

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION AND RESEARCH BILL

Fourth Sitting

Thursday 8 September 2016

(Afternoon)

CONTENTS

CLAUSE 1 agreed to.

SCHEDULE 1 under consideration when the Committee adjourned till
Tuesday 13 September at twenty-five minutes past Nine o'clock.

Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 12 September 2016

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The Committee consisted of the following Members:

Chairs: SIR EDWARD LEIGH, † MR DAVID HANSON

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| † Argar, Edward (<i>Charnwood</i>) (Con) | † Milling, Amanda (<i>Cannock Chase</i>) (Con) |
| † Blackman-Woods, Dr Roberta (<i>City of Durham</i>) (Lab) | † Monaghan, Carol (<i>Glasgow North West</i>) (SNP) |
| † Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Mullin, Roger (<i>Kirkcaldy and Cowdenbeath</i>) (SNP) |
| † Churchill, Jo (<i>Bury St Edmunds</i>) (Con) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Evennett, Mr David (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Rayner, Angela (<i>Ashton-under-Lyne</i>) (Lab) |
| † Howlett, Ben (<i>Bath</i>) (Con) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Johnson, Joseph (<i>Minister for Universities, Science, Research and Innovation</i>) | † Streeting, Wes (<i>Ilford North</i>) (Lab) |
| † Kennedy, Seema (<i>South Ribble</i>) (Con) | † Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Marsden, Mr Gordon (<i>Blackpool South</i>) (Lab) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| | Katy Stout, Glenn McKee, <i>Committee Clerks</i> |
| | † attended the Committee |

Public Bill Committee

Thursday 8 September 2016

(Afternoon)

[MR DAVID HANSON *in the Chair*]

Higher Education and Research Bill

2 pm

The Chair: We now begin line-by-line consideration of the Bill. To curry favour from the start, I should say that Members may, if they so wish, take off their jackets. I remind Members that mobile phones should be switched to silent or turned off.

As a matter of form, I also remind Members that my fellow Chair Sir Edward Leigh and I do not intend to call starred amendments. The required notice for Public Bill Committee amendments is three days, which in effect means that amendments should be tabled by the rise of the House on Monday for consideration on Thursday, and by the rise of the House on Thursday for consideration on the following Tuesday. The Clerks will circulate a note shortly on the arrangements that will apply during the forthcoming recess.

The selection list for today's amendments is available in the room and on the website. It shows the selection of amendments that I have made, and their groupings. Today, I intend to call first the Member who has put his or her name to the leading amendment in the group. Other Members are then free to catch my eye accordingly. Members may speak more than once in a single debate, should they so wish.

At the end of the debate, I shall again call the Member who moved the leading amendment in the group. Before any such Members sit down, they will need to indicate to me whether they intend to withdraw the amendment or to press it to a decision by the Committee. Any Member who wishes to press any other amendment or new clause in a group to a vote needs to let me know, because some amendments are not decided on in the order of their consideration in Committee, but are taken at a later date, as are new clauses that have been grouped. Let me know at that stage if any amendments in the group are to be taken further, and they will be dealt with at the appropriate point in the Bill or at the end. Decisions on new clauses, as I have said, will be taken at the end of the Bill, so after consideration of clause 113.

I shall use my discretion to determine whether we are to have clause stand part debates following the initial debates on amendments.

Clause 1

THE OFFICE FOR STUDENTS

Valerie Vaz (Walsall South) (Lab): I beg to move amendment 119, in clause 1, page 1, line 5, leave out "Office for Students" and insert "Office for Higher Education".

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

Amendment 120, in clause 1, page 1, line 6, leave out "OfS" and insert "OfHE".

Amendment 121, in clause 1, page 1, line 7, leave out "OfS" and insert "OfHE".

Valerie Vaz: Thank you, Mr Hanson. It is a pleasure to serve under your chairmanship. My amendment is intended to be helpful; obviously, if Members do not like what I say, they can just trash me in the press. "Office for Students" is a misnomer. First, this body is not about being an office for students; as various clauses make clear, the body is about registration and regulation—a registration procedure—and not about students. It is certainly not about having students as part of the office for students.

Secondly, from the written and oral evidence given to the Committee, the situation of postgraduate students has clearly not been acknowledged or mentioned in setting up this body, and, with the new changes in the Government, we now have two responsible Departments. Postgraduates do a fantastic job of not only research, but teaching, so they are split between the two. There is a gap there, which has been acknowledged. Postgraduate students have to be somewhere in the Bill.

Furthermore, there is nothing about subject-specific support—the strategic and vulnerable subjects, which require a higher level of funding. That is why I say that this body is not about students. There is nothing about skills, the skills deficit or protecting the STEM subjects of science, technology, engineering and maths. I liken the office for students to the Care Quality Commission. This is like calling the CQC the "office for patients" when its responsibility is not actually about that, but about regulating healthcare providers.

The office for students appears to set up regulation and registration processes. We can see in the Bill a power to impose monetary penalties and a power for the suspension of registration. Higher education providers will have to pay for the benefit of being part of the register. If we continue to look through the Bill, we see clauses titled "De-registration by the OfS" and "De-registration by the OfS: procedure". Higher education providers are going to be spending all their time on bureaucracy, and all that money will be taken away from front-line services—away from the students themselves. That is why I say, again, that it is not about students.

According to clause 2(2), the Secretary of State has to give guidance. Again, there is no clarity. We need to change that, because we now have two Secretaries of State. If the OFS was for students it would be about fees protection, because students who were having to face bills of £27,000 are now being provided with invoices for £45,000. It would also be about students' wellbeing, the skills shortage, retraining, returners, and all those people who do not classify themselves as students as we imagine them to be. Our time as a student is actually a very short part of our lives. There are people who do not fit the student mould, yet who will be students at some stage during their lifetime.

I want to pick up on the Minister's remarks earlier about my being the only one who wants to pause the Bill. I do so because I am a lawyer, and was a Government lawyer. It is important to have clarity on the face of the Bill. Currently, that is not the case. The Minister helpfully

told us that he has been living with the Bill for 14 months. I sympathise with him on that, but there have been a lot of changes, not least the new grammar school policy that might be coming through. What happens at the early stages of education filters up. The abolition of the Office for Fair Access and what happens to young people as they go through the education system will have a great impact. I know that it is not part of the programme motion, and I have been told that we cannot discuss this, but what happened on 23 June is vital. I say again that the machinery of Government changes.

There is no clarity on the face of the Bill. “Office for Students” is a misnomer. I would prefer to work with the Minister to find another way to describe the body, not least because it is not about students.

The Minister for Universities, Science, Research and Innovation (Joseph Johnson): I echo the hon. Lady’s pleasure at serving under your chairmanship, Mr Hanson.

I shall move straight to the points raised by the amendment, with which I fundamentally disagree. I do, though, appreciate the hon. Lady’s efforts to be helpful and am pleased to have a chance to address the points she made. The Bill sets out a programme of reforms for higher education that will improve quality and choice for students. It will encourage competition and allow for consistent and fair oversight.

As I said when I gave evidence to the Committee this morning, there have been several significant changes to the higher education system since the last legislation was introduced to overhaul the regulation of the sector, all the way back in 1992. The majority of funding for the system used to come directly from the Government, in the form of grants. We have now moved to a system in which students themselves fund their studies.

The regulation of the sector clearly needs to keep pace with developments if confidence, as well as our international reputation and standing, are to be maintained, so we need an HE regulator that is focused on protecting students’ interests, promoting fair access and ensuring the value for money of their investment in higher education. That has been a central tenet of Government reforms since the publication of the 2011 White Paper, “Students at the Heart of the System”. Ensuring that the student interest is at the centre of the sector’s systems and structures is a cardinal principle of our approach.

Paul Blomfield (Sheffield Central) (Lab): I thank the Minister for giving way; it is probably the first of many occasions. I wonder whether he could not give some reassurance to my hon. Friend the Member for Walsall South on the issues she is raising by indicating that he views our amendments sympathetically. They would give life to what he just talked about—putting students at the heart of the system—by providing for effective student representation both at the top on the OFS board and throughout the system.

Joseph Johnson: Yes, I will certainly come on to that issue, which is the subject of a number of later amendments, but I will happily touch on it in answering the hon. Gentleman.

In its written evidence, University Alliance states that:

“As the organisation responsible for regulating the higher education sector, the OfS will need to ensure that institutions operate in the interests of students.”

That point was reiterated by Professor Quintin McKellar, vice-chancellor of the University of Hertfordshire in his evidence to this Committee, when he said that

“the Government’s idea to have an office for students that would primarily be interested in student wellbeing and the student experience is a good thing.”—[*Official Report, Higher Education and Research Public Bill Committee*, 6 September 2016; c. 22, Q31.]

We also heard from Alan Langlands, vice-chancellor of the University of Leeds, who concurred when he said:

“I think the Government have struck a reasonable balance, and putting students at the centre is sensible.”—[*Official Report, Higher Education and Research Public Bill Committee*, 6 September 2016; c. 27, Q41.]

The creation of the office for students is about putting students at the heart of the system. It has been a consistent theme of Conservative and, formerly, coalition policy for a considerable time. The OFS will, for the first time, have statutory duties focused on the interests of students and equality of opportunity when using the range of powers given by the Bill.

In addition, unlike appointments to the HEFCE board, the Secretary of State must “have regard” to the desirability of the OFS’s members having proven experience of representing the interests of students when appointing the OFS board. That goes straight to the point that the hon. Member for Sheffield Central raised. Schedule 1 of the Bill captures the intent of many of the amendments that have been tabled for later clauses. We feel that schedule 1 fully meets those intentions of ensuring that the OFS board has people with the experience of representing student interests.

Mr Gordon Marsden (Blackpool South) (Lab): May I repeat my delight in serving under your chairmanship, Mr Hanson, and that of Sir Edward? On the very specific reference that the Minister has just made, some might say he is just trying to defend the indefensible. It is “Hamlet” without the prince, but we will come on to that in a moment.

Is it not the case that the specific phrase “have regard” offers the minimum in draftsmanship, not the maximum? We have to legislate not for the best universities—I am sure the Minister will in due course become part of them—but for the most unexcellent. Just saying “have regard” will not be sufficient to give the guarantees that students need.

Joseph Johnson: I completely agree that for the OFS to function effectively in students’ interest, they should be represented properly on it. We have had a crack at that in schedule 1. I am certainly receiving a lot of representations from Opposition Members and from student unions and so on saying that we have not gone as far as we might in entrenching that core principle with which we are in basic agreement: students need to be properly represented in the governance of the office for students.

I have understood the messages we are being sent, but I point out that at board level we will be recruiting those with experience of representing or championing the student interest. A critical feature of the OFS as it is organised is that overall it must have members with experience of representing the full diversity of the sector, including students. It is essential that the individual appointed can act on behalf of the wider student interest.

[Joseph Johnson]

That reflects common practice: board members are typically appointed for their breadth of experience and representation.

OFS members will have significant responsibilities in taking decisions, many of which will ultimately impact on all students, so it is essential that each member brings more than an individual perspective to the decision-making process to ensure that the diversity of stakeholders is fairly represented.

2.15 pm

Student interests are genuinely at the heart of our reforms, and we will continue to engage with our partners as the implementation plans are developed. As seen from the Green Paper onwards, we have sought the engagement and thoughts of all involved in the sector.

I return to the amendment of the hon. Member for Walsall South. Changing the name of the organisation to the “Office for Higher Education”, as she suggests, implies that the market regulator that we are explicitly creating with the office for students is in fact a creature of the sector that answers to higher education providers, rather than one focused on the needs of students. It would achieve the very opposite of our objectives for the organisation.

Mark Pawsey (Rugby) (Con): Does the Minister agree that the Opposition are focusing far too much on the institutions themselves? The whole point of the Bill is to focus on students. By calling for such a change, the hon. Member for Walsall South is missing the entire point of the Bill.

Joseph Johnson: I thank my hon. Friend for his point. That is right. HEFCE is a brilliant body. As we discussed this morning, it was set up in 1992 as the successor body to the Universities Funding Council. It is in the tradition of being a funding council at a time when the Government no longer principally funds the universities, so it is doing its job in a regulatory environment that reflects a bygone era. We need a regulatory structure that reflects the fact that students are now the primary funders of their education through the student loan system. This is a market, as recognised in law, so we need a market regulator. The office for students is the body that we believe is best placed to do that.

A change of name of the kind that the hon. Member for Walsall South suggests would go against the main principles that we are trying to achieve through these reforms. I note that none of the stakeholders who gave evidence to the Committee on Tuesday or today asked for a change of name.

As a regulator, the OFS will need to build relationships across the sector. Part of its duties will be thinking about the health and sustainability of the HE sector. However, that does not change the fact that the new market regulator should have students at its heart, and I believe that the name of the organisation needs to reflect that. For that reason, I ask that the hon. Lady withdraws her amendment.

Valerie Vaz: The stakeholders may not have asked for it, but that does not mean that people cannot have an idea of their own, take soundings or look at the face of

the Bill and see what strikes them. I have not missed the point, as the Minister said, because clause 2(1)(b) says that the OFS is needed

“to encourage competition between English higher education providers in connection with the provision of higher education”.

Anything to do with students, universities or higher education is also about collaboration and public good. I wanted to flag up the fact that the name, as it currently stands, does not incorporate the idea of putting students at the heart of it, for reasons that I will not go through again. It is open to very clever civil servants to come up with something that reflects this debate. With that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 1 ordered to stand part of the Bill.

Schedule 1

THE OFFICE FOR STUDENTS

Wes Streeting (Ilford North) (Lab): I beg to move amendment 2, in schedule 1, page 63, line 17, leave out “twelve” and insert “ten”.

This amendment would maintain the maximum number of OfS members as twelve when taken together with amendment 3.

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

Amendment 122, in schedule 1, page 63, line 18, at end insert—

“() At least one of the ordinary members appointed under sub-paragraph (1)(d) must, at the time of their appointment, be currently engaged in the representation or promotion of the interests of individual students, or students generally, on higher education courses provided by higher education providers.”

This amendment would ensure that at least one of the members must be a student representative.

Amendment 3, in schedule 1, page 63, line 37, at end insert—

“(2A) The members appointed under subsection (1) shall appoint two further members (“the student representatives”) who—

- (a) are persons—
 - (i) enrolled on a higher education course of a registered provider,
 - (ii) elected as representatives of a students’ union, or
 - (iii) elected as representatives of the National Union of Students, and
- (b) are considered by the members of the OfS able to represent, or promote the interests of, a broad range of students.

(2B) For the purposes of subsection (2A), “course” means any graduate or postgraduate course.”

This amendment would require there to be two student representatives as members of the OfS.

Wes Streeting: It is a pleasure to serve under your chairmanship, Mr Hanson. I welcome this opportunity to debate the first higher education Bill that we have had for some time. In introducing the first in a series of amendments I have put forward to the Bill, I want to offer the Committee some context for what I am trying to achieve.

The Minister's warm words about the importance of students and of placing them at the heart of the system, as in the title of the coalition Government's White Paper, are laudable but that aspiration is not currently reflected in the Bill. Since the introduction of university tuition fees and their subsequent trebling and trebling again, students have not been afforded anything like the rights and protections that they deserve, given the substantial contribution that they now make to the cost of their higher education.

When I saw the Bill on publication I thought it was at risk of being a missed opportunity. Instead of being a higher education Bill it ought to be a Bill of Rights for students, addressing some of the serious deficiencies that currently exist and ensuring that students are better protected.

During the evidence session, the Minister talked about the importance of consumer rights for students within the context of the current higher education system. I regret that language and the pace of marketisation that we have seen in higher education. It has always been my view that higher education is not simply a commodity to be bought and sold in the marketplace. It is a mission that goes far beyond benefits to individuals. Higher education has a far broader societal benefit and a benefit to students. At the heart of the relationship between the student, their lecturers and institution is not a sense of suppliers and consumers; it is actually a partnership. I would like to see a focus on higher education that places principles of co-production of higher education at the heart of the Bill rather than aggressive consumerism.

Dr Roberta Blackman-Woods (City of Durham) (Lab): My hon. Friend is making a series of excellent points about the current state of higher education. Does he agree that we are getting payment for higher education out of balance and not recognising that there should be a relationship between the state, the public good and individual students in the payments funding of higher education? At the moment too much weight is being placed on individual students for funding higher education. Although they benefit, society benefits, too.

Wes Streeting: I wholeheartedly agree with my hon. Friend, who has made an enormous contribution to the debate on higher education in this place over a great many years. I know she shares some of my frustrations about these issues.

When the Dearing report was first published, it placed a tripartite principle at the heart of contribution. All the beneficiaries were expected to make a contribution: society, through general taxation, employers, and students themselves as graduates. I will not open the funding debate in its entirety today as that is outside the scope of the Bill, but I must say to those outside this place who take an interest and watch these proceedings that I share some of their frustrations that the scope of the Bill means the Opposition cannot set the direction of higher education policy on a radically different course, by placing more progressive principles at the heart of the Bill. To have that opportunity, a party needs to win a general election. There is a lesson in that as people make their choices.

To return to the scope of the Bill and in particular the amendments tabled by the Opposition, not only is there a lack of general protection for students, but the proposed

office for students itself epitomises the problem with the Bill as it stands: students have their name on the door but they do not have a seat at the table. The amendments seek to ensure that students are represented on the board of the office for students.

I listened carefully to what the Minister said about the responsibilities that board members have for not just representing their own perspectives or interests but promoting the broader interests of higher education. I speak as someone who has been a student nominee on the governing body of the University of Cambridge, the board of the Office of the Independent Adjudicator for Higher Education, the Higher Education Academy, and several other bodies that I cannot instantly recall, during my previous life as president of the National Union of Students. It has always been accepted that when someone accepts a role as a board member, they are not there solely to represent their own interests; they must take on a broader responsibility for the duties of the body concerned, particularly where that is a public body. That would be implicit and explicit in the student representatives' responsibilities.

Ben Howlett (Bath) (Con): The Care Quality Commission was mentioned earlier. There is no patient on the board of that organisation to represent the views of patients, because things evolve quickly. How does the hon. Gentleman want student voices to be engaged more effectively? The Quality Assurance Agency for Higher Education, which the Labour party requested give oral evidence to the Committee, provided a probably successful and succinct idea for embedding the student voice by representing and engaging students at every level, not by having a token director on the board. Other regulators in the system certainly do not. Why not embed and engage students throughout the system as we move on?

Wes Streeting: Given the nature of the role of board members, those people would not be token; they would in fact have serious duties and responsibilities, and their voices and valuable perspectives would be heard at the heart of discussions. I might argue, by the way, that patient interests really ought to be represented on the board of the Care Quality Commission, but that is certainly outside the scope of the Bill. I have a serious point: I urge the hon. Gentleman and the Minister to agree with the new Prime Minister, who has said some interesting things since her elevation to the highest office about the importance of having worker and consumer representatives on company boards. That is an interesting point that ought to be addressed at the heart of the Bill.

Whether we believe that students are consumers of higher education or we prefer to see them as co-producers, both those visions would be served by these amendments, because students' voices would be heard on the board of the office for students. I propose that there should be two student representatives, because I found—particularly in the higher education sector—that it was often helpful for there to be someone else who shared my perspective and experience when I was sat at the table with people who had often been around for some time, had been through the mill and had a great deal of experience. That principle has been supported by the evidence that the Committee has gathered. It is regrettable that we had only one NUS representative in, and for only 15 minutes. We had two GuildHE representatives in for an hour. In fact, we heard a whole range of perspectives

[*Wes Streeting*]

from just the universities represented during our evidence gathering, but there was very limited time for students. I hope that we do not make the same mistake with the architecture of the higher education system.

Placing students on the board of the office for students would bring to life the Minister's commitment that the new body will place students at the heart of its work. We might have a debate about the best mechanism for that and the appointments process. I have suggested, for example, that the board itself should appoint student representatives, there might be some chopping and changing as a result of turnover or churn, and the Secretary of State may not want to get bogged down in annual or biannual appointments.

We can debate implementation and perhaps even tidy it up on Report, but at this stage I would like the Government to commit to including students on the board of the office for students. That is not much to ask. It would not have a great cost, but there would be an opportunity cost of excluding students. Students have a valuable perspective to offer. There are countless examples of NUS representatives, student union representatives and students themselves making valuable contributions to university governing bodies and higher education bodies and enhancing the quality of our higher education sector as a result. I commend these amendments to the Committee and hope for a favourable hearing from the Minister.

Paul Blomfield: To make up for failing to do so earlier, may I say what a pleasure it is to serve on this Committee under your chairmanship, Mr Hanson? I look forward to several weeks of debating with the Minister, who through the process of this Bill being brought together has proved to be a very listening Minister. He has ensured that proposals have developed and responded to concerns that have been raised. I hope we can continue to do that as we debate. While there will be a few dividing lines between each side of the Committee, there are also many things on which we can agree. Many of the amendments have been tabled genuinely to be helpful—this is one such amendment—and I hope there will be space for us to reach some understanding around them.

2.30 pm

I echo the concerns of my hon. Friend the Member for Ilford North about the consumer-producer language we use in relation to students and universities. It is to a degree inevitable, given the change in the funding regime, that students are consumers and in a different way universities are producers, but they are much more than that. In his evidence, Professor Simon Gaskell said that students are co-creators of education. That is an important point to make as we start our deliberations, and we should all seek to see students in that context.

The hon. Member for Bath—for whom I have high regard and work with closely on the all-party parliamentary group on students, seeking to give students a voice—made a point in relation to Douglas Blackstock's remarks on the QAA and the way students can engage. The QAA is an excellent example of what my hon. Friend the Member for Ilford North seeks to do through his amendment and, indeed, subsequent amendments. I have tabled one in relation to the quality assessment committee.

The QAA decided 10 years or so ago not simply to listen to students, but to bring them into their audit teams so that students sat within audit teams as equal members when they went on institutional visits and prepared the assessment of institutions. That, as Mr Blackstock shared with us earlier, has been extraordinarily successful in improving the quality of the assessment process undertaken by the QAA. That spirit of providing for student representation is what all of us are trying to capture in the amendments tabled, and in that spirit I hope we can find a way forward with which the Government will agree.

Mr Marsden: I rise to support the comments of my hon. Friends the Members for Sheffield Central and for Ilford North and to propose amendment 122, which stands in my name and that of the shadow Secretary of State. I begin by making it clear that in no way do I doubt the bona fides and the good intentions of the Minister; I hope he realises that. However, as I said in the previous session, we have to produce legislation for a significant period, so we have to think about all sorts of situation.

My hon. Friend the Member for Ilford North, in an excellent speech, drew attention to the context in which these amendments are proposed today and to the aggregation of decisions, costs and responsibilities that has been growing for individual students of every age since we decided in the early 2000s to introduce a tuition fee regime. I do not wish to sound unkind, but there is an old saying about hanging concentrating the mind of the condemned person wonderfully. If the Government wish to put students as consumers at the heart of the Bill, I can only say that there has been a great deal of hanging and stretching over recent years to concentrate their minds in that respect. I do not wish to be partisan—I merely remark on the fact—but in my experience, having listened to a large number of students on the issue, perhaps the more profound point is that the tripling of tuition fees, the withdrawal of grants and their substitution with loans for disadvantaged students, and the freezing of the threshold, of which Martin Lewis spoke so eloquently in our evidence session, make the question of how they can have their voice truly heard in the process even more important.

Let me address what the Minister and the hon. Member for Bath said about their perception of the role of the proposed student representatives. Again, I do not believe that either intended this—I have already referred to the bona fides of the Minister, and the hon. Member for Bath does excellent work with my hon. Friend the Member for Sheffield Central on his all-party group on students, and all the rest of it—but I ask them to consider whether students might see as a little condescending the suggestion that the representatives are in place simply to represent the student body and not to reflect on any of the broader issues.

The Minister is right to say that in any corporation or organisation of any description, when people are put on boards, whether as paid or non-executive directors, we want to get good value out of them, so that they are not simply a representative of a particular organisation but have broader perspectives. Indeed, by being on the boards and involved in the process, they themselves develop in understanding of the industry—to talk in commercial terms—or, in this case, of the vocation and structures of universities.

We see that in other areas. I will remain within the spirit and the text of the amendment, Mr Hanson, but I wish to reflect on young people's councils, which a number of Members of Parliament have in their constituencies. In some cases, those young people's councils are involved in making decisions, working with the local councils and local authorities. As I am sure has been the experience of other hon. Members, when I have had engagement with students or young people in informal or formal events in my constituency, the one thing that has always come across strongly is that they do not want just to be sitting there and wearing only the one hat—to talk about young people's issues. Young people of course have interests in specific areas such as higher education, but they are interested in all sorts of other areas as well. By extension, therefore, it is a faulty or deficient argument to say that the amendments are merely putting forward a token representative for a particular perspective.

Alex Chalk (Cheltenham) (Con): Does the hon. Gentleman think it would be appropriate to take into account that the existing clause bakes in the desirability—in fact, the requirement—for OFS members to have experience of representing or promoting the interests of individual students or of students generally? In other words, that is already baked into the proposed legislation.

Mr Marsden: I hear the point made by the hon. Gentleman. He is absolutely right to say that paragraph 2(2)(a) of the schedule has such a reference. He talks about baking in, and I will not ask for a description of whether it is soft or hard-baked, but I would prefer to have the measure hard-baked into the Bill. The reason is to send out the message to students that they are valued, not simply as instrumental members of the board, but as a holistic part of the operation and one that can add value.

The principle is important, which is why I am spending some time on it at this stage, and it will appear in a series of other amendments that we will consider in due course. To turn specifically to the existing drafting of the Bill, the OFS is to have three designated places—one each for a chair, the chief executive officer and the director for fair access and participation. The remaining non-designated members have to collectively demonstrate experience and satisfy a number of criteria, but I agree with what the NUS said in its submission. Without the guarantee we propose, there would be no statutory protection for the student voice and no statutory protection for that time in the future when the Minister has moved on to higher and greater things and possibly even to No. 10—we may yet get a Johnson in No. 10. There is no guarantee in the Bill. It is true to say that ordinary members of the OFS will have experience of representing students, but that is not in itself a sufficient guarantee that the voice of students would be heard in the office that bears their name. This is about sending out a very important symbolic message, which would benefit the Bill.

In their evidence to the Committee, the NUS talked about specific values—it is, after all, a trade union and trade unions have to have due regard to the interests of their members, otherwise they would not exist—but it went beyond that. It said that, following the recent referendum and elections over the last few years, it is

clear that young people have a great appetite to engage in politics and civic society and to shape the world around them. The NUS suggests all sorts of ways that that might be done, including individual electoral registration, but there is a broader point here, and on that point I want to refer to our evidence session with Mr Martin Lewis. Giving students the opportunity and the right to be at the heart of the office for students would confer not only those benefits on students, but would add value to this Government's—to any Government's—commitment to the democratic process.

To remind Members, Martin Lewis spoke in his evidence about the controversial issue of the freezing of the threshold—I am not going to go down that road at the moment. He went on to talk more broadly about breaking the principles of good governance and finance, and then continued:

“not only that, but this breach of trust makes it more difficult for people like me who have been trying to say to students, regardless”—
I am sure we don't all share this view—

“of the political spittle generated—forgive me—by you people when you argue over these issues, that students can still afford to go to university... Let us not just treat students as consumers; let us treat them as voters and citizens.”—[*Official Report, Higher Education and Research Public Bill Committee*, 6 September 2016; c. 38-39, Q55.]

The danger is that retrospectively changing terms breaches a contract and breaches the belief in politics as a whole. My point is not about that specific issue; it is that this is a social contract, and that is extremely important. The Government are contracting to produce a body that they believe will do far more for students in the future. They want students to be enthusiastic about it, to abide by it and to participate in it. In return, students want to have the right to sit on that body. I am tempted to quote the famous saying of the American colonist who said, “No taxation without representation.” I hope that we will not have a civil war, such as that between England and what became the United States, but this is a totemic issue, which students feel strongly about.

If the Government were to consider and reflect on this issue, it would send a very strong signal of how important it is to include students in this process and in broader democratic processes. That would benefit all of us in Parliament in terms of improving engagement not just from younger students, but from older students as well. For those reasons, while I do not in any way mistrust the bona fides of the Minister, the hon. Member for Bath or indeed anyone in the room, we do intend to press amendment 122 to a vote.

2.45 pm

Roger Mullin (Kirkcaldy and Cowdenbeath) (SNP): It is a pleasure to serve under you again, Mr Hanson. I hope that this is not a private fight, and that the Committee does not mind a Scot intruding in this debate, which would seem rather strange to anyone who has been in receipt of university education in Scotland, because universities in Scotland have had students at their centre, in different ways, for centuries. Indeed, the amendments are extraordinarily modest in their intent.

Some may know that for centuries ancient universities in Scotland—the four ancient, as we call them—have had elected rectors. Only the students have been able to vote to elect rectors, who are chairs of the court. That has not led to an utter collapse in the system. Indeed,

[Roger Mullin]

the other day we heard a professor saying how proud he was that his university was ranked 19th in the world. Over the years there have been some aberrations; in the early 1970s in Edinburgh, they elected a student as rector, who did go on to No. 10: a Mr Gordon Brown, I believe, who also used to be able to get elected as MP for Kirkcaldy and Cowdenbeath, but no more.

Having worked in the education sector at times, I know that students can show remarkably wise judgment: students elected me honorary president of Paisley University in the early 1970s for two years. More recently, when I was doing some work at Stirling University, I was invited to chair the students' association as an external person. The engagement has been great, and there are many platforms for student engagement.

The serious point I would like to make about the nature of student engagement, however, is that we should look at some of the problems that we have on boards, not just in the education sector, but more generally in society. Look at what happened when the banks crashed. The Government regularly point out that part of the problem is group-think on boards—in other words, nobody on the board comes from a different perspective, able to challenge.

Although I respect many of the contributions we heard in evidence in the past two days, it strikes me that many of the people were talking with similar assumptions and in similar ways. We are just as likely to get group-think among well suited academics sitting together in a room as we are on the board of a bank. Student representation can provide a type of challenge, which is important. It is not even a problem if challenges are wrong, as long as there is challenge. To avoid group-think, there should always be someone willing to provide that challenge. That is where I think student representation has a particular role to play. If I correctly understood the hon. Member for Blackpool South to say that he intends to put his amendment to a vote, we will be happy to support it.

Joseph Johnson: I will respond to amendments 2, 122 and 3 together, as they all relate to student representation on the board. As I said earlier, students' interests really are at the heart of the reforms. They are hard-baked into the Bill. They are clearly and explicitly, in black and white, in schedule 1, in which, as has already been made clear, the Secretary of State must have regard to the desirability of the OFS board containing people with experience of representing students' interests.

We will continue to engage with our partners as the implementation plans are developed. That will include ensuring that the student perspective is represented on boards and decision-making bodies. That is why, for the first time, we are setting up an office for students, with the intention, set out in primary legislation, that its members will, between them, have experience of representing such interests. I think it is fair for the Committee to acknowledge that that is progress. The current legislative framework, which was set up in 1992, did not have any requirements for the board of HEFCE or its predecessors to have experience of representing the student interest. It is also fair to acknowledge that putting students at the heart of the governance of the main regulatory body that will oversee the sector is a

significant step in the right direction, even if that is not quite as hard-baked as the hon. Member for Blackpool South would like, in terms of prescribing the specific number of people on boards who are capable of representing the student interest, or prescribing that those involved be current students.

Mr Marsden: I entirely acknowledge what the Minister says about the provision not existing in 1992 or subsequently, but that, while not exactly being a lawyer's argument, is a slight straw person, if I could put it that way. We might as well say, "We have near-universal suffrage in the UK today; they didn't have that 200 years ago." It is not a very strong line of argument, I would suggest. The Minister talked about experience of representing the student interest; most of us here have that experience, so I wonder if either he or his officials could give us a definition of that, and say whether it includes or excludes existing students.

Joseph Johnson: It could easily include students who are presently at university, but we would not want to put that in the legislation, because that might exclude people who are quite capable of playing that role. Many NUS executives, for example, could occupy the position, but they are often not actually studying, as I understand the NUS's arrangements. They take leave of absence or years out from their university. They sometimes perform these important functions shortly after they have stopped studying. Putting in legislation the kind of requirement that the hon. Gentleman wants would prevent many of those kinds of people from contributing their valuable experience. We would not want to exclude them by putting in a requirement that they be existing students. It would perhaps not be in the student interest to do so, because we want to make those skills available.

It is essential that the individuals who are eventually appointed be able to act on behalf of the wider student interest that I spoke about. Students are a highly diverse group, and we want representatives on the OFS board who can represent the rich diversity of the student population—mature, part-time, minority ethnic and distance learners, as well as many other forms of learners. We want the OFS board members to be able to represent more than one type of student. It is very possible that we can recruit members with several of the criteria that we are looking for.

Dr Blackman-Woods: May I help the Minister out by suggesting that he looks at having the president of the NUS, or an immediate past president of the NUS, as a member of the board—somebody with a very up-to-date knowledge of a wide range of issues relating to students and the higher education sector more widely?

Joseph Johnson: We have made it clear that we want the student voice prominently represented in the governance structures of the main regulatory body. We would not want to set out in legislation that the holders of particular positions in the NUS or other student unions had ex officio places on the board of the office for students. That would tie the hands of the board of the OFS in a way that would be entirely undesirable in primary legislation.

I want to pick up on one or two points that the hon. Member for City of Durham made. She said that the way in which the higher education market had evolved

to cause students to be regarded as consumers was regrettable, and she also regretted the withdrawal of the state from the financing of higher education. I would like to point out that that is not true: the taxpayer still makes a considerable contribution to the funding of the system. Taxpayers fund it directly, and also often subsidise the loans that underwrite students' studies. That is a critical feature of a progressive higher education system that has enabled many people from disadvantaged backgrounds to go to university and benefit from it.

As I was saying, schedule 1 is progress. It includes a requirement that is not found in current legislation. The student voice and the student interest will be represented in the main regulatory body; that has not previously been the case. The Committee should welcome that, even if some want the types and specific characteristics of the student representatives to be set down even more clearly.

Paul Blomfield: I thank the Minister for giving way again. He has explained his aspiration to engage students. The first OFS board will set the tone; it will set an operating framework that will be maintained over many years. Under the Bill, would the Minister expect that first board to include a current, or at least very recent, student, so that that particular experience could complement its work?

Joseph Johnson: I would not want that to be explicit in primary legislation. It will be for the Secretary of State to have regard to the duty to think about the desirability of student representation, but I do not want the Bill to be clear now as to whether it would be a current student or someone who had just finished studying. It could be either of those, or people with a number of other characteristics. The key thing is that there will be people on the OFS board who will be capable of representing the wider student interest.

Mr Marsden: Without trading lawyers' words, the amendment says that at least one of the members should,

"at the time of their appointment, be currently engaged in the representation or promotion of the interests of individual students, or students generally".

That is drafted quite widely, for the specific and practical reasons that the Minister outlined. It certainly does not say that a member has to be an NUS officer or official. There is a degree of latitude in the amendment.

Even at this stage, I shall make an offer to the Minister: if he is worried that the amendment is technically deficient—after all, he is Goliath and we are David in this matter; he has many officials to draft amendments, whereas ours may well be technically deficient—and he wants to suggest improvements to it, that would be a different matter, but he has not said that.

Joseph Johnson: I deal with the amendments that have been tabled. I do not choose which amendments Opposition Members table; I can deal only with those that are presented to me. The amendment as drafted would restrict student representation at board level to a current student. We think that is over-prescriptive. It is of course right that we engage directly students who are currently in higher education, but restricting the requirement

in such a way would risk our not being able to appoint the right person to the role. It could, for example, prevent us from appointing a future full-time officer of a student representative body. For that reason, I urge the hon. Member for Ilford North to withdraw the amendment.

Wes Streeting: Having listened to the arguments, I am genuinely baffled by the Government's reluctance to give way on the notion of student representation on the board of the office for students. I cannot understand how it could be reasonably argued that students' interests lie at the heart of the office for students when there might be no voice around the table with current or recent experience of being a student.

Alex Chalk: Does the hon. Gentleman recognise that students are not being excluded? It is not the case that they will not be included; they just might not be. The schedule simply allows the flexibility to ensure that if the representative is a student, they are the best person for the job.

Wes Streeting: I am grateful for the hon. Gentleman's intervention. It is in the nature of the business of the office for students, which is, after all, for students, that it will be always discussing the kind of issues on which it would be advantageous to have the perspective of a current or former student who had been involved in student representation, so that the OFS could reach the right conclusion and listen to the right perspectives.

It is some 12 years since I graduated from university, and more than half a decade since I left student representation. Although I maintain a passion for representing the interests of students, as reflected in the amendments I have tabled and in the contributions I tend to make in the Chamber, I do not pretend for a moment to know what it is like for students currently studying on my course at my university, let alone on all other courses at all other universities. Things have moved on. I know the higher education sector can sometimes move at a glacial pace when it comes to improvements and developments, and it suffers from small c conservatism, but none the less there have been significant changes. In the student finance system alone, the architecture for tuition fees has changed twice since I was at university, and the repayment terms and conditions have changed even more. I cannot understand the argument we have heard this afternoon.

3 pm

The Minister spoke about progress, but this is not meaningful progress at all in the context of how radically higher education has changed since student representation was first considered in legislation in a meaningful way. It is outrageous that students are graduating with record levels of debt. The nature of the student finance system and the changes made to it in this Parliament will mean that the poorest students graduate with the highest levels of debt. It is genuinely outrageous that students are bearing so much of the burden of repaying their education as graduates, yet they are being afforded so few rights, protections, and opportunities to have their voices heard. Whether we see this as a matter of consumer rights or as a matter of ensuring meaningful co-production

in the relationship between students and their institutions, the fundamental point is the same: co-producers deserve a voice and consumers deserve rights.

Amendments 2 and 3 are not necessarily meant to be prescriptive. Amendment 3 provides that the two student members should be

“enrolled on a higher education course of a registered provider...elected as representatives of a students’ union, or...elected as representatives of the National Union of Students, and...considered by the members of the OfS able to represent, or promote the interests of, a broad range of students.”

We recognise that there is diversity in the sector; that was the motivation for providing for two members.

I am disappointed that the Minister is not giving way on this matter. As a member of the Treasury Committee, I am able to count the number of Members in the room, and I appreciate that, thanks to the Government Front-Benchers’ effective whipping, I am unlikely to win the day. I am content to withdraw the amendment, but I appeal to the Minister to reflect on our discussion as we continue debating the principle of student representation, and to consider bringing the amendments back on Report, perhaps in a slightly modified form.

This debate is almost divorced from the reality of the higher education sector. There are student representatives on the governing bodies of most higher education institutions, including the Higher Education Funding Council for England, the Quality Assurance Agency for Higher Education, the Office of the Independent Adjudicator for Higher Education, and UCAS.

Ben Howlett *rose*—

Wes Streeting: I give way to the hon. Member for Bath, in the hope that he has had a change of heart.

Ben Howlett: I appreciate that the hon. Gentleman is withdrawing his amendment, but some of the examples he has cited show that student representation can be looked at by one of the committees provided for in schedule 1. If he tables further amendments on student representation, surely he should look at that at a committee level, rather than board level.

Wes Streeting: It comes back to the Minister’s point, which is that we do not want to see tokenistic representation. The board of the office for students is the governing body of the institution; it has powerful regulatory functions to oversee and it will have a degree of responsibility for allocation of resources. It is quite right that the student perspective should be heard right at the top.

I fear that the Government’s reluctance at this point in our discussion to include student representation will go down very badly throughout the country, not just among student representatives—many of us have large student constituencies—but with the sector, as we saw in the evidence session. I am sorry that university and higher education sector leaders seem to have a greater appetite for, and understanding of, the true value of student representation than the Government have demonstrated this afternoon. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 122, in schedule 1, page 63, line 18, at end insert—

“() At least one of the ordinary members appointed under sub-paragraph (1)(d) must, at the time of their appointment, be currently engaged in the representation or promotion of the interests of individual students, or students generally, on higher education courses provided by higher education providers.”—
(*Mr Marsden.*)

This amendment would ensure that at least one of the members must be a student representative.

The Committee divided: Ayes 9, Noes 11.

Division No. 1]

AYES

Blackman-Woods, Dr Roberta	Rayner, Angela
Blomfield, Paul	Smith, Jeff
Marsden, Mr Gordon	Streeting, Wes
Monaghan, Carol	Vaz, Valerie
Mullin, Roger	

NOES

Argar, Edward	Kennedy, Seema
Chalk, Alex	Milling, Amanda
Churchill, Jo	Morton, Wendy
Evennett, rh Mr David	Pawsey, Mark
Howlett, Ben	Warman, Matt
Johnson, Joseph	

Question accordingly negatived.

Mr Marsden: I beg to move amendment 123, in schedule 1, page 63, line 20, after “have” insert “equal”.

This amendment would ensure all the related criteria are taken to be of equal importance and there would be no perception that a hierarchy exists between any of them.

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

Amendment 124, in schedule 1, page 63, line 24, at end insert “or further education providers”.

This amendment would ensure experience of Higher Education at Further Education providers is taken into account.

Amendment 125, in schedule 1, page 63, line 37, at end insert—

“(h) working to improve equality of opportunity and the widening of access and participation within higher education, including via part-time, adult and lifelong learning.”

This amendment would ensure improving access and widening participation is considered when appointing board members.

Amendment 126, in schedule 1, page 63, line 37, at end insert—

“(i) being an employee of a higher education provider, particularly in the capacity of teaching or researching.”.

This amendment would ensure the Secretary of State had regard for the experience of Higher Education employees, teaching or research staff.

Mr Marsden: The aim of these amendments is again to extend and clarify our view of the direction in which the Bill should travel. I like to hope that other members of the Committee feel likewise. I will take them in order.

Amendment 123 is relatively straightforward but contains an important principle. It marks a slight dividing line between Government and Opposition. We had a lot of discussion about consumers in the previous debate—rightly so, because we wanted to take the Government at their

word, when it came to their interpretation. Surely it should be a principle that all the related criteria referred to in this part of the Bill, which talks about the desirability of the proposals, should be of equal importance. There should not be a perception of them being in a hierarchy.

The Government have suggested that the new office for students will be explicitly pro-competition. I am sure, as we go through the Bill, we will have a number of significant debates on amendments that will draw out what the Government mean by being pro-competition. There is a risk—I put it no stronger than that at this stage, as we will want to return to the subject in detail when we talk of providers—that if we encapsulate that preference in the criteria, that element will take priority over other functions, which could harm the quality of higher education and act against the wider student interest.

We believe that members of the office for students should have prior experience and understanding of all aspects of the work of the OFS board, and that should be made explicit in legislation.

Amendment 124 addresses what I hope we will discover from the Minister's reply is a drafting error. We are asking for the words "or further education providers" to be included in the list of things that members of the board should have experience of. There is a very straightforward reason for that. Further education colleges in England have provided and increasingly provide a range of higher education, including higher-level skills and qualifications for students entering the workforce and individuals wishing to pursue a higher education qualification.

I speak with some feeling, although I do not have a university in my constituency. We might have had one in the 1960s; it was between us and Lancaster, but unfortunately the Conservative council at the time thought that revolting students—because that is, of course, what people were doing in the '60s—were not what they needed in Blackpool, so it went to Lancaster. However, we do have an excellent further education college—Blackpool and the Fylde College—which has thousands of higher education students and was one of the first FE colleges to be awarded independent degree-awarding powers.

The direction of travel in that respect is absolutely clear—or at least I hope it is. Some 159,000 people study at higher education colleges, and colleges deliver 85% of HNCs, 82% of HNDs and 58% of foundation degrees. Given what the White Paper said about the crucial importance of skills and vocational education in driving the objectives that the Government describe—indeed, the Minister said that when he introduced the debate in the House of Commons—I would have thought it was a no-brainer, if I can put it that way, that we should consider looking at people who have worked in the further education sector and have specifically promoted and developed higher education degrees.

This is a good opportunity for the Government to respond to the concern, which I and other people have raised, that further education colleges and their role in higher education got a raw deal in the White Paper and the Bill. On Second Reading, I raised the forecast figure in the Government's technical paper for the number of further education colleges that would be delivering higher education as a result of this Bill. The figure for 2027-28 is exactly the same figure as that projected for 2018-19.

Now, perhaps the Minister will say, "Oh well, that's speculative" or whatever, but there is a suspicion—I will put it no stronger than that—in the further education sector that when the Government talk about the importance of new and existing providers of higher education, the further education sector is not absolutely at the forefront of their mind. For those reasons, it is desirable, and frankly in the Government's interest, that this modest amendment, which simply identifies what is actually the case at the moment—that more than 10% of higher education is delivered by FE colleges—should be incorporated in the list of criteria, not the obligations, that should be considered when the members of the board are appointed.

In amendment 125, we are developing and taking forward the same principle of widening participation and social mobility. We are suggesting again that they need to be made explicit criteria in the Bill. Again, the Labour Opposition are putting forward our strong view of how important widening participation and improving equality of opportunity and access are. I am not going to speak in detail about the inclusion of the phrase "part-time, adult and lifelong learning",

because there will be other opportunities when we debate other amendments, but we want the Government to put money where their mouth is, and their mouth has been very eloquent about the need to improve and widen participation. Again, I cannot see any reason why those measures should not be included.

Indeed, the previous Prime Minister made great play of this issue at the beginning of the year, and I have no reason to believe that that position is not supported by the current Prime Minister. The Minister herself has spoken eloquently about the need to get universities and higher education institutions to step up to the plate.

3.15 pm

The Association of Colleges is supportive of the Government's measure to widen participation and, as I have already said, colleges play a key role in advancing the position of disadvantaged black and minority ethnic people, as do many of the new universities. The old universities need to do more; I think the Minister and I agree on that.

These particular amendments, which are relatively modest, would simply put in the Bill at this very significant point the issues that the Government think are important for the board to consider. As one of my hon. Friends said earlier, the appointment of this first board—the people who are on it and the criteria used to appoint them—is crucial, regarding the message that is to be sent out.

The final amendment in this grouping, amendment 126, addresses a really important point. We are proposing that another of the criteria should be to ensure that the Secretary of State has regard for the experience of higher education employees—teaching or research staff. I would add, although it is not formally in the amendment, that the Government should consider the experience of all staff who work in the HE sector at whatever level. However, for the purposes of the amendment, we are talking about teaching and research staff.

Again, that is an issue that the University and College Union feels strongly about and we support it, because the success of a university does not only depend on

having excellent vice-chancellors or excellent managerial staff; it depends on the work of everybody in that university, from the highest professor to the most modest junior lecturer, or whoever. I would have thought that having that broad mix of people included in the list of people with desirable attributes from whom the Government wish to produce this first board for the OFS would set an admirable precedent.

Those are the reasons why we are tabling these specific amendments. We do so to broaden and—if I can put it this way—make more catholic, with a small c, the criteria and the pool of talent from whom the Secretary of State will be able to draw the members of the first OFS board.

Joseph Johnson: Ensuring that the OFS board members reflect the diversity of the HE sector is of the utmost importance to this Government. It is also essential that the board has the range of skills, knowledge and experience that will be required for it to be the market regulator of a sector that is of such strategic importance to the UK.

The current legislative framework requires the Secretary of State solely to have regard to the desirability of appointing HEFCE board members with experience of the HE sector, business or the professions. Over the years, that has given successive Secretaries of State from different parts of the House the flexibility to ensure that the HEFCE board has the breadth and depth of experience and skills that it has needed to deal with the priorities of the day.

The provisions in this Bill relating to the OFS board appointments take the same approach as the current legislative framework. In line with the OFS's broader remit, we have expanded the number and range of areas to which the Secretary of State must have regard when appointing OFS board members. For example, those areas now include developing and implementing a regulatory framework, and promoting student or consumer choice. However, the basic approach remains the same. The Secretary of State must have regard to the desirability of appointing, but is not bound to appoint, people with certain backgrounds. The aim of the Bill remains to preserve the crucial flexibility for Secretaries of State to constitute the OFS board in the most appropriate way to address the challenges and opportunities it faces at any given time.

On amendment 123, it is extremely important that the Secretary of State has the ability to determine the overall balance of the board, and to decide where the OFS board needs greater strength and depth. While I agree that a balanced approach will be important, the amendment would inhibit the Secretary of State's ability to make appointments that reflect current priorities. It risks having a board lacking the depth and breadth of key experience it needs to tackle the issues of the day, which may vary over time. The amendment would mean that the Secretary of State needed to have equal regard to all the criteria. It therefore implies that it would be desirable to have equal representation from all the areas on the list all of the time.

The process we have adopted for making appointments to the OFS board is based on that which has been successful for the HEFCE board over the past quarter of a century. The current legislative framework requires the Secretary of State to have regard to the desirability of appointing HEFCE board members with expertise

in higher education, business and the professions. In terms of OFS board recruitment, the legislation expands the skills it is desirable to have. In purely numerical terms, the Bill lists seven areas, whereas the previous legislation mentioned only three, which means there will likely have to be some trade-offs between different types of experience that the Secretary of State will need to consider when making appointments. Furthermore, it is highly probable that some people will satisfy more than one of the criteria, and it would therefore be odd to try to pigeonhole individuals into a category for the purposes of satisfying the amendment, rather than making a judgment on the best way for the OFS to deliver its duties.

On amendment 124, I am glad that the hon. Member for Blackpool South has raised the important role of FE colleges in HE. Some 159,000 students study HE in a college, which is why I would like to highlight the support given to the package of reforms contained in the White Paper and the Bill by the AOC. The AOC says:

“We welcome much of the Bill's content, as it has been one of AoC's key long-standing policy objectives to make it easier and quicker for high performing institutions, including colleges, to achieve their own degree awarding powers”,

as the hon. Gentleman's college in Blackpool has successfully done recently. I will read another quote from the AOC that shows the support from colleges for what we are trying to do through our reforms:

“Choice, access and quality are the welcome watchwords of the Government's long-awaited plans to open up higher education and to allow more colleges to award HE qualifications. This step change away from the country's traditional university system will empower more people than ever before to access HE in their local area through a college. It will also provide a wider choice of courses that are linked to employment.”

I agree that having board members who can represent a wide variety of students would serve to enhance the diversity of the board. However, a specific amendment to ensure that is not necessary, as the definition of higher education providers in clause 75(1) is broad enough to capture further education providers. The definition already includes any provider who is offering higher education courses, which reflects the definition used in the Education Reform Act 1988. That definition has been used deliberately so that it captures HE in FE as an important and valued part of the sector.

There is nothing to be gained by highlighting a distinction between higher education and further education providers as the amendment proposes. The Bill enables the necessary flexibility to select board membership that best represents a very broad range of student interests. The amendment would serve to restrict that flexibility. It is essential that the individuals appointed can represent all students, which reflects common practice, where board members are typically appointed for their breadth of experience and representation.

Mr Marsden: I have to say that the Minister's response was an extraordinarily—this was possibly predictable—managerialist response written by his civil servants. It was a pretty poor response. On the specific point he made, I would have more sympathy with the technical position—I have no doubt that the civil servants have gone through the previous legislation—were it not for the fact that in the White Paper and the Bill that was presented, the role of further education colleges in

delivering higher education was pretty non-existent. That is why it is important to include the phrase in the Bill at this point.

Joseph Johnson: I have made the point that including the phrase is simply unnecessary, because the definition of “higher education provider” that we are using, which is taken from the 1988 Act, captures the delivery of HE through FE colleges. It would be entirely redundant and confusing for people to see a new definition spring up at this point in the Bill.

Turning to amendment 125, widening access and promoting the success of disadvantaged students will be a key part of the office for students’ remit. We want to ensure that in bringing forward our reforms, higher education providers do not lose sight of their vital role in promoting social mobility and in helping some of the most disadvantaged young people in our society to benefit from our world-class HE system.

The integration of the remit of the director of fair access within the OFS signals our commitment to making fair access and participation a priority. The OFS will have a new duty that will require it to consider equality of opportunity in connection with access to and participation across its functions, so widening access and participation for students from disadvantaged backgrounds will be at its very core.

I understand the concerns expressed about the importance of considering experience of widening access and participation when appointing the chair and ordinary members, but just because it is not in the list in schedule 1 does not stop the Secretary of State from appointing ordinary members who have that experience. The OFS’s members will be drawn from a wide range of backgrounds to ensure that the body is supported by the knowledge and expertise critical to delivering its mission and informed by representation that reflects the diversity of the sector’s providers and students.

We have already signalled the importance we attach to access and participation through the duties we are placing on the OFS and through the creation of the director for fair access and participation post. The DFAP will, like other members, be appointed directly by the Secretary of State. The DFAP must have the skills necessary to fulfil the duties placed on the OFS in widening access and participation. The necessary experience will therefore be there within the membership of the OFS. The OFS members will operate in effect as a board.

Amendment 126 relates to HE staff representation. The HE sector is diverse. It includes: large teaching intensive institutions that operate on an international level; highly specialist conservatoires of music, dance and the performing arts; and small, very locally based organisations focused on giving the most disadvantaged groups access to HE. In the Bill we have already included measures that mean the Secretary of State must have regard to the benefit of having represented on the board experience of providing higher education and experience of a broad range of providers. Such experience could come from higher education staff involved in teaching or research, or from leaders of higher education providers.

The most important thing will be that the individuals can bring a broad range of experience and represent interests that go beyond their personal position. In any

case, it would be difficult to get a truly representative cross-section of HE staff, even if they filled all 15 available places on the HE Board. It would be impossible to ensure anything like fair representation from the other stakeholders in the HE sector alongside having anything approaching even reasonable representation of HE staff.

In practice, we see no reason why many members of the OFS board will not, at one time or another, have worked in HE and be able to use the experience they gained there to represent HE staff, regardless of whether they are actually employed in HE at the precise time they are serving on the OFS board. I therefore ask the hon. Gentleman to withdraw the amendment.

3.30 pm

Mr Marsden: I have listened carefully to the Minister and, again, I have no reason to doubt his bona fides. But what he has said and, particularly during the discussion of the last two amendments, the criteria on which he has based the Government’s unwillingness to take them on board underline our concern about the direction of the Bill.

I mentioned earlier the need to have a Bill that is fit for the challenges of the 21st century and does not simply reflect the issues of the 20th century. I do not want to sound like a sociologist, but I am disappointed that the assumptions in the definitions of what the Minister has said are so extraordinarily hierarchical. In the context of the Bill, none of the amendments are mandatory. We are not saying there must be a cleaner on the board of the office for students—perhaps that would be a good thing—or a junior lecturer or X or Y. We are saying that when thinking about such things we should think broadly and outside the hierarchical box that has occupied, perhaps for too long, the attention of civil servants and Ministers. We are talking about a revolution in higher education in the 21st century, yet the very modest issue of not putting in the Bill indicators that show that the Government are thinking in a new, rather more creative and profound way instead of going back to the hierarchical models that have obsessed higher education in the past is extraordinarily dispiriting and disappointing.

Another point should be made. My hon. Friend the Member for Ilford North talked about the impact of what we have had today, and I am sure debate on it will recur in other places at other times. We heard the Government using their majority on this Committee to slap down any suggestion of student representation in the office for students—[HON. MEMBERS: “No!”] It is true.

The Lord Commissioner of Her Majesty’s Treasury (Mr David Evennett): That is rubbish.

Mr Marsden: No, it is not. The fact that you protest too much shows the weakness of your position.

The Chair: Order. That is not my position.

Mr Marsden: I apologise, Mr Hanson, on both counts.

If Conservative Members are feeling touchy on that subject, I will move on to the broader point. We have now heard the Minister talk without mentioning further

[Mr Marsden]

education colleges or the importance of such things. It is no good the Minister saying the Government are thinking about it elsewhere. Symbols and permissiveness matter when considering the people we want on the board, particularly because this is the first time this has ever been done. I am genuinely frustrated, as I think are my hon. Friends, with that position. The Minister could have said he would go away and think about it or work on it but, no, he has fallen back on the standard managerial, hierarchical structures that have turned so many people off higher education in the past.

On this occasion, because the Minister is clearly not prepared to consider the amendment further, I will not press it to a vote, but we will be watching him carefully during the progress of the Bill for a more positive response to the issues covered in this group of amendments than that which he has shown today. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Marsden: I beg to move amendment 127, in schedule 1, page 64, line 5, at end insert—

“() The Director for Fair Access and Participation shall be responsible for all the OfS Access and Participation functions.”

This amendment would ensure the Director for Fair Access and Participation is responsible for all Access and Participation Functions

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

Amendment 156, in schedule 1, page 64, line 6, leave out from “responsible” to the end of line 8 and insert—
“for the access and participation functions of the OfS and must report to other members of the OfS on the performance of these functions.”

This amendment aims to clarify that the Director for Fair Access and Participation is responsible for the performance of access and participation in addition to just reporting on those functions.

Amendment 134, in schedule 1, page 66, line 21, at end insert—

“() The Director for Fair Access and Participation must be consulted before any function relating to access and participation is delegated by the OfS under subsection (1).”

This amendment would require the Director to be involved in access and participation functions.

Amendment 157, in schedule 1, page 66, line 23, at end add—

“(3) Any functions in relation to access and participation functions will be delegated to the Director for Fair Access and Participation.”

This amendment aims to underline the exclusive responsibility of the Director for Fair Access and Participation for all matters relating to access and participation.

Mr Marsden: In the Minister’s concluding remarks on the previous group, he referred to the important role of the director for fair access and participation. In the amendments we are proposing now—I see that my hon. Friend the Member for Ilford North has tabled other amendments in this regard, too—we want to explore the independence and flexibility of the director with the Minister. He rightly described that in his comments as part and parcel of what the Government want to embody in the Bill.

I am not being particularly critical, but, as always, we did not have a great deal of time to tease out some of the implications for the director—whoever holds that office—when the current director of fair access appeared in the evidence session. We could take enough from what he said to know that the ability of the director for fair access and participation to negotiate with institutions—whether soft-baked, hard-baked or anyway-you-want-baked—would be seriously compromised if the director did not have the ultimate authority to approve or refuse access and participation plans. My hon. Friends who have tabled amendments and I believe that that is not sufficiently clear in the Bill, so we want to pursue the matter further with the Minister.

To ensure that the targets set by universities and colleges are sufficiently challenging will always involve tough negotiations. For the director to have had that independence to engage in negotiation free from conflicts of interest has been crucial in securing high levels of commitment by institutions to date—the key factor in OFFA’s success, which vindicates the decision of the Minister’s predecessor, David Willetts, to appoint Les Ebdon to the post in the first place. Negotiations can secure significant additional investment in access and a marked increase in the ambition of many universities and colleges. For example, in the 2016-17 access agreements the director’s negotiations led to improved targets at 94 institutions, and 28 increased their level of predicted spend, which secured an additional £11.4 million for fair access and participation.

Those are the statistics, and statistics are important. After all, we often talk about evidence-driven policy, and it is gratifying when there is evidence to drive the policy. It also, incidentally, strengthens the Minister’s hand in the financial discussions that he has to have from time to time with the Treasury. Behind the figures, however, lies the success story, or aspirational stories, of hundreds and thousands of not only young people, but—I speak with feeling as a former Open University tutor—older people who traditionally thought that higher education was not for them. In any system, some people will always be able to bustle their way through, even when they have not had opportunities on a previous occasion, but the whole point of a director for fair access and participation is to spread best practice, not only from the best universities and the most determined students, but generally.

I am labouring this point, because it is so important to continued success. When an important new framework is to be established with the office for students, it is crucial that the director’s ability to do his or her job is not impeded, whether by omission or by unexpected and unplanned consequences. If the director for fair access and participation can be bypassed and overruled by the chief executive or board of the office for students, we believe, as do others, that that would significantly undermine his or her ability to negotiate directly with vice-chancellors and to offer a robust challenge. That would probably lead to a significant scaling down of ambition by some institutions. That, I am sure—indeed, I do not need to be sure, because the Minister has waxed eloquent on it in several speeches and lectures at a number of institutions over the past year—is not the Minister’s intention. The amendments are, therefore, genuinely intended to be helpful in getting clarification.

It is vital to have a high-profile director for fair access and participation with the authority and credibility to offer robust challenges to institutions. A director who has first-hand experience of how tension at a higher education provider plays out in practice—in relation to finance, marketing, recruitment, student voice, learning and teaching, and Government policies and initiatives—will be well positioned to make nuanced judgments across access agreement negotiations about what is reasonable and achievable. That would obviously require the director to be a credible champion and a high-profile person in this field.

If the director does not have responsibility over access agreements and that is not clear in primary legislation—putting to one side the helpful advice that Ministers may be able to give subsequently—that will send out the wrong message for the institutions that we would expect to engage in the new settlement resulting from the Bill, and will make much more difficult both the Government's avowed intent to widen participation and access and the specific responsibility of the director to pursue that.

Jo Churchill (Bury St Edmunds) (Con): I am getting a little lost. Is not the hon. Gentleman being a little managerial now by saying that only the director for fair access and participation is responsible? Based on the arguments he made in favour of previous amendments—that we should be looking at the broader ability of the board to make decisions—should it not be the responsibility of the whole board to feed into such a position in order to ensure that the important area of access and participation really does what it says on the tin?

Mr Marsden: I have considerable respect for the hon. Lady, not least on the basis of the speech she made on Second Reading, and she has made a valuable point. It is not my intention, or that of my colleagues, to say that the director for fair access and participation should sit in a great bubble somewhere thinking great thoughts and that the OFS should simply rubber-stamp them at the end of the day. It is about who takes the initiative and carries things through on a day-to-day basis. With the best will in the world, we do not believe that that should be left to the board.

I have served on boards, committees, trusts and all the rest—as have, I am sure, many Committee members from both sides of the House—and everyone knows that one of the most difficult things to get right is the balance between overall strategic policy and the day-to-day administration of that policy. In my view—I have not heard many people dissent from this position—the director of fair access has been a successful innovation. It is important that those elements of the role that have worked so well so far are not restricted, unintentionally—I am not saying there is a dastardly plot to undermine them—by a defective or unclear identification and delegation of the director's powers in the Bill.

This is a question not of managerialism but of realpolitik. We all know that in the real world and in the political world, if people's powers are not well defined, there will always be someone who at some point will try to chip away at them. That is the point I am trying to get at. I understand entirely the point that the hon. Member for Bury St Edmunds was making. I do not wish to micromanage the affairs of the office of the director for fair access and participation any more than I think the

Minister does, but I do not want to see set in legislation a train of views that takes us down the path I have described.

To meet the Government's goal of doubling the rate of young people from disadvantaged backgrounds entering higher education by 2020 will require an acceleration of the process and a director who can continue to offer those robust challenges. If the director does not retain the authority to approve or reject an access and participation plan, if it is not clear that he or she retains that authority, or if that power can be delegated to others and decisions overturned, there is a real risk that the director's position will be seen as weakened. Believe me, having sat on the Education Committee, I do not think that lawyers and judicial reviews or internal rows in Departments, detracting from the work of that Department, are something to be recommended.

3.45 pm

To make these points more clear—my hon. Friends will want to add their own views—these are important issues, and getting them wrong could send a message that fair access had been deprioritised and would likely lead to a scaling down of ambition by institutions. That kind of message would be seen as contrary to the Government's fair life chances and social mobility agenda.

Dr Blackman-Woods: I rise to support the amendment and the excellent case that my hon. Friend the Member for Blackpool South has made. On Tuesday, we heard from the director of fair access, Professor Les Ebdon, about how important it is that the Bill protects the interests of not only current students but future students. I cannot overstate the importance of the Bill providing a robust framework for fair access to universities, and I am concerned that it may water down some of the director of fair access's powers to hold universities to account on widening access.

That issue was raised by Professor Ebdon in his evidence, during which he said:

“The concern that I would have is around whether it actually gives more power to the director of fair access or not.”

He was speaking about the new role of director for fair access and participation. He added:

“At the moment, the director of fair access has the sole authority for deciding whether an access plan is sufficient and universities have done what is sufficient to promote and safeguard the interests of students. I know there would be a number of universities that, if they had somebody else—another chief executive above me—to go to, would take my decision to them, because they argue long and hard with me about the decisions I make.”—*[Official Report, Higher Education and Research Public Bill Committee, 6 September 2016; c. 57, Q86.]*

The point of the amendment—this may address the point made by the hon. Member for Bury St Edmunds—is that it seeks to ensure that the final responsibility for decisions relating to fair access and participation rests solely with the director for fair access and participation, not with other members of the board or a chief executive who might be in the structure above the director. The amendment seeks to address the concerns expressed by OFFA by ensuring that responsibility for holding universities to account rests solely with the director for fair access and participation, and that universities cannot

[*Dr Blackman-Woods*]

try to undermine the authority of the director by going above his or—at some time in the future—her head to a higher authority.

There is a danger that without the amendment, the good progress that we are making on widening access could be slowed down as universities delay taking action on failings in their access programmes, believing that they can rely on complaining or appealing to someone else to overturn what has been requested of them by the director for fair access and participation, and that they may not ultimately have to take the actions that he or she suggests.

I look forward to hearing what the Minister has to say. If he does not like the wording of the amendment, we would be happy for him to come back with another form of words that would ensure that there is no watering down of directives that might be given by the new director for fair access and participation.

Paul Blomfield: I rise to speak to my amendments, which in an extraordinary example of excellent co-ordination say much the same thing but in a slightly different way. Amendment 156 tries to address what I see as a flaw in the schedule as drafted, which makes the director for fair access and participation responsible simply for reporting. The amendment seeks to clarify that he or she is not responsible simply for reporting but for that function and reporting on it. I think that is a helpful additional drafting point.

Amendment 157 clarifies the point about delegation and that the director should not be bypassed by his or her responsibilities being delegated to somebody else. The way that we deal with the matter could set the tone for discussions over the next few weeks. There is complete agreement on trying to achieve widening participation and enormous progress has been made. The Government have shown commendable ambition to make further progress. With these amendments we are considering ways to help that along.

I am sure my colleague the hon. Member for Cannock Chase will acknowledge that when we considered this issue in the Select Committee on Business, Innovation and Skills there were, despite the one area of disagreement, many areas of agreement. One was fair access. Changing the institutional architecture of the sector, which has merits, by bringing the Office for Fair Access into the OFS, also has risks unless we protect the autonomy and authority of that function within the office. That was a key recommendation of the Select Committee report, agreed by all Members. It also relates to the next group of amendments and I will say more about it then. We are simply seeking to ensure that that function has the authority to deal with universities, to get the sort of change of culture and practice that we are all trying to achieve.

I was a supporter of David Willetts's appointment of the current director, which was not uncontroversial at the time. That was a signal from the previous Government that there was an intention to see change and Professor Ebdon has assisted that process enormously. He has been a very impressive director of fair access and we should listen closely to the evidence that he gave us on Tuesday. He is clear that this sort of definition is

required to ensure that the director has the authority to help the Government achieve their objectives in negotiating the deals with the universities.

I hope the Minister will say he is happy to bring back some different form of wording, if not to accept the amendments, picking and choosing between mine and those tabled by my Front Benchers. I hope he will be able to make an amendment that reflects that suggestion, in which case I would be happy not to press mine to a vote.

Joseph Johnson: I thank hon. Members for their helpful and extremely interesting amendments. Although I was less able to be accommodating on previous amendments, I would like to signal that we are giving these amendments very careful thought. There is obviously agreement on both sides that social mobility is a huge priority, all the more so now for this Government. Widening access and participation in higher education is one of the key drivers of that.

I agree strongly with the hon. Member for Sheffield Central that the current director of fair access, whom I played a part in reappointing last year, has done a superb job and continues to be exemplary in the way he discharges his functions in that critical role.

Through our reforms, we are keen to ensure that promoting the success of disadvantaged students will be a central part of the OFS's remit. Through the Bill, the OFS will bring together the responsibilities for widening participation currently undertaken by the director for fair access and HEFCE. Bringing those functions together in one body will ensure greater co-ordination of activities and funding at national level. That should allow greater strategic focus on those areas identified as a priority. In establishing the OFS, we have been clear that we are creating a single body, whose members will, in effect, operate as a board responsible for a range of functions, including access and participation. It will be the responsibility of the OFS to ensure that all its functions are being fulfilled.

Let me reassure Members the intention is that the OFS will give responsibility to the director for fair access and participation for activities in this area. The intention is that the OFS will give responsibility to him for these matters. We envisage that in practice that will mean that the other OFS members will agree a broad remit with the future director for fair access and participation and that the DFAP will report back to them on those activities. As such, the DFAP would have responsibility for those important access and participation activities, including—critically—agreeing the access and participation plan on a day-to-day basis with higher education institutions.

Amendment 134 would place in legislation details of how the OFS members will operate when considering delegation of functions. It would not, however, be appropriate to put that kind of detail into statute. Rather, we would expect the OFS, once established, to confirm how it will operate and exercise its delegation powers taking account of guidance from the Secretary of State. However, let me repeat and attempt to reassure hon. Members that the intention is for the OFS to give responsibility for access and participation to the director for fair access and participation.

The work of the DFAP does not need to be separated from the rest of the work of the OFS. The reforms mean that access and participation will be considered in the context of everything that the regulator does, with the Secretary of State's directly appointed champion in the form of the director for fair access and participation. The Government are serious about social mobility and that is exactly what the measures will help to drive. I therefore ask the hon. Member for Blackpool South to withdraw his amendment.

Mr Marsden: I thank the Minister for laying out the outline and broader direction so strongly. I am glad that he reflected on my comments and those of my colleagues, and indeed the exchange I had with the hon. Member for Bury St Edmunds, because that was helpful in bringing out the tensions between day-to-day executive activity and broad strategy and policy. He referred to that in his comments.

We will take the Minister's assurances at face value. We need to do that because what Ministers say in Committee influences the interpretation of the final legislation. We will wait to see how that issue is dealt with—in another form, if that is what he wishes. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Wes Streeting: I beg to move amendment 10, in schedule 1, page 64, line 6, leave out "is responsible for reporting" and insert "must report".

This amendment, together with amendments 11 to 14, would require that the Director of Fair Access and Participation reports directly to the Secretary of State and that the report produced be laid before Parliament.

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

Amendment 11, in schedule 1, page 64, line 7, after first "OfS", insert "and Secretary of State".

See Explanatory Statement for amendment 10.

Amendment 12, in schedule 1, page 64, line 9, leave out "may" and insert "must".

See Explanatory Statement for amendment 10.

Amendment 128, in schedule 1, page 64, line 9, leave out

"the other members of the OfS"

and insert

"the Board of the OfS".

This amendment would ensure that the Director for Fair Access and Participation reports to the Board Members of the OfS on performance of access and participation functions.

Amendment 13, in schedule 1, page 64, line 9, after "OfS", insert "and Secretary of State".

See Explanatory Statement for amendment 10.

Amendment 14, in schedule 1, page 64, line 12, at end insert—

"() The Director must prepare a report under sub-paragraphs (1) and (2) at an appropriate time but at least annually.

() The Director must send the report to the Secretary of State.

() The Secretary of State must lay the report before Parliament."

See Explanatory Statement for amendment 10.

Wes Streeting: The amendments follow a similar theme to the previous group, being about the architecture of the higher education system and in particular safeguarding the position the Office for Fair Access has occupied since it was first created.

I will take members back to that debate in 2003-04. OFFA was one of the important concessions—one of the few surviving concessions, I have to say—of the debate surrounding the introduction of variable tuition fees in the Higher Education Act 2004. OFFA was born out of a concern about the risk that increasing tuition fees might jeopardise fair access to the most elite universities, particularly if they are charging higher variable fees, and a broader concern that it might jeopardise widening participation more generally among students from under-represented backgrounds.

4 pm

There were also concerns, regardless of the risks that were considered at the time of the discussion of that legislation, that progress in both widening access to selective universities and widening participation in education more generally was being made far too slowly, so the role of OFFA and the director of fair access was considered for all of the reasons that have already been discussed. It is important that the director for fair access and participation occupies a prominent and important role, and I am grateful to the Minister for indicating that he is looking very carefully at that. In that context, I think Parliament needs to think about its role in relation to safeguarding fair access to higher education.

The amendments would provide for the director for fair access and participation to report to the Secretary of State, and for the Secretary of State in turn to lay the report before Parliament. I think that is important. We have seen in debates in this Parliament, the previous one and many before it that the issues of social mobility and fair access to universities is of importance to all Members, regardless of whether they represent a constituency with a large student population or areas that have particular social disadvantage. Given that widespread interest, and given that progress is still too slow, I think it is reasonable to expect that Parliament would have some oversight over progress or lack of progress, and an opportunity to debate that accordingly.

We know from all of the evidence that exists that fair access to higher education is not simply the responsibility of universities; it stretches back far earlier, in terms of both the education system and broader aspects of social policy. In that context, it is important to give all Members an opportunity to look carefully at the issues contained therein. Given that, I hope the amendments will receive a favourable hearing from the Minister and that he can consider them as he will be considering the amendments we have just debated.

Paul Blomfield: I will only make a brief contribution, which is to follow up on the point I was making about the Select Committee report on this specific point. I will share the brief recommendation we made as a Committee, with the endorsement of every member of the Committee:

"In order to best promote widening participation, and to help the Government meet its own targets, we believe it important that the decisions of the Director for Fair Access are seen as fully independent and not subject to being overruled by any higher

[Paul Blomfield]

authority within the same organisation. The ability for this post to report direct to the Minister and to Parliament should therefore be built into the new higher education architecture.”

I think that crystallises the point made powerfully a moment ago by my hon. Friend the Member for Ilford North when moving his amendments. I hope, and I am sure, that we can reach the same accommodation if the Minister is able to respond in the same terms as he did to the previous group of amendments.

Mr Marsden: The generic points the Opposition Front Benchers would like to make in this area have been amply covered by my hon. Friends the Members for Sheffield Central and for Ilford North. I will briefly touch on amendment 128. I say again that we entirely endorse and think it is of huge importance that that report should come to Parliament on a regular basis. Although this is not part of any of the amendments, it is taken for granted that it should also go to the relevant Select Committees. It is in that context of closing the circle that we wanted to clarify with a probing amendment that the director would report to the board members of the OFS on his performance.

To go back to the point that the hon. Member for Bury St Edmunds made earlier, we do not want the director to sit in a bubble. I can imagine that the OFS board, once it gets going, will have myriad things to consider at its meetings and it is important therefore that we flag up that there is a regular slot for the board members to receive that report from the director for fair access and participation. That would be of benefit to the board as a whole and to the director in maintaining his strong relationship with it.

Joseph Johnson: Again, I thank hon. Members for their interesting amendments. Widening access and promoting the success of disadvantaged students will be a key part of the remit of the office for students. It will build on the important progress that has been made in widening participation in recent years. Hon. Members will have noted that the latest data for 2016 entry shows that the application rate for 18-year-olds from disadvantaged backgrounds is again at a record level.

We want to ensure in bringing forward our reforms that higher education providers do not lose sight of their vital role in promoting social mobility and in helping some of the most disadvantaged young people in our society to benefit from our world-class higher education system. The integration of the remit of the director of fair access into the OFS signals our commitment to making fair access and participation a priority. The OFS will have a new duty requiring it to consider equality of opportunity in connection with access and participation across all its functions, so widening access and participation for students from disadvantaged backgrounds truly will be at its very core.

There is a further protection in the arrangements because, as I have said, the DFAP will be directly appointed by the Secretary of State, but ultimate responsibility for access and participation sits with the OFS and it will be the responsibility of the OFS to ensure that all its functions are being fulfilled. As I said in my comments on the last group of amendments, the intention is that the OFS will give responsibility to the director for fair access and participation for activities in

this area. We envisage that, in practice, that will mean that the other OFS members will agree a broad remit with the DFAP and that the DFAP will report back to them on those activities.

The OFS board will have responsibility for access and participation but, on a day-to-day basis, I envisage that that will be given to the DFAP. In particular, he or she will have the responsibility for agreeing access and participation plans, as is currently the case. I reiterate that because it is such an important point and I know hon. Members are focused on that issue.

The amendments would have the effect of requiring reports by the director for fair access and participation to be presented to the Secretary of State and to Parliament separately from other OFS reporting. As I said, that is an interesting idea, to which we will give some thought. We agree that it is important for the DFAP to report on their activities and areas of responsibility, so the Bill does require the DFAP to report to OFS members. As I have said previously, we are mainstreaming access and participation as a key duty for the regulator as a whole. As such, it will then be for the OFS members to report on that function.

The OFS members will operate in effect as a board, although they are not referred to by that term in the Bill. It will be required to produce an annual report covering its functions, and access and participation activities have been identified as a key function by virtue of their prominence in the Bill. That report will be sent to the Secretary of State and laid in Parliament. The work of the DFAP does not need to be separate from the rest of the OFS and its work should be reported to Parliament as part of the OFS's overall accountability requirements. In addition, the Bill allows the Secretary of State to ask the OFS to provide additional reports on access and participation issues, either through its annual report or through a special report. Any such report will also be laid before Parliament and therefore made available in the Library. The OFS can produce separate independent reports on widening participation. It would not be consistent with integrating the role into the OFS to require separate external reporting from a single OFS member when the organisation will be governed collectively by all its members.

These arrangements ensure that effective reporting will be in place, so that the Secretary of State and Parliament can effectively monitor activity in this area. As I said, we are looking carefully at it, but in the meantime I ask the hon. Member for Ilford North to withdraw his amendment.

Wes Streeting: I listened carefully to the Minister, and I am grateful that he will go away and reflect. What he said about clarifying the reporting mechanisms reinforces my belief that the present arrangements do not go far enough. It is right and proper that the Secretary of State should be able to demand additional or more extensive reporting, either as part of the annual report or separately. That is to be welcomed, but it somewhat dilutes parliamentary accountability, which is separate from Government accountability. Many Members would welcome the opportunity to consider issues of access and participation through parliamentary scrutiny; it need not be burdensome, but it would be welcomed. I was particularly struck by the evidence given by my hon. Friend the Member for Sheffield Central.

Paul Blomfield: Does my hon. Friend agree that we are at such a critical juncture in developing widening participation targets and strategies that it is a risky time for them to be completely subsumed? I would not challenge for a moment the Minister's genuine intent, but there is a risk in organisations that what the Minister described as "mainstreaming" sometimes means that functions get subsumed, and we have to take care that the particular function of widening participation is not.

Wes Streeting: I wholeheartedly agree with my hon. Friend; his point reinforces the recommendation of the Business, Innovation and Skills Committee. When the Minister goes away to reflect on these issues, he should consider not just what is being said here but the view of that Committee. Parliamentary accountability is important, and as my hon. Friend warns, there is sometimes a risk that mainstreaming leads to a lack of focus. I do not think we are anywhere near where we need to be as a country on social mobility—on ensuring that people's backgrounds and the circumstances of their birth do not determine their destiny in life. Higher education has a critical role to play. We know from looking around the Palace of Westminster and from looking at the top of business and civil society that the levers of social, political and economic power tend to be pulled by people who went to university—often to the same universities.

It is important that we keep a close eye on this matter, because it goes beyond the question of value to higher education; it is in the national interest. That is why there is such interest in parliamentary debates on these issues, and why I think parliamentary accountability is important. However, I am mindful of what the Minister said about considering these issues further and so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Marsden: I beg to move amendment 129, in schedule 1, page 64, line 21, at end insert—

"() The appointment of the Chair of the OFS shall be subject to a pre-appointment by the relevant Select Committees and the proposed appointment shall be subject to the passing of a resolution by each House of Parliament."

This amendment would ensure Parliament was able to ratify the chair of the OFS.

We have had an interesting and productive exchange on social culture and the role that the OFS will play both in governmental activity and, as my hon. Friends quite rightly reminded us, in parliamentary activities. It is in that spirit that I move amendment 129.

This House is a place that invents precedents, and one of the most useful precedents that we have invented in recent years—I am a former member of Select Committees, and we have current members of Select Committees here, too—is the principle that Select Committees should play a significant role when key appointments are made, which is now well established. Of course, that has not always meant that the Select Committees concerned have got their own way, and we have had an interesting example of that recently in the context of Ofsted. We might argue about whether the Select Committees have a veto power or a restraining power, or whatever, but there is no major disagreement or lack of consensus in the House that it is important for Select Committees to have that watching brief when key officials are appointed by Ministers.

4.15 pm

We have already had a major discussion about the role of the OFS. We might disagree about many things in relation to the OFS as we go through the Bill, but the one thing on which we will not disagree is that the Bill will be creating an important new body if it passes in something like its current form. As the Bill will be creating an important new body, at the beginning we should lay down the principle that the appointment of that new body's chair should be subject to a pre-appointment process by the relevant Select Committees. I use the word "Committees" advisedly because, although I am sure the Minister is groaning under the practical day-to-day implications of the machinery of government, I am not entirely sure—maybe even his officials are not yet entirely sure—of the extent to which the chair of the OFS might be scrutinised by more than one Select Committee. The most important thing is that the proposed appointment should be subject to the relevant Committee, and it should then be confirmed by a resolution of each House.

There it is. This is a modest proposal that is entirely in line with the powers that the House has given to its Select Committees in recent years. Some form of pre-appointment scrutiny or process by the relevant Select Committees would be important for democracy in this House and would signify the importance of the office.

Ben Howlett: Does the hon. Gentleman realise that this already exists? My hon. Friend the Member for Bury St Edmunds and I have just sat on the pre-appointment process for the selection of the Equality and Human Rights Commission chairman. Select Committees already do this, and legislation is not necessarily needed to implement it.

Mr Marsden: The hon. Gentleman refers to another welcome precedent. Yes, Select Committees sometimes have this power but the devil is in the detail. I am reminded of what President Reagan said: in these matters one should "trust, but verify". There have been discussions in the past about the powers of Select Committees. This is a new proposal, and it is a probing amendment, but it would do no harm if the Minister were prepared to say today that this is a part of the process that he would welcome.

Joseph Johnson: I think I can be of some help. There is no legal obligation for pre-appointment hearings to take place for OFS appointments, as currently none of them is on the Cabinet Office list of appointments subject to pre-appointment hearings—that is a technical point, and I do not want to be accused again of being overly managerial. Despite there being no direct legal obligation, I reassure the Committee that we fully intend to actively involve the Select Committee or Select Committees, as appropriate, in the appointment process, including the option of pre-appointment hearings for senior OFS appointments. I welcome the constructive role that Select Committees can play through pre-appointment hearings. I believe that that involvement will ensure sufficient parliamentary oversight.

For that reason, I firmly resist the suggestion in the amendment that a vote in both Houses should be needed to ratify the appointments. We need to ensure an

[Joseph Johnson]

appropriate level of ministerial involvement in the appointment to a key public role. Parliamentary ratification is not in line with normal practice and would be both burdensome and unnecessary. Furthermore, there is no precedent for parliamentary approval of such appointments. HEFCE appointments have never been subject to parliamentary approval, and the Cabinet Office general guidance on pre-appointment scrutiny states that it is for Ministers to decide whether to accept the Select Committee's recommendation on an appointment. We are following the Office of the Commissioner for Public Appointments approved process and as such are working closely with an assigned public appointments assessor to ensure that all public appointments are fair and open. I therefore ask the hon. Member for Blackpool South to withdraw the amendment.

Mr Marsden: I have heard what the Minister has said. I am grateful for his endorsement of the overall principle. Heaven forbid that I should ruffle feathers in the Cabinet Office dovecote on this matter and provoke a constitutional crisis. On that basis, I am happy to take his assurance and to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Marsden: I beg to move amendment 130, in schedule 1, page 64, line 39, leave out “considers appropriate” and insert “must specify”.

This amendment would ensure the Secretary of State must specify why a person has been removed as a member of the Ofs.

I do not think that this is an issue of constitutional niceties, but it is an issue of beefing up something that I think is extremely important. I make this not as a partisan political observation, but as an observation from having been—dare I say it?—in this House for nearly 20 years and having seen various rows, crises and everything else about why various people have been removed by Ministers at various points in time.

The wording of the Bill at the moment gives far too broad a remit to the Secretary of State—any Secretary of State—simply to remove a member of the OFS without some form of explanation. I am familiar with the civil service: I have been a Parliamentary Private Secretary in three Departments. I am familiar with the civil service's use of terminology, and the terminology “considers appropriate” basically means “You can do what the...you like if you are the Secretary of State.”

Again, I am thinking of the reputation of the OFS, particularly in its formative years. I do not think that simply saying “considers appropriate” is necessarily the best way of proceeding. That is why we are suggesting the alternative of “must specify”. And let me be very clear to the Minister and his officials before they come back and say, “Oh, this is terrible. It can't be done.” The implication of this is not that we would expect the Secretary of State, if there were some person on the board who they thought was completely and utterly disruptive, objectionable and all the rest of it, to give chapter and verse as to why that was the case. However, we do think, for the sake of confidence in the board, that it would be helpful, including to the Minister concerned, if we had stronger terminology that dealt

with situations in which the Secretary of State would have to remove a member of the OFS. There may be all sorts of perfectly non-controversial reasons why a member of the OFS would be removed—because of health or whatever—and those personal discretions could be dealt with, but we would feel more comfortable if we did not have the wording “considers appropriate”, which is vaguely suggestive of Henry VIII powers and which we would not be happy having in the Bill.

Alex Chalk: This is a reasonable point if I may say so, but is it not also right to take into account the fact that a Minister, as an officer of the Crown as it were, has to act rationally? If he does not act rationally, there is always the risk of sanction in the courts, and that always has to be recognised as a safety net.

Mr Marsden: I hear what the hon. Gentleman says, and of course we are all honourable Gentlemen and Ladies in this place and I hope we all act rationally, although there has been just a smidgen of examples in the past in which Ministers, on both sides of the House, appear not to have acted entirely so. [HON. MEMBERS: “Surely not.”] Surely not. I take the point that the hon. Member for Cheltenham is making, but I feel that some movement—again, the Minister might not like the phrase “must specify”—away from a phrase that is redolent of Henry VIII powers would be helpful.

Joseph Johnson: I understand that the amendment is well intended, but I am afraid we are not going to be able to support it and certainly not as it is drafted. The amendment would require the Secretary of State to specify the reasons for removing a member of the OFS board from office and we strongly resist it. It would take us well away, quite clearly in the wrong direction, from the current legislative arrangements for HEFCE board membership. Such a requirement would be inconsistent with normal practice on public appointments, and as my hon. Friend the Member for Cheltenham hinted, it would be unnecessary, as general public law principles require that the Secretary of State must act reasonably and proportionately in taking an action such as removing a member from the board. The specific terms and conditions of appointments would also have effect in that way.

The Secretary of State might remove a board member for a number of reasons, and in many cases it would not be appropriate to disclose the grounds for dismissal. I am sure hon. Members can understand that the removal might, for example, be because of personal or health-related issues and making those public could be an inappropriate breach of a member's privacy. Disclosure of reasons for dismissal may have an adverse effect on the reputation or future employment of the member.

Schedule 1 to the Further and Higher Education Act 1992 currently empowers the Secretary of State to appoint HEFCE board members on such terms and conditions as he deems appropriate. For the past 25 years, Secretaries of State from successive Administrations have routinely attached terms and conditions to the appointment of HEFCE board members relating to the circumstances in which they might be removed from office. These have, for example, included conditions relating to the individual's fitness to hold public office and record of attendance at HEFCE board meetings.

Mr Marsden: On that point, I appreciate that the Minister is trying to be helpful and I also appreciate there is a balance to be struck between transparency and the sorts of personal issues he talks about. I do not think I am going to agree with him that the Bill has got the balance right; I personally believe that there needs to be greater transparency in it. To be helpful, given that he is praying in aid HEFCE as the precedent, if he is not prepared to accept the amendment, will he at some point disclose the generic list of principles that would be appropriate to remove a member of the OFS board?

Joseph Johnson: As I have said, over the past 25 years Secretaries of State have routinely attached terms and conditions to the appointments of HEFCE board members. I gave a couple of examples of the conditions that have been common practice, including that an individual must be fit to hold public office and that they must have a strong record of attendance at HEFCE board meetings. Those are the kinds of conditions that are typical, the breach of which might lead to a Secretary of State deciding that it was necessary to remove a member. I have to say that it has never proved necessary to remove a HEFCE board member over the past 25 years. If it had, the Secretary of State would have written to the board member in question to explain his or her decision. That letter would have had to be clear about the grounds on which the Secretary of State was removing the board

member, and the individual in question would have had every right to make that letter public if they had wished to.

The Bill draws on that successful historical practice. Schedule 1 makes provisions identical to those in the Further and Higher Education Act as regards the Secretary of State's discretion to set such terms and conditions for appointing OFS board members as he or she deems appropriate. As I have said, that replicates current arrangements and provides that crucial flexibility for the Secretary of State to set a clear expectation, appropriate to the circumstances of the time, on appointing OFS board members. In addition, the amendment would be inconsistent with the arrangements that apply more generally across the range of public appointments. I therefore ask the hon. Gentleman to withdraw his amendment.

Mr Marsden: We are not going to agree in principle on this issue, but I understand the Minister's position. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned.
—(Mr. Evennett.)

4.29 pm

Adjourned till Tuesday 13 September at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

HERB 25 Dr Sherrill Stroschein, Senior Lecturer in
Politics, University College London

HERB 26 Institute of Physics

HERB 27 Academy of Medical Sciences

HERB 28 British Medical Association

HERB 29 Goldsmiths, University of London

HERB 30 Higher Education Statistics Agency Limited

HERB 31 Royal Society