

MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

on the

HIGHGATE CEMETERY BILL

Tuesday 2 March 2021 (Afternoon)

In Committee Room 4a

PRESENT:

Baroness Hallett (Chair)
Lord Aberdare
Baroness Garden of Frognal
Lord Trefgarne
Baroness Whitaker

IN ATTENDANCE:

Nicholas Evans, Parliamentary Agent

WITNESSES:

Dr Ian Dungavell, Chief Executive, Friends of Highgate Cemetery Trust
Martin Adeney, Chair, Friends of Highgate Cemetery Trust
David Jones, Petitioner
Paula Swift, Petitioner

IN PUBLIC SESSION

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(At 2.00 p.m.)

181. THE CHAIR: Good afternoon, everybody. We're now returning to our hearing into the Highgate Cemetery Bill by the Opposed Bill Committee. We have finished the evidence of Dr Dungavell in chief. Now, Mr Jones, would you like to ask Dr Dungavell any questions?

Evidence of Dr Ian Dungavell

182. MR JONES: Thank you, Lady Hallett. Yes, please. I did in fact have three questions, one of which is directly relevant to the objection that we are making. The other two are not quite so directly relevant but I wondered if I might suggest them to the Committee as questions that they might consider. And those two are that Mr Evans in his presentation mentioned a letter of undertaking going to the Ministry of Justice concerning the notice under clause 5 and the notice being placed on the website with the names of the individuals on the grave. I was wondering if that letter of undertaking also included a time period for that to remain on the website.

183. The other question which I thought the Committee might want to consider is the objects clause of the charity. I couldn't find, looking at the objects clause, that there was any reference to, in fact, the relatives of those interred at Highgate Cemetery. I was wondering, when the charity was first set up, why that was in fact excluded from the consideration of what the objects clause should include. Those are the two I would like to refer to the Committee. I'd just now like to ask Dr Dungavell – good afternoon, Dr Dungavell.

184. DR DUNGAVELL: Good afternoon.

185. MR JONES: In the very last part of your testimony, Mr Evans asked you a question about what the process would be should you receive an objection from a collateral descendant of someone who either owned the grave rights or was interred in the grave. You said it would be a complex process, and made the comment about, 'Who would I listen to in the event that more than one person came up and objected?' And I was wondering whether or not the cemetery has a protocol for how it would deal with objections from a collateral descendant.

186. Under what circumstances would you decide that you want to make an application to the Ministry of Justice to ask them for a ruling in respect of that objection? And under what circumstances would you decide that, no, you would listen to the objection and in fact you would not proceed with the grave renewal in those circumstances? Obviously, that's a fairly broad question but my question is really related to the fact of: is there a protocol that actually covers that ground?

187. DR DUNGAVELL: The short answer is no. Were we to get the Bill, were we to propose the cancellation of the burial rights and were a collateral descendant to object, under the Bill as it stands, where they have no standing, I think what we would be looking to do is to see if we could transfer that burial right, assuming it's still with someone who is no longer alive, to a member of the family. So we've got a process for dealing with that already. And the second part, I guess, is that what happens if that is not possible.

188. MR JONES: Yes, indeed.

189. DR DUNGAVELL: That's an interesting question. I think you could possibly proceed with the cancellation of the burial right. And then you could sell the burial right to a new owner who would be one of the collateral descendants of the family. So there would be that possibility of re-establishing that link.

190. MR JONES: Presumably, though, you would need to identify whether or not you thought the objection was a real one or whether the connection between the person interred and the person who is making the objection was so slight that it ought not to be considered. Therefore you would go to the Ministry of Justice and seek their consent. But I take it, from what you say that at this stage, you haven't really got a protocol that deals with those circumstances.

191. DR DUNGAVELL: No, I haven't.

192. MR JONES: Okay. I have no further questions, Lady Hallett.

193. THE CHAIR: Mr Jones, can I ask you a question? I think I may have confused myself earlier. Your opposition is to the exclusion of collateral descendants from clause 4. Yet you haven't opposed the disturbance of human remains under clause 5 whereby

collateral descendants wouldn't be included, have you?

194. MR JONES: Not specifically, My Lady, but the correspondence between ourselves and the cemetery did in fact deal with the disturbance of remains and the rights that are given under clause 5(8).

195. THE CHAIR: Exactly. I'm afraid I may have misled one or two members of the Committee because I had read that you had made the reference to the fact that – I mean, at the moment, a collateral descendant like you isn't included in the definition of a relative.

196. MR JONES: That's correct.

197. THE CHAIR: And therefore, to stop the disturbance of remains, it would only be if the registered owner of the extinguished right of burial, the registered owner of a memorial or a relative within the terms of the Act objected, that the disturbance could be stopped.

198. MR JONES: That's correct.

199. THE CHAIR: Although you've raised that as an objection in the past but I wasn't sure whether it remains an objection of yours.

200. MR JONES: It does remain an objection, My Lady. The Bill is structured in such a way such that the ownership of the burial rights is the person who can say, 'No, there must be no disturbance,' or sorry, 'No, there must be no extinguishment.' And no extinguishment leads automatically to no disturbance of remains or removal of memoria.

201. THE CHAIR: So you were starting at step 1 rather than step 2.

202. MR JONES: Yeah.

203. THE CHAIR: But pursuing this, Dr Dungavell, can I ask you this? We have of course Mr Jones's point on clause 4 but if we look at clause 5, which is not about rights of property akin to a lease or a licence but it's about disturbing human remains, only a relative, as quite narrowly defined, can object or the registered owner of the burial right or the memorial. There's no provision there for, if anybody else objects to the

disturbance of the remains, it going to the Secretary of State. Is there a particular reason for that? Where anybody else objects, does it go to a consistory court if it's consecrated land under subsection 12 of clause 5? That presumably is only consecrated land, is it?

204. DR DUNGAVELL: Yes. I mean, separate arrangements will apply for consecrated land for the disturbance of remains. That will be a matter for the Diocese of London.

205. THE CHAIR: Yeah. So if it was a right of burial that had been extinguished on non-consecrated land, and a collateral descendant, say, wanted to object, there is no provision even for the Secretary of State to proceed here, is there?

206. DR DUNGAVELL: I don't think there is.

207. THE CHAIR: Do you know if anyone's considered that?

208. DR DUNGAVELL: No, I don't.

209. THE CHAIR: It would mean some kind of replication of clause 4(7)(b), wouldn't it? Anyway, I just make that as a point. It seems to me to link in to Mr Jones's primary point about who can object to what some people may consider to be more fundamental, disturbing human remains, as opposed to the right of property. That was all.

210. DR DUNGAVELL: There is a role for the Secretary of State in paragraph 10 to provide directions about how remains might be disturbed. Presumably, that could cover something like that. I'm not sure how that would be done normally by the Secretary of State.

211. THE CHAIR: It doesn't mean you have to have the Secretary of State's consent if anybody other than a relative, or the registered owner –

212. DR DUNGAVELL: No.

213. THE CHAIR: Anyway, I raise that in case anybody else wishes to consider it.

214. LORD TREFGARNE: May I ask something, Chairman?

215. THE CHAIR: Yes, please.

216. LORD TREFGARNE: I suppose my aim is: what is a consistory court referred to in paragraph (12) in section 1?

217. THE CHAIR: It's a church court, I think is the quickest way to put it. Isn't that right, Dr Dungavell?

218. DR DUNGAVELL: That's correct.

219. THE CHAIR: The Church of England will call together a court. Very often I think the person who heads it is normally, I think, a lawyer who's appointed to sit. Mr Evans, perhaps, do you know more about this than I do? I've never appeared in a consistory court but I'm talking from vague knowledge.

220. MR EVANS: I hesitate to say I know any more than you, My Lady, on any subject, but a consistory court, you are right. It's a lawyer appointed by the relevant diocese to deal with these matters, particularly here.

221. LORD TREFGARNE: They sit as a lawyer.

222. MR EVANS: They sit essentially as a judge but looking at ecclesiastical law questions. In this case, whether it would be permissible for a faculty to be given, which is the church equivalent of the consent to disturb the remains in what would be the consecrated ground. So subsection (12) applies where the land affected, the grave concerned, is in consecrated ground. So the trust would still have to get the relevant consent from the church.

223. LORD TREFGARNE: I see.

224. THE CHAIR: A consistory court, there are a number of lawyers around who have a particular interest in church law and church principles. A number of them are appointed on a semi-permanent basis, so that when a case comes up, they can call a court together and bring in a lawyer to chair, or head the consistory court, as I understand it.

225. LORD TREFGARNE: Right, thank you for that.

226. LORD ABERDARE: Chairman, can I make a brief point?

227. THE CHAIR: Please do.

228. LORD ABERDARE: It's just to confirm my understanding. It does seem that in clause 5 a collateral relative does not have the rights to have a notice of objection listened to. But you can't get to clause 5 unless the rights of burial have been extinguished under clause 4 and a collateral relative does have the Secretary of State procedure available in clause 4. So it seems to me that perhaps this was the logic of Mr Jones's position that unless you've extinguished the rights under clause 4, the issue of disturbing remains doesn't actually arise. You're muted, Chair.

229. THE CHAIR: I think that's what I was getting to as I was talking it through. Mr Evans, is that your understanding of the Bill?

230. MR EVANS: My Lady, yes. The position is that first the rights would have to be extinguished, either through clause 4 or because they had come to a limit, they'd been time limited for instance, and that time had expired, or if no rights had ever existed. A relative would be able to object under clause 4. Then, at that point, the Secretary of State would have to positively consent to the extinguishment of the rights. If that has occurred then a collateral relative would be under no special position under clause 5. That's correct.

231. Under clause 5, relatives, as defined in the Bill, would have the ability to put – essentially, if they made an objection and did not withdraw it, then there would be a 25-year stay on the proposals, after which the trust, if it still in 25 years' time wanted to reuse that grave, would have to advertise again. This position, under the Bill, is the same as in the 2007 Act, if you turn to tab 11H of the bundles on page 303. About halfway down the page, 7C, it has the same process for a relative of the person whose remains are proposed to be disturbed to make an objection.

232. Then if we turn to page 304, the definition is in substantially similar terms. We've slightly updated some of the references but it's direct descendants in the same way. Similarly, in tab 11I, on page 307, the New Southgate Cemetery Act uses the same definition of 'relative' as well. When we discussed these provisions with the Ministry of Justice there were no particular concerns raised in this respect.

233. THE CHAIR: Right, thank you very much. Mr Jones?

234. MR JONES: No further questions, My Lady.

235. THE CHAIR: No further questions.

236. BARONESS GARDEN OF FROGNAL: Might I just ask something, Lady Hallett?

237. THE CHAIR: Please.

238. BARONESS GARDEN OF FROGNAL: I noticed that Mr Jones did have another objection which was the publishing the notice in a newspaper or displaying a notice at principal entrances. I wonder if the amendment we proposed satisfies you on that. You're suggesting that it should be to post it on the website. You also said place notices as well at the grave itself. I think the amendment we proposed is that it should be on the website. I don't think we proposed an amendment to be on the grave itself, but are you satisfied with that amendment, Mr Jones?

239. MR JONES: I believe that the Bill – well, the filled in Bill, as now proposed, does deal with the question of notices as close to the website as is possible, together with a notice on the website.

240. BARONESS GARDEN OF FROGNAL: Yes.

241. MR JONES: The question I was asking earlier is: was there a period of time which had been undertaken to the Ministry of Justice, but that was my understanding of what the changes that have been made to the Bill meant.

242. BARONESS GARDEN OF FROGNAL: Okay, thank you. That's fine.

243. THE CHAIR: Following that point, can I ask a question of Dr Dungavell? As far as the website notification is concerned, the amendment talks about 'electronic equivalent'. I can't remember what the expression is – 'or by using equivalent means of electronic publication'. I was a bit concerned about that. I appreciate the thought that the idea was to give the trust as much flexibility as possible when technology changes and websites and things may change but 'or by using an equivalent means of electronic publication' may not necessarily reach the target audience, the people who would have an interest in Highgate Cemetery. My question is, Dr Dungavell, is that amendment not

a bit loose?

244. DR DUNGAVELL: It certainly wasn't intended to be loose except to cope with the unknowns of the future. At the moment, the website, whatever the web means, that is what we're all used to but the web itself is relatively new. I hope we will not be going for any amendments to our Act for another couple of hundred years so we'd want this to be suitable to take into account whatever technology throws at us in the future. But the idea is to make it as widely known as possible. If you were interested in a grave at Highgate Cemetery, I guess the cemetery website at the moment would be your first port of call.

245. THE CHAIR: Maybe we can just add 'and/or' if there's no such thing as a website. Anyway, Baroness Whitaker has a hand up.

246. BARONESS WHITAKER: Thank you. May I ask Mr Evans and Dr Dungavell a question about the proposed amendment 17, which refers to clause 4, subsection (8). It's just this question of 'destroy', which is to be amended to 'dispose of'. What do you understand by 'dispose of'? As far as I know, it's not a strict legal term so how do you define it for the purposes of this amendment?

247. MR EVANS: My Lady, this amendment was suggested to us by the Ministry of Justice and agreed by the promoter. There was a concern that if the Act simply said that the burial authority could destroy the memorial that some other means of disposal would not be available to them. I understand that in some cases it's been the practice of cemeteries where a grave has been reused, for a memorial to be placed almost in between that grave and the next grave that's available, to act not quite like a tab in these bundles but to indicate that you've come to another burial. It covers that circumstance. It would cover sale of the memorial, if that was appropriate. It does also cover destruction if that was appropriate at the time.

248. BARONESS WHITAKER: Thank you.

249. MR EVANS: But it was to give us that wider range, not just destruction.

250. BARONESS WHITAKER: Sure, well, I think that's an improvement certainly. However, bearing in mind your earlier remarks that Highgate Cemetery is a site of

national importance and unique cultural heritage, which I absolutely agree, would it not be more appropriate not to dispose of a memorial in any way which removed it from the cemetery? I quite see the point that you can move it somewhere. I've been to many former cemeteries and old cemeteries where the headstones all lean up against a wall so at least you can see the history, when the people died and that kind of thing. It seems to me that idea isn't necessarily obliged by your use of the word 'dispose of'. What would your comments be on that?

251. MR EVANS: If perhaps, My Lady, we turned to clause 2 of the Bill and the description of what a memorial is. You'll see there, there's quite a wide range –

252. BARONESS WHITAKER: Yes, indeed.

253. MR EVANS: – of proposed things including elements like walls and kerbs and railings and so on.

254. BARONESS WHITAKER: Yes.

255. MR EVANS: They have to be removed to make space for the later burial. So making sure that we have the flexibility for the wider term, it was considered appropriate.

256. BARONESS WHITAKER: Well, yes, I understand you might want to get rid of a kerb or a railing or a wall but do you not see the point in preserving a headstone, even if it's moved?

257. MR EVANS: Dr Dungavell may have some more information on this, but as he explained earlier, where there is a memorial that is in good condition, the starting point would be not to exercise these powers. So we're likely only to be looking, in any event, at the memorials which are already in a poor condition, whether because of erosion, because of tree roots, because of a matter like that. Such that there is unlikely to be any substantial historic information that's still accessible on the face of the headstone.

258. BARONESS WHITAKER: I see Dr Dungavell nodding but there's nothing to prevent you taking a headstone entirely out of the cemetery. No.

259. MR EVANS: For the headstone, this power would only be available if the owner

of the memorial originally did not claim it. So the thing that would prevent us from using these powers would be them exercising their ability to say, within six months after removal, to say, 'That is my headstone. I claim that and you cannot use it in this way.' If they had not done that then, yes, you are correct, My Lady.

260. BARONESS WHITAKER: I don't want to labour the point, because it's obviously a very small part and it doesn't feature in anybody's objection but usually, the ingredients of sites of national importance and unique cultural heritage are not at the disposal of private citizens. Let us leave it there, perhaps, for the time being but I will consider the point.

261. MR EVANS: Thank you, My Lady. And we would note that insofar as any of the memorials are linked to the cemetery's designation as listed, well then of course, those protections would remain. And the undertaking that I gave on behalf of the trust at the outset, that when exercising the powers conferred by clauses 4 and 5, so that includes this power of disposing of memorials, the trust would act in accordance with the conservation plan that Dr Dungavell spoke about and the technical guidance on reuse and reclamation of graves.

262. And it would do so in a way that's consistent with its charitable objective, securing the preservation of the cemetery and its monuments and conserving Highgate Cemetery's importance as a grade I listed, registered site and its listed features of special architectural and historic interest. So those protections would qualify how the trust exercises this power. Although they do not appear in the specific provision of this subsection, they would apply to its exercise.

263. BARONESS WHITAKER: That's helpful, thank you.

264. THE CHAIR: Mr Dungavell, did you want to add anything to what Mr Evans has said in response to Lady Whitaker's concerns?

265. DR DUNGAVELL: Thank you, My Lady. Only simply that we also have the protection for pre-1925 tombstones by virtue of being in a conservation area. So that's a level of external control. So none of the existing heritage protections on the cemetery would be removed as a result of the Bill. And as far as I was concerned the ability to dispose of memorials from the cemetery would be used in cases when they were

fragmentary or extensively damaged. So much so that they did not contribute, or may even negatively contribute to the historic interest of the cemetery.

266. BARONESS WHITAKER: Thank you.

267. THE CHAIR: Right. Mrs Swift, would you like to ask your question of the witness in relation to clause 5 and the 75-year period?

268. MS SWIFT: Yes, thank you My Lady. Good afternoon, lords, ladies and gentlemen.

269. THE CHAIR: Good afternoon.

270. MS SWIFT: It's not so much a question I want to ask as a sort of expression of, well, it is emotive. As I say, I've got a little statement I want to say. I don't know if other people feel like this but if I may read it to you. It's not long, I can assure you. I feel like a female David facing a thousand Goliaths. This for me is a matter of principle and respect for people, be they dead or alive. Dickens would have had a field day with this, not to say a grave day, or perhaps Galsworthy, with the titles 'Greed' or 'Gifts from the Grim Reaper'. What you plan to do is desecration, pure and simple. Bones cannot be cast aside with such disrespect. I still have not had a satisfactory answer to the questions of the memorial stones, but that has been more forthcoming, having listened to this, which we took great care and trouble to have engraved quite beautifully with the willow tree.

271. I'm sure the next users of the plot would want their own stone. It doesn't matter how many years one's plot would be allowed. We chose Highgate because it means something profound to us. It should be there for all our future relatives for years to come, to see and wonder about their ancestors, to look at the stone and to feel the history involved. I might be a little old lady on the hill in Highgate but everyone matters and, as has been said before, particularly by Mr Arthur Miller, 'Attention must be paid and noted.'

272. I've lived in Highgate for well-nigh on 60 years. My roots are here. My husband and I thought we had the plot in perpetuity and didn't realise that there was a timeshare arrangement on our graves. I don't want my bones and my husband's tossed aside and

our history forgotten, or indeed anybody else's. This is emotive but surely this is the thin end of the wedge. Who knows if in 50 or 100 years from now there will be a Bill to allow for the building on houses on this hallowed ground? I rest my case, My Lady.

273. THE CHAIR: Thank you, Mrs Swift. I think I take from what you said not only your point of principal objection but your point is that you say 75 years is too short.

274. MS SWIFT: Yes. Well, I don't think you can put any years on it. I don't think you can say 100 years, 500 years. It's not paying account to people. It's not paying account to what they were, whatever they were. It's a disrespect to people. And I just find it very emotive.

275. THE CHAIR: Well, I'm sure we totally understand how it would affect you as a person with such an interest in the area and obviously the cemetery, and your husband's grave. Have you considered what would happen – nobody is suggesting that they are going to attempt to disturb, for example, your husband's remains. But let's make it less personal. You have considered the provisions whereby if the registered owner, or relative of the person with the right of burial, objected, then the 75 years becomes 100 years.

276. MS SWIFT: Yes, I know but it's still a question of saying you can be there for so long but then you're going to be cast aside. I know it's not literally being cast aside but there's just something – and I'm not a religious person but I just think it's irreverent to people. It's not paying enough respect to people, not just because of me or my husband, but anybody. That's why I feel – I don't normally do this sort of thing. I never read any legal notices but when I saw it, whenever it was, at Highgate Cemetery I thought, 'What? What?' And that's why I suddenly took up the cudgel, because I thought, 'Somebody must say something emotive.'

277. Perhaps they mustn't but I was very pleased what Lady Whitaker said about the gravestones. She had a point there, which I have to say, when this arrived I thought to myself, it needs three months to read and assimilate properly. I sort of started and I thought, 'I can't. I can't get through this.' And so I didn't. So I missed a lot because I couldn't. I didn't have time to do it, if you see. But that's why I did it, just because I felt attention must be paid. Somebody must say something for little old ladies like me that are sitting on the Highgate Hill.

278. THE CHAIR: Don't worry, Mrs Swift, you're not the first person to wonder about the language of statutes. I can tell you, even the top lawyers in the country will disagree over the interpretation of words that you find in the statutes. And I've had to struggle with some of the words over the years, so I do understand the difficulties you had getting through it. Let me ask Dr Dungavell. You've heard what Mrs Swift has said, Dr Dungavell. Can you offer any kind of reassurance or comment on her objections?

279. DR DUNGAVELL: Yes, and I must say I'm glad to hear from her because lots of people will feel this way and so it's important that we discuss this at the Committee. And obviously, being the promoter of the Bill, I've had to think of what do I personally think about this when we're proposing to disturb human remains. And I've had to reflect on how that is done and where it fits in to history and what people have done before. So, first of all, this is something that, if it is able to happen, would be done with utmost sensitivity. So casting things aside wouldn't be how that is done. There's over 1,000 permits for exhumation that the Ministry of Justice, for example, deals with each year. So there's quite a well-established procedure for dealing very sensitively with human remains.

280. But that's in the abstract and it's also much more difficult to think about that and how it relates to a particular person. So I said, 'What's the historic context of this?' Really, the proposals in our Bill go back to managing a cemetery in the same way that English churchyards were managed over the generations where there was no private right of burial in a grave and where people's remains were buried and then allowed due time. Then the churchyard was used in a circular way and, in a period of time, the sexton would come and a new burial would be put on top of the historic burial.

281. If there were bones encountered, in times distant past, they were removed and put in the charnel house. I certainly wouldn't say that was what we wanted to do but I think there's probably the balance between using the cemetery continually, which would prevent it from becoming a site for housing, as was proposed for many cemeteries in the 1970s. So there's a balance to be struck between keeping the cemetery use and the respectful treatment of its occupants.

282. So, yes, I've thought myself of how I would feel about this being done to my own

relatives. I think the key thing is that it's done very sensitively and thoughtfully and there's no casting aside involved. Would I personally find it reassuring to be joined by successive generations of other people? I think, yes, I would, in the same way that that English churchyard tradition has continued throughout. So I think by proposing what we're doing, we're in fact just going back to a state of affairs which existed before the massive growth in urban centres in the 18th and 19th centuries that prompted the formation of these cemeteries.

283. So that gives me a little comfort that there's a historical continuity between the past and the present, and that this isn't a horrible new utilitarian way of dealing with the problem of a shortage of burial space in urban centres. I'm sorry to go on at length but I do understand where you're coming from.

284. THE CHAIR: Mrs Swift, you're muted.

285. MS SWIFT: Sorry. Yes, I understand totally what Dr Dungavell said but I still can't help the way I feel. It doesn't mean to say because it was done whatever it was how many years ago that it's still right today. We have to rethink things from time to time but, I mean, that is purely emotive; I know it is but I can't help how I feel about it. But thank you very much, My Lady.

286. THE CHAIR: No, thank you.

287. BARONESS GARDEN OF FROGNAL: Sorry.

288. THE CHAIR: Dr Dungavell? Sorry, if I can ask this question then Baroness Garden can ask hers. Dr Dungavell, can you answer the question originally posed by Mrs Swift about the difference between 75 and 100 years? We've seen the other Act, so we know that other Acts have followed but were you just simply following a precedent set by other Acts of Parliament? Why did you settle on 75 rather than 100 years?

289. DR DUNGAVELL: Well, first of all, I started with the precedent because looking at what had generally been accepted. Then I started to consider how that would particularly apply to Highgate. As I have said before, there's numerous constraints that would affect how a grave renewal could be done at Highgate. That's particularly because there's very few graves that would be able to be renewed without damaging the

heritage or without colliding with other regulations such as the protection of memorials. So as we go forward, providing as many burial spaces as we can without damaging the historic environment is quite important.

290. So over, say, 300 years, at 100 years I get three uses out of a grave. At 75 years, I'd get four. That may not sound like a big difference but when there's actually such a small number of graves that might be available in the cemetery, that probably will make some difference. That's a theoretical capacity of 25% that would be lost by extending it to 100 years. Bearing in mind that actually the protection is 100 years. If anyone is around who is concerned about this, the relatives can object and that instantly pushes it forward another 25 years before that's considered. So it's a balance between preserving the interests of the family and dealing with what will be a relatively small number of graves, compared to the 53,000 that there are in the cemetery that will be renewed in the future.

291. THE CHAIR: Baroness Garden?

292. BARONESS GARDEN OF FROGNAL: Yes, well, I do hear absolutely hear what you say, Mrs Swift. And I was really going to reiterate what Dr Dungavell has just said, that if in 75 years' time there are relatives around, it will push it forward to 100 years before it's disturbed. But the other thing which struck me, it sounds as though you have a beautiful memorial for your husband in the cemetery. And really, picking up on what Baroness Whitaker was saying, I've known other cemeteries where memorials and headstones that weren't used anymore were actually collected together in a sort of separate place for preservation. I wondered whether any thought had been given to that but obviously, I think it would be really important that the memorial for your husband is preserved, Mrs Swift, won't it?

293. MS SWIFT: Thank you.

294. BARONESS GARDEN OF FROGNAL: I'm sure that sounds as though that's a very important aspect.

295. MS SWIFT: It is indeed, thank you.

296. BARONESS GARDEN OF FROGNAL: Thank you.

297. THE CHAIR: Lady Whitaker?

298. BARONESS WHITAKER: Thank you. Following what Lady Garden said, I too hope that your husband's memorial will be looked after but I'd just like to ask you. I absolutely understand your point and indeed I sympathise with it. But if that were the general principle, the obligation of the Friends of Highgate Cemetery to preserve it as a public burial ground could simply not be reached. So is it your opinion that it should become a closed cemetery? Because that would presumably be the eventual result if nobody's graves were allowed to be disturbed. There would be no room for more people, which would mean that the whole basis of the Friends of Highgate Cemetery's work would have to be changed. That's a very big step. Is that what you think?

299. MS SWIFT: I don't know. I hadn't thought about that. I hadn't thought about it from that way around. It hadn't occurred to me. But I do know there are certain cemeteries that, once the last plot is finished, that's it, and they don't. And I think that is the correct way. I know what you're saying. It hadn't occurred to me to think about it that way before. But I'm not sure it's right, even so. When you go around little churchyards, I know what you're saying, but it's wonderful to look at those stones and read them and think about their lives.

300. Sometimes whole families in little villages – because we used to know the Lake District very well. Those little churchyards had so much history in them that, I don't know, I just feel that we're getting to be such a throwaway society in a way. I just think somewhere we've got to stop. Just because it was done however many years ago doesn't mean to say it's right or should be continued. I think we have to just go into it a bit more. I hadn't, I admit, until you said what you said, Lady Whitaker. So, there we are. It's given me something to think about but it's just a strong feeling I have of disrespect.

301. THE CHAIR: Lord Aberdare has a question. Maybe it's the same thing but I certainly don't detect any disrespect, Mrs Swift; I really don't. This is all about conserving and preserving the cemetery and its links to the local community.

302. MS SWIFT: I know.

303. THE CHAIR: Anyway, Lord Aberdare had a comment.

304. LORD ABERDARE: Yes, thank you very much, Lady Hallett. I do understand Mrs Swift's feelings on this matter. Slightly on the other side, I live in Barnes where there is a disused cemetery in the middle of the common. Really, I find it very sad that that is totally unlooked after by anybody. Most of the memorials, there are some very splendid ones, are either illegible or broken or in no state of repair. I think that is also disrespectful in a way.

305. I mean, personally, I think I would much rather feel that my relatives and I were somewhere which had the prospect of being continually looked after, and while there were people who felt strongly about the matter that they were protected in some way, than go into a cemetery that becomes closed and where, for whatever reason, there is no further maintenance and respectful looking after. I think this is just a very difficult balance to strike.

306. Chair, if I may, this is something I was wanting to ask much earlier but Dr Dungavell gave a very good answer, I thought, on what they had done to let the local community and all the other interested parties know about the proposals and the consultation process. But I think what I was interested in was there were very large majorities supporting the proposals made. But to what extent have they tried to analyse those who didn't express that support and whether there were any sort of issues there, whether they were similar to those raised by Mrs Swift or Mr Jones or others, and whether there was anything there that gave them thought about how could they make sure that the minority groups, if you like, their views were taken into account while obviously having to respect the views of the majority, fundamentally? A not very well put question, but I hope it makes some sort of sense.

307. DR DUNGAVELL: Yes, thank you. So the main concerns actually were very similar to Mrs Swift's, which is why I was glad to hear from her today. As she said, this is a very emotive thing and there's nothing at all wrong with that. This comes, really I think, to something how we feel very personally about and to what extent we see the process as having been considered and justified or to be done thoughtlessly. So as far as I recall, I haven't got the analysis in front of me, but as far as I recall the main objections were an instinctive feeling this is not the right thing to be doing. Some people said the Church of England would never approve of that, which was basically saying, 'I don't approve and I'm sure that this is not the right thing to do.'

308. The problem is I think we would all rather not to have to do it. Most of the Victorians did not think what would happen when the cemeteries filled up but the ones that did thought they would be maintained forever in glorious condition at public expense. Local authorities have been very reluctant to do that. Where they have done it, particularly in the 1950s and 1960s, they levelled cemeteries and converted them to playing fields. I'm thinking of Grant Gardens in Liverpool and Gartside Gardens in Manchester, which were the first two 19th century cemeteries of which not a trace remains except for a book of transcriptions in the general register office.

309. So as the Friends, we're trying to look at the best of all possible worlds, is to try and keep going as a cemetery so that that continues. There's a trade-off, I guess, with what happens to some individual graves within that location. Some of you will be familiar with other cemeteries in London which have faced challenging activities in them because they're not used because the grave owners are no longer there visiting. Some of them have even been rebranded as parks and urban nature reserves rather than as cemeteries. That may suit some places but I think that would be a sort of sad end for somewhere like Highgate.

310. THE CHAIR: Thank you very much. As far as the question of the objects of the charity are concerned, Dr Dungavell, are you the person to ask about that? Mr Jones raised it. He said he didn't strictly have permission but I'll give him permission. The collateral descendants not included in your objects. Do you know why that would have been or do you have any knowledge of other charities with similar objects?

311. DR DUNGAVELL: I wouldn't have thought they would be thinking that specifically to include collateral descendants there. I think that would be under the broad category of operating as a public burial ground, that there would be concern for relatives because that's a continuing activity. It's not just a matter of posing the remains in a grave; it's also what happens after. I don't know whether Martin Adeney would have any idea. He's been around Highgate much longer than I have.

312. THE CHAIR: Mr Adeney?

313. MR ADENEY: Yes. I think as far as the charitable objects are concerned, the charitable objects are high level. When you work with the Charity Commission to agree charitable objects they rarely go into such detail as Mr Jones has suggested. I cannot tell

you in 1975 what the discussion was but obviously they didn't feel that grave owners should be specifically picked out but that would be within that particular point to permit the cemetery to be used as a public burial ground. And in some ways, I suppose, they come within the public benefit.

314. THE CHAIR: Yes, Lord Trefgarne has got his hand up.

315. LORD TREFGARNE: Thank you, My Lord Chairman. I'm afraid I'm unpersuaded by all of this. I feel that Mrs Swift's representations carry some force.

316. THE CHAIR: I'm sorry, I don't know if others had trouble following that. I missed the last bit.

317. LORD TREFGARNE: I'm unpersuaded by Dr Dungavell's arguments. I think we should extend the time from 75 to 100 years. I hope he will agree to that and My Lady will so recommend.

318. THE CHAIR: Well, yes, I think we would have to wait to discuss it when we finish hearing the evidence and any questions, with respect.

319. LORD TREFGARNE: Yes, of course.

320. THE CHAIR: Right. What was your other question Mr Jones? It was about the letter of undertaking to the MoJ about the notice period under clause 5?

321. MR JONES: That's correct, My Lady. I just wondered whether or not that letter of undertaking would include a time period for how long that notice remained on the website.

322. THE CHAIR: Mr Evans, is that a question for you?

323. MR EVANS: Yes, My Lady. As it currently stands there is no time period in the undertaking that I just gave. But we could certainly look to include one and if we can, perhaps, in the next break, do the equivalent of what would be having a discussion in the corridor about an appropriate time period. There are several notices that would be put up, both on the website, in the press and on site. So to identify what would be an appropriate period would be to make sure that the notice remains on the website or future equivalent of it. So we could certainly look to include something.

324. THE CHAIR: Lady Whitaker, did you want to say something?

325. BARONESS WHITAKER: Thank you. On this question of including a collateral member of the family, I'd just like it made a bit clearer about what the promoter's objections to it are if there is no lineal descendant. It may be that I've got a professional bias which is in our place of work, if there isn't a lineal descendant to a peer, it would be a nephew, or a fourth cousin, or somebody like that, just somebody. So if you could clarify your position, please?

326. MR EVANS: Certainly, My Lady. I suppose the first point would be that aunts, uncles, nephews, nieces, first cousins and so on are included in the definition. That sort of first degree of relationship is included in the definition of relative. Beyond that, the position and properly identifying who the person is and their link with those concerned, either the person who has the right of burial under clause 4 that Mr Jones was concerned with, or the person who is currently interred, under clause 5. The issue is identifying that that person properly is who they say they are and extending the category broadly potentially puts an additional burden on the burial authority to have to deal with that.

327. In addition though, on clause 4, which is the power to extinguish rights of burial, we go back to the position that this is properly a matter between the rights owner and the trust rather than relatives. So if it was clause 4 that you were concerned about, My Lady, our position there is more on the principle rather than the practicality. There is of course nothing to stop a person who owns the right of burial from passing that down to a collateral descendant with their estate, if they have no lineal descendants. That person would then become the rights owner and would have the full veto power under clause 4 that the existing rights owner has.

328. BARONESS WHITAKER: That's helpful. Do I understand it that your restrictions are for the convenience of the administrators then?

329. MR EVANS: It's what we would call a matter of practicality, in essence, identifying the full range of who a collateral descendent is, and as Dr Dungavell mentioned earlier, if you have different people of different levels or degrees of relationship, and they have different views, ruling between them is like determining between them.

330. BARONESS WHITAKER: I can see the problem. Okay. Thank you.

331. MR EVANS: As I think Dr Dungavell did mention, the preference of the trust would be – and perhaps my apologies, Lady Hallett, I should probably have asked this question in re-examination – but, with permission, he did previously identify that the preference of the trust would be to re-establish the link with living relatives if possible. So if the known owner had vanished, if there were no lineal descendant, if a person appeared who was a collateral relative and said, ‘I object to this extinguishment’, the trust’s preference would be that that person would become the next owner of the right of burial if they had an interest in that burial space.

332. LADY WHITAKER: Thank you. Could I just ask Mr Jones if he finds that satisfactory and, if not, why not?

333. MR JONES: Lady Whitaker, I think the problem is that the Bill is structured in such a way that the ownership rights to the grave allow you to prevent disturbance of remains and removal of memoria, and the only way in which you can therefore be absolutely sure forever more that those remains will not be disturbed and the memorial be removed is if you can actually get those ownership rights transferred across to you. Now, the cemetery is indeed helpful in that regard but for collateral descendants to be absolutely sure that they can get that ownership transferred is rather more difficult than for lineal descendants.

334. I would suggest that there is no reason why the Bill has to be structured in that particular way. Mr Evans makes reference to the fact that clause 4 – it would be wrong for collateral descendants to be able to interfere with the legal relationship between the owner of those grave rights and the cemetery but, on the other hand, we have a Bill here which is proposing to do precisely that. I see no reason why the Bill cannot be structured so the ability to object on the part of collateral descendants who may not be able to say they are the only collateral descendants but certainly can prove, as we can in the case of our great uncle, that we are the descendants and that is something that we could quite readily approve and it would not put the cemetery to any expense because we would have to prove that to them.

335. LADY WHITAKER: Thank you.

336. THE CHAIR: Two things, firstly following up on that point, the point made by Mr Jones. Do you want to respond to what Mr Jones has just said about the way in which the Bill is structured and whether it could take greater account of collateral descendants like members of the Jones family?

337. DR DUNGAVELL: I'm not really capable of commenting on the structure of the Bill. I'm not quite sure if we've exhausted the possibilities of the Jones descendants becoming registered owners of the graves through the processes that are already in place. Is that not possible?

338. THE CHAIR: Mr Jones, has it been possible – I mean, presumably your point is about collateral descendants generally, not just your family.

339. MR JONES: That's correct. There is a discussion ongoing with the cemetery in relation to the Merrett grave where we are lineal descendants and whilst it's not completely certain, I believe that we will be able to arrive at a point where we can get the ownership of the grave transferred. The ownership of the grave in the case of the Simmons grave is rather less clear and it would require us potentially to sign a statutory declaration which might involve – well, I don't think we will be able to sign the statutory declaration because we wouldn't have possession of all the facts.

340. THE CHAIR: But under the clause as drafted, if anyone objects then it will go to the Secretary of State procedure. Now, that is something to which you've taken exception. I mean, I have done a case, as Mr Evans pointed out earlier, where exactly this happened: there was an objection to an exhumation and the Lord Chancellor was asked to decide. He decided in a way that the objectors didn't like and so it then came through for review. So you have a fairly rigorous process whereby the Secretary of State has to consider the position and consider the evidence and reach a reasoned decision and then, if you don't like that decision, you can go to a High Court judge. What is it about that process that you take objection to as a collateral descendant?

341. MR JONES: It's a process where we don't really know what would trigger that in terms of the cemetery's thinking. I mean the cemetery actually has to go to the Secretary of State and ask for permission to override the objection. So we start with a step where we're not quite sure what, in the cemetery's mind, is going to lead to that but then it goes to, presumably, the Ministry of Justice and I'm certainly not criticising, nor

my brothers, the professionalism of the officials at the Ministry of Justice in looking at this but it's a professional and dispassionate view of something that has enormous emotional significance for the people that are involved and it cuts across the preservation of rights bought in perpetuity by those who believed that those rights would be respected.

342. THE CHAIR: Well taking you through the process, it's nothing to do with what the cemetery would want to do, it's straightforward. If a note of objection is received by any person and the objection isn't withdrawn, there can be no extinguishing of any rights or removal of anything unless the Secretary of State consents. So it will automatically go to the Secretary of State if the objection's not withdrawn. So the process is straightforward so I'm not following. Your first step was you didn't know what the cemetery would think or do and I'm afraid I didn't follow that argument.

343. MR JONES: Okay, well I did not understand then that the cemetery would be obliged to notify the Secretary of State that there was an objection and that therefore that would trigger a process between the Ministry of Justice at that point. I assumed that the cemetery would have the right to basically say, 'Okay, we understand what your objection is. We see why it is a very close family connection. We will not proceed'.

344. THE CHAIR: Well, Mr Evans will correct me if I'm wrong, although he said before he wasn't going to, but as I read it, this is a very tightly drawn sub-section which says, 'If any person', so whether you're the registered owner or a relative or whatever, 'If any person objects, and that objection is not withdrawn, the rights must not be extinguished unless the Secretary of State consents'. Is Mr Evans nodding?

345. MR EVANS: Yes, my Lady, that is correct. I suppose it would then be open to the trust potentially to withdraw that application.

346. THE CHAIR: Yes, but if they want to extinguish the rights, and there's a note of objection, they must go to the Secretary of State.

347. MR EVANS: That's correct.

348. THE CHAIR: Does that reassure you at all, Mr Jones?

349. MR JONES: I had understood that. I mean, the step that I was referring to was the

one that Mr Evans has just referred to, that the trust would have the right, at that stage, to say, 'Well, we're not going to go any further with this. We're not going to put the request forward to the parliamentary Secretary of State'. But it does seem to me that we are dealing with something that is of quite important emotional significance, a family connection, the rights were bought originally in perpetuity and I believe that those should be respected.

350. THE CHAIR: Right. Okay, Dr Dungavell, anything you would like to add in relation to what we've just been talking about or do you want to have another go at addressing the 75 or 100-year point?

351. DR DUNGAVELL: So just in terms of what we said about collateral descendants, it actually requires the Secretary of State's active consent, doesn't it? So the grave is protected until the Secretary of State says, 'No, it's not. Those rights can be extinguished'. So, to me, that provides quite strong protection for other people to prevent the extinguishment of those rights because it's something that really has to be actively got. So I think that's quite strong.

352. In terms of the 75 to 100-year protection, again, I come back to the point I made earlier which is that balancing the need to provide burial space with protecting the interests of people who are concerned about their relatives. So if any relative objects, 75 years becomes 100 years automatically and then it becomes 125 years and then it becomes 150 years, as far as I understand it, so it's a case of while there are people who would be affected by the potential disturbance of the remains in the grave, where there would be people who would be worried about that and upset by it, it won't happen because the relatives can object to that. And in the many cases where that may not be the case, then the use of the land is not being held up in circumstances where the lowering of the remains within the same grave would not be objected to.

353. THE CHAIR: Thank you very much. Anybody have any more questions? Lord Aberdare, is your hand still up?

354. LORD ABERDARE: Yes, it is.

355. THE CHAIR: Okay, yes.

356. LORD ABERDARE: It's just something that Dr Dungavell has just said. Is it correct that the 25-year extension can be repeated ad nauseam? I mean what he indicated was that after the first 25 years you could extend it another 25 years if there were still objections which I had not appreciated but I think is quite significant.

357. THE CHAIR: That's how I read the Bill. Mr Evans, what are your submissions on that point?

358. MR EVANS: My Lady, it is the same. We take the same approach to it that if, having given a notice under clause 5(8) an objection was made that triggers the 25-year stay, the burial authority could not simply exercise the powers 25 years later but would have to start again with a fresh notice and, at that point, a fresh objection and a fresh 25-year stay could be obtained. And so, as Dr Dungavell says, for as long as there are people who are still concerned with the grave, that a further stay of approximately a further generation would be able to pay their respects before the cemetery could ask again.

359. LORD ABERDARE: Thank you very much.

360. THE CHAIR: That's certainly how I read the Act. It seemed to be fairly carefully drawn to indicate that 25 then if there's an objection another 25 and that's why it's drafted in that way.

361. Right, anybody any other questions? I'll come to you in a second, Mr Evans, in case there's any re-examination you want. Any other members of the Committee? Mrs Swift? Mr Jones? Anything else for the doctor? No. Right, Mr Evans, do you have any re-examination?

362. MR EVANS: My Lady, I think we have been through each of the points in some detail so the points that I wanted to raise in re-examination generally have been taken. I was just wondering though on the question of 75 versus 100 years if Dr Dungavell could have a look at the various maps that you set out in tab 7 and if you're able to give an estimate of how many spaces might be lost immediately if we were to go to a 100-year cycle rather than a 75-year cycle, or as a proportion.

363. DR DUNGAVELL: So turning to the old Marx grave path, tab 7, page 123,

there's about 11 out of 60 graves there that would not be available if the period was extended to 100 years and, in some cases, that would also be a problem if there was a need to lower the remains in the grave because one of the practical aspects of an exhumation or disturbing human remains is it needs more working space than merely depositing a coffin in the grave. So when there are two graves together, that's particularly important if you can work on them at the same time so that the exhumation and the lowering of the remains in the grave can be done more effectively.

364. So I'm just looking at the third line down, that line with the old Marx grave indicated on it. In that line, you'll see there's two pairs of graves where there's a green rectangle and an orange rectangle next to each other. Those orange ones would not be available if the period became 100 years and so it would be more difficult to work on any disturbance which needed to be done to reuse those graves. So that would be a particular concern that there would be a reduction of the number we could work on at any one time.

365. MR EVANS: So, Dr Dungavell, are you also saying there that where there is a yellow grave next to a green grave, the fact that the yellow grave was unavailable, does that also therefore mean that the green grave is potentially unavailable because of the difficulty of working?

366. DR DUNGAVELL: It may do and that would depend on a case-by-case basis.

367. MR EVANS: The number that you gave there was 11 out of 60 or so it's roughly 20%. Is that roughly the same for the other areas that you have surveyed?

368. DR DUNGAVELL: The thing about the age profiles of the cemetery, it depends where you're looking at and so I just reach for another of the plans, the top of the following page is only a small area but there's three graves out of nine which would not be available at that time but in page 125, which is also the plan of square 125, you'll see that in that area which is older, there's only one grave which would be affected. So it's quite variable as you go across the cemetery. The next page, page 126, you'll see that there's very few graves available in this whole stretch but there's six or seven of them which would not be available and only about the same number that would be available. So half of the ones drop out if you extend the period to 100 years.

369. MR EVANS: Thank you. No further questions, my Lady.

370. THE CHAIR: Thank you very much, Dr Dungavell. Now I suggested earlier that you would call Mr Adeney next, Mr Evans. What evidence is Mr Adeney going to give? I'm just thinking, we have read the papers. No disrespect to Mr Adeney who I'm sure is very knowledgeable and has great expertise in the subject, but what's he going to say?

371. MR EVANS: To give some more background, I suppose, to the cemetery and the trust and how it is that the trust came to be responsible for the cemetery and what it is that the trust does and the approach that it takes to the exercise of its responsibilities. It may be that the Committee considers that perhaps, if there is a question about this, you could just ask Mr Adeney as other evidence as we deal with the petitioners' evidence. I had in mind that we're an Opposed Bill Committee and Mr Adeney is under oath so I should probably examine him in chief formally, that is all.

372. THE CHAIR: Yes, of course. It's entirely up to you. I mean, you're promoting or you're acting for the promoters of this Bill so take whatever course. But just to say that I think we've all got a fair understanding now of the basic and very worthy aims of the friends of the cemetery. Our decision is going to have to be as to whether this is the right means to achieve them but, yes, take your own course but please bear in mind that we have read the papers.

373. MR EVANS: Thank you, my Lady. In that case, it being 10 minutes before you'd indicated a break, would you like us to begin with Mr Adeney now or perhaps take the break now and start with him in 15 minutes.

374. THE CHAIR: Thumbs up for a break now, thumbs down for a break later. Members of the Committee, thumbs up for a break now. Yes, okay, very well, Mr Evans. You've won the backing of my fellow members of the Committee. We'll take the break now and return at 3.35.

375. MR EVANS: My Lady.

THE CHAIR: Thank you very much.

Sitting suspended.

On resuming –

Evidence of Mr Martin Adeney

376. THE CHAIR: Right, we shall now continue this hearing into the Highgate Cemetery Bill. Mr Evans, we've reached the stage where you were going to call Mr Adeney to help us further to the extent necessary on the Highgate Cemetery and its trustees and objects.

377. MR EVANS: Thank you, my Lady. Mr Adeney, could you start please by telling us who you are and your role in the trust?

378. MR ADENEY: Yes, I'm the chair of the Friends of the Highgate Cemetery Trust. I've lived in Highgate for over 40 years on the same hill as Mrs Swift. Many of my friends and acquaintances lie in the cemetery and I know and am in touch with their families and I want to emphasise how much the cemetery is connected to the local community. The friends is the charity which owns and operates Highgate Cemetery.

379. MR EVANS: Thank you, and I think, just to be on the safe side, formally, could you confirm your name?

380. MR ADENEY: Yes, it's Martin Adeney, Howard Martin Adeney.

381. MR EVANS: Thank you. Now I've given some of the background to the cemetery and the trust already, as has Dr Dungavell. So perhaps you could just give the Committee a little bit more detail of who the trustees are and what they do.

382. MR ADENEY: Yes. The Trust has about 800 members spread throughout the world and we have regular arrangements for the trustees. We have 12 trustees and three people who are called protectors who keep an eye on the trustees which relates to when two charities join together to form the trust and those 12 are – nine of them are elected by members of the trust but three are appointed but still have to be voted for and those three are people with special interests or connections which the trust chooses. I'm one of them; I'm from the local community. That's how I get there and I was suggested by the Highgate Society. We have somebody who is there to look after the heritage connection and we have somebody who is a former director of the Victorian Society and we have somebody who looks after the various ecological things and we have a person

there who has worked hard at Capel Manor which some people in north London will know is an important college and education establishment for horticulture.

383. As you previously heard, by the 1970s the cemetery was in a very bad way and it had decaying monuments and pilfered graves. Bones and bodies were dragged out and it was known as a place for casual vandalism in Highgate. My partner still likes to tell me of the fun he and his friends used to have climbing into the cemetery as boys. So that's what we came from and that's what we must never get back to.

384. The company effectively abandoned it and, unlike some councils like Lambeth or Southwark which took over equivalent cemeteries among what is sometimes called the magnificent seven, Camden declined to do so because of the expense of restoration. Instead, the Highgate Society got together a group of mainly local people to try and keep the cemetery open and that became the Friends of Highgate Cemetery in 1975, a charity was formed and it took ownership of the cemetery in the 1980s. And over the years the friends have steadily sorted out the cemetery, securing its fences, reclaiming its damaged monuments and introducing entrance charges to fund the work.

385. We're best known, of course, as the burial place of Karl Marx but we have many other famous people including George Eliot and Michael Faraday and the attraction of the cemetery is its remarkable architecture, a deliberate mixture of Gothic and Egyptian as well as its enchanted glades. So we attract a wide number of visitors, many of them from abroad.

386. You've heard that before Covid we had 100,000 visitors a year and we came in at number 29 in TripAdvisor's list of all the places to visit in London, a prestigious list which includes the Tower of London and the British Museum. So the trustees are looking at ways to do more to meet visitors' expectations and provide better facilities. You may have seen reports of the international competitions we've recently launched to find the best architects to assist us with our landscape plan and advise us on the very limited number of new buildings we might be able to erect.

387. It can't be overemphasised that this is all within the context of continuing to function as a burial ground. The trustees are totally committed to keeping Highgate open for new burials as long as we possibly can because we believe it is essential for the character of the cemetery as well as its viability and that will be the best protection for

existing graves and grave owners. If it was simply a visitor attraction it would become, as Dr Dungavell's already said, more like a public park and our successors would be tempted, and economics might compel them, to introduce a range of different leisure activities which could include sporting and hospitality events, for example.

388. And just to give you an example, when we had our competition a few weeks ago, one of the architects who put forward for our landscape plan but didn't reach the shortlist did actually have in their proposals, playgrounds and even a place for Halloween activities and that kind of thing is in people's minds and it's very important that we should keep the cemetery as a place of burial and respect and not do things that would detract from the feelings of respect and enchantment which captivate people who visit and are the best protection for grave owners. Thank you very much. That's why we're promoting this Bill.

389. MR EVANS: Thank you, Mr Adeney. We didn't particularly have any further questions on this evidence.

390. THE CHAIR: Thank you very much, Mr Adeney. I don't know if anybody has any questions. Yes, Baroness Whitaker?

391. BARONESS WHITAKER: Thank you very much, Mr Adeney. Your friends' objective of a public burial ground is obviously the point of conflict with Mrs Swift's point about perpetuity which, as Dr Dungavell said, had been echoed by other consultees. So I'd like to ask you, do you associate the objective of the cemetery being a public burial ground with Mr Evans' characterisation of the cemetery as a unique cultural heritage? What is the value that you attach, particularly to the function of the cemetery being a public burial ground, so is likely to get filled up?

392. MR ADENEY: Well, because that is what the cemetery started as, that is what its tradition is, that that is its motor as it were and I think it connects perfectly well with its historic connections.

393. BARONESS WHITAKER: Thank you.

394. THE CHAIR: Yes, Baroness Garden?

395. BARONESS GARDEN OF FROGNAL: There was a very interesting article in

the *Observer* in November about the cemetery suggesting that you are probably going to get a gift shop and a cafe and I don't know what else. Do you see that as part of the way in which you can get people more involved with the cemetery?

396. MR ADENEY: It may be. I mean the *Observer* article said, I think, we already had a cafe. Lots of cemeteries do have cafes. We will be considering whether or not we go ahead with one but we're not there yet. In terms of a gift shop, we already sell books to do with bereavement and history of cemeteries in our small shop but we're not going overboard about that but it is also something which people expect when they go to other places and you may be aware that the Heritage Lottery fund has spent a lot of money in recent years on cemeteries. One thinks, for example, of Brompton; one thinks of the Bristol cemetery, doing just those things.

397. BARONESS GARDEN OF FROGNAL: Thank you.

398. THE CHAIR: Any other questions for Mr Adeney? Mr Jones? Mrs Swift? Any other member of the Committee? Yes, Lord Trefgarne, yes.

399. LORD TREFGARNE: Thank you very much, Chair. There was a very interesting and relevant piece from the "Countryfile" television programme only last evening that concentrated on Highgate's importance as a wildlife centre in the northern London area. Did you see that?

400. MR ADENEY: Yes, indeed, and we obviously facilitated it and Dr Dungavell was on it. Yes, this was on "Countryfile".

401. LORD TREFGARNE: Yes, indeed.

402. MR ADENEY: Yes, yes. No, we did see it and we were involved in it and it drew on some of the things which we've been saying about our plans and the importance of looking after nature there.

403. LORD TREFGARNE: I'm glad you enjoyed it because I did too.

404. THE CHAIR: Anything else? Lord Aberdare?

405. LORD ABERDARE: Thank you. Yes, I'm not quite sure where this question fits but it occurs to me that I don't know the answer. I mean, one of the potential visitor

groups, I suppose, to the cemetery is relatives and people who have an interest in some of the people who are buried there. Do you have on a computer, for example, a list of all those numbers that we saw on the maps and how they relate to who's there? I mean is there a computerised record, in other words, of everybody who's there and where they are and is this something otherwise that you might be considering trying to create?

406. MR ADENEY: Well, I'll defer to Dr Dungavell but the answer is we are actually working on that at present and it's a work in progress. We're also doing a digital mapping project so that we can connect that to all the graves so that we know exactly and also will have a picture of every grave that we can connect up. But one of the problems is, as you probably know, the cemetery is extremely overgrown in parts and so we have to do physical clearance in order to enable that to happen.

407. LORD ABERDARE: Thank you. I don't know, except from what you've told us, I'm very much looking forward to the opportunity to find out for myself.

408. MR ADENEY: Well, you'll be most welcome.

409. THE CHAIR: Lord Aberdare, you'd better go and find out about your ancestors' grave and see if that's overgrown.

410. LORD ABERDARE: Absolutely. It's in the west cemetery but, beyond that, I know nothing so we will see.

411. MR ADENEY: Do send us the name. I did hear it but I can't remember it.

412. LORD ABERDARE: Lord Lyndhurst, he was. He was a chancellor in the 19th century, yes.

413. THE CHAIR: Any other questions for Mr Adeney? Any questions by way of re-examination from you, Mr Evans?

414. MR EVANS: My Lady, only one. I suppose it may be helpful to deal with this here but Mr Adeney, if you turn to the Bill and clause 7 of the Bill, to put it in re-examination terms, could you tell us what that requires the trust to do? Subsection 1.

415. MR ADENEY: Well, we have to register all the burials and we keep track of them. Sorry, is that what you're talking about?

416. MR EVANS: Sorry, Mr Adeney, I think you were talking away from the microphone but in the context of Lord Aberdare's question about whether you had records of all the burials –

417. MR ADENEY: Well, we have a full register. It's just not digitalised, or not all digitalised yet. I mean, we have huge numbers of written old books with written registers in them which we access and they are in considerable detail. They show when original burials were but then what changes were made, who was buried since and so on.

418. MR EVANS: And then clause 7 puts that on a statutory footing.

419. MR ADENEY: Yes.

420. LORD ABERDARE: My question was specifically in relation to the digitisation of all that information.

421. THE CHAIR: Right, well, thank you very much, Mr Adeney. That was very helpful. Right, so where do we go from here? What I suggest we do next is if I ask Mr Jones and Mrs Swift if there's anything they would like to say to promote their opposition, if that's the right expression?

422. MR EVANS: My Lady, I wonder if it would be helpful, there was one point that Mr Jones asked previously about the time for which notices would be available on the website and we promised to go into the virtual corridor and discuss and we have done so and we would propose at the end of the proceedings that the undertaking be that that notice would stay on the website for the full duration of the objection period, so for the full six months, and I hope that deals with Mr Jones's point.

423. THE CHAIR: Thank you very much. So, Mr Jones, what would you like to say? To an extent we've already heard your opposition in your question but please feel free to take any more time that you need to tell us why you oppose the subsection of clause 4.

424. MR JONES: Thank you, my Lady. I will try to avoid some of the points which we have covered exhaustively but would like to just re-emphasise one or two that we covered.

425. THE CHAIR: Certainly.

Submissions by Mr David Jones

426. MR JONES: First of all, I'd like to explain why I'm here. I'm here to represent myself and my two brothers, Andrew and Anthony. We are lineal descendants of a metropolitan police officer who purchased the rights to a grave in 1897. We are collateral descendants of other family members who have their graves in the cemetery, one of whom I will refer to today.

427. We are one of two petitions against the Bill and the only one addressing grave spaces purchased over 100 years ago. We are not making any criticism of the cemetery here, and we acknowledge what Dr Dungavell said earlier about the extent to which the cemetery publicised the Bill, but we believe that is because those who would be interested do not know of it. For a variety of social and financial reasons, the relatives of those who once lived in north London are now widely dispersed.

428. In our family, there are 18 lineal descendants, none of whom lives close to Highgate, and only one lives in the London area. My brothers and I only know about the Bill because my niece heard a brief mention of it on the radio and we had to scramble to present the petition shortly before the deadline expired.

429. Our purpose in petitioning is not to prevent the Bill from becoming law. We can see that it offers the trust the means to create the financial resources to maintain and preserve the cemetery. Our petition is merely seeking a more reasonable group of rights to be available for those who know they had relatives buried in the cemetery and who place emotional value on that connection.

430. To illustrate the way the Bill will work and its practical effect, I would like to refer to two of the graves in which my family are interested. A list of the people interred in each grave was submitted in my evidence. There were two pages: one was the Merrett grave and the other was the Simmons grave. I'm afraid I don't have page numbers for those.

431. The Merrett grave has three interments: my grandfather's brother, Samuel; and two of my grandfather's children that died young, my mother's brother, Thomas and her sister, Olive. My grandfather is at this moment the registered owner. As we are his lineal descendants, we may be able to transfer the ownership to one or all of us,

preventing the remains from being disturbed. As the grave has no memorial and only three occupants, it meets at least some of the cemetery's criteria for grave renewal.

432. The other grave is that of Thomas Simmons and his family with six interments including Thomas; his wife, Elizabeth; two of his children; his sister, Mary; and his brother, Robert. Thomas was my great-great uncle and he is the registered owner. He has no lineal descendants. However, we may face difficulties in getting the ownership of the grave transferred to us because we cannot be certain that there are not other great-great nephews and nieces who might also be entitled to ownership. So any objection to the extinguishment of rights, and therefore no disturbance of remains, would rely upon a decision by the Secretary of State. Clause 5.8 would not allow us to prevent the disturbance of remains as we are not relatives as defined in the Bill's interpretation clause.

433. The Simmons and Merrett family were very close. My grandfather lost both his parents while he was young and his uncles and aunts provided both emotional and financial support. My mother kept in regular contact with some of her cousins until they passed away. My grandfather, as a young man, saw his mother buried in a common grave with other unrelated souls. He was determined that would not happen to his brother and his wife and children so he purchased the rights at Highgate. He paid six pounds 12 shillings for those rights at a time when a police constable wages were one pound, five shillings and sixpence, about five and a half weeks' pay. I suspect, but I don't know, that his uncle gave him some help.

434. My grandfather, who eventually became the inspector of police of Hampstead police station, would be appalled to know that the permanent rights he and his uncle had purchased could potentially be removed through an Act of Parliament with some of their relatives being largely powerless to prevent it. There is a strong possibility that similar stories apply to the graves of other families at Highgate.

435. The cemetery in their submissions, and indeed in their remarks today, make it clear that their main rationale for the Bill is to maintain the stream of income associated with full burials. The cemetery sees grave renewal providing only a small increase in the number of burials and is more focused on maintaining a sustainable supply and operating on a small scale as a public cemetery. Graves in the cemetery are likely to be

sold at a price which is significantly higher than the London average. The cemetery's own numbers suggest that the average full grave cost was £22,800 in 2016-2017 which compares to the average cost for burial in London of £4,400. According to one website which provides guidance on funerals, Highgate is the most expensive place in the UK in which to be buried.

436. The reason I make this point is that the cemetery's response to our petition and the letter from Dr Dungavell makes extensive references to the need to follow precedent. Indeed, Mr Evans mentioned precedent five times in his presentation this morning and that is as represented by the New Southgate Cemetery Act and the preceding legislation which affected municipal authorities in London. In the case of the latter, the legislation affected public cemeteries, public burial grounds. This legislation was directed towards increasing capacity, increasing the ability of those cemeteries to handle new graves, not an increase in revenue.

437. Highgate Cemetery is using these legislative precedents for a different purpose: to facilitate revenue raising. In our view, it is wrong to use those precedents unamended for an entirely different purpose, no matter how reasonable the purpose appears to be. Highgate Cemetery will say that they are now a public cemetery but the cost of an interment at Highgate, which I mentioned earlier, suggests that this is not fully justified.

438. The same, of course, is true of the New Southgate Cemetery Act but that Bill was unopposed. While one consequence of the New Southgate Act was to sustain Westerleigh profits, Westerleigh being the private owner, the main objective was to provide more burial space.

439. Our petition requests that clause 4.7 be amended to give the rights to both lineal and collateral descendants to give notice of objection to extinguishment of burial rights and disturbance of remains. Because of the way the Bill is structured, full rights to object to disturbance of remains and memoria are only given to registered owners. Transferring ownership to lineal descendants may be possible depending on circumstances and the cemetery are helpful but bear in mind there may be a considerable passage of time since the original owner made his purchase. Transferring ownership to collateral descendants is more difficult and people in that position may be reliant on the Secretary of State decision, which will be sought by the cemetery.

440. The cemetery point out in their responses the existence of the rights in 5.8 where relatives can object and the disturbance of remains is then deferred for 25 years. However, relatives, as that terms is defined in the Bill, do not extend beyond the next generation below the last interment. Great nieces and nephews etc are excluded. The graves where the original owner made his purchase 100 years ago or more ago, and that must be a great many graves in Highgate, that protection is highly unlikely to apply.

441. Within the cemetery's response to the petitioners, and specifically on page 135 where the 75-year time period is discussed, it is noted that the cemetery would be less sustainable over time if up to 20% fewer graves were available. And that, we submit, is the real reason why the cemetery does not want to widen the pool of rights available to relatives.

442. We wish to suggest to the Committee that a more equitable balance would be struck if collateral descendants were given the rights to object to grave renewal or reclamation on a permanent basis, without any other approval or intervention. The cemetery say that is not possible because only those who are registered owners can do that because they hold the burial rights, to which we would respond that that is the case because that is the way the Bill has been structured. It does not have to be structured that way. There is no reason why the rights to prevent removal and disturbance of remains cannot exist within the Bill entirely separate from the rights to burial. Thus the cemetery could continue to extinguish burial rights but they could not disturb the grave space at all if there are objections from collateral or lineal descendants.

443. We may not be able to prove that we are the only collateral descendants of Thomas Simmons but we certainly can prove that we're his descendants. It would be up to the relatives to satisfactorily demonstrate that they have those links that they're suggesting and they would obviously require or need to incur expenditure to provide satisfactory proof. The cemetery will no doubt say that the rights to object are protected by the decision of the Secretary of State, which could, if needed, be challenged by a judicial review. We do not doubt the professionalism of those involved but that decision will be made in the context of a request delivered by the cemetery, not by the relatives, and a professional and dispassionate review is an inadequate protection for rights, which have enormous emotional significance and which were purchased in perpetuity by those who believed those rights would be respected.

444. My final point, I would like to return to the question of precedent. If the Highgate Cemetery Bill goes forward unamended it will have a much wider impact than just Highgate. It will be much more difficult for objections to future bills affecting private cemeteries in England to be sustained. For that reason as well I ask the Committee to require the changes we have suggested. Thank you.

445. THE CHAIR: Thank you very much indeed, Mr Jones. Mr Evans, are there any questions that either you would like to put to Mr Jones or the Committee to put to him?

446. MR EVANS: Just a couple, My Lady. Mr Jones, you described the costs of burial within Highgate. Can I ask you to turn, please, to tab 2 and page 17?

447. MR JONES: Yes.

448. MR EVANS: And do you see that there is a list of the prices available at the cemetery?

449. MR JONES: I do.

450. MR EVANS: And that there is a range of prices.

451. MR JONES: Indeed.

452. MR EVANS: And do you accept that, supply and demand being what it is, if there are fewer spaces available the average price would tend to go up and if there were more spaces available the average price would tend to go down, all things being equal?

453. MR JONES: As a believer in supply and demand, Mr Evans, I certainly accept that but that wasn't really the point I was making. I was making the point that the cost of being buried in Highgate is much higher than the London average and that, in a sense, the cemetery, whilst part of its objective is to act as a public cemetery, nonetheless it is burying a relatively small number of people each year. And certainly compared to the burial requirements in Camden it's pretty small.

454. MR EVANS: Do you accept also that if the cemetery had more spaces available to sell each year it could charge lower prices?

455. MR JONES: I think that would be very much up to the cemetery to make that

judgement. The Highgate Cemetery, certainly on the west side, is a prestige space and I've no doubt that it would continue to sell the space available there at a premium to the rest of London.

456. MR EVANS: Thank you. And you drew a distinction between the London local authorities and New Southgate Bill, which you said were concerned with increasing grave space, and this one, which you've characterised as being concerned with increasing revenue. Even if that were the case, do you agree that the revenue could only be raised if grave space were increased?

457. MR JONES: I am not objecting to the increase in the grave space. As I said in my remarks, we are not objecting to this Bill becoming law; we are just trying to provide a greater set of rights for those who object. Certainly not objecting to what the cemetery's objectives are here. And I think the cemetery themselves, I think Dr Dungavell said in his submission that he didn't see a significant increase in the rate of burial; that he was looking to create a reserve that would enable them to sustain burials in the cemetery over a long period of time.

458. MR EVANS: Indeed. And you agree that the powers to increase grave space are needed to do that.

459. MR JONES: As long as the rights of descendants are adequately protected, in particular relatives of people who bought those rights in perpetuity.

460. MR EVANS: And on – sorry, please, continue.

461. MR JONES: I mean in the responses that Dr Dungavell gave in relation to the various investigations of people's views of reusing grave space etc and the publication of the issue of the Bill it was reported that very few people objected. All we're talking about is, therefore, possibly those few people who will object.

462. MR EVANS: Thank you. On the point of the objections, if I could ask you, please, to turn to clause 4(7)(b) of the Bill, which deals with the nature of the objections. And it may be that this part of your remarks was written before we had our discussion before lunchtime but just to confirm, you were talking about relatives having the ability to object to the extinguishment of rights and no further approvals being needed to

uphold their objections. And could you just – well, can we just confirm that, as we discussed earlier today, it is not necessary, is it, for there to be a decision by the Secretary of State to uphold an objection? The objection is automatically referred to the Secretary of State and the Secretary of State must consent to the extinguishment.

463. MR JONES: I must admit, Mr Evans, I thought when we were talking about it earlier on that you were saying that if a notice was given, in fact, the cemetery would decide at that point whether or not to apply to the Secretary of State.

464. MR EVANS: No. I think the point that I made was that it would be open for them to withdraw the proposal at that stage otherwise, as Baroness Hallett noted, it would automatically be referred to the Secretary of State.

465. MR JONES: To me, Mr Evans, the notice being withdrawn and the cemetery deciding not to proceed with the proposal are one and the same thing.

466. MR EVANS: Very well. But the point remains, doesn't it, that under 4(7)(b) it is the cemetery who must persuade the Secretary of State to consent to the extinguishment. The onus is not on the objector to persuade the Secretary of State to uphold the objection.

467. MR JONES: I would entirely agree that it is the cemetery who is making the application to the Secretary of State. That is true.

468. MR EVANS: Thank you. No further questions, My Lady. I think you're still on mute.

469. THE CHAIR: Does anybody else have any other questions for Mr Jones? If not, we will – yes, Lord Trefgarne?

470. LORD TREFGARNE: The Secretary of State frequently referred to in all of this is the Secretary of State for Justice.

471. THE CHAIR: Yes.

472. LORD TREFGARNE: Is that right?

473. THE CHAIR: The Lord Chancellor as it –

474. LORD TREFGARNE: Who is also the Lord Chancellor, of course.

475. THE CHAIR: Yes.

476. LORD TREFGARNE: Lord Justice.

477. THE CHAIR: Thanks. Right, in which case, we move to Mrs Swift. Mrs Swift, is there anything that you would like to add to the statement you made earlier?

478. MS SWIFT: No. I've been most interested hearing what everybody said, particularly Mr Jones, who I thought was most succinct in what he said. But I still can't help the way I feel, but I'm very glad to have been part of it and to have heard what's been going on. I think it's fascinating and goes to prove the depth of what goes on in that cemetery and how wonderful it is. And nobody actually mentioned – all these things are marvellous but the feeling of peace when you're there wandering about is just – I feel so fortunate that – well, my husband is already there and I hope to be there with him.

479. Oh, there's one just quick question. Does the 25 years go from when I go or has it already started because he's gone?

480. THE CHAIR: As I understand it, and anyone correct me if I'm wrong, the 75 years starts to run from the time the last right to burial was used.

481. MS SWIFT: Right.

482. THE CHAIR: Once that 75 years – so that would be if you used the right to burial then it would be 75 years after you had gone into the grave.

483. MS SWIFT: After that. Thank you. Yes, thank you.

484. THE CHAIR: Which we hope will be a very long time to come. And then if anybody objected after 75 years to any proposal to extinguish your burial right it would be extended for another 25 years.

485. MS SWIFT: Right. Thank you very, very much. Thank you. I have no more to say. Thank you.

486. THE CHAIR: Well that's very good. Thank you very much. Right. So Mr Jones

and Mrs Swift, we're now going to turn to the amendments and unopposed sections of the Bill and it's entirely up to you whether you stay with us. Mr Evans, any idea how long you think it's going to take us to go through them?

487. MR EVANS: My Lady, I certainly hope that we could get through the remaining provisions of the Bill by 5.00 p.m. I wonder if it may be helpful for Your Ladyships and Lordships to have the opportunity to consider overnight, as it were, so that if you do have any further points to put to us we could return tomorrow to address those.

488. THE CHAIR: It's just occurred to me, Mr Evans, I haven't given you the chance to reply. Did you wish to take it?

489. MR EVANS: If that is acceptable then that would be helpful.

490. THE CHAIR: Yes, of course.

Submissions by Mr Nicholas Evans

491. MR EVANS: We only had a couple of points in response to Mr Jones and Mrs Swift. In summary, we consider, the trust considers, that Mr Jones's point that descendants should have the ability effectively to veto the extinguishment of burial rights should be resisted, for the reasons that we'd previously given that the question of the rights is properly a matter between the burial authority and the owner of the rights and this can be distinguished from the matter of disturbance of remains. And the differences that Mr Jones draws between this Bill and the earlier Bills does not affect that. And as you, My Lady, made clear under clause 4(7)(b) any objection, unless the proposal is withdrawn, automatically ensures the Secretary of State has to make a positive decision in order for the rights to be cancelled. And we consider that that is the appropriate level of protection for descendants.

492. And Mrs Swift, as I understand it, has moved beyond her petition a little to suggest that the powers in clause 5 really should not be granted at all rather than just being subject to a 75-year limitation. We do think that these powers are needed and it is not just because they have been granted before. We think they are right today and they strike a balance between the interests of people who use the cemetery today and those who might use it in the future and they enable the trust to continue to meet its charitable

objects by permitting the cemetery to be used as a public burial ground in a sustainable fashion. And this is what will ensure the character of the cemetery, the feeling of peace that Mrs Swift quite rightly mentioned, that is what will ensure that it is best preserved. I think Mr Adeney said it well that the trust believes that if the cemetery remains as a public place that's essential for the character of the cemetery as well as its viability and that will be the best protection for the existing graves and grave owners.

493. On the point between 100 and 75 years, we again strongly suggest that it should be a 75-year period. As Dr Dungavell has said, if the period for disturbance is increased to 100 years this would result in approximately a 20% to 25% reduction of the spaces available. And the key point here is that there is already a limited number of graves available, and this is also relevant to the wider point that Mr Jones made as well. There are already very few graves that could be drawn upon to make the cemetery more sustainable and the more difficulty there is in identifying those graves the less likely it is that the cemetery is able to remain sustainable in the long term. And, as has been previously discussed, if the 75-year period is retained but relatives do object then it becomes a 100-year period and so on while people continue to pay their respects in that grave.

494. So those would be our very brief submissions in response to the points made by Mr Jones and Mrs Swift.

495. THE CHAIR: Does any member of the Committee have any questions or comments for Mr Evans in relation to his reply and the opposed clauses of the Bill?

496. LORD ABERDARE: I don't know if this is the right point to raise my failure to understand clause 4(2) of the Bill, and I had recourse to the explanatory notes with the result that I was even more confused than I was reading the Bill. But I don't quite understand what the circumstances are that it's designed to address.

497. MR EVANS: Yes, and my apologies for the quality of the explanatory memorandum. The point here, and the mischief that I suppose this is seeking to deal with, under 4(1) – ah- rights that have not been exercised for more than 75 years could be extinguished. Clause 4(2) prevents that power from applying to any new rights that are granted after the passing of the Act. So if the burial –

498. THE CHAIR: The new rights for a period longer than 75 years. So, in other words –

499. MR EVANS: Correct, yes.

500. THE CHAIR: If the cemetery chooses to give a right to burial in perpetuity after the Act is passed they can't use the powers under the Act.

501. MR EVANS: Yes. That would be our lookout. We would – it would be our problem.

502. LORD ABERDARE: So you can effectively say, 'This is a burial of such importance that we don't want it ever to be extinguished and, therefore, we'll give it a period longer' – I mean any period longer than 75 years effectively means perpetuity, then, doesn't it?

503. MR EVANS: Well, it may be time limited for 100 years, at which point the grave – or 85 or 80, whatever the period is – at which point any unused space would become available after that time-limited period had ended.

504. LORD ABERDARE: I see. I see. Yes.

505. MR EVANS: But the point is, I suppose, unlike the London Cemetery Company in the 1840s, the trust now knows it could be creating a problem for itself to exercise these powers.

506. LORD ABERDARE: Please don't apologise for the quality of your explanatory notes. I think it's more the quality of my brain that may need attention.

507. THE CHAIR: I can assure you you're not alone. I've often struggled with not only the words of the section but the explanatory notes as well.

508. Right. Anything else for Mr Evans at this stage? Right. Well, Mrs Swift, Mr Jones, I think what we will now do is we'll now go on to the unopposed clauses and the amendments. As I say, please stay if you wish or go if you don't. We hope to conclude those this evening but then we're not going to make our decision today, because I think my colleagues and I would like obviously to discuss everything we've heard during the course of today. And so, if we're in a position to make our decision tomorrow or we

have to come back to consider further amendments tomorrow, then – can I check? Is Chris Clarke there? Chris, are you online?

509. THE CLERK: Yes, I am. I'm here.

510. THE CHAIR: What provision have we made for if we want to come back tomorrow morning and give our decision?

511. THE CLERK: So there'll be a Zoom link sent this evening, just as it was yesterday evening, to be back online tomorrow morning at 10.30.

512. THE CHAIR: Right. Okay. So –

513. THE CLERK: And, equally, we could be online at 10.30 on Thursday as well and if the Committee needed more time we could rearrange a further hearing in due course.

514. THE CHAIR: Right. So Mr Jones, Mrs Swift, if we're in a position to give our decision tomorrow or Thursday we'll send you the link and inform you that that's what we're going to do and we'll try and give a decision, obviously, as soon as possible because everybody wants to get this matter resolved as soon as we can. So I hope that you'll be available when we – and we'll do our very best to make sure that we don't give our decision, if you want to be present remotely, without your being present remotely. All right? Thank you both very much.

515. MS SWIFT: Thank you very much.

516. THE CHAIR: Not at all. Right. Mr Evans, I think we're now going to the amendments. Is that right?

517. MR EVANS: The unopposed provisions –

518. THE CHAIR: And the unopposed provisions and the amendments, yes.

519. MR EVANS: Thank you, My Lady.

520. THE CHAIR: And you can remind me what's been referred to us. In fact, Chris Clarke told me about what had been referred to us but I think the idea is that we do check out even the unopposed clauses to an extent, isn't it?

521. MR EVANS: My Lady, yes, that's right. We still have to satisfy you that the Bill is expedient, in general terms, although I hope, because the meat of it is in clauses 4 and 5, that we've already covered those issues, and then to talk through any of the unopposed clauses. If this were an Unopposed Bill Committee you would be able to fire questions at any of us throughout and I suspect that may be the best way of proceeding as Dr Dungavell and Mr Adeney will also have information to give on some of these, if that helps you.

522. THE CHAIR: Yes. That would be great. Thank you. So, members of the Committee, just put your hand up when you want to throw a question. So do we start at the beginning of the Bill and go through it that way, Mr Evans?

523. MR EVANS: Yes, My Lady.

524. THE CHAIR: And then if you pass over something and a member of the Committee has a point if they could just jump in. Would that be helpful?

Unopposed Provisions and Amendments presented by Mr Nicholas Evans

525. MR EVANS: And the start of the Bill would be the preamble, which, as it happens, we would come to last and formally approve that at the end of the process.

526. I should draw attention to the fact that in the filled-up Bill that was circulated last night, the one marked 2 March, there are a couple of further changes to the preamble. This is because we noticed, unfortunately at a late stage, that the 1836 Act that we'd been referring to doesn't actually have a short title. So we have to use that full long description of the sixth year of the reign of William IV and all the rest of it.

527. And there is a change in paragraph 5 of the recital. There was an ambiguity in the way in which the graves where no rights of burial exist were described. It's the intention of the cemetery to make use of graves on an ongoing basis both where rights have been extinguished under the Bill and where rights have been granted for a time-limited period and that period has expired. And the description in paragraph 5 of the recital and in the definition section - in the interpretation section - of clause 2, the definition of a 'public or common grave' led to some ambiguity. And, following discussion with the Ministry of Justice and counsel to the Committee, we have proposed

a new definition of what's called an 'expired' right of burial to make it clear how this is distinguished from an otherwise public or common grave, which is a grave where no rights have ever been granted. And the change in paragraph 5 of the recitals is to reflect that.

528. The second change from 'improving' to 'conserving' ties the powers in the Bill, the purpose of the Bill, more closely to the objects of the trust, which refer to conserving the cemetery.

529. THE CHAIR: Right. Anybody any comments or questions about that? Thank you.

530. MR EVANS: And if I turn, then, to – clause 1, obviously, is the citation and commencement provision. Clause 2 contains the definitions and, again, many of the changes relate to the definition of the 1836 Act and the points that I mentioned previously about expired rights and common graves. There's a consequential amendment in the definition of 'registered owner' and, just to make it clear, where any rights in relation to a grave have expired or been extinguished the last person who was registered as the owner is required to be notified. So we've created a definition of 'registered owner' for expired and extinguished rights.

531. Clause 3 contains a power to operate and maintain the cemetery. And this is required because we're proposing to repeal all of the old Acts which established the cemetery and it mirrors section 2 of what the 1836 Act does and puts – essentially, the plan is to put the trust in the same position that the London Cemetery Company would have been and the proposed amendment there just makes it clear that this power in clause 3 does not override all the other provisions in the Bill. So we can't rely on our power to do anything to ignore the protections that are in clauses 4 and 5.

532. Clauses 4 and 5 we have been through so, unless there are any particular queries about those, I was planning to move directly to clause 6, which I mentioned briefly.

533. THE CHAIR: Well, there's only the point – am I being pedantic by the provision about publish such a notice on the website and/or by using an equivalent...? I'm sure nobody would want to, as I said it to members of the Committee, stick a notice on an inappropriate website that had nothing to do with the cemetery, but I just wonder

whether, given this is a statute –

534. MR EVANS: We would say that the use of the word ‘equivalent’ qualifies the publications.

535. THE CHAIR: Yes. That’s what I was wondering.

536. MR EVANS: So it has to reach the same sort of number or serve the same purpose as a notice on the website would do. What we did have in mind, and actually this is a point quite rightly raised by Mr Jones, that in some cases there are commercial websites like ancestry.com, for instance, which are very good at circulating information about cemeteries. It may be the case that in some circumstances that is also an appropriate alternative but it was meant to futureproof us, as Dr Dungavell said, that in 200 years’ time we don’t know if something is going to be called a website or not but there will be some electronic means of publication.

537. We would hesitate to use ‘and’ because that would require us to use the equivalent means as well as using a notice on the website.

538. THE CHAIR: Yes. Well, unless any other member of the Committee’s concerned about it, I’m content.

539. MR EVANS: Thank you, My Lady.

540. Turning to clause 6, this provides the further protection for other graves that I mentioned and it does look as though there’s been quite a bit of change to it but, actually, this is in tidying up the provisions and putting them in a consistency of language. But what this does under subsection (1) where there is a Commonwealth war grave then the burial authority needs the consent of the Commonwealth War Graves Commission and they have confirmed to us that they are content with the drafting changes here. And where there’s what is defined as ‘a protected grave’, then we must obtain the written agreement of Historic England and Camden before extinguishing rights or disturbing it. And subsection (3) sets out the process for designating protected graves, i.e. again we have to consult with Historic England or Camden or they can suggest graves to be designated and then we have to keep a record of it. And it’s intended for the graves that may not reach the standard for listing but still have

significance, still are worthy of protection.

541. THE CHAIR: I was going to say we haven't discussed protected graves during the course of today but that is the criterion, is it? That they're worthy of some note but not the same kind of note as Karl Marx's grave.

542. MR EVANS: That is more or less it. We'll find some more words to describe it but I think Your Lady's hit the nail on the head there. We have offered an undertaking to work or to use reasonable endeavours to collaborate with Historic England and Camden in the exercise of their functions under the Bill and their functions under the Bill are contained in here. So we would be working with them to work out what is an appropriate list of graves to protect that fall short of listing but do deserve additional protection.

543. I don't know if, Dr Dungavell, you have any examples of the sort of graves that we have in mind here.

544. DR DUNGAVELL: Yes. So really, of course, all pre-1925 tombstones are protected by conservation designation. Listing protects only structures of national importance and so this, effectively, is the cemetery equivalent of local listing where there's the specialness of – is a rank down but also could be used for things that they haven't got around to listing yet. So one of them could be the fantastic memorial of Patrick Caulfield, the pop artist, that he designed himself late in his life that just says, 'DEAD', letters punched out, which is an astonishing artwork as well as a memorial. And I can't imagine anyone would want to do anything about that but, that said, he would be high on my list of graves that are worthy of protection and that we would be talking to Historic England and the conservation team at the London Borough of Camden to come up with criteria for that. Everyone recognises it's such an important landscape, there are so many important things, and this is to give comfort that there's another layer of protection with some oversight from Historic England and Camden.

545. THE CHAIR: Thank you.

546. MR EVANS: On clause 7, which I mentioned briefly when I misunderstood the nature of Lord Aberdare's question, but this puts on a statutory basis the obligation for the trust to maintain a register of the burials that are recorded within the cemetery and

would replace the equivalent provision in the 1836 legislation. So, as you'll have seen from the plans that Dr Dungavell was talking about, that shows the detail that is available at the moment with the numbers for each grave. And this simply requires the register to be put on a statutory basis and to be made publicly available and, of course, this will provide further protection. Where any disturbances have taken place there's a specific obligation to make references to those, as well.

547. Clause 8 we have proposed to omit from the Bill and this was following discussions with the Ministry of Justice, who quite rightly noted the overlap between this clause, which creates offences in the cemetery, and clause 9, which gives the power to create byelaws, which could also make offences in the cemetery. And their view, which we accept, is that it's more appropriate for this to be done through byelaws. The idea here is that this would again put the trust in a similar position to a municipal cemetery and it does replicate the historic powers to make rules under the pre-Victorian legislation. In short, it's to make sure that they could make rules akin to byelaws to provide for the regulation of conduct in the cemetery.

548. There is control on this because under subsection (5) the byelaws would not have effect until they are confirmed by the Secretary of State, and the procedures in place under the Local Government Act when local authorities make byelaws would apply to these byelaws as well. The sort of things that the trust has in mind here are the sort of things that are offences under the old acts and are offences in local authority cemeteries under article 18 of the Local Authorities' Cemeteries Order 1977: things like wilfully creating a disturbance in the cemetery, committing a nuisance in the cemetery, wilfully interfering with burials taking place in the cemetery, interfering with graves or vaults or tombstones without authorisation and playing of games and sports in the cemetery. These matters we consider ought to be controlled.

549. So clause 9 would be the only power in that regard and we propose to remove clause 8 because that has duplication.

550. THE CHAIR: Right. Thank you.

551. MR EVANS: And then turning to clause 10, this repeals the old acts insofar as they relate to the cemetery. They're repealed insofar as they relate to the cemetery because we do not know whether they have actually been exercised in relation to

Stepney. And so we know that they were exercised in relation to Nunhead and when the London Borough of Southwark took over Nunhead Cemetery the Act that provided for that to happen repealed those enactments insofar as they related to Nunhead Cemetery. We are providing for Highgate Cemetery so we are getting rid of these acts so far as they relate to Highgate Cemetery but we can't prove that it's necessary to do that more widely.

552. There is a proposed amendment here - as well as the amendments to give the long titles of the old acts - but sections 118 and 119 of the 1836 Act, those are the sections that create the offences, the old offences. So the proposal is that those would be repealed on the date on which new byelaws come into operation so that there would be continuity of effect there.

553. LORD ABERDARE: It's been spotted that in the filled-up Bill the numbering of the clauses is incorrect. It goes from 6 to 9 instead of 1 to 4.

554. MR EVANS: Yes, and we would pick that up when it's - if the Committee decide that the Bill should proceed we would pick that up if we reprint the Bill at that stage.

555. And subsection (2) and subsection (3) deal with the London Cemetery Company and the fact that it appears to have been liquidated. However, it was created by statute in 1836 so it's not wholly clear to us that it actually has been properly liquidated, even though it was wound up and notices to that effect were placed.

556. And so subsection (2) puts that beyond doubt and says that actually all of the rights and liabilities etc in relation to the cemetery shall be vested in the trust and continuity of personality there. And that reflects what has actually happened on the ground. The cemetery has been bought by the trust and is operated by the trust and that cleans up something that presumably was not top of people's minds in the mid-1970s, getting rid of the old statutory company.

557. And then subsection (3), the effect of that is essentially that all of the grants of burial rights, in particular, that were done by the old London Cemetery Company they still have effect as if done by the trust. So if somebody has any complaints about how the London Cemetery Company exercised those functions it can take those issues up directly with the trust. We can't say, 'Aha, the London Cemetery Company doesn't

exist any more', but we're on the hook for all the things that they did.

558. And there were a handful of further, essentially, typographical corrections that counsel to the Committee has noted that mean that we would be putting forward a few further amendments this evening but they are of this nature: if you look in clause 10(1)(a) it refers to the London Cemetery Company Act 1836. Well, actually, we've defined that as 'the 1836 Act'. We just missed that specific reference when we were going through. So it's that nature of things that remains outstanding. So there are about four of those which we'll have printed this evening.

559. THE CHAIR: Thank you.

560. MR EVANS: And those are the provisions of the Bill.

561. THE CHAIR: Thank you very much, Mr Evans. Does any member of the Committee have any questions or comment? Yes, Lord Trefgarne.

562. LORD TREFGARNE: Thank you, Chairman. I was just wondering again about clause 1 of the Bill coming into force 28 days after it's passed. What happens if it hasn't had Royal Assent in that time? Royal Assent is, indeed, normally granted very quickly but not always so and I wonder what the situation would be in that case.

563. MR EVANS: For these purposes, the reference to the Bill being passed means the day on which it gets Royal Assent.

564. LORD TREFGARNE: I see. Thank you.

565. THE CHAIR: Any other questions or comments for Mr Evans? No? Everyone seems to be shaking their heads or not indicating otherwise.

566. Right. Well I think, Mr Evans, Dr Dungavell, Mr Adeney, I think that completes the proceedings in a day. Thank you all very much for your assistance and I think Mrs Swift and Mr Jones have gone but I thank them too. What we'll now do is we'll close this Zoom link and the members of the team and I will gather under another link, another umbrella, and discuss confidentially what our thoughts are this evening. And we'll let you know as soon as we possibly can when we can announce our decision. And I think at that stage, and I know someone's going to remind me, depending on our

decision if we approve the Bill going forward I then have to – Mr Evans, you're the expert on this, I have to take Dr Dungavell through the preamble. Is that right?

567. MR EVANS: I would do that, My Lady. I would ask him formally to prove.

568. THE CHAIR: Oh, you do it. Okay, right. And so you do that but we have to reach the stage of putting the Bill forward before we do that. Is that right?

569. MR EVANS: That's right.

570. THE CHAIR: Right. Thank you. Sorry, I've never been involved with an opposed Bill before.

571. MR EVANS: They're few and far between.

572. THE CHAIR: Thank you all very much and whoever's sending the link to our next confidential discussion could they send it to my personal email address, please? So if they could do that I'd be very grateful. Thank you all very much.