

Special Meeting of the Board Impact of Malvern Hills (Electoral Changes) Order 2023 16 February 2023

Background

Minutes of meeting 22 September 2022

Paper B Governance Committee 11 October 2022

As the Board is aware the Malvern Hills (Electoral Changes) Order 2023 was made on 11 January 2023. This instrument re-configures the District Council Wards in the Malvern Hills Area. Seven of MHT's trustees are elected in accordance with the 1924 Malvern Hills Act which states: "to be elected by the local government electors for the *urban district of Malvern* (one person by each of the seven wards of the said district)".

Until this Order was made, the external boundary of the relevant 7 District Council wards had remained the same as the old Malvern Urban District (MUD) boundary, although there had been some internal boundary re-alignments. The Order enlarges 2 of those wards to include areas which were not in MUD – Newland parish has been added into Link Ward and Wells Ward has been expanded to take in Welland and Castlemorton parishes.

This leaves the Trust in a position where it is not clear how its elections should be conducted without legislative clarification.

The Trust sought legal advice as soon as the problem became apparent. This is outlined in the paper of 11 October 2022. There were 3 potential options, a single issue Charity Commission Scheme, an order under s67 Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") or a Private Bill.

The Trust is due to hold elections in October 2023. It is unclear whether any of the options can in practice deliver the legislation the Trust requires in time. The Board resolved in November to continue to pursue all available options.

Summary of present position

The Charity Commission were approached but have declined to assist with pursuing a s73 Scheme to address this issue, one reason being that they did not believe a Scheme could be made in time for the 2023 deadline. They felt it was for the Trust to pursue this change along with the wider governance changes being sought, through the mechanism of a Private Bill. There is no prospect of a Private Bill being made in time for the 2023 elections.

The outcome of the Trust's request to the Department of Levelling up Housing and Communities (the Department) for an Order under the 2009 Act is awaited (see below).

The Election Services Manager at Malvern Hills District Council remains hopeful that the 2023 election could be conducted based on the old ward boundaries which would give the Trust some breathing space if none of the above options produce a result in time.

As reported at the January Board meeting, the CEO and Secretary to the Board (with the Trust's Parliamentary Agent) met staff from the Department by Zoom in December. The focus of the Department staff at that meeting was why the Trust had not made any changes to its Acts since 1958, in response to other Local Government boundary changes.

The Trust's Parliamentary Agent researched the history of changes to local government boundaries and sent a full explanation on 6 January setting out the reasons why no action had been necessary in the past (see background above). This has been acknowledged but no other response has been received.

Harriet Baldwin MP had been in correspondence with the Department and made considerable efforts to secure a meeting with Under Secretary Lee Rowley which took place on 6 February. The Minister listened to what we had to say and asked his staff for comments. The question of whether it was appropriate for the Department to take action in this instance or whether the Trust's problem was the cumulative effect of past inaction was raised again. Mrs Baldwin quickly responded that this was a one off problem caused by the 2023 Order. The Minister has given his staff a month to investigate this point and what procedural issues might be posed in seeking an Order to amend the Trust's governing legislation. The Trust raised their concern about the tight timescales for pursuing the changes that were needed.

Mrs Baldwin indicated that she would continue to explore whether there were other options available to amend the Trust's Acts.

What changes should be made?

If an offer is made to introduce amending legislation, the Trust has to put forward the change they are seeking, and needs to be ready with these proposals in advance.

The broad options which had been identified were set out in the paper for the meeting on 11 October. Because the Trust is seeking an amendment to the Acts to overcome the issues created by the 2023 Order, it would not be appropriate to seek anything other than to reflect the status quo so far as possible. In finding a resolution, trustees should have in mind the possibility of future local government boundary changes and look for a robust solution which would avoid the need to go through this process again.

1. Basing the electoral areas on parishes

The most obvious medium term solution would be to specify that instead of basing voting rights on wards, they are instead be established by parish. This maintains the status quo in terms of the households which have the right to vote. It also has the major advantages of tying the right to vote to payment of the levy and being assured that the Trust elections can still be conducted on the Malvern Hills District's electoral software. The arrangement to replace the election of 7 trustees from the MUD area would be:

Malvern Wells and Little Malvern Parishes combined elect 1 trustee
West Malvern Parish elects 1 trustee
5 trustees elected from the Malvern Town Council area.

If this change was made, the officers have considered whether the rules relating to the conduct of parish council elections should be applied to these elections or whether to continue to apply the rules relating to the election of District Councillors. We are advised that either choice would be workable from the point of view of running the election. Changing to rules for electing parish councillors would represent a significant change and the present position is that the rules for

the election of District Councillors are universally applied to all Trust elections (including in the parishes of Guarlford, Mathon and Colwall) so making any changes to the application of those rules would create 2 systems and this is not felt to be appropriate.

The issue then arises whether the elections in the Town Council area should be based on a single list, or the town wards combined to produce 5 electoral areas.

Single list

The major advantage of this would be no further issues would arise if there were changes to the parish wards (and we are advised that there may be such changes when the Local Government Boundary Commission looks at the County Council divisions). The town council elections are already run on the basis of multiple councillors being elected from a single list (with 2, 3 and 4 councillors elected from each ward).

As was pointed out at the November Board meeting, having a larger constituency makes it more difficult for candidates to canvas. Any by-elections are also more costly to conduct. The first point could be substantially mitigated by the Trust agreeing to:

- a) Facilitate the running of hustings. This would enable candidates to address meetings of voters.
- b) The Trust already publishes candidate statements on its web site, but it would be an option to post out a booklet of candidate statements to each property in the voting area (no figure available for the cost but we understand that to write to all households in the entire Trust electoral area would cost in the region of £5,600. It might be expected therefore that the cost would be roughly half this figure).

Running elections on the basis of wards

The other option in Malvern Town would be to seek to combine some of the nine wards to produce 5 voting areas with roughly equal numbers of voters. This again has the disadvantage of not being flexible if the town wards are altered in any subsequent boundary review.

2. To seek to maintain a reference to the District Council Wards.
Three possible permutations have been identified:
 - a. To define the voting area by reference to a map (showing the old MUD area) and say that those parts of the 7 District Council Wards which fall within the area defined on the map each elect a trustee. The potential disadvantages are:
 - This will not accommodate boundary changes which alter the number of wards within the perimeter

- It may be that the MHDC election software is adapted so that it cannot accommodate running an election based on anything other than Local Government ward/parish boundaries. This option effectively creates a cross over between the ward and the parish electoral systems and would fail if the relevant parish boundaries changed.
 - It is never easy to obtain a copy of a map referred to in legislation.
- b. To define the area by description – one trustee from each of (5 named wards), together with one from Link Ward excluding those resident in Newland parish and one from Castlemorton, Welland and Wells Ward excluding those resident in Castlemorton and Welland parishes. Alternatively it might be possible to word the description by reference to “those living within the levy paying areas in each ward”. The disadvantages are:
- The drafting is unlikely to be elegant.
 - It does not accommodate future local government boundary changes.
 - The election software may not in future accommodate this hybrid voting arrangement.
- c. One trustee to be elected from
Malvern Wells and Little Malvern parishes combined,
West Malvern parish
Each of Barnards Green, Pickersleigh, Great Malvern, Upper Howsell Wards
Link Ward excluding those resident in Newland parish.
This is slightly less cumbersome than (b) above but still has all of the same problems in relation to Link/Newland

There is the risk in all the cases set out above that reference to the District Wards could raise an expectation for those living outside the old MUD area that they may be entitled to vote. The legislation would also need to include an amendment to the application of the rules governing District Council elections (which currently apply to the conduct of Trust elections) to say whether (if the entitlement to vote is based on residence in the old MUD area) those living in the non-voting areas of the wards of Newland/Castlemorton/Welland could stand for election.

3. Allowing the whole of the new Wards to vote
This would be a significant change to the current Acts and would destroy the link between paying the levy and the right to vote in Trust elections. In addition, Castlemorton and Newland already appoint a Board member through Worcestershire County Council

Conclusion

Option 1 would seem to be the most suitable and the most resilient to any future Local Government Boundary changes, with the elections continuing to be run in accordance with the rules for election of District Councillors.

Serious Incident Report to the Charity Commission

Given that the Malvern Hills (Electoral Changes) Order 2023 has been made, there is no doubt about the Trust's position. The wording of the Acts no longer fits the reality of the Malvern Hills Warding arrangements. Without legislative change, the Trust will potentially be open to challenge in the conduct of its elections. The Officers' recommendation is that the Trust should now file a Serious Incident Report with the Charity Commission spelling out the problems as previously detailed which it will have in complying with its Acts in the conduct of the 2023 elections.

Recommendations

That the Board resolved:

1. That the CEO should file a serious incident report with the Charity Commission setting out that the wording in the Malvern Hills Acts in relation to the conduct of elections no longer reflects the MHDC warding arrangements.
2. That if the opportunity is presented, the Malvern Hills Acts should be amended so that in section 7(2), in substitution for "Seven persons to be elected by the local government electors for the urban district of Malvern (one person by each of the seven wards of the said district)" the Acts should read:
 - a. One person to be elected from the combined parishes of Malvern Wells and Little Malvern
 - b. One person to be elected from the parish of West Malvern
 - c. 5 persons to be elected from the parish of Malvern Town

Susan Satchell
Duncan Bridges
09 February 2023

