

House of Lords and House of Commons
EXAMINATION OF PETITIONS FOR PRIVATE BILLS

HOLOCAUST MEMORIAL BILL

Monday 17 April 2023

Before:

The Examiners of Petitions for Private Bills:

MS CHRISTINE SALMON PERCIVAL, Clerk of Private Bills, House of Lords
MR TOM HEALEY, Clerk of Bills, House of Commons
MR JUSTIN LESLIE, Counsel for Domestic Legislation, House of Commons
MR CHÉ DIAMOND, Assistant Counsel to the Chairman of Committees, House of Lords

There appeared:

MR ROBBIE OWEN, of Pinsent Masons LLP, appeared on behalf of the Bill's promoter.

MR ALASTAIR LEWIS, of Sharpe Pritchard LLP, appeared on behalf of the London Historic Parks and Gardens Trust, the Thorney Island Society and Residents of Westminster.

MR RICHARD BUXTON appeared on behalf of the Buxton Family and the Thomas Fowell Buxton Society.

MR MUSTAFA LATIF-ARAMESH, of BDB Pitmans LLP, appeared on behalf of Westminster City Council.

BARONESS DEECH & DR MARTIN STERN appeared on behalf of Baroness Deech and Holocaust Survivors.

(11.00 am)

1. **MR TOM HEALEY:** Good morning, everybody. Thank you all very much for coming. I will start by observing that, as ever in the Palace of Westminster, the regulation of the temperature varies quite significantly from area to area, so if you are too warm, please feel free to remove your jackets. It is really quite hot in here compared with the next-door room.

2. We are meeting today to conduct an Examination of the Holocaust Memorial Bill. My name is Tom Healey. I am the Clerk of Bills in the House of Commons. Beside me are Christine Salmon Percival, deputy head of the legislation office in the House of Lords; Justin Leslie, counsel for domestic legislation in the Office of Speaker's Counsel in the House of Commons; and Ché Diamond, assistant counsel to the Chairman of Committees in the House of Lords. We are the Examiners of Petitions for Private Bills.

3. Our role as Examiners today is twofold. First, it is to decide whether, in the case of the Bill that has been referred to us, it should be considered hybrid. We will come on to the question of what makes a Bill hybrid during the course of today's proceedings. If the Bill is considered hybrid, certain private business Standing Orders may apply in relation to it. In that case, our second duty will be to ascertain whether any Standing Orders that are applicable have been complied with.

4. Most of the Bills that we consider as Examiners are private Bills, in which case the answer to the former question of whether the Bill is private or hybrid and whether private business Standing Orders apply is self-evident. The primary function of those Examinations is, therefore, to establish whether the relevant Standing Orders have been complied with.

5. In cases where a government Bill has been referred to us, the first question we have to decide is whether it is hybrid. Usually, when a government Bill is referred to the Examiners, the issue of hybridity is uncontested. Think of the HS2 legislation, for example, which the Government expected and intended all along to be treated as hybrid. It is more unusual for the question of hybridity to be contested, which is the situation that is before us today.

6. The Holocaust Memorial Bill was presented in the House of Commons on 23 February this year. It has two purposes. The first is to provide legislative authority for government expenditure on the construction and operation of a Holocaust memorial and learning centre, and the second is to provide that the relevant sections of the London County Council (Improvements) Act 1900, which are Sections 8(1) and 8(8), requiring Victoria Tower Gardens to be maintained as a garden open to the public, do not prevent the construction and use of a Holocaust memorial and learning centre in relation to the land described in that section.

7. I will not go into the history of the proposals relating to the purposes of this Bill here. They are well known to those involved, and further information is readily available online for anybody who is not familiar with the issues. When it was introduced, the Bill was found to be *prima facie* hybrid by the Clerk of Legislation in the House of Commons and was, therefore, referred to us.

8. I should say that we do not expect to complete our consideration of both parts of the Examination today, if both parts are needed. It is our current expectation that we will

consider the first of these issues today—whether the Bill is hybrid—and we will then, if necessary, adjourn and appoint another time for the continuation and completion of the Examination.

9. The Government have made a written statement in advance of today's hearing, which is available online on the Bill page on the Parliament website. We have also received six memorials. These are submissions by other parties alleging that the Bill is hybrid, that the Standing Orders are applicable to the Bill, and that they have not been complied with. These have also been made available on the Parliament website. It is not very common for memorials to be submitted and heard against a Bill in this way. We are aware of only a handful of cases in the post-war period.

10. I will now very briefly outline the process that this Examination will follow. First, the Government, represented today by Robbie Owen, a parliamentary agent at Pinsent Masons, will present their case as to why, in their opinion, the Bill should not be considered hybrid and why the private business Standing Orders are, therefore, not applicable.

11. We will then hear from the Memorialists, who will make their case as to why the Bill should be considered hybrid. The parties that will appear before us today are the London Historic Parks and Gardens Trust, represented by Alastair Lewis of Sharpe Pritchard; the Thorney Island Society, also represented by Mr Lewis; Baroness Deech DBE and a number of Holocaust survivors and descendants of Holocaust survivors, some of whom are in attendance today; the Buxton family and the Thomas Fowell Buxton Society, represented by Richard Buxton; and Westminster City Council, represented by Mustafa Latif-Aramesh of BDB Pitmans. It is important that everybody I have just referred to is seated with a microphone in front of them, which I think you all are. If you are not and you are expecting to speak, please do find a seat with a microphone, which we use both for broadcast and transcription purposes.

12. We will first hear from a panel consisting of the first four of these Memorialists. We have invited you to appear together because you have made similar arguments in your submissions. We will then hear from Westminster City Council. After all the Memorialists have been heard, Mr Owen will be given an opportunity to respond on behalf of the Government. We will be asking questions of both the Memorialists and the Government throughout today's proceedings.

13. We propose to sit to around 4.30 pm at the latest today, with a break of about an hour at 1 pm. If we are not able to conclude the first part of the Examination on the question of hybridity by 4.30 pm, we will adjourn and seek another time to resume. Once the first part of the Examination has been concluded, we will adjourn to consider our decision in private. As I said, we will not be making or announcing any decisions today. If we find that the Bill is hybrid, we will meet again on a date to be decided to hear further arguments about compliance. If we find that it is not hybrid, it will be proceeded with as a public Bill and it can go straight to its Second Reading in the House of Commons.

14. As I have said, this is quite an unusual proceeding. Many of you will have been engaged with the proposal for the Holocaust memorial in Victoria Tower Gardens for several years. It is worth emphasising that it is not the purpose of today's proceedings to consider the merits of the Bill, of the memorial itself or of the proposed location, nor is it our purpose to repeat or reopen previous proceedings that have taken place in other forums. Our concern

today is strictly and narrowly with the technical procedural question of hybridity, and the questions that we are seeking to answer may, therefore, be different from those that have arisen in other contexts. The decisions that we will make will be based purely on the strength of argument and the application of the relevant parliamentary rules and precedent.

15. Having said all that, could I now invite Mr Owen on behalf of the Secretary of State to make the case for the Bill?

16. **MR ROBBIE OWEN:** Good morning. I am Robbie Owen, a solicitor and parliamentary agent at the law firm Pinsent Masons, and I will be addressing the Examiners today on behalf of the Secretary of State. In this opening statement of submissions, I expect to be speaking for around 45 minutes to one hour, which is, I think, in line with your expectations.

17. You have had the Secretary of State's submission and appendices, and I do not propose to go through those word for word, you will be, no doubt, delighted to hear. Instead, I intend to summarise the key elements of the Secretary of State's submission and to respond to the cases made in each of the five memorials that are before the Examiners. On that basis, I would like to please ask for the Secretary of State's submission to be put formally on the record. There was, of course, a sixth and late memorial submitted on Friday afternoon. I am not going to address that specifically, but we consider that, in any event, the issues it raises are covered by the other memorials and, therefore, what I will be saying about them.

18. Just to emphasise at the outset what you touched on in terms of the scope of this hearing, it is important to understand what is before the Examiners and what is not. You have explained that you are here today to ascertain, first, whether the private business Standing Orders of both Houses are applicable to the Bill—in other words, whether the Bill is hybrid—and, if so, which of them apply and whether they have been complied with.

19. By definition, that means that the Examination of the Bill is not concerned with the merits of the proposed Holocaust memorial and learning centre—and, for brevity, I will refer to this throughout as the Holocaust memorial for the remainder of today—or, indeed, whether Victoria Tower Gardens is the correct site for the memorial. These are issues for the entirely distinct planning process, which the Bill would in no way alter or circumvent, as our written submissions make clear.

20. I will turn now to briefly summarise the content and effect of the Bill. It consists of three clauses. I understand that it is accepted that Clauses 1 and 3 do not present any questions, arguable or otherwise, of hybridity. As a preliminary point, I wanted to deal with an issue raised by some of the Memorialists that Clause 1 of the Bill is “to provide a hook on which to hang an argument that the Bill is a matter of public policy”. See, for example, paragraph 30 of the memorial from the London Parks and Gardens Trust. This is not the case. Clause 1 is, in fact, a necessary provision to allow the Secretary of State to incur continuing expenditure associated with the Holocaust memorial. This is in accordance with HM Treasury guidance called *Managing Public Money*—the most recent version is available online and dated March 2022—whereby expenditure that meets certain criteria, which applies to that incurred in relation to the Holocaust memorial, must be legislated for. To quote from paragraph 2.6.1 of that guidance, “Most significant new policies which are intended to persist require specific primary legislation”.

21. Indeed, paragraph 6 of the Explanatory Notes accompanying the Bill reads as follows: “Some expenditure has been incurred to date in connection with the development of the proposed memorial and learning centre, including on the preparation of an application for planning consent. The Secretary of State has relied on common law powers. More significant expenditure will need to be incurred in order to construct, maintain and operate the memorial and learning centre, and as set out in chapter 2 of HM Treasury’s document *Managing Public Money*, Ministers must normally seek parliamentary authority for specific legislation to authorise expenditure on significant new commitments likely to persist”. I hope that that clarifies matters for all.

22. Moving on, the focus of this Examination, which all would more or less appear to agree with, must be Clause 2 of the Bill, which provides that Sections 8(1) and 8(8) of the London County Council (Improvements) Act 1900 do not “prevent, restrict or otherwise affect the carrying out of any of the activities described in paragraphs (a) to (c) of Section 1(1) on or in relation to the land described in Section 8(1) of that Act”. These activities are, in summary, the construction, use, operation and maintenance of a memorial learning centre commemorating victims of the Holocaust.

23. The clause does not permit the carrying out of any works or any other form of development to deliver the Holocaust memorial, but simply deals, in effect by disapplication, with the existing local legislation in force affecting Victoria Tower Gardens.

24. I will not go into detail on what Sections 8(1) and 8(8) provide for, as this is set out in our written submission, but a quote from the High Court in its judgment last year quashing the planning permission for the Holocaust memorial sums things up well at paragraph 76: “Sections 8(1) and 8(8) are both to the same effect. They require the land to be laid out and thereafter kept as public gardens”. The practical effect of Clause 2, then, is to ensure that, should the Holocaust memorial proposals obtain planning permission and all other consents and permissions required, the provisions of Sections 8(1) and 8(8) of the 1900 Act would not prevent it being delivered at Victoria Tower Gardens.

25. As set out in our written submission, the Secretary of State’s case for the Bill not being hybrid rests on three main interlinked points. First, the Bill does not affect the private interests of any person. Secondly, in any event, the Bill does not single out a person or body from a defined class for special or differential treatment. Thirdly, the Bill is implementing public policy.

26. I will first make some comments on the general tests for hybridity, and then I will take each of these points in turn, responding to the memorials in front of the Examiners at appropriate points as I do so. Ultimately and unsurprisingly, the Secretary of State’s case is that the Memorialists have failed to demonstrate that the Bill is hybrid.

27. First, just dwelling on the tests for hybridity, there is some common ground between the Secretary of State and the Memorialists on the overarching principles that apply to a Bill being hybrid, albeit that Westminster City Council has put forward an alternative view, which I will address shortly.

28. I refer to Mr Speaker Hylton-Foster’s seminal and well-known definition given in December 1962 in a debate on the Bill for the Local Government Act 1963. That definition

was that a hybrid Bill is “a public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class”. The key factor, then, as to whether a Bill is hybrid is whether (a) a Bill impacts on—ie affects—a private interest, and (b) whether a particular person or body of persons is impacted differently from other persons or bodies in the same class. It would depart from the very well-established principles to say, as some of the Memorialists do, that it is sufficient for there simply to be a private interest affected by a Bill for it to be hybrid. That is plainly wrong, we say, and would fly in the face of the whole purpose of a Bill being hybrid.

29. The Secretary of State acknowledges that a private interest has been held to include a local interest in particular circumstances, which I shall come on to. When I refer in these submissions to private interests, that expression should be heard as including local interests.

30. As a further point, Westminster City Council, in its memorial, introduces what it has defined as the Abraham formulation of what a hybrid Bill is—namely, a Bill “which contains provisions affecting private rights in such a manner that, if similar provisions had been contained in a private Bill, preliminary notices would, under the Standing Orders relating to Private bills, have had to be given to parties whose rights are affected”.

31. Dealing with this point on a preliminary basis, it appears to the Secretary of State that this formulation does not aid in today’s key question as to whether the Bill is hybrid. As will be established, the Secretary of State submits that there are no private rights—that is to say, private interests, although, arguably, a private right is of a more limited extent than a private interest—affected by the Bill that would require the service of preliminary notices specifically for their benefit. In any event, the formulation also ignores the key concept, which I will come on to, of differential treatment.

32. I will now turn to each of those three key points: first, that the Bill does not affect the private interests of any person; secondly, that in any event it does not single out a person or body from a defined class for special or differential treatment; thirdly, that the Bill is implementing public policy.

33. First, no private or local interest is affected. The Secretary of State respectfully submits that no private or, indeed, local interests would be affected by the Bill. As I have explained, the rights protected by Sections 8(1) and 8(8) of the 1900 Act are for members of the public to use Victoria Tower Gardens. This has been confirmed by the High Court in its judgment last year. Contrary to what is submitted in a number of memorials, on no reasonable interpretation can these be described as private rights. Furthermore, on no reasonable interpretation can Sections 8(1) and 8(8) be constructed so as to confer on certain members of the public a different nature of interest or right that would be impacted by the Bill compared to the wider general public. This is simply not how the 1900 Act is framed.

34. I will now seek to comment on the submissions made by each of the Memorialists on this point, but in no particular order. It is noted that there is a degree of overlap between the Memorialists on this issue, so, rather than taking this memorial by memorial, I will try to cover the various categories of private interest alleged by the Memorialists.

35. First are the amenity societies. The Thorney Island Society, the London Historic Parks and Gardens Trust and the Thomas Fowell Buxton Society assert that they have “private

interests that are affected by the Bill”. In support of this, they cite the fact that these groups would be “entitled” to petition against this Bill, if it were to proceed as a hybrid Bill, on the basis that it falls within the class of society, association or other body representing amenity or recreational—among other—interests mentioned in House of Commons Standing Order 95(2) and House of Lords Standing Order 117(2).

36. That is all very well, but we are here today to consider strictly whether private business Standing Orders 4 to 68 apply to the Bill. As such, we submit that this is the incorrect approach to the question of whether the Bill is hybrid and whether a private interest exists to be affected by it. The question of whether these groups are entitled to petition against the Bill is only relevant if the Bill is deemed to be hybrid.

37. It is worth pausing here for a moment to consider briefly the Festival of Britain (Supplementary Provisions) Act, which is prayed in aid by a number of Memorialists as being a helpful precedent in terms of the subject matter of the Bill we are discussing today. The Secretary of State submits that the Festival of Britain Bill is clearly distinguishable for a number of reasons, not least that (a) it authorised the construction of works; (b) it authorised the body to take possession of land; (c) it provided a regime by which persons affected in nuisance could claim compensation; and (d) it conferred new functions on London County Council and the Port of London Authority. The Secretary of State acknowledges that, if the Holocaust Memorial Bill sought to make provision for similar matters, it could indicate that it was hybrid in nature. However, it does not.

38. Turning to local residents, a number of Memorialists assert that local residents have private interests affected by the Bill, in effect because they live close to Victoria Tower Gardens. I will deal with this point briefly, in so far as to say that the Secretary of State maintains that the 1900 Act does not confer special rights to use Victoria Tower Gardens on local residents. They are open to all. I would just add that, if local residents had private interests affected, it would be nigh on impossible to define how local a resident would need to be to benefit from such rights, as this plainly was not in contemplation when the 1900 Act passed into law.

39. We note in footnote 7 of Westminster City Council’s memorial that it is asserted that a statutory trust in favour of the public is in place at Victoria Tower Gardens. We do not think that today is the forum to discuss that point, but it does not appear to the Secretary of State that this would aid the Memorialists’ case, given that such a trust would, again, be in favour of the public at large.

40. I will come back to local residents shortly as part of my remarks on whether private interests are affected differently from others in the same class, but I will turn now to the Buxton family. It is submitted by the Buxton family that they have a private interest in the Bill arising from, in summary, the existence of the Buxton memorial in Victoria Tower Gardens and the fact that they and the Thomas Fowell Buxton Society use the gardens for annual gatherings associated with that memorial.

41. I would submit in response to this that, although the Buxton family clearly have an interest in that memorial, that could not be said to extend to a private interest affected by the Bill, particularly by reference to the effect of the 1900 Act, which does not specifically

relate to the Buxton memorial, given that it was only located to the gardens from Parliament Square several decades later.

42. Baroness Deech and other survivors of the Holocaust assert that victims and survivors of the Holocaust, and their descendants, have a special interest affected by the Bill, as it is their experiences specifically that will be encapsulated for future generations as part of the Holocaust memorial. With all due respect to Baroness Deech and others, although the Secretary of State, of course, recognises the unique experiences and insight that they can offer, these would not extend to qualifying as private interests affected by the Bill, again given the scope of the 1900 Act in respect of Victoria Tower Gardens and what the Bill would do to that, which, ultimately, is what we are considering today.

43. So far as Westminster City Council and the Greater London Authority are concerned, all the Memorialists make the case that Westminster City Council has a private interest affected by the Bill, ultimately because of the common ground that such an interest can, in principle, include a local interest of a local authority in relation to the administration of its area.

44. The submissions made focus on Westminster's functions as local planning authority and local highway authority, and its general functions in relation to the health and well-being of its residents and the provision of recreation and amenity space. It is the Secretary of State's submission that the Bill does not affect the administration of Westminster's area in any way. It makes no provision at all in relation to or affecting any of Westminster's existing statutory functions, nor would it impact the way in which those functions could be exercised within its area at any stage in the future.

45. Of key importance here is that Westminster City Council does not own Victoria Tower Gardens, nor is it in any way responsible for their ongoing running and maintenance. Instead, Victoria Tower Gardens are owned by the Secretary of State and administered on their behalf by the Royal Parks. Westminster, therefore, has no direct influence over Victoria Tower Gardens, and this situation is not altered by the Bill. The Council does, of course, have some oversight of what happens at the gardens through, for example, its planning functions, but the Bill in no way affects the status quo.

46. In its memorial, the city council argues in part that it has a relevant interest affected by the Bill because of its role in protecting the Palace of Westminster UNESCO world heritage site, but the Secretary of State respectfully submits that this sort of point starts to diverge into the planning merits of the Holocaust memorial, which the Bill in no way relates to.

47. It is further noted by the Secretary of State that all the Memorialists make similar points about Westminster having an affected private interest as a result of the events leading up to and ultimately resulting in the 1900 Act. Some of the Memorialists hang this argument on the fact that Westminster and London County Council contributed financially to the laying out of the part of Victoria Tower Gardens that is regulated by the 1900 Act, as well as the fact that London County Council promoted the Bill, which became the 1900 Act.

48. Westminster's memorial takes this point further, submitting that, in effect, Section 8 consists of an agreement between Westminster as one successor to London County

Council and the Secretary of State as successor to the Commissioners of Works, and the Bill would seek to vitiate that agreement.

49. The Secretary of State submits that, although the events leading up to the 1900 Act cannot be disputed, Section 8 does not constitute an agreement between the parties, and that is not how the provision is drafted. Instead, the functions conferred on the now Secretary of State constitute statutory functions which the Secretary of State is legally obliged to discharge, unless and until those functions are amended or appealed. Westminster has no enforcement function.

50. Further, the Secretary of State is not aware of any other arrangements that exist in relation to Victoria Tower Gardens that would indicate that the events that resulted in the 1900 Act were intended to constitute an ongoing deal between the parties under which Westminster would have some recourse—for example, any covenants imposed on the land. It is the Secretary of State's submission that, if this were the intention, such arrangements would have been put in place on the face of the 1900 Act. Westminster appears to be seeking to rely on events that took place over 100 years ago and which were not written into the 1900 Act to assert a private interest that the Secretary of State submits is misplaced.

51. Turning to the Greater London Authority, which is similarly presented by some of the Memorialists as having a relevant interest affected by the Bill, the Secretary of State's position is that the submissions I have made in relation to Westminster equally apply to the Greater London Authority.

52. Finally in relation to this first point of private interest, I would like to address the position of the Secretary of State for Culture, Media and Sport as successor to the Commissioners of Works. This is because, in its memorial, Westminster City Council submits that the Secretary of State for Culture, Media and Sport has a private interest in the Bill as successor to the Commissioners of Works, given that the latter have specific protections or functions conferred on them in the 1900 Act.

53. As I hope all parties will be aware, the Secretary of State has acknowledged this point in his own submissions and submits that the Secretary of State's interests affected by the Bill would not make it hybrid. This is because, first, at law, there is only one Secretary of State, so it would be perverse, we say, for the promoter of the Bill also to be specially affected by it, thereby making it hybrid. Secondly, there is a precedent in the form of the Electricity (Miscellaneous Provisions) Bill, albeit concerned with a different subject matter, for a Bill not being hybrid, where a publicly owned entity is not being adversely affected, which is arguably analogous in this situation.

54. The Secretary of State notes that Westminster appears not to have engaged with the first of these points, but, on the second, Westminster submits that the precedent cited by the Secretary of State relates to a national Bill, which does not identify specific people who are treated differently and, in the alternative, the test of whether an effect is adverse turns in this case on whether, objectively determined, the ability for the Secretary of State to discharge their functions effectively is diminished, regardless of the Secretary of State's support for the Bill.

55. In response to those points, we submit as follows. First, although the Electricity (Miscellaneous Provisions) Bill was, indeed, a national Bill, it was clearly possible to identify the affected publicly owned party, namely British Nuclear Fuels Limited, which was named in the debate. In the alternative, it is difficult to see how a strict reduction in the Secretary of State's scope of functions under the 1900 Act would result in an adverse effect on their ability to discharge those functions.

56. I turn now to address the second key point, which is that, in any event, the Bill does not single out a person or body from a defined class for special or differential treatment. As I have set out, it is the Secretary of State's position that the Bill does not, in the first place, affect any private interests at all. However, without prejudice to that position, I would like to turn to our submissions on how, if there are such affected interests, those interests are not singled out or treated differently from other interests in the same class. I will focus entirely on the status of the general public in this respect.

57. Taking as a starting point the well-established definition of hybridity as expressed by Mr Speaker Hylton-Foster, to which I referred earlier, being able to establish a person or body specially affected is fundamental to any case for such a Bill being hybrid. This concept of differential treatment is central to the concept of hybridity, its purpose being to provide that any individual who is singled out by a public Bill for adverse treatment should be allowed to plead their cause to a Select Committee on a petition against the Bill or against those provisions of the Bill that will affect them.

58. We, in our written submissions, annexed in annexe 9 an extract in relation to the Aircraft and Shipbuilding Industries Bill in the 1970s, where the Examiners referred to the doctrine of hybridity having been "designed to give the minority some defence against the legislature; and that in modern times means defence against the Crown". If there are no persons specially affected, there is no need for this process. Indeed, it is the Secretary of State's understanding that none of the Memorialists disputes that this is the purpose of the established process for hybrid Bills.

59. Before I turn to each of the persons submitted by the Memorialists as having private interests affected by the Bill, I just would like to reiterate once again that Sections 8(1) and 8(8) of the 1900 Act are broad and general in nature and do not confer, either in the provisions or impliedly, any special right or privileges on any person or class of persons beyond the public at large, aside from, arguably, the Secretary of State, which I have already dealt with. This interpretation has been endorsed by the High Court.

60. Should the Bill pass into law, it would only impact the provision securing maintenance of Victoria Tower Gardens as a public garden and, therefore, access to that garden by the general public. If we take the general public as the relevant class for the purposes of applying the hybridity tests, no person's private rights or local interests, including any special interest groups and local residents, would be specially affected. We say that it is a misreading of the 1900 Act and the effect the Bill has on it to conclude otherwise.

61. I do not intend to deal again with each category of persons alleged by the Memorialists to have private interests affected by the Bill, but I would just like to make the following points in relation to the general public. First, Westminster submits that the Secretary of State's case in respect of the general public is misconceived as it is "the substance of the

matter rather than the form that is what matters here". As such, Westminster submits that "someone who lives in Cornwall may have the same nominal right to use the gardens as a person who lives in the City of Westminster, but will not use them on a regular basis". As such, Westminster asserts, local residents' local interests are plainly affected in a different manner as a subset of the general public.

62. In response to that, if one was to accept that some members of the public do have private interests that are differently affected from others in the same class, which we contend cannot be correct, given how the 1900 Act is framed, it is not apparent to the Secretary of State where Westminster would seek to draw the line in terms of where a person would qualify as having such an affected interest. I would hazard a guess that a considerable number of people who work in this very building use Victoria Tower Gardens on a regular basis, potentially more regularly than local residents, but may not live in Westminster. Would they have private interests differently affected? The same applies to me and my colleagues here today, all of whom live in London and could readily access Victoria Tower Gardens by public transport or bicycle, but do not reside in Westminster. Do we have a local interest?

63. These are just a few examples that demonstrate the inherent uncertainties as to how a person could establish that they have a private interest disproportionately affected, adopting Westminster's argument. As such, we would submit that it cannot possibly be the correct interpretation here.

64. To sum up on this point, I would turn to a quote from the Education Reform Bill debate, which we put forward in our submissions. The reference is paragraph 5.7, and that quote, in our view, wraps things up neatly in this case, regardless of the subject matter of the Bill. The Speaker there said that "the fact that individuals are differently affected when they fall within a general description is not relevant" to the question of hybridity. As such, whether a person is disproportionately affected by a Bill does not determine that it is hybrid. There needs to be more than that.

65. We also note Westminster's reference to the Legislative Reform (Epping Forest) Order 2011, which Westminster prays in aid as a precedent on this point. There are two points to make in response. First, it almost goes without saying that, notwithstanding how hybrid instruments are defined in the House of Lords private business Standing Order 216, paragraph 1, they are clearly different things from hybrid Bills, not least in respect of procedure. For example, the Chairman of Committees does not, so far as I am aware, need to confirm the rationale anywhere for why they think an instrument is hybrid, nor is there any equivalent process to the one we are going through today where that conclusion can be interrogated. As such, I would contend that, simply because the 2011 Order went through the hybrid instruments procedure, it does not bind the Examiners in this case.

66. Indeed, notwithstanding Westminster's reference to the report of the House of Lords Hybrid Instruments Committee in its memorial at footnote 10, it is not apparent from that report why the 2011 Order was subject to the hybrid procedure. Westminster asserts this was due to the Order affecting local interests, which happened to use Epping Forest for recreational activities, but that, I would suggest, is merely an educated guess at best. It could instead be because the Order conferred functions on the Metropolitan Police, which is clearly distinguishable from the Bill we are considering today, notwithstanding the scope of petitions lodged against the Order, which the reference report discusses.

67. The third key area is that the Bill is implementing public policy. All the Memorialists make various points relating to whether the Bill is implementing public policy. At the outset, I would just like to make it clear that the arguments put forward in our written submissions on this point are, in effect, a supplementary argument to those I have already touched upon in relation to private interests. Ultimately, if the Examiners find that no private interests are affected by the Bill, or, if there are private interests, that they are not affected differentially from other persons in the same class or category, the question of whether the Bill is implementing public policy becomes redundant.

68. However, for clarity, it is well established that, where a Bill is implementing public policy whereby private rights over large areas or of a whole class are affected, that Bill is not hybrid; see the extracts from *Erskine May*, which we and others have cited in submissions.

69. The Secretary of State acknowledges, however, that simply because a Bill implements public policy, it does not mean that it is automatically a public Bill, as it is a two-limbed test. As we have set out in our written submission, the Bill is clearly implementing public policy, so I will not repeat the Secretary of State's position on this. Suffice to say that the subject matter and aspirations for the Holocaust memorial go beyond a local or private measure and extend to a far-reaching policy ambition that is for the UK public as a whole.

70. The Holocaust memorial would commemorate the victims of the Holocaust and encourage reflection on the implications of the Holocaust for British government and society. It is, therefore, of national importance and significance. Its location is incidental to this policy aim. Although the Secretary of State acknowledges that the Bill relates to a specific area of land, the policy drivers behind that are of a more general overarching nature that can properly be characterised as public policy.

71. Some of the Memorialists have sought to draw a distinction between government policy and public policy, but it is submitted that this is a false distinction. Although public policy is a notoriously difficult concept to define, it is helpful to consider the definition in *Osborn's Concise Law Dictionary*, which is "in the interests of the public as a whole, so that something contrary to public policy would not be in the wider interests of society". We would submit that the coming forward of the Holocaust memorial is, without doubt, in the interests of the public as a whole.

72. Turning to the second limb of this test—namely, whether private rights over large areas or of a whole class are affected—for the reasons I have already given, the Secretary of State's position is that the whole class is, in fact, affected and there are no persons singled out to be affected differently. This does not change, even having regard to the precedents prayed in aid by some of the Memorialists.

73. I would like to conclude by making two short points. First, the principles of hybridity have been consistently applied across decades. There is a well-established, settled definition. Indeed, Mr Speaker Hylton-Foster's definition given on 10 December 1962 was taken as the starting point—I refer to paragraph 12—by the Examiners in 2010 in relation to the Local Government Bill, which is the last time this issue was considered by the House of Commons and the House of Lords. Nothing in the Bill changes the fact that such a definition ought to be applied in this case.

74. Therefore, the points made by the Memorialists, particularly by Westminster City Council and its Abraham formulation, should be seen in that light. The Examiners in the case of the Local Government Bill in 2010—the reference there being paragraph 15 of their decision—worked off the basis that there needed to be differential treatment within each class germane to the subject matter of the Bill for it to be hybrid.

75. Secondly, irrespective of whether the Bill is declared hybrid, the Memorialists will be able to make representations on the Holocaust memorial as part of the ongoing planning process. Whether or not the Bill proceeds as a public Bill would not change that.

76. This concludes the Secretary of State's opening statement and submissions in support of our position that the Bill is not hybrid and that the Examiners are, therefore, requested to certify and report that no Standing Orders relating to private business are applicable to it. Thank you.

77. **MR TOM HEALEY:** Thank you very much, Mr Owen, for your opening submission. We have some questions for you. Could I start by asking about the category of people with a local interest? You talked about this being quite a difficult category of people to define. What about people who use Victoria Tower Gardens regularly but do not necessarily live very nearby? How nearby do you have to live to fall within that category of people with a local interest? It is not quite the same as saying that the category of people does not exist, is it? It is possible to have a category of people who might be difficult to define. We might have to go through a difficult right-to-be-heard process of establishing who is and is not in the category, but is your argument that the category is so loose that it does not exist at all?

78. **MR ROBBIE OWEN:** Our argument is not that. It is really that the interest, given the way in which the 1900 Act is framed, is a general, wide public interest. The Act is not written on the basis of the interest being given to particular parts of the population, local or otherwise. That is not how it approaches matters. It is impossible, we say, to conclude that the interest that the Act affords is anything other than a general public interest. That is what we are saying, and we are testing that by the points I was making about who could try to demonstrate that there is a distinct local interest in it. Certainly, there is a local community. Obviously there is, but that is not the test.

79. **MS CHRISTINE SALMON PERCIVAL:** Mr Owen, leading on from that question, what is the distinction between local interest and private interest? How do they differ? I know that they are different, but could you describe what you think those two concepts mean?

80. **MR ROBBIE OWEN:** It is not entirely clear to us, I have to say. When this was last considered in 2010 in the Local Government Bill—and you may recall the reference there—there was some questioning by the Examiners, and their report concluded that they were not entirely clear themselves as to the difference, but they did not need to make a ruling on the matter.

81. It is clear, if we go back to Mr Speaker Hylton-Foster's definition, that the key point here is a private interest, but, over the years, there has been a bit of expansion of that concept to say that a local interest can be a private interest, specifically in relation to the position of a local authority, which is a different test. When it comes to determining whether local

authorities have a right to petition against private and hybrid Bills, their interest is certainly seen to be a local interest, which is one that can warrant a petition. For the reasons I gave, though, it is not necessary here to determine the precise difference between a private interest and a local interest, because we think neither exists.

82. **MS CHRISTINE SALMON PERCIVAL:** The argument of the Memorialists is that, where a Bill is of local application, the test is not whether there is differential treatment. It is whether private interests are affected at all. My recollection is that you do not share that.

83. **MR ROBBIE OWEN:** It runs contrary to the well-established principles of hybridity that have been observed in both Houses of Parliament for many decades that you have to have differential treatment of different private interests within the same category or class. That is extremely clear from the whole line of decisions, most recently of course in 2010 and in other precedents that we have referred to—for example, the Aircraft and Shipbuilding Industries Bill in the 1970s. The concept of differential treatment is central to proving hybridity.

84. **MS CHRISTINE SALMON PERCIVAL:** Whether it is a public Bill or a hybrid Bill, when a Bill receives a Second Reading, the principle of that Bill has, therefore, been established. What do you think the principle of this Bill is? If this Bill receives a Second Reading, what principle would you say had been established?

85. **MR ROBBIE OWEN:** That is a very good question. It would be a matter for the Government to decide whether, as is practice nowadays, they wished to table a Motion for consideration by the House, setting out what the committee to which the Bill would then be referred should regard as being the principle. This is not something that I have agreed with those instructing me, but I would say that the principle would be that there should be a Holocaust memorial, that it should be located in Victoria Tower Gardens—that is, in effect, the combination of Clauses 1 and 2—and that money per Clause 1 should be allowed to be spent for that purpose. It would be a matter for the Government to consider, if the Bill is declared hybrid, whether they wished to guide the committee of each House to which the Bill was referred as to what they saw as the principle of the Bill.

86. **MR TOM HEALEY:** You have referred to the Hylton-Foster formulation of differential treatment within a category or class. What do you think the category or class affected by this Bill is?

87. **MR ROBBIE OWEN:** This comes to the core of what I was saying. Beyond the general public, we say that there is no category or class specially affected.

88. **MR JUSTIN LESLIE:** On that, are you telling us that there is no category or class, or that there is a category or class and that that category or class is the general public?

89. **MR ROBBIE OWEN:** It is the latter, because everyone is affected equally, we would say, in that there is no differential treatment. That is different from disproportional effects, of course, as per the Education Reform Bill example that I gave.

90. **MR JUSTIN LESLIE:** Are we bound to accept the Government's framing of a category or class? I ask that because, reading the Examiners' report relating to the Aircraft and Shipbuilding Industries Bill, there is some complaint from our predecessors about the

Examiners being bound by what the Government have presented in the Bill as to the category or class.

91. **MR ROBBIE OWEN:** My understanding is that you are bound by how the Bill chooses to define the category or class, and we refer to various authorities that make it clear that you have to look at the terms of the Bill. How the Bill chooses to define the category or class is what you have to go on and be guided by in reaching a decision on hybridity.

92. **MR JUSTIN LESLIE:** Because this Bill does not, on its face, define the category or class, does that mean that there is more scope for us to go beyond what you have just told us is the category or class?

93. **MR ROBBIE OWEN:** You are right that, in the Bill, there is no definition or drawing of a category or class. Therefore, it comes down to your understanding and interpretation of the effect of Clause 2 on those who are, per the 1900 Act, entitled to benefit from the requirement for Victoria Tower Gardens to be maintained as a public garden.

94. **MR JUSTIN LESLIE:** I asked, because the complaint is very clear in the Examiners' report, but the Bill that they were considering was quite different, in that it set out the various companies that were proposed to be nationalised. The drafting was very clear about what categories were being affected by the Bill, so the Examiners clearly were bound by the terms of the Bill, because that is the Bill that had been presented. In this case, because no class is defined in the text of the Bill, your assertion that the class is the general public may be something that we can explore.

95. **MR ROBBIE OWEN:** Absolutely, it is our assertion, as you just said, based on how the 1900 Act is written—not based on how the Memorialists might wish it was written or think it was written, but how it was written—as pronounced on very recently by the High Court.

96. **MR JUSTIN LESLIE:** You make some points about the position of the Secretary of State in all this. Although you are quite right that, in a statute, a reference to the Secretary of State is a reference to all Secretaries of State, it is right, is it not, that they can be corporations sole and hold land in their own right?

97. **MR ROBBIE OWEN:** That is absolutely right, yes.

98. **MR JUSTIN LESLIE:** In this case, it is Secretary of State for Culture, Media and Sport who owns the land.

99. **MR ROBBIE OWEN:** Yes.

100. **MR JUSTIN LESLIE:** Is there not, in those terms, a definable person with a private interest—ie a landowning interest, in relation to the gardens?

101. **MR ROBBIE OWEN:** The second point I made in that respect was that the effect on the Secretary of State is not adverse, because, again, it is an adverse effect that goes to the key principles of hybridity, and we gave authority for that view.

102. **MR JUSTIN LESLIE:** Again, are we bound by you telling us that it is not adverse, or is it a question of objective analysis about whether the interests are affected adversely? That is a point made in the Westminster City Council memorial.

103. **MR ROBBIE OWEN:** That is the point made, but we responded to it just now by saying that it is hard to see how, in effect, reducing an obligation would be an adverse effect.

104. **MR JUSTIN LESLIE:** Yes, but I am just trying to tease out whether, because you are telling us that the Government's position is that it is not an adverse effect, we are bound to accept that as well, or whether we need to look at how the interest is affected and determine whether it is adversely affected.

105. **MR ROBBIE OWEN:** I have made submissions on that. No doubt the Memorialists will say what they wish to say in response in a moment. It would be for you to take a view on whether you want some evidence on this; I do not know. It is a matter for you as to how you want to take it. I come back, though, to the first point, which is that it would be a rather perverse result, we would say, if the Bill is declared hybrid on the basis of the Secretary of State being held to be affected when we are all brought up to understand that there is one Secretary of State, conventionally, and that is how government at that level proceeds.

106. **MR JUSTIN LESLIE:** To explore this point about public policy, were you telling us that, because the Bill is implementing a public policy, that is a further argument about why it cannot be hybrid, or was your point in addition to your points that private interests are not affected by the Bill?

107. **MR ROBBIE OWEN:** It is really a supplementary point. Having dealt with the private interests on the first two areas I touched on, it is a settled position that, where a Bill is implementing public policy and affects a whole class, although not necessarily equally, that is conventionally not seen as being hybrid. I was trying to say that we think it is a point that we can make, following on from the fact that we say there are no private or local interests differentially affected. The public as a whole are affected and, because the Bill is implementing public policy and thereby having that effect, in accordance with convention that means the Bill should not be seen as being hybrid.

108. **MR CHÉ DIAMOND:** I have two points arising out of your argument that everyone is affected equally. That is a phrase that you used a few moments ago: "Everyone is affected equally. All members of the public are affected equally by the Bill". My first point is this.

109. I note with interest, as we have gone through, that you have mentioned repeatedly and focused on how the 1900 Act is framed and written, and how this Bill is framed and the words of the legislation. You focused on that in addressing the point about whether this Bill affects particular private interests in a manner different from the private interests of other persons or bodies of the same category or class. You focused very much on that rather than on how this Bill would affect people in fact. I wondered what your response to that is. Why have you not focused on how it affects people in fact? Some people might say that you have therefore been putting a form over substance argument.

110. **MR ROBBIE OWEN:** This goes back to the well-understood definition of hybridity, which is that you have to have differential treatment of private interests within the same category or class. That is not the same as saying that everyone is affected equally, because you will recall from our submissions, both today and in writing, that the Speaker was very clear, in the context of the Education Reform Bill back in 1987 and 1988, that the fact that individuals are differently affected when they fall within a general description is not relevant. Indeed, any general legislation will probably affect different people to different degrees. That is not relevant to how Parliament has conventionally dealt with hybridity.

111. Hybridity turns on whether there is a singling out by the Bill of particular private interests within the same category or class for differential treatment. Differential treatment is different from the concept of some people being affected differently than others. There is a subtle but key difference between the two, and that is why we do not think it is relevant to the issue of hybridity as to how different people may be affected by the construction of the memorial, because, given the way the 1900 Act is framed and that it is a general public right, we do not think that goes to the issue of hybridity at all. That has never been how this place has considered the issue in the past.

112. **MR CHÉ DIAMOND:** You are saying that it is treatment, not effect, so the effect does not matter. If we go back to the case of the resident in Cornwall, are you saying that there is a more obvious effect on residents in Westminster? You said that drawing a line might be quite tricky, but would you say then that the presence of this green park space in Westminster affects local people more than people in Cornwall, Manchester or Newcastle? Are you trying to draw a distinction between that and treatment? You acknowledge that losing the green space would affect local people in a different way than it would affect people in Cornwall for that green space to be changed.

113. **MR ROBBIE OWEN:** Yes. If I might say so, that is a helpful summary in that hybridity turns on the treatment by the Bill, not the effect of the Bill. That has been clear from past precedent, and it is not for me to say today quite how effects may differ between residents of Westminster and of Cornwall. I can see how the effect might well be greater for a resident of Westminster. Anyone could probably see that, but that is not relevant to the task before you in determining whether the Bill is hybrid. That seems clear to me from the whole line of authority on this, going back to Speaker Hylton-Foster's definition of differential treatment of different private or local interests within the same category or class.

114. **MR JUSTIN LESLIE:** Something that you have not mentioned at all yet is an alternative way of framing the category or class as a class of one. If the Bill is relaxing a restriction that applies to the Commissioner of Works, now the Secretary of State for Culture, Media and Sport, is there a way of viewing this through the "class of one" approach, or is that something that the Government have not considered?

115. **MR ROBBIE OWEN:** The Bill is drafted how the Bill is drafted. As I explained earlier, it is not an express disapplication of Sections 8(1) and 8(8), but, in effect, it says that the memorial may be built, notwithstanding those provisions. They do not prevent it from being built, and that was how the drafters of the Bill thought it appropriate to express the point that they did not see it as being necessary to define a class or category as affected. They were just dealing with making sure that the 1900 Act was not a legal obstacle.

116. **MR JUSTIN LESLIE:** I was just interested in whether, given how you framed your submissions to us, there was an alternative approach to the “category of one” approach. My understanding is that, if you can identify a category but there is only one member of it, a Bill will not be treated as hybrid.

117. **MR ROBBIE OWEN:** The implication of what I have said this morning is that there is one category or class singled out for treatment, which is the general public, and there is no sub-category or sub-class within that overall category or class singled out for differential treatment. The implication behind what I have said is that the Bill, in effect, has in mind the single category or class of the general public. As we just said to Mr Diamond, the effect of the construction of the memorial, given the disapplication, may be different on some members of the public than on others, depending on where they live and what use they make of the Victoria Tower Gardens amenity, but that is not relevant to whether the Bill is hybrid.

118. **MS CHRISTINE SALMON PERCIVAL:** The 1900 Act is a private Act, is it not?

119. **MR ROBBIE OWEN:** It was the result of a private Bill that became a public local Act, yes.

120. **MS CHRISTINE SALMON PERCIVAL:** If the ownership of Victoria Tower Gardens remained with the local authority, it would require another private Act to amend it. Is that right?

121. **MR ROBBIE OWEN:** If that were the case, certainly a government Bill would be able to amend it, but that would mean that it is more likely that such a Bill would be hybrid. The ownership of Victoria Tower Gardens is one of several reasons that I have referred to today as to why we do not think that the Bill is hybrid, but, yes, were the ownership to be different, you would have to approach hybridity with that in mind.

122. **MS CHRISTINE SALMON PERCIVAL:** It is rather significant who is the owner of this piece of land.

123. **MR ROBBIE OWEN:** We say so. Were, for example, Victoria Tower Gardens to be owned by Westminster City Council as successor of the former London County Council, that would present a very different situation in relation to hybridity than the land being Crown land owned, nominally and in law, by the Secretary of State for Culture, Media and Sport. As I have tried to say today, that makes a big difference to how you apply the hybridity tests.

124. **MR TOM HEALEY:** Thank you. Can I now invite the group of four Memorialists to come forward? That is the London Historic Parks and Gardens Trust, the Thorney Island Society, Baroness Deech, and the Buxton family and the Thomas Fowell Buxton Society. Mr Lewis, you are leading off on behalf of this group.

125. **MR ALASTAIR LEWIS:** Yes, that is right. With the agreement of my fellow Memorialists, I will be leading on behalf of the panel. They will be following up and making their own specific, individual points. I think I am right in saying that the general submissions I am making in relation to hybridity are supported by my colleagues. Obviously, Mr Latif-Aramesh is in a different category completely.

126. Just to start off, my name is Alastair Lewis and I am, like Mr Owen, a parliamentary agent; at Sharpe Pritchard. I appear on behalf of the London Historic Parks and Gardens Trust, which I will call “the trust”; the Thorney Island Society, which I will call “the society”—

127. **MR TOM HEALEY:** I am sorry to interrupt. Could you speak up a little bit, please?

128. **MR ALASTAIR LEWIS:** Yes, of course.

129. **MR JUSTIN LESLIE:** Mr Lewis, just while you are doing that, is there a particular memorial we should be looking at?

130. **MR ALASTAIR LEWIS:** I will come on to a list of documents that I will be drawing to your attention, but since you have asked the question, yes, please could you look at the Thorney Island Society’s memorial? The paragraph numbering is different between memorials and that could have led to confusion, so I am using that one as the basis. Also, before I get going again, I will just mention that I timed myself yesterday going through these submissions and it came to about 30 minutes, so I hope that will give us enough time at least for me to complete my submissions before the break.

131. Starting again, and hoping that this is better and clearer, I appear on behalf of the London Historic Parks and Gardens Trust, which I will call “the trust”; the Thorney Island Society, which I will call “the society”; and the individuals named in the schedule to the society’s memorial, who I will call “the residents”. My general submissions about hybridity, as I have just said, are made on behalf of the trust, the society and the residents. There will be occasions when I will say something specifically relating to each of them. I understand, as I have said, that Baroness Deech and Mr Buxton will be adopting my general submissions. You will have noticed that our memorials are somewhat similar.

132. My submissions, in summary, will comprise the following. First, I will provide some background about those I represent. Secondly, I will submit that the Bill is what I will call a local purpose Bill, and I will also submit that all that needs to be demonstrated in the case of such Bills is that private interests are affected, not necessarily that private interests have to be affected in a manner that is different from other private interests in the same category or class. Thirdly, I will explain why certain private interests are affected by this Bill and, as I go through each, I will explain why those private interests are affected in a manner that is different from other private interests in the same category or class, in case you are not with me on my first point, which I acknowledge would require you to take something of a novel approach. Fourthly and finally, I will deal with the issue of Bills relating to public policy.

133. First, I will provide some background about those I represent. The London Historic Parks and Gardens Trust is an amenity society and a registered charity with an interest in protecting the capital’s historic landscape and, in particular, its heritage and amenity value. Its charitable objects are to promote the education of the public on matters connected with arts and sciences of historic garden land and to preserve, enhance and recreate, for the education and enjoyment of the public, whatever historic garden land may exist or have existed in and around London. Not to be confused with those I represent, the Gardens Trust, a national body, is a statutory consultee in the planning process. The London Historic Parks and Gardens Trust, which I do represent, represents the Gardens Trust in that statutory capacity when it

comes to planning applications relating to certain historic parks and gardens in London, of which Victoria Tower Gardens is one.

134. The Thorney Island Society is a local amenity society established in 1985. Its area of interest is in what it calls old Westminster, an historic area that includes Victoria Tower Gardens and the Palace of Westminster. One of the society's purposes is to secure the preservation, protection, development and improvement of features of historic or public interest in the old Westminster village. Approximately 40% of the society's members live in the old Westminster village and make use of its open spaces. The 16 residents' homes are all a few minutes' walk from Victoria Tower Gardens and all of them are members of the society. The residents value Victoria Tower Gardens as an open space and important green asset, and they regularly use it for recreation. All those I represent took an active part in the application for planning permission for the Holocaust memorial.

135. A general point I should make is that there is much common ground between cases of my clients and the case of Mr Latif-Aramesh for Westminster City Council. The Council has made a number of points in its memorial that my clients support. I will indicate where there is particular support for the council's points, but I will not dwell on them as I do not wish to intrude, obviously, on Mr Latif-Aramesh's territory.

136. During my submissions, I will ask you to look at the Bill, the memorials of my clients and of Westminster City Council, and the written representations of Mr Owen for the Secretary of State. As I mentioned earlier, when I ask you to look at my clients' memorial, to avoid confusion with paragraph numbering, please look at the memorial of the society and the residents.

137. I now move on to the first substantive part of my submissions, namely that the Bill is what I will call, borrowing from the relevant heading in *Erskine May*, a local purposes Bill. I will also seek to persuade you that all that needs to be demonstrated in the case of such Bills is that private interests are affected, not necessarily that private interests have to be affected in a manner that is different from other private interests in the same class. I would ask that you have paragraph 10 of the society's memorial before you to begin with.

138. In my submission, the Bill falls squarely within the description of "Bill" mentioned in paragraph 42.3 of *Erskine May* under the heading, "Bills brought in by the Government for local purposes, et cetera". That paragraph contains three sentences. The first two sentences are: "A Bill brought in by the Government (dealing with Crown property, or with national and other works in different localities, etc.) that affects private interests is introduced as a public Bill. It is subsequently treated as a hybrid Bill". The third sentence sets out the Hylton-Foster test, which Mr Owen has of course referred to. "A hybrid Bill has been defined by the Speaker as 'a public Bill which affects a particular private interest in a manner different from the private interest of other persons of the same category or class'".

139. Next, if I could ask you to turn to paragraph 15 of the society's memorial, please, the description in *Erskine May* of the local purposes category can be broken down, in my submission, into these three elements. First, the Bill must have been brought in by the Government. Secondly, the Bill must deal with Crown property or with national and other works in different localities, et cetera. Thirdly, the Bill must affect private interests. There is no doubt, in my submission, that the first two elements of that description are satisfied. The

Bill was brought in by the Government and it deals either with Crown property or with national and other works in different localities. It deals with Crown land, and I think that has been accepted.

140. The only question at issue then is whether the Bill affects private interests, in my submission. I have deliberately not said that a local purposes Bill must affect a particular private interest in a manner different from the private interests of other persons of the same category or class, and I would like to develop that case next.

141. The first point in support of that proposition is a simple one. The proposition reflects what *Erskine May* actually says. If I could ask you to look again at paragraph 10 of the society's memorial, the first two sentences of paragraph 42.3 are clear in their own terms. They say that a local purposes Bill is hybrid if it affects private interests. I acknowledge, of course, that in the only other sentence in paragraph 42.3 the Hylton-Foster test is set out. However, in my submission it need not be read as a qualification to the first two sentences of paragraph 42.3, but as context. In other words, I would submit that one could interpret 42.3 on the basis that what it suggests is "here is the Hylton-Foster test and, in the special case of a local purposes Bill, the test is that, if private interests are affected, whether or not differently from others in the same class, the Bill is to be treated as a hybrid Bill".

142. My next point on this issue picks up on what the Cabinet Office *Guide to Making Legislation* says in the section, "What is a hybrid Bill?" It is important to read some of the preceding words and the whole of paragraph 41.3 to provide the context. They are set out in paragraph 12 of the society's memorial. In the section headed, "What is a hybrid Bill?", the guide says at paragraph 41.1, "A public Bill which affects a particular private interest in a manner different from the private interests of other persons or bodies in the same category or class is called a hybrid Bill and is subject to a special procedure which includes some of the steps applicable to private Bills". I do not think I need to read the rest of that paragraph.

143. Paragraph 41.2 then lists examples of various works Bills that have been classified as hybrid Bills. Then paragraph 41.3 says, "'Private interest' is wide enough to cover not only the interests of a purely private person or body (such as an individual or company) but also, for example, the interest a local authority has in the administration of its area. A Bill may also be regarded as hybrid if it affects a named geographical area outside London (London is often viewed as a special case) and also affects private interests. A Bill that singles out a particular person or body for favourable treatment is not normally regarded as hybrid so long as others in the same category or class are not thereby prejudiced. These are, however, only rough guides to hybridity". Again, I do not need to read out the last couple of sentences.

144. I would suggest that the guidance seems to distinguish between local purpose Bills and others in the way that I submit *Erskine May* does. The Hylton-Foster test is set out in paragraph 41.1, but then, in paragraph 41.3, the first use of the word "also" in the underlined sentence could be said to indicate that a different approach is applicable in the case of local purposes Bills.

145. For my next point, could I ask you please to bring up paragraphs 5.4 to 5.7 of the representations of the Secretary of State? My point centres on the examples given in the written representations in support of what is called the key factor: that private interests must be affected differently from others in the same class. The examples given are clearly different

from the Bill in front of us today. They include Bills that provided for the nationalisation of industries, some of which in turn, as Mr Leslie said, contained lists of specific companies that were to be treated in certain ways under the Bill in question. The passage quoted from the Speaker's comments on the Education Reform Bill, which Mr Owen has referred to on more than one occasion, in paragraph 5.7 of the Secretary of State's representations, includes the passage set out, with my emphasis in underlining, in the second part of paragraph 19 of the society's memorial, which I would ask you to bring up next, please.

146. It says, "I have to look at the terms of the Bill. Provided that the formula or description used in the Bill deals with a category or class which is relevant to the purposes of the Bill and the Bill does not expressly specify or single out an individual or corporation within the category for different treatment, the Bill is not hybrid". I would submit that the proviso mentioned above is not satisfied in the case of the Bill. The Bill does not use any formula or description to deal with any category or class. The Bill simply lifts a restriction over an area of land. The Secretary of State appears to suggest that the category or class affected is the general public, and that has been confirmed today, but I would submit that, even if that were correct, there is nothing in the Bill that can be described as a formula or description that deals with that category or class and that is relevant to the purposes of the Bill. If you accept my submission that the proviso is not satisfied, I would submit that the test of whether people or bodies are treated differently from others in the same class does not arise.

147. Finally on this point, I should mention that, in the memorials, the case of the Festival of Britain (Supplementary Provisions) Act 1949 was mentioned in support. On reflection, and having read it as closely as Mr Owen has clearly read it since the memorial was put in, although I consider it to be helpful in support of the general proposition as to why the Bill should be treated as hybrid generally, in that it was a measure of local application that suspended protection of a public open space, on rereading the Act in more detail I can see that there could be an argument that it also affected specific property rights and therefore is distinguishable from the Bill. I would be happy to go into that in more detail, but I suspect you probably do not think that is necessary.

148. I summarise this section of my submissions by submitting that this Bill is the type of hybrid Bill that falls into the category of a local purposes Bill, particularly if private interests are affected. I will seek to demonstrate that private interests are affected in the next section of my submissions. In case you are not with me on the specific issue of whether private interests must be affected differently from others in the same category or class, I will also seek to demonstrate that they are so affected in the next section.

149. I now move to probably the most important section in my submissions—namely, whether private interests are affected by the Bill and whether those interests are treated differently from others in the same category or class. First, I will make some short general points. Could you first please turn to paragraph 5.17 of the written submissions for the Secretary of State? In those representations, Mr Owen contends that the only rights protected by Sections 8(1) and 8(8) of the 1900 Act affected by the Bill are the rights of the general public to make use of Victoria Tower Gardens, as you have heard this morning. At paragraph 5.17, he says, "The rights protected by Sections 8(1) and (8) of the 1900 Act for members of the public to use Victoria Tower Gardens as a public garden cannot, by any reasonable interpretation, be described as 'private rights'—they are much too general in nature for that".

That submission has obviously been supported by Mr Owen this morning, but in my submission the Secretary of State is wrong in both regards.

150. If I could ask you to turn up paragraph 12 of the trust's memorial again, please, first I refer to the passage from the Cabinet Office guidance set out in that paragraph, where it says, "'Private interest' is wide enough to cover not only the interests of a purely private person or body (such as an individual or company) but also, for example, the interest a local authority has in the administration of its area".

151. Secondly, the Secretary of State appears to concede—and the precedents, including the Local Government Act 2010 and the Legislative Reform (Epping Forest) Order 2011, bear it out—that private interests can include local interests. This can be seen in paragraph 5.2 to 5.4 of the submissions made on behalf of the Secretary of State, which I would ask you to turn up, and in the extract from *Erskine May*, which is quoted in paragraph 5.2. In fact, this issue is probably not in dispute, having heard what Mr Owen said this morning. Paragraph 5.2 says, "Hybrid Bills are public Bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same category, so as to attract the provisions of the Standing Orders relating to private business".

152. Having made those introductory general points, I submit that the first organisations whose private—for which I also read "local"—interests are affected are the trust and the society, which I will deal with together. In my submission, the trust and the society have private local interests that are affected by the Bill. In support of this contention, I first refer to the passage in *Craies on Legislation*, which is set out in paragraph 14 of the trust's memorial, which I would ask you to turn up, please.

153. In a section headed, "The nature of hybridity," *Craies* says at paragraph 5.4.17, "A useful rule of thumb for acquiring a general flavour for the kind of Bill likely to be hybrid is to consider whether the nature of the Bill is such that it is theoretically likely that there would be a class of person with sufficient private interest in the matters affected by the Bill to wish, and be entitled, to petition against the Bill in the event of their private interests not being properly safeguarded or compensated by the promoters of the Bill".

154. Using the words from that passage, I submit that the nature of the Bill is such that it is more than theoretically likely that the trust and the society fall within a class of person with sufficient private interest, which I submit includes a local interest, in the matters affected by the Bill to wish and be entitled to petition against the Bill in the event of their private—and again I say "local"—interests not being properly safeguarded or compensated by the promoters of the Bill.

155. In my submission, both the trust and the society would be entitled to petition against this Bill if it were to proceed as a hybrid Bill. This is because the class of person in which they fall is the class of society, association or other body representing amenity or recreational—among other—interests mentioned in House of Commons Standing Order 95(2) and House of Lords Standing Order 117(2). Had Parliament not considered that the interests of an amenity society could be a private interest—I include "local interest" in that expression again—it would not have made those Standing Orders, in my submission. Because of those Standing Orders, local amenity societies and other organisations have petitioned

against numerous private and hybrid Bills that deal with specific public open spaces, in order to protect their local interests and those of their members.

156. As to whether the trust and the society's private local interests are affected differently from others in the same class, they submit that the class in which they fall is the class of other similar societies, associations or other bodies, and more particularly those that are capable of representing amenity or recreational interests mentioned in the Standing Orders I have just alluded to. That class of societies is clearly germane to the subject matter of the Bill, because the effect of Clause 2 of the Bill would be to disapply the restrictions imposed by the 1900 Act in Section 8(1), which require Victoria Tower Gardens to be laid out and maintained for use as a garden open to the public and require the Secretary of State to maintain the gardens so laid out.

157. The trust and society's interests are affected by the Bill in a different way from other amenity societies in that class, simply because Victoria Tower Gardens is within the relatively small area or collection of parks and gardens in which they have those interests, as compared with other amenity societies that have interests elsewhere. The interests of the society are affected differently from similar organisations that represent amenity and recreational interests in areas outside old Westminster. The interests of the trust are affected differently from other similar organisations that have similar interests outside London.

158. Next, I turn to the residents I represent and the specific local community of the old Westminster area. I would submit that the local residents' private local interests are affected by the Bill in an obvious way. They are clearly beneficiaries of the continuing trusts that were put in place by Section 8(1) and Section 8(8) to ensure that the gardens remain as gardens open to the public. The Secretary of State may say and has said that they are in no different a position from any other member of the public, but that is plainly not correct in reality. Even though Victoria Tower Gardens happens to be located close to a major tourist destination, the fact is that it is likely to be used more frequently by those who live or work in the local area all year round than occasional visitors. For that reason, the local residents and those who work in the area are affected disproportionately.

159. In summary, the residents allege that their private local interests are affected by the Bill, that they are affected in a different way from others in the same class because of the disproportionate nature of the effect of the Bill on them, and that the class is a class that is germane to the subject matter of the Bill. On this specific point, those I represent support the points by Westminster City Council in its memorial, including, in particular, the praying in aid of the Legislative Reform (Epping Forest) Order and the report of the Hybrid Instruments Committee, where it appears that the Order was treated as hybrid due to the effect of the suspension of the public's rights over the forest, and particularly the local users.

160. I think Mr Owen said that it was not clear from the first report of the Hybrid Instruments Committee what the rationale was in that case for saying that instrument was hybrid. I apologise to Mr Latif-Aramesh if I am treading on his toes here. I have not asked you to bring it up and I do not know whether you have the first report from the Hybrid Instruments Committee on that particular case, but I have highlighted a paragraph that is in the discursive paragraphs at the beginning of the report, which says, "Accordingly, the Order has no permanent legal effect and the principal issue which it raises under the 1878 Act"—which was the equivalent of the 1900 Act—"is whether part of the open space on Wanstead

Flats should be unavailable to the public as an open space for three months next summer”. I would suggest that the highlighted paragraph is a clear indication of what reasons were had in mind as to why that instrument should be treated as a hybrid instrument.

161. Finally, I deal with Westminster City Council. Again, I apologise to Mr Latif-Aramesh, but it is part of our memorial and a very important part, I have to say, so I will keep my comments relatively brief. It is a fundamentally important part of my clients’ case that the private local interests of Westminster City Council are affected by the Bill. The council obviously has interests in the administration of the area affected by the Bill. The fact that the council is the local planning authority with important functions relating to the use of land in its area, including public open spaces, gives it exactly the sort of local authority interest that is described in the Cabinet Office guidance and the sort of local interest alluded to in *Erskine May*.

162. Its interests in the administration of the area, particularly as local planning authority, are unquestionably affected by the Bill because of the proposed removal of the restriction on the use of Victoria Tower Gardens, which will have a direct impact on its residents, including those I represent. In my submission, this point alone is enough to demonstrate that the Bill should be treated as hybrid. In addition, Westminster’s predecessor had an interest in Victoria Tower Gardens at the time the 1900 Act was passed and played a direct role in its implementation. That is a point that has been covered by Mr Owen and no doubt will be covered by Mr Latif-Aramesh.

163. In the event that you are not with me on the question of whether there needs to be distinction within a class, I would submit that Westminster City Council is treated differently from all other local authorities that have similar functions to them, and in particular those that are capable of falling within House of Commons Standing Order 98 and House of Lords Standing Order 118—namely, local authorities that can petition against a private Bill because their area is injuriously affected by the provisions of a Bill.

164. In summary on this section of my submissions, I submit that the private—for which also read “local”—interests of Westminster City Council, the trust, the society and local residents in the area are all affected by the Bill, and that they are treated in a different way from others in their class. Whether or not you are with me on the question of whether interests must be treated differently, there is enough in my submission to demonstrate that the Bill should be treated as hybrid in the category of a local purposes Bill.

165. Finally, I turn to the question of public policy, which was raised in the Secretary of State’s representations. If you could please now turn up paragraphs 5.20 and 5.21 of those representations, as the memorials say, those I represent disagree with the assertion made in those paragraphs that this Bill implements public policy where a whole class is affected and therefore should not be treated as hybrid. First, in my submission, it is not clear whether the Bill implements public policy at all. If it does not, it must be treated as hybrid in my submission. It is accepted that it is government policy to support the implementation of the Holocaust memorial in Victoria Tower Gardens. However, the fact that a policy may be government policy does not mean it is public policy for the purposes of deciding whether a Bill is hybrid.

166. If you could bring up the Bill itself, please, as has been touched on by Mr Owen already, Clause 1 of the Bill would provide for the Secretary of State to incur expenditure in

relation to the construction, use, maintenance, improvement or operation of a new national Holocaust memorial and learning centre. In disagreement with Mr Owen, I say there is no need for this provision. Had the High Court not quashed the planning permission for the Holocaust memorial and learning centre, I submit that it is inconceivable that a single purpose Bill would have been required to authorise expenditure on it.

167. If I could just take another example of capital expenditure authorised by the Government, the roads investment strategy, a large number of capital infrastructure projects such as road improvements are funded by the Secretary of State, but you do not find a single Bill being promoted every single time a piece of capital infrastructure such as that is taken forward. Clause 1 is only in the Bill, in my submission, to provide a hook, as Mr Owen said, on which to hang an argument that the Bill is a matter of public policy. Without it, the only substantive provision of the Bill would be Clause 2, which would have to be modified by replacing the references to Clause 1 with something else. All that clause does is to lift the restrictions on the use of Victoria Tower Gardens for specified purposes. In that form, I submit that the Bill would amount, to an even greater extent than it already does, to a local measure, not a Bill implementing public policy.

168. Again, I looked at Epping Forest for a precedent. There was no provision in the Legislative Reform (Epping Forest) Order about the Government funding the police muster facility that was enabled to be constructed. I would suggest that the implementation of the Olympic and Paralympic Games, for which the facility was needed, was in a similar category as the Holocaust memorial in terms of whether it was a matter of public policy. In my submission, the Bill is not concerned with public policy like the Bills cited as examples in the submissions of the Secretary of State are, such as the nationalisation Bills and the Education Reform Bill. It is, in essence, a local measure dealing with a local issue that has arisen because an important local Act prevents the Government implementing a project in a particular local area.

169. Mr Owen may have rowed back on this point, but I am going to make it anyway. Even if the Bill were considered to be a matter of public policy, it does not follow that it cannot be hybrid, as appears to be the suggestion of the Secretary of State in paragraph 5.21 of the written representations. On that point, first I submit that the public policy test does not trump the test relating to local purpose Bills, which simply requires an assessment of whether the Bill is brought in by the Government, deals, in this instance, with Crown land, and affects private interests.

170. Secondly, as the Secretary of State's representations say in paragraph 5.19, the public policy test has a second limb to it, as set out in *Erskine May* in paragraph 30.57, which says that it is not the practice to treat as hybrid a Bill implementing public policy whereby private rights over large areas or of a whole class are affected. I submit that private rights over large areas or of a whole class are not affected in this case. The private rights and interests that are affected in this case include the local interests of those I represent and Westminster City Council, as explained in the previous part of my submissions.

171. Finally, I mention the Legislative Reform (Epping Forest) Order. If one assumes that Order was considered to have dealt with public policy—ie the facilitation of the Olympic and Paralympic Games—it was still treated as hybrid, presumably on the basis that it affected

private interests in similar ways to those affected by this Bill: in other words, at a local level, and not over large areas or of a whole class.

172. Finally, in summary, for the reasons I have mentioned and for the additional reasons given by Westminster City Council, which I am sure will follow, those I represent say that the Bill should be treated as a hybrid Bill and that the private business Standing Orders should apply to the Bill.

173. **MR TOM HEALEY:** Thank you very much. Can I suggest that we maybe put questions to you now, then break for lunch and then come back to hear from the other Memorialists in this group? I will start, if I may. You have talked about amenity societies and the societies you represent being affected differently from other amenity societies by the Bill. Is the general category of amenity societies a category that is germane to the purpose of this Bill?

174. **MR ALASTAIR LEWIS:** I would say it is because the interests that amenity societies can represent include looking after public open spaces. I am not saying that all amenity societies' interests are in looking after public open spaces, but a very significant number of them are, on both a local level and a national level. Given that the substantive provision, Clause 2 of the Bill, is in effect to override the trusts that were created in the 1900 Act to provide public open space, as guardians of public open spaces, yes, I would say that category is germane to the Bill.

175. I would also follow up on the point about whether the Bill defines the category. I think it was a point Mr Leslie made. I am sorry if it was not. In my estimation, the Bill does not define a category or class, nor did the Government come in and say to you, until questioned on it, what the category or class actually was. I say that as a passing remark.

176. **MR TOM HEALEY:** On this question of what is and is not public policy, I do not know but would guess that, in the example of the police muster facility on Epping Forest, that expenditure was authorised somewhere. There was quite a lot of legislation to do with the 2012 Olympics, so it is likely that that was authorised elsewhere. Is it your argument that the principle that separate statutory authorities should be given for new objects of government expenditure does not apply in the case of the Holocaust memorial, or is it your argument that Clause 1 is not necessary to authorise the expenditure on the memorial?

177. **MR ALASTAIR LEWIS:** It is. I have to say that I am not familiar with every word, line, paragraph or page of *Managing Public Money*, but my recollection from when I last read it is that nowhere does it say that, if a government department intends to provide for capital expenditure on a specific project, a specific Act of Parliament has to be promoted in order to authorise that expenditure. I mentioned the continuing road investment strategy. One would imagine that it would normally be sufficient for the annual Supply and Appropriation Bills to make provision for ongoing expenditure of the kind that is required here for this memorial. So yes, is the short answer to your question.

178. **MS CHRISTINE SALMON PERCIVAL:** I would like to repeat a couple of the questions I asked of Mr Owen, if I may. How would you define private and local interests? What is a private interest in the context of an amenity society?

179. MR ALASTAIR LEWIS: I knew I would end up agreeing with Mr Owen on at least one thing, and I agree with him on this. It is very difficult. There is no definition that I can turn to and say, “Yes, in case X it was said that a local interest is this”. Mr Owen quite rightly acknowledged and recognised that the interest of a local authority is a local interest for the purposes of hybridity. In relation to the two amenity groups that I represent, as I explained in my opening remarks—this is why I thought it was important for me to explain what they do and where—I would say that it is enough for them to show that they have a real local interest in what they do. Obviously, the society is very much a local society with a very focused local interest. As for the Parks and Gardens Trust, I mentioned that there is a national organisation and that this is the London organisation with a specific local interest in parks and gardens in London.

180. Although I am afraid I cannot point to a definition, I would say that those organisations clearly have local interests, as opposed to—Cornwall has been used, so I shall use Cornwall as well—a local amenity society that looks after the open spaces in Truro, which I think is in Cornwall. No one is correcting me, which is good. That deals with them.

181. With the local residents, I totally take the point that it can be quite difficult to define where you draw the line between someone who has a local interest and someone who does not. What I can say in support of the argument is that there are specific Standing Orders, obviously, which allow for the local authority to represent the local residents and, in effect, those who work in the area. One could draw it as wide as Westminster, or as wide as a ward or a number of wards within Westminster. To a point that Mr Healey made, when it comes to the actual test of whether someone has standing to appear, that would be dealt with in the House of Commons and the House of Lords by the Select Committees dealing with the Bill, and there would be challenges to people whose standing was thought not to be specifically local enough. That is how I would answer that question.

182. MS CHRISTINE SALMON PERCIVAL: How do you address Mr Owen’s point that, if relying on an argument that the amenity societies or the council would have standing because there is specific provision under the Standing Orders, that only bites if the Examiners find the Bill to be hybrid?

183. MR ALASTAIR LEWIS: My answer to that is that the Standing Orders we are considering today, or at least some of them, are specifically there to draw the attention of those mentioned later in the other Standing Orders to the fact that the Bill has actually been introduced. That is where I would draw the connection. That may not be a complete answer to your question, but it is my answer to your question. I cannot really say anything more than that.

184. MS CHRISTINE SALMON PERCIVAL: Thank you. If I could again ask you the same question that I asked of Mr Owen, as I said earlier, if the Bill receives a Second Reading, the principle of the Bill is affirmed. What is the principle of the Bill in your view?

185. MR ALASTAIR LEWIS: I hope it is not what Mr Owen said it was. I did write it down and I probably will not be able to find my notes. He said it without instructions, so I am not holding him to that, of course, nor would he expect me to, but I think he said something along the lines of, “There shall be a Holocaust memorial and learning centre in Victoria Tower Gardens”. I would say that the principle of the Bill must be much more restrictive than that,

because the Bill, as Mr Owen himself said, does not authorise the construction of the centre in the gardens. All it does is lift a local restriction.

186. This is me too without instructions. I would suggest that the principle of the Bill at its highest would be that those provisions of the 1900 Act that are relevant should be suspended, lifted or disapplied for the purposes of allowing the Holocaust memorial and learning centre to be built in Victoria Tower Gardens, rather than authorising, as it were, the construction of that project. I would hope that that would give enough leeway for those I represent to petition against the Bill and seek amendments for their protection, for example by restricting the area above ground that could be used, or rather restricting the amount of Victoria Tower Gardens that could be taken for the purposes of the centre.

187. **MS CHRISTINE SALMON PERCIVAL:** That is very helpful. Thank you very much.

188. **MR JUSTIN LESLIE:** Can I take you back to your initial argument that, in this case, a Bill presented for local purposes does not need to satisfy the differential treatment limb of the Hylton-Foster test? You took us to a particular paragraph of *Erskine May*. You were correct in explaining to us the sequences of the sentences, but could you expand a little on why that is authority for the proposition that the differential treatment test does not apply in this context? That strikes me as a bit of a departure.

189. **MR ALASTAIR LEWIS:** I acknowledged and continue to acknowledge that I am asking you to make a departure here. I do not think that this point that I have argued today has been argued before the Examiners before, and there certainly is no specific finding to that effect that I can point to. I am not sure I can really expand further on what I said about that passage from *Erskine May*. It says what it says. I have suggested that the reference to the Hylton-Foster test should be looked at as setting the context, and that the sentence saying that private interests, full stop, need to be affected says what it says and is repeated in the Cabinet Office guidance extract, which I also read. I am not sure I can take the argument any further than that, so I leave it at that.

190. **MR JUSTIN LESLIE:** In relation to the Cabinet Office guidance, what sort of weight should we be attaching to that document?

191. **MR ALASTAIR LEWIS:** It is not as much as *Erskine May*, but it should not be ignored. The Government are obviously represented here; the Cabinet Office is a part of the Government. It should be persuasive, in the same way that—I will acknowledge this too—*Craies on Legislation* is persuasive rather than authoritative, but it is helpful to our case.

192. **MR JUSTIN LESLIE:** I will come back to the *Craies* point in a moment, but on paragraph 19 of the society's memorial you quote the Speaker's comments in relation to the Education Reform Bill. You underline a line that says, "Provided that the formula or description used in the Bill deals with a category or class which is relevant to the purposes of the Bill and the Bill does not expressly specify or single out an individual or corporation within the category for different treatment, the Bill is not hybrid". I think it is common ground that the Bill does not identify a category or class. Am I right that your conclusion or what you take from that is that the question of category or class falls away, or is it the case that our task remains the need to define a category or class?

193. **MR ALASTAIR LEWIS:** You really have two things to think about, which are the two things you have just said. I would argue that, as a primary point, if the Bill itself does not provide a formula or description, as I think you said we all agree it does not, my primary submission would be that you do not have to think about whether you compare people's interests one way or the other. If you do not accept that, given that the Secretary of State has not come to you today with a specific explanation of what it thinks the category or class is other than, in response to questions, to say that it is the general public and possibly the Secretary of State for Culture, Media and Sport, it has been left to you.

194. Mr Owen said it is left to you to think about what that class should be, which is unlike what happened in 2010 on the Local Government Bill, where the Bill was much more determinative of what the category or class was. The representations made by the government agent in that case were a bit harder, if that is the right word, in saying, "This is what we think is the category or class, and what we say goes".

195. **MR JUSTIN LESLIE:** Just on a point about the quote from *Craies* that you provided, and then your reference to Standing Order 95(2), is there a risk of eliding the test for standing that is applied by Select Committees with the test for hybridity if we accept your approach?

196. **MR ALASTAIR LEWIS:** I would go back to the answer I gave to Ms Salmon Percival on this. How do you reconcile the fact that we are here talking about those first few Standing Orders with the fact that the Standing Order I refer to is really about standing rather than compliance with the Standing Orders that are relevant when the Bill is introduced? There is a link between them already, and that link is that those first few Standing Orders are there so that those who have the right to petition know that it has been introduced. That is what the Standing Orders are for.

197. I am not specifically saying that everyone who comes to Parliament with a petition has a private interest, because clearly that is not the case, but at the same time I would not go so far as to say that I am saying that everyone who has a Standing Order and interest in the right to be heard Standing Orders necessarily has a private interest either. I am saying that those I represent do, because their interests are so local and so specific.

198. **MR TOM HEALEY:** Thank you very much. That is a good moment to suspend for lunch. When we come back from lunch, we will hear from the other Memorialists in this group. I will suspend the Examination now and we will resume at 2.05 pm, which gives us almost exactly an hour.

(The committee adjourned at 1.05 pm.)