PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Eighth Sitting

Thursday 16 September 2021

(Afternoon)

CONTENTS

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Monday 20 September 2021

The Committee consisted of the following Members:

Chairs: Sir Christopher Chope, † Judith Cummins

Bacon, Gareth *(Orpington)* (Con)
† Britcliffe, Sara *(Hyndburn)* (Con)
† Bruce, Fiona *(Congleton)* (Con)
† Buchan, Felicity *(Kensington)* (Con)
† Donelan, Michelle *(Minister for Universities)*
† Glindon, Mary *(North Tyneside)* (Lab)
† Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Holden, Mr Richard *(North West Durham)* (Con)
Jones, Mr Kevan *(North Durham)* (Lab)
† McDonnell, John *(Hayes and Harlington)* (Lab)
Nichols, Charlotte *(Warrington North)* (Lab)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)
† Tomlinson, Michael *(Lord Commissioner of Her Majesty's Treasury)*
† Webb, Suzanne *(Stourbridge)* (Con)
† Western, Matt *(Warwick and Leamington)* (Lab)

Kevin Maddison, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 16 September 2021

(Afternoon)

[Judith Cummins *in the Chair*]

Higher Education (Freedom of Speech) Bill

2.1 pm

The Chair: I start by inviting Members to declare any interests.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): My partner works at the University of Hull on the degree apprenticeship programme.

Matt Western (Warwick and Leamington) (Lab): My wife works at a higher education firm.

David Simmonds (Ruislip, Northwood and Pinner) (Con): I am an honorary fellow at Birkbeck.

The Chair: Thank you.

Clause 1

Duties of registered higher education providers

The Minister for Universities (Michelle Donelan): I beg to move amendment 1, in clause 1, page 3, line 27, after "providers" insert "and their constituent institutions".

This amendment is consequential on NC1.

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

Government amendments 2 to 26.

Government new clause 1—*Duties of constituent institutions.*

Michelle Donelan: Government amendments 1 to 26 and new clause 1 concern the position of certain colleges of universities such as the Universities of Oxford, Cambridge and Durham. The amendments will ensure that, in these collegiate universities, colleges are subject to the new strengthened freedom of speech and academic freedom duties in the same way as the registered higher education providers themselves. The amendments will restore a legislative position similar to the one in place before August 2019, when constituent colleges of collegiate universities in England were directly responsible for meeting the duties set out in section 43 of the Education (No. 2) Act 1986 to take reasonably practicable steps to ensure freedom of speech for their students, speakers, members and visiting speakers.

The Bill sets out new and strengthened duties; in particular, it introduces direct routes for individuals to seek redress when they believe they have suffered loss as a result of a breach of the duties, so it is vital that action can be taken directly against the body that is responsible, including when that is a college. As the types of college in scope of the amendments may enjoy a large degree of legal independence from their parent provider, it is possible that, without these amendments, a registered provider could demonstrate that they have met their duty in new section A1 of the Higher Education and Research Act 2017 to take steps that are reasonably practicable for it to take to secure freedom of speech, but a college could still act in such a way as to restrict someone's lawful freedom of speech.

My officials have held discussions with some of the main institutions that will be affected by the amendments, in particular the Universities of Cambridge and of Durham, and they have indicated that they would welcome the amendments. They do not think that they will result in a burdensome change in practice for their colleges, since in general their colleges have continued to maintain the codes of practice relating to the freedom of speech duties that they were subject to until 2019.

The wording used for the definition of "constituent institution" in new clause 1, in proposed new section A3A(4) of the 2017 Act, reflects the wording that applies to those bodies subject to the Prevent duty and the coverage of the complaints scheme operated by the Office of the Independent Adjudicator for Higher Education. A college that is required to comply with the Prevent duty will, therefore, also be subject to the freedom of speech duties, which is clearly sensible, and the coverage of the higher education complaints schemes will be consistent.

In addition, amendment 3 makes it clear that student unions at approved fee cap providers that are subject to the new duties in clause 2 do not include student unions at colleges. Colleges fund their junior and middle common rooms and, to that extent, can exert a lot of control over their activities. Those groups do not own or occupy their own premises or run the booking the systems, so imposing a freedom of speech duty on them seems to be unnecessary and overly bureaucratic. We do not believe that including them in the provision is necessary, as the freedom of speech duties on the colleges will apply to the activities of their student unions. I hope it is clear that the amendments are necessary for the Bill to work as intended, to ensure that all key bodies in our universities play their part in securing freedom of speech on campus, and to ensure that where they do not, those who suffer detriment can seek redress from whomever is responsible, whether that is a university or one of its colleges or student unions.

Matt Western: It is a pleasure to see you back in the Chair, Mrs Cummins. Overall, I have to say that I am really delighted—I think all the Opposition Members are—that the Minister has listened intently to what we have been calling for in our speeches on Second Reading, in Committee and during the witness sessions. We have been calling for clarity. It was clear that the Higher Education and Research Act 2017 made a similar mistake by omitting the likes of Oxbridge colleges and constituent institutions.

John McDonnell (Hayes and Harlington) (Lab): I am sorry to be sarky, but this is therefore the second time in major legislation that the Department for Education has discovered that it does not understand the structure of higher education in this country. Does my hon. Friend find that a bit worrying?

Matt Western: The lack of corporate knowledge or rock of collective experience that legislation should be based on is really surprising. I would have thought that such errors would be corrected and noted, and always and forever be related to anything in the higher education realm. I would have also thought that there were many

in this place—there may be more of them on the Government Benches—who have been to the likes of Oxbridge or Durham and who would be more familiar with them. I do not mean that lightly; I think it is factually true. Personally, I did not attend them, so I am not so familiar with how those institutions work in terms of their governance. It is a simple point, but the error should not have been repeated.

On Second Reading, the shadow Secretary of State for Education, my hon. Friend the Member for Stretford and Urmston (Kate Green), forcefully made the point that numerous collegiate institutions affiliated to a central university would be outside the scope of the legislation in its current form. It is easy to think about existing Oxbridge-type institutions, but what about future-proofing the higher education sector and the changes that may affect affiliate and collegiate associations between higher education providers? That important point was picked up by Members on both sides of the House, and rightly so. It is good to see the Minister taking the feedback on board, and I hope that we will see some further evidence of that arising from yesterday's sittings.

I have a small point to raise in relation to amendment 3 and an apparent exemption. The Minister spoke about the MCRs and JCRs at the likes of Oxford, but I do not know why they should be exempt. Any groups associated with a university or a higher education provider, whatever its size or shape, should be covered. If the legislation is honest in its intent, why should any be excluded from it? What justification could there be for preventing a student body at an Oxbridge college from being covered by the Bill?

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Is it not in fact troubling? The JCR system is operational at only a few universities, so a few universities will end up being exempt, or have student bodies that are exempt, while the vast majority will not. There is clear inequity there. Will it not prompt other bodies to be unnecessarily created, or reconfirm the unfair and often undeserved privileged status that some so-called elite universities have in this country?

Matt Western: I thank my hon. Friend for his well made point. It could indeed reinforce those existing privileges, or lead to a complete breakdown of the SU structures and change to institutional structures too, with disaffiliations and so on. We must be careful about the message that that sends out.

John McDonnell: I can understand why some organisations or bodies that associate with universities—the Bullingdon club, or whatever—are excluded, but what is the rationale for the exclusion of JCRs?

Matt Western: I thank my right hon. Friend for posing that question. It is question that I think we Opposition Members would like to hear the Minister give a more explicit answer. It was not clear to me in her remarks, and it seems that it was not clear to my right hon. Friend either. It seems a bizarre exemption that they should not be covered.

Think of the outrage of the former Secretary of State for Education, the right hon. Member for South Staffordshire (Gavin Williamson), when Magdalen College middle common room—not that I am familiar with that establishment or its make-up—did something shocking by taking down a picture of the Queen. Were it the Lucian Freud version, I could perhaps understand it. The MRC members chose to do that, and it was their expression of free speech. Had they done something of greater significance though, it would not come under the remit of the Bill. I hope the Minister will address that important point.

Overall, I am pleased that the Government have been listening and have proposed this change to the legislation, because it is important. However, I ask the Minister to specifically, explicitly address why it is that middle and junior common rooms should be excluded.

Fiona Bruce (Congleton) (Con): I very much welcome this amendment and addition to the Bill. Perhaps colleagues will permit me a moment of reflection on a personal experience that makes me feel so strongly about this.

In 2016, I was invited to speak at an Oxbridge college. I will not name it, because I think that the situation is somewhat embarrassing for it. I was asked, as chair of the all-party parliamentary pro-life group, to speak to Oxford Students for Life. As I began speaking to around 100 people in a room of a similar size to this one, with large glass windows at the back, an official rushed in and said "This meeting must stop. You are causing offence to students in the social room on the other side of the quad." The chair of Oxford Students for Life said "But they can't hear us," and the official replied, "Well, I have been told that I must stop the meeting." In the end, we came to a resolution whereby, if all the curtains were closed on those large ceiling-to-floor windows, the students in the social club would allow us to carry on. The whole situation was just ridiculous.

2.45 pm

I subsequently wrote to the vice-chancellor, who said it not his responsibility, and that as this was an Oxbridge college, he could not take any action. Eventually, I found somebody in authority to whom I could write and explain that this really was an unacceptable experience and situation for that group of students. Of course, the irony was that they had asked me to speak about work that I had done in Parliament, all of which is in *Hansard* anyway. I was not going to say anything that was not already in the public domain. Eventually, I secured a full apology, but what really troubled me was that, in my preparation for this Bill Committee, I spoke to an Oxford academic who told me that a similar experience had occurred not a year or two later in the same Oxbridge college.

That is why we need to ensure that we have these organisations—these constituent institutions—clearly included in the Bill, because, to an extent, there is a sense that they are self-governing. In this respect, they have to understand that they have the same degree of responsibility and accountability as any other university institution.

Michelle Donelan: We did indeed listen to the sector and Members after the Bill was first published, and we identified a gap. These technical amendments will close that gap, which could otherwise have meant that some individual colleges would not be in scope. Since the Bill introduces new routes of redress for individuals who believe that their lawful freedom of speech or academic freedom has been improperly restricted, it is vital that the right institutions are held responsible.

[Michelle Donelan]

To reiterate the points that I made in my opening speech, colleges fund their junior and middle common rooms. To that extent, they can assert a lot of control over their activities. Such groups do not own or occupy their own premises or run the room-booking systems, so imposing the freedom of speech duties on them seems quite unnecessary and overly bureaucratic. The amendments are necessary to ensure that the new duties apply to all appropriate bodies on campus and that the routes of redress in the Bill are available for all who need them.

Matt Western: The Minister is being generous in giving way. Essentially, what the Bill saying is that the colleges can exert pressure on their middle and junior common rooms and somehow influence behaviour and how free speech is permitted and managed within those forums. It is a delegation to the colleges to do that. But what the rest of the Bill is saying is that all other student unions, bodies, clubs and affiliates are responsible to the university and have to comply. Are we saying that there will essentially be a two-tier system for how the legislation will work?

Michelle Donelan: What we are saying is that the junior and middle common rooms are very different from student unions, and we have to ensure that the legislation strikes the right balance—a point made by the hon. Gentleman when we debated the last amendment on bureaucratic burden.

To conclude, colleges have a vital role in the protection of freedom of speech.

John McDonnell *rose—*

Lloyd Russell-Moyle *rose—*

Michelle Donelan: I really am going to conclude now, as we must move on. Colleges have a vital role in the protection of freedom of speech, which is a fundamental value for all of society, but especially in our world-leading higher education providers, as I am sure hon. Members agree.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 5.

Division No. 12]

AYES

Britcliffe, Sara	Holden, Mr Richard
Bruce, Fiona	Simmonds, David
Buchan, Felicity	Tomlinson, Michael
Donelan, Michelle	Webb, Suzanne
Hayes, rh Sir John	

NOES

Glindon, Mary	Russell-Moyle, Lloyd
Hardy, Emma	
McDonnell, rh John	Western, Matt

Question accordingly agreed to.

Amendment 1 agreed to.

Matt Western: I beg to move amendment 44, in clause 1, page 3, line 28, after "education" insert—

"and in the conduct of research"

This amendment would ensure that higher education providers must promote the importance of academic freedom in the conduct of academic research as well as teaching.

This is another example of a small detail that we wish to amend. As we said throughout yesterday's proceedings, we want to keep to a minimum any damage that the legislation might cause to our institutions, the viability of student unions and, indeed, the entire sector. The amendment equates protecting freedom of speech and academic freedom, not just for teaching, but for the conduct of research as well.

The point that we want to stress and to have reflected in the Bill is that all too often, observers of the higher education sector think purely about education in the form of instruction, as my hon. Friend the Member for Brighton, Kemptown said. Teaching can be instruction, of course, but in the realm of higher education institutions in particular, there is differentiation when it comes to research.

Research is so important; it is the fundamental differentiator in institutions' success and reputations. The amendment would add the words

"and in the conduct of research"

because research is important not just to society but to the development of our understanding of humanity and more. Dr Ahmed said that academics should be allowed to pursue

"lines of research that they think might be fruitful".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 13, Q22.]

That is why we want to ensure that, as we heard in evidence, research is at the core of the sector. It needs to be included where possible, to remind everyone of just how central it is to the debate.

Emma Hardy: This discussion follows on quite well from debate on amendment 59, tabled by the hon. Member for Congleton, in that it seeks to close a loophole for masters and PhD students. That is what amendment 44 is intended to resolve. Our discussion about academic freedom and freedom of speech applied to those involved in teaching. The amendment nips off that loophole so that the provisions can apply to masters and PhD students.

Matt Western: I thank my hon. Friend for her intervention. In response to a point by the right hon. Member for South Holland and The Deepings about the detransitioning of research at the University of Bath, Professor Whittle said in evidence that

"had Bath addressed it properly, they could have done more to say, 'This needs sorting and this does before we will consider it.'"—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 41, Q75.]

The amendment would incorporate innovative research under the academic freedom duty, and that would push the likes of the University of Bath towards further exploring how such research proposals could be encouraged. It is a very simple amendment, but we hope that, in the spirit of how we have tried to co-operate, the Government will accept it.

Michelle Donelan: This amendment seeks to extend the duty of higher education providers to promote the importance of freedom of speech and academic freedom so that it specifically applies in the conduct of research, as well as in the provision of higher education more generally. The duty set out in proposed new section A3 of the Higher Education and Research Act 2017, created by clause 1

of the Bill, is a new one. It requires a provider to promote the importance of free speech within the law and academic freedom throughout its provision of higher education. This is a general duty that intends to drive a positive tone on campuses across the country, promoting a culture in which everyone on campus can express their lawful views, and in which academics feel safe to question and test received wisdoms and put forward new ideas and controversial or unpopular opinions.

Emma Hardy: The amendment is specifically meant to address cases in which an individual is sometimes a student and sometimes a teacher. As a PhD researcher their activity falls under academic freedom, but as a student it falls under freedom of speech. An individual can hold two different roles at two different times depending on what they are doing, and that problem is what we were trying to resolve with this amendment.

Michelle Donelan: I think that the next part of my comments will address the hon. Member's concerns. A key element of this duty is to promote academic freedom for academic staff. It is widely understood and set out in international case law that academics should expect that their academic freedom is protected for any research they seek to undertake, as well as in the design and delivery of their teaching and wider comments or writings that they issue. The duty to promote the importance of academic freedom in the provision of higher education will therefore cover research undertaken in that context, noting the high-level nature of the duty. However, I have listened to hon. Members today, and while this will be made clear in the guidance, I shall commit to take this issue away and see whether further clarity would be of assistance.

Matt Western: I have heard what the Minister has to say. I take her at her word and look forward to having further conversations and discussions on this issue. I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 33, in clause 1, page 3, line 28, at end insert—

"(2) For the purposes of this section, 'freedom of speech' and 'academic freedom' do not extend to any statement that amounts to the denial of genocide."—*(Matt Western.)*

This amendment ensures that the objective of securing freedom of speech and academic freedom do not cover those who make statements that amount to a denial of genocide.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 13]

AYES

Glindon, Mary	Russell-Moyle, Lloyd
Hardy, Emma	
McDonnell, rh John	Western, Matt

NOES

Britcliffe, Sara	Holden, Mr Richard
Bruce, Fiona	Simmonds, David
Buchan, Felicity	Tomlinson, Michael
Donelan, Michelle	Webb, Suzanne
Hayes, rh Sir John	

Question accordingly negatived.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2

DUTIES OF STUDENTS' UNIONS

2.30 pm

Amendment made: 2, in clause 2, page 3, leave out lines 43 and 44 and insert—

"(d) staff and members of the provider and of its constituent institutions, and".—(*Michelle Donelan.*)

Emma Hardy: I beg to move amendment 83, in clause 2, page 4, line 3, after the first "the" insert "sole".

This amendment, with Amendment 84, relates to use of the premises of a registered student union, stating that they can be provided and will not be denied on the basis of the grounds referred to in subsection (4).

The Chair: With this it will be convenient to discuss amendment 84, in clause 2, page 4, leave out lines 6 and 7.

This amendment is linked to Amendment 83.

Emma Hardy: It is a pleasure to serve under your chairwomanship, Mrs Cummins. The amendments were linked to other amendments, but unfortunately they were not tabled in time, so I will try to make as much sense of this as I possibly can.

The amendments are a reaction to the written evidence we received from the Free Churches Group of England and Wales. For those who are not familiar with it, it is a group of academics and it includes the Baptist Union of Great Britain, Churches in Communities International, the Methodist Church and various other Christian groups that work together in higher education. I do not know whether I should declare an interest, but as a Christian Methodist I think very highly of this group and take very seriously its written evidence and its concerns about the Bill.

The group's written evidence addresses the question of premises and where people are able to debate free speech. We have said many times that we all support free speech; we all accept that people have different views and that those views can be heard in different places. The amendments seek to address the issue of premises, and I would summarise them as being about respect. While we can hold a different view, sometimes we need to think very carefully about the place in which we choose to express it.

I will quote directly from the group's evidence:

"One problem is that it is not clear which groups might claim use of premises under what circumstances under this clause. Even the Government is unclear whether it will mean universities are required to provide premises for holocaust deniers. What seems equally unclear is whether the clause means that groups opposed to views or activities a space is designated for will be allowed to enter that space to express their views. Arguably not to allow such access would be to deny those wishing entry use of premises, and freedom to speak there, on the basis of their views, beliefs etc. Thus the Bill may be taken to provide for a group opposed to religion to enter an Islamic prayer room to exercise their freedom to speak their views on religion, or, indeed to enter a room booked by, say, a Christian Union or a Jewish Society for similar reasons. Does the Bill provide for holocaust deniers to have entry to a room booked by the Jewish society, or can holocaust deniers be denied entry on the basis of their beliefs?"

The written evidence from the Free Churches Group of higher education institutions does not say that people should not be allowed to express such opinions or to be

[Emma Hardy]

given space to express them, but it does say that thought needs to be given to the need for respect for the place in which those opinions are expressed.

The right hon. Member for Hayes and Harlington has mentioned the idea of consulting people when permission is sought to hold an event. For example, we would not expect an event that denies the existence of God to be held in a Christian Union building, out of respect.

Sir John Hayes (South Holland and The Deepings) (Con): Obviously, I sympathise with the hon. Lady's sentiment because there is a need for privacy in different circumstances—she talked about churches and mosques and so on. However, the Bill does not confer on anyone the right to demand the opportunity to speak when and where they want. Perhaps it is being cast in that way by some—I do not think by her, but by others outside this place—but it does not give that right to anyone. We are talking about invitation and privacy, are we not? Those things pertain, regardless.

Emma Hardy: I thank the right hon. Gentleman.

John McDonnell: That is an interesting point. I have been in situations where an individual has joined an organisation as an agent provocateur and has undertaken activities in the name of the organisation deliberately to bring about bad odour and destroy its reputation. I do not see any protections in this Bill against someone joining the Muslim society, or whatever, within the organisation, then demanding that an invitation be put out to a fascist, and then the organisation getting caught. It is very difficult to prove that there was some form of vexatious participation. I remember—this is partly related—when the right hon. Member for New Forest East (Dr Lewis) joined the Labour party to infiltrate it and bring bad odour. It happens. I congratulated him on it as a tactic eventually. These things do happen, and my worry is that there is no defence against that in this Bill.

Emma Hardy: My right hon. Friend makes an extremely valid point: there is not that protection. I again refer hon. Members to the written evidence. This is not written evidence from some small organisation that does nothing; it is the Free Churches Group of England and Wales. It is a group of higher education institutions.

Lloyd Russell-Moyle: I am thinking not about invitations to external speakers but about students—students' unions, where there are students of opposing views. The Bill says:

"the use of any premises occupied by the students' union is not denied to any individual or body on grounds specified in subsection (4)"—

belief and so on. We need to be clear—perhaps the Minister can come back and clarify this on the record, which would help—that when we say "any premises", we do not mean that the students' union cannot decide which rooms are used. It is not that someone has the right to say, "I want to meet in the Christian prayer room," or, "I want to meet in the Muslim prayer room to talk about things that would be inappropriate for those spaces." Students' unions must have the right to say, "Yes, we give you a free speech platform, but we decide where within our premises we do that." Or sometimes they might say, "Not those premises, but we have other premises down the road that you can meet in." The phrase "any premises" gives that indication. Often, chaplaincies use university premises.

Emma Hardy: That is exactly right. I refer again to the written evidence, which says:

"We are concerned about the drafting of Points (3) and (4) in section A1 of the Bill, repeated later in connection with Students' Unions. These clauses have to do with the provision or denial of premises and appear to prohibit both the making and the denial of such provision on the basis of 'ideas, beliefs or views.'…Our advice is that these clauses are ripe for a variety of interpretations or misinterpretations, with unhelpful unintended consequences possible and even likely."

The Free Churches Group goes on to say:

"Clause 3 (a) as explicated by clause 4 is similar to Section 43 of the Education (No.2) Act 1986, but in a new context."

That is the point it is making. The submission continues:

"The clause says use of premises cannot be denied on the basis of ideas, beliefs etc. It has, as far as we know, led to no problems so far and that may continue to be the case. However, inserting it into this Bill, with its strengthened requirements, lack of clarity, and temperature-raising highlighting of a very few cases as justification for the Bill, may affect its previously benign record."

I accept that I was rushed in putting together these amendments—the Clerks were very helpful—and this might not be the exact wording that the Minister wishes to use, but the question of premises and when something can be allowed or not needs to be addressed. We need that reassurance. As I say, these amendments are meant to be not about denying opposition or other people's point of view, but about just having some respect about where they are held.

That goes back to the point made so eloquently by my right hon. Friend the Member for Hayes and Harlington about some events needing to be done in consultation with other groups and people within the student union body and the higher education system to ensure that such things do not happen.

I do not believe for one moment that any hon. Member in Committee would think it acceptable to hold an anti-Islamic debate in an Islamic prayer room and I do not believe for a moment that the Minister or the Government intended that when drafting the Bill. I am saying, with the helpful intervention of my right hon. Friend, that people could join those groups, they could invite someone to be provocative and they could insist on the debate taking place in particular premises, which would cause incredible upset for many people.

John McDonnell: I fear to tread into this, but there are schisms within individual organisations. Anyone who has had any dealings in recent years with the gurdwaras in this country knows that we have had real issues, as we have had in the Christian religion. There have been disputes, debates and so on within different groups in a particular religion, some denying premises to individual groups and that becoming a matter of contest. We are treading into some extremely dangerous territory, if we are not careful. We could be dragged into disputes that result, eventually, in claims in court.

Emma Hardy: Absolutely. I state again, referring to the written evidence of the Free Church Group, that it

"affirms the importance of freedom of speech and academic freedom."

I would not wish this to be interpreted in any way as the group being against free speech—it is not. It is saying that, for the purposes of the Bill, we need to have a look at the question of premises and whether some premises, or some individual rooms within premises, should be in some cases denied to certain groups, out of respect for what those premises are meant to be used for.

When the Minister replies, I hope that she takes the amendment in the spirit in which it is intended, although it is perhaps not perfectly drafted, as I have explained. However, we need to resolve that problem, because we should be mindful of the fact that people have different beliefs and opinions, and we have to show tolerance and respect at all times. All of us in this debate on free speech have said that we want to encourage a climate in which ideas are challenged, but that they should be challenged in a respectful way.

Matt Western: I thank my hon. Friend for the amendments, the clarity with which she presented them and the debate that they provoked—if I may use "provoked". When we start to delve into this, it is interesting just how far-reaching the unintended consequences become. As has been examined, that is not just between external groups or about mischievousness between one group and another—whether religious or whatever—but about infiltration of groups, as my right hon. Friend the Member for Hayes and Harlington mentioned. Factions within different societies or groups might have challenges or issues of power, leading to problems on campus. Many will have views that are sacrosanct, for example, on the denial of the holocaust, and we have to respect that some places on campus should also be sacrosanct.

That can be reduced to a simple point: there is a time and a place for vigorous debate, and universities are good places for that, but we have to provide protections. That is what we have been seeking to do throughout, to ensure that individuals have protections and, here, to protect against an anti-religious group who might want to occupy a prayer room, for example. That is a conflict of duties, which would skew the balance too far in favour of freedom of speech, without referencing any of the competing freedoms to which Danny Stone referred in his evidence.

Emma Hardy: Referring again to the written evidence, the Free Churches Group is asking for urgent clarification and redrafting of this clause. It says:

"Whether the clause means no premises can be provided on the basis of beliefs etc is unclear and needs clarifying. If it does, the consequences for prayer rooms, chapels, chaplaincies, kitchens designed with sensitivity to religious beliefs, amongst other facilities, could be dire."

That is the point that my hon. Friend makes. The problems with the way in which the Bill is drafted mean it is open to vexatious and disrespectful abuse.

2.45 pm

Matt Western: I agree. Whether it is, for example, an Islamic or Christian prayer room, or a space for the Jewish Society, we have to be very careful about the implications. I concur with what my hon. Friend just said.

John McDonnell: The word "any" is key. To give one other concrete example, I have a large Muslim community in my constituency and an Ahmadiyya Muslim community. The majority Muslim community do not recognise Ahmadiyyas as Muslims. The word "any" means that we could have a situation where one group is insisting on using a particular room, invited by an individual, which then offends others. There is then a situation of conflict and even litigation.

The word "any" has to come out. It is a provocation for the future, if we are not careful. This is a simple amendment to ensure that we forestall a potential problem in the future.

Matt Western: My right hon. Friend is right: this is yet another example of how things are well managed by students' unions up and down the country. They see challenges day in, day out, week in, week out. They manage the various, sometimes conflicting, interests of different groups.

My right hon. Friend has given a simple example of an Islamic prayer room and how that can play out between the Ahmadiyya and other Muslim groups. I urge the Minister to take on board our points and make the changes set out in the amendments. The word "any" is problematic and the Government would do well to remove it.

Michelle Donelan: The amendments would narrow the application of the freedom of speech duty in proposed new section A4 on students' unions so that it only applies, as regards premises, to the "sole" use of those premises and does not apply to the terms of the use of those premises.

Proposed new section A4(1) in clause 2 requires students' unions to take "reasonably practicable" steps to secure lawful freedom of speech. Proposed new sections A4(3) and A4(4) set out how this duty will work in relation to the use of the premises. The students' union must take "reasonably practicable" steps so as not to deny the use of their premises because of

"the ideas, beliefs or views"

of an individual body when inviting speakers. That was an excellent point made by my right hon. Friend the Member for South Holland and The Deepings.

A key part of the Bill is the emphasis on "reasonably practicable" steps. On the point that the hon. Member for Brighton, Kemptown made, if a range of rooms was available and some rooms were not suitable, for example because of religious beliefs, it would be "reasonably practicable" not to choose certain rooms. However, I have heard the concerns raised in the debate and the evidence that has been provided, so I will commit to take this important point away.

Fiona Bruce: I thank my hon. Friend for her encouraging words. Could she reflect on whether the code of practice is a vehicle that could be used to respect freedom of religion or belief in this context?

Michelle Donelan: An important aspect of the Bill is that it does not place freedom of speech above other duties, such as freedom of religion. It is down to the university or students' union to balance those competing duties and make a reasonable assessment. We think that freedom of speech duties should apply to the terms of use of premises. It would not be right if a students' union decided, for example, to charge one group more for room hire than another group. In any event, proposed

[Michelle Donelan]

new section A4(3) is clear that the freedom of speech duties include the stated provision on premises, so the exact wording of the amendment would not be likely to have any effect in practice. However, I am happy to reconsider how we could make it clearer in the Bill.

Emma Hardy: On the basis of the Minister's promise to go away and have a look to ensure that we can offer the clarity and reassurance needed, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 34, in clause 2, page 4, line 13, at end insert—

"(4B) The objective under subsection (2) does not apply to any person or body that—

(a) has made any statement in public that amounts to the denial of genocide; or

(b) intends to make any statement that amounts to the denial of genocide within the premises of the students' union or to any members of the students' union.".—*(Matt Western.)*

This amendment ensures that the duty on students' unions to secure freedom of speech within the law does not cover those who make statements that amount to a denial of genocide.

The Committee divided: Ayes 5, Noes 8.

Division No. 4]

AYES

Glindon, Mary	Russell-Moyle, Lloyd
Hardy, Emma	
McDonnell, rh John	Western, Matt

NOES

Britcliffe, Sara	Hayes, rh Sir John
Bruce, Fiona	Simmonds, David
Buchan, Felicity	Tomlinson, Michael
Donelan, Michelle	Webb, Suzanne

Question accordingly negatived.

Amendment made: 3, in clause 2, page 4, line 27, at end insert—

"(6) In this Part, references to a students' union for students at a registered higher education provider that is eligible for financial support do not include a students' union for students at a constituent institution of such a provider.".—*(Michelle Donelan.)*

This amendment is to make clear that the duties on students' unions relating to freedom of speech do not apply to students' unions of colleges and other constituent institutions.

Question proposed, That the clause, as amended, stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 4—*Other student bodies*—

"After section A4 of the Higher Education and Research Act 2017 (inserted by section 2) insert—

'A4A Application of students' union provisions to other student bodies

(1) In this Part, where a provision applies to a students' union, it should also be taken to apply to any other student body.

(2) For the purposes of this section "other student body" means—

(a) any Junior Common Room or Middle Common Room of a constituent institution; and

(b) any club or society made up of students at a higher education institution, whether or not the club or society is affiliated to the students' union.'"

This amendment would expand the definition of a student body to include any Junior Common room or Middle Common room of a constituent institution or any club or society at a higher education institution, regardless of whether student union affiliation requirements have been complied with.

Matt Western: I rise to speak to new clause 4. Our points on the new clause amplify the points that we made not half an hour ago, about the importance of how the Bill is applied to the Higher Education and Research Act 2017 and the need to include the junior and middle common rooms of a constituent institution. As we have said many times, there is a wide diversity of student bodies out there, on all sorts of different campuses and institutions. We have to make sure that the expansion of free speech duties that are being placed on student unions extend to other relevant bodies as well.

The scale of the sector in this country means there is a very complex mix of student bodies, many with very different relationships from those that we may be more familiar with from our personal experiences or from those we work with in our constituencies. My hon. Friend the Member for Brighton, Kemptown raised this issue during the evidence sessions, putting the point that some of the public debate has been about debating societies—the Oxford Union, the Cambridge Union, Durham and so on—and other informal societies. He asked whether we were right in that, because they have no funding relationship with the university and they would not be covered by the legislation. He asked whether that defeated the point.

That question was put to the only lawyer we heard from who is currently working in legal practice, Smita Jamdar at Shakespeare Martineau. Her response was very clear. She said:

"Absolutely. It only applies to universities and student unions as defined, so it would not apply to the Oxford Union or the Cambridge equivalent."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 56, Q107.]

That response comes from a lawyer who is very experienced and knowledgeable in the sector. It exposes an anomaly and a clear difference across the sector. She went on to say:

"As for informal societies, again, you would have to look at exactly what the grouping was and whether it was even an entity you could define in any way, shape or form—it might just be the individuals within it. What might happen in those situations is that the dispute among the group about what they wanted to do would become escalated up to the university and again resource would have to be spent on trying to resolve what was essentially a dispute between a small group of students over a single event."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 56, Q107.]

Smita Jamdar is the only practising lawyer we heard from.

That underlines just how complicated it is going to become, particularly given the different organisations and bodies that may relate to universities and higher education providers but are not necessarily covered by the Bill. That is why the extension to the Higher Education and Research Act 2017 is important. The amendment would have the effect of explicitly including all student bodies in the duties to uphold freedom of speech, but it would have a dual effect. It would prevent student bodies from explicitly deciding to not affiliate with a student union, simply to escape the duties. That is really important. I have, as do my colleagues, a real concern that this will see a lot of bodies or groups disaffiliating from student unions. Ultimately, the viability of that student union will then be called into question.

Emma Hardy: I want to keep making one point. When we are talking about student unions and organisations, we are not just talking about Oxford and Cambridge; we are talking about all the small universities and colleges as well. It seems fairly ludicrous to me that every aspect of the Bill would apply to the very small higher education provision at Hull College, but would not apply to the junior common room. That does not seem equitable or fair.

Matt Western: My hon. Friend is absolutely right. To that we can add all sorts of institutions—Warwickshire College Group in my constituency and many others up and down the country. That is the concern. We have this absolutely bizarre situation where we will have a two-tier system operating. For some reason, those groups that are viewed by many as being more privileged and, some would say, elite—though I would not necessarily describe them as such—are somehow being protected and insulated from the legislation in a way that others are not. It seems to be an extraordinary contradiction of the legislation when they are perhaps in need of this legislation more than, or as much as, others.

That was the first point in terms of the dual effect: preventing student bodies from explicitly deciding not to affiliate. That is a real concern about the future of student union bodies. The second point was the effect of including outside student bodies, such as JCRs and MCRs. I mentioned the point about removing the picture of the Queen from Magdalen College in Oxford. JCRs and MCRs are just as lively forums as any affiliated student union. I therefore struggle as to why the Minister would not wish to support this proposal. All we are seeking is consistency and a level playing field. There should be one rule for all, not one rule for some.

Sir John Hayes: I heard what the hon. Gentleman said about trade union. Like many in the Committee, I imagine, I served as an officer of the students union when I was at Nottingham. My son was the faith and belief officer at Newcastle University students' union last year. We understand the significance of student unions, but they must be subject to the same democratic accountability that the right hon. Member for Hayes and Harlington championed a moment ago. The provisions of the Bill in respect of freedom must apply liberally—I hesitate to use that word except pejoratively, but I will—in that way. I am concerned that student unions should not be elevated to a status that prevents them from being subject to the same expectations and disciplines in democratic terms that the right hon. Gentleman is championing.

Matt Western: I thank the right hon. Gentleman for his intervention. I am not seeking for them to be elevated in any way. I just believe there should be direct relevancy to the MCRs and JCRs as well. I want to add that groups that may be beyond the thoughts of the Committee, but that do exist, should also be covered—groups that may be more familiar to certain members of this Government, such as the Bullingdon club or the Piers Gaveston society. If societies affiliated with student unions are subject to the new duties, why should other student groups not be subject to those same duties?

John McDonnell: There is an absurdity at the heart of this legislation as a result of all of this, as my hon. Friend the Member for Brighton—[Hon. Members: " Kemptown!"] Of course, it is. A wonderful racecourse. In practical terms, the absurdity is that if I want to ensure an organisation is outside the ambit of this legislation, I simply name it "junior" or "common room". That cannot be right. There is an absurdity here somewhere. It is the point that was made earlier. I have only just grasped how easily that can be done. There have been a number of times in the past when organisations have not wanted to have a full light thrown on their real role and activities. We have seen that. That is exactly what is going to happen here. We are either all in or all out with these institutions; otherwise the legislation becomes unworkable.

Matt Western: My right hon. Friend hits the nail on the head. It is an absurdity and, as I keep saying, an inconsistency. All legislation should be fair and consistent, and the public and, in this case, organisations will see it as disadvantageous or favouring some rather than others. That is really problematic for the sector, and it is one of the unintended consequences that the legislation will lead to. As my right hon. Friend says, we will see what, as I said a moment ago, I fear is a disaffiliation. I see groups being spawned on university campuses that are outside the student union—they will have the moniker "JCR", or whatever it may be—that will seek to circumvent any responsibilities under the legislation.

Emma Hardy: Some organisations, and some student organisations, will have the ability, resources and staff power to work out how to disaffiliate, and that will happen, but many will not. It comes back to equity. As my right hon. Friend the Member for Hayes and Harlington put it perfectly, we are either all in or all out. Liverpool Hope University, which is one of the smaller universities in Liverpool, has only three full-time members of staff at its student union. It simply does not have the same resources as many other organisations to put to working out how to circumnavigate the loophole that the Minister seems intent on leaving in the Bill. Again, we have this system of inequality and unfairness in the legislation as it is written at the moment.

Matt Western: My hon. Friend is right: there is an issue about how this will work across diverse organisations in the sector. It is problematic because it means that yet again there is one rule for some and another rule for others. When we are discussing, debating and writing legislation, we cannot allow that difference to be compounded in it. It seems absolutely wrong.

I listened with real interest to the conversation that my right hon. Friend the Member for North Durham and his counterpart the hon. Member for North West Durham had about some of the issues that they face on a local campus regarding certain organisations. My right hon. Friend cited particular problems with some of the Chinese-based societies and how they might be acting. This is nothing specific about China—it includes other groups as well—but to amplify that point, if we are not careful such groups will ensure that they are extracted from the remit of the legislation so that they are able to act freely and beyond this law. I urge the Government to take on board this very straightforward, sensible, consistent and pragmatic new clause and include it in the legislation. It is really important, and I am sure that we will hear more from my colleagues.

Lloyd Russell-Moyle: The reason the new clause is important is that it would include all bodies that students might interact with in their role as students, to ensure

[Lloyd Russell-Moyle]

that the promotion of freedom of speech happens. I will come on to rebut some points that I think the Minister incorrectly made about JCRs, but I first want to talk about the chilling effect. We have heard a lot about it, but if we are to believe what we hear about the chilling effect, it is because a culture has set in—particularly in the student body—in which it is allowed to run rife.

As we know, large parts of student activity are not necessarily in the classroom or lecture theatre; in fact, many students complain that they do not have enough lecture and seminar time. That is a regular complaint of students nowadays because fees are so high. We could have an interesting argument around what the purpose of university is—whether it is instruction, or to enable students to have a wider experience of intellectual endeavour—but I will put that to one side.

However, if the effect is to exclude a swathe of student life and to allow that chilling effect to continue to circulate, the whole point of the student part of the Bill is defeated. The education part or university part? Okay, that is fine. But with the student part, what will still happen, of course, is that students will still be afraid to speak up in lecture theatres, because in the non-regulated part of their student experience they will still not have the culture of free speech and they will be shunned if they do speak up. They will not speak up and feel like they can have their own views, because in one part of their life the chilling effect is not because of formal institutions, but partly because of informal cultures. And if we are not tackling those cultures in all aspects, then we will not deal with this issue. That is why, for example, this measure should extend to JCRs and MCRs.

Earlier, the Minister said that JCRs do not run their own booking systems. That is not correct for all JCRs. St Mary's College at Durham University runs its own booking system for its JCR. When a student wants to make a booking, they go on to the JCR website and fill in a JCR form, and the JCR allocates a booking. With some of the Oxford colleges, students have to go into the Oxford system, for the whole university, and I have just found that out after 10 minutes of Google research into how the booking systems work. I am sure that a fuller analysis would show that the picture is more complicated, which is why we need to include JCRs and similar facilities explicitly in this measure, so that it is clear.

David Simmonds: It may be that there is a degree of misunderstanding. When I was a student at a college that had a structure with a JCR, MCR and senior common room, the president of the JCR was someone who would become a future Labour Member for Corby.

Lloyd Russell-Moyle: A good man.

David Simmonds: He was a very good man, and is a good friend of mine. However, a key point about that organisation is that it is not autonomous. So although the JCR has its own bar, the JCR, the MCR and the SCR—the three academic components of the college—are all supervised by, and under the control of, the college's governing body. So they are not autonomous.

Therefore, although it is the case that a student could book a room, rent a tennis court or something like that, if it is in the ownership of that JCR, the college—as a constituent part of a university—supervises and controls the JCR's activities. So the JCR is directly accountable, as a part of the college and a part of the university, and it is not autonomous in its own right.

Lloyd Russell-Moyle: Neither are student unions. The Education Act 1994, which I am probably the only Member of Parliament to bang on about, because most MPs will talk about previous Education Acts, requires universities to supervise all student unions, just as they would JCRs. It requires universities to ensure that the finances of student unions are conducted fairly and to oversee the policy of the student unions, so that the universities fulfil their duties under other Education Acts, such as ensuring freedom of speech. So what the hon. Gentleman just said is the case with all student unions.

However, this Bill sees fit to mention student unions specifically, even though they are regulated—in terms of their policies, their funding, their use and their terms regarding discrimination—by the university and by the Charity Commission.

Emma Hardy: On the point about the regulation of student unions, it is worth pointing out that one of the criticisms of the Bill is that it introduces new and varied ways of regulating student unions, which, as we know, are also regulated by the Charity Commission. So some of the issues that we will seek to address as we get further through the Bill are about exactly which layer of regulation student unions are meant to follow first, because, as the Bill is drafted, the situation seems to be incredibly confusing.

Lloyd Russell-Moyle: That is quite right. One of the problems with the Bill, as my hon. Friend suggests, would be where there was an activity run by a student union, and someone felt that something had been denied and wanted to seek redress. But the student union is funded by the university, which most student unions are now—most do not rely on commercial income for the bulk of their income, because of the changing nature of students. The money is not gathered from bars that make a big profit. Gone are the days of NUS Services Ltd being the biggest beer purchaser in the country. My uncle, who used to be the director of Whitbread, used to love going to the NUSSL conferences and flogging cheap beer. Those days are just gone. The students union gets money and it uses the facilities of the university, but despite that we will now have a situation where someone could complain to the student union and complain to the university. That is very confusing, but it is not quite the point of this new clause, so I must redirect back to that.

3.15 pm

This new clause is saying that the same status should be given to JCRs. Yes, JCRs have some regulatory oversight of the institution, and so do student unions, but this Bill only takes account of student unions. Not only that, but it means that, just as we heard from the hon. Member for Ruislip, Northwood and Pinner, the danger is that the institution in the first place will bat it off and say, "It is not our responsibility; it is the junior common room's responsibility. Go through their

complaints procedure." If the JCR does not have a complaints procedure that is in line with the existing legislation, there is a danger that it will give people the runaround. It would just be clearer if everyone had complaints procedures in line with the legislation.

David Simmonds: Without wishing to labour the point, I think the Minister is absolutely correct in the position she has taken. The junior common room is a component part of the college, so all its complaints processes and its supervision are inherent in its nature as a component part of the college. There is not a requirement to bring it within the purview of the legislation in the same way as there is for a student union, which is a separate institution with its own governance. It is already covered by its very nature.

Lloyd Russell-Moyle: That may be, but the Minister said that JCRs do not have control of their own bookings, their own policies or their own finances, and that is not quite true, if we compare them with student unions. I do take the hon. Gentleman's point that junior common rooms are not automatically registered with the Charities Commission, for example, but I am not sure that, legally, there is anything preventing them from registering. That would be an interesting legal point.

Each junior common room, again, is slightly separate. We had a quasi-junior common room system set up at Lancaster University when that was created, to model the Oxford system, but it was significantly different, because the system of Lancaster University was different and was based in halls and housing, much of which is now run by private institutions based at the university campus because of the private finance initiative systems and so on that we have in many universities. Again, for those junior common rooms that are now often in private student halls because they had a residential-based junior common room system, how is it regulated? They are on campus, but they are private blocks now, run by private service providers. It would be clearer if we included everyone.

Emma Hardy: This debate highlights the wildly differing amount of resource that many of these different student unions and organisations have. It seems ludicrous that we would not directly include a JCR or MCR, with the resources and finances it has, but we probably will include, as I have mentioned before, my beloved Hull College higher education institution. It comes down to an issue of fairness. I respect the point the hon. Member for Ruislip, Northwood and Pinner makes, but if we are going to directly regulate one form of student activity within organisations, why not simply regulate and direct them all?

Lloyd Russell-Moyle: I will move away from the JCR, where we will maybe not seek agreement. I must admit I am not as au fait with the Oxford-Cambridge-Durham JCR system as maybe I should be, because I am a child of 1960s-based universities—quite literally; I went to a crèche in one—but there were, and are, equivalent JCRs run in different forms that do not follow the Oxford and Cambridge form, which therefore might not be included in this.

I come on to what I would call not a JCR, but a student space—student facilities provided alongside accommodation. Accommodation, even when it is on university campuses, which for the larger part it is not, is mostly run by private providers. The university will recommend that provider; it might even have a contract with that provider to provide a certain number of student halls. The facilities for those students—sometimes including the bar, and often including meeting spaces and recreational activities—are all provided by that private provider. Bookings are done by that private provider. The private provider might well organise a student committee of the residents to help to run that and facilitate it—in a way that is similar, I guess, to how a JCR committee would run those facilities. But they are not a student union; they are not a JCR in the Oxford-Cambridge sense. They are running a common room for students who live in those halls, but they would not be regulated by this provision, and the danger is that those spaces more and more often are being used to invite speakers, because students are self-organising, and of course people will go through all this stuff again—the ridiculousness of having to close curtains or shut down meetings which would seem totally legitimate. From a student point of view, they are using a student space that is designed only for their educational use.

Emma Hardy: Listening carefully, as I am, to my hon. Friend leads me to think, which I had not done before, about purpose-built student accommodation and the common spaces there. When I shadowed this brief, we had huge issues about students paying rent for things that they could not use, and that deepened my understanding that purpose-built student halls of residence are often provided by private providers. The question is whether this Bill would apply to their common room space as well. I would seek clarity from the—*[Interruption.]* The Whip just shouted something over to me that I missed. Perhaps the Minister could clarify the matter when she comes to make her remarks.

Lloyd Russell-Moyle: It might well be that the Minister can—*[Interruption.]* I am not sure that I am allowed to ask the Whip to speak, but he was muttering something under his breath that I did not quite hear. Let us say that we had another amendment, with slightly different wording, which was specific to, for example, student halls, places that are focused on students, places that the university authorises for students to be exclusively at—like student halls but also other student clubs. For example, I have known universities that, rather than having a student union-run bar, will make an arrangement with a commercial bar provider to provide a student-specific bar with student-specific meeting rooms. It might well be that an amendment that just ensures that the duty is extended to commercial providers would be better than this amendment. I am open to that, but we need something; otherwise there is a real danger, particularly with universities moving more and more to commercial partnerships.

John McDonnell *rose—*

Lloyd Russell-Moyle: I give way to John—my right hon. Friend the Member for Hayes and Harlington.

John McDonnell: I have never known him to be so affectionate. *[Interruption.]* I can't help myself. The complexities of this are amazing. The hon. Member for Ruislip, Northwood and Pinner and I are both ex-Birkbeck. If someone joins the Birkbeck student union, they are then a member of the junior common room at the

[John McDonnell]

School of Oriental and African Studies and therefore have access to the SOAS junior common room bar, and can book it for meetings, invite speakers and so on. Again, I am not sure of the status or the independence of the student union at Birkbeck, or the status of the relationship with the SOAS junior common room, and therefore of the line of accountability for control of the premises. Unless the Bill is all-encompassing, it will introduce myriad problems.

Lloyd Russell-Moyle: We had the equivalent discussion with regard to academics; we talked about what would happen with a visiting academic. Yes, they would be protected in their own institution, but they would not necessarily be protected as a visitor, so that is why we put forward amendments. We have the same issues about, in effect, visiting students. This applies particularly to London. London University, as a federal university, will have overlapping student unions. Unfortunately, we have seen the demise of the University of London union, which is a great shame for the University of London. I think that, bizarrely, was done for political purposes. I am convinced that the last few presidents and leaders of the University of London union were too-left-wing rabble-rousers. It was fed up with it, and fed up with the *London Student* newspaper being too much of a pain, and it shut it down, so that is an example. Would this Bill prevent the shutting down of the University of London union, which was shut down in my—

The Lord Commissioner of Her Majesty's Treasury (Michael Tomlinson): On a point of order, Mrs Cummins. I wonder about the relevance of this. The hon. Gentleman will forgive me for having interrupted him earlier by muttering from a sedentary position, which I do not do now; I rise to make it perfectly clear. Is this at all relevant to the amendment or clause?

The Chair: I am sure that the hon. Member for Brighton, Kemptown heard that point of order, and that he will bring his remarks, which will be directed at the amendment, to a conclusion.

Lloyd Russell-Moyle: The point here is other student bodies. It is about when they are not directly a student union, which is what we are debating now. Our amendment would extend to all student bodies, whether or not they are directly part of the institution. That is why it is relevant to this clause. It seeks to cover an exclusively student body—not a general pub down the road—that has a relation just with students from that institution or from other institutions and that should also have some of these basic duties. If it does not have them, there is a real danger of loopholes here.

I will move on from talking about the type of provider, but there are other areas where this is relevant and important, such as non-affiliated societies. According to the lawyer we heard in evidence, the Bill would extend to the day-to-day activities of each individual society. I can understand saying to the student union, "You must allow the society to meet." That is fine. This is about allowing societies to do that. But our understanding is that that society must fulfil the principles of the Bill. That would mean that there were two different legal frameworks for a non-affiliated society that was for all other purposes a student society in that university, and for an affiliated society.

If we go back to the essence of the chilling effect with an external speaker, a student does not necessarily know whether it is an affiliated or non-affiliated society. When an event is cancelled or a speaker is no-platformed or whatever we are worried about happening—again, I am not sure that the Bill is necessary, but these are the accusations and evidence that we heard—the danger is that the chilling effect still happens. The speaker is cancelled, the event is postponed, the society is shut down and students say, "I cannot talk about those things," even though it might have happened in a non-affiliated space. It is important to extend that duty to all exclusively student bodies.

Emma Hardy: I hope that the Minister is listening, because we are trying to be as helpful as possible. Affiliated societies tend to rely on the assurance offered by being affiliated directly to the student union, and are therefore less likely to have huge sources of their own income. Non-affiliated student societies tend to have external financial support, from other countries or organisations. It comes down to equity and fairness, which is the point my hon. Friend is making about non-affiliated organisations with external support. I cannot see how the Bill would be relevant to them if they are not part of the student union, even though as my right hon. Friend—my hon. Friend rather—keeps saying, they are comprised almost entirely of students.

Lloyd Russell-Moyle: Exactly. We know that a number of these non-affiliated societies already exist. There is a particularly large network of Chinese student unions or Chinese student societies that receive large amounts of funding from the Chinese Communist party. Of course, their role is to be beacons of a chilling effect around campuses. They will have a property on the edge of the campus that might not be affiliated to the campus but will be open exclusively to students at that institution, and that institution will often advertise that society as the place for students to go. There are a number of ways around this. Again, I am not saying that the wording of the new clause is perfect, but we could say that the institutions would have to make it clear that such societies are not to be recommended unless they fulfil the general duties in the guidelines. We could say that institutions cannot recommend organisations that have not fulfilled the basic guidelines. That would include housing providers, but it would also mean that Chinese student societies that do not fulfil the duty could not be recommended as places for students to go locally. All of these are options that I urge the Minister to look at; otherwise, we have inequality, and there needs to be some balance.

3.30 pm

Emma Hardy: As my hon. Friend keeps saying, we accept that the wording of the new clause might not be perfect, but I hope the Minister will go away and have a look at it. With regards to purpose-built student accommodation and the relationship that its providers have with some universities, it could be a condition of that relationship that they follow the procedures and guidelines in the Bill. I hope the Minister will not just

dismiss our many points on this issue, because we are talking about whether we want a fair and equitable system that applies to every student in all the higher education institutions in the country. That is ultimately what the amendment is designed to achieve.

The Chair: Before I call Lloyd Russell-Moyle again, although we want as wide and inclusive a debate as possible, I ask Members to ensure that interventions are interventions.

Lloyd Russell-Moyle: This is a significant new clause, and it is the only new clause relating to this matter. As people will know, I am particularly passionate about student unions and student representation, so I hope the Committee will forgive me for my detail and enthusiasm in this area.

There is another way that this issue could be dealt with by the Minister, if she does not want to accept the new clause but will accept something else. That would be to say that, although there is a general duty on student unions to ensure that all who wish to have access can do so, it does not regulate the detailed workings of student societies. In my view, that would be preferable. However, I am not sure it would necessarily fulfil the desires of some of the Members on the Government side. For example, it would mean that the UN women's society at Oxford, which disinvited Amber Rudd and got the wrath of the national papers, would still be entitled to do that. We have to make a choice: either we want to allow societies to be bloody rude—I think it is extremely rude to invite someone and then disinvite them, and I have no truck with that—

The Chair: May I interrupt the hon. Member and ask him to reconsider his language?

Lloyd Russell-Moyle: I am terribly sorry. I did try to reconsider my language. It was a very rude thing to do. "Bloody" should be used only in the sense of the blood that runs through our veins, and nothing else.

It is very rude to invite someone and then disinvite them, and I do not condone anyone who does that, but we have to have equity. We either have to have all societies able to invite and disinvite people, and to be as rude as they want, or we have to say that it is not acceptable in an academic space because it creates a chilling effect, and then we have to say that no society can do that. We cannot have a two-tier system whereby we say, "If you happen to have affiliated to a student union or institution, you get it, but if you set up shop outside and everyone thinks that you're that society, it is acceptable." There lies the real danger, but there are options here.

Finally, I want to touch on the role of such unions as the Oxford Union, the Cambridge Union and the Durham Union. They have been real bastions of free speech, and I do not suspect that they would have any problems with the duties covering them, too. We all know that often they have been the ones that have continued to say, "We want all different people to come, debate and talk." But we cannot create a law based on the long-standing position of the Oxford, Cambridge and Durham unions—to name the most famous but not necessarily best student debating societies in the country—because they have had an historical foundation, whereas almost every other debating union and society in our country is regulated because it forms an affiliated part of an institution. I do not think it is fair that a few ancient universities get different privileges from the newer universities. That is a dangerous division.

We need to ask whether a debating club made up exclusively of students is regulated or not. The Minister needs to make a decision. I hope that she will say that she has accepted the point. She may not agree with the detailed wording, but I hope she says that she will go away and make sure that the provision applies to either all student societies or none, and either all student spaces or none. That should also cover the commercial sector—bodies with whom an institution may have commercial relationships.

Michelle Donelan: Any transgression of freedom of speech and academic freedom goes against the fundamental principles of the higher education sector in England. It is therefore essential that our universities are places where freedom of speech can thrive for all staff, students and visiting speakers, so they can contribute to a culture of open and robust intellectual debate. Student unions provide support and services to their members and their universities. It is therefore appropriate and essential that the legislative framework is extended to cover student unions directly.

The extension of the duties imposed only on higher education providers will ensure that freedom of speech is protected to the fullest extent. This will ensure our universities can continue their long and proud history of being a place where views may be freely expressed and debated. Clause 2 will provide the legislative framework to extend these important duties to student unions at approved fee cap providers—a category of registered higher education providers. It will insert two new provisions into the Higher Education and Research Act 2017. Proposed new section A4 provides that student unions will be required to take reasonably practicable steps to secure lawful freedom of speech for their members and staff; for students, members and the staff of the provider; and for visiting speakers.

Emma Hardy: May I seek a point of clarification? I will be super-quick.

Michelle Donelan: Opposition Members have spoken at great length on this clause, so I will give way only once.

Emma Hardy: Thank you. I want clarification about non-affiliated student societies—student societies that are not directly affiliated to the student unions.

Michelle Donelan: If the hon. Lady will bear with me, I will come on to student societies.

In deciding what is reasonably practicable, student unions must have particular regard to the importance of freedom of speech. This will allow those involved in all aspects of university life to contribute to a culture of open and robust intellectual debate, without fear of repercussion. Those are new duties, providing new protections and ensuring coverage across campus. Proposed new section A5 will require student unions to maintain a code of practice, which will act as an aid for compliance with the new duty in proposed new section A4.

[Michelle Donelan]

The code of practice must set out the procedures to be followed when organising meetings and activities, as well as the conduct required in connection with them. That is in addition to the criteria for making decisions about student union support and funding, and who can use premises. The clause sets out the new duties on student unions that are vital for ensuring that freedom of speech is protected to the fullest extent within higher education in England. It is therefore an important and necessary part of this Bill.

New clause 4 would extend the duties on student unions at approved fee cap providers so that they also apply to junior and middle common rooms at colleges and student societies. Taking student bodies at constituent colleges first, the colleges fund their junior and middle common rooms and can exert a high level of control over their activities. We do not believe that imposing the duty on junior and middle common rooms would be appropriate, as they are autonomous, as has been said. Freedom of speech duties would be unnecessary and bureaucratic if applied to junior and middle common rooms. A point was made about booking systems, but even given that junior and common rooms may book rooms, those rooms are owned by colleges and the JCRs have no actual control over them. Given that, we do not believe that including them is necessary as the freedom of speech duties on the colleges will apply to the activities of their student unions. It is important to note that student unions at constituent colleges are not classified as student unions under the Education Act 1994. In addition, the administrative burden on providers to give the Office for Students details of the student unions of their constituent colleges in addition to their own student unions, with the OfS then under a duty to maintain a list of them, monitor their compliance with their duties and deal with them in regulatory terms, as well as under the complaints scheme, would be resource intensive and disproportionate. That point has been made many times by Opposition Members in relation to other issues that have been raised today.

As for student clubs and societies, if they are affiliated to the student union, they will be covered by the student union's code of practice. If they are not affiliated, they will still be subject to their provider's code of practice, a point that I think has been missed in today's debate. For similar reasons to those I have already set out in relation to JCRs and MCRs, we therefore do not think it would be appropriate to extend the duties to cover those clubs and societies directly. I hope that this clarifies the points made, and that we can agree not to accept new clause 4 and to move forward with the rest of the Bill.

Matt Western: The debate on these particular points has been really healthy and robust, and my Labour colleagues' contributions have been extremely important—I particularly note those of my hon. Friend the Member for Brighton, Kemptown. What we have been saying for the last hour or hour and a half is that all we are seeking is consistency in this Bill, and that we cannot afford to have a two-tier higher education system. The words "iniquitous" and "unfair" have been used, but the problem is that either we recognise there is a need for coverage for all bodies and all groups that are exclusively student, as was rightly said, or there is not. The Minister has just said that it would be unnecessary and bureaucratic for this provision to be applied to middle and junior common rooms. We would say that it is unnecessary and bureaucratic for all institutions, irrespective of what they are or their heritage and history, and particularly for the smaller organisations that we keep speaking up for. As is well understood by many of us in this room, the whole higher education sector is incredibly diverse. Many smaller bodies—further education colleges and so on—will not be geared up to sustain these changes.

Emma Hardy: Maybe the Minister cannot provide the evidence for this, or maybe I am making a mistake, but I do not understand how non-affiliated student societies that are privately funded will be covered under the Bill as it is written.

Matt Western: That is my real concern, which I was just about to come on to. There is real fear about these well-funded bodies; I mentioned the Chinese groups specifically because that point was raised by both sides, by my right hon. Friend the Member for North Durham and by, I think, the hon. Member for North West Durham. There is increasing evidence that these groups are seeking to influence our campuses from beyond, and that those groups will not be affiliated to those institutions.

The Chair: May I just remind the hon. Member that we are summing up here, rather than making a brand new speech, because time is pressing.

Matt Western: Mrs Cummins, I am sorry if it was not clear that I was trying to sum up the points that were put so well by my colleagues. The Minister has said that these non-affiliated groups would be covered by these duties, but it is not clear to me or to my colleagues how that will be the case.

Michelle Donelan: To clarify, if a non-affiliated group were having an event on a university campus, it would of course be covered under the university's code of practice.

Matt Western: I thank the Minister for her intervention. I do not mean to try her patience; the points we are trying to make are simply an attempt to explore absolutely all eventualities. We have talked about PBSA—purpose-built student accommodation—and the increasing amount of private sector premises on campus and elsewhere that are being used by universities. I can speak from local experience. In Leamington, we have private accommodation that is being used by the student union.

3.45 pm

Sir John Hayes: I am going to be careful what I say, because I have other responsibilities in the House on a different Committee, but the hon. Gentleman makes an important point about external organisations that includes consideration of the Confucius Institutes, which are now located on campuses across the country. Perhaps he might use this opportunity—or perhaps I might use it through him—to ask the Minister to look at that matter again. These are highly questionable, in terms of what they do, where they are located, how they are funded and who is behind them.

Matt Western: I thank the right hon. Gentleman for illustrating and articulating the point that I was alluding to, but was not being specific about. I am sure the Minister will have listened to the important point he makes.

I understand the Minister's point about these groups being covered on campuses, on premises that the university may control, but how would that apply to, for instance, the private properties in Leamington that are used by Warwick University?

Lloyd Russell-Moyle: The Minister said in her useful intervention that if it is a university property, it will be regulated, but we are talking about private property that the university does not run but just directs students to. The university has a big signpost saying, "This is our accommodation," but as soon as students step over the threshold, the university has no regulatory role, no delivery role—no anything role. What is provided in that property is student space, meeting rooms and accommodation. That is the nub of what we are trying to get to.

Matt Western: It is exactly that. I will not spin the wheels and repeat exactly what my hon. Friend has said, but perhaps the Minister would like to respond.

Michelle Donelan: I appreciate the point that hon. Members are trying to make, but I think it is time to step back and reflect on the consequences of what they are arguing. They are effectively arguing that if a group of students were in their homes, or if they organised an event in a pub, we would have to regulate that. We have to be reasonable about what we are asking universities to regulate and what is in their control.

Matt Western: That is the issue, perhaps in part, with the Bill. The Government are trying impose, top down, a series of responsibilities and duties on universities to oversee and implement this legislation. The points we are making are about how many loopholes there are and how groups, particularly well-funded groups and private societies, will disaffiliate from the union and seek other premises in which to practise this sort of speech.

Mr Richard Holden (North West Durham) (Con): Quite clearly, some parts of an institution come through a university—its student union, properly affiliated to it; student bodies; its faculty—but this provision also includes individual students, and when those individuals come together, they are not representing the university. It is not top down. All the Government are trying to do is to ensure that anything that comes down through the institution is covered, whereas things that essentially come from groups of students getting together in a non-formal setting are different. I can see the difference, and I am sure that the shadow team could also reflect on the clear difference between those two things.

Matt Western: I understand the hon. Gentleman's point. My colleague wants to make a short related point, and I will respond to both together.

Lloyd Russell-Moyle: This is the nub of the contradiction. That is why some of us suggested that the Minister could, to be consistent, remove student societies from the regulation. If students come together and organise a club that just happens to affiliate to the student union—even if they are totally autonomous and there is no role for the institution—the Bill regulates them. If they decide not to affiliate to the institution, but do everything else the same, the Bill does not regulate them. All I am saying is that it needs either to regulate them or to say that it regulates the student union but does not go down further to regulate the constituent parts—for example, a speech at the student Conservative club should not require monitoring by the office of diktats.

Matt Western: It is about affiliation, or the decision of groups to disaffiliate from the student union, as well as how private property will come into play. We have simply said that it should be all or none. We cannot have a two-tier system for this regulation.

The new clause is very simple and straightforward. It is pragmatic and would bring about sensible changes and protections, which is what I thought the Government were trying to do. At the end of the day, without such changes the whole legislation is exposed for what it is and will not deliver the protections that the Government believe they are going to introduce.

Clause 2, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Michael Tomlinson.)*

3.51 pm

Adjourned till Monday 20 September at half-past Three o'clock.