Malvern Hills Trust

Ordinary Meeting of Governance Committee
Guesten Suite, Lyttelton Well, Malvern WR14 2AY
Tuesday 10 June 2025 at 6 pm

Present: David Core (Chair), Richard Bartholomew (left 6.20 pm), Robert Berry, Mark Driscoll, David Fellows, John Raine.

In attendance: CEO, Secretary to the Board, Richard Fowler, Cynthia Palmer, Mary Turner, 14 members of the public.

Mark Driscoll opened the meeting as Vice-Chair by welcoming everyone present.

1. **Election of Chair**
   David Core was elected unopposed, nominated by Richard Bartholomew and seconded by Mark Driscoll. He took the Chair.

2. **Election of Vice-Chair**
   Mark Driscoll was elected unopposed, nominated by David Core and seconded by John Raine.

3. **Apologies for absence**
   John Michael (non-voting).

4. **Chair's announcements**
   None

5. **Declarations of interest**
   There were none.

6. **Public comments**
   Public comments were received from Prof Malcolm McCrae, Mr Jonathan Brew and Dr Graeme Crisp. These are attached at Schedule 1, together with the responses provided by the Trust.

   It is to be noted that the first speaker argued his points with the Chair of Governance, speaking in a brusque, hectoring manner, and that he continued to do so at several points during the meeting

   Richard Bartholomew left the meeting at 6.20 pm, having offered apologies to the Chair.

7. **Matters Arising**
   7.1. **Minute 8.2 of the Meeting held on 7 November 2024 - *Public Comments***
   The Board had approved Governance Committee's recommendation that public comments should be provided in advance of a meeting and in writing

so that responses could be provided promptly, as had been the case in this meeting.

7.2. **From the agenda for the cancelled meeting on 6 February 2025 – *Board Effectiveness Review***

Plans for this review had been impacted by the decision of five trustees to petition against the Private Bill. This had resulted in division on the Board, which needed to be addressed first. The Trust would be researching possibilities around an external reconciliation process.

7.3. **Minute 11 of the Meeting held on 7 November 2024 – *Review of Disciplinary Procedure for Trustees***

The recent independent investigation report might have some implications for the procedure. It was therefore not appropriate to progress it in its current form until there had been sufficient opportunity to consider those implications.

8. **Office for National Statistics (ONS) – Notification of Classification Assessment**

The Committee received a briefing paper from the Secretary to the Board (SttB) on the background to the recent notification, together with ONS's letter to MHT of 15 April, advising that the assessment would take place, and their letter of 22 May to the Treasury, confirming their decision. Questions were invited from trustees and the following points were made:

- A Trustee, who had taken their own independent advice (not shared with the Trust), asserted that MHT 'ticked all the boxes' to be a public body and asked why there was any concern about this. Why was the Trust running away from the issue and why had it not taken legal advice since the ONS notification had been received? David Core said that the Trust had been assured by ONS that the notification made no material difference to its status. The Board had previously resolved in 2022[1] not to spend any more time or resources on discussing whether or not it was a public body. The question would be addressed in Parliament by the Select Committee in due course. A trustee suggested that it would be important to know the implications of the assessment prior to the Select Committee.
- A Trustee asserted that the Board needed to see all instructions and Terms of Reference that went out to lawyers in order to ensure that the right questions were being asked. They noted that in his opinion to the Trust in 2023, Tim Straker KC did not share the view of the Trust's solicitors, VWV[2]. The trustee thought that an independent KC should be instructed to provide an opinion on the assessment. This view was supported by one of the trustees in attendance.
- A trustee in attendance asked when MHT had changed its mind about being a public body, noting that the Environmental Act, to which the Trust was subject, only applied to public bodies. David Core said that the Trust

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[1] See Board open minutes of 10 November 2022, minute 11.3.iv

[2] Tim Straker KC's opinion and the VWV advice he disagreed with are unrelated to the Trust's status; both refer to the impact of the boundary changes put in place in 2023. Both have no relevance to the Trust's governance, but they do discuss its susceptibility to judicial review.

had been ‘loose’ with its language in former years, reiterating the advice from VWV quoted in the briefing paper that there is no single definition of ‘public body’ or ‘public authority’ for legal purposes.

- A trustee asked in attendance asked why MHT had been represented at the Bill’s Second Reading by the Vice-Chair of the Board and the Governance Change Officer and passed comment on the Vice-Chair’s apparent physical cues that they said they had seen on television. They also insisted that there should be some ‘milestones’ on the Bill’s road. David Core said that this was because they were two of the four individuals delegated by the Board to take any urgent action; they had been in a position to contact the other two delegates had it been necessary. He confirmed that the next ‘milestone’ would be the Select Committee.
- There was a discussion about the rising costs of the Bill process. A trustee in attendance said that they had previously suggested that costs should be capped, so that there was a point at which the process should be aborted. David Core insisted that the Trust had a reasonable estimate of costs and the reasons for the increases had been explained. The budget had now been reset and MHT needed to wait to see what happened at Select Committee.
- A trustee asked whether all Board members would be kept fully informed of the Bill’s progress. David Core said that the Board had resolved that a number of trustees were conflicted and were therefore subject to certain restrictions and decision-making around the Private Bill only. In response, one trustee said that they would be asking for an investigation and asked if David Core would wish to see Trust information ‘published in the paper’.
- A trustee asked whether MHT’s trustees were supposed to be working in the *Charity’s* best interests or in the *public’s* best interests. They recommended that the Trust should be appraising itself of what was in the Cabinet Office Code of Conduct. The CEO requested that if the trustee was party to any specific, relevant legislation and/or Code of Conduct, they provide this to the Trust in writing.
- Mark Driscoll as Committee Vice-Chair said that he acknowledged that there was still much confusion on the implications of public body status and that the Trust had not been good at articulating what it meant. It was AGREED that Mark Driscoll and Robert Berry would meet to review the available information and report back to the next meeting.

At this point, the SttB voiced discomfort and there was some hectoring from the audience. The CEO told the meeting that staff had the right to conduct themselves without harassment.

9. **Policy Review Schedule**

The Committee received a paper prepared by David Core as Chair of Governance and the SttB, following Governance Committee’s request for a revision of the Schedule. This revision would ensure that strategic policies were reviewed by the Board, while more operational policies and procedures were reviewed by the CEO only, without requiring Board ratification. A number of land management-related policies would be incorporated into a single Land Use Policy, overseen by

Land Management Committee. It was noted that two trustees had asked for consideration to be given to the creation of a specific Nature Recovery Policy and this would also be looked at by Land Management Committee. David Core reminded the meeting that the review of the Land Management Plan would be coming up; this was one of the Trust's most important documents, focusing as it did on the Trust's core objectives.

A trustee suggested that it would be sufficient for those policies listed for annual review by Finance, Administration & Resources Committee to be reviewed bi-annually instead. This was agreed and the SttB was asked to make this change to the Schedule.

It was noted that Governance Committee's priority as regards to policy review was the creation of a new Access Information Policy (to include the Trust's position regarding Freedom of Information) and the review of the Complaints Policy. The SttB said that the Charity Commission had asked the Trust to review its Safeguarding Policy, last reviewed in 2021, and so this would be added to the priority list.

10. **Date of Next Meeting**
    Thursday 23 October at 6.30 pm at Park View Community Room, Victoria Park Road.

The meeting closed at 7.05 pm.

Schedule 1 – Public Comments

The Trust's responses to public comments, provided by David Core as Chair of Governance Committee, are shown in *italics*.

1. **Malcolm McCrae**

   My public comments are framed around obtaining transparent answers to the following questions:

1. Given the potential impact on the private bill submission of the confirmation of MHC's public body status by ONS and the fact that the papers for this evening's meeting show that officers were aware of the ONS classification ahead of last week's fractious Special Board Meeting why was this information not available to Trustees and the public ahead of that meeting?

   Since the ONS classification is for statistical purposes only and has no impact on the legal status or governance arrangements[3] of the Trust the ruling was not considered germane to the Bill budget discussion.

2. The Board's assertion that it is not a public body but a simple charity governed primarily by charity law was challenged by a number of peers at the second reading debate. Their concerns were presumably partially driven by the absence of the words charity, and Charity Commission (CC) in any of the Acts, coupled to the absence of any specifically defined charitable objects having been ratified by CC. So what documentary evidence, beyond an unsubstantiated assertion by DEFRA junior minister and a registration number, does MHC have to support its assertions that it is not a public body but a simple charity?

   I am not aware that the Trust has ever claimed that it is a simple charity. In some instances the Trust performs a public function and is subject to specific public law. It is a registered charity and a body corporate as established by the Malvern Hills Act 1884. Section 13 of that Act states that "The lands described in …. this Act … be and remain under the management and control of the Conservators for the use and recreation of the public". To be a charity an organisation must have purposes beneficial to the community. These include the provision of facilities for recreation and other leisure-time occupation in the interests of social welfare with the object of improving the conditions of life for the persons for whom they are intended[4]. Keeping the Hills and commons open and unbuilt upon for the recreation of the public fulfils that objective. Hence the Trust has had a charitable objective from its inception.

3. Given the serious criticisms raised at second reading what option work is this Committee going to instruct officers to undertake ahead of the Select Committee hearings and how does it plan to involve its various stakeholders to help ameliorate the objections voiced by the record number of petitioners?

   When the DCMS and Charity Commission directed the Trust to use the private bill route it was to allow "greater scope for public scrutiny and debate than under a parliamentary scheme". The second reading debate showed that process in action. Earl Attlee's instruction provides a good basis for the next step in the process, the

[3] See ONS article Public sector or private sector: How the ONS decides – and why it matters

[4] See Charities Act 2011 section 5

Contested Bill Select Committee, which will examine the Bill thoroughly. Prior to that the Trust is engaging with stakeholders where appropriate to consider their concerns with the Bill as drafted.

4. Why is the designation of MHC as an unincorporated charity now an error when it was used both in several sets of accounts and by MHC's Vice Chair in response to my questions in early 2024 as to whether the private bill submission would be from a statutory public body or an unincorporated charity?

   The Trust is a charity incorporated under the 1884 Malvern Hills Act. Earlier references to the Trust and MHC as an unincorporated charity were in error.

2. **Jonathan Brew**

   What evidence exists to suggest that the Malvern Hills Trust is NOT a Public Body or at the very least a hybrid Public Body/Charity?

   The Trust must consider what it is, rather than what it is not. There is no single specific regulatory framework associated with public or hybrid bodies. As the Cabinet Office notes "some Public Bodies are also classified and registered as charities by the Charities Commission. This is a separate system of classification that applies to institutions that are established for charitable purposes only and subject to the control of the High Court's charity law jurisdiction"[5].

3. **Graeme Crisp**

   Paper A appears to be at odds with statements by several peers taking part in the debate on the second reading of the Malvern Hills Bill. Paper A makes it clear that MHT knew when their status was under review by ONS and that they presented no evidence after receiving a letter from them. Was this because the Trust lacks any evidence to show that they are other than a hybrid body. They might well take note that their status as a hybrid as was suggested by one of their Lordships in the second reading debate.

   The ONS never contacted the Trust to seek further information or clarification on its status.

   Paper A further states that the ONS classification is only for the purpose of compiling economic statistics and that it has no impact on the governance arrangements of the Trust. The paragraph which follows in paper A lacks clarity and is of a form which should raise alarm bells. It makes a statement about VWV advice namely:

   Legal advice from VWV on the status of the Trust pointed out that there is no single definition of "public body" or "public authority" for all legal purposes, although some specific pieces of legislation do contain definitions that apply for the purposes of that specific legislation. This is followed by an irrelevant statement about the Human Rights act, which reads:

   For example, there is a definition of "public authority" in the Human Rights Act 1998 (the "HRA"), which applies only for the purposes of the HRA." Following this the paper states that "The classification by ONS is of a similar nature, for one specific purpose only".

[5] See [Classification Of Public Bodies: Guidance For Departments]

It appears that this last statement originated in the Trust and was not part of the VWV advice available when paper A was published. Otherwise the paper would have simply stated that VWV have advised that : the ONS classification was only for the purpose of compiling economic statistics and that it has no impact on the governance arrangements of the Trust.

I call on the Trust to present now any evidence they may have that they received from VWV advice that the ONS classification was only for the purpose of compiling economic statistics.

The statement on the impact of the classification decision is from ONS itself, in a blog entitled ***Public sector or private sector: How the ONS decides and why it matters****.*