# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL [*LORDS*]

*Fifth Sitting*

*Thursday 7 January 2016*

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New clauses considered.
Bill, as amended, to be reported.
Written evidence reported to the House.

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**Monday 11 January 2016**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

**The Committee consisted of the following Members:**

*Chairs:* † Fabian Hamilton, Mrs Anne Main

† Churchill, Jo *(Bury St Edmunds)* (Con)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Jenrick, Robert *(Newark)* (Con)
† Johnson, Gareth *(Dartford)* (Con)
† Kyle, Peter *(Hove)* (Lab)
† Lefroy, Jeremy *(Stafford)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Mak, Mr Alan *(Havant)* (Con)
† Morton, Wendy *(Aldridge-Brownhills)* (Con)
† Newton, Sarah *(Truro and Falmouth)* (Con)
Stevens, Jo *(Cardiff Central)* (Lab)
† Streeting, Wes *(Ilford North)* (Lab)
† Throup, Maggie *(Erewash)* (Con)
† Tugendhat, Tom *(Tonbridge and Malling)* (Con)
† Turley, Anna *(Redcar)* (Lab/Co-op)
† Wilson, Mr Rob *(Minister for Civil Society)*

Marek Kubala, Ben Williams, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 7 January 2016*

[Fabian Hamilton *in the Chair*]

## Charities (Protection and Social Investment) Bill [*Lords*]

### New Clause 7

Reserve powers to control fund-raising

'(1) The Charities Act 1992 is amended as follows.

(2) In Part 2, after section 64A (reserve power to control fund-raising by charitable institutions) insert—

"64B Reserve power in relation to fund-raising regulators

(1) Regulations under section 64A may, in particular, impose on charitable institutions requirements to do any of the following—

(a) to comply with requirements imposed by a regulator;

(b) to have regard to guidance issued by a regulator;

(c) to be registered with a regulator for the purpose of its regulation of charity fund-raising.

(2) "Regulator" means a body specified in the regulations as a regulator for the purposes of this section.

(3) A body may be specified as a regulator for the purposes of this section only if the regulation of charity fund-raising appears to the Minister to be a principal function of the body.

(4) A body maintained out of money provided by Parliament may not be specified as a regulator (and this section does not confer power by regulations to establish a body to act as regulator)."

(3) In Part 2, after section 64B insert—

"64C Reserve power to confer additional powers on Charity Commission

(1) In the case of charity fund-raising which—

(a) is carried on by a charity, a person managing a charity or a person or company connected with a charity, or

(b) involves soliciting or otherwise procuring funds for the benefit of a charity or a company connected with a charity, or for charitable purposes,

regulations under section 64A may, in particular, make provision conferring functions on the Charity Commission, including provision applying or reproducing, with or without modification, any provision of the Charities Act 2011.

(2) The regulations may provide for a power that is exercisable by the Commission by virtue of the regulations to be exercisable by a person appointed by the Commission for the purpose."

(4) In section 64A(2) after "this section" insert "and sections 64B and 64C".

(5) In section 77(4) (regulations and orders) at the end insert "and, in the case of regulations made by virtue of section 64B or 64C, shall in particular consult the Charity Commission.""'.'—*(Mr Rob Wilson.)*

*This is a new clause to extend the existing reserve power to regulate charity fund-raising (in s.64A of the Charities Act 1992). If exercised, the power could require mandatory registration and compliance with a specified fund-raising regulator or for fund-raising regulation to be carried out by the Charity Commission.*

*Brought up, and read the First time.*

11.30 am

**The Minister for Civil Society (Mr Rob Wilson):** I beg to move, That the clause be read a Second time.

May I begin by congratulating you, Mr Hamilton, on your promotion to a shadow foreign affairs post? I know that you will put your enormous experience to good use on behalf of your party.

Most people will be familiar with the issues surrounding charitable fundraising by large charities that surfaced last summer, and which I referred to in some detail in relation to clause 14. As I said, I accepted Sir Stuart Etherington's recommendation to give charities a final chance to make the self-regulation of fundraising work. The new system has my complete support, and the public are eager to see improved fundraising and signs that charities are listening to and acting on their concerns. It is now up to the sector to make the improved system of self-regulation work in a timely and effective manner, and I will keep a close eye on the progress being made.

Charities rely on the generous charitable giving and voluntary work of the British public and so need to deliver on the public's expectations. Otherwise, we must be prepared to step in and act. I do not want to have to do that, but I want to be prepared in case it becomes necessary. Public trust and confidence in charities has already been rocked because of the poor practice uncovered last summer. In a survey last year, only 48% of people—less than half—said that they trusted charities. A more recent survey found that 76% of the public wanted tougher regulation of charity fundraising. We cannot allow further damage to public trust, which is why it is imperative that we have the right tools to act if it becomes clear that the new system is not sufficiently supported by charities. For that reason, I propose an amendment, through new clause 7, to the existing reserve powers in the Charities Act 1992. This will act as a safeguard should self-regulation fail.

Proposed new section 64B of the 1992 Act will extend existing powers in relation to fundraising regulation to compel charities to comply with the requirements and guidance imposed by the fundraising regulator. It will also allow the Government to require charities to be registered with a body for the purpose of regulating charitable fundraising. Under this provision, Ministers will have the discretion to mandate with the regulation of charity fundraising any body whose principal function appears to be in line with that purpose. The provision makes it clear that that may not be a body maintained out of money provided by Parliament. That will be the case with the new fundraising regulator currently being established by Lord Grade of Yarmouth, the interim chair, and Stephen Dunmore, the interim chief executive, which will be funded by the sector itself.

Most of the largest charities have already committed to registering with the new body once it is established, and I am sure that any charity showing initiative and commitment in that way will be a welcome sign to both the public and Parliament. However, should any charities be found to be dragging their heels, this power could be used to compel them to register with the fundraising regulator. It could be used as a first statutory step should charities prove insufficiently proactive in their support of the new self-regulatory system.

Self-regulation will not work if charities decide to wait and see what the finished system looks like before pledging their support. It would be starved of both the necessary mandate and the financial resources even to begin its work. This power will therefore be a vital safeguard to ensure that self-regulation is given a proper

chance to succeed. If needed, the power would further act as an early warning sign to charities, flagging it up to them that they are falling behind the expectations that the public, Parliament and the Government have of what is necessary to make self-regulation work. I would challenge any fundraising charities and, in particular, large, sector-leading charities that did not sign up to the new self-regulator to consider their obligation to safeguard the public and their trust in charities more generally. It would certainly be a poor reflection on what is largely a dedicated, compassionate and well-run sector if the Government were forced to invoke this power. However, I will not hesitate to do so if that becomes necessary.

The new clause also introduces proposed new section 64C into the 1992 Act. The new section extends the existing reserve power to regulate fundraising, to enable the Government to confer the function of regulating charitable fundraising on the Charity Commission. That is a significant power, which would change fundraising regulation completely.

**Tom Tugendhat** (Tonbridge and Malling) (Con): For clarity, may I ask a brief question on the Minister's slightly earlier point, which he has just moved on from? Is it only charities that will have to opt in, or will other organisations have to?

**Mr Wilson:** I thank my hon. Friend for raising that really important question. Charities—particularly education charities—rely on the special relationship they have with their membership. The data protection legislation that has just been passed in Europe means that all sectors will need to move to an opt-in system in the next 18 to 24 months. That means that any organisation will require unambiguous and affirmative consent before being able to process any individual's data. Workarounds such as assumed consent or pre-ticked boxes will simply no longer be good enough. A change is therefore coming, and it will affect all sectors, not simply the one we are discussing.

**Peter Kyle** (Hove) (Lab): The Minister has repeatedly asserted in his opening speech that charities need to heal the wounds resulting from the challenges they faced last year and from the public dismay that greeted some of what happened. However, would it not be more honest to acknowledge that the Government also played a role in undermining public confidence in charities last year? Will he take this opportunity to reaffirm that the Cabinet Office will no longer put millions of pounds in funds into charities that are trading insolvently—something that greatly undermined public confidence in not only one charity, but the Government themselves?

**Mr Wilson:** That really is a very strange point to make. What we saw over last summer was a number of large charities clearly targeting vulnerable and elderly people in the most immoral way and on a scale we had not seen before. The Government had no role in making that happen or even allowing it to happen. Since we discovered the scale of what was going on, we have acted extraordinarily swiftly. We have set up a new single regulatory body in a very short time, given it the powers to be successful and made sure it is funded sufficiently. We have got the sector's backing, and a whole series of other things are now happening to make sure that that body is up and working so that the sector does not make the terrible mistakes it has made in the past.

It is also important to recognise that it is a small number of large charities that have let the whole sector down and that, by and large, small charities have had nothing to do with this. We are therefore having to focus on a fairly narrow section of the sector, but that work is important, because we have seen the figures for those who trust charities go down to below half the population—it was previously much higher—and that has had an impact on how people feel about donating to charities. A lot of the work that the Government have done over the past five or six years has been about building the idea that people should give of their time and money to volunteering and charities, and that has been a big success for the Government.

**Peter Kyle:** I am grateful to the Minister for giving way again. He spoke with great passion about solving the problems that a small number of charities faced, and indeed created, with some of their fundraising practices last year. However, he also quoted figures for the damage done to the voluntary sector's reputation, and I invited him to face up to the fact that the Government also played a role in damaging the sector's reputation last year by overriding officials' recommendations not to put more money into Kids Company. In doing so, the Government put millions of pounds into a charity that was trading insolvently, creating a national scandal that was reported throughout the media, which damaged the sector itself. Yes, the voluntary sector needs to own up to its challenges, but will the Government take a lead? Will the Minister say that the Government will no longer fund charities that are trading insolvently?

**Mr Wilson:** Look, there are at least three separate investigations into what happened at Kids Company, two of which are due to report by the end of this month, I think. It is important that we all wait to see what those reports say. If lessons can be learned, the Government will certainly learn them and do what we can to ensure that such things do not happen again, but to pre-empt that in this Committee would be wrong.

I was talking about the change in the nature of fundraising regulation if we had to invoke this power. It would no longer be governed by a self-regulatory system; instead, the Government would be able to invoke statutory regulation by mandating the Charity Commission with that task. Were that function to be passed to the commission, clearly it would require additional funding or would charge fees under section 19 of the Charities Act 2011.

I hope that I will never feel compelled to use this power, as it would mean that the self-regulatory system had failed. More importantly, it would mean that large charities had failed to put their house in order. However, the seriousness of the abuse in the past year or so and the impact it has had on public trust in charities has made it clear that a robust backstop is needed to ensure that the public feel that they can give with confidence and to prevent the same sorts of scandals being repeated.

**Mr Alan Mak** (Havant) (Con): One area of charitable practice that helped to undermine confidence in the sector is the behaviour of so-called chuggers—charity collectors who collect direct debits on behalf of charities.

*[Mr Alan Mak]*

Can the Minister assure the Committee that the new regulatory system will clamp down on such bad practices and increase confidence in the sector by way of regulation?

**Mr Wilson:** I thank my hon. Friend for raising an issue of great public interest. Many people have raised such concerns in recent years. Personally, I am not convinced that that method of fundraising is beneficial to the sector's reputation. Many people dislike being approached in the street or on their doorstep. On the other hand, I appreciate that it represents an important source of income for the sector, and it would be churlish not to acknowledge that there have been some improvement in the regulation of face-to-face fundraising—it is known as that, rather than chugging—in recent years. It was highlighted as a problem as far back as 2012 by Lord Hodgson's report. However, I expect that the new fundraising regulator will pay very close attention to chugging. Charities and the new regulator need to ensure that it is done respectfully and responsibly, and that the methods used to solicit donations are not the next big scandal waiting to happen.

Let me return to section 64C, if that is not too geeky for the Committee, which sends a clear signal about the Government's intention for better regulation of fundraising in the future in one way or another. The charity sector feels compelled to ensure that that is achieved through the Etherington system, rather than statutory regulation. I think that everybody here wants fundraising to be better regulated in future to ensure that it protects the vulnerable, is not governed by vested interests and does not allow free riders to abuse the system. The new clause provides a robust back-up to the system of self-regulation currently being implemented. It will also act as a deterrent to those who are still in denial about the seriousness of the issues that the sector faces.

In some ways, it is odd that I hope that I and my successors will never have to invoke the reserve powers to regulate fundraising. Ultimately, whether or not that happens is in the hands of the charities themselves, which need to ensure that the self-regulation of fundraising works in the public interest. I hope hon. Members will agree with me and back this important new clause, which will help safeguard the future of fundraising and the reputation of charities in the long term.

11.45 am

**Anna Turley** (Redcar) (Lab/Co-op): May I second the Minister's comments and congratulate you, Mr Hamilton? Yours is an extremely well deserved appointment and we look forward to seeing the wealth of experience you bring to the role. It is not before time, so many congratulations. I would also like to congratulate my hon. Friend the Member for Cardiff Central, who is not with us but also received an appointment today. There have been some very good moves all round.

We support the Government's new clause, which seeks to reserve powers to control charity fundraising. It could require mandatory registration in compliance with a specified fundraising regulator, or for fundraising regulation to be carried out by the Charity Commission.

Before going into more detail on why we support the new clause, I want to refer to the important point made by my hon. Friend the Member for Hove. The strength of the Bill, and one of the main reasons for our support, is that it is important for charities to have the support, the regulatory framework and everything they need to ensure they are abiding by the highest standards.

We also think that there are many lessons to be learned from the sorry Kids Company saga. I was pleased to hear the Minister commit to conveying strongly the message from the investigations underway. We look forward to seeing the outcome of those investigations and to working with the Government to ensure that those standards are upheld within Government as much as within the sector.

Returning to the new clause, the Institute of Fundraising, the professional membership body for UK fundraising, and the Public Fundraising Association, the membership body for charities and agencies that carry out face-to-face direct debit fundraising, are in the process of merging to form a single professional body across the sector in the light of the Etherington review. Both say that they understand the reasons for amending the Bill to introduce these reserve powers and do not object in principle to their introduction. They hope, as do we, that ultimately the reserve powers will not be needed, and that the new self-regulatory structures will be effective. They commit to working to support the new system of stronger self-regulation to help ensure its success without the need for the reserve powers to be used. I welcome their positive commitment to that.

As we said in the previous sitting, we believe that the sector takes its responsibility in this field very seriously and will strive to reach the high standards set out in the Etherington review, which we welcomed. Standards have fallen short with some recent fundraising practices. I agree with the Minister that those practices were restricted to a small minority but had a substantial and disproportionate effect on public perception of the sector. When that does happen, it is important to ensure that charities and the bodies charged with regulation can act swiftly and effectively to restore public trust.

We believe that state regulation should be a last resort when self-regulation has failed, but these powers give self-regulation the opportunity to succeed, while ensuring that there is proper back-up should the new arrangements fail to deliver satisfactorily. We look forward to working with the Government on reviewing the steps that the sector takes to fulfil these commitments. Like the Government, we hope that the powers will not need to be invoked, but it is important, when tackling these issues, that we have backbone and teeth with such powers.

If the Minister had not indicated on Second Reading that he was going to amend the Bill in this way, we would certainly have put down an amendment, because we support the need for these measures. We welcome them, support them and look forward to working with the Minister to protect the integrity of charity fundraising.

*Question put and agreed to.*

*New clause 7 accordingly read a Second time, and added to the Bill.*

**New Clause 2**

POWER TO MAKE REPRESENTATIONS

'(1) A charity may undertake political campaigning or political activity in the context of supporting the delivery of its charitable purposes.

(2) A charity may campaign to ensure support for, or to oppose, a change in the law, policy or decisions of central government, local authorities or other public bodies.'.—*(Anna Turley.)*

*This New Clause would enshrine in legislation the right of charities to undertake political campaigning activity.*

*Brought up, and read the First time.*

**Anna Turley:** I beg to move, That the clause be read a Second time.

The new clause would enshrine in legislation the right of charities to undertake political campaigning activity. We are clear that this is a direct attempt to challenge the unfair and poorly applied Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014—the gagging Act, as it is commonly known.

Campaigning is an important part of democracy and civil society. One of the fundamental principles of a thriving and healthy democracy is that individuals and organisations can speak out about the issues they care about. Charities, in particular, have a long-established role in educating and informing the public, campaigning and securing positive social change throughout our history and, crucially, holding the state to account. It is the sign of a mature and confident democracy that we allow dissent and ensure that we have wide-ranging and representative public debate. Charities not only have the right to campaign, but are often best placed to provide important insights that can inform and improve policy making. They are so often the ones on the frontline seeing the gaps in provision, the duplication of services, inefficiency and waste, and indeed spotting the best ways of solving problems.

Many charities can often make a bigger impact with their limited resources through campaigning than through service delivery alone. Campaigning often saves taxpayers' money in the long term as issues can be addressed at their roots, rather than having to address their costly aftermath. For example, is it better to care for victims of crime in the aftermath of an event or to help prevent crimes in the first place? It is good to help care for patients with long-term conditions such as cancer, but is it not better to push for more effective treatments, awareness of symptoms and support for diagnosis?

**Mr Wilson:** Will the hon. Lady explain how the legislation stops such things happening at present? I have seen nothing to suggest that that is the case.

**Anna Turley:** I thank the Minister for his intervention but, as I will say, the sector has made it clear that it feels stifled, particularly in the lead up to general elections, when there are serious debates about the future of Government policy. That is what this new clause seeks to prevent.

The lobbying rules affect charities because of their non-partisan campaigning activity. Organisations can campaign for changes to law or policy where such a change would support their charitable objectives. Although under charity law campaigning cannot be the continuing or sole activity of a charity, it is an entirely legitimate activity for charities to pursue. Under the current rules of the Political Parties, Elections and Referendums Act 2000, some of that activity is already regulated by the Electoral Commission when an organisation has been deemed to produce election material. For many charities and voluntary organisations, raising awareness of the issues affecting the people and causes they support is a routine and important part of their work and central to their charitable objectives.

In a letter leading up to the general election last year, more than 160 signatories from the charitable sector, including Save the Children, the Salvation Army, Oxfam, Greenpeace, Age UK and Amnesty International, said that the legislation should be scrapped and that it is having a "chilling effect" on charities' work.

**Tom Tugendhat:** One of the things the hon. Lady is talking about is the identification of political campaigning, particularly in the run-up to an election, and I understand why she feels that charities should have the right to campaign on issues about which they feel passionately. However, I am uncomfortable that taxpayer-funded bodies, which, let us face it, is exactly what charities are—the tax break means that the taxpayer is paying for this—are paying for a revolving door of special advisers and press advisers from political parties, notably one political party, to come back, take Government money and lobby the Government. I find it absolutely extraordinary that we are asking the British public to pay to be lobbied on their own behalf. It is very odd.

**Anna Turley:** That logic refutes the need for any special advisers, who are of course paid by the public purse to implement a political manifesto.

**Peter Kyle:** Does my hon. Friend agree that there is ample charitable law stating that charities exist to serve their beneficiaries? They do not exist to serve special advisers or any other part of society; they exist to support their beneficiaries. That is the beginning, the middle and the end of the story as far as charities are concerned.

**Anna Turley:** My hon. Friend is absolutely right. That is their full purpose, and they should feel entirely able to stand up and challenge the Government of the day, whoever they may be, and any political party if they feel that their policy does not support their charitable objectives.

**Wes Streeting** (Ilford North) (Lab): Some of the remarks made this morning do a disservice to many Conservative councillors and Members of Parliament. I can even think of Government special advisers with whom I have worked in the voluntary sector as paid staff, and they all did a very good job in the voluntary sector and are doing reasonably well in government.

**Anna Turley:** My hon. Friend is absolutely right, and he is right to pay that tribute. There is often a political motivation behind such proposals that resents the fact that a party, once it is in power, has to accept that people will challenge it and hold it to account.

**Robert Jenrick** (Newark) (Con): I draw the hon. Lady's attention to the one case that I am aware of when a charity has been criticised for not being politically neutral during the general election. That was the Badger Trust. It is not a charity that I am particularly familiar

*[Robert Jenrick]*

with, but the Charity Commission said that there was a risk of its political neutrality being called into question. The example it gave was that Dominic Dyer, its chief executive officer, organised rallies in the lead-up to and during the general election, and emailed all its supporters, using the charity's computer system, in advance of the Labour party's manifesto launch on rural communities, saying that he had contributed to it and asking supporters to attend the launch event and support it—or words to that effect. Does the hon. Lady think that is right? Surely not.

**Anna Turley:** I thank the hon. Gentleman for raising that suggestion. I wonder whether he would have had the same concerns had that been done for his political party. Surely consultation is a positive thing. If a charity's aims and objectives are welcomed and taken forward by a political party, it is surely right for it to welcome that success for its charitable objectives and its efforts to have influence, shape policy and change society. That is something to be welcomed, and the hon. Gentleman is on a difficult line with that.

**Mr Wilson:** Is the hon. Lady really arguing that it is okay for a charity to email its members and ask them to attend a party political launch event? Can I just be clear on that?

**Anna Turley:** I think that is perfectly acceptable, if people want to go to any party political event and offer their views. They may go to it and disagree with the party and challenge it. As far as I am concerned, we are in danger of separating politics from the realities of campaigning and policy making. Politics has to be open and accessible and must not exist in a vacuum. Many people are deeply involved in politics, from councillors and MPs to activists; there is not a small box for people to sit in because they are in one category but not another.

**Peter Kyle:** Does my hon. Friend agree that there are many ways to achieve social change? One is to go into communities and work with individuals on the frontline, and another is to change public policy. An individual using the front-line method can change hundreds of people's lives, but changing public policy can change millions of lives for the better. Is not it right that charities should seek to bring about front-line change and involve themselves in public policy simultaneously?

**Anna Turley:** I agree that that is part of their core objectives and part of what they have done for centuries. I am happy to support that.

**Jo Churchill** (Bury St Edmunds) (Con): I was a campaigner before I came to this place, and it sits uneasily with me that any organisation that deems itself to be a charity should align itself with a political party in that way. The policy for cancer patients is totally the responsibility of all our parties, in my view, so for someone to take their position in a charity and use it by way of promotion is wrong.

**Anna Turley:** I totally disagree with the hon. Lady. That example, for me, is not aligning with a political party. I do not see it as an issue if someone who has influenced thinking—influenced a manifesto that will influence policy change—encourages people to go and have a debate at an event.

**Several hon. Members** *rose—*

**Anna Turley:** I will make some progress, if I may, because we are trying to finish our proceedings this morning.

Charities themselves set out some concerns, including the fact that the scope of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 was very broad. They were concerned that legitimate, day-to-day activities of charities and voluntary organisations engaging with public policy would be caught by the rules. That means that a number of regulated charities, voluntary organisations and other groups will be substantially affected.

They felt that the Act as a whole is incredibly complex and unclear and that it might be difficult for charities and other voluntary groups to understand whether any of their activities would be caught, giving rise to a risk of discouraging campaigning activity. They also felt that it gave substantial discretion to the Electoral Commission, creating an unnecessarily burdensome regulatory regime, and that it might leave some charities, voluntary organisations and the Electoral Commission open to legal challenge.

Legal opinion provided to the National Council for Voluntary Organisations by election law experts suggested that the rules are so complex and unclear that they are

"likely to have a chilling effect on freedom of expression, putting small organisations and their trustees and directors in fear of criminal penalty if they speak out on matters of public interest and concern".

I want to set out some further reaction from the sector to the 2014 Act. Julia Unwin, chief executive of the Joseph Rowntree Foundation, said:

"It is my view that the provisions of the Bill, if enacted, could reduce significantly the effectiveness of the endowed foundation I lead, make it difficult for us to achieve our purpose, and divert charitable funds to responding to legal challenge in a way that is wholly inappropriate".

The Royal British Legion called it "sloppy". Mike Wild, chief executive of Macc, said:

"Community organisations from informal voluntary groups to large national and international charities need to be able to challenge politicians, ask difficult questions and say what they are seeing happening in communities around them. The ambiguities in this Act will leave many organisations uncertain over what they are allowed to say and when."

12 pm

**Jeremy Lefroy** (Stafford) (Con): I sat through the debates on the 2014 Act in the last Parliament and think that I know it fairly well. I will make two points. First, I have taken part in three general election campaigns, and I would say that the last one was no different from any other with regard to the representations put forward, particularly on the health service, which was of particular interest to my constituents. Secondly, since the general election I have not received one single representation from any charity about a so-called "chilling effect" on their work during the election campaign.

**Anna Turley:** On the second point, perhaps they have given up hope and they may have some despair. We have certainly had a lot of support and encouragement from the sector in taking these proceedings forward. Charities have asked us to continue to press the Government on this issue and to review it. We came under a lot of pressure, and our manifesto stated that if we had won in May we would have revoked the measure.

**Robert Jenrick:** I have done some research into that just briefly over the past few days, and the only example I could find is the one about the Badger Trust, which I think most reasonable people would agree is an example of inappropriate behaviour by a charity. Can the hon. Member give us some examples of charities whose activities during the general election campaign were inappropriately curtailed as a result of the 2014 Act?

**Several hon. Members** *rose—*

**Anna Turley:** I will respond to the hon. Gentleman's point and to the previous point before taking the next intervention. There has been a commission report. I appreciate that the hon. Member for Stafford takes the view that there was no difference in the last election, but there is evidence to suggest that charities felt that the Act has impeded the way they behave. I will talk about that further a bit later, if I may, but I will take the next intervention now.

**Tom Tugendhat:** The hon. Member is being extremely generous in giving way. Forgive me, but I come back to the simple point that the taxation element of this is really important. Regarding the element that comes from the taxpayer—the 25%, the gift aid, or whatever it happens to be—that break is money taken by force. Let us not forget what it is; tax is money taken by force. It is not a charitable gift and it is not an extra donation; it is money taken by force from people across our nation, and it is absolutely essential that we do not force people to support one political party or another. It is up to people themselves, because it is a free association and a free choice to support a political party, a campaign or perhaps an issue. However, she seems to be calling for charities to be enabled to use that money for political lobbying, which has to be wrong.

**Anna Turley:** I do not understand the point that the hon. Gentleman is making, because gift aid is made automatically to charities that people may or may not support. A taxpayer may be paying gift aid to a charity whose aims and objectives they may not support. That is the logic.

**Peter Kyle:** May I invite my hon. Friend just to clarify one point? We are talking—are we not?—about charities having the ability to support individual policies. They are not being invited or allowed to support political parties.

**Anna Turley:** My hon. Friend makes a really important point. This measure is not about party political campaigning; it is about lobbying and putting pressure on the Government, and on all political parties—*[Interruption.]*

**The Chair:** Order.

**Anna Turley:** I can only respond to one comment at a time, and I am trying to be as generous as I can. This measure is not about party political campaigning; it is about campaigning on issues and trying to influence every political party of the day by appropriate means. We think that is fair.

**Several hon. Members** *rose—*

**Anna Turley:** I am going to make some progress; I am sorry. We are going to run out of time.

As I said in response to the comments of the hon. Member for Tonbridge and Malling, charities' fears have been realised. The Act did stop charities from campaigning—they say so themselves—and caused unnecessary cost and confusion, according to a report by the Commission on Civil Society and Democratic Engagement, which looked into its effect on last year's general election. Drawing on evidence from UK charities and campaign groups, the commission found that charities were faced with confusion about the

"ambiguity of the definition of regulated activity".

As a result of that, the commission says,

"many activities aimed at raising awareness and generating discussion ahead of the election have not taken place".

A representative of the World Wildlife Fund told the commission:

"I think the Act has created an atmosphere of caution within parts of our sector. It has also wasted time in terms of analysis of it, explaining it to trustees, staff etc. It is not…a piece of legislation we need."

An anonymous large non-governmental organisation told the commission:

"The Act meant we didn't undertake some of the activities we planned. Also, joint campaigning was tough as many organisations were very nervous about the Act and (therefore) watered down their activities, meaning our ability to campaign in the run-up to the election was severely hampered."

Greenpeace told the commission that it had intended to participate in a "cross-NGO campaign", but that all but a couple of organisations ended up not participating due to the general election period, leaving Greenpeace without enough partners to run the campaign. The Salvation Army said that although it was not traditionally a campaigning charity and therefore not in danger of exceeding the top limit, it was still wary of supporting causes that

"could be considered coalition campaigning because we felt the administrative cost would be excessive and we couldn't control the level of spending".

The report stated that 12.5% of the organisations surveyed reported taking no part in coalition campaigning because of the Act, while a further 12.5% substantially reduced and 31% slightly reduced their involvement in coalition campaigning. The commission also stated that it had seen

"no evidence to substantiate the claim that the Lobbying Act was needed to avert undue influence on elections".

I am afraid the lobbying legislation looks to many in the sector too much like a deliberate and shameless act by a Government scared to debate their record or to be open to scrutiny and challenge by the third sector. A Government who seek a big society and a strong civil

*[Anna Turley]*

society must not be afraid of one of the most fundamental aspects of such a society: freedom of speech and to hold the Government of the day to account.

**Wendy Morton** (Aldridge-Brownhills) (Con): I am grateful to the hon. Lady for giving way, because she has taken a lot of interventions. We need to remind ourselves that charities already make representations to Government on behalf of the public and of the many valuable causes that people promote and hold dear. Does she not agree that the new clause would risk fundamentally undermining that very relationship of trust, which we are seeking to strengthen in the Bill? Charities often value their independence from Government and politics.

**Anna Turley:** I disagreed with everything until the hon. Lady's last point. Charities totally value their independence. Previous legislation has sought to stifle their independence and to prevent proper challenge and scrutiny of Government in the build-up to an election, but the new clause seeks to protect that.

**Peter Kyle:** Does my hon. Friend agree that what would damage the trust of people who give so much to charities and of beneficiaries is to see Government discussing and making policies for an area that concerns them directly while the charity stays mute because it is not allowed by law to intervene or even talk publicly about that area?

**Anna Turley:** My hon. Friend makes an important point. When people support a charity—whatever the issue, whether it is cancer treatment or supporting the elderly to have a dignified older age—they want to see it making a difference, and that is in everything, from campaigning and having a loud voice nationally to seeking to secure changes to our society.

**Tom Tugendhat** *rose—*

**Anna Turley:** I am going to make some progress, if I may—I apologise to the hon. Gentleman.

The new clause seeks to prevent what the shadow Minister for the Cabinet Office, my hon. Friend the Member for West Bromwich East (Mr Watson), described last month as

"a fundamentally illiberal Government that railroads proposals through Parliament without debate and seeks to limit scrutiny whenever and wherever possible".

It is the same mind-set that regards

"the FOI Act…as an irritant and the Human Rights Act…as nothing but an inconvenience"

and that goes in for

"squeezing the finances of the political parties who oppose you becomes not just acceptable but desirable."

The lobbying Act was a part of that fundamentally illiberal approach and an attempt to gag charities. It came from the same fear of public scrutiny and accountability. The new clause seeks to protect that important freedom.

In 2010, the coalition agreement promised that the Government would

"throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account."

How much, it seems, has changed, yet the Government still seek to ensure that charities are accountable—and rightly so. From today's papers we can see that they are considering extending the Freedom of Information Act to charities that deliver public services. I would be happy to extend the Bill process if the Government wish to table further amendments to that end, so that we may have that discussion. Transparency, accountability and freedom to challenge must work both ways.

**Mr Mak:** The hon. Member for Hove talked about the public's expectations when they engage with or contribute to charities. Surely the public's expectation is that charities will focus on their community work and their help for vulnerable groups, rather than on party politicking. The new clause would blur the clear line that we have now.

**Anna Turley:** This is not about party politicking. Is the hon. Gentleman seriously suggesting that an organisation such as Shelter should simply stick to providing advice to Members and not seek to challenge the Government and politicians of all sides, holding them to account? That is what we are seeking to protect.

The Commission on Civil Society and Democratic Engagement also found that voluntary groups embroiled in Government contracts regularly face threats to remain silent on key Government policies. Many neglect to speak out on issues plaguing society for fear of losing funding or inviting other unwelcome sanctions. The health of our democracy depends on people's right to campaign on the issues they care about. The lobbying Act was an attack on our democracy. It hits charities and campaigners and limits their right to fight for important causes while allowing professional lobbies to escape scrutiny. It has left expert organisations that have a vital contribution to make to public debate unsure whether they are allowed to speak out. Governments should not be afraid of criticism or lively debate. As the old saying goes, politics is too important to leave to politicians. We seek to protect this right of charities to have a loud and respected voice in our democracy. I commend the new clause to the Committee.

**Wes Streeting:** It is a pleasure to serve under your chairmanship, Mr Hamilton. I add my voice to those congratulating you on your new role in the shadow foreign affairs team. I am sure your experience will be greatly appreciated throughout the whole House.

I confess to feeling some responsibility for this discussion. The question we should always ask when debating any potential law is: what is the problem we are trying to fix? I understand the problem the new clause is trying to address. It is, as my hon. Friend the Member for Redcar described, the chilling effect that was undoubtedly caused by the gagging law passed by the previous Parliament. I will talk about that chilling effect shortly, but it is worth remembering why that gagging law was passed in the first place. It was, of course, because some very foolish Liberal Democrat MPs and a few Conservatives made the decision prior to the 2010 general election to sign a pledge in a Committee Room down the corridor with me, as president of the National Union of Students, that clearly stated, "I will vote against any increase in tuition fees and will campaign for a fairer funding system."

The irony was that, prior to the general election, I was hauled in by members of the Liberal Democrat party leadership, who subsequently joined the Cabinet, to explain why the NUS had gone so soft and was not demanding abolition of all fees in line with Liberal Democrat policy. That would have been laughable in itself, given subsequent events, were it not for the fact that previously, as leader of the NUS, I was dragged up to a particularly dreary Liberal Democrat spring conference at Harrogate expecting to endorse its new graduate tax policy as the "Labour" president of the NUS. Of course, it was never a party political role—*[Laughter]*—but nevertheless, there I was, ready to endorse the Liberal Democrat graduate tax policy, which never came to fruition.

That is an important example because, even as president of the National Union of Students, which is arguably one of the most small "p" political charities where candidates stand on political tickets—I was elected as a Labour president of the NUS—there was never any doubt in my mind about who I was accountable to and who I served. I was elected first and foremost—in fact, only—to serve students. If that meant going up to a wet and windy Liberal Democrat spring conference to stand alongside its leader and endorse a policy that, sadly, did not come to pass, I was prepared to do it.

In the same way, I told Lord Mandelson, when he was Business Secretary, that unless there was student representation on the Browne review, he would find me and 100 other student union presidents outside the Business Department holding up signs saying, "Students let down by Labour". The point is that, whoever is in government, if sometimes they take decisions that impact on beneficiaries or communities that we serve under the auspices of our charitable objectives, we must have the muscle to hold their feet to the fire.

That happens today to Labour politicians up and down the country, whether it is the Labour-led Welsh Assembly Government or Labour in local government. Look at the work that the Refugee and Migrant Forum of Essex and London does. It threatened to take the Government to court over their terrible "go home" vans and was prepared to turn up at its local Labour council to say it must do more to support refugees and migrants.

The Ilford Salvation Army does a load of great work on homelessness, and I want it not just to provide for homeless people with direct provision, but to turn up at the door of their local councillors or Members of Parliament asking them to explain why public policy is having a detrimental impact on those people and how it needs to change.

**Tom Tugendhat:** The hon. Gentleman is making a powerful case for the ability of charities to explain themselves, and I fully support that. Will he point to the part of the Bill or any element of it which prevents that and therefore creates the need for the words "political campaigning", not just campaigning on issues?

12.15 pm

**Wes Streeting:** We are debating new clause 2. Members can see it but, for the benefit of those watching, let me point out that I do not see any reference in it to party political campaigning. It would simply enshrine in legislation the right of charities to undertake political activity. That is important, because a chilling effect followed the gagging law, which had a number of practical implications. For example, charities spent ridiculous amounts of time with spreadsheets trying to calculate their national spend versus constituency spend, and whether they were close to the spending limits and whether that would affect their collaboration with other charities.

I thought the Conservatives were the party that wanted to scrap red tape, yet they have generated a whole load of red tape for voluntary sector organisations whose funds would be better spent on helping their beneficiaries through either direct service provision or lobbying and campaigning. Students unions at the last general election were afraid to hold hustings events. Of course they should do that—it is nonsense that they should not hold those events. The gagging law had a chilling impact.

**Tom Tugendhat:** The hon. Gentleman is being extremely generous in giving way. I do not know about his hustings events, but most of mine were held in churches, which are almost by definition charities. The number of charities that were afraid to hold hustings in my community was zero, so I am baffled as to why he feels that some were afraid about that.

**Wes Streeting:** I am simply citing the representations I have had from my old colleagues at the National Union of Students about the impacts of the gagging law. It is important to put that forward. I was the head of a charity at not one but two general elections. First, I was president of my university's students union back in 2004, where our "Get out the vote" campaign in Cambridge undoubtedly contributed to the loss of an excellent Labour MP, in the form of Anne Campbell—she had abstained on the Second Reading of the Higher Education Act 2004, which I am sure contributed to that. Secondly, during the 2010 general election, I was president of the NUS.

At that time, charities were well constrained from party political activity and endorsing political parties, and there is unlikely to be a single charity campaigner in the country who cannot cite CC9 of the Charity Commission's guidance chapter and verse, which is clear about the restrictions on charities in party political campaigning. The gagging law passed in the previous Parliament was a solution in need of a problem. There were no previous problems; it was just that the Liberal Democrats got scared of the consequences. Alas, even the gagging law could not save them.

Finally, on the general attitude to the voluntary sector's political representation and campaigning, too many Members of Parliament seem to be happy to turn up and have photographs with guide dogs at party conferences, pop along to their local Barnardo's outreach and have photographs with service users and be there for photographs, leaflets and press releases, yet when it comes to being confronted with the consequences of the decisions this place has made under successive Governments, they do not like the hard truths.

We need to think about the voluntary sector's reach and its broad focus on speaking up for and serving the most disadvantaged in our society—people who do not know how to find their way into the corridors of power. Incidentally, those in the sector are not like the many commercial organisations that have also had significant amounts of public money, but which can none the less

*[Wes Streeting]*

exercise their muscle in Committees, in the corridors in this place and on the Floor of the House. These are charities that speak up for some of the most dispossessed and disadvantaged in our society, and when they say that the gagging law has had a chilling effect, it is incumbent on us to listen and to take this simple, uncontroversial measure to ensure that every charity knows that they are empowered to make political representations to speak truth to power on behalf of their beneficiaries.

**Mr Wilson:** Let me begin by putting things right and congratulating the hon. Member for Cardiff Central on her promotion to shadow Justice Minister, which is something I should have said earlier. My heartiest congratulations to her. Things have warmed up a bit in the Committee this morning. I am glad to see that pulses are racing and faces are reddening: that is a good sign for healthy debate in Parliament.

I happily repeat for the Committee's benefit what I said in our first sitting, as well as many other times in public: I support charities' right to speak up for their beneficiaries, whether I, as the Minister with responsibility, or the Government like it or not. I cannot be clearer than that. Charity law already permits charities to undertake non-party political campaigning that furthers the charity's purposes and that the trustees consider to be an effective use of its resources. That can legitimately involve campaigning to change the law or a policy, and non-party political campaigning to support such a change. That is absolutely clear. Charities must not support a particular political party. That is established by case law. It is defined widely, and it includes a charity promoting a political party event to its members. A charity cannot be used as a vehicle for the expression of the political views of its trustees or staff members.

Perhaps the hon. Member for Redcar got mixed up in what she was trying to say earlier, but she has the chance to put it right. It is clear that what she was suggesting is outside the law. If the Badger Trust were promoting an event for all political parties, that would be different, but promoting one party above another is clearly outside the rules and the definitions.

**Wes Streeting:** Is the Minister seriously saying that there are not charities up and down the country that have put on events hosting senior politicians of all parties and invited beneficiaries? Is he saying that charities should not do that?

**Mr Wilson:** It is astonishing how easily the hon. Gentleman gets the wrong end of the stick. I was clear that it is permitted if it is all parties, not one party. He said that that those charities invite Members of all parties to events, and that is the important distinction. If, as the Badger Trust did, a charity emailed its members to invite them to one political party's event, that would be considered a very close association with one political party. If it did the same for all political parties, as the hon. Gentleman said without understanding the implications of that, that would be okay.

**Wes Streeting:** I cannot speak with authority about that specific case, but with the notable exception of big set-piece events, such as the Citizens UK events that were attended by the party leaders, we do not seriously expect the Prime Minister to turn up to an event hosted by a national charity and find people such as Natalie Bennett, Nigel Farage and all sorts of other people who will never have his job standing alongside him being given equal weight. Which other random parties should appear with the Prime Minister at charity events?

**Mr Wilson:** I think we are straying into the realms of electoral law rather than charity law, and I am sure you do not want us to stray too far in that direction. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 applies to all third-party organisations campaigning for a particular electoral outcome. It does not specifically target charities or prevent them from campaigning to further their charitable purposes. The Charity Commission's guidance CC9 makes that absolutely clear.

The Hodgson review, which is under way and will report in the next couple of months, will look at all those issues and consider in detail all the representations that are made to it. I think the Opposition should have waited for the review to see the detail of the representations made and whether there is evidence that things are going wrong and that the so-called chilling effect is taking place.

There is no bar to charities or student unions holding husting events, provided they do so in a balanced, even-handed way that furthers the charity's purposes. Like many other Members, I am sure, I attended the student union debate in my constituency. I am very surprised that any student union was worried about putting on an even-handed debate, open to all parties.

The Charity Commission's guidance is clear and comprehensive. Unlike primary legislation, guidance can be relatively easily updated, with proper consultation to ensure that it reflects current case law and other developments, such as the rise of social media. In recent years, there have been cases where charities, inevitably, have strayed on to the edges in what they are doing in social media. The guidance on that is obviously fairly new, and it is important that it is there.

I would say simply that the new clause is unnecessary, unless the hon. Member for Redcar and her colleagues are arguing that charities should be able to engage in party politics, in which case I very strongly object. What we heard about the Badger Trust emailing its members asking them to go to a single party political event and sort of supporting the manifesto elements that had been introduced would fall into the category of party political activity. We should keep charities and party politics completely separate. Where charities engage in non-party political activity, they should take extra care to protect their independence and to ensure that they do not give the impression of being politically partisan in any way, and that is the category that would apply with regard to the Badger Trust.

It is right that we have an independent regulator in the form of the Charity Commission to investigate concerns where charities may have overstepped the mark of what is acceptable, and some have done that in social media in the last couple of years. Where the dividing line between charitable and political becomes blurred and charities come to be seen as politically biased or aligned with a particular party, there is a real risk of public trust and confidence in charities being degraded.

One of the charities' strengths is their independence and their ability to stand outside politics, and I would really hate to see that undermined by the new clause.

**Louise Haigh** (Sheffield, Heeley) (Lab): In the last Parliament, before I was an MP, I had a little back and forth with a charity known as the New Schools Network, which was set up by a former special adviser to the present Secretary of State for Justice deliberately to implement Government education policy on free schools. To me, there is a clear clash there between charitable status and implementing a particular political party's policy stance, but this Government have made no effort to address that. Given that that was a clear breach and that the Charity Commission actually had to investigate the charity in question, I do not feel that the Minister's point about making sure that charities are separate from party political activity stands.

**Mr Wilson:** As far as I am aware, there was no finding of any inappropriate party political activity against the New Schools Network. People can make complaints about all sorts of things, but whether those are found to have any evidential base is quite another thing. There are lots of examples of think-thanks and other organisations that are charities that want to put forward new ideas in the educational sphere, and as long as they have an educational purpose and they stay outside party politics, there is absolutely no reason why they should not do that. Just because, in the early days of the new free school network, the Labour party opposed free schools, that does not mean that that particular organisation did not have the right to exist. The fact that the Labour party did not like what it was saying is neither here nor there; it had a right to express its views freely, as I and others here—*[Interruption.]* As long as they are not party political—I have made that absolutely clear.

**Louise Haigh:** But it is party political.

**Mr Wilson:** The New Schools Network is not a party political organisation. I think that that is best left there.

**Peter Kyle:** The Minister talks about the importance of independence and the fact that beneficiaries need to see charities being independent-minded. They absolutely do, but does he not accept that to be independent, charities need to be able to choose the terms on which they engage with public policy? It is interesting that the hon. Member for Worthing West (Sir Peter Bottomley), who sits on the Government Benches, has invited Donald Trump to his constituency because he thinks it will be an important statement of free speech in our country. Is it not strange that we live in a world where Donald Trump and billionaires are invited here to demonstrate the principle of freedom of speech, while we are discussing charities' freedom of speech being inhibited in the run-up to a general election, when the voices of the disempowered are needed the most?

12.30 pm

**Mr Wilson:** I simply do not agree with the hon. Gentleman's characterisation of the law as it stands, because charities can and do campaign on policy and political issues today. Members of my party are particularly charitable people, although they are not charities themselves, and if, on the basis of promoting freedom of speech, they want to invite people to come and speak in their constituency, they should be free to do so.

**Tom Tugendhat:** Speakers on both sides of the Committee have been extremely generous in giving way, so I will be as brief as I can. Will the Minister identify that there is a difference between executing Government policy, such as free schools, and lobbying to achieve political party aims? They are two separate things. Will he also identify that there is a difference between freedom of speech for individuals, which we all enjoy in these islands, thank God, and have done for many hundreds of years, and the freedom of organisations that receive taxpayers' money—money taken by force, I remind the Committee —to lobby in a different way? The two are necessarily different.

**Mr Wilson:** My hon. Friend makes the points powerfully. He has returned a number of times to a point that is relevant and of huge public interest: charities should not use Government funding for political activity. That should be clear from the terms and conditions attached to any Government funding of a particular charity. For political activity, charities can use other funding, such as voluntary donations or earned income from trading. I understand what he says, and I have set out clearly the Government's view .

**Peter Kyle:** The hon. Member for Tonbridge and Malling makes an important point. Empowered individuals absolutely have the right to speak for themselves, as does any citizen of this country. The problem we have is that some citizens in this country do not have the ability to be heard or to voice their concerns—the disempowered people, who are often hidden away from general discussion and from public policy. That is why civil society organisations need the power to speak vocally on behalf of the people who do not represent themselves equally in a democracy. Does the Minister not agree?

**Mr Wilson:** Once again, I am surprised at the hon. Gentleman's question. At the outset, I said clearly that charities should be able to speak truth to power. That is absolutely fine—

**Peter Kyle:** Not during an election.

**Mr Wilson:** Whatever time of year it is. The hon. Gentleman singles out elections. We have Lord Hodgson looking at this. The Charity Commission has looked at the incidents that took place during elections. So far, I have seen no evidence of any chilling effect, and I await Lord Hodgson's report to support the hon. Gentleman's case.

Attempting to put into statute a provision of case law risks changing the boundaries of what is permitted. It just is not feasible to encapsulate all the nuances of case law in a simple single statutory provision. We have already explored those risks in the context of clause 9 and the protection of charity assets, and it would be no different here.

It is not clear whether new clause 2 would permit charities to support political parties, for example, by allowing charities to undertake political campaigning without defining exactly what that means. Given our earlier conversation about the Badger Trust, I think

*[Mr Rob Wilson]*

even the hon. Member for Redcar is not clear about what constitutes political campaigning and what does not. The new clause is just one example of where a well meaning attempt to codify case law in a statutory provision can go badly wrong, resulting in potentially significant unintended consequences.

There is also a risk that the new clause would permit charities to overstep the current mark in another way: under the law as it stands, charities cannot engage in campaigning to such an extent that it calls into question their charitable status. If the only thing the organisation does is non-party political campaigning, one would question whether it is an organisation with political rather than charitable purposes. That is already encompassed in case law, but it is not clear to me whether new clause 2 would encompass that restriction, potentially opening up charitable status to political organisations. That would clearly damage public trust in charities, which I am sure the hon. Lady does not intend.

**Tom Tugendhat:** Forgive me for intervening once more, but on that point, does the Minister believe that it would be wise for charities to identify how much they spend on their core activity and how much on campaigning?

**Mr Wilson:** My hon. Friend raises a question of enormous public interest. Only last year the Charity Commission looked at whether charities should be required to submit details of their campaigning spend as part of their annual return process, details of which would have been published on the register of charities. The commission concluded that such a requirement would create a significant amount of work for charities and decided not to include that in the annual return for 2015. However, the commission did note the huge level of public interest in the issue and said it would look at the matter again. I welcome that and encourage the commission to keep the matter under review. I hope that clearly answers my hon. Friend's question.

Even in the unlikely event that the boundaries of law were not shifted by an attempt at statutory definition, one would still expect legal challenges to test whether the law had in fact changed, by design or otherwise. There is further risk in putting this in the Bill since it would risk politicising charities' right to campaign. Ministers, rather than the independent regulator and the courts, would be responsible for the provision, which could leave it open to political interference over time.

I hope the Committee will agree that one advantage of case law provision is that it is in the hands of an independent regulator and the courts and is not subject to ministerial intervention. As I said, my noble Friend Lord Hodgson of Astley Abbotts is currently reviewing evidence of the impact of 2014 Act on charities and other organisations in the run-up to the election. I understand his report is expected reasonably soon, and I look forward to seeing the findings and whether there are lessons to be learned.

I also point the Committee to the Charity Commission's recent publication of the cases it investigated in the run-up to the 2015 general election. From looking at those cases, one gets a good impression of the independent regulator properly exercising its regulatory role in this area in a very proportionate way.

I hope that I have given the reassurances that Opposition Members seek about charities' right to speak out for their beneficiaries, while cautioning against the dangers of statutory provision, and hope they will not press the new clause.

**Anna Turley:** I thank the Minister for his explanation, although he has not convinced us—he will be surprised to hear that. We will not press the new clause to a vote now because we want to return to it on Report. I am sure hon. Members look forward, as I do, to further discussion on the Floor of the House.

I was struck by the Minister's passionate defence of the independence of the charitable sector and his desire to protect it from the overbearing oppression of political campaigning forced on it by the new clause. I would love to know how many charities begged and pleaded with the previous Government to bring in the gagging Bill to protect them from overbearing political parties forcing them to campaign. In fact, the feeling from the sector was quite the opposite: they were asking for independence from being gagged and being told they could not. I fundamentally disagree with the Minister's claim that he is trying to protect the sector's independence. Its independence to speak with its true voice and commitment is what the new clause is about.

I hope I am not naïve in saying this, but for me the basis of politics is to try to make a difference and to find solutions to problems. So many of the aims and objectives that we in this room all share are completely concurrent with those of the charitable sector, so it is inevitable that on many of the issues we try to address and change, charities will feel just as strongly and passionately as we do. They will try to influence us because we are in a position of power to make decisions.

**Mr Wilson:** I would appreciate it if the hon. Lady gave me three quick evidence-based examples of charities being stopped from pursuing issues on behalf of their beneficiaries. I hope that her party has given examples to Lord Hodgson to show where that has already happened. It would help me and other Conservative Members to understand.

**Anna Turley:** I gave examples during my speech. I will be happy to resurrect them on Third reading and to submit them. Going back to the point about the independence of student unions, a university in my area cancelled a hustings because it was extremely cautious. It had sought expensive legal advice and did not proceed because it was not sure that it was sufficiently meeting its charitable status in the number of people and different parties it was inviting. That is a clear example from my constituency.

The 2014 Act is a classic incumbency piece of legislation from a political party that has gone far from its roots and become immersed and entrenched in Government, pulling up the drawbridge and becoming separate from the ideals that drive politicians and the sector. I believe that it is incumbent on all political parties, but particularly in Opposition, to listen right through to the day of a general election to the challenges that civil society sets out to us, its problems with the policies we make and how it exposes to us the challenges facing society. We do not have all the answers, but it is important that, as

I said, right up to the day of a general election we continue to listen. That Act had, as the sector has identified, a clear effect on its ability to do that.

**Louise Haigh:** The indignation of Conservative Members that this would not apply if charities were acting in this way toward their own party is a little hard to swallow when, as my hon. Friend said, the Government are attempting to weaken FOI. I note that the Minister did not respond to that point. I hope he will intervene and correct me. This year, the Government, including his own Department, failed for the first time in 50 years to publish Cabinet papers due to the National Archives and failed to come to the House and explain why. I hope the Minister will intervene and correct me on both points, or provide a timetable for action.

**Anna Turley:** I thank my hon. Friend because she is absolutely right. Every political party comes into Government with the best ideals—we heard from the coalition that they would be the most open, transparent and accountable Government ever. Suddenly the fear sets in, and when they start to hear from the public things they do not like it is easy to pull up the drawbridge. We are seeing that with a range of measures from the Government.

Turning briefly to badgers—we have heard a lot about them today; I am very fond of them. I have not seen the email, but despite what Government Members have said, I am still struggling to understand the issue—*[Interruption.]* The Minister sighs in despair. I will try to explain and perhaps he will show some tolerance for those of us who are struggling to keep up.

If a charity has aims and objectives such as saving badgers, it might write to all political parties setting out what it would like to see in their manifestos, setting out its aims, ambitions and aspirations. One of those political parties might write back saying, "Fantastic; we love badgers too. We want to put that in our manifesto and to have an event to launch it. We want it to be part of our rural ambitions." Would it not be understandable if that charity engaged with that political party, attended events, and discussed, debated and challenged that manifesto to promote its cause?

**Mr Wilson** *indicated dissent.*

**Anna Turley:** The Minister shakes his head, but I do not know why that is unacceptable. I admit that I do not know the individual case, so I cannot comment on the specifics, but judging by what has been set out, I do not have a fundamental problem with a charity that emails its members to advise them to go to a political event. It could advise them to go to three party events—if another party had accepted its views on badgers, it would have done the same thing with that party. This is about putting badgers first—badgers before politics.

12.45 pm

**Robert Jenrick:** The hon. Lady is being generous in giving way. The reason why it is concerning is not about party politics; it is about faith and trust in charities. In my constituency, 60% of the electorate voted Conservative, I am pleased to say, but I am sure that many of my constituents who voted Conservative share her passionate support for badgers and, if they were members or supporters of the Badger Trust, would have been disappointed to see it explicitly support one political party. The statistics about lack of trust in charities suggest that of those people who say that they do not have faith in charities or that their faith in them has been diminished, the number who cite partisan and party political campaigning by charities as a reason has tripled in the past three years. Is the hon. Lady not concerned about that?

**Anna Turley:** I do not recognise that evidence, because what has come to us indicates quite the opposite.

**Robert Jenrick:** I will send it.

**Anna Turley:** Please do. To go back to the hon. Gentleman's point, I am delighted for his sake—if not for ours—that so many of his constituents voted Conservative, but if many of them care passionately about badgers and see such measures in the Labour manifesto and not the Conservative manifesto, surely they can challenge that party's views, because views can be changed. There will always be things that a political party stands for that we will disagree with—I am sure that many of us on both sides of the Committee feel that. Things are not set in stone and this measure does not seem inflexible and against the grain. I am happy to explore that case in more detail, but I remain to be convinced.

**Mr Wilson:** In the spirit of co-operation that we have had in the Committee, perhaps I can help the hon. Lady. The Charity Commission will send her a copy of its report on the Badger Trust so that she can see the details of the case. I hope that will help inform her for Third Reading and Report.

**Anna Turley:** I very much appreciate that, but, on the principle set out, I do not see an explicit problem with a charity emailing its members about attending a meeting of a political party. That is my baseline, but I look forward to hearing more about that case, because I cannot make a decision without seeing all the details.

I want to make another comparison. Many charities attend political party conferences to lobby, influence and try to shape political thinking. Many of them will say, "Actually, we can't afford to go to every party conference," so they may go to only one, whether that of the party in government or in opposition or the party that most shares its views on whatever its issue of the day is—I will not say badgers again. Is it at odds with its political neutrality if it attends just one party conference to try to influence and shape thinking? Those are difficult issues for charities to think about.

**Jo Churchill:** Those charities are making commercial decisions about how they can best influence the landscape. That comes back to the element of trust; that when someone donates, they are donating to the cause and not to a political party. A problem would come about if I were donating to a charity that was explicitly promoting a political party via a policy. I would defend to the death any charity's right to be at every party's conference and to put its points forward. What is being proposed would allow people, via the back door, to support one party over another, and that is not right.

**Anna Turley:** It would not; it would just allow charities the opportunity to be free from restrictions and to able to influence political parties in the way they think best, which is what the hon. Lady was trying to defend.

**Robert Jenrick:** I promise that this is my last intervention on the hon. Lady on this point. We should be careful what we wish for here. In the United States, the blurring of the line between philanthropy and politics is much greater than in this country. In fact, it has been legal for charities to support parties and candidates for only 50 years in the US, where we see wealthy philanthropists setting up charities with blurred objectives. We should all defend against that passionately.

**Anna Turley:** I totally agree, but I am not aware that we were in the same situation as America before the hon. Gentleman's Government introduced this Bill. I do not share his view that our revoking these powers would provoke that kind of situation. As I said at the beginning, we are trying to defend the independence and voice of the charitable sector and to enable charities to speak truth to power without fear or favour and to shape and influence their view on what would build a better society, in accordance with their charitable aims and, hopefully, with the views of many in the Committee. We will not be pressing the new clause to a vote, but we will return to the matter at a later stage. I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

**New Clause 3**

INDEPENDENT SCHOOLS' FACILITIES: PUBLIC BENEFIT

'In section 4 of the Charities Act 2011 (the public benefit requirement), after subsection (4) insert—

'(5) Independent schools which are charities must engage actively with local communities and state schools with a view to sharing resources and facilities.

(6) The Charity Commission must publish guidance setting out the minimum that independent schools which are charities must do to comply with the duty in subsection (5).'.'—*(Anna Turley.)*

*This New Clause would require independent schools to engage with their local communities and state schools to share resources and facilities.*

*Brought up, and read the First time.*

**Anna Turley:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss the following:

New clause 4—*Independent schools' sports facilities: public benefit—*

'In section 4 of the Charities Act 2011 (the public benefit requirement), after subsection (4) insert—

'(5) Independent schools which are charities must engage fully with local communities and state schools with a view to sharing sports facilities and coaching expertise.

(6) The Charity Commission must publish guidance setting out the minimum that independent schools which are charities must do to comply with the duty in subsection (5).''

*This New Clause would require independent schools to engage with their local communities and state schools to share sports resources and facilities.*

New clause 5—*Independent schools' music and arts facilities: public benefit—*

'In section 4 of the Charities Act 2011 (the public benefit requirement), after subsection (4) insert—

'(5) Independent schools which are charities must engage fully with local communities and state schools with a view to sharing facilities for music, drama and arts.

(6) The Charity Commission must publish guidance setting out the minimum that independent schools which are charities must do to comply with the duty in subsection (5).''

*This New Clause would require independent schools to engage with their local communities and state schools to share music resources and facilities.*

New clause 6—*Independent schools' careers advice: public benefit—*

'In section 4 of the Charities Act 2011 (the public benefit requirement), after subsection (4) insert—

'(5) Independent schools which are charities must engage fully with local communities and state schools with a view to careers advice, work experience and further education admissions advice.

(6) The Charity Commission must publish guidance setting out the minimum that independent schools which are charities must do to comply with the duty in subsection (5).''

*This New Clause would require independent schools to engage with their local communities and state schools to share careers advice, work experience opportunities and further education admissions.*

**Anna Turley:** I am sure that Members will be sick of my voice today, not the Minister's! I rise to speak in support of new clause 3 and, for ease, I will also speak to all the new clauses in the group. New clause 3 would ensure that independent schools that wish to benefit from charitable status engage actively with local communities and state schools with a view to sharing resources and facilities. Again, I must pay tribute to the noble lords in the other place who supported the new clauses, particularly Lord Moynihan, sports Minister under Margaret Thatcher and chairman of the British Olympic Association between 2005 and 2012. For that reason, I was surprised to hear the new clauses criticised as "prejudiced and outdated" by the Secretary of State for Education in the media last night.

The vast majority of independent schools in this country—more than 2,000—benefit from charitable status, meaning that independent schools are effectively publicly subsidised by taxpayers whose children do not attend such schools to the tune of £700 million a year in the form of charitable rate relief. Charitable status for private schools may have made sense when many were established prior to the introduction of compulsory education. Many of them were set up to educate "poor and indigent boys". Harrow, for example, was set up as a grammar school by instinct of charity to educate the needy, but the world has changed.

Seventy years ago, after the Education Act 1944, Conservative Education Minister Rab Butler reflected:

"The public schools are saved and must now be made to do their bit."

I argue that that bit has not been sufficiently done. Sadly, despite the fantastic work taking place in many of our state schools and the strong investment and reform programme put in place under the previous Labour Government, which transformed state school achievement, the reality is that the gap is still too broad.

Independent schools remain one of the most significant bulwarks of social inequality in this country and continue to entrench privilege and hamper social mobility. Young people from independent schools, who make up 7% of

their age group, take up nearly 50% of the places at Oxford and Cambridge, with the subsequent statistical likelihood of earning more and being more likely to be in professional employment within six months. Within the professions, 71% of senior judges, 62% of our senior armed forces and 55% of civil service departmental heads attended independent schools, compared with just 7% of the population.

**Mr Wilson:** I want to be clear about the case that the hon. Lady is making. It is certainly not in the new clause, but is she saying that she is an opponent of independent schools and that they should be abolished? It would be helpful to understand that.

**Anna Turley:** I appreciate the Minister's intervention. I am a realist and a pragmatist in all things. I recognise the huge contribution made to this country by many independent schools, faith schools and other schools that would not necessarily be my first choice for my children. I am not advocating their abolition, but rather that they should deliver over and above what they currently do and justify taxpayers' money supporting them through their charitable status.

**Tom Tugendhat:** The hon. Lady is making some interesting points, and it might surprise her to know that I do not disagree with a lot of them. The best independent schools do exactly what the Bill proposes. Tonbridge School in my constituency does exactly that. Lord Moynihan is a very wise man, because he sends his children to Tonbridge School and appreciates what really good independent schools can, and indeed should, do.

I would argue strongly that it is not independent schools that have caused the division in society to which the hon. Lady refers, but rather the withdrawal of the ladder for the many others. The very best schools in my constituency—I must declare an interest: I am a governor of Hillview, a non-selective secondary school—do indeed provide that ladder and reduce the social division to which she refers. It is therefore not simply a question of identifying an independent school; it is about an entire educational range.

**Anna Turley:** I agree with much of what the hon. Gentleman says. We have seen the damage that selective education has done, and the pulling up of the ladder has had a quite devastating impact. I do not believe that it is acceptable. Having been educated in Kent—I am going back to far too long ago—I have a strong view that there was quite a divisive approach to education in that county. Selective education is damaging to social mobility, and I share the hon. Gentleman's desire to challenge that in all its forms. I also recognise that many independent schools do an extremely good job in supporting the state sector.

**Tom Tugendhat:** Just for the record, I actually do support selective education.

**Anna Turley:** I appreciate that the hon. Gentleman supports state education—

**Tom Tugendhat:** Selective education.

**Anna Turley:** Okay.

**Peter Kyle:** To clarify, the new clauses are about trying to get better value for the public from private and selective education. To use a previous argument of the hon. Member for Tonbridge and Malling, where taxpayers' money is—

**Tom Tugendhat:** Taken by force.

**Peter Kyle:** —taken by force and given to selective education, we need to ensure that the public who pay for it get full value for it.

**Anna Turley:** I totally agree, and I will come on to that point shortly. I want to make it clear that my view of pulling up the ladder is selective education, but I will move on, because we can have a whole conversation outside the Committee on that. I agree with the good work that many independent schools are doing; it is just not enough, in my view.

A recent report by the Social Market Foundation showed that UK children who are privately educated are likely to earn almost £200,000 more between the ages of 26 and 42 than those in state schools. Independent schools seem to be stretching further away from even middle-class families, who have been priced out of private education because of an "endless queue" of wealthy people from outside Britain pushing up fees. Andrew Halls, the head teacher of King's College School in Wimbledon, south-west London, recently said that local lawyers, accountants and military officers had stopped sending their children to the school because of the costs. He said that in many cases, such schools have become

"finishing schools for the children of oligarchs".

It is simply not appropriate that while the social and financial advantages to independent school pupils persists, they are subsidised by the British taxpayer through the charitable status. My hon. Friend the Member for Hove made the point that I was going to make about the view of the hon. Member for Tonbridge and Malling on value for money. Charitable status is now an outdated and inappropriate financial privilege that is impossible to justify without substantial action from independent schools, which is what the new clauses seek to achieve.

Charitable status currently means that trustees of school charities have a responsibility to ensure they are running the school for the public benefit. Public benefit is part of what it means to be a charity, to operate as a charity and to report on a charity's work. The Charity Commission produces guidance for charity trustees on each of those aspects of public benefit and the particular issues that relate to the different charitable purposes that the law recognises. All charity trustees have a duty to have regard to the Commission's public benefit guidance and must report each year on how they have carried out their charity's purposes for the public benefit. The Commission publishes those reports on the online public register of charities and checks a random sample of them. Trustees must therefore take action to ensure that the school does not solely benefit those who pay fees, yet the critical point is that it is up to the trustees to determine how that is achieved, and that is what we seek to challenge.

*[Anna Turley]*

During the Bill's passage through the other place, these new clauses were voted down on the understanding that the Charity Commission would pursue non-legislative routes. The Charity Commission updated its guidance in October last year, but the only change was to "encourage" schools to show in their annual reports how, for example, they have shared sports facilities; there is no compulsion to do so. It can only be concluded from that limited reaction that there is no desire for any progress on this issue. Indeed, it goes against the very principle of why people send their children to independent schools. Why would someone pay to send their children to schools for the facilities if other local children who do not pay get to use them? There is no inherent incentive for independent schools to share their facilities.

1 pm

**Maggie Throup** (Erewash) (Con): The new clauses assume that every independent school has the resources that large and well known independent schools have. That is not always the case. In fact, quite a lot of independent schools share facilities or have to use other facilities. The amendments take a one-size-fits-all approach that I do not think would be acceptable to some of the small independent schools; they seem to have been missed out of the new clauses.

**Anna Turley:** I thank the hon. Lady for her intervention. The point is not how much the schools have, but the fact that the money they receive from the public purse is over and above what other schools receive.

**Jo Churchill:** Will the hon. Lady give way?

**Anna Turley:** I am very sorry, but as I said before I have to make some progress. I will rattle through, and I apologise to hon. Members on both sides for that.

If they want to keep facilities solely for their own pupils, schools must give up their charitable status. If they want to retain that status and the financial benefit that the parents of non-pupils pay for, they must allow non-pupils greater access. It is time to clarify the law. In the wise words of the Upper Tribunal, adjudicating between the Independent Schools Council and the Charity Commission,

"these are issues which require political resolution".

That is the purpose of the new clauses.

Independent schools will of course seek to reassure us of the other public benefits they claim to provide, but even the chief inspector of schools, Sir Michael Wilshaw, said that that model of partnership between independent and state schools was meagre stuff, describing it as "crumbs off your table". Why are independent schools expending their energy and resource—in fact, our resource as British taxpayers—educating the elites around the world, rather than helping to tackle the challenge of lifting educational attainment, expanding aspiration and tackling the social inequality that still exists in our country? That should be their charitable aim. That should be their public benefit.

There are many excellent schools in the state sector, some even better than independent schools, yet that is not true for all, and in some communities there is a stark division between the type of opportunities and facilities that can be enjoyed. The Opposition believe that this country deserves an education system where the majority of young people enjoy the same access to excellence as the privileged 7%. That is the intention of new clause 3.

I will quickly rattle through my comments on the other provisions. New clause 4 is about sports facilities, which I propose should be shared. I will not rehearse the broader arguments I just made, but will focus on the role that sport can play in tackling inequality, building cohesion and confidence and raising aspiration, and why sharing sports facilities can help schools to fulfil their public duty test and should be mandatory.

Evidence from the Department for Culture, Media and Sport shows that young people's participation in sport improves their numeracy scores by 8% on average. Underachieving young people who take part in sport see a 29% increase in numeracy skills, and returns on investment in sports programmes for at-risk youth are estimated at £7.35 of social benefit for every £1 spent. Sports programmes can strengthen social networks and community identity, yet inequality in access to sport for young people is still a huge barrier. A study by the Sutton Trust shows that more than a third of British medal winners in the 2012 Olympics were from private schools. Indeed, the trust says that that figure

"comes as no surprise as children in independent schools benefit from ample time set aside for sport, excellent sporting facilities and highly qualified coaches, while in many state schools sport is not a priority, and sadly playing fields have been sold off."

A survey carried out after the 2012 London Olympics found that "lack of facilities" was cited by parents as one of the biggest challenges facing schools trying to increase the amount of school sports. According to Sport England, the percentage of those on the lowest incomes participating in sport has hit the lowest level since records began. At a time of rising childhood obesity, less school sports and cuts to local authority leisure budgets, official figures show that most five to 10-year-olds say that the 2012 games did not encourage them to take part in sport.

In the light of all that evidence, the value of sport to young people, particularly those from the most deprived backgrounds, is clear. Independent schools should have a moral obligation as part of their charitable aims and their public duty test, and now, under new clause 4, a legislative obligation, to ensure that their facilities can have a positive social impact on children in their local communities.

New clause 5 focuses on music and, again, I will be extremely brief. We know that 84% of parents want their children to learn to play an instrument, and 82% say that music can help to teach children discipline. However, access to the learning of classical music, in particular, is restricted for many children. Sir Anthony Seldon, master of Wellington College, said:

"When the results achieved by independent schools are analysed, it is often without considering the role that a rounded education plays in this success—and particularly the role of the arts. It is also this unequal provision of culture that gives the alumni of independent schools a substantial advantage throughout life."

The cost of purchasing instruments is one of the most prohibitive factors. The joy of learning classical music should not be the preserve of those who can afford it. For the many reasons I have given, we believe that music resources should also be shared by independent schools that want to retain their charitable status.

New clause 6 would require private schools to engage with their local communities and to share access to careers advice, work experience and further education admissions. We think it is a vital measure, because it seeks to get to the heart of some of the inequality that becomes entrenched for those in private schools by access to opportunity for outcomes in later life. As I set out in my earlier comments, the evidence on the difference in opportunity in higher education and careers for pupils from independent schools is stark and not diminishing. They take up nearly 50% of the places at Oxford and Cambridge, but I will not rehearse statistics that I have already run through.

That building of confidence for the future from which many independent school pupils benefit, the access to wider opportunities, the networks that many schools have with higher education establishments and the informal opportunities for internships and work experience in the professions are the key to unlocking opportunity. The evidence suggests that having work experience or an internship on a CV is critical to finding employment. More than one third of this year's graduate vacancies will be filled by applicants who have already worked for the employer as an undergraduate. The critical questions are who gets those opportunities and how do they get them. Alan Milburn, in his 2009 report on social mobility, said:

"What has struck me so forcibly during the course of our work particularly when meeting young people from a whole variety of backgrounds is the emergence of a 'not for the likes of me' syndrome… Of course not everyone can be a doctor or a lawyer—and not everyone will want to be—but those with ability and aptitude need a fair crack of the whip to realise their aspirations…It is not ability that is unevenly distributed in our society. It is opportunity."

By giving children from state schools the opportunity to access the advice, guidance, support and networks that independent schools use for the advantage of their children, new clause 6 will go some way to breaking down the disparity in and inequality of opportunity that exists in our society and help to release some of the potential in our young people that otherwise might never be realised.

**Jo Churchill:** It is a pleasure to serve under your chairmanship, Mr Hamilton.

I read new clauses 3, 4, 5 and 6 with a degree of sadness and, because of my age, no small feeling of déjà vu. How many times have I heard the justification that to be fair we must regulate? Regulation and quotas, however, do not always work as we might want—the Labour party might know that from current experience. What saddens me about the new clauses is the lack of understanding of independent schools and the benefits that they bring to the table, including how they already contribute to the public good. The proposals would apply red tape to something that is already working.

Independent schools are inspected by the Independent Schools Inspectorate or by Ofsted, and their contribution to public benefit is already commented on in those bodies' assessments. The whole point of the Bill, it seems to me, is to give the Charity Commission the right to hold to account those who act in the name of charity. If an organisation has been granted the status of a charity, it is right and proper for it to be held to account for its behaviours and that of its trustees—we discussed that on Tuesday—and for its outcomes. That is as true for an educational charity as it is for any other.

Is there a little bit of mischief-making in the tabling of the new clauses? Yes, there is the cost of £700 million, but the taxpayer is also saved a cost in that the education of 500,000 children is paid for by individual parents, so the additional money is engaged in the system.

It is well documented that schools at the apogee, such as Eton and Wellington College, rightly sponsor local state schools and do all manner of things as part of their outreach. They teach older people computer skills, work with local primary schools, and cascade and absorb good practice—from the independent sector to the state sector and back into the independent sector from the state sector. It should be remembered, however, that 55% of all independent schools have fewer than 350 pupils, which means that it is not commercially viable for them to outreach all their systems to fill those gaps.

Incidentally, my children were educated nowhere near a private school. If we accept the new clauses, for those who are not fortunate enough to live near a well equipped private school we have created nothing but another two-tier system. Also, 28.7% of pupils educated in the independent system are from minority ethnic backgrounds, which is a higher proportion than in the state system.

A local example in my constituency is South Lee school. A new sports facility was required, and without prescription or any of the new clauses, the school set up a community interest company, working with my borough council, a charity called Sporting 87 and Bury St Edmunds cricket club. A community use agreement with the council kept rates for use affordable. The school uses the facilities during the day in term time and allows other schools to use them if possible. Everyone in the community is involved and at the weekends, evenings and in the holidays, it is fully used by tennis clubs, archery clubs, cricket and so on. Everybody gains.

**Maggie Throup:** Does my hon. Friend agree that the new clauses would undo a lot of the hard work that has been done to create partnerships between independent schools and the state sector? Forcing specific types of partnerships might undo all the good that is being done and would be detrimental.

**Jo Churchill:** I could not agree more—it is not always necessary to tell people how to behave well.

The school has forged great community links and the council and people in my constituency got another sports ground for very little investment. It helps social cohesion and health outcomes, among other things, as the hon. Member for Redcar alluded to.

My underlying belief is that people should be allowed to choose what is right for themselves and their family. The clauses would legislate choice and good behaviour out of the system to a degree, and that is regressive. Indeed, if my memory serves me correctly, the hon. Member for Hackney North and Stoke Newington (Ms Abbott) chose to send her son to a private school. As a mother, I can understand her need to make that choice about what is best for her child. Should we deprive others of that choice? I do not think so, but the new clauses could begin to do that.

The worry is that the clauses will not allow small schools that offer specialisms in areas that the hon. Member for Redcar discussed to continue to do so across the board, particularly for gifted music scholars,

*[Jo Churchill]*

those who are talented at sports and budding linguists. All have benefited from education in the independent sector. Many of these schools offer bursaries and 100% scholarships to youngsters whose parents would not normally be able to afford the fees. Similarly, and of the utmost importance, some of the best education for our children with dyslexia or autism occurs in the independent sector, easing the burden on state schools to provide special needs support.

**Peter Kyle:** As an acute dyslexic, I understand the benefits that can be bestowed on students who are lucky enough to have parents who are able to send them to such schools. Does the hon. Lady accept that she is citing best practice in the private schools sector, and that the new clauses seek to extend best practice throughout the whole sector?

**Jo Churchill:** No, I am not. I am standing here and saying we must be allowed to choose. I am the mother of four children, two of whom are acutely dyslexic. They have both been educated fully in the state system at a school that is excellent. What I am saying is that independent schools must be allowed to function as they see fit and to pay back in a way that is appropriate; the Charity Commission will be the regulatory body, as will Ofsted and the ISI. An organisation cannot be compelled to devolve out, because all that will do is create yet more unfairness.

Independent schools are often a vital resource, depended on by local authorities. That has to be considered, because we cannot account for all the specialisms. Many local authorities use such provision to help disadvantaged children to get on. More than 66,000 pupils in the independent sector have special educational needs. For that reason, we should be very cautious of doing anything that ties the hands of schools.

I believe that we should empower school leaders—and I mean all school leaders. Leaders in this sector often assert that the clear vision, ethos and purpose on which they are founded and the freedom to deliver allows them to excel. That should be there for all schools to allow them to bring rounded people into society who have the same fair chance at everything.

All schools with charity status currently have to demonstrate a charitable purpose. A strong Charity Commission will hold them to account. It should not be for us in this place to over-regulate. There are excellent examples of this Government promoting schemes that help, such as the National Citizen Service. My children attended the scheme with children from the independent sector and children who had been in dire straits with different authorities. All went on the scheme together, which allowed them to learn, experience and become well rounded.

1.15 pm

**Anna Turley:** I am big supporter of the National Citizen Service; it is a great thing. That is exactly the kind of example of what an independent school should be doing. If an independent school wants charitable status and its financial return, why can it not use that financial return for a programme like that?

**Jo Churchill:** There is no point. First, smaller schools, which make up more than half the number of independent schools, could not afford to put on a programme on such a vast scale. Secondly, a scheme exists to get social mobility between different areas and have children learn from each other. I am worried by the over-prescription of this measure and the need to regulate something that does not need to be.

I feel able to comment as somebody who believes in choice. The choice I made for my four children was to educate them entirely in the state system. The point at which they had any degree of paid provision was when they were in nursery. As they were all born during the previous Labour Government, I could not access any provision I did not pay for.

**Peter Kyle:** There is less now.

**Jo Churchill:** That is not actually the case. With the extension of provision to two-year-olds and three and four-year-olds, there will be considerably more than I was granted.

After many years as a school governor at a high-achieving secondary school in the state system and a primary school for those with special educational needs, I believe that independent schools have to abide by the obligations placed on them, and the Charity Commission is there to do a job. To prescribe their behaviour further is not only unnecessary but may well force small specialist schools out of existence due to the red tape and cost of administration. It is nothing to do with what they deliver.

These proposed new clauses are ill considered and should be rejected. They will not give any of us what we all desire, which is an excellent education for all our children, so they become well rounded individuals who can contribute to society and have an equal chance of doing what they wish.

**Mr Wilson:** I start by congratulating my hon. Friend on her excellent speech, which was clearly based on an enormous amount of personal knowledge. I also thank all Members of the Committee for their contributions over the past four or five sittings. We have had an excellent Committee stage, where we have given the Bill a rigorous check on what it should and should not do. I look forward to Third Reading and Report.

I agree that we should do more to promote stronger partnerships between independent and state schools. Where I differ from Opposition Members is in how we go about that. We should recognise that many strong partnerships already exist, as my hon. Friend and other hon. Members have said, and they are growing in number and impact.

Before I go into detail, I want to clear up a point the hon. Member for Redcar made about Lord Moynihan's views. Lord Moynihan actually agreed with us that encouraging charities to do more to share facilities was a better approach than legislating to force them to do so. That ought to be on record so as to make clear Lord Moynihan's views.

**Peter Kyle:** When I was an adviser at the Cabinet Office I had the benefit of working on the 2006 Charities Bill, later the Charities Act 2006, which brought in the public benefit test. We discussed public schools then

and considered drafting and implementing an amendment not dissimilar to the new clauses at that stage of legislation. At that point, we had representations from independent schools, which strongly said that they would improve community relations and that self-regulation and actions from within the sector would deliver demonstrable change. Can the Minister tell the Committee the degree by which the sector has improved in the intervening years and whether that will extend further without the need for legislation?

**Mr Wilson:** I thank the hon. Gentleman for that point. I will come to it later in my speech, rather than deal with it up front.

There are both principled and practical reasons why legislating to force charitable independent schools to do more is wrong and could be counterproductive. Let me start with the principled argument against these new clauses. Public benefit is a requirement at the centre of the definition of a charity. All charities, regardless of their size or charitable purpose, must exist for public benefit. Public benefit itself is not defined in statute, but has a meaning given by a body of case law that has been built up over several hundred years, which sets out clear principles but gives the definition the flexibility needed to deal with a wide range of types of charities. The way in which a charity demonstrates its public benefit and the extent to which it does so is for its trustees to decide, taking into account the circumstances of the charity and other relevant factors. It is not for the Charity Commission to interfere unless charities fail to meet the requirement.

An Upper Tribunal ruling in 2011 set the parameters for charitable independent schools. Public benefit must be real and not tokenistic, but beyond that it is not for the Charity Commission to dictate to schools the type or amount of public benefit they provide. That should be a matter for the trustees of the charity, who must take into account the charity's circumstances.

There is a wide range of ways in which charitable independent schools can and do provide benefits, including academic partnerships with state schools, sharing sporting or other facilities and expertise, and providing bursaries and other financial assistance to those who cannot afford the fees. There is also the important indirect benefit of relieving the taxpayer of the cost of educating 7% of the nation's children. It is for the trustees to determine the way in which their charity provides a public benefit. The law places the decision on which approach or combination of approaches the charity takes in the hands of the charity's trustees.

It would be wrong to single out one type of charity in legislation and stipulate one particular type and the extent of public benefit that it must provide. No other type of charity is treated in that way, and it would set a very dangerous precedent. What would be next? Religious charities, overseas aid charities or campaigning charities? Once the precedent has been set, the risk is that the temptation to interfere would be too great for some to resist, and specific legislative requirements could creep in over the years for different types of charities. If unchecked, there is a real danger that over time charities would be opened up to significantly increased state interference—whether or not politically motivated—which could seriously undermine the charity sector's independence. In this Committee, all parties have sought to protect the independence of charities and trustees.

**Anna Turley:** On the point about setting a precedent, the difference is that independent schools provide a service over and above state provision. There is statutory universal provision, but people choose to go in over and above that and send their children to independent schools. We should question the right of those schools to receive taxpayers' money. It is a unique situation in education, so we cannot simply say that it would set a precedent.

**Mr Wilson:** As I said, parents pay for education at independent schools, which relieves a huge burden on the state. It is very easy to dismiss the fact that private schools provide more than 500,000 places, but as I said to the hon. Lady earlier in our proceedings, abolishing independent schools would immediately create the huge problem for the state of how to educate those children.

**Anna Turley:** There is a short-sighted financial view about the cost of educating children and the saving to the state sector of educating children in the independent sector. We are dismissing some of the value that those children, their parents and families would put back into the state system, were they to be educated there. One should not see children simply as a financial burden on the state; they will contribute greatly to the state system.

**Mr Wilson:** I worry that the hon. Lady, along with a number of Opposition Members, has a mindset that the independent sector is better than the state sector. That might have been true under a previous Labour Government, but state schools have improved enormously under this Government. It is important to make the point that independent schools do not necessarily offer a better, more advantageous education for our young people than state schools any more. That view is being degraded year by year by the reforms and protected investment that we have put into our education system. It is very sad that the Opposition do not recognise or welcome that.

**Anna Turley:** May I take the Minister up on that point? He has made a sweeping statement that is not the case. He does a disservice to the reforms made by the Labour Government under the Building Schools for the Future programme—since cancelled—following 18 years of neglect that left many schools with leaking roofs. He does a disservice to our record. Why does the Minister think people send their children to independent schools, if there is no difference from the state sector? What is it that they are paying for?

**Mr Wilson:** There are many different reasons why people send their children to independent schools. I would not like to intrude on the decisions that families make up and down the country for the good of their children. Some may base the decision on distance, if they live in a rural area and the school is close.

**Anna Turley:** They do it for advantage.

**Mr Wilson:** If the hon. Lady is painting the situation as simply one of privilege, she is straying into territory she should not stray into. Many independent schools offer bursaries and many other ways to ensure that

*[Mr Rob Wilson]*

people who cannot afford to send their children are able to do so. We might want to pick up on that debate outside the Committee.

What is currently meant by public benefit has been determined by the courts over several hundred years. While not perfect, the current case law definition has served us well and we start interfering with it at our peril. In addition to our principled objection to these proposed changes, there are practical reasons why we do not support them. Over recent years, many independent schools have embarked on successful partnership projects with local state schools. Those have arisen from local needs and reflect good relationships between head teachers in the state and independent sectors. Forcing schools into particular types of partnership will not work in the long term and could undermine much of the good work that has already been done.

Legislation is not needed to make those partnerships happen. They are already happening and are growing in number. In answer to the earlier question from the hon. Member for Hove, according to the Independent Schools Council, 93% of its member schools—1,073—are already involved in partnerships with state schools. Of those, more than 900 are involved in sporting partnerships, more than 600 in music partnerships, almost 600 in academic partnerships, about 400 in drama partnerships and more than 200 in governance partnerships.

As my hon. Friend the Member for Bury St Edmunds said, when people think of independent schools they often think of the largest and most well known, but the reality is very different. More than half have fewer than 300 pupils, and in many cases they might have more limited resources than the local state school. For example, some may not have any sports facilities to share with local state schools. It would seem odd to legislate for something that some schools simply might not meaningfully be able to do. The measures proposed focus on sports, music, drama, arts and careers and higher education advice. They omit perhaps the most important category of partnership between independent and state sectors: academic partnerships.

Let me give an award-winning example. King Edward's School in Birmingham aims to improve teaching and learning for pupils in local state junior schools across the city. Its outreach programme has doubled in size in each of the past three years so that the school is now in contact with more than 11,000 state-educated children and more than 450 teachers from 130 different junior schools. More than 50 members of staff and 300 pupils from the school are involved, and activities have included a city-wide maths competition entered by teams from 110 state primaries, which has proved so successful that it now hopes to run annually.

1.30 pm

Closer to home, Westminster School runs a number of partnerships focused at raising the aspirations and ambitions of pupils from disadvantaged backgrounds. It sponsors Harris Westminster Sixth Form, a free school sixth form that enables pupils with a high academic potential from socially and educationally disadvantaged backgrounds to receive a high-quality education, enabling them to make successful applications to Russell Group universities. It also operates the Westminster summer school—a week-long event each July that provides up to 70 pupils from schools across London with academic tutorials, presentations from leading universities' admissions staff, and visits to leading businesses.

St Albans School has built strong community links through its long-running partnership programme. Pupils from four local primary schools use the swimming pool for their lessons on two afternoons a week. Masterclasses in ICT, design and technology, and science are held for local primary school children, and staff from the drama, music, art, maths and French departments travel to local schools to run classes and share their specialist skills with the children and staff.

**Wendy Morton:** I am grateful to the Minister for sharing those examples with us because they really show the breadth of partnerships that have evolved over time in different communities across the country. Does he therefore agree that the new clause would be so prescriptive—such a one-size-fits-all approach—that it would stop that really good way of working at a community level? I was brought up in an area where there was one school; the nearest school was probably about 15 miles away and there was no independent school. People like me would never have benefited from such a clause.

**Mr Wilson:** My hon. Friend makes her case powerfully. I would not seek to add anything because I agree with her. She is absolutely correct.

It is not just the largest schools with the most resources that are engaging in such partnerships. Belmont Preparatory School near Dorking has, for over a decade, provided facilities and resources for a local community pre-school music education group to meet twice a week, enabling early years children and their parents to enjoy music making and to form links between the local community and the school.

In order to show that strong partnerships already exist, the Independent Schools Council has created and is managing a "Schools Together" website that launches this month. I hope that everyone will have the chance to look at it. As well as showcasing existing examples of best practice, the website will act as a vehicle for the development of new partnerships between the independent and state sectors, enabling schools to register their interest in developing a partnership. So far, more than 175 schools have registered and reported on more than 400 partnership projects. I encourage the Committee, particularly Opposition Members, to review the growing number of projects on the website and support the development of new partnerships in their constituencies.

The ISC will undertake a census of all partnership activities and will promote partnerships among its member schools. The Charity Commission has updated its guidance on ways that trustees of charitable independent schools can ensure they run their charities for public benefit.

**Anna Turley:** We discussed earlier today what happens when self-regulation fails. Does the Minister have in mind a framework of what improvement he would like from the sector? At what point will he intervene or look for some kind of back-up powers, as we discussed today, to try to ensure that further activity is made?

**Mr Wilson:** As the hon. Lady knows from the contributions made in the Lords, an agreement was reached on what independent schools will be doing. That agreement will need time to bed in, to ensure that it can progress in an orderly way. We have no intention of introducing any back-up powers, for the reasons I have stated; in principle and in practice, the hon. Lady's proposals simply would not work. I expect independent schools to do more through partnerships, as I said at the start of my speech.

The updated guidance encourages trustees of charitable schools to comment on their individual approaches to public benefit in sport, drama, music and other arts in their annual report, and the guidance includes new examples of sharing sporting facilities. The commission also gives new examples relating to the sharing of sports, arts and music facilities in its example of a good trustees' annual report. The ISC has disseminated new guidance to its member schools.

The commission has committed to follow up with a research project that will begin in 2017, when enough time will have elapsed to assess the impact of the new "Schools Together" initiative and the updated guidance provided by the commission. That research will draw upon data from charitable schools' annual reports, as well as aggregated data that the ISC collects through its annual report. The terms of reference will be developed by the commission with input from the ISC, and a report of the research will be published in 2017, which will enable us to get a much clearer picture of the extent of existing and new partnership activities between the independent and state sectors.

I have been encouraged by the willingness of the ISC and its member schools to engage constructively in this debate, and I expect that many people will be surprised by the volume of partnership activity that is already taking place between the independent and state sectors but that has perhaps gone unreported in the past. The ISC is keen to showcase best practice and to encourage more such partnerships, and it has shown its commitment through its actions. An inflexible legislative solution is the wrong approach and could damage the good will that exists in the independent sector. The best partnerships are not forced but evolve through local needs and provide mutual benefits. We should welcome the ongoing work to nudge and encourage such partnerships, but we should not make them a legal requirement.

To recap, there are several good arguments, both in principle and in practice, for not pursuing these new clauses. I therefore hope that hon. Members will decide not to press the new clause further.

**Anna Turley:** The Minister has been extremely generous with his time in responding to all our interventions, so I will not delay the Committee much further. I will just make a small point in conclusion. I appreciate that there are many examples of good partnership, which is to be encouraged, but words such as "nudge" and "encourage" are a little disappointing. Given that schools receive a financial rebate from the taxpayer, taxpayers have a right to expect some benefit from those schools. The pace has been positively glacial, so I am not convinced by the Minister's arguments. However, we will not press the new clause to a vote today, but we may well reconsider it on Third Reading. We are not convinced that there has been sufficient progress that anything other than a statutory power will do anything to compel independent schools to justify the money they get back from the British taxpayer.

I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

*Bill, as amended, to be reported.*

1.39 pm

*Committee rose.*

## Written evidence reported to the House

CHB 17 Cabinet Office
CHB 18 Bircham Dyson Bell LLP