

CORRECTED

House of Lords and House of Commons

MINUTES OF EVIDENCE

taken before the

UNOPPOSED BILL COMMITTEE

on the

Faversham Oyster Company Bill

Tuesday 1 November 2016

Before:

Lord McFall of Alcluith, Chairman of Committees (known as the Senior Deputy Speaker), with the assistance of his Counsel, Mr Peter Milledge, and Ms Christine Salmon Percival, House of Lords.

ALASTAIR LEWIS, of SHARPE PRITCHARD
appeared as the Parliamentary Agent for the Bill

There also appeared:

DUDLEY CRAMP, Consultant Solicitor/Notary Public at Gullands Solicitors; and Company Secretary at Faversham Oyster Fishery Company

ROB COTTAM, Corporate Law Reform, Department for Business, Energy and Industrial Strategy

(10.45 am)

1. **THE CHAIRMAN:** Good morning. Welcome to this Unopposed Bill Committee. I am Lord McFall, Chairman of Committees and Senior Deputy Speaker. On my right is Peter Milledge, my counsel. I believe we have a departmental representative from the Department for Business, Energy and Industrial Strategy. Would you introduce yourself, please?

2. **MR ROB COTTAM:** I am Rob Cottam, policy official at the Department for Business.

3. **THE CHAIRMAN:** Thank you. Mr Lewis, can I ask you to introduce yourself and your colleague and describe the Bill's main provisions?

4. **MR ALASTAIR LEWIS:** Yes, my Lord. My name is Alastair Lewis. I am from Sharpe Pritchard and I am the parliamentary agent for the promoter of the Bill, which is the Faversham Oyster Fishery Company. To my left sits Mr Dudley Cramp, who is a solicitor and also the Company Secretary. My Lord, what I was intending to do was to give you a little of background about the company first and then take you through the clauses of the Bill if that is satisfactory.

5. The Faversham Oyster Fishery Company lays claim to being one of the oldest companies in the country. The now repealed Faversham Oyster Fishery Company Act of 1840 recited that from time out of mind, which means before the Magna Carta, there had been a company in the nature of a prescriptive corporation called “The Company or Fraternity of Free Fisherman and Dredgerman of the Manor and Hundred of Faversham in the County of Kent”—snappy title.

6. During the 19th century, the company became known as the Faversham Oyster Fishery Company and, through thick and thin, it survives today in good health. The company is a statutory company; in other words, it was incorporated by an Act of Parliament and it remains governed, to this day, by that Act, which is the Faversham Oyster Fishery Act 1930. That is not to say that provisions of general company legislation do not apply to it because some do.

The important point is that the company's objects and its general powers are limited by the terms of the 1930 Act. The only way to relieve itself of some of those limitations is to promote further private legislation, hence this Bill.

7. Faversham is located on the Swale in Kent. Unsurprisingly, the water is tidal at that point because, as its name suggests, the company's main business is the farming of oysters, other shellfish and fish, and in spat and spawn, which is the young of shellfish. It would seem that the company was in good health in Victorian times but fell on harder times at various points during the 20th century. It was badly affected by pollution of the waters at various times, thankfully now resolved due to changing attitudes, changing environmental laws and changing tastes. For some time now, the public's taste for shellfish has been healthy and the company's accounts are now in surplus. It is a mark of that success that the company brings this Bill forward, because one of the things the company wants to do—and at the moment cannot—is to expand both geographically and in the types of business it can undertake.

8. Before turning to the clauses of the Bill, I should mention consultation and human rights. Before the Bill was deposited, the company consulted on the Bill, notifying mainly local interests. In response to the consultation, the company received a few comments from its own members and also from the local harbour authority, the port of Sheerness, which requested and were given a protective provision in the Bill. The company has also been in discussions throughout with what was then the Department for Business, Innovation and Skills and is now Business, Energy and Industrial Strategy. Neither they nor any government department has any adverse comments on the Bill in principle and that remains the position.

9. In relation to human rights, counsel's advice was taken on the draft Bill before it was deposited and he gave it a clean bill of health. However, Baroness Neville-Rolfe reported to your predecessor on behalf of BIS on 26 January and raised some concerns about ECHR compliance. I will deal with those later.

10. With that, I now turn to the clauses of the Bill. You have the filled Bill, which contains quite a large number of amendments, all of which I can safely say are improvements to the Bill, and many of which come from discussions with your counsel, Mr Milledge, to whom we are very grateful for his input. I will start slightly out of turn, if I may, with Clause 4, the subject matter of which I have already alluded to. Under Section 6 of the 1930 Act, which this clause would replace, the company's objects are restricted to purposes connected directly to the fishery at Faversham. This is considered unnecessarily restrictive and the company wishes to alter its objects to allow it to operate as a general commercial company and to be able to spread its wings wider, geographically speaking.

11. I now go back to Clause 3: the name of the company and the adoption of model articles for private companies. By this clause, the company would be able to adopt the model articles for private companies limited by shares set out in Schedule 1 to the Companies (Model Articles) Regulations 2008. This would modernise the way in which the company is governed and would bring it more into line with current business practice.

12. Clause 3 sits well with Clause 5, the disapplication of the Companies Clauses Acts, which would sweep away the mass of Victorian legislation to which the company remains subject, as regards its governance. Currently, certain provisions of the Companies Clauses Consolidation Act 1845 and the Companies Clauses Act 1863 apply to the company. These Acts set out a number of standard provisions, which are either adopted by or apply directly to statutory companies, in order to avoid the legislation that incorporated them having to set them all out in full. All of these provisions are, in the view of the company, now satisfactorily replaced in modern terms by the Companies Act 2006, which should apply to the company instead. The intention is that the company would, following Royal Assent, apply for registration at Companies House. At that point, the company would bring Clause 5 into effect by resolution using the commencement provisions of Clause 20.

13. There is also a short new subsection (4) in Clause 3, which makes provision about the company's name. If, as is expected, the company seeks registration at Companies House, then under current legislation, the registrar will have no choice but to require the company to change its name to include the word "Limited" at the end. This is because the Companies Act 2006 requires such. There are some exceptions to this but none of them applies to the company. As you can imagine, having traded under the same name since the early 19th century, the company is reluctant to have to change its name now, so this provision is included to avoid that having to happen. Companies House have been consulted about this particular provision and they are happy about it.

14. Clause 7: how to raise additional capital. Under the 1930 Act, the company can raise additional capital of up to £30,000. Clause 7 would raise that amount to £100,000. Clause 8 deals with the company's borrowing powers. Section 23 of the 1930 Act places constraints on the company's powers to borrow and, in particular, limits the amount that may be borrowed to up to half of its share capital. Clause 8 provides a more general power concomitant with other companies allowing borrowing on the security of the Company's assets and revenues and with no limit.

15. Clause 9 deals with investments in other companies. Currently, under Section 30 of the 1930 Act, the company can invest in and lend to companies associated with the company or associated with fishing. The company wishes to extend this power to allow it to invest in and lend to other companies and Clause 9 would achieve that aim.

16. Clause 10 deals with powers to deal with land. The 1930 Act imposes restrictions on the amount of land that the company can acquire for its purposes. The company wishes to remove those restrictions, which include one that says the company may only purchase 10 acres of land, in addition to the land that it owned in 1930.

17. I now move on to Part 3 of the Bill that deals with missing shareholders. This part shows by far the most amendments and is the most technical. In short, the provisions would establish a regime by which the company will be able to update its books of shareholders. Since the company was incorporated in 1930, it has kept records of all the shareholders, most of whom in 1930 were locals of Faversham. As time has passed, many of those shareholders have either died or have changed address without notifying the company. As a result, when at least once a year the company has to send out company materials in the post to its shareholders, a large proportion is returned undelivered. There are 137 shareholders entered on the company's registers, who between them own 29,176 shares, the two classes of shares being original and new ordinary. The number of shareholders whom the company consider to be within the category of missing shareholders is 54; 54 out of the 137 are either dead or have moved address without telling us where they have gone. That is quite a large proportion.

18. Accordingly, the missing shareholders represent about 40% of the total shareholders, which represents approximately 23% of the total number of shares currently in issue. Presumably, they have either died or have moved on. In summary, what Part 3 will do is set up a system whereby the company does the following: first, it publishes two notices in a local newspaper and two in the *London Gazette* explaining the effect of Part 3 and naming the shareholders to whom the process will apply; it then sends three successive notices to the shareholders—these are called shareholder notices—using the addresses that the company has in the register, explaining Part 3 and inviting the shareholders to return a notice to the company.

19. **THE CHAIRMAN:** How many local newspapers are there?

20. **MR DUDLEY CRAMP:** Sorry?

21. **MR ALASTAIR LEWIS:** How many local newspaper do we have circulating in the Swale district?

22. **MR DUDLEY CRAMP:** Two, sir, in addition to the national ones.

23. **THE CHAIRMAN:** Would you put them in two of them?

24. **MR ALASTAIR LEWIS:** We would only have to put them in one of them according to the Bill. That is the way we would propose to do it.

25. **THE CHAIRMAN:** You might get some people complaining that they did not see it locally. I have had that experience myself.

26. **MR DUDLEY CRAMP:** It is unlikely, sir, from the information I have.

27. **THE CHAIRMAN:** Fair enough.

28. **MR ALASTAIR LEWIS:** A deposit would have to be paid of £50 as well, enabling the recipient to claim entitlement to ownership of the shares. The company then publishes yet further notices, times two, in the local paper and the *Gazette*. It is not as if there are not a large number of notices that do have to be published throughout this process.

29. If the company receives no reply to any shareholder notices within a certain period called the notification period, then the company can treat the shareholder as a missing shareholder and can sell the shares. If a recipient returns a notice claiming ownership of the shares, then the company must give consideration to the claim. If it is satisfied that the claimant is entitled to the shares, for example because they are the original shareholder or because they are entitled by way of inheritance, then the register will be altered accordingly, if necessary.

30. This brings me to mention the human rights concerns that were expressed by Baroness Neville-Rolfe on behalf of the Government. In short, the main concern was that as deposited the Bill was not clear enough about the right for a shareholder to apply to the court for rectification of the shareholders' register, in particular by the ability to make use of Section 125 of the Companies Act 2006. A subsidiary but related concern was that the Bill, as introduced, would have enabled the company to cancel rather than sell the missing shareholders' shares.

The company has addressed both concerns to the satisfaction of the department by agreeing to seek amendments to the Bill. The first of those amendments would replace the power to cancel shares with the power to sell them. This is the replacement Clause 14 that is set out on pages 3 and 4 of the additions apart at the front of the Bill.

31. At this stage, I should also mention that a supplemental paper of four technical amendments to Clause 14 was submitted, with the approval of Mr Milledge, at the end of last week, which has also been approved by the department.

32. The second amendment to meet the department's initial concerns is to the commencement provisions. If you look at page 8 of the filled Bill you will see at the bottom a new subsection (2) in Clause 20, which provides that Part 3 comes into force on the day after the day on which the company is first registered at Companies House. That means that Section 125 of the Companies Act 2006, which contains the procedure by which applications to the court can be made, will definitely be available to people who wish to assert their ownership of shares through the courts, despite the procedures set out in the Bill. You will note that, in any event, what is now to be Clause 16 on page 8 of the filled bill specifically provides a saving for Section 125.

33. If I could then take you through the more significant amendments to Part 3 that have come about as a result of discussions with Mr Milledge. First, there is a much clearer definition of the notification period in Clause 12 on page 4 of the Bill; that is the period within which a claim can be made in response to a shareholder notice. In effect, the period is 18 months after the publication of the second set of newspaper notices that I referred to earlier. Next, there is an extended definition of who counts as a missing shareholder. This is set out in page 1 of the "additions apart" at the front of the bill as new subsections (2) to (5) of Clause 12. Not only must the whole shareholder notice and newspaper notice procedure have to have been completed with no claim being made, but also a period of 12 years has to

have passed during which the shareholder in question has not claimed any dividends of other sums owed to him by the company.

34. In Clause 13, there are new subsections setting out the procedure for service of notices; see additions A and B on page 2 of the additions apart at the front of the filled bill. With these in place, the original Clause 15 is no longer required and is therefore shown as struck out.

35. Next, and also in Clause 13, there are amendments to what is now to be subsection (8) on page 6 of the filled bill. Clause 8 deals with instances where a claimant has, for example under Section 125 of the Companies Act, made a claim to the courts about his entitlement to shares. Clause 8 has the effect of extending the period for making a claim under the Bill, whilst the court proceedings are ongoing.

36. **MR PETER MILLEDGE:** Are you talking about subsection (8) here?

37. **MR ALASTAIR LEWIS:** I am, yes. That is right. I beg your pardon. The main alteration to this subsection is the introduction of the new paragraph C, which is at caret 8 at the bottom of the page. The company is concerned to ensure that if court proceedings—as they sometimes do—come to a standstill due to a lack of progress on the part of the applicant, it should be able to take a view and give notice to the applicant, which has the effect of curtailing the claim period under the Bill.

38. I have already mentioned the new Clause 14, which replaces the power to cancel shares with the power to sell them. Also, I have mentioned why Clause 15 notices are no longer required.

39. Finally, moving onto the final provisions in Part 4, my Lord, you will see that there are savings for the rights of the company over the existing fishery in Clause 17, and for the port of Sheerness, which I have already mentioned, at Clause 18. There is a costs provision at Clause 19. The commencement provision has been altered somewhat, first of all to meet the

human rights points raised by the department, but also to ensure that when the company registers at Companies House there is a smooth transition from the Victorian governance provisions to the provisions of the Companies Act 2006.

40. Finally, the Schedule sets out the provisions of the 1930 Faversham Oyster Fishery Act, which are to be repealed as a result of the modernisation and extension of the companies legislation, effected by Part 2. My Lord, that was all I was intending to say as introduction to the Bill.

41. **THE CHAIRMAN:** Thank you very much and thank you for forewarning us of your intention for asking for further amendments, Mr Lewis. I have had an opportunity to discuss these with Peter and I am inclined to accept them.

42. **MR ALASTAIR LEWIS:** Thank you.

43. **THE CHAIRMAN:** Mr Cottam, is the department content with these amendments?

44. **MR ROB COTTAM:** Yes we are, my Lord.

45. **MR PETER MILLEDGE:** In particular, are you content with the one dealing with the application for registration and the preservation of the company's existing name? As a matter of policy, are you content with that?

46. **MR ROB COTTAM:** Yes we are, my Lord.

47. **THE CHAIRMAN:** Is there anything else you wish to add, Mr Milledge?

48. **MR PETER MILLEDGE:** I had two or three questions, if I may?

49. **THE CHAIRMAN:** Yes, sure.

50. **MR PETER MILLEDGE:** The notion of a general commercial company does not give us much of a clue. What kind of functions, on expansion, do you have in mind?

51. **MR ALASTAIR LEWIS:** I will ask Mr Cramp to answer that question as Company Secretary.

52. **THE CHAIRMAN:** What do you mean by “commercial”? Define that for us here as well.

53. **MR ALASTAIR LEWIS:** Trading is what we have in mind, and making money, putting it bluntly.

54. **THE CHAIRMAN:** Trading in what? Is this limitless? Is this another empire that is going to be built here? Are we going to have us a FTSE 100?

55. **MR DUDLEY CRAMP:** I hope so, sir. The situation is that under the Act as it stands at present, it says we can simply operate the fishery and nothing more. The company traded very successfully in the 19th century; the turnover, by current value, was about £750,000, obviously allowing for inflation and all the rest of it. We are now beginning to expand within the fishery itself because of clean water. We are now in surplus but we then thought the business of the fishery may hit hard times again; therefore, the company was concerned that we should be able to protect the company from adverse times in the future.

56. This might mean, for example, operating with other private fisheries that are immediately within Whitstable Bay. I do not know if you are aware of the geographies, sir, of the north Kent coast, but there are two of the other fishery companies: the Whitstable Oyster Fishery Company and the Seasalter and Ham Fishery Company. The Act does not allow us to trade with them. We cannot go into joint ventures and we cannot operate joint harvesting ventures or anything. We are simply ring-fenced to act independently on our own. Obviously, we have modern trends and productivity desires. We are prevented from doing any of that. There are other fisheries on the north Thames coast—the coast of Essex—the Crouch is an area where there are also a lot of fisheries. Again, we cannot trade with them.

57. We might wish to merge. We are quite successful; we have surplus funds, which have enabled us to promote this Act. Without this Act, we cannot trade or operate in joint ventures with companies on the Crouch. We just cannot do it. We have tried to persuade

the barrister to advise us otherwise but we could not convince him. We cannot run as that. Obviously, we would like to expand and preserve and protect ourselves for the future. It is the company's desire to maintain itself. We are merely custodians for a few years. The company has been going for a thousand years.

58. **MR PETER MILLEDGE:** Thank you. From what you are saying, you are envisaging staying in the fishery area of activity.

59. **MR DUDLEY CRAMP:** Yes.

60. **MR PETER MILLEDGE:** It occurred to me that your company name is quite a specific name and that if you were intending to branch out into other areas of commercial activity beyond fisheries, I was concerned that it might be misleading. However, from what you are saying, you are planning to stay in the fisheries area for the moment.

61. **MR DUDLEY CRAMP:** Yes. As I say, we consider that we are merely custodians of the company and we want to see it maintained for decades and centuries to come.

62. **MR PETER MILLEDGE:** Thank you. I had a question about Part 3. By my calculation, for the entire process, by the time you have had the first round of company notices, the three sets of shareholder notices and the final company notice, you could be clocking up something approaching five years.

63. **MR DUDLEY CRAMP:** I think that is likely, sir. The problem that we encountered is that the profitability of the company, or the modern profitability of the company, has only started in about the last 10 years, where we have been able to harvest substantial quantities of shellfish. Noting the 12-year period that we have to comply with, we have only reached year 10. We have only been making these dividend payments for about 10 years. Therefore, we would not be in a position to issue the first notice for another two years anyway.

64. **MR PETER MILLEDGE:** I see. What would you envisage might be the average time between the first notice and the end of the notification period?

65. **MR DUDLEY CRAMP:** Between 18 months and three years for the whole process. I would certainly want to try to save some money and send out certainly the first notices with the notices of the AGM because they are entitled—the members or, if I may call them this, the missing members—to be treated as full members until the process has been completed. I would imagine that there will be at least two annual notices within that period. I would anticipate sending out the annual notices and the warning notices at the same time, which is important in the case of someone suddenly taking notice and waking up and saying: “If I do not do something I might lose my rights”. I would probably make sure they were in the same envelope so that they get a package.

66. **MR ALASTAIR LEWIS:** It may help if I just add, my Lord, that one of the reasons why we have rather a long, drawn-out procedure is that after taking the human rights advice we were advised to add an extra tier of notices in addition to what we were originally proposing. Of course, we followed that advice to make sure that we were as compliant as we could be.

67. **THE CHAIRMAN:** When you say missing members, do you have a register of members?

68. **MR DUDLEY CRAMP:** Yes we do, sir.

69. **THE CHAIRMAN:** Do you have details on them, like their date of birth?

70. **MR DUDLEY CRAMP:** We do not have their dates of birth. I have only one copy here, which I am happy to show you, of the list of members. Someone could take it round. You now have my copy. What you might find interesting is that if you look at the left hand column, those are the dates that the members were registered. You will see that most of them were registered in 1930. There were some changes in 1935 and 1947. I think there were about four changes: there was a change of ownership in 1988 and one in 1976. The bulk of the missing members, in fact, have not changed hands since 1930.

71. **THE CHAIRMAN:** If some of them were registered in 1930 they would be—

72. **MR PETER MILLEDGE:** Over 100.

73. **THE CHAIRMAN:** Exactly. In fact, maybe 105 and 107.

74. **MR DUDLEY CRAMP:** Yes.

75. **THE CHAIRMAN:** Maybe if you did a check of how many people over 105 are living.

76. **MR DUDLEY CRAMP:** Yes, sir.

77. **MR ALASTAIR LEWIS:** We have to go through the procedures, I am afraid.

78. **MR DUDLEY CRAMP:** It is not the company's wish to deprive these people or, indeed, their successors. These are the ones we do not hear from.

79. **MR ALASTAIR LEWIS:** It may well be that as the result of the newspaper advertisements, a descendant of one of these people recognises the surname and thinks, "I might have something to say here".

80. **THE CHAIRMAN:** We are looking for a clutch of 107 to 110 year-old people.

81. **MR ALASTAIR LEWIS:** It would be an interesting shareholders' meeting.

82. **MR PETER MILLEDGE:** I do not think anyone could say that Part 3 of the Bill involved a lack of notification. I had a final question on Part 3, about what is now Clause 13(9) on page 6, which enables the company to extract an indemnity from a successful claimant. I wondered whether you were envisaging an indemnity from everybody or from some cases only, and what would inform your judgment about when to exercise that power.

83. **MR DUDLEY CRAMP:** It is simply a matter of corporate governance, sir. I am assuming that all the share certificates for these people have been lost. Therefore, they will not be able, even if we are reasonably confident—and I do not think the company intends to set a very high bar for claimants—but I am presuming they will not have share certificates and therefore we will have to take their word within limits. Therefore, we would ask for what I

would call a standard indemnity that, should someone come along with the share certificate, they would indemnify us against issuing a new share certificate to them.

84. **MR PETER MILLEDGE:** I see. Thank you.

85. **MR DUDLEY CRAMP:** It is a standard procedure.

86. **MR PETER MILLEDGE:** I have no further questions.

87. **THE CHAIRMAN:** Mr Cottam, regarding the human rights issues, just to make it clear for the record, you had concerns before. Could you confirm the department is entirely content with the proposed amendments, and that there are no issues in that, or any others that you wish to raise?

88. **MR ROB COTTAM:** Yes I can, my Lord. As Baroness Neville-Rolfe's letter to your predecessor set out, our concerns crystallised around the fact it was not entirely clear that Section 125 of the Companies Act 2006 applied to allow shareholders to apply to court to protect their interests. That has been rectified by the requirement that Part 3 does not kick in until the company is registered under the Companies Act 2006. Therefore, Section 125 applies. We are content there are not any human rights issues relating to the Bill as amended.

89. **THE CHAIRMAN:** Good. That is important for the record. I agree to these additional amendments. Please see that they are added to the Committee Bill. Mr Lewis, would you like to continue your presentation now.

90. **MR ALASTAIR LEWIS:** All I need to do now is go through the formalities as it were, and ask Mr Cramp to swear the preamble.

91. **MR DUDLEY CRAMP:** I swear by almighty God that the evidence I shall give before this Committee shall be the truth, the whole truth and nothing but the truth, so help me God.

92. **MR ALASTAIR LEWIS:** Is your name Dudley William Cramp?

93. **MR DUDLEY CRAMP:** Yes, it is

94. **MR ALASTAIR LEWIS:** Are you the Company Secretary of the Faversham Oyster Fishery Company, the promoter of this Bill?

95. **MR DUDLEY CRAMP:** I am.

96. **MR ALASTAIR LEWIS:** Have you read the preamble to this Bill?

97. **MR DUDLEY CRAMP:** I have

98. **MR ALASTAIR LEWIS:** Is it true?

99. **MR DUDLEY CRAMP:** Yes.

100. **MR ALASTAIR LEWIS:** Thank you, my Lord.

101. **THE CHAIRMAN:** Thank you. That concludes our proceedings and I will report the Bill to the House with amendments.

102. **MR ALASTAIR LEWIS:** Thank you very much, my Lord.

(The Committee adjourned at 11.15 am)