PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION AND RESEARCH BILL

Eighth Sitting

Thursday 15 September 2016

(Afternoon)

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Monday 19 September 2016

The Committee consisted of the following Members:

Chairs: † Sir Edward Leigh, Mr David Hanson

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

Katy Stout, Glenn McKee, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 15 September 2016

(Afternoon)

[Sir Edward Leigh *in the Chair*]

Higher Education and Research Bill

2 pm

The Chair: I must interrupt the negotiations between the Whip and the Opposition spokesman. I can see that they are proceeding in an extremely amicable way, as always. I am sure we can look forward to some expeditious business, because colleagues will be anxious to leave for their constituencies. Meanwhile, we are going to enjoy ourselves.

Clause 13

Other initial and ongoing registration conditions

Dr Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 178, in clause 13, page 8, line 17, at end insert—

"(f) a condition relating to the provision of access to a range of cultural activities including, but not restricted to, the opportunity to undertake sport and recreation and access to a range of student societies and organisations;

(g) a condition relating to the provision of student support and wellbeing services including specialist learning support;

(h) a condition relating to the provision of volunteering and exchange opportunities;

(i) a condition relating to the opportunity to join a students' union."

This amendment ensures that all aspects of a positive student experience are considered relevant to the inclusion of a Higher Education institution on the register.

It is a pleasure to serve under your chairmanship, Sir Edward. This amendment takes us back to the thorny issue of what a university is and how we ensure that the measures in the Bill do not allow for or enable the dumbing down of the sector as a whole. I want to pose a series of questions to the Minister about why clause 13 does not provide a list of the sorts of service and the range of amenities that the Minister might expect a university to have in order to be deemed a university. The amendment sets out a whole range of conditions that should be included in the clause, so that something called a university actually is a university. I will be interested to hear why the Minister thinks that is not important.

As we all know, students do not only go to university to get a degree. Of course they go to university to get a degree, but along the way, they join lots of clubs and societies. They take part in cultural events. They might have a drama club. They often, as in the case of Durham University, have a theatre and put on performances—really good ones—that local people go along to. That is an incredibly important aspect of the cultural activities at Durham. At the weekend, we often go along to watch the university teams compete against other universities or in local leagues. It is incredibly important that students, particularly those who have done so at school, can take up sport at university.

Students join a whole range of clubs and societies that enhance not only their wellbeing but that of the wider community. In that respect, I point out the particular importance of providing volunteering opportunities for students, which can often help them with future employment and give back massively to the local community through community service. Indeed, I was at a luncheon club in my constituency just a couple of weeks ago that had been started up by students in a disadvantaged area of Durham. They have a volunteering rota to keep the club up and running.

We would normally equate those sorts of activity with the university experience, along with being able to join the students union, which I will not mention again because we discussed it a couple of days ago, but that is clearly a very important aspect of what students can do when they go to university.

Paul Blomfield (Sheffield Central) (Lab): Does my hon. Friend agree that the thrust of the Government's policy here is enhancing the learning experience, and that the sorts of activities that she describes are not simply important in giving students the widest opportunities in their lives, but provide them with opportunities to learn team and leadership skills, and are very much part of that broader learning experience?

Dr Blackman-Woods: Absolutely. My hon. Friend makes an excellent point about the way in which the wider experience of university contributes to the overall student experience. Indeed, a necessary part of that student experience is universities ensuring that there is adequate student support and a range of wellbeing services, and that specialist learning or special needs are met through the university learning support system. It seems a little odd, to put it mildly, that in the list of "other initial and ongoing registration conditions" in clause 13, there is absolutely nothing about the range of services that an institution should provide; it is all about regulation. It is important that the sector is properly regulated, but that is not sufficient.

A few months ago, I was standing where my hon. Friend the Member for Blackpool South is sitting now, questioning the Housing Minister about starter homes. I made the point to him—this is directly relevant—that a starter home was not affordable housing just because the Government legislated for it to be affordable housing or thought that it was affordable housing. Clearly, a £450,000 house in London, or a £250,000 house outside London, is simply not affordable. Alas, that Minister did not take my advice and went ahead with legislation that said that such houses were affordable, when clearly they are not. Now, of course, the Government are having to revisit that legislation and what they are doing on starter homes, because it was absolutely obvious that they could not simply legislate for something to be what it is not. I fear that the same will happen with the Bill, and the Government will say about a college or specialist provider, "It is a university if it meets these regulation conditions," when in any other context it would be considered not a university but a specialist provider.

I am trying to help the Minister to avoid falling into the same trap of legislating for something that clearly is not what the Government try to make it out to be by suggesting that it would help us all in our deliberations—indeed, it would help some of us to negotiate our way through the clauses dealing with registration conditions—if the Minister clarified what he thought a university should be and the range of services that an institution should provide before it is able to use "university" in its title. We really do not want students to think that an institution provides a certain range of services when it clearly does not and has no intention of ever providing the range of services or opportunities that one would normally associate with a university.

It would be helpful to hear what the Minister thinks a university is and what range of services he would like to see universities normally provide. Can he reassure us that no institution will be able to call itself a university when it clearly is not one?

The Minister for Universities, Science, Research and Innovation (Joseph Johnson): It is a pleasure to be back under your chairmanship, Sir Edward. I do not want to delay the Committee for long with what might risk turning into an abstract and philosophical conversation about what a university is. After all, that question has occupied theoreticians of education through many books and learned articles. At its most literal, a university can be described as a provider of predominantly higher education that has got degree-awarding powers and has been given the right to use the university title. That is the most limited and literal sense. If we want a broader definition, we can say that a university is also expected to be an institution that brings together a body of scholars to form a cohesive and self-critical academic community that provides excellent learning opportunities for people, the majority of whom are studying to degree level or above. We expect teaching at such an institution to be informed by a combination of research, scholarship and professional practice. To distinguish it from what we conventionally understand the school's role to be, we can say that a university is a place where students are developing higher analytical capacities—critical thinking, curiosity about the world and higher levels of abstract capacity in their thinking. In brief, that is my answer to what a university is.

Let me turn to the nitty-gritty of the hon. Lady's amendment and her suggestions for how we can improve the registration conditions. Her amendment highlights the breadth of opportunities offered by participation in an HE course, and it is welcome in doing so. However, I do not believe that putting that into legislation would be desirable. There are many excellent examples of extracurricular activities and experiences offered by higher education institutions—sporting groups, arts groups, associations of all kinds and exchange opportunities. I agree that, in many cases, those activities contribute greatly to a student's learning and personal and professional development. As the hon. Lady said, they can be as much a part of a student's education as traditional lectures.

When a student is deciding which institution to study at, their decision is based on many factors, including the qualification they will receive, the cultural and social opportunities presented to them, the student organisations they can join and the support available. Higher education institutions think very carefully about the range of extracurricular activities they offer and the additional opportunities for students on or around campus. They are tailored to the specific characteristics and needs of their particular student bodies. One size does not necessarily fit all, and student populations vary hugely in their requirements. As independent and autonomous organisations, higher education institutions are best placed to decide what experiences to offer without prescription from the Government.

Dr Blackman-Woods: In our deliberations, we have heard, particularly from the possible new entrants into the sector, that they wish to have a level playing field. Part of the point of this amendment is to genuinely make it a level playing field. We do not want to take diversity out of the sector; we just want to ensure that all institutions that could become a university provide a basic level of services.

Joseph Johnson: There may be high-quality institutions based in, for example, urban locations that cannot offer the broad range of services that campus-based, big institutions can. That does not mean they are lesser institutions; it just means that their student populations have their own purposes in coming to that particular institution and want their needs to be met in a way that is relevant to their institution. For those reasons, I do not believe that a one-size-fits-all, prescriptive approach is the best way to achieve the hon. Lady's goals.

The Chair: I am sure we are all grateful for the Minister's definition of a university. He said it is about high levels of abstract thinking—I learned a lot about that in the union bar.

Dr Blackman-Woods: The Minister is being characteristically generous about what universities do. I am bitterly disappointed by his response because this is a really serious point. The higher education sector in the UK has an excellent national and international reputation and we meddle with it at our peril. It is incumbent on the Government to uphold and promote the quality and excellence of the sector, which means ensuring that, if something is to call itself a university, or to have "university" somewhere in its title, the common understanding is that it provides a range of opportunities for students. Otherwise, it can stay as it is at the moment as simply a specialist provider.

2.15 pm

If institutions want to join a specific club, they should take on all the obligations and responsibilities that go with that membership. Simply allowing specialist institutions with a very narrow range of courses and opportunities for students to be considered in the same way as other institutions does not seem to be very helpful, either to the institutions themselves, quite frankly, or to potential or current students. I urge the Minister to take the amendment away, look at it and then see if he can include something in the Bill to reassure both prospective students and the sector at large that the Bill will not dumb down what a university might be and what our excellent higher education experience is. I am sure that that is not his intention at all. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Gordon Marsden (Blackpool South) (Lab): I beg to move amendment 190, in clause 13, page 8, line 17, at end insert—

"( ) The OfS may strengthen the registration conditions for new providers depending on the assessment of that new provider's previous track record and future sustainability.".

This amendment would enable the OfS to set stricter entry requirements for new providers by considering previous history and future forecasts.

It remains a pleasure to serve under your chairmanship, Sir Edward, even under these heated circumstances. There appears to be a little more of a draft coming through; if we dissipate some of our hot air it may become even greater.

I thank my hon. Friend the Member for City of Durham for what she said because it is germane to this amendment, which is in the name of my hon. Friend the Member for Ashton-under-Lyne and myself. The amendment tries to define what new providers that might wish to become a university have to do, and I think it is incumbent on us to think a little harder than is perhaps sometimes the case about a new provider's

"previous track record and future sustainability."

The Minister was quite right not to engage in a "philosophical discussion"— I suspect if he had not said that, the Lord Commissioner of Her Majesty's Treasury, the right hon. Member for Bexleyheath and Crayford, would have perfectly reasonably bashed him on the head—but there is a balance between that and simply saying, "This is what a university does." That is particularly true when talking about new providers. In earlier exchanges, the Minister referred to Lord Mandelson, whose grandfather, Herbert Morrison, when asked what the definition of socialism was, famously replied:

"Socialism is what a Labour Government does."

That is a reductionist argument with which I am sure the Minister would not agree, but we need to ask some serious questions about what guarantees and provisions we would require from new providers.

As I said on Second Reading, the Bill

"places immense faith in the magic of the market"—[*Official Report*, 19 July 2016; Vol. 613, c. 720.]

to produce new providers and to take them on board. It is philosophically consistent, if I may be so grand, with the paean to competition and the markets in the White Paper, which says:

"With greater diversity in the sector…our primary goal is to raise the overall level of quality. But we must accept that there may be some providers who do not rise to the challenge, and who therefore…choose to close some or all of their courses, or to exit the market completely. The possibility of exit is a natural part of a healthy, competitive, well-functioning market and the Government will not, as a matter of policy, seek to prevent this from happening. The Government should not be in the business of rescuing failing institutions—decisions about restructuring, sustainability, and possible closure are for those institutions' leaders and governing bodies."

That is all very well as a paean to free-market Friedmanism, and perhaps those who had drafted it had had a good lunch at the time, but the truth of the matter is that it is not the people who draft such things who have to deal with the consequences, but the people on the receiving end, who are not just students—although students are a key part of that process—but everyone who works with, is sponsored by or supplies those new providers. Therefore, it is important that we talk about that—we will do so in more detail when we reach clause 40, which deals with some of the issues to do with awarding powers, so I will be careful not to step into that territory.

Cutting corners in the process of becoming a higher education provider can pose a serious risk to staff and students, and it can increase the risk of public money being misused. If we are in any doubt about that, I would refer to the Public Accounts Committee report on alternative providers published in February 2015. The Committee was fair about the potential benefits of alternative providers, but hard on some of the things that had happened in the preceding period. It stated:

"The Department pressed ahead with the expansion of the alternative provider sector without a robust legislative framework to protect public money…and…failed to identify and act quickly on known risks associated with the rapid introduction of schemes to widen access to learning…The Department does not know how much public money may have been wasted…and…should report back to us urgently with an assessment of how much public money is at risk of being wasted",

and so on. I appreciate that the Minister was not in place at the time, but the report was a fairly comprehensive slap on the wrist for the Department for Education about how the matter had been treated.

No doubt the Minister will come back and say, "Ah, but that was then, and this is now. We have done lots of other new things", but the trouble is that that argument does not solve the problem. As a result the University and College Union, among other organisations, submitted a detailed paper to Committee members, including a number of specific examples of where things had gone wrong. It argued that to allow commercial providers a quick, low-quality route into establishing universities and awarding degrees would mean that those studying and working in the sector were seriously vulnerable to the threat of for-profit organisations moving into the market for financial gain, rather than from any desire to provide students with a high-quality education or teaching experience.

The University and College Union also quoted figures from the Department for Business, Innovation and Skills: between 2010 and 2014-15 the number of alternative providers rose from 94 to 122. Furthermore, the matter is one that concerns the public purse, as well as the protection of students, because student support for those alternative providers rose from £43 million to more than £600 million. Also, in 2014 the National Audit Office reported concerns about abuses of the student loan system by for-profit providers. It mentioned that drop-out rates at nine of them had been higher than 20% in 2012-13, compared with 4% across the sector in general.

As I have mentioned, the Public Accounts Committee published its report in February 2015. If the Minister therefore says, "Ah, well, we don't want to put more obstacles in the way of potential new providers. We don't want to make it overly onerous for them", all I can say is that we have to look at the track record up until now. That is not to disparage any of the new providers who might come forward or the evidence that was given in our sessions. It is merely to say that the precautionary principle is often a wise one to proceed on. It is not often I quote President Reagan with approval. He was famously asked, during SALT negotiations with the Soviets, whether he trusted them. He said he worked on

the principle of "trust but verify". Trusting but verifying is the thrust of the amendments.

In case the Minister is tempted to say that we are digging up old history, it is not that old. Since he referred to something I said in 2002, I think I am being generous in only digging up recent history. Only this year the West London Vocational Training College had its designation for student support funding revoked following a Quality Assurance Agency for Higher Education report that said that it had failed to establish the authenticity of applicants' academic qualifications, admitted some students who were demonstrably not qualified to enter their course, included some students who had not met the English language proficiency requirement and admitted some students after qualifications awarding body Pearson—which is for profit and has been there for a long time—had blocked it from registering new entrants.

Before the Minister either personally or corporately allows some of his officials to write more paeans to the benefits of the market and competition, perhaps he would indulge us by considering the amendment. It is important that the registration conditions for new providers consider previous track record and future sustainability. Of course, not all new providers will have a track record and I think one of the witnesses mentioned that at the evidence session. If that is the case, the presumption should be to look more stringently at their future sustainability.

The proposal is not that they must have both but they certainly must have one. It is on that basis that I put the amendment forward for consideration.

Joseph Johnson: I start by reassuring the hon. Gentleman that there will be no cutting of corners to allow an easy route into the sector for providers who would not pass our exceptionally robust thresholds in terms of financial sustainability, management, governance and quality. The single gateway into the sector that we are putting into place through the Bill and the robustness of its processes are of key importance to the success of our reforms. The hon. Gentleman and the Government are at one on that question.

I explained when debating earlier clauses and amendments that risk-based and proportionate regulation is the basis on which the office for students will operate. "Trust but verify", as the hon. Gentleman put it, might be a good way to describe it. It will protect the interests of students and the taxpayer while providing a regulatory system appropriate for all providers.

Clause 5 requires the OFS to consult on and publish initial and ongoing registration conditions. Different conditions will be applied to different categories of providers. Although it is for the OFS to determine those conditions, we expect that they will reflect those first set out in the Green Paper and subsequently confirmed in the White Paper. We expect they will include academic track record, as demonstrated by meeting stringent quality standards, checks on financial sustainability, including requiring financial forecasts from providers, and other important issues, such as the provider's management and governance arrangements.

In addition, clause 6 provides the OFS with the power to apply specific ongoing registration conditions based on the OFS's assessment of the degree of regulatory risk that each provider represents.

Gordon Marsden: I appreciate that there is a delicate balance to be struck in trying to set up all the details of the OFS in Committee. I welcome the Minister's view on the importance of track records. Obviously, that will be weighed up by everybody else in considering the Bill. Does the Minister have any indication at the moment for how long a new provider should have been involved in an area of activity before making these applications?

2.30 pm

Joseph Johnson: As set out in our technical note on market entry and quality assurance, which was sent to the Committee, although not necessarily successfully received by some Members, we have given a clear indication that OFS will be consulting representative bodies in the sector to establish answers to that sort of question. I encourage the hon. Gentleman to feed into that consultation when it is under way.

Clause 6 provides the OFS with the power to apply specific ongoing registration conditions, based on the OFS's assessment of the regulatory risk that each provider represents. Where the OFS determines that a new provider represents a higher level risk it may, under the powers already included in the Bill, apply more stringent conditions. Moreover, the OFS may also adjust the level of regulation at any time, should there be a change in a provider's circumstances or performance. That may be appropriate if a provider's financial forecasts, as supplied when the provider first applied to join the register, eventually prove perhaps to be have been over-optimistic.

While I understand fully the reasons for the amendments and agree with the need for the OFS to take such matters into account, I believe that the Bill already provides the OFS with the powers necessary to take a wide range of issues into account.

Gordon Marsden: Before the Minister sits down, I would say that all of that is welcome. The paper to which he refers and the student protection plan, which I have now looked at, are welcome. The student protection plan is strong in direction of travel but weak on detail and we can come to that on another occasion. The Minister is perfectly reasonably laying a number of onerous requirements on the OFS, particularly as regards the forecasts that his Department has produced on the potential for new providers to want to take on charges, university title and licence. Is the Minister at all concerned about what resources the OFS will have to carry out this process? If there is going to be a rush of new providers there will be substantial requirements of it, given what the Minister has just said.

Joseph Johnson: The hon. Gentleman will have read the impact assessment, which goes into some detail about the future cost projections for the OFS. That will give him and the Committee a sense of the OFS's resources to deal with the anticipated new providers in the sector. In addition, the Higher Education Funding Council for England is a very competent funding council and we want to maintain all the excellent capabilities that it has, including the people who undertake the important roles relating to quality in the system.

As I was saying, although I agree with the reasons for the amendments, I believe they are unnecessary, given the provisions we are making in the Bill in respect of

[Joseph Johnson]

safeguards for quality in the system and, therefore, I ask the hon. Gentleman to consider withdrawing his amendment.

Gordon Marsden: I have heard what the Minister has to say and am reassured by his commitments. As always, the devil will be in the detail and we will want to probe further but at this point I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 13 ordered to stand part of the Bill.

Clause 14

Public interest governance condition

Wes Streeting (Ilford North) (Lab): I beg to move amendment 25, in clause 14, page 8, line 27, after "documents" insert "and practices".

This amendment is consequential to amendment 26.

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

Amendment 27, in clause 14, page 9, line 2, at end insert—

"( ) The list (as originally determined and as revised) must include the principle that the governing body of a higher education provider publish the ratio of pay of the highest paid employee at the institution to the pay of—

(a) the average, and

(b) the lowest

paid employee at that institution."

This amendment would require, as a public interest governance condition, the governing body of a higher education provider to publish the ratio of pay between the highest, average and lowest paid employees at the institution.

Amendment 26, in clause 14, page 9, line 2, at end insert—

"( ) The list (as originally determined and as revised) must include the principle that the governing body of a higher education provider appoint as members of any committee established to consider remuneration of the institution's employees representatives of—

(a) persons employed at the institution, and

(b) persons enrolled at the institution."

This amendment would require, as a public interest governance condition, the governing body of a registered higher education provider to include staff and student representatives on any remuneration committee.

Wes Streeting: It is a pleasure to serve again under your chairmanship, Sir Edward. I hope we will have the opportunity to hear more about your mind-expanding experiences at university. That was highly enlightening.

Britain has one of the best higher education systems in the world, educating millions of students from this country and around the world. Behind that success are hundreds of thousands of dedicated staff, ranging from university leaders and those who educate students on a daily basis to the many staff who perform essential support functions, from processing admissions to keeping our campuses clean.

Like any good employer, universities should invest in their staff and ensure that they are paid fairly. My motivation for tabling these amendments is to tackle two things. One is excessive high pay at the top of our universities, and the other is some of the remaining poverty rates that continue to be paid to staff working in and around higher education, particularly those working for university contractors.

I will begin with high pay. It is important to say that as leaders of universities, vice-chancellors carry serious responsibilities for a large number of staff, manage huge budgets and have to consider a wide range of activities, from research and innovation to educating students. It is right that we pay vice-chancellors at a rate that enables us to recruit and retain the very best leadership from this country and around the world. I certainly do not begrudge vice-chancellors appropriate payment for the work they do or, indeed, use the ludicrous benchmark that appears from time to time of comparing vice-chancellors' salaries with the Prime Minister's.

I have been concerned, however, about excessive rates of pay rises in recent years, particularly at a time of restraint in public spending and with students paying more than ever for their higher education. I do not use terms such as fat cat lightly, but vice-chancellors who have decent and appropriate salaries have been receiving fat-cat pay rises with little justification and certainly inappropriate scrutiny from institutional remuneration bodies.

I know that the Minister is concerned about that. In the HEFCE grant letter for this year, the Minister and the former Secretary of State for Business, Innovation and Skills, the right hon. Member for Bromsgrove (Sajid Javid), included a specific reference to excessive high pay at the top and urged universities to show greater restraint— incidentally, not only in terms of pay and pay rises, but in awards made to vice-chancellors on exit. I hope that the Minister will see the amendments as friendly ones that would help to pursue the issue that he and the former Secretary of State raised in the grant letter and could really make a difference.

Ben Howlett (Bath) (Con): The hon. Gentleman makes a very good case for open and transparent processes in relation to vice-chancellors' pay. I have a lot of sympathy with him about that. However, is he aware that this Government have already introduced gender pay gap reporting? For the institutions he mentions, the amendment would simply mean a duplication of legislation. We should look at enhancing the current legislation.

Wes Streeting: The hon. Gentleman is right to refer to the gender pay gap in higher education. There is something like an £8,000 difference in the pay awarded to male and female academic staff. My amendments do not deal specifically with the gender pay gap, but instead address the inequality between pay at the top and at the bottom.

The amendments would address those issues in two ways. The first is to require universities to publish the pay ratio between the highest-paid staff and the lowest-paid staff and the median rate of pay. That would get remuneration committees to think hard, when telling front-line staff that they cannot afford pay rises, about whether they are applying the same principle to staff at the top. According to the *Times* higher education survey,

one in 10 universities paid their leaders 10% more in 2014-15 than the previous year, while average staff pay rose by just 2%. It is incredibly demoralising for university staff, academic staff and support staff when they feel they are exercising pay restraint but see university leaders not leading by example.

Publishing the pay ratio would bring about greater equity and a greater focus on low pay. I do not see any good reason why any university in this country should not be an accredited living wage employer. I hope that one outcome of the amendments would be to reinforce many of the campaigns led by students unions and trade unions to persuade universities to become accredited living wage employers.

As well as proposing publishing information to push for transparency, the amendments would strengthen accountability by including staff and student representatives on remuneration committees. That is important for two reasons. One is that staff representatives, through the University and College Union and other trade unions, and student representatives, through their students unions, bring a degree of independence from the process. They have a legitimate interest in ensuring fair pay from a staff perspective and also from a student perspective, in terms of ensuring that their fees are well spent.

There is also a broader point, which ties into the interesting exchange earlier about the idea of a university being, as well as all the things that the Minister set out in his response to my hon. Friend the Member for City of Durham, a community. An important part of a university is the academic community in the university. It is not made up just of university leaders and staff; students are also part of it, and I think that it is important to include them in the decision-making process.

I therefore hope that the Minister looks favourably on the amendments. They would reinforce the signal that he has already sent through the HEFCE grant letter. They would help to concentrate more effectively the minds of remuneration committees, as well as bringing about a wider range of perspectives to ensure that they are reaching the right conclusion, to the benefit of students, staff and the taxpayer. I hope that the Minister supports the amendments.

Joseph Johnson: I thank the hon. Member for Ilford North for his amendments, to which we are giving some thought. However, I emphasise that the public interest governance condition that the clause contains is a vital component of the new regulatory framework and is designed to ensure that providers are governed appropriately, as he wants them to be. That is in recognition that some providers' governing documents—in particular, those of providers accessing Government grant funding—are of public interest.

Let me first explain how we envisage the public interest governance condition working. Clause 14 explains what the condition allowed for by clause 13 is. It will be a condition requiring certain providers' governing documents to be consistent with a set of principles relating to governance. The principles will be those that the OFS thinks will help ensure that the relevant higher education provider has suitable governance arrangements in place. That is not new. Legislation currently requires the governing documents of certain providers—broadly, those that have been in receipt of HEFCE funding—to be subject to Privy Council oversight. That is the backdrop.

Let me deal with the amendments. I do not believe that amendment 25 is necessary, and it could be confusing. The arrangements are already set out and designed for the primary purpose of ensuring that appropriate governance arrangements are in place and that best practice is observed. The introduction of the term "practices" through the amendment would risk changing the scope of the public interest governance condition to give it a much wider and more subjective application and imposing a significant and ambiguous regulatory burden on the OFS. That would stray outside our stated policy objective and beyond the OFS's regulatory remit.

The suggestion in amendments 26 and 27 is to include principles relating to transparency of remuneration as being helpful for potential inclusion within the consultation process. We resist those also. We do not think that it would be helpful at this stage to make them mandatory components in clause 14. That is because, as I am sure the hon. Gentleman will appreciate, higher education institutions are autonomous institutions and the Government cannot lightly dictate what autonomous institutions pay their staff. As the hon. Gentleman said, we have already as a Government recently expressed concern about what appears to be an upward drift in senior salaries. The previous Secretary of State in the Department for Business, Innovation and Skills and I put this explicitly, as the hon. Gentleman said, in our most recent HEFCE grant letter. We clearly stated that we want to see sector leaders show greater restraint. The hon. Gentleman will also know, as a seasoned veteran of the HE sector, that higher education institutions are now obliged to publish the salaries of their vice-chancellors anyway, but as I said, we are watching this issue very closely and doing everything we can to urge the sector to exercise restraint, without crossing the line and interfering in the practices of autonomous institutions.

Ben Howlett: Will my hon. Friend give assurances, however—I agree this should not be put in the Bill—that he will work with the new OFS to ask them to look at remuneration, and also make sure that transparency is at the very heart of the OFS in relation to remuneration?

2.45 pm

Joseph Johnson: Yes, I can certainly give my hon. Friend that assurance. Transparency is a big feature of the reforms in other respects and it is important we continue to ensure that the OFS is attentive to the issues around remuneration in the future, as we have asked HEFCE to be in our last grant letter.

To make sure we get this list of principles absolutely right, clause 14 requires the OFS to consult on its contents. This is because we wish to ensure a transparent and full re-evaluation of the current and any subsequent lists, and to provide all interested parties with a full opportunity to make their own representations and help shape the terms of the list in a positive way. For those reasons, I respectfully ask the hon. Member for Ilford North to consider withdrawing his amendment.

Wes Streeting: I am grateful to the Minister for his reply, particularly his initial remark that these amendments are on issues that the Government are carefully considering. I hope that the Minister will take the exchange we have had this afternoon on board and think about more

[Wes Streeting]

precise amendments. I note that he made a technical objection to amendment 25, and hope that he will therefore reflect on whether a better form of wording would achieve the objectives.

There are a couple of issues I want to pick up, in terms of the Minister's principal objections. He talked about university autonomy and of course that is an important principle, but he has also conceded that universities are already required to publish the pay of the highest paid members of staff in an institution. The amendments propose a very simple and relatively minor extension to make sure there is transparency about the lowest paid. There are issues within institutions where some staff, particularly support staff, are paid at frankly unacceptable levels—in particular if they are contractor staff. I do not think it would be a gross intrusion into university autonomy to proceed with the principles outlined in the amendments. There is certainly not the threat to university autonomy that universities have been audibly whingeing about in the last few days. I hope the Minister will go away and think carefully about that.

Having said that, the Minister has raised a particular technical concern and I am mindful of the crack hand of the Whip—even when he is not in his place he is very effective at marshalling the troops—so conscious of the numbers, and the practical issues the Minister has put forward, I am content and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: We are making cracking progress when the Whip is not here.

Gordon Marsden: I beg to move amendment 169, in clause 14, page 8, line 34, leave out "English higher education providers" and insert "Higher education providers in England".

This amendment would ensure higher education providers which operate in other UK nations are not excluded.

The Whip returns just as I am moving an amendment that, if he did not look at it carefully, he might think was a piece of pure pedantry—

The Lord Commissioner of Her Majesty's Treasury (David Evennett): Perish the thought.

Gordon Marsden: But it is not, and I will explain why. Clause 14 deals with a public interest governance condition. The need, or concern, for the amendment has been brought to my attention, and possibly to the attention of other members of the Committee, by the Open University because it is alert—as the Minister and I always are—to the unintended consequences of legislation. I am also alert to the fact—as I hope the Minister will be, because he will want the successful completion of the Bill, if not on his tombstone, on his CV—that Bills like this one do not come along that often. Therefore, we need to try, without having a crystal ball, to look at where higher education is going in the next 20 years. The Open University, of course, is particularly concerned because it also operates, as the explanatory notes say, in other UK nations. It is therefore important that the Open University is not unintentionally removed from those provisions.

The Open University has been going for more than 40 years, but other potential providers, groups and conglomerates will increasingly want to operate across other UK nations through different mechanisms and in different media. We therefore have to try to future-proof the Bill for the development of online and other sorts of learning, as well as for the traditional campus-based learning that we all know and love—that is true in your case, Sir Edward, and possibly in other people's cases, too.

I do not want to labour the point, but new forms of teaching are rapidly developing, such as massive open online courses. The Open University has come together with a number of other organisations on the FutureLearn programme. Groups of organisations that have not historically put their material out for formal or informal learning, particularly in the arts and cultural sector, might see the potential to do so and to produce largely online degrees that are quite specific to the stuff they put out, which is welcome. I do not know whether we will quite reach the nirvana on which the Minister mused. If he has been misquoted, I will let him correct me, but I think at one stage he speculated as to whether Google or Facebook might want to enter from the wings.

As for today, this is principally and specifically something about which the Open University is concerned. I am sure that the devolved Administrations will also be concerned, because they do not want to have different levels of regulation for institutions that operate across the United Kingdom, let alone across other jurisdictions outside the United Kingdom.

This is a probing amendment in the sense that I am presenting the Minister with a difficulty. If, by any chance, what I have suggested is technically inadequate, I would be more than happy for him to propose an alternative.

Joseph Johnson: I thank the hon. Gentleman for tabling the amendment, which we have carefully examined. The amendment would change a reference in clause 14 from "English higher education providers" to "Higher education providers in England". The term "English higher education provider" is defined in clause 75 as one

"whose activities are carried on, or principally carried on, in England".

In practice, that means any higher education provider that carries out the majority of its activities in England. In that sense it replicates the definition in the Further and Higher Education Act 1992. It is important to note that that wording is capable of including a provider that carries out activities outside England. The only proviso is that the provider must carry out most of its activities in England.

Clause 14 relates to the public interest governance condition that can be set as an initial or an ongoing condition of registration of any registered higher education provider. A provider that has such a condition will be required to ensure that its governing documents are consistent with a set of principles relating to governance. We intend that the OFS will monitor compliance with

those principles upon a provider's registration and as part of its annual monitoring of a provider's governing documents.

The public interest governance condition is an essential aspect of the new regulatory framework. It is right that the condition should be applied to all registered higher education providers but that it should not apply more widely. To apply the public interest governance condition to any institution that happens to provide some HE in England would extend the OFS's regulatory reach beyond that which is appropriate and would expose some HE institutions to double regulation.

Gordon Marsden: Will the Minister give way?

Joseph Johnson: I will press on because this is a complicated set of arguments.

Such double regulation does not seem right, and it would not respect existing devolution arrangements in cases where an institution is already providing higher education across the nations of the UK. To make it a bit less abstract, let me give an example of HEFCE and the Higher Education Funding Council for Wales. At present HEFCE regulates all HEFCE funded providers who carry on activities wholly or principally in England. Likewise, HEFCW regulates providers whose activities are wholly or principally in Wales. HEFCE regulates activities outside English borders—for example, the Welsh activities of a provider that principally operates in England—and HEFCW regulates the English activities of a provider that principally operates in Wales. Those arrangements ensure that there is neither a regulatory gap, nor double regulation, across the UK.

Giving the OFS the ability to regulate providers involved in providing any HE in England at all, no matter how limited, would upset the current balanced devolution arrangements. Even if the amendment of the hon. Member for Blackpool South were applied only to the public interest governance condition, it would expose Welsh, Scottish and Northern Irish providers, which might have only a minimal presence in England, to additional regulation from the OFS for their activities in England.

Gordon Marsden: I appreciate that it is a complicated situation—I often use the example of a Rubik's cube—and this is obviously part and parcel of that process. The Minister prayed in aid the arrangements made in the 1992 Act. There is a world of difference between the way people operate in higher education in 2016 and how they operated in 1992, hence the various references I made to online providers and all the rest of it. I am concerned to capture in the legislation what the situation would be for people who operate as an online provider, as the Open University increasingly does. How can the structure the Minister describes, which was principally set up for an analogue world, cope with a digital one?

Joseph Johnson: The Bill is designed to cope with the growth of online HE providers. Providers of distance learning or online HE courses will be covered by the definition in clause 75 if the majority of their activities take place in England. If that is not the case, they can bring themselves into scope by setting up their presence in England as a separate institution and meeting the OFS's registration conditions. Considerable thought has been given to the future-proofing of the legislation to take into account the growth of online and distance provision.

The hon. Gentleman asked about foreign institutions wanting to set up in England. Providers of HE courses will be covered by the definition in clause 75 if the majority of their activities take place in England. If a foreign university wished to set up base here, to appear on the register, and to hold English degree-awarding powers and a university title, it would need to set up its presence in England as a separate institution and meet the OFS's registration conditions.

The hon. Gentleman specifically mentioned the Open University. I reassure him that we believe that the Open University will count as an English HE provider. According to published data from July 2015, the majority of its students are in England, and most of its income is from English sources. Like the hon. Gentleman, I recognise that the Open University plays a valuable role in HE provision right across the four nations of the UK and it is rightly proud of its status as a four-nation university. Its status as an English HE provider under the Bill should not be seen to detract from that in any sense. I hope that I have reassured the hon. Gentleman and I ask him to withdraw his amendment.

Gordon Marsden: I am reassured by the Minister's explanation. It was important to have that exchange, because what he said and the implications of it for future-proofing are important. It is important to get it on the record at this stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3 pm

Gordon Marsden: I beg to move amendment 170, in clause 14, page 8, line 40, after "law", insert

", including from Government and other stakeholders".

This amendment would ensure that academic staff are not constrained on academic freedom by Government or other relevant stakeholders.

The Chair: With this it will be convenient to discuss amendment 171, in clause 14, page 9, line 5, at end insert—

"( ) relevant student bodies and/or their representatives,

( ) academic workforce and/or their representatives,".

This amendment would ensure the OfS must consult with students/ academic staff before revision of the list.

Gordon Marsden: I always bow to the Clerks' superior knowledge, but I confess I was slightly mystified about why amendments 170 and 171 are yoked because they cover different issues. I will have to keep them within the scope of the one clause.

My hon. Friend the Member for Ilford North asked the Minister about definitions of "university" and wisely constrained himself to talking in fairly straightforward terms and did not become too philosophical. I will try to do the same in the context of this amendment.

We had a debate about what should and should not be in the Bill. Clause 14, to my surprise when I first saw the Bill, refers to

"the principle that academic staff at an English higher education provider have freedom within the law".

[Gordon Marsden]

In my judgment, it is unusual to see that in a Bill and I was so bold as to table the amendment because the one group of people the academic staff did not seem to be protected from were Government or other relevant stakeholders. It talks about ways in which they might be protected against, presumably—perhaps the Minister will amplify this—being affected by their provider. One can think of all sorts of situations without naming individual universities. Hypothetically, for example, a university might depend heavily on funding or support from companies promoting genetically modified foods and so on.

I will not mention a particular university although I will mention a particular controversy. In future, a university might, for example, receive funding from the proponents of fracking and find that a member of its staff who was not keen on fracking had all sorts of legitimate academic arguments against it. Such examples, which I believe will be covered by the clause, are well understood. The amendment is about how the Government or other relevant stakeholders might also constrain that because that will arise in any Government. I think back to when Baroness Thatcher was deprived of an honorary degree from Oxford because of the views of the congregation at that time—not that she was moved to be punitive or, as far as I am aware, to be terribly concerned about the matter. Nevertheless, circumstances may arise in which a university might put itself against the view of a Government Department, Minister or something else.

If we are going to have all these others things in the Bill, the amendment would not be a bad idea, although it is a probing amendment, obviously. I tabled it partly from curiosity because I want to tease out why these specific things have been put in the Bill when in other circumstances I would expect them to be in guidance or whatever.

My only other point relates more to the whole of clause 14 and putting forward new ideas and controversial and unpopular opinions. I do not want to set a hare running, but there is a fine line between controversial or unpopular opinions, or sometimes perceived opinions, and things we now take for granted should not come under the purview of the academics promoting them. Some may remember the furore around Professor Eysenck and his supposed research about the abilities of certain races to perform better at sports, for example. Some will remember a time when university academics pontificated about the origins of homosexuality and so on. These are not hypothetical issues. Getting the balance right between being allowed to put forward

"ideas and controversial or unpopular opinions"

and those things that we in an evolving society now regard as unacceptable is always difficult. That is why I was curious to see this proposal in the Bill. I urge the Minister to think about the issues in terms of the Government and other stakeholders and to respond.

I will turn to the entirely separate matter of amendment 171, which is more straightforward and far less philosophical. In line with everything the Opposition have said and will continue to say—and on which my hon. Friend the Member for Ilford North sallied forth today—this concerns the position of students. Surely it makes sense to require the OFS to consult students, the academic workforce or their representatives before revision of the list.

Again, that would need to be proportionate. We had this argument on an earlier clause but I am not suggesting that every small item of detail that requires a revision of the list should be consulted on. Fundamentals that perhaps change the pattern of work in a university or the closing of a campus should surely require students and academic staff to be consulted and to put forward their opinions to the OFS. That is the basis of amendment 171.

Joseph Johnson: The governance condition is a vital component of the new regulatory framework. It is designed to ensure providers are governed appropriately. Taking amendment 170 first, academic freedom is one of the fundamental strengths of our system and I want to reassure the Committee that the Government are fully committed to protecting it. We absolutely agree that academic staff must be able to teach and research without interference.

The OFS is obliged to consult on a list of principles that can make up this governance condition. The Bill, therefore, rightly does not prescribe what should be included in that list, with the one notable exception that the hon. Gentleman has identified, which is the principle of freedom for academic staff

"(a) to question and test received wisdom, and

(b) to put forward new ideas and controversial…opinions"

without losing their jobs or privileges. The amendment relates directly to that wording, which has been highlighted in consultation with the sector as being of great importance. That is why clause 14 ensures that that important principle remains included in legislation for the future.

The hon. Gentleman asked where the exact wording comes from. It is from the Education Reform Act 1988, which now cross-references to freedom of speech and academic freedom provisions in the Counter-Terrorism and Security Act 2015, in relation to actions of governing bodies in preventing people being drawn into terrorism. The wording is also the same as specified in the Committee of University Chairs' higher education code of governance. This is a tried and tested definition of academic freedom, widely valued and understood by the sector.

The Bill includes a comprehensive range of protections for academic freedom, of which this is just one. It defines for the first time all the ways in which the Secretary of State may influence the OFS by issuing guidance, in terms of setting conditions of grant and giving specific directions to the OFS. In each case, the Bill places an explicit and specific statutory duty on the Secretary of State to have regard to the need to protect academic freedom, and it lists the areas in which the Secretary of State may not interfere.

While I can reassure hon. Members of our commitment to academic freedom, I do not believe that the amendment adds anything to what are already extensive protections from Government interference in academic freedom, specified in multiple places in the Bill. As I mentioned earlier, the OFS will need to consult prior to determining and publishing a new list of these public interest conditions.

I turn to amendment 171 and the issue of who the OFS needs to consult, on which I am glad to be able to provide some reassurance. I fully believe that the list of

principles on which the governance condition will be based should be as proportionate as possible and consulted on widely. I therefore welcome and sympathise with the suggestion that student bodies and academic staff should be included. In fact, I firmly expect those groups to be covered under subsection (8)(c), which states:

"such other persons as the OfS considers appropriate".

It would be inappropriate, however, to attempt to list all parties the OFS needs to consult on the face of the Bill. That approach would risk drawing up what could be seen as an exhaustive list, thus excluding anyone else from such an important consultation.

I assure hon. Members that I firmly expect the OFS to conduct a fully open consultation, inviting the views of anyone with an interest, including students and staff. The Bill as drafted fully allows for that to happen. In the light of all those assurances, I ask the hon. Gentleman to withdraw his amendment.

Gordon Marsden: Taking amendment 171 first, I entirely accept and am reassured by what the Minister said, which will be welcomed. There is always an argument about not wanting to list everything under the sun because we might miss something, and that is fair.

I will not press the amendment to a vote, which the Minister will be pleased to hear. Without us spending half an hour going through the various bits and pieces of statute— we are obviously not going to resolve it this afternoon—if we stopped people in the street and asked, "What is one of the most important things that a new office for students, preserving academic freedom, would want to do?" I would not be surprised if they said something like, "Well, Government shouldn't be allowed to interfere."

These are not hypothetical issues; they are real ones—for example, universities or colleges that get support in the area of fracking. Those are real issues, but we are saying, "Oh, well, it's all covered somewhere else." I am not knocking the specific examples on the face of the Bill, but I do not understand why things like questioning and testing received wisdom and new ideas need to go on the face of the Bill but something as fundamental as saying, "You can't be done for challenging Government policy or Government Ministers" is not.

Joseph Johnson: I will continue to reflect on the points raised by the hon. Gentleman. He makes some interesting suggestions, and we will take them away and have a think.

Gordon Marsden: On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 14 ordered to stand part of the Bill.

Clause 15

Power to impose monetary penalties

The Chair: I am delighted to call the Member who represents Durham University, which is where I went to university and learned everything I know—when I was concentrating, which I shall now do for the hon. Lady's speech.

Dr Blackman-Woods: I beg to move amendment 194, in clause 15, page 9, line 11, leave out "if it appears" and insert

"where evidence has been provided".

This amendment would require the OfS to have evidence about the behaviour of a higher education provider before taking action against them.

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

Amendment 195, in clause 16, page 9, line 24, leave out "if it appears" and insert

"where evidence has been provided".

See explanatory statement for amendment 194.

Amendment 196, in clause 18, page 11, line 17, leave out "it appears" and insert "evidence has been provided".

See explanatory statement for amendment 194.

Amendment 197, in clause 21, page 13, line 1, leave out "it appears" and insert "evidence has been provided".

See explanatory statement for amendment 194.

Dr Blackman-Woods: Given the breadth and depth of your knowledge, Sir Edward, Durham University obviously did a simply brilliant job.

Amendments 194 to 197 all deal with the same issue. The OFS has a wide range of powers outlined in the Bill, including the ability to impose sanctions on institutions. Clause 15, to which amendment 194 relates, gives the OFS the power to impose a monetary penalty on a higher education provider. Clause 16, to which amendment 195 relates, gives it the power to suspend a registered provider. Clause 18, to which amendment 196 relates, allows it to deregister a higher education provider completely, and clause 21, to which amendment 197 relates, gives it the power to refuse to renew an institution's access and participation plan.

3.15 pm

Each of those sanctions could have a significant impact, both for the university in question and its reputation and, perhaps more important, for the students studying at that institution and the staff who work there. It could also ultimately lead to students not being able to graduate from their degree. However, I do not have a particular issue with the range of sanctions that the OFS will have in its arsenal. Members of the Committee know I have grave concerns about the laxity of the system that will allow new entrants into the sector, so I am actually very pleased that there are some sanctions for new entrants that breach the registration conditions. My question is: how will the OFS know those new entrants are in breach of the registration conditions?

Each of those clauses use the words "it appears". For example, in clause 15:

"The OfS may impose a monetary penalty on a registered higher education provider if it appears to the OfS that there is or has been a breach of one of its ongoing…conditions."

Clauses 16, 18 and 21 use similar forms of words to determine whether a sanction should be applied. What does "it appears" mean, and what evidence will be needed to demonstrate the appearance of breaching a registration condition? Schedule 3 sets out in more detail how the OFS will go about imposing penalties on higher education institutions but it does not set out

what evidence will be sufficient for the OFS to take action and enforce sanctions. Schedule 3 says only that in the notice to providers the OFS must specify its

"reasons for proposing…the penalty".

Again, the language is rather inadequate, but I will leave that point until we scrutinise schedule 3. What does "it appears" mean? What evidence base is going to be applied by the OFS and where do we learn what that evidence base is? Is it going to be set out in regulations or is it going to be up to whoever happens to presiding over that section of OFS?

It is a serious point because, for example, a disgruntled student could take to the airwaves and criticise an institution and say it is in breach of a registration condition, when in fact that might not be the case. Is that sufficient evidence? Is that, as "it appears", a breach of a condition? The lack of clarity is my concern and I look forward to the Minister's response.

Joseph Johnson: I thank the hon. Lady for tabling her amendments. They would require that evidence must first be provided to the OFS that a provider has breached its registration conditions before a sanction may be imposed, such as a monetary penalty or removal from the register, or a suspension placed on the provider's registration.

The Bill as drafted states that the OFS may take such actions if it appears to the OFS that a breach of conditions has occurred. The test of "it appears" needs to be read alongside the rest of the clause and schedule 3. Regulations will set out the factors to which the OFS must or must not have regard when deciding whether to impose a monetary penalty. They will be subject to consultation and targeted at ensuring that the OFS can impose a monetary penalty only when there is good reason to do so. In addition, the hon. Lady will be aware that the OFS, as a public body, must act reasonably and proportionately in accordance with general public law principles.

I recognise the spirit in which the amendments were tabled. Although I understand and respect the intentions behind them, the OFS will be a public body acting in accordance with public law. It is clearly the case that

"if it appears to the OFS"

requires the OFS to make a judgment and take responsibility for its decisions, which seems to me to be the right approach. If we accepted the amendment, the changed wording

"where evidence is provided"

would be more passive, almost implying that, provided the OFS has received some evidence, it could trigger the sanction without applying a rigorous approach. We surely want a more engaged OFS than that, applying its judgment flexibly, sensibly and proportionately.

Clause 2 is clear on that point, too, making it clear that the OFS must follow the principles of best regulatory practice, including that its regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed. The hon. Lady might take further assurance from the fact that any intention to impose a suspension or monetary penalty or to remove a provider from the register must have clear processes, described in the Bill, that allow for a minimum period of 28 days for providers to make representations to the OFS. The only exception to that rule is where the OFS considers that a suspension should take effect immediately because of an urgent need to protect public money. Those provisions create important safeguards for providers. I am clear that any compliance action proposed by the OFS must be based on well founded concerns, and I am confident that the Bill as drafted makes the necessary provisions.

I add that clause 2 requires that the OFS, when performing its functions and duties, must have regard to guidance given to it by the Secretary of State. I assure Members that if the OFS is not acting in a reasonable and proportionate manner in respect of the issues raised by the amendments, such guidance will be given. On that basis, I ask that the hon. Lady withdraw the amendment.

Dr Blackman-Woods: I have listened carefully to the Minister's response. If I have got it right, although "appears to" might be rather loose language, subsection (3) means that regulations will set out the types of evidence that the OFS might consider. In addition, if the regulations are not considered to be sufficient or have not been adopted properly by the OFS, additional guidance will be given by the Secretary of State to assist the OFS in its decision making. With that in mind, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Joseph Johnson: I beg to move amendment 32, in clause 15, page 9, line 22, after "interest" insert

", and

(d) the retention of sums received".

This amendment is consequential on amendment 33.

The Chair: With this it will be convenient to discuss Government amendments 33, 102 and 103.

Joseph Johnson: The Bill grants the office for students the necessary powers to impose penalties on higher education providers and recover costs and interest related to unpaid penalties and costs. As drafted, the Bill provides only that those sums will be paid into the consolidated fund. On reflection, that is too blunt an approach and is not in line with best practice elsewhere. We think it should be possible for the OFS to retain some of these costs, but only in certain cases in which the Secretary of State agrees to it with the explicit consent of the Treasury. We are clear that the OFS should be allowed to retain income only when it relates to its costs, not when it is imposed as a penalty or deterrent.

For the avoidance of doubt, Government amendments 32, 33, 102 and 103 align the legislation with standard Treasury guidance. They make it clear that OFS income is to be remitted to the Secretary of State unless the Secretary of State, with the consent of the Treasury, directs otherwise.

Gordon Marsden: I have no wish to detain the Committee over Government amendments that seem to me entirely sensible and proportionate. However, I have a question for the Minister that is not merely hypothetical, because significant sums of money that were extracted under the previous Government, for example in LIBOR fines,

found their way into curious parts of the Consolidated Fund, enabling the Chancellor to stand up and produce rabbits out of hats in the various Budgets. That is another matter and we will not go into it, but it leads me to my point, which is that I am entirely happy and relaxed for the money to go to the OFS or even to the Secretary of State, but I would be rather less relaxed if I thought it would disappear into the Treasury without trace. Will the Minister give me an assurance that this money will be ring-fenced for the Department and will not simply go back into the Treasury?

Joseph Johnson: I thank the hon. Gentleman for that further line of questioning, which I will reflect on. I cannot give him that assurance now, but I will reflect and hopefully provide some further assurance in due course. In the meantime, I reiterate that the amendments are to bring the treatment of OFS income in line with best practice by allowing the OFS to retain some of its income, but only where the Secretary of State so directs, with the explicit consent of the Treasury.

Amendment 32 agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Schedule 3

Monetary penalties: procedure, appeals and recovery

Amendment made: 33, page 72, line 34, leave out sub-paragraph (5) and insert—

"Retention of sums received

5 The OfS must pay the sums received by it by way of a penalty under section 15 or interest under paragraph 4 to the Secretary of State.".*—(Joseph Johnson.)*

Schedule 3, as amended, agreed to.

Clause 16

Suspension of registration

Joseph Johnson: I beg to move amendment 34, in clause 16, page 10, line 11, after "ends" insert

"otherwise than when the provider is removed from the register".

This amendment provides that the OfS's duty to enter the date on which a provider's suspension ends in the register does not apply where it ends with the provider's removal from the register.

The amendment removes the requirement for the OFS to enter the date of the end of the suspension of a provider in instances when the provider has been removed from the register. Given that, in the event of deregistration, there will no longer be any entry in the register to enter a date against, it is a sensible clarification of the OFS's duties in such cases.

Amendment 34 agreed to.

Gordon Marsden: I beg to move amendment 172, in clause 16, page 10, line 12, at end insert—

"(10) A suspension must not exceed 365 days.".

This amendment would ensure suspension of a provider's registration cannot exceed more than one year.

The Chair: With this it will be convenient to discuss amendment 174, in clause 17, page 10, line 36, at end insert—

"(e) specify what happens to existing students during the suspension period as documented in an institution's student protection plan.".

This amendment would ensure clarity as to the safeguards for students at a suspended institution.

Gordon Marsden: We return to a subject that we have already begun to touch on and will touch on further: the issue of what happens when things go wrong for whatever reason. I will deal with amendment 172 first, which is a probing amendment. As in the discussion that we had earlier on the issue of 28 days and 40 days, the figure is not entirely arbitrary, but it is a figure that could be played with.

3.30 pm

The amendment concerns suspension and would create a sunset clause. Our concern is about natural justice for the provider that has been suspended, but equally we want to make sure that all the people affected by the suspension—we come back to our familiar mantra of workforce, students and so on—are not left in some infernal limbo for an unreasonable period of time. I will not refer to specific examples, but will draw on my own experience of having been on the Select Committee before 2010 when two or three major cases came up, which the Select Committee looked at and which the QAA was involved in. There were lengthy proceedings, which in some cases took two to three years to resolve. That was detrimental not only to the provider under investigation, but to all those associated and, by extension, caused problems for the reputation of the sector as a whole. I bear that in mind with this amendment.

After all, if a provider is suspended, there are presumably two outcomes. They are either told, "Go away and put your house in order and we will lift the suspension", or the provider withdraws from the market or possibly goes and does things and they are then told, "Sorry, this is not going to work", and then there is a market exit of some sort. But suspension needs to be done in a reasonable and timely fashion. The Minister has the advantage of the rest of us because he has a phalanx of civil servants who can go back and look at previous examples of how long some of these things have taken, and who can consider whether it is not unreasonable to put some form of sunset clause in the Bill. That is the reason for amendment 172.

On the broader and more substantial issues, which again we have touched on to some degree and which I am sure we will touch on again when we come to clauses 40 to 48—I will not engage with the issue of the relevance or otherwise of probationary powers—amendment 174 is about what safeguards there are for students at a suspended institution. We want more meat and potatoes in the Bill to say what is actually going to happen. That is why the amendment would specify what happens to existing students during the suspension period—leave aside the issues for future or indeed past students who might study their degree certificates more nervously than previously, considering the amount of money they have spent to get them—as documented in an institution's student protection plan.

At this point I want to refer to the paper that the Minister has given us. It is the paper on student protection plans that we discussed this morning. I have speed-read it. I might have said earlier that I think the broad range of intentions are good and perhaps one should not expect to see more than the broad range of intentions, but there are lots of specific points. Before I press the Minister a little further on a couple of points about market exit, it is important to lay out the context, which we touched on to some degree this morning when I talked about the evidence produced in the Government's White Paper on the expansion of alternative providers up to, I think, 2014 and on the number of institutions that have closed. I will not go over that ground again, but I will say something that I did not have the opportunity to say this morning on the nature of students at alternative providers.

I alluded this morning to the other part of the IFF Research report—commissioned by the Department for Business, Innovation and Skills, which was then in charge of higher education—which emphasises the proportionally large number of people from ethnic minorities or from disadvantaged circumstances who study at alternative providers. The Minister will remember our evidence session with a couple of the alternative providers and the discussion that followed with Mr Proudfoot, who represents a range of such providers. Mr Proudfoot specifically emphasised, and wanted us to support, the proportionally large number of people from disadvantaged backgrounds who study at alternative providers. From what the Minister and others have said, we can assume that the Government wish to see an expansion of alternative provision precisely to address some, although we believe by no means all, of the access and participation issues.

Alternative providers are, as it were, the other side of the coin, which is why we feel it is important to press this point. The figures from the survey suggest that 46% of learners at alternative providers are significantly more likely to be from an ethnic minority—46% of respondents were non-white, compared with 10% in the publicly funded sector. There is also some indication that those studying at alternative providers tend to be older, with only 23% aged under 20 at the time of entry, compared with 37% aged over 20 at the time of entry in the publicly funded sector.

I come back to what I said this morning, and have said on other occasions, about the importance of all forms of providers addressing the need for lifelong learning, because people want to come back to reskill and retrain. All of that is good. Concomitantly, when and if alternative providers stumble or fall, there are greater consequences for people who either would have felt wary of coming into higher education—perhaps because no one in their family had been there before or because higher education is not seen as a great strength by their particular ethnic grouping, or for whatever reason—and for people who went into higher education at a later stage. Again, I draw on my experience as an Open University tutor. People who enter higher education at a later stage are often in their middle years and are predominantly women. Often they go to alternative providers because they do shorter-term courses or ones that can be fitted in with a complicated work-life balance. People who were chary about going into the system in the first place, or people who went into the system knowing that they would have to juggle things quite a lot to do so, will be far more dramatically affected than others, it might be argued, by a collapse in the alternative sector. For all those reasons, we believe it is important to get this right as soon as possible.

I am sorry to have to come back to this, but this is not a question of something that cannot happen, has not happened or, indeed, is not happening. I referred previously to the issues in 2011, when concerns around BPP and the Apollo group caused the previous Secretary of State to pause a major extension in this area. *Research Fortnight* argued in May—I am sure the Minister will not agree—that

> "The government's proposed reforms are being billed as bold and innovative but in fact they are no such thing."

It said that the wording

> "proportionate for the Bill's regulatory aspects"

is "code for light touch" and that

> "the UK government has instead decided to emulate a model from which many in the rest of the world want to escape."

We may not share all the conclusions that might come from that, but we are well aware that those other problems exist elsewhere and have affected students. Indeed, a six-country study that was requested by BIS and published by the Centre for Global Higher Education at University College London's Institute of Education warned of some of these risks. It said that

> "relative to the public sector, the quality of provision…is often found wanting, while tuition fees are usually higher."

The six countries concerned were the US, Australia, Germany, Poland, Japan and Chile. The study went on to say:

> "This suggests the need for much tighter regulations in the UK for all private providers, and not just those receiving government funding"—

I appreciate that today we are dealing specifically with the ones in that category.

I want to press the Minister on these points. When it comes down to the practical, a student at a university that is suspended and has problems will ask, "Who is going to pick up the pieces if it all goes wrong?" We are talking about several different sorts of pieces—how do I continue my degree? What happens about the money I have spent already? What happens if the problems are not picked up until halfway through my course? Apart from financial compensation, the other issue is: if I want to continue with this course, where do I go? That is a huge issue for the Government and the OFS to address.

We are not going to solve this today, but to put the amendment on the face of the Bill would at least suggest that there needs to be a direction of travel. At the moment, the way the Government have set out the provisions is too laissez-faire and assumes that everything will be fine. I will go back to the example I quoted this morning of a question raised in the House of Lords about the West London Vocational Training College. I think that the question was posed—*Hansard* will or will not bear this out—by the noble Baroness Wolf, and the report in the *Times Higher Education* tells me that it was the noble Baroness Evans of Bowes Park who responded for the Government. In her answer, published on 1 July, she said:

> "The Government has revoked West London Vocational Training College's designation…Affected students will be supported so they can continue their studies with as limited disruption as possible."

May I ask the Minister how—this is germane to illustrating the need for amendment 174—those students are being supported? That answer was on 1 July; it is now 15 September. If the Minister cannot respond today, perhaps he will be good enough to update us on precisely how they have been supported. Have they been supported financially? Have they gone to other institutions? I use that example to demonstrate that just saying, "Well, they will be supported," begs a range of other questions.

I have a whole list of other colleges that have been in similar circumstances recently. I would be interested to know about those, too, although I will not trouble Committee. Perhaps those colleges will be a subject for written questions that might pop on to the Minister's desk at some point.

These are not hypothetical issues. In its evidence to the Committee, the National Union of Students—having said what it said about the changes to degree-awarding powers—said that there should be a requirement, under clause 13, for all student protection plans to specify

"how students will be protected from any reasonable financial loss".

It also says, "Should a student's institution collapse or close their course while they are still studying, through no fault of their own, the student may be at risk of losing course costs, accommodation costs, moving costs and other costs that they would not have incurred had they not gone to that university, and it would be grossly unfair to put a student in a position where they stood to suffer financially for reasons totally beyond their control."

3.45 pm

I think that submission from the National Union of Students is particularly valuable because it lays out the range of issues to be dealt with. It is a question not simply of tuition fees but of all the knock-on effects on people's accommodation commitments. The cost of accommodation for students, particularly in London, has become a key issue, as I was told when I visited the new University of the Arts London campus in January. If there are failures of that sort—I am not suggesting that in respect of UAL but I am using UAL as an example of how important accommodation costs are in places such as London—there needs to be a clear set of plans for dealing with it.

It is interesting that Carl Lygo, the vice-chancellor of the for-profit BPP University said that the report showed that, while the alternative sector was

"doing a great job at attracting students that would not otherwise go into higher education",

there was

"quite a lot of instability in the sector".

He said:

"It is a sector that really does need a track record before progressing on to full degree-awarding powers".

That is the thrust of much of what the amendment is trying to get at. We do not expect to get much more detail today, although we may press for it in due course. However, we expect to get some sense from the Minister as to how it will be taken forward.

This morning, the Minister prayed in aid, as a good—an unalloyed good—the power to take the cap off the number of students who could go into the sector. He slightly had a go at us for somehow being dog in the manger about it, but it is not just the Opposition who are questioning the rush for alternative providers. The noble Baroness Wolf, to whom I already referred, has drawn sharply to the Government's attentions some circumstances that have taken place in Australia as a result of the expansion of private providers, possibly without the necessary precautions.

I am sure that it is no part of the Minister's wish that if we do not get the regulation and protections right, two or three years after his Bill appears on the statute book, there will be a series of scandals that cause real problems for the reputation of the whole alternative provider sector. I strongly urge him not simply to say, "Oh, well, we have adequate protections already", or, "Putting this on the face of the Bill is otiose." The tens of thousands of students who are at alternative providers or, indeed, at existing providers—we are talking not just about alternative providers, but about protecting people at existing longstanding institutions or new people who might be tempted into the market—would not regard these matters as unsuitable for the Bill. If we make this amendment to the Bill, it would give a great deal more reassurance—and direction, which is also important—to the OFS to ensure that this information is available.

Joseph Johnson: I thank the hon. Gentleman for raising these issues, which I agree are important, and that is why we have given them very careful thought at every stage in the development of our reform proposals.

The Bill provides important enforcement tools for the OFS, including a power to suspend a provider's registration if it appears to the OFS that there has been a breach of the provider's registration conditions. This imposes a powerful incentive for providers to adhere to the OFS's conditions, and is therefore critical to safeguarding the quality and reputation of our HE sector, and to protecting students.

Amendment 172 seeks to ensure that any suspension imposed on a provider's registration cannot exceed a period of more than 365 days. Imposing a limit of that nature to a provider's suspension seems arbitrary and may be unhelpful, for example, when a suspension has been imposed in cases where a provider is "teaching out" students during a period that could exceed 365 days. I hope that gives the hon. Gentleman just one very quick example of why we would not want to have a limit of that kind.

Clause 17 puts in place a clear process for dealing with suspension, including setting out to providers the reasons for imposing a suspension and any remedial actions that may be required of them. We envisage that such remedial action requirements will not only state clearly what needs to be done but set out clearly the date by which such actions need to be taken.

The OFS will treat any breach of conditions as a serious matter and will require providers to put matters right promptly. Indeed, clause 18 allows the OFS to deregister a provider if its powers to suspend are insufficient to deal with a breach of a provider's conditions. That will provide a clear safeguard for students, as it will avoid unnecessarily lengthy—even unduly protracted—periods of suspension.

I turn to amendment 174. The Committee has already discussed student protection plans, which the OFS can impose under clause 13. As the Committee has heard, we want the basic principles for having a student protection

[Joseph Johnson]

plan to be applied to any and every situation where a material change may potentially affect students' continued participation on a course or at an institution. Such situations could include an event where a provider's registration has been suspended.

We would expect providers to set out to students clear arrangements as to how student protection plans would handle material changes that might occur, including suspension. Information to students should include a clear process and provide clarity about options and mitigating actions, and the objective is to minimise any potential negative impact on students. The Bill also gives the OFS the ability to specify what transitional financial support students may receive if they are at a provider that has been deregistered by the OFS, resulting in designation for student support being removed.

On that basis, therefore, although I fully agree with the hon. Gentleman's concern about the importance of having a robust regulatory framework and tough threshold conditions for entry for high-quality providers, I do not believe that the amendment is necessary as I strongly believe that the Bill already contains the necessary provisions to safeguard students' interests.

Gordon Marsden: The Minister has quoted chapter and verse as to what the OFS might or might not be able to do, but what he has not been able to do is address the specific circumstances that I have listed, and I press him on this point about the differences between accommodation and all the rest of it. If he does not want to make this particular change to the Bill, how does he intend to ensure that the OFS considers all of those matters?

Joseph Johnson: We published an explanatory guide to the student protection plans, which was made available to the Committee yesterday, and that was an early provision of information to assist the Committee. Of course, the OFS will properly consult relevant bodies when it comes to drawing up the finer detail of how student protection plans should work.

Members of the Committee will have seen the kinds of measures that we expect student protection plans to include to assist students in those circumstances, such as suspension. We have listed four examples. The plans should include:

"provision to teach out a course for existing students; offering students an alternative course at the same institution"—

if it is just a programme or a department that is closing—

"making arrangements for affected students to switch to a different provider without having to start their course from scratch; measures to compensate affected students financially".

Those are the kinds of things that we expect the consultation to flush out.

Gordon Marsden: I know the Minister is trying to be helpful. As I have said before, I am not dissing, to use a colloquialism, the student protection plans paper that has come forward, but it is very much a first stab at this. In particular, I want to ask him about the section on market exit at the end. Paragraph 35 states:

"Instances of a provider suddenly and without warning exiting the market completely are likely to remain extremely rare."

I am sorry, but that is not historically accurate. We have had examples where providers have collapsed. The paragraph also states that

"the OfS will be able to work with students who want to transfer to alternative institutions".

Say an institution was teaching law in a confined area and it was suddenly suspended for whatever reason and it had 1,000 students. Can the Minister tell me what alternative institutions would be available to pick up that tab and that group of students at that point? Just as importantly, what support—

The Chair: Mr Marsden, I can allow you to intervene as many times as you like—I am very easy-going on that—but we have to keep interventions brief, otherwise it is not fair on other people.

Joseph Johnson: Again, Sir Edward, I respond to the hon. Gentleman by reminding him that student protection plans are an existing feature of our higher education system, but the problem is that they are patchy and not systematic. The Bill will ensure that the OFS has the power to request student information plans systematically from categories of provider so that more students can benefit from the kinds of protections that are currently available only on a piecemeal basis. Those protections have helped institutions cope with the closure of courses or programmes, and we want to make systematic the existing best practice framework in the sector. That is our objective.

The hon. Gentleman is trying to conjure up this image of a sector that will suddenly be confronting the need to develop student protection plans, but they exist already. We are making them more widespread and on that basis, having given way a couple of times, I ask him to withdraw the amendment and agree that we are defending the student interest with this provision and putting in place something that the NUS has welcomed.

Gordon Marsden: Right—okay. I hear what the Minister has said. It is not my interpretation of what the NUS has said, which is why I am quoting chapter and verse from it, but the NUS can speak for itself. The problem with what the Minister has said—I accept his bona fides, his intentions and the rest of it, and I can see his frustration that I am not prepared to accept the broad assurances, but that is what they are—is that they are broad assurances that do not address some practical issues.

I go back to this point: the Minister cannot put a paper out to the Committee and not expect to be questioned on it in the course of the consideration of an amendment. I take him back to paragraph 35, which says that

"the OfS will be able to work with students who want to transfer to alternative institutions, with the aim"—

this is the additional thing—

"of their having banked credit for study already completed."

The Minister knows as well as me, because he has made a big thing of the fact that he wants to do more about it in the future, that that situation of being able to transfer banked credit for study already completed does not exist in many institutions. That is one of the things that needs to be changed, but he wants to introduce a system that will make market exit much easier.

The Minister is blithely saying in the paper, "Of course they will be able to transfer to an alternative institution", but he cannot give me any idea of what would happen in the particular example I gave him, or where the inducements would be. The paper also talks about the aim of students transferring with banked credit for study already completed, but the Minister knows perfectly well that is very fragmentary and very uncertain in the process that we currently have. Particularly in a crisis, hundreds of students could be transferred from one institution to another. Who will fund them? Will the Government stump up money? Will the university that takes them on board automatically have all those courses?

4 pm

I know that these are matters of detail and not in the Bill. I do not expect them to be, but I do expect us, when we table an amendment that says that the OFS needs to think about all these things in great detail, not simply to be palmed off with the idea that it is all in the paper and everything will be fine, because everything will not be fine. There are many recent history examples of that.

That is why I am profoundly unhappy and concerned at the Minister's approach at this moment. I hope that he will reflect on this exchange and the issues that we are raising. When we come to consider some of the specific issues in clauses 40 to 48, we will want to see far more meat on the bone than we have been given here this afternoon. I am mindful of the time and the heat of the day and that it is Thursday afternoon and hon. Members want to get back to their constituencies. For those reasons, whereas on other occasions I would have pressed this amendment to a vote, I will not press it today, but I will expect to hear about more progress on this issue from the Minister in the future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17

Suspension: procedure

Joseph Johnson: I beg to move amendment 35, in clause 17, page 10, line 42, at end insert—

"( ) section 85 in the exercise of UKRI's power under that section to give financial support, or".

Clause 17(8) provides for an expedited suspension procedure where there is an urgent need to protect public money. This amendment adds financial support given by or on behalf of UKRI in the exercise of its power under clause 85 to the list of examples of public money for the purposes of that provision.

Subsection (8) provides the OFS with the power to suspend a provider with immediate effect where the OFS considers that there is an urgent need to protect public money. The clause lists particular examples of payments in the HE field that the OFS may want to protect and the amendment simply adds to that list payments made by UK Research and Innovation using the powers given to it by the Bill. The amendment provides a clear signal that the OFS will specifically take into account the need to protect UKRI funding when considering the suspension of a provider.

Amendment 35 agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18

De-registration by the OfS

Joseph Johnson: I beg to move amendment 36, in clause 18, page 11, leave out line 26 and insert

"breach (whether or not they have been, are being or are to be, exercised in relation to it)."

This amendment clarifies that the requirement in one of the pre-conditions for de-registration of a provider that the OfS's powers to impose monetary penalties or suspend registration are insufficient to deal with the breach does not prevent those powers being exercised in relation to the breach.

Clause 18 sets out two types of case in which the OFS must deregister a provider. The first is when a provider, having previously been suspended or fined for breach of an ongoing registration condition, breaches the same condition or another of its conditions. The second case is when the breach of an ongoing registration condition is so serious that neither the imposition of a monetary penalty nor a suspension will be sufficient to deal with it. The amendment simply makes it clear that the OFS can come to a view that a fine or suspension would be insufficient to deal with a breach and then move to deregistration without first having had to take any action to impose those sanctions. That allows for appropriately speedy action in particularly serious cases—for example, cases of large-scale fraud. Of course, it will always be the case that the OFS could take such an approach only if the facts of the case justified it.

Amendment 36 agreed to.

Gordon Marsden: I beg to move amendment 175, in clause 18, page 11, line 37, at end insert—

"(8) The OfS must submit any list produced under subsection (7) to the Secretary of State who shall lay it before Parliament."

This amendment would ensure the list of providers removed from the register is laid before Parliament.

The Chair: With this it will be convenient to discuss new clause 5—*De-registration: notification of students*—

"(1) The governing body of a higher education provider must inform all students enrolled on a course if it—

(a) is notified by the OfS of its intention to suspend the provider's registration under section 17(1),

(b) is notified by the OfS of its intention to remove it from the register under section 19(1),

(c) is notified by the OfS that it will refuse to approve a new access and participation plan under section 21(2), or

(d) has applied to be removed from the register under section 22(1),

(2) The governing body of an institution must notify students under subsection (1) by the date on which—

(a) the suspension takes effect,

(b) the de-registration takes effect, whether enforced or voluntary, or

(c) the expiry date of any existing access and participation plan that will not be renewed and the period of time for which approval of a new plan will be refused,

whichever is applicable."

This amendment would require that any students still undertaking courses at that provider are notified if the provider becomes deregistered.

Gordon Marsden: This amendment, again, is in line with transparency before Parliament, particularly transparency in serious cases. That is what it would be, in our opinion, if a provider were removed from the register. We had a run-around on this subject in another context on Tuesday. The Minister said to me then, perfectly reasonably, that the register would be done in real time, that it was an ongoing process and so on. I observed that things done on a rolling basis day by day are often things that people do not pick up on.

After all, if a provider is to be removed from the register, there must be substantial reasons for doing so, and it is in the public interest, let alone the interests of students and other stakeholders, that that should be made clear. They should not be constrained to look on a website every day to see whether their institution has not made the grade in some way. As a de minimis process, it should be the case that the OFS must submit, according to the terms of the amendment,

"any list produced under subsection (7) to the Secretary of State who shall lay it before Parliament."

That is not onerous—indeed, one might say that stronger things could have been put into the Bill. However, it is important for the sake of transparency and confidence in the sector, particularly if we are going to be dealing with a significant number of new and alternative providers over the next 10 years, that the public and students have confidence, and that the communities in which those new providers provide higher education have confidence. That is why we tabled amendment 175 as a probing amendment. I hope that the Minister will understand the difference between simply putting something on a register in real time and having a fixed period in which to lay it before Parliament.

Dr Blackman-Woods: I will speak to new clause 5. The clause continues the argument set out by my hon. Friend the Member for Blackpool South that in the event of deregistration, the interests of students must be paramount. In particular, students and their degrees must be protected, and they must be able to prepare and decide what to do if their institution is deregistered or their course is removed.

The purpose of new clause 5 is to ensure that something is put on the face of the Bill about how and when students will be informed that there is a problem with their institution. It will ensure that the governing body of a higher education provider informs students enrolled on one of its courses if it is notified by the OFS of its intention to suspend the registration of the institution or remove it from the register, or if it refuses to approve the new access and participation plan, which would have the effect of removing it from the register. It stresses that the governing body must notify students if a suspension or deregistration is to take place, when it will take effect, whether it is enforced or voluntary and, critically, whether there is an expiry date for any existing access and participation plan.

The new clause is straightforward: it simply seeks to set out in the Bill some basic protections for students to ensure that they are informed well in advance. Although the new clause does not say this, students should be notified before something inaccurate gets into the media that might alarm them. They should be informed well in advance of anything leaking out and be given clear information about whether there is going to be a suspension or deregulation, and when. Critically—this was the purpose of the amendment of my hon. Friend the Member for Blackpool South—students must be enabled to take relevant and appropriate action early enough to safeguard their current and future studies. I look forward to hearing what the Minister has to say.

The Chair: That is your cue, Minister.

Joseph Johnson: I do not want expectations to rise too high.

I welcome this opportunity to discuss the deregistration of providers. The OFS list of deregistered providers will be a single, comprehensive record of English HE providers that have been removed from the register. As such, it will be updated in real time as and when additions are made to it. The list and the information in it will be publicly available and hosted on the OFS website. In that sense, there appears to be little value in placing a duty on the Secretary of State to make available information that the OFS will place in the public domain. The OFS will take steps to ensure that the register and the list of deregistered providers is well publicised.

On new clause 5, the powers that the OFS is given in the Bill to impose sanctions, suspend a provider's registration and, ultimately, to deregister a provider are a powerful incentive for providers to adhere to their registration conditions. When the OFS proposes to suspend or deregister a provider, or to refuse to renew a provider's access and participation plan, this is primarily a compliance measure to ensure that providers take necessary steps to comply with the conditions of registration that have been placed upon them. Providers are given time either to take corrective action or to make further representations to the OFS before any sanctions are imposed.

I understand the reasons for the new clause, but it would not be right for there to be widespread publicity when the OFS has yet to decide to take action, and when discussions, representations and evidence gathering may still be ongoing. Such publicity may cause reputational damage that would not easily be repaired, even if the provider addresses the OFS's concerns and no action is ultimately taken. It may also dissuade those giving evidence from doing so and lead to the provider not being fully co-operative. That is not desirable, given that our aim is, whenever possible, to work with providers to improve their performance, and for them to continue to provide high-quality higher education.

Let me be clear: when a decision has been taken, if the OFS considers it appropriate that students should be informed of the actions taken, it already has the power when appropriate to compel a provider's governing body to ensure that students are properly and promptly informed.

Gordon Marsden: The Minister is being characteristically generous in giving way. We have already expressed our concern about the phrase "if the OFS considers it to be appropriate". I am sure that my hon. Friend the Member for City of Durham does not want to place huge burdens on the OFS, but I do not think "if the OFS considers it to be appropriate" is the right phrase. If an institution is in that situation, it should not be a question of whether the OFS considers it appropriate to notify students; it must do so. If I were the new chief executive

of the OFS, I would consider it a dereliction of my duty not to do so. I see no reason, therefore, why we are not talking about "must", rather than whether it is appropriate.

Joseph Johnson: I understand the hon. Gentleman's point but, as I have said on previous occasions, the OFS will be a public body that has to respect general public law principles and will need to act reasonably and proportionately in everything it does. I assure him that it is certainly our expectation that the OFS will act in the interests of students and will consider making it a specific condition of registration that a provider's governing body advises students promptly and accurately of OFS proposals to take action against it. Where a provider applies to the OFS to be voluntarily removed from the register and students are still on such a provider's courses, they will be notified through actions set out in the provider's student protection plan. On this basis, I ask the hon. Gentleman to consider withdrawing the amendment.

4.15 pm

Gordon Marsden: I thank the Minister for his response. It is clear that, if not a philosophical, there might be a slight ideological division for us on whether it should be "must", or "considers it to be appropriate". He will be relieved to know I will not go down that route again. I accept the thrust of his arguments and am glad that he has been induced, if I may put it that way, to speak as passionately on the subject as he has, because that will enable a much clearer steer to go to the OFS. I think that steer is important, as I have said before, with any new institution, notwithstanding the wisdom of the Secretary of State in appointing whoever she does to those particular posts. On that basis, for my own part—my hon. Friend the Member for City of Durham must speak for herself—I am prepared to withdraw amendment 175.

Dr Blackman-Woods: I listened carefully to what the Minister said. I think that he was assuring us that the protection plan will contain clear guidance about how students are to be informed in the event of an impending deregistration or suspension. If that was indeed what the Minister was saying, that suffices for the moment and I will not press new clause 5.

Gordon Marsden: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 18, as amended, ordered to stand part of the Bill.

Clauses 19 and 20 ordered to stand part of the Bill.

Clause 21

REFUSAL TO RENEW AN ACCESS AND PARTICIPATION PLAN

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

Gordon Marsden: I rise to put a couple of particular questions to the Minister about this process. Obviously the refusal to renew an access and participation plan would be of significant concern. The whole idea of access and participation plans is to take forward the process of widening participation that the Minister and all of us have committed to, so refusing to renew one is actually quite a significant step. In the text the Minister has provided, there is a lot of detail about the circumstances in which that might take place. The Bill talks about the OFS notifying

"the governing body of the provider"

about this. I was not quite clear about the implications of this particular phrase, so I would be grateful if the Minister were to expand on it, but subsection (3) says:

"The Secretary of State may by regulations make provision about… matters to which the OfS must, or must not, have regard in exercising its powers under subsection (2);".

I would welcome some clarification, however brief, on that. That is the first point.

My second point touches on our earlier discussions. What would the position and the relationship of the director for fair access and participation be in this process? At what stage, for example, would his recommendations be reviewed? Would he have a veto—that is perhaps the wrong word—or the sole power to make that decision, which the OFS board would just rubber-stamp, or does the Minister envisage a conversation between the OFS board and the director before refusals were made clear? As I have said, this is not a power that should be used lightly. It is not a light issue for the students who will be affected by no longer having access to an access and participation plan nor for the provider who will have its plan removed and for whom it will potentially appear as a black mark on its corporate reputation.

Joseph Johnson: I am grateful to the hon. Member for Blackpool South for giving me a chance to provide some clarification. The Government believe that anyone with the talent and potential to benefit from higher education should have an opportunity to go to one of our great institutions. In the new world, the OFS will take on responsibility for agreeing access and participation plans, so that even more people can have that chance. However, it is important that the OFS has a backstop power to refuse to agree a new plan where there have been concerns with previous performance, which would be used only in circumstances where it appears that a higher education provider has failed to deliver on commitments in its access and participation plan or has exceeded the specified limits for course fees.

The process that the OFS would follow in those circumstances will be set out in regulations. The regulations will cover the matters that the office for students should or should not take into account in deciding whether to refuse to renew an access and participation plan, the procedure it should follow when giving notice of the refusal to renew a plan, the impact of a notice of refusal and provisions enabling providers to apply for a review before a decision to refuse to renew a plan becomes final. Such detailed arrangements, covering the whole process of agreeing, renewing and enforcing plans, have been set out in regulations since 2004. The hon. Gentleman asked about clause 21(3). Those provisions replicate the provisions in the Higher Education Act 2004.

The director of fair access has not used his powers to enforce compliance with access agreements under the current system. However, we want to ensure that the

[Joseph Johnson]

office for students has the necessary teeth to act where there are concerns. Such a power underlines the priority that we place on widening participation and the key role the OFS will have in ensuring that continued progress is made in that area. I recommend that this clause stands part of the Bill.

Gordon Marsden: It is extremely helpful of the Minister to lay that out. I asked a very specific question about at what point in the process the director for fair access and participation would be involved and whether he would have a full say. I accept that those are issues that can be dealt with when further guidance is put forward. They are important issues. As the Minister has just said, the current director has not yet had to use his powers in this area. If we are looking at a situation where there is going to be a significant expansion of providers over the next 10 years, which the Government's own technical document makes very clear, we cannot assume that this process will not happen in the future. It would therefore be helpful for the Government and the OFS if some further thought were given to the relationship between the OFS and the director for fair access and participation on the important decision to refuse an access and participation plan as envisaged in clause 21.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

Voluntary de-registration

Gordon Marsden: I beg to move amendment 191, in clause 22, page 14, line 5, leave out "may" and insert "must".

This amendment would ensure transitional measures were put in place by the OfS if a provider is removed from the register.

People might say that voluntary deregistration is not as important as a compulsory one. Nevertheless, even a voluntary deregistration has consequences. Therefore, with this probing amendment, we are asking the Minister to consider requiring the transitional measures to be put in place, rather being left as "may". I leave that for the Minister to consider in context, but it is important for us not simply to have a situation of voluntary deregistration.

Joseph Johnson: The amendment would require the OFS to put in place transitional measures when a provider has applied to be removed from the register, even if it were the case that all students had completed their studies. We expect that, in the overwhelming majority of cases, transitional measures will be appropriate and that they will be made by the OFS. It is important, however, for the OFS to retain discretion to act when necessary, rather than being forced to take action that, in some circumstances, may not be appropriate, in particular when a provider is making an orderly exit from the HE sector.

There is little value in the OFS being required to make transitional arrangements when a provider has acted reasonably, responsibly, and has remained on the register until such time as the students have completed their studies. I understand the hon. Gentleman's intentions in moving the amendment and fully agree with the need to promote such important issues, but it is not necessary, because the Bill already makes appropriate provision. I ask him to withdraw the amendment.

Gordon Marsden: I hear what the Minister has to say. I am grateful for his explanation and, on that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 22 ordered to stand part of the Bill.

Clause 23

Assessing the quality and standards of higher education

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

Dr Blackman-Woods: I do not wish to detain the Committee unduly, but the Minister will be well aware that Universities UK has, in its written evidence to the Committee and, I am sure, in person with him, expressed some real concerns about how the concepts of quality and standards are being applied in this legislation.

In the written evidence, Universities UK pointed out to the Committee that the way in which standards should be assessed is not being set out clearly enough, nor has enough clarity been given to the difference between what is meant by "quality" and "standards" throughout the Bill. Universities UK states:

> "The quality of higher education provided is clearly a key consideration in the regulation of the sector, although at present the bill makes the relevant condition one which may be applied rather than one which is a mandatory condition of any institution seeking to be included on the register of higher education providers."

It points out that all the clauses subsequent to clause 13 that deal with assessing quality and standards should make the distinction between "quality" and "standards" much clearer.

On that point, clause 23(3) as drafted states:

> "'Standards' has the same meaning as in section 13(1)(a)."

Clause 13(1)(a) states that

> "a condition relating to the quality of, or the standards applied to, the higher education provided by the provider (including requiring the quality to be of a particular level or particular standards to be applied);".

That does not seem to be a particularly helpful or clear definition.

Will the Minister, from clause 13 onwards and in clauses 23, 25 and 27, assist the Committee in its deliberations by agreeing to put more clarity in the Bill or in regulations?

Paul Blomfield: My hon. Friend makes an important point, which is shared by the Russell Group in its evidence. It is concerned that the definition as it stands would require the OFS to be involved in decisions about appropriate standards that are properly for universities themselves to make as autonomous institutions? There is widespread concern, which the Government need to address.

Dr Blackman-Woods: I thank my hon. Friend for making that important point. The Minister has had many representations on this issue. I have not yet heard from him how he will address those concerns, but I am sure I am about to.

Joseph Johnson: Yes, indeed. There have been representations and plenty of discussion about why the Government felt it necessary to make explicit reference to standards here. The words "quality" and "standards" have distinct meanings within the higher education sector, even though both are encapsulated within what a layperson might consider to be the quality of a degree. While we consider that HEFCE currently has a role in assessing standards as part of its current quality duty, the lack of an explicit mention for standards has created some uncertainty and that requires correction.

Quality refers primarily to processes, such as whether a provider has suitable academic staff or is providing appropriate levels of assessment and feedback. Standards, on the other hand, refer to the level that a student is required to meet to attain a degree or other qualification. The common expectation of standards is set out in the "Frameworks for Higher Education Qualifications", which has the support of the sector.

It is essential that the office for students is able to ensure that providers are genuinely offering qualifications that are of a suitable standard to be considered higher education. Otherwise, we could be powerless to prevent a provider offering a qualification in, for example, mathematics which might require students to achieve no higher standards than a C at GCSE, while potentially passing it off as a degree and collecting student support from the taxpayer. This would clearly be unacceptable.

Let me be absolutely clear for the hon. Member for City of Durham and others. This is not about undermining the prerogative of providers in determining standards. It is essential that the office for students is able to ensure that providers are genuinely offering qualifications that are of a suitable standard to be considered higher education, otherwise we might be powerless to prevent a provider offering a qualification in, say, mathematics, which might require students to achieve no higher standard than a C at GCSE, perhaps while passing it off as a degree and collecting student support from the taxpayer. That would clearly be unacceptable.

Let me be absolutely clear for the hon. Member for City of Durham and others: this is not about undermining the prerogative of providers in determining standards. This is about ensuring that all providers in the system are meeting the threshold standards set out in the "Frameworks for Higher Education Qualifications", a document endorsed and agreed by the sector.

We are clear that the Government have no role in prescribing course content or structure and that institutional autonomy, as well as the consequential diversity of content and teaching styles across the sector, are crucial to the reputation and vibrancy of UK HE. However, it is important that we can ensure that the overall quality of HE in this country is not undermined by providers offering substandard qualifications, thus ensuring that students get what they pay for and that the taxpayer receives value for money.

As we heard from Pam Tatlow of MillionPlus during the evidence sessions,

"we have got to protect quality and standards for our students. We have also got to maintain a system in which we can maintain confidence."—[*Official Report, Higher Education and Research Public Bill Committee,* 6 September 2016; c. 12, Q11.]

Together with our wider reforms set out in the Bill, clause 23 is a key element of our approach to maintaining a high and rigorous bar for entry into the system and providing effective oversight—goals that I know hon. Members share—while reducing the burden of inspection on those providers that are performing well.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clause 24 ordered to stand part of the Bill.

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

4.34 pm

Adjourned till Tuesday 11 October at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

HERB 41 Royal Academy of Engineering

HERB 42 Brunel University London