to put my hand on it, but I know there is something that says that there are certainly some meetings that have to be held wholly in person.

31. THE CHAIR: Yes, of course. There are a lot of amendments here, but these are tidying up and no issues of principle in these.

32. MS LEAN: It is my understanding they are primarily tidying up, made in discussion with your counsel.

33. THE CHAIR: Yes.

34. MS LEAN: My Lord, that is the rules.

35. LORD EVANS OF GUISBOROUGH: On the schedule, please, this is quite comprehensive, but it occurs to me that there are other things that might belong in the schedule and I would be interested in your advice on them, so consultation policy, for example, recruitment policy—I know that we have just discussed recruitment a bit, but recruitment policy for those appointed members—and your more detailed election policy, so how the elections are actually going to work.

36. MS LEAN: My Lord, if I may, on the recruitment policy, that is specifically provided for under Clause 14. That is a freestanding requirement to have the recruitment policy for appointed trustees, and also now the suggested amendment would be to bring that in for independent members as well. On election policies, by which I take that to mean how it is going to work, that is specifically dealt with under Clause 24 of the Bill.

37. LORD EVANS OF GUISBOROUGH: There is not a lot of detail there.

38. MS LEAN: No. Indeed, my Lord. My understanding is that there have been discussions about, certainly on Schedule 1, how much detail there ought to be in the Bill on the mechanics of rules and regulations. I understand that the advice that came in discussions with, I am going to say, House lawyers, not your counsel specifically, was that it would be more appropriate, or it would be advisable, perhaps, to have the high level, “You have to have rules about these things”, to maintain that flexibility to then put those rules in place, rather than trying to essentially write the first set of rules for the Trust in the Bill. With the rules covering the matters in part 1 of Schedule 1, they have to be approved by the Charity Commission.

39. On the rules about the method and conduct of elections, Clause 24(2) says you have to have rules. Clause 24(3) specifies some of the things that have to be in them, but, again, it is the enabling the Trust to then work out what those rules need to be. As my Lord will appreciate, the way the Bill sets things up is to allow for moving away from the system where they are run for the Trust by the local authorities in accordance with local authority rules, to enable the Trust to move to a model more like, say, the Wimbledon and Putney conservators, which I understand run on more of the electronic postal voting perspective,

and they run it themselves. They have by-laws that set out their electoral rules or policies. It essentially allows the Trust to put together that bespoke set of rules, which is so that the elections will work in a way that works for the Trust, given the nature of the elections it is running.

40. LORD INGLEWOOD: Can I ask a point arising from that? My understanding of it is that we have here a statutory body that is also a charity. It has to operate according to charitable interpretation of the way its objects are delivered. Where charity law stipulates certain requirements for charities, then the way it operates has to do that, but where the rules of operation are determined by the deed or, here, statute, statute trumps the provisions of the Charity Commission if it is guidance, so that, in terms of determining the detail of these kinds of rules, what is in this legislation is what determines what happens. While the Charity Commission's guidance is helpful, it is not necessarily binding. Is that right?

41. MS LEAN: That would be my understanding, my Lord, that, if certainly there is a conflict between the Act and Charity Commission guidance, then the Act has to take precedence.

42. LORD INGLEWOOD: Yes, and we are writing the Act now, between us all.

43. MS LEAN: Yes, my Lord, I suppose. Yes. I think we are rather hoping that we have written it and you will scrutinise it and decide you like what we have written, but yes, my Lord, I do.

44. LORD INGLEWOOD: The point I was wanting to make has been made.

45. MS LEAN: Yes, my Lord.

46. LORD EVANS OF GUISBOROUGH: I did mention the consultation process as well.

47. MS LEAN: Yes, my Lord. In terms of the consultation process, if I come back to that, I dealt with rules under the Clause 7. The Trust can also make regulations, so there are also other things it can make regulations about, which are not the same status as rules. They do not have to go through the formal approval of being looked at by the Charity Commission, for example. There is certainly nothing in the Bill, as I understand it, that

says, “If it is not specified in the schedule, you cannot have something on it”.

48. It would seem sensible that, in the usual way, there will be other policies, health and safety policies, employment policies, things like that, which sit alongside it. In the consultation context, clearly it will depend, in any given case, what—there may not be a general consultation policy. There may be a consultation policy about the Clause 63 licensing, for example, but a different approach may be taken too if there is consultation on another matter. This does not prescribe every single thing that the Trust may ever make or do. It does not stop it adopting sensible guidelines or policies, depending on which language you want to use, for specific things.

49. LORD EVANS OF GUISBOROUGH: It just strikes me that the Bill empowers the Trust to do quite a lot of things that will require consultation. It might be useful to have a process for that, so that we know what to expect. I take your point that different things may need to be consulted on in different ways.

50. MS LEAN: Thank you, my Lord. Just then coming back to the point on Clause 7, I did mention the regulations, and the regulations are about the matters in part 2 of Schedule 1. This is starting at page 75 of the filled Bill. In headline terms, these are, to a large degree—the things that are specifically set out in part 2 are really largely to do with committees. You may have regulations about quorums for committees, voting rights for members of committees who are not trustees, calling meetings and then, for example—this is not committee-specific—for methods of making decisions in cases of urgency where a meeting is impracticable, custody of documents, keeping of records et cetera, things like that.

51. Importantly, there is the safeguard in Clause 7(2). You cannot have anything in a regulation that is inconsistent with something in a rule. It is not the right analogy, but you cannot use something in the equivalent of secondary legislation to override something that is in the equivalent of primary legislation when it comes to the rules and regulations of the Trust.

52. My Lord, I have mentioned the need for the Charity Commission’s approval for rules. That is in subclause (7). The rules also have to be dealt with by a special resolution. That is in subclause (6).

53. THE CHAIR: Why is there a difference between rules and regulations? In the Supreme Court we had rules, which we were able to make without changing, and regulations, where you had to come back for a statutory instrument.

54. MS LEAN: My Lord, my understanding is that “regulation” is not being used in this Bill in the sense of a statutory instrument. It is differentiating it from the matters that are those headline governing mechanics, as it were, and that require sign-off by the Charity Commission, because they are the sorts of things you might have found in the Commissioners Clauses Act, for example quorums, how you elect a chair, things like that. The regulations—different words, I think, may have been looked at for what that was meant to capture, but it is essentially those secondary-type governing documents, which are really more about internal mechanics rather than the headline ones that go to the core of some of the decision-making.

55. THE CHAIR: In my experience it is the wrong way round; the regulations are the things you have to go to somebody else for. But the regulations are within the power of the Trust entirely.

56. MS LEAN: Yes.

57. THE CHAIR: Yes, that is fine. Thank you.

58. MS LEAN: Forgive me, and, yes, I do understand that it does look slightly odd in that sense, if you look at it from that sort of perspective, as my Lord said, the Supreme Court rules. My Lord, I think, hopefully, that is a rough and ready through Clause 7 and Schedule 1, in terms of setting up the procedures of how the Trust is to go about doing its business, if I could put it in those terms.

59. I mentioned also Schedule 2, which starts at page 77 of the filled Bill. This is the schedule that applies essentially those bits of the Local Government Act 1972 that deal with meetings being held in public and access to reports prepared for those meetings or background documents that are referred to in reports prepared for those meetings. This carries across essentially, or builds on, what is in the 1995 Act, which is when those provisions were applied to the Trust for the first time.

60. There are some specific modifications that are made in there. One is the one that I

think was picked up by, forgive me, one of the co-petitioners with Ms Dicks and Ms Holdsworth about the potential to exclude people from the meeting if they were being disruptive. That is a provision that is inserted at page 78. That is just the ability to exclude a member of the public from a meeting if, in the opinion of the chair, the conduct disrupts or is likely to disrupt the normal conduct of the business of the meeting and, similarly, for the public to be excluded if, in the opinion of the Chair, the conduct of the public generally disrupts or is likely to disrupt the normal conduct or business of the meeting. That is not a power to just oust the public, as it were. It is dealing with a very specific situation of if the business is actively being disrupted.

61. The other modifications are the ones that are specified in subclause (c) on page 78, which is essentially about access to meetings, that it does not apply if it is a committee or a subcommittee that is making any decision. Sorry, forgive me. Essentially, it is saying it does not apply if there are meetings of committees or subcommittees where decisions are not being made under delegated function. It says that, if there is a meeting that is going to make a decision under the delegated power, then the public can have access to that meeting, but, if it is just a meeting where there is not going to be any decision-making, essentially a bit like a working group-type meeting, the public does not have to have access to those meetings.

62. THE CHAIR: This presumably has a precedent in the existing legislation, does it?

63. MS LEAN: My Lord, I do not think the existing legislation carves out access to committee or subcommittee meetings per se—I would have to check—I think because probably the committee structure is not expressly provided for in the existing Acts. That is a practice that has grown up among the Trust, whereas obviously this Bill, I think for the first time, expressly references the potential to establish committees, so there is the provision there.

64. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Why would you want to exclude the public from an ordinary meeting? I can understand that you think they might be disruptive, but, if it is just a very routine meeting and they are not making decisions, the public will pretty soon get fed up with attending. To actually exclude them is likely to cause even more aggravation than having them there.

65. MS LEAN: Perhaps if I look to Ms Satchell on that one.

66. MS SATCHELL: The background to it is that, if there is no delegated function, it will come back to the board, so the public will have the opportunity to attend the board meeting where the actual decision is made. There is a very strong feeling among the trustees that the presence of the public does sometimes prevent them from having a full and frank discussion. There have to be some occasions where there can be blue sky thinking without members of the public necessarily thinking that this is going to be carried through. If it is not a decision-making meeting, it was felt that the public did not necessarily need to be there, because they could be there when the actual decision was made.

67. LORD INGLEWOOD: Could I suggest that, in this place, when there are debates, the public listens to them in just the same way that they listen to the discussion when legislation is formulated. Is your interpretation not perhaps a bit restrictive?

68. MS SATCHELL: The intention is really to facilitate the debate in a situation where there is no possibility of a decision being made.

69. LORD INGLEWOOD: The debate on the Floor of the House, is that a perfect example of what you have just described? I am just pressing you.

70. MS SATCHELL: Yes, I understand, but ultimately the decision is made in the board and there, almost inevitably, is further discussion in the board meeting. That is the point at which the public can hear what is being said.

71. LORD INGLEWOOD: I understand your argument.

72. THE CHAIR: What about exclusion of trustees from the meeting?

73. MS SATCHELL: That is a completely different matter, my Lord.

74. THE CHAIR: This is not going into that area at all.

75. MS SATCHELL: No, it is not. That is the conflict of interest policy that I think is under the rules, I think I am right in saying. Ms Lean is much better at remembering what is in what than I am. That would be a matter for the rules, the setting up of a conflict of interest policy. This certainly is not about excluding trustees.

76. THE CHAIR: This is purely public.

77. MS SATCHELL: Yes.

78. MS LEAN: My Lord, if it is helpful, it did strike me that one thing we have done with some of the legislation is to provide you with a copy of the underlying Act marked up with the amendments. If it is helpful, we could certainly provide a copy of the relevant bit of the Local Government Act 1972, showing what the amendments might be, because it may be when it is seen all in context as well. I am conscious that when you look at the Local Government Act, for example Section 100(e), it says that these provisions of 100(a) to (d) apply, but they do not apply in these circumstances. It is perhaps a little bit tricky to try to do it just from picking that out, so if we perhaps just provide that so you have it and you can see exactly how the structure works and what that means.

79. THE CHAIR: I do not think we need that. We have enough to think about.

80. MS LEAN: Okay. Thank you. Fair enough.

81. MS SATCHELL: Sorry, I have just thought of something else. I know that one of the problems that you have been wrestling with is how comfortably this, as a statutory body with levy-raising powers, sits with a Trust being a charity. I would just mention that it would not normally be the case that charity meetings are open to the public. The Trust is a special case, which is why these provisions from the 1972 Act are incorporated. I think that there was previous legislation in the 1960s that meant that the meetings had to be open to the public. It is part of that cross-over.

82. THE CHAIR: Yes.

83. MS LEAN: My Lord, the only thing just to finish up on is to highlight, obviously, in Schedule 1, there are provisions in part 3 about the holdings of meetings. In part 4 you have some definitions, but I do not know that it is necessary to go through any of those. It is just to make sure I have mentioned them as we have gone through the hearings.

84. The next, then, of the unopposed clauses to pick up on is in—I did have a note that it was potentially Clause 9, term of office of trustees, but I am conscious that we did touch on that yesterday with Mr Myatt in particular, which is that every trustee has a four-year term. What is built into that is, in subclause (3), that a trustee who has held office for two consecutive terms may not be appointed or elected as a trustee unless there has been at

least a one-year cooling-off period. I know I touched on it. I do not think I provided the specific clause reference yesterday, so that cooling-off period is in Clause 9(3). Then there are some provisions about how you calculate the consecutive terms and suchlike in that provision.

85. That probably brings us on to Clause 10, which is the transitional arrangements and co-opted trustees. It may just be helpful to jump around a little bit here—and I apologise for that—just to explain briefly how the arrangements would work under the Bill, if it becomes an Act, moving from the Trust today to this newly constituted body. Under Clause 10(1), that provides that the terms of office of all of the existing trustees will come to an end on the day preceding the new constitution date of the Trust, no matter what their term of office was when they were appointed or elected. New constitution date: all the new trustee arrangements take effect. You do not have people holding on for the remainder of, say, two years if they would have had two years to go, and then a disjunct. It is a clean start on day one of the constitution date.

86. How the provisions are set up is that, under Clause 16 of the Bill, at page 16, the first appointed trustees, i.e. the six new appointed trustees, will be appointed by the existing trustees, in accordance with the nominations committee procedure and recruitment policy. The newly identified appointed trustees will start their term of office on the constitution date. Of those first lot of appointed trustees, three of them will serve one year before there has to be a relook at an appointment and three of them will hold office for three years. When those appointments are being made, it will have to be identified which ones are holding for one year and which ones are holding for three years.

87. The appointments of those trustees that are going to take effect on the constitution date must be made by the existing trustees as soon as reasonably practical after the day on which the section comes into force. This would be a section that came into force after three months. The new constitution date has to be not later than nine months after Royal Assent, so you have a six-month window to get all of your appointed trustees and elected trustees in place.

88. Then, in terms of the elected trustees, this is in Clause 19 of the Bill. This says that the elections of the six elected trustees have to happen before the new constitution date of the Trust, and those six new elected trustees will assume office on the constitution date.

The new constitution date is something that will be decided by the existing trustees. Forgive me; I have just not put in my note which provision that is. Forgive me; it is in Clause 8(2) of the Bill. That is the one that says that the new constitution date will be fixed by ordinary resolution of the trustees, which means existing trustees, and it has to be a date within nine months of Royal Assent. That is, in very rough terms, how the Bill sets up getting from the board today to having a newly constituted board of six elected, six appointed on the new constitution date, not more than nine months after Royal Assent.

89. LORD EVANS OF GUISBOROUGH: Clause 19(2) states that, of your six elected members, three will hold office for four years and three will hold office for two years. How do you envisage that actually working, given that you are asking for them all to be elected at once?

90. MS LEAN: My Lord, it is in subclause (2), right at the bottom under (b), that the trustees must specify when making the arrangements for those elections. At a risk of speculating, it seems that what there probably would be is to say, “There are vacancies for three trustees for three years and three for six years”, but that would be part of something that has to be looked at by the trustees under the rules—I will look to Ms Satchell in case I am wrong—as to whether that is specifically asking people to stand for the three and three, or whether it might work out as well maybe, if it is ranked—sorry, forgive me, not ranked, but I think it was discussed that the candidates with the six most votes over all the electoral area would be the ones who occupy the offices. It might be that a rule would be put in place that said, “The three who get the most votes will fill the three four-year slots and the three in the next four, five, six places would serve the two-year bit”.

91. MS SACHELL: That is exactly what was envisaged, that the candidates who got the most votes would serve for the longer period and that the following candidates who were in positions four, five and six would serve for the two-year period.

92. LORD PONSONBY OF SHULBREDE: Is that a standard way of doing it? It is the people with their surnames beginning nearer to A would be the ones who would get more votes. It is quite a big difference, actually, because I was in a three-seat ward and there was a huge difference between what letter your surname—

93. MS SACHELL: I think that that is a very important point. I think that that is

something that we should address in the rules. Perhaps they should be randomly listed on the ballot paper or something, because I do completely take that point.

94. MS LEAN: My Lord, in respect of Lord Evans, it is something that has to be specified, so it is something that will have to be decided upon and identified before the elections happen as to how this is going to work and what the criteria are for ending up in the two-year as opposed to the four-year slot.

95. LORD EVANS OF GUISBOROUGH: It will need to be made very clear to the people who are voting, because it is quite an unusual concept compared to the votes they will normally be taking part in.

96. MS LEAN: My Lord, I think I can certainly say that it seems that there are an awful lot of things that will have to happen in order for the Trust to take effect on the new constitution date and changes, so I imagine there would have to be quite a lot of communication about what exactly was happening.

97. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: The voters will be used to voting under a system in the Representation of the People Act, and that is what they will be used to. If we are going to do something different, as has been said, you will need to make it very clear.

98. MS LEAN: Indeed. I am sure, My Lady, that, as Ms Satchell said, the Trust will think very carefully about these points that have been raised about things that may need to be addressed and dealt with as it moves towards that unusual first set of elections. Obviously after that it goes into the usual four-year cycles, apart from potentially where you get to the quasi-by-election situations. I hope that gives a little bit of a run-through on the transitional provisions and how we get to the new constitution date.

99. What Clause 10 also provides for, going back to Clause 10 on page 10 of the filled Bill, is that, if you end up with a situation of fewer than three of the existing trustees becoming an appointed or an elected trustee under the provision going through, the existing trustees can co-opt no more than two trustees to serve in addition to the new trustees for a period of six months beginning on the new constitution date. I am sure that Ms Satchell will tell me if I am wrong. I think that that is probably an institutional memory-type point to carry across.

100. You may have an entirely new board or a very much new board. This allows a provision for a couple of people staying on in a quasi-handover role to get past that initial stage, as there are things that are going to have to be done, like making electoral rules and potentially putting in place or starting work on things like the rules for how the Trust is to operate and policies for things. That work may well have started before the new constitution date. Rather than expecting the trustees to start everything afresh on day one, it carries forward that idea of a bit of continuity of any work that may have been going on beforehand.

101. My Lord, I think probably those provisions have illustrated why we have identified that there may need to be a bit more clarity in some of those provisions about existing trustees being able to do things and not the trustees, because “trustees”, as is defined in Clause 3, is trustees who are appointed or elected in accordance with Clause 16 or Clause 14, but obviously a lot of these things are going to have to be done by existing trustees. People who are to be elected cannot themselves then elect themselves, if I can put it in those terms.

102. The next clause I had in my note, my Lord, is Clause 12.

103. THE CHAIR: Clause 11.

104. MS LEAN: Clause 11. Forgive me, yes.

105. THE CHAIR: It is not opposed.

106. MS LEAN: No, it is not opposed. Forgive me, my Lord. This is a declaration to be made by trustees. This is a new provision in terms of the Malvern Hills Acts. There is a provision about this sort of thing in the Commissioners Clauses Act of 1847, although it was not one of the provisions that got applied into the Malvern Hills Act 1884. This does essentially reflect the practice and requirements that you find in the parish council, for example, context or also other similar statutory bodies, like harbour authorities, this requirement that, before assuming office or in order to validly assume office, you have to have made a declaration as to certain matters. Hopefully that looks relatively uncontroversial: a declaration that the trustees will use reasonable care and skill to exercise the trustees’ functions solely and exclusively to advance the objects, by complying with the code of conduct for trustees and by complying with requirements as

to disclosure of financial and other interests.

107. Clause 12. I had a note down about some outstanding points. I think, my Lord, though, I have picked those up when we traversed the housekeeping matters earlier this morning.

108. Clause 13, disciplinary procedures, was not one that I think we touched on and I think is also on the list of unopposed. This really does sit with Clause 12. We did talk about Clause 12 with, I think, Councillor Owenson of Malvern Town Council, which is the resignation and disqualification of trustees, including, for example, if there has been the acting in a manner that has seriously impeded or prejudiced the Trust. Clause 13 essentially says that, if you are in that territory, if you are in the 12(3) territory of not complying with the code of conduct, impeding or prejudicing the Trust, acting in a way that brings the Trust into disrepute, the sanctions are not only to or do not go straight to removal or resignation. There is the provision there for the trustees to impose other requirements or sanctions, such as a requirement to undergo training or a formal reprimand.

109. Again, I am conscious that Clause 12 was a cause of some concern that people could be ousted from the Trust. I think my submission was that you would envisage that being in quite an extreme situation, not where somebody just disagrees with the decision somebody made in a Trust meeting. In my submission, that is reinforced by Clause 13, which does tend to show that it is not just, "If you have done one of these things, we move to disqualification or resignation". You would expect the Trust board to have to consider, in the first instance, "Is this really that territory or really is this something we should be looking at, in the first instance, through some other means of sanction?"

110. LORD EVANS OF GUISBOROUGH: You have removed the power to suspend.

111. MS LEAN: Yes. I understand that there was a request from the Charity Commission to take that out and also the Attorney-General, I am told.

112. I think, then, the ones that I then have down as unopposed next are the group in 16 and 17, which are appointment and terms of office of first appointed trustees, and casual vacancies in the office of appointed trustees, and then 19, 21 and 22, which are the first election of elected trustees, and casual vacancies in the office of elected trustees. I think

I have dealt with, I hope, terms of office for the first appointed and the first elected.

113. Casual vacancies, I am conscious I gave a high-level run-through of how that worked last week, but left open, when you get to the elected trustees, why what seems like quite a complicated process of, if there is one vacancy in this period of time, then you do this; if there are two, then you go to election. Perhaps I can look to Ms Satchell to explain why the Trust has ended up with the provisions that are in the Bill, as opposed to something that might be a bit simpler.

114. MS SATCHELL: My Lords, my Lady, it is a convoluted process. When we ran the consultation in 2019, the suggestion was that, when there was a casual vacancy in—I am assuming that casual vacancy in the office of an appointed trustee is not really an issue, but, when there was a casual vacancy in the office of an elected trustee, you appointed someone to stand in their place until the next election, so, with a reasonable fair wind, it would not be more than two years. That raised a considerable amount of comment in the consultation, and so we adapted the process.

115. Councillor Owenson said words to the effect—and I apologise if I do not represent exactly what he said, but he said, “We just hold another election”. With the greatest respect, the cost of holding an election for Malvern Hills District Council is a very small sum in its budget. The cost of holding an election in the Trust’s budget is very significant. The reason behind suggesting not immediately having another election was in order to try to save costs. That is how we came to that halfway house, where, if it was just one elected trustee, there could be an appointment on a temporary basis until the next elections were held. If there was more than one, then, yes, it seemed reasonable to then carry the cost of running an election process. I think that that is really the simple explanation as to why.

116. LORD EVANS OF GUISBOROUGH: If you have two vacancies, you will effectively have a by-election to fill them.

117. MS SATCHELL: Yes, my Lord. In the same way as there is for the parish council, there is a carve-out for a vacancy occurring within proximity to the next elections in any event. I did just check back in my inquiries. It is going to take at least 13 weeks to go through the election process and, if the appointment is then only going to be for three months, it is not money well spent. That is why there is that carve-out of a period—I think it is—of nine months. If there is a vacancy within nine months of the next election, you

just hold it over.

118. It does to some extent reflect, not entirely, the parish council position, where a parish council, if it has a vacancy and nobody has specifically called for an election, can co-opt for a period. We did not really want to go down the co-option route as such, but it is not completely unprecedented to say that the body can fill the vacancy until the next election comes along.

119. LORD EVANS OF GUISBOROUGH: What happens if you have one vacancy and then another vacancy?

120. MS SATCHELL: The extremely convoluted provisions do provide for that, in that you then have to call an election. If you have an elected trustee who has been replaced by an appointed trustee, and then you get a second elected trustee stand down for some reason, then that triggers an election.

121. LORD PONSONBY OF SHULBREDE: What are the sums, roughly? Is it about the same cost to run two by-elections as one by-election, and roughly what are those costs?

122. MS SATCHELL: Because the proposal is that it will be the entire electoral area, there is a very marginal difference in whether you are appointing one trustee or three. It is running the process that generates the cost. I have to be completely honest and say I have not updated the cost figures from when we initially looked into this. I did write last night to all of the bodies that conduct electoral services for various bodies, asking them if they would refresh their figures for me. One has certainly come back to me this morning and said he is going to do it.

123. LORD PONSONBY OF SHULBREDE: What are we talking about—£1,000, £10,000?

124. MS SATCHELL: No, we are talking something in the region of maybe £30,000, or possibly more now, to be honest. I am really sorry. I should have got this up to date beforehand, but the figures that I was given by one organisation was £13,000 to run the process, and then, at that stage, 60p per vote returned on a postal basis. The postal charges have gone up a massive amount since then, so I would imagine it is going to be significantly more than 60p per return.

125. THE CHAIR: Would that be a convenient point to break?

126. MS LEAN: Yes, my Lord. I think it probably would be.

127. THE CHAIR: I look forward to seeing—

128. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I was going to say would it not be simpler to just co-opt the first person with the highest votes who did not get elected and just missed out?

129. MS SATCHELL: My Lady, somebody did suggest that, but I think it is a really difficult one to follow. If the election was over a year ago, that person may not want to stand.

130. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You would not give them the chance to say whether they wanted to or not.

131. MS SATCHELL: I think that that possibly raises quite a lot of complications if that is what we were to do. I have not really thought that through as a process, but I think it would be very difficult for that to be your default position. It would be fine if the election had only taken place two months ago. You could expect that their circumstances would not have materially changed.

132. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You obviously do not know much about local elections, because candidates will stand, fail, four years later stand, fail, stand and then get elected. If people are keen to get elected, then they really do stick with it.

133. MS SATCHELL: Perhaps not everybody, my Lady. I do take your point that people do stand again, and they will be able to stand again within two years if they fail to get in on a Trust election. I am not sure whether then introducing the notion of co-opting them when they have failed is necessarily the way to go, but I take your point.

134. THE CHAIR: Shall we break now? We will sit again at 2.05 pm.