

MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 5 November 2024 (Morning)

In Committee Room 4A

PRESENT:

Lord Etherton (Chair)
Lord Faulkner of Worcester
Lord Hope of Craighead
Lord Jamieson
Baroness Scott of Needham Market

FOR THE PROMOTER:

Christopher Katkowski KC, Counsel, MHCLG
Jacqueline Lean, Counsel, MHCLG
Robbie Owen, Parliamentary Agent, Pinsent Masons

FOR THE PETITIONERS:

Lord Blencathra
Brian Doctor KC
Baroness Deech

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(At 10.30 a.m.)

1. THE CHAIR: Good morning, everybody. This is the second public session of the Holocaust Memorial Bill Committee. We have made it clear to all the parties that today we are going to be dealing with the issue of standing only. We are not going to be dealing with what might be called more substantive matters at this stage, but obviously when we have heard everybody on standing we will indicate to those who are represented by counsel, to counsel, and to those who are not represented whether we wish to hear them or not further.
2. There are three parties who I would call the cultural or recreational societies whose standing has not been challenged, and we have not requested that they come to establish their right to standing before us.
3. Our plea this morning, as a committee, is that everybody who speaks today should confine themselves, please, strictly to the issue of standing. On that issue, I wish to emphasise that we have read all the petitions. I am sure many of us have read them several times, but we have read the petitions of the people who are before us today and the others who will be coming in due course. We have also read all the material supplied by the promoter, both in terms of principle and in terms of precedents.
4. We have read all that, and the way this will be dealt with is that I will, in due course, invite Mr Katkowski to make an opening statement, and then we will move on to the individual petitioners. When we have heard their case, we will ask Mr Katkowski whether he wants to ask any questions, and that would be the end, as it were, for each of the people appearing before us on the issue of standing.
5. I have to repeat, I think, for formality's sake if nothing else, what I said at the last hearing about fire alarms. In case of fire, bells are not used on the parliamentary estate. Instead, there will be a two-toned siren followed by a series of taped messages which are broadcast. If evacuation is necessary, please follow the instructions of the clerk. Anyone not in the committee room itself, perhaps waiting in the corridor, should find the nearest security officers.
6. The proceedings are being broadcast. A full transcript will be taken and, of course, there will be a Hansard repetition of what we have said. At the end of the day, assuming

there is time, we will then go into a private session. On the basis of what I have said, my understanding is that the first person we will be hearing today on the issue of standing will be Lord Blencathra.

7. Right. So, first, Mr Katkowski, do you want to make an opening statement about Lord Blencathra and his standing?

8. MR KATKOWSKI KC: Yes, thank you, my Lord.

Opening Statement by Mr Katkowski KC

9. MR KATKOWSKI KC: As I understand the programme—obviously I will seek your guidance on this—my opening, which should not take too long, is actually an opening which addresses the question of standing for the 15 petitions that you will be considering this week and next week. That is to say, I had not imagined that I would be speaking each morning or each afternoon before the next set of petitioners, because my submissions are one and the same, to be quite frank. It does not matter, for the purposes of my submissions, who is the petitioner of the morning or the afternoon, so to speak.

10. With that in mind, I wonder whether I can very briefly mention that in relation to the promoter's position with regards to the right to be heard, as opposed to issues relating to the scope of matters that this committee might consider, there are three documents from the promoter. First of all, there was our note on the subject, which was handed in when we were here for the first session on 16 October, and that has two appendices, and you I am sure will remember that. Secondly, there was the bundle of authorities that I will be referring to briefly in a little while. Then, most recently, there is a summary of our position in relation to standing, which is a three-page note. It is dated 1 November. It is on this committee's webpage. I do not know whether you have copies of that.

11. THE CHAIR: We have that.

12. MR KATKOWSKI KC: Thank you.

13. THE CHAIR: We have read all those documents.

14. MR KATKOWSKI KC: Thank you very much indeed. We have, for the purposes

of convenience, put the three-page note on to the slides, the first page of which is on the screens, but can I come to that in a little while. In relation to the right to be heard, there are just two preliminary points I would like to make by way of submissions, and then I will come to the essence of the promoter's position.

15. The first preliminary point that I wish to make is that, in making our submissions with regards the right to be heard of a number of the petitioners, it is important to bear in mind that, while it might appear that by doing so we are seeking in some way to stop particular people making the points they wish to make, this is not the case. As the committee will well understand, this Committee stage here is a special part of the parliamentary process because of the hybrid nature of the Bill. In essence, this stage is here to consider the private, as opposed to public, aspects of the hybrid Bill. The wider issues, which are writ large in the various petitions you have in front of you, of public policy and public interest, can be, and already have been, debated at other stages of the Bill's progress through Parliament, including the Second Reading debate in this House.

16. There are yet more stages, of course, of the parliamentary process yet to come, and, in my submission, it is an important point of distinction that there is a place for wider matters of public interest to be debated in other stages of the parliamentary process, whereas this stage—this committee—as you will well know, has a very particular and special task relating to what makes this Bill hybrid, the private interests and aspects of the Bill.

17. The second preliminary point is that the right to be heard, as you will well know, is quite distinct from the reason why this Bill was found to be hybrid by the examiners. There are, and indeed there may well be, some local residents who would be affected in a different manner to the wider general public. That is, in essence, why this Bill has been found to be a hybrid Bill. That does not mean that any of those particular residents have the right to be heard in relation to established practice and precedent here. Those are the two preliminary points I wish to make.

18. Just to briefly go to set the scene, as you will well know, under Standing Order 114, it is for the committee to decide upon whether or not the petitioners have the right to have their petitions considered. *Erskine May* summarises or encapsulates the position. This, as you will know, is in our bundle of authorities. You will have already read this.

It will be very familiar to you, but it is at tab 1, page 3 of our bundle of authorities, the entitlement to have one's petition heard, general principles. It is the second paragraph, paragraph 44.5 on page 3 of that bundle. The language will be very familiar to you, I am sure: "Generally speaking, it may be said that petitioners are not entitled to be heard by the committee on the Bill, unless it is proved that their property or interests are directly and specially affected by the Bill".

19. The most recent consideration of this by a committee in this House, which had to examine the principles which underpin that passage in *Erskine May*, is the committee on the High Speed Rail (London to West Midlands) Bill, and that is at tab 2 of the bundle of authorities. Lord Walker, the chair of that committee, in the various rulings on standing, drew the principles together at page 12 of the bundle, paragraph 8. It is the second part of that paragraph that I place particular reliance on, because in my submission it is not only, as one would expect, an accurate summary of the principles, but it is an extremely clear summary, and an extremely helpful one for the business of this committee in considering the right to be heard in relation to this Bill.

20. THE CHAIR: Could I ask whether Lord Walker said anything about the ambit of the discretion under Standing Orders 117 and 118, because we have both things to look at? We have, obviously, Lord Walker's pronouncement in paragraph 8, but we have also a discretion, and we need to know what the ambit is of the discretion.

21. MR KATKOWSKI KC: Indeed, and I was going to come to the discretion, but in answer to my Lord's question, on the very next page, at page 13 in these rulings, at paragraph 16, at the foot of page 13—if I can just divert from where I was a moment ago—there is a case here where the committee exercised its discretion under Standing Order 118, as I understand it, and this was in relation to a councillor, Councillor Williams. He made it quite clear, as you can see from paragraph 16, he was not claiming to speak on behalf of the local authority in question, of which he was a councillor. He had made the point about the social and economic deprivation in his particular district, and at the bottom of page 13—this is the key point—some of the residents in that district, especially in particular locations, might, with ampler resources, have been in a position to present petitions based on direct and special detriment, but several of them had been relying on Mr Williams, who is an articulate and dedicated councillor, to speak for them: "We allow his petition as an exceptional exercise of our discretion under

Standing Order 118, on condition that he does not address the realignment of the route”, in that particular case.

22. In other words, there is, to the extent that one can see, a principle underpinning the ruling. The principle is, as far as we can see, that, as an exceptional exercise of the discretion, a councillor is allowed to speak, in effect, on behalf of people who, had they had the resources to do so, might well have been directly and specially affected in their own right, but they had not participated as petitioners. They had been relying instead on their local councillor to, in effect, speak for them, so he was allowed through on that basis.

23. LORD HOPE OF CRAIGHEAD: I was just wondering whether the last few words of 118 extend the discretion just a little bit wider than that and cover individuals—local residents—who can demonstrate that, in some respects, their interests as local residents are affected.

24. MR KATKOWSKI KC: Thank you, my Lord. As you will know, under Standing Order 118, first of all, there is a discretion to permit the local authority of the area in question to be heard. That is of an area, the whole or any part of which is alleged in the petition to be injuriously affected. The Order runs on: “Or any of the inhabitants of any such area”. Now on face value, one might say, “Well look, if you are an inhabitant here of the City of Westminster, then do you not, as a matter of principle, fall under Standing Order 118?” To that I would say no, because practice and precedent, if you like, has evolved in such a way that the inhabitant in question, the resident in question, needs in some way to be representative of the residents of the area more generally who might otherwise have had some form of right to petition in their own right.

25. In other words, it is not just that you do not qualify, so to speak, under 118 simply because you are an inhabitant, a resident, of the area. If you take the City of Westminster, there are just under 250,000 inhabitants in the City of Westminster. It cannot be right as a matter of first principles to say, “Well, any of these 250,000 people can come along and have their petition heard in the exercise of your discretion”. There needs to be something to mark them out from the other inhabitants, and an example of that is here in this ruling in HS2 where we see a councillor allowed through under 118 on that special basis.

26. The only other example that we have been able to find in the precedents, so to speak, is later in the book, in the bundle of precedents, and it is in the relation to the Midland Metro Bill. This was in the House of Commons, as opposed to this House, and it starts at page 129. The relevant Standing Order in the Commons is Standing Order 96, which is in the same form as Standing Order 118. This, of course, was the Court of Referees. There on the very last page of the bundle, page 137, we find the ruling. On page 137, it is the two paragraphs beside and underneath “chairman”. A residents’ group—the CARE Residents Group—was allowed to be heard under House of Commons Standing Order 96, equivalent of this House’s Order 118, on the basis they would represent only those who are directly affected—the frontagers. This Midland Metro was a transport project, and various people who were fronted on to the route would be directly affected in some or other shape or form. This residents group was allowed through to speak for those who otherwise, if you like, would not have been heard.

27. Those are the two examples we have been able to find. They may well be i.e. rather than e.g. Those are the two instances that we have been able to find, and there are a number of precedents, a number of decisions, in this bundle which have gone the other way when people have just simply been, if you like, local residents who were not marked out in some way as different from their fellow local residents. My Lord, sorry. That is a very long-winded answer to your question, but there needs to be something in addition to simply being an inhabitant of the area as we understand the established precedents.

28. LORD HOPE OF CRAIGHEAD: Thank you very much.

29. MR KATKOWSKI KC: Going back, if I may, to the “as of right” position that, as I said, is, for our purposes, very effectively summarised in Lord Walker’s ruling in the HS2 Bill case—page 12, paragraph 8, second part of the paragraph. “It is also important to note that an individual petitioner’s right to be heard”—that is not under the discretionary powers in 117/118—“depends on that petitioner establishing the prospect of direct and material detriment to his or her property interests”.

30. THE CHAIR: Sorry, can you give me the page number, please?

31. MR KATKOWSKI KC: Page 12, my Lord. I am so sorry. Page 12 of the bundle,

paragraph 8, is the rulings on standing by Lord Walker and the committee. The second part of the paragraph, about eight or so lines down: “Important to note an individual petitioner’s right to be heard as a right ... depends on that petitioner establishing the prospect of direct and material detriment to his or her property interests, either by compulsory acquisition or by interference with his or her property rights which amounts to a common law nuisance”—it is these words which are of particular importance in my submission—“or some other interference which would be actionable if not authorised by Parliament”. That is obviously in a private law action, not a public law action. Some other interference which would be actionable were it not for whatever it is that the Bill is authorising. My Lord, on that basis—

32. THE CHAIR: Can I ask you about that?

33. MR KATKOWSKI KC: Of course.

34. THE CHAIR: The basic proposition or rule is that there must be a special and direct impact on property rights or other interests. Those interests can be totally personal, can they not? We do not see, in this paragraph, any separate reference to interests. All you see is a reference to property rights and to causes of action which in some way or other are related to property. Is it your proposition that everything has to be tied to some kind of an interest in a property, and that there is no separate category of interests?

35. MR KATKOWSKI KC: Thank you, my Lord. In relation to the right to be heard, it is indeed my submission that the interest in question either needs to be, to use my Lord’s phraseology, tied to property, or—and it is the last line and a half of paragraph 8—some other interference which would be actionable if not authorised by Parliament. I understand that to mean—because we are looking here, are we not, at the private aspects of a hybrid Bill—actionable in private law. If there is some other interest which is not a property interest, but even so could found an action—litigation—to protect it were it not for what it is that the Bill authorises, then you would fall within the right to be heard in this ruling.

36. THE CHAIR: For anybody to have standing—

37. MR KATKOWSKI KC: The right to be heard, yes.

38. THE CHAIR: Yes, standing. If anybody wants to have the right to be heard, your proposition is that they must show that they have a sufficient property interest, which might—I do not know—extend to a licence, but it certainly would be a proprietary interest of some sort, I assume, or—I do not know this—some actionable right connected to that property interest. That is a really narrow definition.

39. MR KATKOWSKI KC: It is a narrow definition, and deliberately so as I understand it, my Lord, because the whole purpose of this stage in the proceedings looking at the private interests that are affected by the hybrid Bill is indeed in relation to the right to be heard confined in that way.

40. My Lord mentioned a licence. In one of the precedents, yes, someone who held a licence was indeed considered to have an interest that would fall within this category of the right to be heard, something that you could litigate to protect, were it not for the provisions in the Bill in question—litigate in private law—all the time remembering that this stage of the parliamentary process is not a stage that is considering public policy or wider matters of general public interest. It is looking at the private aspects of the private interests that are affected by this hybrid Bill.

41. THE CHAIR: Do you know of any other precedent, as you call them, which has a similar explanation or amplification that you find at the end of paragraph 8, or does that stand alone in such a narrow approach?

42. MR KATKOWSKI KC: There is not another precedent, if that is the right word to use. There is no other precedent that draws the points together in that particular way, but on the other hand, there are no precedents that have allowed, as we understand it, the right to be heard on a basis wider than that which is encapsulated in paragraph 8 of the HS2 ruling. I have referred to paragraph 8 because it draws the points together, in my submission, particularly clearly. It is narrow.

43. THE CHAIR: It is very narrow.

44. MR KATKOWSKI KC: In my submission, that is not a reason to criticise it, if you like.

45. THE CHAIR: I am not criticising. I am just saying it is very narrow.

46. MR KATKOWSKI KC: It is. I would certainly assent to “narrow”, but deliberately so, my Lord, in my submission, because of the nature of this stage of a hybrid Bill’s progress through Parliament, which is not here to examine, if you like, broader issues. It is here to examine those who will be affected in some private law manner by the Bill, and who would have been able to protect those interests by litigation were it not for the provisions of the Bill. It is deliberately narrow.

47. LORD HOPE OF CRAIGHEAD: Paragraph 10 may be helpful, because he is looking at this second category, the actionable area. The case he is referring to is the Canary Wharf case where a group of people who were local residents were complaining of the interference with their comfort—the mess in the streets and so on—due to the construction of the Canary Wharf project. The House of Lords held that they did not have an actionable right simply because they were nearby and there was dust on their pavements, and that kind of thing. It was more than that, and I think he is trying to explain that in paragraph 10.

48. MR KATKOWSKI KC: Yes, and then at the end of paragraph 14, having dealt with what has been described as the narrow as of right ability to be heard, Lord Walker, at the end of paragraph 14, then went on to say, “But we need to look to see whether various groups and so on would come within the terms of Standing Order 117”. There is this stepped process, is there not? First of all, do you have the right to be heard? If not, do you fall within the discretionary reach, if you like, of 117 or 118?

49. THE CHAIR: Do you know of any other case that bears any similarities to the one we are considering here? Most of these cases—not all, but most of them—are compulsory purchase cases. The 19th century cases, where people were setting up companies to acquire land for railways, were again mostly to do with the acquisition of land, and so those are clear situations. I wondered if you could direct us to some precedent that was not concerned with the acquisition of land, or an interest in land, by the promoter, but was something, as I said, along the lines of the present Bill.

50. MR KATKOWSKI KC: My Lord, can I just take a step back? In relation to the HS2 Bill, of course, in that case, although you are right that the Bill included compulsory purchase, it was also a Bill to authorise the project. It is particularly pertinent to bear that in mind. You will understand, of course, in relation to the

Holocaust Memorial Bill, the Bill does not authorise a project. It simply seeks to remove a statutory obstruction to the construction of the project in the gardens. Even in a case—and HS2 is an example—where consent was granted for the project, when it came to this stage in the Lords, this whole issue of standing was dealt with in the way in which we have just seen.

51. In relation to the Bill itself, there were much wider issues than should the promoting authority be allowed to purchase the property of A, B, C, D and E—much wider issues than that—because underpinning the Bill was consent for the project itself. Even so—and this has been described by my Lord as narrow, and I am happy to assent to that—this narrow approach was taken to the right to be heard in contradistinction to discretionary exercises under 117 and 118 of the committee’s ability to allow people to be heard, even though they do not have the right to be heard.

52. In my submission, it is particularly telling that the approach was adopted by the committee—by Lord Walker and the committee—in the HS2 Bill, when that Bill was dealing with such a wide-ranging set of issues, including granting consent for the project itself. Even so, at this stage in the proceedings, the focus was very much on, “Is there a private interest, which otherwise could be protected by litigation, which entitles a person to be heard or not?” Forgive me for taking a step back, but that is the first part of my answer.

53. The second part of my answer is, my Lord, no, there is nothing that we are aware of in any precedent or otherwise that is akin to the Bill that is before you. As I said in my opening submissions on the first day of these proceedings, this is a certainly very unusual and, as far as we are aware, a unique Bill in the sense that it authorises the expenditure of money, but in relation to its particularly controversial aspect, it is seeking in clause 2 simply to lift the statutory obstruction that stands in the way of building a project, as opposed to authorising the project itself to take place. No, we are not aware of anything that is anything like closely analogous to the Bill that you have in front of you.

54. THE CHAIR: Thank you very much.

55. MR KATKOWSKI KC: Yes, I do stand by that narrow formulation in relation to the right to be heard. On that basis, it will come as no surprise—and as our various notes

have explained—we do draw these matters to the committee’s attention by way, if you like, of challenges to the right to be heard of a number of the petitioners—in fact, all 15 petitioners that you have timetabled or scheduled for today, tomorrow, next Tuesday and next Wednesday. It is the same point in relation to all of them, that none, with great respect, have the right to be heard, because none, again with great respect, fall within the confines of that principle that has been set out.

56. Certainly as I understand it, from reading the petitions, I do not believe that any of the petitioners in question—but if we focus on the petitioners whose right to be heard is being dealt with today, Lord Blencathra, Baroness Deech and others—I do not think that any of the petitioners actually claim that they fall within Standing Order 117, which relates to associations, a discretionary power to allow associations to be heard, where whatever interest it is that that association protects would be injuriously affected by the provisions contained in the Bill. I do not think any of the petitioners claim that they are acting as an association in that regard.

57. In relation to Standing Order 118, none of the petitioners plainly are the local authority for the City of Westminster, so that simply leaves the question of inhabitants, which I have already addressed in my answers to Lord Hope earlier on. Not that any of the petitioners, as I understand it, particularly claim that they fall within the discretionary remit of Standing Order 118, but to the extent that any of them do, I have made my submission that the inhabitant in question needs to be sufficiently representative of inhabitants of the area that is injuriously affected in cases where, as here, the local authority is not a petitioner. Plainly, if the local authority here had petitioned then there would have been no real need to consider individual inhabitants, because their authority would in effect be speaking for them.

58. I, with respect, do submit that none of the petitioners whose standing is being looked at this week and next week—in particular, today, Lord Blencathra and Baroness Deech, and the other petitioners within that petition—fall within any of these established principles. That is the submission. Now, my Lord, with that said, the slides simply summarise the summary note that we submitted dated 1 November, and to be quite frank says nothing any different from the submissions I have already made. Would it or would it not assist—I suspect not—for me to go through all this, because it would be very repetitious?

59. THE CHAIR: No, we do not want any repetition, if that is all right.

60. MR KATKOWSKI KC: Exactly, no. I really would not want to keep repeating myself anyway, but those are the submissions I seek to make in relation to the principles, my Lord. Lord Hope.

61. LORD HOPE OF CRAIGHEAD: There is just one point that affects the people—the three bodies—you accept come in under, I think, one or other of the Standing Orders. You say that it would be unnecessary duplication to hear all of them because they are all covering the same point. I wonder whether you are overplaying that issue rather by reference to the HS2 case, because in HS2 there were an enormous number of people. What Lord Walker was doing was trying to group them together to save time, because otherwise there would have been an immense amount of time spent.

62. We are not in that position really, and would it not be right for us to hear each of these three bodies without being too worried about duplication? Obviously, if they are repeating what has been said before, we can cut them down and say, “We have heard that argument already. What else do you have to say?” To say we would not hear them because of duplication would be pressing it too far, would not it?

63. MR KATKOWSKI KC: Indeed, my Lord. I am entirely content for this committee to act on the basis that, if it has heard too much duplication or repetition amongst those discretionary petitioners, so to speak, this committee is more than capable of saying, “We have already heard that point. Thank you very much indeed. We do not need to hear it again”. My Lord, yes, the elephant in the room, so to speak, in my submission, relates really to the scope of the matters that they are to address you on, which this committee should allow, whoever it is who is to address the committee in due course.

64. My Lord, I was going to ask for some guidance, somewhere along the line, as to quite how the committee imagines or intends the question of scope to be dealt with, because we have, as you know from my submissions on the opening day, explicitly asked for this committee to consider scope. I understand entirely, of course, that today, tomorrow, next Tuesday and next Wednesday the committee is addressing only the issue of standing. That is of course not a problem. That is absolutely fine, but for whoever it is who is let through the net, so to speak, whether that be any number of the 15 who the promoter challenges, and in the event for the three discretionary associations and

groups, there is the question, which to my mind is a much more important question than the question of standing, as to quite what it is that those petitioners will be permitted to address you on.

65. THE CHAIR: We are very alive to that.

66. MR KATKOWSKI KC: Yes, thank you.

67. THE CHAIR: I think if there are any directions to be given that affect the way in which those submissions are going to be stated and by whom, we will give those directions later.

68. MR KATKOWSKI KC: I am much obliged. The committee well knows, because we have written ad nauseum on the promoter's position in relation to scope. It is set out in note after note.

69. THE CHAIR: We have read your note. You had a separate note on that, and you addressed it in some detail, partly in response to questions from us on the first day.

70. MR KATKOWSKI KC: Indeed so, and my only point, if you like, is simply that I just ask that there be some consideration of that before we get to other petitioners in due course. We know that there are three already, but however many other petitioners there might be who join the three in due course to make their submissions and their case to you, I just ask there is some consideration as to that question of scope. That is what I would invite you to do anyway, my Lord, rather than just letting everyone say everything they want to say, and for it to be a repeat of what happened in the House of Commons, at this stage, where, having heard everyone say all these various points, we were left then to say, "Well, that is all very interesting, but it is not in scope. That is all very interesting, but it is planning. That is all very interesting, but it is public policy," and so on and so forth.

71. Of course, it is for the committee to decide what is the best use of its time. I just make a plea, if you like, that some consideration be given to that—if it is by way of directions, that would be extremely helpful, but some consideration is given to that—before we turn to the substance of those petitioners who either have the right to be heard, as you have decided, in due course, or who have been allowed to address you in

exercise of your discretionary powers under Standing Orders 117/118.

72. THE CHAIR: Understood.

73. MR KATKOWSKI KC: Thank you very much indeed, my Lord.

74. THE CHAIR: Thank you, Mr Katkowski. Right, very well. Lord Blencathra, I think it is your turn to say why we should hear you. Now, please do not veer into the question of scope of the Bill, of public policy. All we want to hear you on, strictly, is standing. When you make your submissions on this, can I emphasise, as I emphasised before, that we have read your petition? We have read it very carefully, many of us more than once, so we know what is there. Subject to those points, please let us know if you wish to add something or highlight something in particular on the question of standing.

The Rt Hon David Lord Blencathra

Submissions by Lord Blencathra

75. LORD BLENCATHRA: Thank you, my Lord Chairman, and thank you and your committee for your courtesy and generosity in letting me appear first this morning so that I can go to another meeting. My opening remarks will be just about six minutes, and take up six minutes of your time, if that is acceptable. It is an argument for the right to be heard, not about the substance of my petition.

76. When I drafted my petition, I wrote, “I have lived in the area for almost 30 years. Whilst my main home is not in London, I have a flat about 400 yards away from the proposed development. However, it is tucked away on a side street and I do not think that my property value would be affected by any additional traffic or the construction of this monument”. My Lords, I wish to revise that slightly. I can no longer pace it out at a regulation 30 inches per pace, but I judge the distance to be closer to 300 yards.

77. If this monument turns out to be a damp squib, then my property value and others in the street would probably not be affected, but if it is as successful as the promoters claim, then there will be large crowds and lots of buses. During the week, there are some cars parked on my street, but at weekends it is absolutely jam-packed with visitors to the Tate leaving their cars on my street. Sometimes the gate to our underground garage is

blocked. With cars on either side, the street is down to just one lane. Now, bus drivers, I understand, will be prohibited from parking on Millbank, Horseferry Road, or the road next to the security service. That leaves parts of John Islip Street and mine as the closest places to Victoria Tower Gardens for buses and other cars to park.

78. It is possible that the memorial becomes a place of contention and hostility, and that will reflect on property values nearby. Potential purchasers will see my street packed with buses, and solicitors may advise against buying a property that is also close to a site of unrest. Of course, my Lords, this is speculation on my part, and I cannot say that it will happen. It may not, but the promoters cannot say that it will not happen either. As with much of this proposal, the facts and figures are quite vague.

79. My Lords, I believe that it is possible that my property, and the potential damage to my property, gives me a locus to be heard, but, my Lords, I suggest there is another reason for you to hear other noble Lord petitioners as well as myself. Of course, as Pinsent Masons keep lecturing us at length about restricting the right to be heard, you must follow the procedures of the House on hybrid Bills. On a very strict interpretation, some noble Lords would be excluded if they cannot show property damage, but as a former Clerk of the House once said to me, “Lord Blencathra, our procedures are set and must be followed until such time as we simply decide to change them any time we like”.

80. I am not suggesting, my Lords, that you should change the rules, but asking you to hear Peers of this House as we would in any normal Select Committee, especially since the vast majority of Peers who spoke at Second Reading were opposed. Indeed, all I am asking of you is to follow what a predecessor committee did with HS2—and I would also like to quote selectively from that report—when the committee extended its discretion. Lord Walker may have set out the principles, but the committee then exercised its discretion.

81. The HS2 committee provided an analysis of the petitions it had received, and petitioners heard in its report—and I will say this slowly for Hansard—the report, High Speed Rail (West Midlands to Crewe) Bill, 19 October 2020, HL Paper 149 of Session 2019-21. In chapter 7 of the report, the committee said, “Of the 36 petitions received by the committee, 18 resulted in some form of hearing. Previous special reports by committees on hybrid bills have covered such hearings by exception, only reporting on

those which they considered particularly significant. We have taken a different approach and have chosen to give an account of each of the petitions heard by the committee. The petitioners have shown exceptional patience in waiting for their petitions to be heard throughout the various delays to proceedings and we felt they deserved to receive an account of the committee's findings. We note that this is only possible because of the small number that received a hearing. It would be unreasonable to expect other committees on hybrid Bills to follow this approach".

82. My Lords, over the next 10 days, 12 Peers and one MP are due to appear before you asking to be heard. I think this is unprecedented. The Lords HS2 committee heard 17 petitions from outsiders and one Member of Parliament. I am asking you to hear just 13 petitions from fellow Peers, not 250,000 Westminster residents who may suddenly pop in asking to be heard, just 13 Peers. My Lords, I suggest that if you were to grant them the right to be heard, then you can rest assured that there will be no filibusters or stunts. My whole presentation to the Commons Select Committee was 25 minutes, no questions, and that was it. I suspect other Peers would be about the same length. Of course, you can ask them when they appear how long they would take and if they had any other witnesses. If there was due to be repetition, my Lords, I am sure you could decide to curtail what they had to say.

83. This is a highly contentious issue, and I think there would be disquiet if a Lords committee did not hear other Lords, even though their right to be heard was borderline. We are the House of Lords. We permit amendments at Committee stage that are quite wide of being in order. We permit speeches that are sometimes quite wide of the subject under discussion. That is who we are. That is what we do, my Lords, and it is one of our strengths. Finally, my Lords, I must say I am slightly bemused by the strenuous efforts being made by Pinsent Masons and the promoters to silence us. They tried it on in the Commons, but we were heard there.

84. My Lords, in conclusion, I must tell you, on my word of honour, that afterwards, the chairman of the Commons committee, who has since lost his seat, said that the government case was appalling, shot full of holes and not credible, and he hoped that the Lords would take a proper look at it since his committee has had its hands tied by the resolution of the House of Commons. He had sent a very long list of questions to the promoter, but could not use the answers. He said that my presentation was devastatingly

good and persuasive, but nothing the committee could do to take it on board. I am certain, my Lords, that if you hear from the other petitioners listed, then you might come to the same conclusions. Perhaps that is why strenuous efforts have been made to argue that we do not have the right to speak here either. Thank you, my Lords.

85. THE CHAIR: Thank you very much. Does any member of the committee have questions? Well, Lord Blencathra, we are very grateful to you. Thank you very much. I should make it clear that we will announce those who we agree have standing all together when we have heard everybody. Mr Katkowski, I am not sure of the procedure at this point, but do you want to ask any questions?

86. MR KATKOWSKI KC: I do not want to ask questions, but it is just really a question from me to you, my Lord. Would it help at all for me to say a few words, in effect, by way of submission in response to what you have just heard? I think you can imagine the nature of my submissions.

87. THE CHAIR: Well, I think you have made your submission in your general submissions, and we can see how they fit in with what is in the petition and what Lord Blencathra has said. We understand the point that you do not have a completely free hand, that you have a basic proposition about who is entitled, and then there is these discretions that exist under the Standing Orders. Your case would be that Lord Blencathra does not satisfy any of those.

88. MR KATKOWSKI KC: That is exactly what I was going to submit to you, my Lord, yes. Thank you.

89. THE CHAIR: I think we have that.

90. MR KATKOWSKI KC: Thank you. Just two very small points then, my Lord, if I may. You will recall, of course, that in the House of Commons Committee stage on this Bill, we did not challenge standing at all.

91. THE CHAIR: I do appreciate that.

92. MR KATKOWSKI KC: That issue did not arise. Also, in the other HS2 Bill that Lord Blencathra referred to, where you will recall he read various passages from the report there, there was no challenge to standing in that particular Bill either, so the

circumstances are somewhat different, whereas, in the HS2 Bill that we have referred to—and I referred to earlier on, of course—there were challenges to standing, hence the need for rulings on that subject.

93. THE CHAIR: Yes. Are the passages which Lord Blencathra read out in your little booklet?

94. MR KATKOWSKI KC: No, I do not believe they are because there were not challenges to standing in that matter.

95. THE CHAIR: I see.

96. LORD HOPE OF CRAIGHEAD: I think he was reading from the report in HS2 2B, was not he?

97. MR KATKOWSKI KC: That is right. 2A.

98. LORD HOPE OF CRAIGHEAD: We can trace that report.

99. MR KATKOWSKI KC: 2A, my Lord.

100. THE CHAIR: It is report 2A.

101. LORD HOPE OF CRAIGHEAD: 2B.

102. MR KATKOWSKI KC: Phase 2A of the HS2 Bill in the Lords, as I understand it.

103. LORD HOPE OF CRAIGHEAD: It was the line to Crewe. I should say, I was presiding over that committee, so I know what the circumstances were there.

104. THE CHAIR: Very well. Thank you very much.

Baroness Deech et al

105. THE CHAIR: We will move on now to the next group. Now we are on to Baroness Deech. I am assuming, Mr Katkowski, that you do not want to repeat what you told us initially—

106. MR KATKOWSKI KC: No, no, no.

107. THE CHAIR: —for every single person, but is there something additional or specific you want to say about Baroness Deech that is not covered by what you have already submitted to us?

108. MR KATKOWSKI KC: Save for one point, no, there is nothing particular or specific. The point in question, if you will just bear with me for one moment, is simply this. It is petition 11, and it is simply to draw the committee's attention to the petitioner information—this is box 1—the first page of the petition of Baroness Deech and others, and it is the second of the boxes. “Although we are not formally associated, other than for this present purpose”—I do not think they are formally associated at all—“we constitute a specific class of persons with a private interest in the Bill representing other survivors of the Holocaust and relations of victims who share our views, which we know are widespread in the Jewish community generally”.

109. So plainly, with respect, that is not an association that falls within—well, it is not an association at all, but it is not an association that falls within Standing Order 117. I have made the point in submissions earlier on that although—and I am sure that this can be portrayed and already has been portrayed, by Lord Blencathra, as if we are trying to stop people making points of wider general public policy interest, if you like, in relation to the Bill, but I have sought to emphasise that is plainly not the case, because there are other stages of the Bill's progress through Parliament where all these issues can be addressed, and they already have been.

110. In fact, many of these petitioners' points were made by Baroness Deech in the Second Reading debate, but, no, apart from that, my Lord, there is nothing else, and as I explained earlier on, as I have been programmed, so to speak, to speak once, making submissions on the 15 petitioners in question, I sought to draw together my submissions on all 15 in what I addressed you on earlier this morning.

111. THE CHAIR: That is very helpful.

112. MR KATKOWSKI KC: Thank you.

113. THE CHAIR: Mr Doctor, so you are counsel for Baroness Deech.

114. MR DOCTOR KC: Yes.

115. THE CHAIR: Would you like to make an opening statement?

116. MR DOCTOR KC: Thank you.

117. THE CHAIR: How would you like to proceed?

118. MR DOCTOR KC: Well, my Lord, I am going to address the question you have designated as the topic of today. That is the locus standi of Baroness Deech and the six survivors who have joined her in this petition. I have produced a short note, if I can hand it up, which essentially says what I am going to say, so you will be able to read that in due course, and I will not take up very much of your time, but simply direct your attention to certain points that I want to make and stress.

119. MR CHAIR: Thank you.

Submissions by Mr Doctor KC

120. MR DOCTOR KC: My Lords, I want to start by just referring back—it is not in the note, but it is obvious—it is the first point that Mr Katkowski made, which was the reference to *Erskine May*, paragraph 44.5, which is on page 3 of his bundle, which is the general approach governing these sort of committees. Generally speaking, it may be said that petitioners are not entitled to be heard by the committee on the Bill unless it is proved that their property or interests are directly and specially affected by the Bill.

121. As a corollary, it has been accepted as an established principle that the owners of land proposed to be consultatively taken, also lessees and occupiers, on whom, as on owners, the notices required by the Standing Orders are to be served, should always be heard against both the preamble and the closure of the Bill. Well, obviously we are not owners of land, but nevertheless that is the general principle stated, but, my Lord, I would like to go straight on to the Standing Orders, at least the guidance, which the committee itself has issued. I am not sure if it is in the bundle, but certainly it is quoted in the letter from Pinsent Masons to Mr Wright, the legislation manager, which is dated 2 October 2024, although for some reason—I am not sure if it is a printing matter—it has come out on my copy as 2 November, but it may be that some sort of update was embedded in the dating, but in any event, it is actually dated 2 October, and that was sent to Mr Wright, and that was one of the early submissions on behalf of the promoter.

122. I just want to refer to paragraph 3—I beg your pardon, to paragraph 4—which is the published Holocaust Memorial Bill Committee Lords engagement documents, “the guidance”. It includes the following passages, and we seek to bring ourselves within the words that you have set up as guidance to those who would petition you.

123. The right to be heard: “Only individuals, groups of individuals, companies or organisations who are directly and specially affected by a Bill have the ‘right to be heard’ on a petition by the committee”. That would appear to be a reference to *Erskine May*, the passage I referred to a moment ago. This means that the objections a petitioner has to a Bill must adversely affect them or their interests in a specific way, which is different from the effect on people and bodies generally. There is no standard or set definition of “directly and specially affected”, a concept that is enshrined in *Erskine May*, the guide to parliamentary procedure, since it would vary depending on the Bill in question.

124. In a broad sense, it is generally understood as meaning a direct and demonstrable impact on property or personal interests, which obviously I stress, and an adverse effect different to and beyond that experienced by people or bodies generally. Understandings of this concept have developed over the years, and determinations in the cases of individual petitioners will be guided by past precedents, the cases presented by the promoter and the petitioner, and the views of the Select Committee.

125. So plainly, the Select Committee itself retains the ultimate decision—according to principle, but nevertheless the ultimate decision—as to who should or should not be heard, and it would be natural that that would in some way be affected by the volume of people who wanted to address the committee, the nature of the interests that are being sought to be advanced, the public interest generally that a Bill such as this gives rise to.

126. I have then set out—I will not go through it—who the petitioners are, beginning with Anita Lasker-Wallfisch, who is perhaps the most well known, who is a survivor of Auschwitz and Bergen-Belsen, and there is Dr Martin Stern.

127. All of these people survived camps, including Joanna Millan, who was aged three when she was eventually liberated. She has no recollection of what she went through. She did not even realise that she had been in a camp, and in the petition she describes the process of finding out her origins as a big jigsaw puzzle. The only one who was not

actually in a camp is Henri Obstfeld, who was handed to foster parents who hid him for the duration of the war. His foster parents and Henri had to escape from where they were hiding to the village of Harskamp, and they were liberated by the Allies in April 1945.

128. Finally, Baroness Deech herself. She is not a survivor in the strict sense, but she is in fact a direct descendant of survivors. Both her grandmothers died in the camps. Her maternal grandmother had come to England, where she gave birth to her mother—that is, Ruth’s mother—but apparently her marriage broke down, she returned to Poland and was not allowed to come back here after the war, and she died in a camp. Baroness Deech believes that the promoters, supporters, have gone to great lengths to prevent survivors from knowing exactly what is planned in their names.

129. THE CHAIR: Can I say, in broad terms, that this group comprises survivors themselves and those who are descendants or connected as family members?

130. MR DOCTOR KC: Yes, the only one who is not a survivor is Baroness Deech herself, yes.

131. THE CHAIR: Thank you.

132. MR DOCTOR KC: Now, it was a stated object of the original Holocaust Commission—an intention repeated by the Holocaust Memorial Foundation, which was set up to implement the commission’s vision—that the Holocaust memorial should be built in the lifetime of the remaining survivors. Despite the go-ahead for this project in 2016, the promoters’ planning application only commenced in 2019, at which point he ignored the advice from Mr Buxton, who is one of the other persons I represent, that the siting of this memorial, according to the plans of the planning application, in Victoria Tower Gardens was unlawful. The consequence of that is that we are here now, some five years later.

133. The promoter has, despite these delays, continued to proclaim to the planning inquiry, as well as to Parliament itself, that one of the key factors in justifying the current plans is that the memorial and learning centre must be built in the lifetime of the remaining survivors: that is, the group of people whom I represent. A reading of the inspector’s report shows the success of this argument. Significant emphasis was placed

on this factor by the inspector, which he held to weigh very heavily in the balance against other harm or damage he identified as being caused by the building of the memorial to the park itself, the local residents, other memorials, the users, the trees, and so on.

134. In fact, in my note, Mrs Justice Thornton, in her judgment, quotes a key passage from the inspector's report, from which you will see the very significant emphasis he placed on the remaining survivors and the interest that they would have, he says, in having this memorial built during their lifetimes. So the question then is—well, I start with maybe a rhetorical or even, as some may describe it, a jury point—if the interest of the survivors is of such importance, it would indeed be ironic that they were not held to have an interest of some kind to address their petition with their concerns to a committee such as this, but in fact the interest can be more specifically defined, and I have tried to do that in paragraph 14.

135. The interest of the survivors is a right to avoid being blamed for the adverse, and in some respects dire, consequences of the current plan of the promoter to construct a memorial and learning centre according to his 2019 plans, which were the subject of the planning inquiry and the ministerial approval and which were set aside by the High Court. They fear that, when the intended harm to and disruption of Victoria Tower Gardens comes about, they will be blamed in part and will incur public disapproval and criticism.

136. They also have a right, they say, to be consulted and their views taken into account where the promoter refers to them as a group whose interests he is advancing in his promotion of the Bill. The promoter's heavy reliance on these plans, despite all these problems, and that it must now go ahead—. I think I have made that point. The planning inquiry recognised numerous harms that would be caused by proceeding with the current project, and I make the point in paragraph 16 that with the passage of time this has given rise to even more risks.

137. LORD FAULKNER OF WORCESTER: Sir, can you just answer one question? You referred to the petitioners fearing that they would be blamed and incur public disapproval and criticism. Is there any evidence of that, or is it just a feeling?

138. MR DOCTOR KC: Well, it is mentioned in the petition that they have this fear,

but, given the intense controversy, if I can put it that way, about this memorial, and particularly if the risks in fact materialise as has been suggested, it would be only natural for people to say, “Well, it was all due to the fact that the Minister had to go ahead with this particular plan because the survivors were the ones whose interests were put above everyone else’s, because the plans were put into place despite the damage and so on that they had caused, so that the survivors could be assuaged”, or whatever, and it would be if not admirable then nevertheless natural that people would put blame on the survivors for having caused what might be very serious consequences.

139. LORD FAULKNER OF WORCESTER: That is very speculative, though, is it not?

140. MR DOCTOR KC: My Lord, I would not disagree with you that it is speculative, but it is, I would say, realistic speculation and something which the survivors feel would in some way be attributed to them and, therefore, it is something that gives them an interest in opposing this and coming to explain to you why they do so.

141. LORD FAULKNER OF WORCESTER: Thank you.

142. MR DOCTOR KC: The risks that I have set out in paragraph 16 and the ones that have already been mentioned by the chairman of the planning inquiry—I call him the planning inspector, but he is not that—are: the huge cost of construction, particularly of the underground learning centre, and—this is perhaps something new—the enormous sums which we require to secure it on an ongoing basis; the danger, of course, that the first security lapse will result in the whole garden having to be closed off to the public as a practical means of ensuring security, or at least the most cost-efficient way to secure it; and, of course, the problems of further delay that will arise as a result of the interaction with the renewal and restoration of the Palace of Westminster, and the way in which that will impact on the duration of the construction of both sets of projects.

143. Huge numbers of people will be drawn to the park, and these are things that will give rise to feelings of hostility towards people who were said to have been placed, as it were, at the forefront of the reasons why this particular plan had to be built now. They will say, of course—that is in paragraph 17—that they in particular have been able to witness many other Holocaust memorials in the UK in their lifetime. They say that about 20 or 21, large and small, already exist, and they will say that it is far more

important to get this right and they want to explain to the committee in due course why.

144. They also have an interest, they say, in the question of how the UK is to record and remember the Holocaust itself and whether the promoter's proposals in this regard will achieve these objects. Given the huge amount of public funding that will be made available, they wish to petition Parliament and in particular now this Select Committee to ensure that the money is wisely spent on a memorial and learning centre that achieves the stated desire of memorialising the Holocaust and their experience of it.

145. Members of the public who are dissatisfied with it will eventually, if these risks do occur and it turns out to have large sorts of harm and damage, have to live with the consequences. The survivors, however, will face personal blame and a constant and unending reminder of the lost opportunity to create a Holocaust memorial that does not give rise to the intense hostility which these plans have engendered amongst so many interest groups.

146. I would add, of course, insofar as it is relevant, that their testimony, if given orally, would be short and to the point, and insofar as it is no longer possible, there is a video recording of their testimony in the House of Commons Select Committee. Baroness Deech herself will speak for all the survivors when it comes to the representations, and she has a particular interest in any proposed learning centre since her life experience is illustrative of the central theme of the learning centre, namely the British response to the Holocaust.

147. Her parents are lived examples of this. Her father, on arrival here, was interned in the Huyton camp as an enemy alien. He was ordered to be deported on a ship that was in fact torpedoed, but luckily he dodged boarding the ship. Her mother and father strove to have her grandmother admitted from Poland but were refused permission, which resulted in her death in a camp. Her father was rendered stateless, her mother was made stateless, deprived of her British nationality because she married him. Her mother's citizenship was not restored until 1947. She has an interest, therefore, in advancing these points as points which your Lordships will take on board and consider the possibility of amending the Bill so that the full House can in due course consider them in the light of what you have heard.

148. Now, of course, there are no direct precedents, as my learned friend Mr Katkowski

has said, but the examples that we say have arisen in the past show that a Select Committee can accommodate unusual and somewhat incorporeal interests. I have been through the bundle of authorities and I have found perhaps one or two examples of where a committee has, as it were, taken a broader view. Whether it is a view of the right to be heard or whether it is in the exercise of some discretion in individual and exceptional cases, I leave to your Lordships, but for example, on page 12 of the bundle I mention, although this has been covered by Mr Katkowski, that the concept of nuisance includes productive—as in Lord Hoffmann’s formulation of what it comprises—productive of sensible personal discomfort to a landowner, a part of the same tort of nuisance as physical damage to the land itself.

149. So nuisance has been regarded by Select Committees as a sort of interest that someone might have and, indeed, an objection to pollution coming from a proposed development. Whether you have to be a landlord or not in relation to those particular discomforts, nuisance and pollution, seems to have been not carefully considered, but the one example I want to show you is at page 17, paragraph 27.

150. THE CHAIR: Sorry, what is the point you are making in paragraph 10?

151. MR DOCTOR KC: I am making the point that the sort of interest that has been recognised to give a petitioner locus in previous Select Committees goes wider than merely interests relating to their own ownership of land or some interest they have in land, and in paragraph 26 they were dealing with a lady—a Ms Margaret Rand of Stoke Mandeville—who has previously suffered from some grievous misfortunes and she sets great store on being able to bicycle along Marsh Lane to get from her house to the stables where her ponies are kept.

152. “To build a tunnel would no doubt be disproportionately expensive, but we ask the promoter to consider what might be done to help her, possibly by a relatively small change, enabling her to wheel her bicycle across the pedestrian bridge that is to be constructed a little way north of the present route of Marsh Lane”. That was not too much of a push for the Select Committee to feel that it was necessary to respond in some way to that, and of course general discomfort from—another example I have been able to find—traffic flows and the prospect of increased noise from traffic.

153. Finally, the guidance that your Lordships have set out recognises that the Select

Committee is ultimately the master of its own procedure and the scope of its consideration, and I say that it would be a bitter irony that the promoter has seen fit to object to the petition of the very people he uses to justify the urgency of the scheme he is promoting. The Select Committee should allow them to speak for themselves in order to persuade the House of Lords to modify the Bill so as to avoid the risks and adverse consequences that they fear will be put on them in due course. Thank you.

154. LORD HOPE OF CRAIGHEAD: As I understand your argument, Mr Doctor, your point is that the people whom you represent have a right to be heard for the reasons we have been given. You have not addressed us on discretion under Standing Order 118, and I think you are probably right not to fit in there, because that is talking about inhabitants, local inhabitants, and I just wanted to check with you that none of the people you represent would fall within that category.

155. MR DOCTOR KC: No, that is correct, they do not claim any right under—

156. LORD HOPE OF CRAIGHEAD: They do not under 118.

157. MR DOCTOR KC: Yes.

158. LORD HOPE OF CRAIGHEAD: And you are saying that we have a broader discretion anyway because we are in charge of the procedure.

159. MR DOCTOR KC: Yes, I said at the beginning that you either would accept an argument construing the interest widely enough so that it would be one that would give a right to be heard, or that you might, in the exercise of your overall discretion to determine your procedure and what to follow in this particular case—and you might add “in no other”, setting no precedent—that these particular people should be allowed to be heard, given that the, for example, promoter relies on their, as it were, interests, or who they are, to justify the promotion of this scheme.

160. LORD HOPE OF CRAIGHEAD: I suppose a factor that you can ask us to consider is that this is not a typical compulsory acquisition case. It is quite a different one. It is possibly unique. I do not know whether there has been an example of a Bill quite like this, that you are saying, “Look at the circumstances and the interests of the individuals that we are representing and find that they do have an interest”, and you are

not resting on discretion under 118.

161. MR DOCTOR KC: No, correct. According to the wording of your guidance, the words “a property or personal interest” are wide enough to include the sort of interest I have referred to, and it is up to you to decide whether all these circumstances together—including the fact that it is not going to take that much time and it is very important to them and very important to get this Bill right, the unusual nature of this Bill, which is being promoted as a general power for the Minister to spend money on anything called a Holocaust memorial anywhere in England and Wales, and at the same time he has told Parliament that this plan is going to be this Bill because there is no time to change it anymore in the lifetime of the survivors—give them an interest in being heard that is quite different from the interest of the general public, who may just have views on this subject.

162. BARONESS SCOTT OF NEEDHAM MARKET: Your petition is that there are seven of you in the petition, and in your submission you say, “Although we are not formally associated other than for the present purpose”. Then you say, “Representing other survivors of the Holocaust and relations of victims who share our views which we know are widespread in the Jewish community generally”. So I wonder whether you could just say a little bit more about the extent to which you are petitioning—I mean, you are clearly petitioning, but are you speaking for more than the seven petitioners in the Bill?

163. MR DOCTOR KC: I cannot say that I am speaking for more than them, but they themselves believe that they represent a widespread view in the community and that theirs is not a lone voice, as it were. To add to their personal interest, they would say that there are many people who agree with them and who are particularly interested in the way in which this is being made to factor in the lifetime of the Holocaust survivors, or because there are other people in that position who remain and who have not wanted to come to the fore. Of course, you will hear evidence about that, and you will accept it or reject it, but there are, they believe, others who fall into the same camp and others who have a particular interest in these topics who would agree with them and lend their support.

164. THE CHAIR: So, Mr Doctor, do you want Baroness Deech to have the

opportunity to speak or to add to anything you have said, or are you content to rest with your submissions?

Submissions by Baroness Deech

165. BARONESS DEECH: Just a word, if I may. I understand that this is focused on simply the right to be heard. I speak as a Peer, and one would expect a peer who works in this area and would be very much affected to have the right to speak, but more than that I am one of now a very small band of people who have a scholarly interest in the content of the learning centre, who have been able to access survivors. A great deal of effort has been put into not allowing too much information to go to survivors.

166. There are only a very few left, and most of them have no idea what is being planned in their name. They do not know what a hybrid Bill is. They do not know about the Bill. Obviously, they would not know about the right to petition, and only those who have had this explained to them have clustered behind me. I think there would be more if the information was more widespread. So I speak as someone who has spent years studying Holocaust memorialisation and anti-Semitism, who has managed to access some of the survivors. I could have accessed more, I think, if I had been allowed to.

167. On the right to be heard, if I can expand on what Mr Doctor said, as soon as anyone starts building the memorial, the protests that we have seen in London and elsewhere week after week will of course focus on Victoria Tower Gardens, and I think it is necessary to hold that in your mind if you are trying to understand why the Jewish community and survivors in particular might be held to blame for the sort of violence and disorder that we have seen on the streets of London recently and which is unlikely, I am sorry to say, to decrease.

168. So I think it is a unique case—I am basing myself on your discretion, as this is a unique case—not only because of its subject matter, but because of the way it affects Peers, and MPs, who live here, and Peers who work here who will find their working atmosphere adversely affected for years to come on top of R&R. Thank you.

169. THE CHAIR: Thank you very much. Mr Katkowski, do you want to add anything?

170. MR KATKOWSKI KC: I do wish to just make a few submissions, if I may. It was said by my friend Mr Doctor that Baroness Deech will speak for “all the survivors”. You will understand, obviously, that that means the survivors who are part of the petition in question. I am sorry, but for the record—I mean, because obviously one does not have petitions in support of a project—at the planning inquiry a great number of Holocaust survivors spoke to the planning inspector, and perhaps it is not a matter of any great surprise, but opinions are divided amongst the survivors. A considerable number of survivors spoke very evocatively in favour of the proposals, just as a considerable number of survivors spoke very evocatively against the proposals, but all of that was dealt with through the planning inquiry process, which one can understand is obviously the right forum for exactly that discussion to have taken place.

171. On the promoter’s part, you will understand my nervousness and wariness of the notion taking hold that this project—the Bill is seeking to remove an obstacle to the carrying out of the project in the gardens—is not supported, if you like, by Holocaust survivors. It most certainly is. There are some Holocaust survivors who object to it; there are some Holocaust survivors who are very strongly in its favour. So I just wanted to make that point, given the public nature of these proceedings. Otherwise, one might wonder why we are here in the first place.

172. Secondly, the submission, which my learned friend himself described as potentially a jury speech point, that it would be ironic or extremely ironic if the petitioners in question here were not regarded as having an interest and the ability to speak as of right in relation to that—this is a point I have already addressed you on—fundamentally misunderstands the nature of this special stage in the parliamentary process, which is here, and I am sorry to keep saying this, to deal with the private law aspects of a Bill that is hybrid. It does not mean those who are interested in a general sense or even those who are particularly interested in the subject matter of the Bill.

173. Of course, the interest that might give one the right to speak is a wider interest than an interest in land itself, but it still needs to be something that is actionable in private law were it not for the provisions of the Bill. I am afraid that simply is not the case here, however difficult it might be for me to make that submission, if you like, given the points that have been made about the petitioners in question, but that is simply the position, and of course you would well know and well understand that Peers do not

have the right to speak simply because they are Members of this House. Contrast a special provision made for MPs whose constituency is affected by the inserted 117A in your Standing Orders.

174. So fundamentally those are my submissions, the key point being that there are other stages in the parliamentary process where all of these points have already been addressed, but can be addressed in later stages of this Bill's progress through Parliament, and it would be, I am afraid, changing the very nature of this stage of the parliamentary process to consider that the petitioners in question here have the right to be heard, because that is what is being claimed: the right to be heard. That would fundamentally change the nature of the way in which this stage of this form of Bill is dealt with. My Lord, those are my submissions.

175. THE CHAIR: Thank you very much indeed. That concludes the case for Baroness Deech, and that will end this morning's hearings. This afternoon the committee will meet in private. The public hearings will continue tomorrow at 10.30 in the morning. Thank you all very much for attending today.