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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Tenth Sitting

Monday 20 September 2021

(Evening)

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Friday 24 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

Monday 20 September 2021

(Evening)

[Sir Christopher Chope *in the Chair*]

Higher Education (Freedom of Speech) Bill

Clause 4

General functions

5.30 pm

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

The Minister for Universities (Michelle Donelan): The Office for Students, as the regulator of the higher education sector in England, provides a valuable independent service that helps to ensure that our universities are institutions to be proud of. Universities have historically been centres of inquiry and intellectual debate and bastions of free thought from which new idea can emerge to challenge the current consensus. The OfS is therefore ideally positioned to positively impact on our universities. Our aim is to strengthen freedom of speech and academic freedom in higher education.

The clause strengthens and extends the current legislative framework on the duty of the OfS, enabling it to fulfil that role. The clause amends the general duties of the OfS in the Higher Education and Research Act 2017 to include that, when performing its functions, it must have regard to

"the need to promote the importance of freedom of speech within the law"

and

"to protect the academic freedom of academic staff at English higher education providers".

The clause also inserts section 69A into the 2017 Act, with the provision that the OfS "must promote the importance" of freedom of speech and academic freedom in higher education. That is central to the Bill's aim of changing the culture on campus so that freedom of speech can thrive. Section 69A sets outs provisions about OfS advice on good practice in relation to the promotion of freedom of speech and academic freedom, and gives the Secretary of State the power to require the OfS to report on freedom of speech and academic freedom matters.

I believe that the clause is essential to extending the general duties of the OfS to ensure the promotion and protection of freedom of speech and academic freedom within higher education. It is therefore a necessary and important part of the Bill.

Matt Western (Warwick and Leamington) (Lab): My only comment, which has been made throughout the debate, is about how much responsibility goes to the OfS and how much should remain with the Office of the Independent Adjudicator for Higher Education. We still have profound concerns about how the measures will work between the various bodies, but we will not divide the Committee.

Question put and agreed to.

Clause 4, as amended, accordingly ordered to stand part of the Bill.

Clause 5

Regulation of duties of registered higher education providers

Matt Western: I beg to move amendment 54, in clause 5, page 6, line 39, at end insert—

"(4) The OfS must ensure that the ongoing registration conditions of each registered higher education provider that is eligible for financial support include a condition requiring the governing body of the provider to report to the OfS each year on the number of events that have been cancelled following a complaint about the opinions held by a person due to speak at the event."

This amendment would require higher education providers to report to the OfS each year the number of events that have been cancelled following a complaint about the opinions of the speaker, as part of OfS registration conditions.

It is a pleasure to see you back in the Chair, Sir Christopher. The amendment is straightforward. It is a shame that the right hon. Member for South Holland and The Deepings is not present, because I know that such amendments are quite close to his heart.

In the debate on amendment 73, we expressed concern about the burden and responsibility being placed on the sector, which we felt was inappropriate because that measure could not be applied. *[Interruption.]* I welcome the right hon. Gentleman back to his place. We believe there should be some means of quantifying data, which is important to understanding the scale of the issue. One of the problems has been in trying to recognise the nature and extent of the claimed problem. Our amendment seeks simply to ensure an annual registration or report detailing the number of cancelled events following a complaint.

As I mentioned in debate on amendments 72 and 73, we have to be careful about the burden of bureaucracy being placed on the sector, and appreciate that institutions already have a similar duty—the Prevent duty—as part of what is termed the "accountability and data return". On that, I point out that the last results of that input showed that 99.8% of external speaker events went ahead, which suggests that the system is working largely as planned.

It reminds me of that great commercial many years ago from one of the beer companies. An individual passing through the offices hears the phone ringing and thinks, "That's strange. It sounds like one of those old Bakelite phones. I'd better look in the office to see what's going on." He walks in and sees dust-covered furniture there. He finds the phone, dusts it off and answers, saying, "You've got the wrong number." As he leaves the office, the sign reads "Carlsberg Customer Complaints Dept." There is a little bit of that with this. How many will we actually see go through this office?

The data has been cited so often in our debate, but we have to ask how much of a problem this is in terms of events. There are increasing claims of self-censorship

from witnesses and Government Members, but the data shows that 99.8% of external speaker events go ahead and suggests that the system is working. That leads directly to the quantifiable evidence of no-platforming issues. Professor Grant, whom we heard from in evidence, made it clear that

"It is not about the process of inviting people on to campus and worrying about no-platforming and cancel culture. The data there says that it is a non-issue."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 120, Q259.]

The events data will also help to rebut claims made by the likes of Professor Kaufmann, who, oddly, claimed:

"The no-platforming incidence is really the crux of the issue, which the Bill will address."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 90, Q184.]

It is hard to address something that, clearly, hardly exists. The Government's own data from the Office for Students shows only a tiny percentage of cancellations. That is the only report that was available. In 2017-18, it showed that of 62,000 events, just 53 were rejected, or about 0.1%. The cancellation of some of those events had nothing to do with people's views.

Where evidence is available, there is little evidence of a big problem. According to the Russell Group, the figures were 0.09% of all events cancelled in 2017-18, 0.23% in 2018-19 and 0.21% in 2019-20. The organisation Wonkhe did its own survey of 61 student unions, which showed that just six of 10,000 events were cancelled.

The amendment would also have the benefit of addressing the concerns raised by the Department for Business, Energy and Industrial Strategy's regulatory policy committee, which said:

"The evidence underpinning the proposed intervention and its intended effects is not strong."

The committee supported the Department presenting

"concrete and well-founded examples of the 'chilling effect' and the consequences in those circumstances."

That is what we want to see from the Government.

In the evidence sessions, a couple of witnesses talked of the effects of the Bill becoming apparent over the next 10 years. I am thinking particularly of Professor Goodwin. Well, 10 years is a long time to wait for something to appear. I do not think that any of us have the patience for that. Members will see from our amendments that we wish to review this regularly and within a period of time after the Bill becomes law to see its progress and whether it is doing any good or the burdens are causing considerable financial costs and other issues on campuses.

Of course, it takes time for Bills to embed and for change to be seen, but we do need to see some sort of evidence to support the approach. We are proposing amendment 54 for that reason. We believe that it is vital and in all our interests that there should be quality data to illustrate the nature of any issue, if there is one out there, and perhaps also its scale. As I have said, the numbers we have so far suggest that there is not. That is why we believe that it is important that amendment 54 is agreed to.

Michelle Donelan: As we have heard, the amendment seeks to ensure that registered higher education providers who are eligible for financial support are required to report to the Office for Students each year on the number of events that have been cancelled following a complaint about the opinions held by a person due to speak at an event. I agree with the hon. Member for Warwick and Leamington that we need to be careful about the bureaucratic burden that would potentially be placed on the sector. However, I have already made a commitment to this Committee to take away the point about reporting and whether we need to go further in terms of our ask on the face of the Bill. We do, however, have to ensure that we are not duplicating existing information requirements under the Higher Education and Research Act 2017. Under section 8 of that Act, the OfS must ensure that the ongoing registration conditions of each registered provider include certain conditions relating to the provision of information to the OfS. This section has been implemented by the OfS through registration condition F3, which applies to all registered providers, not just those that are eligible for financial support from the OfS, commonly called approved fee cap providers.

Matt Western: I thank the Minister for giving way; she is being very generous. Can she explain why the OfS does not appear to have been reporting regularly in the last few years?

Michelle Donelan: The hon. Gentleman makes a point about the previous activities of the OfS, whereas today we are focusing in this Bill on freedom of speech. This is a new set of requirements, with a new director, that will be coming into force, and they will be doing an annual report, as we have already discussed.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab) *rose—*

Matt Western *rose—*

Michelle Donelan: I give way to the hon. Gentleman.

Matt Western: To come back on that point, this is a genuine and sincere question, and it would apply to anyone in the Minister's position—I appreciate that she has been in the role for 12 or 15 months or so; I cannot remember, but it would apply to her predecessors as well. Since 2017-18, there has been a rising concern in certain circles about an issue. If it was possible to get that data in 2017-18, why has it not been asked for since? I would have thought that that was incumbent on the Department for Education, and on the Minister and her predecessors.

Michelle Donelan: The OfS did publish data around no-platforming, but as we heard from several of the witnesses who appeared before the Committee, no-platforming is just the tip of the iceberg. It is the chilling effect that we are dealing with in the Bill. To minimise that, and focus just on no-platforming, is to fail to understand the gravity of the issue that we are trying to tackle.

The governing body of the registered provider is required to provide the OfS with such information as it may specify to assist the OfS in performing its functions. The registration condition also requires providers to

[Michelle Donelan]

take such steps as the OfS may reasonably request to co-operate with any monitoring or investigation by the OfS, which may include providing explanations or making staff or documents available. In addition, following Royal Assent to the Bill, we will fully expect the OfS to consult on the detail of the new registration conditions relating to freedom of speech, in accordance with the statutory provisions on consultation in section 5 of the Higher Education and Research Act 2017.

This process will enable the OfS to best understand what is required from the providers in order to comply with the new conditions, including by way of reporting and information. Adding a further separate information requirement to the 2017 Act would cause duplication with section 8 and the existing registration conditions and could also increase bureaucracy. As I have said throughout the Committee stage, I will commit to take away the issue of reporting and seeing how we could go further.

Fiona Bruce (Congleton) (Con): I had hoped to speak for a moment against the amendment but, before the Minister concludes, I draw the Committee's attention to the written evidence that was submitted by Professor Kaufmann, I believe after he gave his verbal evidence. He confirmed that the number of cancelled events is tiny—just a handful among some 10,000—and he gave us some very interesting survey data about the much deeper and widespread crisis in our universities of the chilling effect of self-censorship.

5.45 pm

Michelle Donelan: I completely agree with my hon. Friend. That point was laboured by many of the witnesses we saw in evidence. As I said to the hon. Member for Warwick and Leamington a moment ago, this is much more than an issue of dealing with no-platforming; we are trying to address the chilling effect.

Emma Hardy: I am slightly confused. The Minister is saying that the OfS has been collecting the data, but why has it not been reporting on it? The difficulty with the chilling effect is how quantifiable it is. This is about hard data and events that have been cancelled or no-platformed. The amendment would provide hard data, rather than reliance on some mystical ability to mind-read or judge how chilled someone feels in a particular environment.

Michelle Donelan: I heard the hon. Lady, but yet again the Opposition are failing to grasp the severity of the problem we are trying to deal with, and so honour our manifesto commitment to squash the issues with free speech on our campuses. Those issues are much more entrenched than simply no-platforming. We have heard that from various sources, academics and students alike, who have told us that they have felt curtailed in their ability to speak out on certain issues, to teach certain topics, and so on.

Matt Western *rose—*

Michelle Donelan: I have finished my speech, but I will give way.

Matt Western: I will be delighted to hear more. I hear the Minister and the point made by the hon. Member for Congleton. I want to repeat the words of Professor Kaufmann, who was a star witness for the Government, if we may use terms like that:

"The no-platforming incidence is really the crux of the issue, which the Bill will address."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 90, Q184.]

Those are his words, not my words, which is why I am asking—as was put differently by my hon. Friend the Member for Kingston upon Hull West and Hessle—why that data has not been available for the past few years. The reason it was not being reported was that there was clearly no issue.

Michelle Donelan: I think it is quite clear, from my own words, that the Government do not feel that no-platforming is the crux of the issue; the issue is a chilling effect. We have been very open about the fact that the number of no-platforming incidents is low, but the Bill is about the broader issue of the chilling effect.

Sir John Hayes (South Holland and The Deepings) (Con): I am grateful to the Minister for giving way on the issue of the chilling effect, which I described earlier as the fear that pervades many of our universities. That was made clear by the witnesses who came before the Committee. Dr Ahmed said:

"You can distinguish between hard censorship and soft censorship…Soft censorship is where there is not any regulation, but people know—people sense it themselves, because they know that if they say this, or they say that, or if they present these views, they will be regarded adversely. If they are a student, they might be ostracised."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 9, Q13.]

That fear affects academics and students, and it is damaging the calibre and quality of our universities across the land, which is why the Minister is right about the chilling effect.

Michelle Donelan: I agree with my right hon. Friend, but I fear that we are slipping into a debate on the necessity for the Bill itself, which we have already had at great length on Second Reading. I close my remarks on the amendment.

Matt Western: I hear the Minister. I believe that the amendment was a constructive suggestion, and we would have liked it to have been formalised in the Bill, but I will not press it to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Michelle Donelan: The Office for Students is the regulator for higher education in England and as such it has a vital role to play in ensuring that our universities and colleges continue to be spaces where views can be freely expressed and debated, without fear of repercussions. The OfS regulates English higher education providers by way of registration conditions. The current registration condition requires higher education providers registered with the OfS to ensure that their governing documents

uphold certain public interest governance principles. Those include principles that relate to protecting academic freedom and taking reasonably practicable steps to secure lawful freedom of speech. Therefore, the OfS already has experience with freedom of speech and academic freedom.

To protect freedom of speech and academic freedom to the fullest extent, we need to create a new mandatory initial and ongoing registration condition in the Bill. Clause 5 amends the Higher Education and Research Act 2017 to provide the legislative framework for the creation of the new registration conditions. Proposed new section 8A of the 2017 Act requires the OfS to ensure that the registration conditions of higher education providers include certain specific requirements. They must include a condition that the institution's governing documents are consistent with its freedom of speech duties and that it has adequate and effective governance arrangements to secure compliance. They must also include a requirement that the governing body of the higher education provider complies with its duties under new sections A1 to A3 of the 2017 Act, as inserted by clause 1 of the Bill. Finally, in the case of approved fee cap providers, a particular category of registered providers, the ongoing registration condition must include a requirement to keep the OfS informed of their student unions.

Clause 5 will ensure that the registration conditions relating to freedom of speech and academic freedom are aligned with the duties imposed on higher education providers by the Bill. The OfS will be able to ensure compliance with the new registration conditions by using its powers of enforcement, such as the power to impose monetary penalties. The creation of these new, stand-alone registration conditions will highlight the importance of freedom of speech and academic freedom. It will make the obligations of higher education providers more up front and it is therefore a central part of how the Bill will work. I urge that clause 5 stand part of the Bill.

Matt Western: Sir Christopher, I do not wish to say any more on this clause; I am willing to let it pass.

The Chair: I am sure the Committee will be delighted.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

REGULATION OF DUTIES OF STUDENTS' UNIONS

Matt Western: I beg to move amendment 77, in clause 6, page 7, line 10, at end insert—

"(3A) Any monetary penalty will be limited to a maximum amount set out by the Office for Students decided in consultation with representative bodies of universities and of students' unions."

This amendment would ensure that there is a limit on the penalty to be paid by an individual or institution as a result of this legislation.

With the amendment, of course, we have clause 6. The concern that we have throughout the Bill is the additional burden that it will place, as we have said so many times, on the universities, colleges and others that will be covered by it, as well as the student unions. We have to put this in the context, which I have cited before, of what is going on and what the Government seem to be doing, which is centralising powers in bodies that are not necessarily independent in the way that they are suggested to be. I really am very worried, like my right hon. Friend the Member for North Durham, about how this really centralising and very authoritarian Government are introducing red tape and placing more burden and more cost on institutions and student unions. We see this in other fields as well.

What is clear from this legislation and what we have heard in evidence is just how much responsibility will fall to student unions. The regulatory burden that they will face is really disproportionate. They are already subject to the regulation in this area by the Charity Commission. However, in the Bill, there is no mention of it, even in the schedule, as far as I can see; perhaps the Minister can point it out to me in due course. I cannot see anything about the Charity Commission, which is the regulator of student unions. Looking at the Bill, we would not even know that the Charity Commission existed or had any remit over student unions. It is not in the body of the Bill; it is not even in the schedule—it is nowhere. Perhaps it is the case that the Government want to leverage out the Charity Commission from any say in what goes on in our universities. Perhaps the Minister could address that point specifically. As has been said before, how will the Office for Students and the Charity Commission engage? Student unions are unincorporated associations, so it is not clear how these penalties will apply in practice. Also, the proposals covered in the Bill do not recognise the devolved nature of student unions' governance, as we have said before. For example, a chair of a society may not follow an agreed procedure, which could result in an invited speaker needing to be disinvited once due process was followed.

Emma Hardy: I will continue to make this point, because it is an important one that needs to be made: not all student unions are wealthy institutions. As I have already mentioned, the Bill includes higher education organisations and further education colleges that might not even have any full-time officials working for their student union, but will have to comply with this heavy piece of legislation.

The problem with the Bill is that it has been written in the belief that every university is like the Russell Group universities, forgetting the many York St Johns and Liverpool Hopes out there, which are much smaller institutions but still part of the higher education landscape. How on earth would some of those student unions be able to afford to comply with the legislation, as the Minister is asking them to?

Matt Western: My hon. Friend is right, and that is a point I was going to come on to. I was just looking through my notes about the Office of the Independent Adjudicator and I saw that it said its membership has increased from 150 providers in 2014 to almost 800 providers in 2021, and that is an absolute plethora of universities, colleges, and so on. They are all of different sizes. An agricultural college might have a couple of hundred students, or as could a specialist performing arts college, a music college or drama college. What on earth will this measure do to such institutions, in terms

[Matt Western]

of their liability and responsibility? They will certainly not be able to afford and sustain societies in their student unions.

It is incredibly concerning and there is almost a failure in the Bill to accept the burden that will head the way of these colleges from Government. I think we heard that really clearly from Hillary Gyebi-Ababi, the vice president of the National Union Students. She talked about the huge financial impact on the sector, saying:

"If I am being completely honest, a lot of stuff in the Bill is really, really concerning, such as measures under which people could get monetary sanctions for breaches of freedom of speech."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 128.]

In another evidence session, my right hon. Friend the Member for Hayes and Harlington made the point to Professor Kathleen Stock that

"The Bill itself lays a huge range of conditions on student unions and university and academic institutions, and then it brings in potentially draconian sanctions, but we do not know what the sanctions are".

Professor Stock replied:

"I can see that it is a risk."—*[Official Report, Higher Education (Freedom of Speech) Public Bill Committee*, 7 September 2021; c. 14.]

Professor Layzell of Universities UK also gave evidence, saying:

"Again, we would want the sanctions to be proportionate. I think I would look at it in the context of us all wanting to do better in this space."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 126.]

On Second Reading, a point was made by my hon. Friend the Member for City of Durham (Mary Kelly Foy):

"In fact, Durham University has informed me that, far from encouraging a wider range of views, the threat of sanction could actually result in a more risk-averse speaker programme."—[*Official Report*, 12 July 2021; Vol. 699, c. 106.]

A great many more people from across the sector, including from student union bodies, have registered that concern about how they see the Bill having the reverse impact to the one intended, and having a chilling effect of reducing free speech and debate on our campuses, irrespective of their size.

6 pm

Since becoming shadow Minister, I have met the National Union of Students several times—remotely, of course—and I am pleased to support amendment 77, which it helped to construct and which would introduce an upper limit on the fines. It is vital to have visibility of what sanction or cost there will be. There needs to be a schedule of the maximum penalty an institution could face. How will it be proportionate? Will it depend on the number of students at a college, or will it depend on the nature of the transgression? How on earth will it work?

Emma Hardy: I am in complete agreement with my hon. Friend. Going back to the point regarding student unions, a one-size-fits-all fining system could find that for a student union with a much lower income and smaller resources, the proportion as a percentage would be much higher, which is why, as my hon. Friends propose, we need consultation with representative bodies of universities and student unions. If we want to impose the same punishment in relative terms, that could then be done accurately.

Matt Western: The frustration from right across the sector is that there has not been more consultation, discussion and engagement about the issue and how to address it, and how to deliver legislation that might be workable across the sector with the representative bodies, the Government and so on.

My concern is that this measure is another example of how the matter has been left wide open, and that is problematic for the bodies—in this case, the National Union of Students and the various student unions. In the short time that I have had in terms of exposure to the sector, I say to the Minister that it has a profound and growing distrust of the Government because of this legislation. It feels as though the sanctions have been designed to damage or nullify student unions. On that note, I will sit down.

John McDonnell (Hayes and Harlington) (Lab): I make this simple point. Like my hon. Friend, I have met the National Union of Students to talk about the legislation. One question asked was, "What have the Government got against young people?", because this seems to be an attack on an organisation that young people rely on. I do not understand it. If the legislation is to act as a deterrent against poor behaviour, the Government need to set out what the deterrence is. If there is an element of risk if procedures are not adhered to, that needs to be set out. Normally when introducing sanctions, at least there is a tariff system of some sort. In this legislation, there is no tariff. We are completely in the dark.

The obvious solution is to simply consult people about what the levels should be and how they should relate to certain types of behaviour. In normal circumstances when we impose sanctions, that is what Governments do. Even when it comes to criminal sanctions, there is extensive consultation. Certainly when they introduce civil elements of a sanction, there is detailed consultation throughout with the relevant parties, but that has not taken place in this case. All the amendment would do is ask the Government to sit down with the relevant bodies that will be affected so that they can agree, or at least be consulted on, the nature and level of the sanctions that will be introduced, and—we have referred to this in previous debates—a realistic maximum that does not break the institutions that the Government seek to work with.

When the Government introduce contentious legislation such as this, it is best to take people and the organisations that will be affected with them. The best way of doing that is to engage them in consultation and discussion about the detail of the legislation as it is rolled out. I hope the Minister can give us some assurances—

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): It is important to set out in this Bill the thresholds of the compensation that can be paid because that will also help the court process. We heard in evidence that a large amount of the cost to the court could come from arguments and wrangling about what the actual damage cost is. If that is laid out by the OfS, that reduces the burden of the cost to the courts.

John McDonnell: There is the process of the tort, the process of the civil actions that will take place and the process of the monetary penalties imposed by the OfS. The courts eventually, after precedents have been set, will arrive at some level of compensation. Unless we can set out a legal tariff early on, it will be up to the courts and anything could happen.

Emma Hardy: Maybe I am unfairly anticipating what the Minister will say, but I assume it will involve the words "guidance", "waiting" and "after the Bill"—perhaps not in that order. Therefore, if this will be looked at in guidance after the Bill in consultation, does my right hon. Friend agree that it should be put in the Bill right now?

John McDonnell: Confidence in legislation is secured through engagement, consultation and, where there is disagreement, an understanding to disagree. Then when the Bill is taken to the Floor of the Commons, the confidence of Members has been gained because there has been that thorough consultation. Unless that is done, Members are voting for a pig in a poke. Unless the detail of the regime is set out—in particular, the tariffs and what the maximum will be—how can people vote for this legislation, knowing what its implications are?

To go back to the point that my hon. Friend the Member for Brighton, Kemptown made, let us distinguish between what the courts will do—they will set the level in due course through precedent and so on—and the scheme. The sanctions, the tariffs and the maximum monetary penalties are to be set by the Government. I therefore make the very simple point that when Governments set tariffs in this way, to gain the confidence of the House it is usually best to explain what the tariffs will be.

Emma Hardy: Again, to stress the point about consultation, as I was trying to explain previously, if this is not done in consultation with student unions, especially small student unions at smaller higher education institutions, this will bankrupt them. I am sure the Minister does not wish to be the person responsible for the bankruptcy of a number of student unions up and down the country. I therefore advise that the consultation and guidance be done before Members of Parliament get to vote on the final Bill.

John McDonnell: It is just the simple approach of talking to student unions and saying, "What effect would this tariff have on you? Would it push you over the edge? Would it bankrupt you? Is this an appropriate sanction? Would it act as a deterrent? Would people appreciate the risk that they are undertaking by non-compliance with the OfS's requirements on these individual bodies?" Universities and student unions will almost certainly be consulting their insurance providers about the potential risk and the level by which they have to insure themselves to ensure that they, quite properly, exercise their fiduciary duty of protecting their organisation in the light of that risk. How can they do that if they do not know what is coming at them down that tunnel? The light that is coming at them could be a huge train hitting them with a huge fine.

Matt Western: I could not agree more. As my right hon. Friend described it—he has years of experience in this place—the concern is about how we go through the process of devising and constructing legislation by using a collaborative approach. If we do not pursue that, it could readily be interpreted as wishing to intimidate student unions, which is my real fear. The Bill is designed to act as a big, stamping foot and say, "We're not going to tolerate this kind of behaviour any longer." The Government could simply have created a schedule and worked with the student union bodies to devise what the implications might be for insurance, as my right hon. Friend describes, and what would be a proportionate way to introduce some kind of sanctions scheme.

John McDonnell: That is what generated my question. Why are the Government targeting young people in this way? It would not take much for the Minister to go away and to come back and give the House an indication, at least before Report, of the types and level of sanctions the Government are considering. When the Bill goes to the other place, there will be some insistence on that.

It is very rare for this House not to have some indication of the scale of a sanction that is being introduced in criminal or civil law, because it is seen as unfair. In both the Commons and the other place, there has been a consistent standard of behaviour: when the Government impose sanctions they undertake considerable consultation, so that people have confidence in the legislation that is passed, and in the institution that will adjudicate on the monetary penalties levied. I speak as someone who has been trying to amend Government legislation for about 23 years, even when my own party was in Government. It is a very simple point—nothing more than that—but it is important and is at the heart of the legislation.

Michelle Donelan: Under the amendment, that the monetary penalty that the Office for Students can impose on student unions for breach of their duty to protect freedom of speech will be subject to a maximum amount, set by the OfS and decided following consultation with representative bodies of higher education providers and student unions. However, the Bill already provides that the amount of the monetary penalty is to be decided by the OfS, in accordance with regulations made by the Secretary of State; the regulations will of course be subject to parliamentary scrutiny. This mirrors the approach taken in section 15 of the Higher Education and Research Act 2017 on monetary penalties imposed on higher education providers.

Matt Western: Given what the Minister was just saying about the promise from the previous Secretary of State, will she say precisely when that will be? She is obviously aware of something that I am not. As my right hon. Friend the Member for Hayes and Harlington says, we would like to see that before Report.

Michelle Donelan: I am not going to set out a detailed timetable, but I assure the hon. Member that there will be sufficient consultation with both the sector and student unions.

Emma Hardy: Further to the point raised by my hon. Friend the Member for Warwick and Leamington, the Minister mentioned parliamentary scrutiny, and I want

[Emma Hardy]

to press her on this issue. She should be able to give us at least an outline of whether we will know about this before Report, before Third Reading and before it goes to the Lords. When will parliamentary scrutiny happen? On something as important as this, surely we should have some indication from the Government.

Michelle Donelan: This is in line with how we have done legislation before, and to have in the Bill the details of the exact things that the hon. Member is asking for would not be appropriate.

Several hon. Members *rose—*

Michelle Donelan: I will make some progress.

John McDonnell: Can I help the Minister on that point?

Michelle Donelan: I will give way to the right hon. Gentleman, but if I can then make some progress, I might actually answer some of the Opposition's questions.

John McDonnell: What would be helpful—before Report, at least—is to have some discussion on the draft regulations. I understand that it is not possible to publish the regulations formally, but we could have a discussion on the draft regulations before Report, so that Members can at least be assured of the range that the Government are thinking about with regards to the monetary penalties.

6.15 pm

Michelle Donelan: Our process here is in line with section 15 of the 2017 Act. It is suitable for secondary legislation that will be subject to sufficient parliamentary scrutiny.

The regulations will make provision about the matters to which the OfS must or must not have regard when imposing the penalty. We intend to ensure in that way that the penalty is set at a reasonable and proportionate level. In making the regulations, careful consideration will be given to student unions' status and financial position, and their varying sizes,.

Matt Western: I hear the Minister, and she is a decent individual—I am sure that she means well and I trust her—but one cannot say that a speeding fine is proportionate to the driver when one person can afford it and another can ill afford it. We have repeatedly made the point that there is an absolute diversity of institutions, so there is real concern about the measures.

The Government are on a bad wicket already, and given the way that they are going about this, they will lose the faith and trust of the sector, particularly of student unions. I urge the Minister to take on board the suggestions made by my right hon. Friend the Member for Hayes and Harlington to bring the draft regulations as early as possible before Report, to give us an indication of where the Government are heading with the measures.

Michelle Donelan: I think what is actually important is to have sufficient time for engagement and consultation with the sector and student unions, for the very reasons given about their varying size, financial assets and so on. Rushing the regulations would have an effect contrary to what Opposition Members are arguing for.

It is important to note that the power of the OfS to impose a penalty will be subject to the safeguards set out in schedule 3 of the 2017 Act. That reflects the approach taken to the monetary penalty under section 15 of that Act. We see no reason to deviate from that tried and tested approach.

Emma Hardy: I thank the Minister for giving way again—she is being generous. To make it as simple as possible, we would like to know when we will find out what the maximum penalty will be. She talks about parliamentary scrutiny and the need for consultation. To be as clear as possible, will we know before the final vote on Third Reading?

Michelle Donelan: I think that I have been quite clear, but I shall be even clearer: the regulations will be passed via secondary legislation, when there will be an opportunity for hon. Members to scrutinise those decisions. We want to ensure adequate time for consultation with the sector and with students unions to get that right.

Matt Western: The Minister is being incredibly generous. She said that the Government do not want to rush the regulations and need time to go through the proper process. I remember that in March last year, when former Home Secretary Amber Rudd was no-platformed at Oxford, the previous Secretary of State—bless him—said, "Right, that's it. We're going to bring forward this legislation." Here we are, 18 months later. There has been plenty of time, and this has been on the cards for some time, particularly because the legislation has been driven by the right hon. Member for South Staffordshire (Gavin Williamson). It would have been possible to produce the draft regulations if the proper consultation process had been gone through. I really fear that they are being held back for political reasons, and that student unions are going to be hit hard.

Michelle Donelan: I have reiterated many times, as *Hansard* will show, that it is not our intention to hit, penalise or alienate student unions. We are talking here about proportionate measures to protect freedom of speech. We will ensure that there is a consultation and that the voices of student unions are heard so that the regulations are right.

Lloyd Russell-Moyle *rose—*

Michelle Donelan: I will give way, and then I really will finish.

Lloyd Russell-Moyle: The Minister mentioned "proportionate measures", so will she commit to ensuring that the regulations reflect the size of the institution or student union, and the ability of the student union to comply? I am worried because if, after consultation, there is a flat rate, that would be disproportionate.

Michelle Donelan: Before I finish, I will repeat what I said a moment ago. In making the regulations, careful consideration will be given to the status and financial

position of student unions and their varying sizes. I hope that having that confirmation on the record will satisfy hon. Members.

Matt Western: I hear what the Minister says. It is so frustrating because we want to be constructive. We want to mitigate the damage of the Bill, but it has been so badly conceived, with so many gaps in it, so much information lacking, and so much left to guidance, it is really problematic. It should be for all of us across the Committee, to accept this. We will vote for our amendment, and hold back on the clause.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 16]

AYES

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

NOES

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

Question accordingly negatived.

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

Michelle Donelan: We know the important role that student unions play in ensuring that freedom of speech can thrive on our university campuses. We therefore know how vital it is for the current legislative framework to be extended to student unions and approved fee cap providers—a category of registered higher education providers—as provided for by clause 2. It is necessary to have mechanisms in place to ensure that the freedom of speech duties of student unions are monitored effectively, and that action is taken if the freedom of speech duties are infringed.

Clause 6 extends the regulatory functions of the Office for Students so that it can regulate the student unions. It does that by inserting new section 69B into the Higher Education and Research Act 2017. That new provision will require the OfS to monitor whether student unions are complying with their duties under proposed new sections A4 and A5, as inserted by clause 2. If it appears to the OfS that a student union is failing, or has failed, to comply with its duties, the OfS will be able to impose a monetary penalty. That will enable the effective regulation and enforcement of the freedom of speech duties of student unions by the OfS.

The power to impose a monetary penalty is based on the existing enforcement regimes for higher education providers, and is intended to encourage compliance. Proposed new section 69B will also require the OfS to maintain and publish a list of student unions and approved fee cap providers. That will make it clear which student unions the OfS has been informed by these providers are subject to the duties in new sections A4 and A5. It will also require those student unions to provide the OfS with information that it may require for the performance of its functions.

These new regulatory functions are intended to support the new duties in clause 2. Together with clause 2, clause 6 will ensure that freedom of speech is protected not just by higher education providers but by student unions and across campus. I believe it is a necessary and important part of the Bill, and I beg to move that it stand part.

Matt Western: It was not just our amendment 77. The nub of the problem is how student unions are being muscled by the Government to do certain work for them. I cannot help but use the word "authoritarian" throughout, but this heavy jack-boot seems to be stamping down on student unions across the country, particularly the smaller ones, which will not have the scale, finances or resource to sustain the obligations that the Government are putting on them—particularly if that is the Government's aim. Maybe their intention throughout all this is to see the demise of student unions and maybe some alternative structure to replace them.

Emma Hardy: I found this the most disappointing part so far because we are talking about issues of equality. The Minister said she had the higher education and further education brief because they wanted to bring more equity into those areas. We know what will happen under the Bill: the student unions with money and resources will be able to comply and continue, and the student unions without them will not; they will not be able to offer what they have been able to offer so far. It is incredibly disappointing for the Minister to say that secondary legislation will be where the consultation happens. That is an incredibly disappointing response from the Minister. I hope she will recognise that what the Bill actually does is create a system where only the elite universities have functioning student unions and the rest of the students can do without.

Matt Western: Labour cannot support this clause in its entirety. There are many points that could be highlighted. New section 69B(9) states::

> "If a students' union fails to comply with a requirement under subsection (8) and does not satisfy the OfS that it is unable to provide the information, the OfS may enforce the duty to comply with the requirement in civil proceedings for an injunction."

God, the heavy hand of Government! It is like the opening credits of Monty Python with that hand coming down from the clouds and stamping on the little person, and that is the case for student unions across the country.

Mr Holden: It was a foot.

Matt Western: I stand corrected. The hon. Member obviously misspent more of his time than I did watching that. Whatever part of the anatomy it was, it was coming down rather heavily on the small person. That is what the Government are seeking to do. It is quite clear that the intention in No. 10 and its policy unit is to drive out student unions in this case and change the representation on how bodies may be affiliated on our campuses.

Too much of the clause is down to guidance and none of it has been done in collaboration with student unions. Student unions are not professionally organised with huge resources behind them to counter this and take the Government on. I would have thought the Government would be much more willing to work with student unions

[Matt Western]

and with the National Union of Students and say, "We want to collaborate with you. We do understand there is this issue, and you perhaps appreciate there is a bit of an issue in certain places. How is it that we go about best addressing this issue across certain campuses?", realising that it is not the case across 98.9% of events. We cannot support this. The obligations and duties on student unions are far too onerous, and we will be voting against the clause.

Lloyd Russell-Moyle: As we have heard, this is one of the most worrying parts of the Bill because it seeks to regulate private associations even further. It is a very dangerous step because it starts to undermine freedom of association and the ability of people to do what they wish. Student unions, of course, came under the regulation of their institutions through the Education Act 1994. That Act also allowed students to opt out, which was widely touted to be an attempt to bring in an Australian-style opt-in for student unions, in the hope that it would destroy them, as happened in Australia. That failed, and more than 25 years later this is the next attempt to try to undermine and obliterate student unions and to obliterate the poorest or most fragile parts of our HE sector.

6.30 pm

For the juggernauts in Oxford and Cambridge, half of their student activities will not even be regulated. The OfS will be able to delve into the work of a local debating club in a small specialist institution with maybe 300 to 400 undergraduates, but it will not be able to touch the Oxford Union. It will not be able to touch a junior common room in Oxford, but it will be able to touch the junior common room at Lancaster University, because it is run in a different style. It is total inequality and really concerning.

Then we are having another regulator. We already have the HE regulator. The case law starts with Baldry *v.* Feintuck, which was one of the biggest cases. Baldry was a Conservative MP, and Feintuck was president of Sussex's student union, and then he went on to be my primary school teacher.

Mr Kevan Jones (North Durham) (Lab): That explains a lot.

Lloyd Russell-Moyle: It does possibly explain a lot. He was also clerk to one of the parish councils that I served on, so our lives have been intertwined.

That case said that student unions are excepted charities. As a result of the Charities Act 2011, student unions are not only excepted charities and therefore exempt, but regulated directly by the Charity Commission. As charities, they have a duty to be non-partisan, to be balanced and to ensure that they fulfil all the requirements of the Charity Commission, and we know that the commissioners have great powers to step in if charities are being partisan. So we have a great deal of regulation for student unions already.

Of course, in the HE sector, which this clause covers, student unions are part of that broader assessment that Ofsted has to make when assessing the student unions of the further education college, so now we have a fourth piece of regulation.

Emma Hardy: I want to give a tangible example, just in case the Minister has missed this. This regulation, as written here, will apply to Basingstoke College of Technology's student union. By dint of the college being OfS-registered, because of its HE provision, its student union, which is currently governed by some 17-year-olds keen on running Rag Week, will have to comply with the regulations written here and, as we have heard from the Minister, there will be a fine of an undisclosed amount if they do not, yet still JCRs will not have to comply. Does the Minister not accept that applying this to every single student union, regardless of whether it forms part of an FE college or an HE college, is a little over-bureaucratic?

Lloyd Russell-Moyle: My understanding is that this relates not just to the student union's activities be in the HE sector, but to the whole of the student union's activities, even in the FE part of the institution, so student unions in that sector may face more administrative and regulatory burdens than their parent institutions. It is a bizarre situation. That is why this whole provision must be withdrawn, or voted against, or at least rephrased. The Minister must make sure that this is restricted to only that part of the activity that is HE, and that the regulation is light-touch, and she must make reference to how this relates to Charity Commission regulation. That does not apply for higher education institutions, because they are not regulated by the Charity Commission; they are exempted charities. Since 2010, student unions have not been exempted, so they have to register. They are regulated charities, and this measure is totally contradictory to the current regulation.

Michelle Donelan: It might be useful if I clarify for the hon. Member that, where student unions are registered charities, charity law will still apply to them. The OfS will only regulate student unions on freedom of speech matters.

Lloyd Russell-Moyle: Of course I understand that, but a complaint is not simple and will not be simple. For example, a charity that is seen to prejudice one part of speech, particularly political speech, would be in breach of charity regulations already, because we cannot privilege one part of speech or one part of activities as a charity because it is political speech. That is quite right, excepting the ruling of Baldry *v.* Feintuck, which says that political party associations of students can be supported within the student union if it is self-organised, because it is not the political activity it is supporting but the educational activity of students mocking up being in a political party, so they can hold mock elections and so on.

There is detailed case law and detailed legislation. The danger is that this Bill runs roughshod over that. People would have two places where they could complain. The complainant can go to the Charity Commission, where there is a basis of case law that is already very nuanced, and they can go to the OfS, where there is no case law and no such basis. Because we know the OfS will not necessarily be built with lawyers or making its decisions based on case law, the danger is that we will end up getting semi-contradictory decisions.

Baldry *v.* Feintuck says that student unions are free to support a Conservative club, for example, and to give money to that student Conservative club for its operations, as long as it offers the same amount of resources to the

Labour club, the Lib Dem club or whatever different clubs might come along. There is a danger, however, that free speech regulation will say, "Actually, the regulations need to be different and will require the clubs to accept a broad range of views." That is different from the basis on which those clubs have been set up.

I ask the Minister to reconsider ensuring that there is a direct reference to the Charity Commission and to the order of priorities in which someone would make a complaint to a student union. Currently, they could make a complaint to the institution, to the Charity Commission and the OfS.

Emma Hardy: And the OIA.

Lloyd Russell-Moyle: And the OIA. I would appreciate the Minister doing that, because it is a minefield. We heard as much from the representative of Universities UK, who said that they were deeply worried that this would confuse the matter and make things more difficult in terms of regulation.

Before I finish, I will touch on the finances. Universities effectively have the powers to raise finances through their recruitment of students and the research grants they get. Universities live and die, in that sense, in their corporate actions. Student unions, for the most part, raise no money themselves. Gone are the days of the student bar and the student club. If Conservative hon. Members think that student unions get money from those, I am afraid they are misguided. The vast majority of student unions rely solely on a grant from the university. They are solely dependent on the university, higher education institution or further education institution.

Michelle Donelan: Listening to the debate, I am quite perplexed. On the one hand, the Opposition argue there is no problem with free speech, but on the other, they argue that once the Bill is introduced, virtually all student unions will be fined because they will be breaching it, and they will not be afford the fines. I am a bit confused about the argument here.

Lloyd Russell-Moyle: My argument does not necessarily only deal with fining; I am talking about regulation as opposed to fining, and we have had a debate on that. The point on fining is that we are worried that we will end up seeing a chilling effect and people coming forward vexatiously. That is a real concern—*[Interruption.]* The hon. Member for North West Durham groans, but he should stand up and say why he groans—give a speech or make an intervention supporting the Bill. He has said very little.

Mr Holden: I think that is a bit unfair. I do not quite understand where the hon. Gentleman thinks all of these vexatious claims will come from, and why they are about to happen. Why, in this instance, with student unions specifically, does he think that there will be millions of vexatious claims trying to close them down at the drop of a hat?

Lloyd Russell-Moyle: We have heard that "where there's a blame, there's a claim". We have seen it in road traffic, and we have actually seen an increase in litigation in the higher education sector, which is deeply worrying. Government witnesses talked about the commercialisation of the HE sector and students demanding that they get the results that they want.Those demands have actually led to universities being more restrictive in what people can say. This will increase that.

Mr Holden: The evidence that the hon. Member is pointing to is on students and their universities, and I can quite understand that. This point, however, is all about student unions, so I would like to understand why he thinks that student unions will be targeted, rather than education providers.

Lloyd Russell-Moyle: Because, so far, student unions have not had that contractual relationship, with the ability of students to take them to court for failing to fulfil a service. That is my point about where the money comes from. At the moment, the student gives the money to the university. The contract for a basic service is between the student and the university. This extends that, so the student then has a direct contractual relationship with the student union.

If the hon. Member thinks that every single student will agree with what their student union is doing, and that no student will try it on, then I am afraid that his university experience was far too bland. My experience was of debate and contestation, and of people arguing and wanting to push the boundaries—quite rightly. This will not help that, because it will regulate student unions in a way that means they cannot then defend themselves properly. The reason for that is the financial point, which I was trying to come on to.

The university gets money from the student. They then give a grant—usually a small one—to the student union, which then spends, effectively, the university's money. My understanding is that, according to the Education Act 1994, the university has an oversight role for how that money is spent. Yes, the student union can spend it how the students want, but within a framework that the university sets out and lays down. If the student union is liable, whose money are they liable with? That is what I am trying to get at.

If the OfS puts forward financial sanctions, whose money are they sanctioning at the student union? The student union's money is just the university's money, held in trust and spent on behalf of the university. Would student unions need to raise unrestricted monies, somehow? We know that most student unions do not raise unrestricted monies any more, because gone are the days of the bars. Or would student unions, if they were fined by the OfS, need to use their restricted university grants on this? If so, that clashes with the concept that that university grant is restricted to only the educational activities of the student—not for liability claims against the union. It seems strange that they would face this double regulation, and money able to be drawn from all different quarters, when they have no money themselves.

Mr Jones: It is a bit unfair to call the hon. Member for North West Durham—my neighbour—"bland", but anyway. Surely, what will happen is that student unions will take out indemnity insurance, whether they need to or not? That, again, is more money going away from education and into the coffers of insurance companies.

Lloyd Russell-Moyle: Either they will get indemnity insurance, or they will find a way to be covered by the institution's indemnity insurance, which, again, defeats

[Lloyd Russell-Moyle]

the whole point that student unions are regulated directly. We might as well regulate the institution, which would then have a duty—as they already do—to ensure that the student union is following the rules.

Emma Hardy: Another alternative is, of course, based on examples like the one I gave of Basingstoke College of Technology's student union, and the other smaller student unions that exist out there. They simply stop having a student union and stop engagement, because some of these smaller colleges and institutions, which I have drawn attention to several times, could not afford the insurance. Those unions do not get much money from their colleges, which are their main providers, and therefore might not exist in the future. It would be a devastating impact of this Bill if we ended up with fewer student unions around the country.

6.45 pm

Lloyd Russell-Moyle: We have talked in great detail—possibly too much for some Members. The point is that, in regulating the institution, where it is institutional money and resources, the regulation already flows down to the student union. That is the argument that the Minister has used for the junior common rooms. That already exists.

Double regulating the student unions actually confuses the matter. It makes it more difficult for complainants to seek redress, because student union premises are usually university premises. Who are they seeking redress from? Also, it potentially produces financial settlements that student unions would not be able to pay and that the university would effectively have to bankroll, but it would not allow the university to make representations to the OfS, in this case because the representations are directly with some 17-year-old who is the president of the union. It makes no sense whatever.

The legislation should be, as with the Education Act 1994, in the institution, which then supports the students to get it right. That is why the clause should be withdrawn. It would be a better Bill for it.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 6.

Division No. 17]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7

COMPLAINTS SCHEME

Amendments made: 8, in clause 7, page 7, line 41, after "providers" insert ", their constituent institutions".

This amendment and the Minister's amendments to Schedule 7 secure that the free speech complaints scheme applies to constituent institutions of a registered higher education provider.

Amendment 9, in clause 7, page 8, line 15, after "provider" insert "or of a constituent institution of such a provider". *—(Michelle Donelan.)*

See explanatory statement to Amendment 8.

Matt Western: I beg to move amendment 35, in clause 7, page 8, line 20, leave out "or was".

See the explanatory statement for Amendment 37.

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

Amendment 36, in clause 7, page 8, line 24, leave out "at any time".

See the explanatory statement for Amendment 37.

Amendment 37, in clause 7, page 8, line 25, at end insert—

"(2A) An eligible person specified under sub-paragraph (2) may not make a complaint if more than five years has elapsed since the date to which the claim relates."

This amendment narrows the eligibility requirements for the free speech complaints scheme so that an eligible person may not make a claim if more than five years has elapsed since the date to which the claim relates.

Matt Western: Clause 7, of course, is about the complaints scheme. In that constructive vein that we have spoken of many times before, we want to make some small detail improvements and changes that clarify, or are more appropriate than, what is currently referenced—hence amendments 35 and 36. The amendments are intended to address the scheme and seek to introduce tighter, but not unreasonable, requirements for someone to go through the complaints scheme.

Amendment 37 stipulates the narrowing down of the eligibility of someone who comes forward to seek redress. The Bill seems to appear to remove any minimum requirements for standing. As it stands, the OfS scheme is open to anybody who is or was a member of staff, of the students' union or of the provider, or who was at any time invited to be a visiting speaker. That opens up a can of worms. Just think, through the aeons of time, how many people could be eligible to make claims against universities and students' unions through the scheme. It would really widen the scope of eligibility with two significant consequences.

The first consequence is regulatory. A broader standing has the potential to overrun the OfS scheme with a flood of complaints, much like the issue of tort, as we discussed earlier. What is to stop the 43 people mentioned in the examples given by the witness Bryn Harris all lodging freedom of speech complaints under the scheme the day the Bill passes? Nothing. As it is written, they are all eligible for it, even though some date back to—I am trying to recall the earliest I can recall—2013 or 2015, and certainly before the five years we propose.

The second consequence is the effect on administrative justice. Could the Bill, as written, introduce an element of retrospective administrative decision making? Given that the legislation is so clunky and full of holes, it is disappointing that we heard from only one lawyer. I am pleased that we put forward one, but I regret not putting

forward a second in order to get a broad perspective on the Bill. I am sure that two lawyers would have picked the whole thing apart. However, Smita Jamdar from Shakespeare Martineau—the one lawyer we heard from—said,

"Until quite recently I would have been confident that, as a matter of rule of law, you could not retrospectively apply conditions in that way. However, I am less confident about that than I have been in the past. I think there are regulatory trends that say that people do sometimes try and retrospectively shift the goalposts."

In such cases, judicial review could step in—or so the Minister may claim. However, Ms Jamdar said,

"Normally, you would then potentially be able to go for judicial review, and say that this is a decision that is in breach of public law principles, either because it is irrational or in some way procedurally flawed. However, under the Bill you would not have that right because you cannot challenge the decisions of the free speech champions."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 58, Q112.]

My colleagues and I will address the concept of appeals later, during the next grouping of amendments.

However, although it may be true that the scheme has the power to weed out some vexatious claimants, if "eligible persons" is expanded too broadly, it will be left to the Office for Students to sift through numerous complainants. That could have the effect of taking away resources from the operation of the scheme, undermining its effectiveness and therefore the purpose of the Bill.

We are still none the wiser about the scale of the operation under the Office for Students. How many people will it employ, and will they be full time? Will the director of free speech be full time? The chair of the Office for Students is not full time. How much of that director's professional time will be devoted to this matter? How many people will they have within that, and at what budget? As it stands, we are concerned that the measure will open the floodgates. That is why, under amendment 37, we propose that the period should be limited to five years, counted from the date to which the claim relates.

Michelle Donelan: Amendment 35 would allow only current students, members or staff of a provider to make a complaint to the Office for Students complaints scheme. A key aspect of the Bill is that it provides new routes of redress to individuals who have suffered loss as a result of a breach of the new freedom of speech duties. That includes where students have been expelled from courses or where staff members have been dismissed from their jobs. The amendment would prevent former students, members and members of staff accessing the new complaints scheme.

Of course, the duty will have been owed to such individuals while they were at the provider. In circumstances in which they have subsequently left the provider, however, it is also important that they are still able to access the complaints scheme. For example, we must ensure that, if a provider breaches its freedom of speech duties in a way that leads to a staff member leaving their role, that staff member is still able to access the complaints scheme, otherwise the Bill would be fundamentally undermined.

Matt Western: May I explore that a little further to understand that? Are we saying that the former Secretary of State could go back to the University of Bradford, a fabulous institution, which I was delighted to get the chance to visit, and say, "I had this particular issue" whatever number of years ago—I assume something like 15 years, but perhaps longer—would he be able to do so under the Bill as drafted?

Michelle Donelan: The time limit refers to amendments 36 and 37, which I will proceed to, but indeed we are not setting a time limit. It would depend on what had happened and the facts that were available. It would be investigated. I am not convinced that getting into a speculative hypothetical will help today's discussion.

Amendments 36 and 37 seek to impose on the face of the Bill a time limit of five years as to who may bring a complaint to the OfS complaints scheme. As drafted, proposed paragraph 5(2)(a) of new schedule 6A in clause 7 sets out that the complaints scheme

"may include provision that…complaints…must be referred under the scheme within"

a specific time frame. That reflects similar provisions in the Higher Education Act 2004, enabling the Office for the Independent Adjudicator for Higher Education to set a time limit for its scheme. The OIA only considers complaints made within 12 months of the date that a higher education provider told the students of its final decision. That is considerably shorter than the five years in the suggested amendments. To refer back to the point made by the hon. Member for Warwick and Leamington, that needs to be decided by the director and in the guidance and regulations. We are not setting out a timeframe in the Bill. That would come in the detail.

Emma Hardy: May I clarify whether a time limit will be set out, if not in the Bill, in the guidance produced later?

Michelle Donelan: To clarify, in the Bill there is no time limit, but our full expectation is that there will be one in accordance with precedent, such as that of the OIA. There will be a reasonable time limit, set in conjunction with the voices that have been heard, of the sector and of the hon. Member for Warwick and Leamington, who made his suggestion today. Accordingly, when the OfS sets out the details of the complaints scheme, it will be able to set an appropriate time limit. It is not necessary to set that out on the face of the Bill, as I have stated.

Matt Western: I hear what the Minister has said and I absolutely take her at her word. I therefore very much look forward to seeing that specified in the guidance. So, there will be a time limit, otherwise there will be an almighty problem, not just for universities and student unions, but for the OfS. It could become a ridiculous situation. Given what has happened with claims in Northern Ireland and elsewhere, for example, as the Government have sought to introduce limits there, I imagine some consistency from them in applying a limit here. Will the Minister confirm whether she is considering amendment 35—likewise amendment 36—for inclusion in the Bill, rather than letting the matter be dealt with in guidance, otherwise we will press it to a vote?

Michelle Donelan: Amendment 35 would seek to allow only current students, members and staff of a provider to make a complaint, which would rule out those who had been expelled or lost their job as a result of free speech so, absolutely, we will not consider it for inclusion.

Matt Western: I hear the Minister. I take on board her comments on amendment 37. The matter will be considered and the result issued in guidance. However, we will press amendments 35 and 36 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 18]

AYES

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

NOES

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

Question accordingly negatived.

Amendments made: 10, in clause 7, page 8, line 21, after "provider" insert—

"or constituent institution (as the case may be)".*—(Michelle Donelan.)*

See explanatory statement to Amendment 8.

Amendment 11, in clause 7, page 8, line 23, after "provider" insert—

"or constituent institution (as the case may be)".*—(Michelle Donelan.)*

See explanatory statement to Amendment 8.

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

7.1 pm

Adjourned till Wednesday 22 September at twenty-five minutes past Nine o'clock.