

MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

On the

HIGHGATE CEMETERY BILL

Wednesday 3 March 2021 (Morning)

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

PUBLIC SESSION

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(At 11.56 a.m.)

1. THE CHAIR: This is the second day of the hearing by the Opposed Bill Committee into the Highgate Cemetery Bill. On the first day, yesterday, the Committee heard evidence and arguments from the promoters, and from the two remaining petitioners, with Mr Jones representing other members of his family.

2. The Committee has considered the evidence and the arguments heard overnight, and, with one or more possible amendments and undertakings, the members of the Committee have decided that the Bill should proceed. In our view, it is the only way Highgate Cemetery can continue to operate, as it should, as a place of burial, and as a site of historic and cultural significance.

3. As I say, however, the members of the Committee do propose one or two amendments, and would like undertakings from the promoters that we hope will properly and reasonably safeguard the legitimate interests of the Jones family, Mrs Swift, and other people in their position.

4. Mr Jones and Mrs Swift, we're very grateful to you for bringing your concerns to our attention. You have made an important contribution to the passage of this Bill, and on important matters. We hope that you have found these proceedings of some comfort, given the concerns and the emotional input into the Bill, and we hope you gain from these proceedings an assurance that your concerns have certainly not been ignored, but they've been taken very seriously.

5. However, we were not persuaded by Mrs Swift's arguments that the 75-year period on the face of the Bill, as drafted in clause 5(3), should be extended to 100 years, or that the collateral descendants should appear on the face of the Bill, in clause 4.7.

6. As far as the 75-year period is concerned, if a notice of objection is given, the period immediately extends to 25 years, possibly longer – that is a point we wish to consider with the promoters – but would extend, therefore, the period to the 100 years, about which Mrs Swift had concern.

7. As far as the collateral descendant point is concerned, we were persuaded by the promoter's arguments, that to extend the rights under clause 4, which deals with burial rights – a right of property – could cause legal and practical complications, but we do

acknowledge the legitimate concerns of people in the position of the Jones family, in respect of at least one of the family graves.

8. We would, however, like to see if the Trust can assure us that those legitimate interests of collateral descendants will be properly protected, and we would encourage them, as we'll discuss in a moment, to put in place a protocol, raised by Lord Aberdare yesterday, that may reasonably avoid the need to resort to the Secretary of State procedure.

9. We also wish to ensure that problems of the kind that have been raised for the Jones family, and possibly for any descendants of Mrs Swift, that people who have a burial right ensure that they pass it on in a way that their descendants understand: a) that they have a property asset, and b), the wishes of the person who has passed on that burial right. So we would encourage people like the Jones family, because at least one of the graves may lead to their owning a burial right, and Mrs Swift, who has a burial right, to make sure that those who inherit their estates do understand that they may have this property asset, and they understand the wishes of the person who was passed it on.

10. We would also ask the Trust to consider whether, when they sell a burial right in the future, that they make sure the purchaser is aware that this is an asset that can be passed on in their estate. This should be in everybody's interests, because it means that there should be a better record of who owns the burial right, so it's better from the Trust point of view, and it's also, obviously, better for the families' point of view, for those who inherit the right, or have an interest in the graves of their ancestors.

11. So, with those comments, we would now like to turn to some questions for the promoters. Mr Evans, firstly for you, yesterday we thought we heard you make mention of undertakings that had been given, but we don't have any copies of them. Have any undertakings yet been drafted, or were you talking about possible undertakings?

Submissions by Mr Evans

12. MR EVANS: My Lady, good morning. Yes, those undertakings that I described yesterday were undertakings that had been agreed with the Ministry of Justice – there were three – and, by reading them onto the record at that point, I was, in effect, giving them on behalf of the Trust, and my apologies if I wasn't clear in that respect.

13. There's one exception to that, which is the question raised by Mr Jones, in relation to the duration of the time that the notices would stay up on the website, and then, at that point, I agreed to give that undertaking, and so I was proposing to do that formally today, after you had made your decision on the Bill, generally. So we would be prepared to do that. I understand, from what you have said so far, that you would like the Trust to give some further undertakings, and so, obviously, we would like to take a little time so that I might take instructions on the form of those undertakings, and then, perhaps, repeat formally, for the record, the undertakings that I have given so far, as well as those new undertakings.

14. THE CHAIR: Right, so can you – I'm so sorry, I should have made a note of it, and I may have done but I can't read my own handwriting. The undertakings, just in summary, that you have already given and read onto the record were –

15. MR EVANS: The first one was that the notices published on the website will include the names of the individuals proposed to be disturbed.

16. THE CHAIR: Yes.

17. MR EVANS: And that one, we now say, would remain for at least six months. That is for the full objection period.

18. The second undertaking was to use reasonable endeavours to work collaboratively with Camden and Historic England, so that those bodies can effectively exercise their powers under the Bill, and this is particularly in relation to the protected graves, to make sure that they have full awareness of that.

19. The third undertaking was that when the Trust was exercising its powers under clauses 4 and 5 of the Bill, to do so in accordance with the conservation plan that we discussed yesterday, or any replacement or modification of that plan, and the technical guidance on the reuse and reclamation of graves in London local authority cemeteries, so far as that's relevant for the purpose of conserving and enhancing the cemetery's biodiversity and geological features, as special interest as a metropolitan site of importance for nature conservation, and its listed features, and its status as a Grade 1 listed site within the Register of Parks and Gardens.

20. THE CHAIR: Right, it may be that one of those undertakings relates to a proposed amendment that we have, which was that when the burial authority gives notice that the individual – and I’m just trying to check. Sorry I’m looking down. I was just trying to check that the Bill is drafted – but the individual whose remains will be concerned should be identified in that notice. We think that should be on the face of the Bill, rather than an undertaking. Does that make sense? Where known. So I’m looking – and clause 4, that’s the burial right, and the notice there has to –

21. MR EVANS: The notice there, My Lady, under subsection (6)(a) –

22. THE CHAIR: Yes.

23. MR EVANS: – has to contain full particulars of the proposals, including the registered number, or other description, of the grave spaces in which the rights of burial should be extinguished, and stating whether it’s proposed that memorials should be removed. Clause 5 is more specific, about whether it is that remains should be disturbed.

24. THE CHAIR: But the clause – can we go with clause 5 first of all, because that’s a more obvious one, where identification of the individual will come in. We’re concerned that the likes of the Jones family, who found out about the proposal by coincidence or good fortune, that there should be as much notice as possible, especially where individuals remains can be identified, and certainly in clause 5 – for example, just giving notification of the number of the grave isn’t going to tell the likes of the Jones family that a member that their family’s remains may be moved. So could the notice not, in, for example, 5(6), contain full particulars of the identification of the individual’s remains, where possible, as well as the number of the grave?

25. MR EVANS: My Lady, the reason why we had proposed to do this by means of an undertaking, and relating specifically to the notice on the website, is this on the website we would have more space, in a notice, to have fuller details, whereas the hard copy notices, and newspaper publications, would be more limited in space. So, in an initial notice, which could combine, of course, both notice under Clause 4 and notice under Clause 5, the first time these powers were exercised, there may be space constraints, in terms of the actual hard copy of the notice, and so we propose to include that on the website, having fuller details. The hard copy –

26. THE CHAIR: But that's not on the face of the Bill either, is it?

27. MR EVANS: It's not on the face of the Bill, no, My Lady. That – it's in the undertaking.

28. THE CHAIR: I don't know if any other members of the Committee want to come in on this point, but from my part, I'm not quite sure why, given that you intend to identify the individual, at least on the website – are you talking about the space and the numbers because there may be two or three remains – individuals whose remains are going to be disturbed? Is it really complicated to provide the names?

29. MR EVANS: All the notice – a single newspaper notice may cover more than one grave at a time. So if, on the first opportunity –

30. THE CHAIR: All right.

31. MR EVANS: – that the powers become available, it is identified that there are, say, a dozen graves in different parts of the cemetery that are proposed to be – are suitable for renewal, that they would all be captured in the same newspaper notice, but on the website we could go into more detail. I can certainly take instructions on whether the face of the Bill should include the requirement for the website to include at least the names.

32. THE CHAIR: Baroness Whitaker?

33. BARONESS WHITAKER: Thank you. Would it be the case, whatever the result of your instructions, that the notice would include details of the website, and the information that fuller information is to be found on the website?

34. MR EVANS: Yes, My Lady.

35. BARONESS WHITAKER: Thank you.

36. THE CHAIR: Lord Aberdare.

37. LORD ABERDARE: Sorry, my point was exactly that: that the notice – I've lost the picture now – that the notice should specify where the website – that further information, including details, is on the website, with a link.

38. THE CHAIR: Right, Mr Evans, I think, looking at other members of the Committee, I think that we would like to see as much publicity given as possible, at an earlier stage as possible, and if it has to be a notice linking to the website, then that, I suspect, would suffice, but we would like to see that in the provisions. So if we are looking, say, at – because at the moment, the provisions of the Bill, you publish a notice, but it doesn't say that the website has to include the individual's details, does it? That's going to be in an undertaking.

39. MR EVANS: My Lady, yes. The details that are required are required to be 'full particulars', and that includes either the number, or another description of the graves, and that could include, of course, the name on the grave, but the Bill itself does not say it must include the name. That is in the undertaking. That's correct.

40. THE CHAIR: So would it be too difficult to – obviously, we appreciate you may take instructions – so, for example, (6)(a): 'contain full particulars, including identification of the remains, where known; specification of the registered number' – in other words, just add it there? Would that be – anyway, you must take instructions, obviously, but I think we would like to see that safeguard, if it's possible to do.

41. MR EVANS: My Lady, I'll take instructions.

42. THE CHAIR: Right, thank you. Lord Aberdare yesterday raised with you the possibility of a protocol to cater for looking after the interests of the likes the Jones family. Lord Aberdare, do you want to ask Mr Evans a bit more about that?

43. LORD ABERDARE: Yes, thank you, Chairman. I thought Mr Jones raised a very interesting point, that – when he asked Dr Dungavell whether there was any protocol in place for dealing with, or for responding to, objections or concerns from collateral relatives, and it appeared that there was no such protocol in place. It just seemed to me to be a good way of giving some reassurance about how these objections would be handled, given that they may not have the rights of the registered owner and so forth, but that there should be a procedure or protocol, which might well – the question is how it might be incorporated, but it seemed to me that this might be another possibility for an undertaking.

44. MR EVANS: My Lord, the point is taken, and certainly we did envisage that at

least some protocols would be put in place. Dr Dungavell described the renewal handbook that he was working on, which would, effectively, contain those protocols, and also, in tab 2 on page 27, there is reference to a memorial retention protocol that would be produced, and certainly I can take instructions on potentially giving a commitment on ensuring that any such protocols do include provision for taking account of the objections of relatives.

45. LORD ABERDARE: Yes, and I think it would need to be something specific about this issue, which I –to address exactly the kind of situation that Mr Jones has found himself in.

46. THE CHAIR: Mr Evans, if the Trust were to give these undertakings – I should know the answer to this question, but forgive me, I don't. To what extent do undertakings given by the burial authority – currently, the Trust – bind any successors to the Trust?

47. MR EVANS: My Lady, the undertakings will be given by the Trust in its capacity as the burial authority exercising the powers under the Bill. And so, should a person consider that any such undertaking has been breached, and under Standing Order 130, they may make a complaint to the Senior Deputy Speaker in the House of Lords, complaining of that breach.

48. I am not aware of a case of a breach of undertaking having been raised after the formal responsibility has transferred from the party that gave it to another party. I would expect that, in whatever arrangements was put in place to transfer the rights under this Bill, and the powers under this Bill, it would be ensured that that transfer was made subject to any of the liabilities that also applied under the Bill. I'm pretty sure that the Charity Commission would ensure of that, because we would be talking about the transfer from a charity to another body. And certainly, the trustees at the time would want to make sure that they were not on the hook for their successors' actions in that way. So while I cannot prove to a – point to a specific occasion on which this has happened, that is what I would expect would be the case.

49. THE CHAIR: Thank you very much. That, I think, is my understanding too. Any successors should, if they're going to inherit the rights, they should also inherit the duties, which takes us back to some of our basic legal learning.

50. Right, you talked about protocols and monuments. I know that both Baroness Whitaker and Baroness Garden had some concerns about the preservation of monuments and tombstones, which may have some interest to subsequent generations. As I think Lord Aberdare pointed out to us, when we were discussing this matter earlier, in your changing the words ‘destroy’ to ‘dispose of’, the contradistinction between ‘destroy’ and ‘preserve’ seems to have remained. So, for example, when you have – is it clause 7.4: ‘the burial authority must keep a record’ – 7.4(b): ‘if it is intended to preserve the memorial’, and I know Baroness Whitaker was asking: does that mean preserve the memorial – and I think Baroness Garden, too, was asking the same question – preserve the memorial in the cemetery, or does that – what if it’s sold? What does the ‘preserve’ mean there? Is that clause intended to refer to memorials that are kept at the cemetery? To me, it looks like the word ‘preserve’ is the contradistinction to ‘destroy’, doesn’t it?

51. MR EVANS: My Lady, yes, and it would be an alternative way of putting the memorial to a different use, and disposing of it in that way. My reading of clause 7(4) is the same as yours; that we are dealing with a situation where the memorial has been preserved elsewhere in the cemetery, because, otherwise, the burial authority would not really be able to say where it was and what had happened to it.

52. I would note on this particular point that, as we heard yesterday, the space that the cemetery does have to create, essentially, a garden of memorial stones is limited, for the reasons that all space in this cemetery is limited. I would also note that where the memorial concerned is in consecrated grounds, we would be bound by the Church’s rules on how to deal with memorials, as well. So to that extent, I may have misled the Committee yesterday, by suggesting that the cemetery would have a freer hand than it does, in fact, have, where the memorials are on consecrated grounds.

53. THE CHAIR: Baroness Whitaker, Baroness Garden, do either of you wish to say anything?

54. BARONESS WHITAKER: Yes, thank you. Thank you, Chair. I just want to explore the care of memorials, if the remains are going to be disturbed in any way, and we are talking most often, I think, of headstones, but any memorial is of interest. You mentioned, Mr Evans, today, a proposed memorial protocol about the retention of memorials. I’d like to ask, first of all, whether that includes the care of memorials, but

also, yesterday, you mentioned either undertakings or some sort of commitment about the care of memorials, which I think was helpful to the point which I, and which Mrs Swift, raised. Now, it's not listed in your account of the protocols agreed with the Ministry of Justice. Is there something then, in the articles of the Trust, which binds the Trust to look after memorials, and to make sure that they're well preserved to the extent possible? What were you actually referring to yesterday? What kind of a document status?

55. MR EVANS: My Lady, perhaps if I could invite Dr Dungavell to give some more detail on how the Trust would look after any memorials that were removed, but before he does that, the undertaking I was referring to yesterday was in relation to the cemetery's proposed conservation plan, and as Dr Dungavell mentioned, the renewals handbook that would be produced, and would be setting out details of this matter, including how memorials would be cared for.

56. BARONESS WHITAKER: Thank you.

57. MR EVANS: And if Dr Dungavell, if you want him to say a few more words on what the retention protocol might include.

58. BARONESS WHITAKER: Yes. That will be helpful, but no doubt you will send copies of the renewals handbook to Mrs Swift and Mr Jones.

59. MR EVANS: Certainly, yes.

60. BARONESS GARDEN OF FROGNAL: Could I just ask at this stage, do you have any instances where the memorials have been removed from the cemetery? They've been taken – say, relatives have taken them because they want to have them near where they live, or something like that. Are there ever any occasions when that happens or – it's just that when you say in your statement 'where they've been taken', suggests that they might have been taken outside the cemetery. I wonder if you could clarify that for me, please?

61. MR EVANS: Sorry, I'm not sure if that was a question for Dr Dungavell on the current practice.

62. BARONESS GARDEN OF FROGNAL: Okay, yes.

63. MR EVANS: Whether this has occurred.

Evidence of Dr Dungavell

64. DR DUNGAVELL: For graves with current owners – well, in fact, all graves – the memorials remain the property of the owner, and so they may do what they wish with them, but if the memorial was listed, they would still need listed building consent to take it out of the cemetery, and if it was a pre-1925 memorial, the owner would still need planning consent to remove a monument from the cemetery. They own it. For more recent memorials, I'm not aware, during my time at the cemetery, of ones being removed, but it is the case, from time to time, that exhumation licences have been granted, I believe, for the purpose of the relocation of remains closer to where the family has moved to, and under such circumstances, I would imagine that people would want to remove the memorials as well. So that's where there's an owner of those monuments.

65. For the Trust, on tab 2, page 12, we set up our charitable objects, which we went through yesterday, but I think it's worthwhile, under the current discussion, to just refer to those again. Where the Trust object – the third one, third bullet point on page 12 – 'is to secure the repair, restoration and preservation of the cemetery, its monuments and buildings, and other artefacts and their settings, for the public benefit', and so there will be always the question of reasonableness about that. Obviously, it would be beyond our means to look after monuments on 53,000 graves, but we have undertaken a fair bit of monument repair and conservation work over the last 10 years or so, which actually includes monuments still on private graves, which are owned by the family, but we've done that on the basis that it was extremely unlikely a family would object to us looking after their monument at our expense. So the Trust has spent a considerable amount of money doing that.

66. BARONESS WHITAKER: Thank you very much, that's very helpful. Could I just finally ask, in relation to bullet point 3 on page 12, presumably the registered owner of the grave has been made aware of that responsibility, and as a corollary, what should they do if they think that that responsibility is not being satisfactorily fulfilled?

67. DR DUNGAVELL: The 1836 Act made it the responsibility of the grave owner to maintain the memorial on the grave, I believe, and the penalty for that was the surrender of the right of burial if that wasn't done, and the company, in fact, used that

penalty, I think, several times in the 19th century. I can't imagine that that would have happened more recently. It really is left with the owner to do that.

68. With listed monuments, heritage – sorry, Historic England had included the cemetery on the Heritage at Risk register back in the, I think, early 2000s, and the Trust took on the responsibility of restoring all the listed graves within the cemetery, and it has subsequently been removed from the Heritage at Risk Register. The conservation plan and the landscape master plan we're working on at the moment will produce a prioritised list of areas for grave restoration, so a hierarchy, if you like, of the graves that we should be looking after, as a priority.

69. BARONESS WHITAKER: Thank you. What I really meant was, the owners of the graves, such as Mrs Swift, are they aware – have they – have all owners been made aware that they can find out this responsibility of the Trust? And should they wish to question how it's been exercised, what should they do? Is that clear, also, in the handbook, or something like that?

70. DR DUNGAVELL: I'm sorry, I'm not sure I understand the question. Is it –

71. BARONESS WHITAKER: Right, first of all, the Trust has this responsibility to look after the memorials. Are the owners of graves made aware of this responsibility? Is it in any of the literature that they're given when they buy a grave? Is it accessible?

72. DR DUNGAVELL: The first responsibility –

73. BARONESS WHITAKER: Yes, and secondly, is it available to them what they should do if they think a gravestone hasn't been properly looked after? Is there a mechanism? Is it clear to them who they should write to at the Trust, who they should get in touch with?

74. DR DUNGAVELL: Sorry, My Lady, yes. The first question is that it's the responsibility of the grave owner to maintain the memorial on their own graves. So if there was a problem with that, it's for the grave owner to deal with that, and I believe that responsibility is clear.

75. BARONESS WHITAKER: Okay, understood.

76. DR DUNGAVELL: If they were concerned about any other memorial in the cemetery that's not theirs, then that is a matter to raise with the cemetery authorities, and people do do that from time to time, by contacting our – normally, our registrar directly. So, typically, that may be a case where there's an adjacent memorial, which is leaning or perhaps being pushed over by a tree, and it has been the case that people have contacted us, and we've undertaken remedial works to monuments to sort that out, in the absence of a living owner.

77. BARONESS WHITAKER: And it's clear, from any of your publications, that this is the avenue to pursue, is it?

78. DR DUNGAVELL: I don't think it says that specifically anywhere, but I would expect that would be the first thing anyone would do.

79. BARONESS WHITAKER: All right, thank you.

80. THE CHAIR: Baroness Garden, any further questions on that issue?

81. BARONESS GARDEN OF FROGNAL: No, I don't think so, thank you. I think you've answered that very comprehensively. Thank you very much.

82. THE CHAIR: As far as protocols go, Dr Dungavell, when you sell a burial right, is there any emphasis placed on the fact that the purchaser is buying a property right, and it would help everybody if they made sure that this was considered to be part of their estate, and passed on to somebody specified who knew the wishes of the purchaser? Is there any kind of notification to the purchaser, just alerting them, or do most people seem to know, or what happens?

83. DR DUNGAVELL: So what happens when a purchaser buys a grave is they're issued with a deed – a grant of the right of burial – and so this is a – it's a very official looking document, and most people keep hold of that and recognise that that is something that is quite important. And we also have documents produced on owning and transferring burial rights, which refer to the systems of ownership of graves, and also make it distinct that it's right of burial, rather than interest in the land which is being sold. But it is clear, and we do provide a lot of assistance to grave owners, that the interest is passed down as if it were akin to a property right, and the probate

procedure is followed.

84. THE CHAIR: Thank you. That is something that I was concerned about. So in other words, there's no need to ask you for any kind of protocol, because you already have the information that is provided to purchasers of burial rights?

85. DR DUNGAVELL: Yes.

86. THE CHAIR: So we hope that in future, the kind of problem that has faced the Jones family, for example, where the burial right seems to have – certainly one of them or – if not both of them – has been lost in the mists of time. That shouldn't happen in the future because people are given the proper information.

87. DR DUNGAVELL: Also, the rights are time-limited now, rather than perpetual rights.

88. THE CHAIR: That's true.

89. DR DUNGAVELL: And so people's minds are a bit more focussed.

90. THE CHAIR: Thank you. Mr Evans, this may be a question both for you and Dr Dungavell. Yesterday, I think maybe in response to questions I was asking, we were discussing the 75-year clause in – sorry, the 75-year provision – I think it was in clause 5, which is – so it's 5(8)(c), which is extended by 25 years if a notice of objection is received. And both you and Dr Dungavell seemed to agree that each – so, basically, there's 25 – it could be multiples of 25. So in other words, an initial period of 75 years, notice of objection, further, 25. Then, if the burial authority wanted to go ahead, another notice, another 25 years – another 75 – another 25 years. Was that what you meant to agree? Because it's been pointed out by counsel for the Committee that that's not necessarily how the Act reads. I've checked another Act to which you referred. They have a similar provision and, at the moment, it's not clear to us whether you did mean to agree multiples of 25, or not.

91. MR EVANS: My Lady, our understanding is that this is how the powers would be exercised.

92. THE CHAIR: Sorry, what is?

93. MR EVANS: That the 25 years could be repeated if there were a further notice given after the 25 years, that there could be a further objection, and another 25-year stay at that point.

94. THE CHAIR: Can I ask then, Dr Dungavell, or maybe Mr Adeney, is the Trust content that the provision should be multiples of 25?

95. DR DUNGAVELL: Yes, I think that is correct. That was what I was expecting it should work. The basic principle should be that we are not disturbing the descendants by exercising those powers, and so it's a matter of 25 years, of 25years, and it lasts as long as there are objectors.

96. THE CHAIR: Well, thank you for that clarification. Mr Adeney, you've nothing you wish to add? Right, in which case, Mr Evans, you're going to have to go off and consider. Could you consider, possibly with counsel to the Committee, whether or not, if that is your intention – it's how this section should operate – I appreciate it's replicating previous sections in previous Acts – but perhaps you want to discuss with him the possible argument that it means only one period of 25 years, because I know when Mrs Swift was concerned about the length of time, and I think we'd just like to make that point clear, and it may be it can be made clearer on the face of the Bill.

97. MR EVANS: My Lady, certainly we could do that. Of course, should, in the future, anybody be wanting to understand this ambiguity, they may be able to have reference to these discussions that we have been having in Committee, and understand that it was our clear intent that it should be 25 years, so, to an extent, repeated. So, to an extent, we have now done that.

98. THE CHAIR: Indeed, for example, if you look at – this is a lawyer's point that I know other people hate, but it's the kind of thing that may come to a judge's attention in future years. Subsection – this is meant to be (8) – talks about publication of the first notice. Does that mean – so I think it's potentially ambiguous, and I think we'd be grateful if you could just see whether a little tidying up could make it clearer. I appreciate you can always refer to transcripts of Hansard and the like, in certain statutory interpretation cases, but it's much better if it can be tight on the Bill's face.

99. MR EVANS: My Lady, we'll take that point away and see what –

100. THE CHAIR: Thank you very much. I think that –

101. LORD TREFGARNE: Madam, if I could?

102. THE CHAIR: Yes, sir, please. Please go, Lord Trefgarne.

103. LORD TREFGARNE: I apologise for interrupting. I attach importance to this point as well. I very much hope it can be clarified in the way you have suggested.

104. MR EVANS: Thank you, My Lord.

105. THE CHAIR: Sorry, can I just check with Lord Trefgarne? Does that mean that you wouldn't want it to be tightened so it could be multiples of 25? You would rather it stuck with 75 plus 25?

106. LORD TREFGARNE: I think there should be multiples –

107. THE CHAIR: Should be multiples?

108. LORD TREFGARNE: But – and that is what I think is the correct interpretation of the present provision, but I agree with you, that it needs some clarification.

109. THE CHAIR: Thank you very much. Well there you are, Mr Evans. If you could resolve that, we'd be very grateful. Those are all the matters I had on my list of questions for you. I don't know if anything has occurred to anybody else. Lord Aberdare has his hand up, both literally and remotely.

110. LORD ABERDARE: Thank you, Chair. I'm just not entirely clear what we have agreed about clause 7(4)(b). This is the 'preserve' clause, because it does seem to me that that does need some changing to reflect the fact that we are now the – instead of the opposition being between destroying or preserving, we're now talking about disposing or not disposing. So it seems to me that, in any case, that wording may need to be adjusted to reflect that. Sorry, if it's intended to dispose of the memorial, a statement showing what's actually – how that has happened, and whether it's being kept in the cemetery, or has been otherwise disposed of.

111. THE CHAIR: Yes, that's a very good point, if I may say so. Mr Evans, could you look at subsection (4), as it's intended to be? So 'the burial authority must cause a

record to be made of each memorial removed, a copy of any legible inscription', and then maybe there should be a subsection – sub-subsection(c): 'if the memorial has been otherwise disposed of' – so, if it's intended to keep the memorial at the cemetery, a statement showing where it's been placed; (c) 'if it has been otherwise disposed of by removal from the cemetery, details of any sale or disposal', something like that.

112. MR EVANS: Details of the disposal?

113. THE CHAIR: Yes.

114. MR EVANS: Yes, My Lady, we will have a think about that as well. The word 'dispose' is intended to include the circumstances when it may be appropriate to destroy the memorial.

115. THE CHAIR: Yes.

116. MR EVANS: We haven't – yes, there may be some stones that are already so broken that there is no other likely –

117. THE CHAIR: Yes. Yes.

118. MR EVANS: There is no other appropriate course of action, and also, the definition of 'memorial' does go quite widely, including rails and kerbs and the like as well, and I wonder, is it the Committee's intention that every treatment of such a – that wider class of memorial – should be recorded in the public register in this way? The purpose behind clause 7(4) is to make sure that, if people are seeking to trace and find a memorial now, that they should be able to do so.

119. THE CHAIR: I think the members of the Committee – and they'll correct me if I'm wrong – we were thinking about tombstones; headstones, slabs – is it – a tablet. I'm talking about on which you put 'rest in peace', the name of your loved one, and the dates of their birth and death. I think the other members of the Committee would nod their heads if they agreed about that.

120. BARONESS GARDEN OF FROGNAL: Yes, I don't think we're terribly concerned about curbs and railings, really, but it is the main – our understanding of a memorial would be the tombstone or the headstone or something, which has got an

inscription on it of some sort, I would think.

121. LORD ABERDARE: It is a little bit difficult that the definition of ‘memorial’ is so wide ranging, and it makes it hard, therefore, to distinguish, in a clause like this, which bits are more important than other bits.

122. MR EVANS: Yes, My Lord, I appreciate that. I think it reflects the human ingenuity, in the past, of finding ways of memorializing our ancestors. We could take this away, but am I to understand, then, that the point; that the Committee is particularly concerned to make sure that, where there is what I’d call, in lay terms, a ‘tombstone’, that it is clear, on the record, what has happened to that tombstone? If it is another form of memorial, it may be sufficient simply to say that it has not been preserved, or it has otherwise been disposed of. Is that a fair summary?

123. THE CHAIR: Baroness Whitaker?

124. BARONESS WHITAKER: If I may? I think the qualifying characteristic, although most will fall into the category of tombstones – headstones – it’s that part of the memorial which identifies the – really, the remains, the person. It’s going to be headstones, on the whole, but it may be there’ll be a casket or something. It’s that bit which tells you who the person was. If you could work on that.

125. MR EVANS: Thank you, My Lady. So describing, if it is not preserved, how it has otherwise been disposed of?

126. THE CHAIR: Yes, so that anybody has an interest in the individual who’s been identified, then they can follow what’s happened.

127. MR EVANS: Thank you.

128. THE CHAIR: Anything more you need on that, Mr Evans, from members of the Committee?

129. MR EVANS: My Lady, I don’t think so, but perhaps, when we’re discussing with counsel to the Committee, we could – messages could feed back and forth perhaps, if we’re unclear on something.

130. THE CHAIR: Yes, of course. Right, do any member of the Committee, or

indeed, anybody else, have any other matters they wish to raise in this public session? As I understand the procedure now, you will go away, Mr Evans, and discuss with counsel to the Committee, Mr Adeney, and Dr Dungavell, what amendments or undertakings are to be given, and then we will need to reconvene, in public session, at a date convenient to all parties present on screen at the moment, for the Committee to approve whatever undertakings and amendments you've come up with, and for you, formally, to prove the preamble?

131. MR EVANS: My Lady, yes, and by 'a date convenient to all parties', could potentially include the session that we have timetabled for this afternoon, if we can resolve matters by then?

132. THE CHAIR: You think you may be able to come back this afternoon?

133. MR EVANS: We – as I understand it, we have, I think, five particular points to consider. Firstly, whether the Bill should explicitly state that the notices on the website include the names; whether the protocols that we produce should include an obligation to take account of relatives' views, and set out how that should be done. Specifically, you asked us would we inform Mrs Swift and Mr Jones about those protocols when they were published; clarification on how the 25-year period, under clause 5(8)(b), works, and its repeatability, and provision in relation to the – how memorials that are not preserved are to be disposed of. We could certainly agree amongst ourselves, and have wording over to your counsel in fairly short order.

134. THE CHAIR: Mr Evans, knowing that there is some legislation –Bills before Parliament this afternoon, or before the House of Lords this afternoon, I have an interest in voting in at least one of them, and, by the sounds of it, from what Baroness Garden was saying, she too, of my colleagues, may also. And I'm just wondering whether it wouldn't be better, if you think you get it done in time, and if, perhaps, the Committee is available, to come back tomorrow morning? I appreciate the likes of Mr Jones and Mrs Swift, they want to see this resolved, but unless anybody has any objection, I would have thought that may be a better idea. You do have this afternoon set aside, so if the parties really want us to go ahead, then we'll have to work it around our voting, but I don't know. What do other members of the Committee think?

135. BARONESS GARDEN OF FROGNAL: I think if it could be tomorrow morning,

that might give us just a little bit more flexibility, because we've got tomorrow booked off as well, haven't we, for this Bill, which – and obviously, we don't seem to be going to need the whole day tomorrow, but I think tomorrow morning, if that was agreeable with Mr Evans?

136. LORD TREFGARNE: I agree with Lady Garden. I think tomorrow would be preferable to this afternoon.

137. BARONESS WHITAKER: I agree.

138. LORD ABERDARE: Yes, I'm happy with that.

139. THE CHAIR: Chris Clarke, you've just come on screen. Is that all right with the team? Right. Mr Jones, Mrs Swift, I'm sorry that it means that you won't get a resolution today, but you will understand, we want to make sure that there are the safeguards in place. Albeit, we haven't accepted that they should be on the face of the Bill, we want to try and do our best to allay your concerns, and I think a bit more time for thought, as well as the other problems about this afternoon. We can resolve it all, we hope, tomorrow. I hope you both follow and understand and accept my reasoning, at least, or understand my reasoning, if you don't accept it. Right. Mrs Swift, you look puzzled. Did you want to say anything, Mrs Swift? No, all right.

140. LORD TREFGARNE: Could it be 10.30 tomorrow, Chairman?

141. MRS SWIFT: No, sorry. I'm absolutely in accordance with the proceedings.

142. THE CHAIR: Thank you very much, Mrs Swift. Lord Trefgarne wanted to say something.

143. LORD TREFGARNE: I was wondering whether it could be 10.30 tomorrow, rather than 10 o'clock?

144. THE CHAIR: I am happy with 10.30. Of course, we were at 10 o'clock in private meeting this morning, but I'm happy with 10.30 for the public session. Everybody else happy? If we need a private session to discuss the proposed amendments, we can always try and factor that in, either today or tomorrow morning, but thank you all very much. Mr Jones, yes?

145. MR JONES: Can I just recommend to Dr Dungavell that, in relation to the protocol that was being discussed, that one of the aspects of the protocol should be that anybody who makes an objection should get a copy of the protocol at the time they make that objection, and also, that they should get notified if, in fact, it does go forward to the Secretary of State? Thank you.

146. THE CHAIR: Thank you, Mr Jones. Well, may I thank everybody for helping these proceedings to go ahead. I don't think any of us really expected them to go ahead successfully online, but with not too many hiccups, I think we have succeeded, and I know the team behind this broadcasting and arranging of the Committee's meeting hearings have worked enormously hard, and thank you to all the participants, and to my fellow committee members, and we hope we can meet again tomorrow morning, and resolve the matters so that the Bill can proceed. So thank you all, and I am now going to leave the meeting and we will cut the broadcast.

147. MR EVANS: Thank you, My Lady.

148. THE CHAIR: Thank you very much, everybody.