

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TECHNICAL AND FURTHER EDUCATION BILL

Seventh Sitting

Thursday 1 December 2016

(Morning)

CONTENTS

CLAUSES 13 to 21 agreed to.

CLAUSE 22 under consideration when the Committee adjourned till this day at Two o'clock.

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

not later than

Monday 5 December 2016

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The Committee consisted of the following Members:

Chairs: † MR ADRIAN BAILEY, NADINE DORRIES

† Argar, Edward (*Charnwood*) (Con)
 † Brabin, Tracy (*Batley and Spennithorne*) (Lab)
 Donelan, Michelle (*Chippenham*) (Con)
 † Evennett, David (*Lord Commissioner of Her Majesty's Treasury*)
 † Halfon, Robert (*Minister for Apprenticeships and Skills*)
 † Hopkins, Kelvin (*Luton North*) (Lab)
 † Jayawardena, Mr Ranil (*North East Hampshire*) (Con)
 † Kane, Mike (*Wythenshawe and Sale East*) (Lab)
 Mak, Mr Alan (*Havant*) (Con)

† Marsden, Gordon (*Blackpool South*) (Lab)
 † Rutley, David (*Macclesfield*) (Con)
 † Shah, Naz (*Bradford West*) (Lab)
 † Smith, Henry (*Crawley*) (Con)
 † Tomlinson, Justin (*North Swindon*) (Con)
 Turner, Karl (*Kingston upon Hull East*) (Lab)
 † Vara, Mr Shailesh (*North West Cambridgeshire*) (Con)

Kenneth Fox, Marek Kubala, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Clause 14

Thursday 1 December 2016

(Morning)

[MR ADRIAN BAILEY *in the Chair*]

Technical and Further Education Bill

11.30 am

The Chair: Members may remove their jackets during the sitting if they wish. Will everyone please ensure that all electronic devices are turned off or switched to silent mode? The selection list for today's sitting is available in the room. I remind Committee members that we will consider clauses and schedules in the order set out in the programme order, which has been previously agreed and is set out at the end of the amendment paper. We will start with clause 13, to which no amendments have been tabled.

Clause 13

OVERVIEW OF CHAPTER

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

The Minister for Apprenticeships and Skills (Robert Halfon): It is a pleasure to serve under your chairmanship again, Mr Bailey. The clause is the first in chapter 4, which deals with the regime at the heart of the insolvency measures in the Bill. In this chapter, we make provision for the special administration regime that will make sure that students attending further education bodies in England and Wales are protected should that body fail. Hon. Members will be aware that the regime has been broadly welcomed by all, and I am grateful to the hon. Member for Blackpool South for welcoming it previously. That is not to say that there are no points of concern for stakeholders, but I hope to address those as we work our way through the clauses.

The clause sets out the when, the who and the what of the regime, which will be formally known as education administration. First, the when: the regime can be used when

“a further education body is unable to pay its debts or is likely to become unable to pay its debts”—

in other words, when an FE body is insolvent, based on the well established definition in the Insolvency Act 2000. Secondly, the who: an education administrator can be appointed by the court only on the application of the Secretary of State or Welsh Ministers, depending on where the FE body is based. Thirdly, the what: the education administrator will be responsible for managing the FE body's

“affairs, business and property with a view to avoiding or minimising disruption to the studies of existing students.”

Each of those features is set out in more detail in subsequent clauses. I look forward to debating them with members of the Committee.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

OBJECTIVE OF EDUCATION ADMINISTRATION

Gordon Marsden (Blackpool South) (Lab): I beg to move amendment 1, in clause 14, page 8, line 4, at end insert—

“(3) Before an education administrator may perform functions specified in subsection (2), they must ensure an appropriate assessment is made and published of the impact of performing such functions, including, but not restricted, to—

- (a) the impact on the quality of education provided to existing students of the further education body;
- (b) the capacity of another body or institution to undertake any additional functions or provide education to additional students;
- (c) the infrastructure of the local area, in particular transport;
- (d) any impact on the travel arrangements of students to another body or institution; and,
- (e) any financial impact on those students or any such impact on their travel arrangements, and what measures need to be taken to mitigate them.

(4) The Secretary of State shall make regulations to specify suitable bodies for making the assessments at subsection (3).”

This amendment would ensure that an appropriate assessment is made of any potential impacts on students and their education, if an education administrator puts a further education body into “special administration” and takes action such as transferring students to another institution or keeps an insolvent institution open for existing students. This amendment would also require the Secretary of State to specify suitable bodies to perform such assessments.

The Chair: With this it will be convenient to discuss amendment 2, in clause 14, page 8, line 4, at end insert—

“(3) The education administrator shall not make any decisions required by subsection (2) without consulting—

- (a) existing students of the further education body;
- (b) existing staff of the further education body
- (c) all recognised trade unions at the further education body.”.

This amendment would ensure that all relevant stakeholders are fully consulted about decisions taken by the education administrator in respect of the future of the further education institution.

Gordon Marsden: Good morning, Mr Bailey. It is a great pleasure to serve under your chairmanship. The Minister is right to say that we welcome the concept of the insolvency regime. We think it is necessary in the context that I talked about at the end of the last session, so we do not intend to oppose the principle of it in any shape or form. However, as the Minister has observed, we intend to probe—more sharply on some aspects than others.

If I may, Mr Bailey, I will speak to the two amendments we have tabled separately; although they are linked, they have rather different focuses and emphases. Amendment 1 aims to ensure that an appropriate assessment is made of any potential impacts on students and their education if an education administrator puts a further education body into special administration and takes action such as transferring students to another institution, or keeps an insolvent institution open for existing students. We recognise that the decision whether to transfer students to another institution or to keep an insolvent institution open for existing students is fraught with potential difficulty and will certainly demand great skill and finesse on the part of the education administrator.

The Minister may wish to bear that in mind when we consider later Opposition amendments, which will probe him a little more on the nature, experience and qualifications of the education administrator.

The crux of the amendment relates to some of the matters we discussed when considering similar provisions in the Higher Education and Research Bill. The amendment would ensure that the entitlement that the Bill gives students to continue their education works in practice. We know that cases of colleges failing or other crises have arisen both in FE and in HE. I do not want to exaggerate those issues, because I take on board the points made by the Association of Colleges and other college organisations that the vast majority of FE colleges conduct their affairs in a very wholesome and satisfactory fashion, as my hon. Friend the Member for Luton North has mentioned previously.

Kelvin Hopkins (Luton North) (Lab): Amendment 1 is very simple and I hope the Government will be minded to accept it in some form. Have we had any response, contribution or advice from the Association of Colleges or the Sixth Form Colleges Association? Do they broadly agree with the Government's proposals? Are they agreeable to our amendment?

Gordon Marsden: My hon. Friend is right that we need to get support from those organisations. The AOC has raised particular issues relating to later Opposition amendments, such as amendment 34 to clause 15. Some of those concerns will be explored when we consider those amendments.

The ambitions of the special administration provisions are noble, but amendment 1 is intended to serve as a safeguard against any unintended consequences. As we know, even isolated incidents of colleges that hit the headlines can have a deleterious effect on the sector. The sector is in a delicate state at the moment—I will not put it any stronger than that—so if this provision is needed, we should do what we can to avoid problems with the impact on students and education.

As far as I understand it—I say that with due modesty, because some of this is quite technical—the education administrator will be given four options for supporting students to continue their education if their college becomes insolvent: selling assets to keep a college afloat; bringing in another body to take on functions of the college; transferring students to another college; and keeping the college

“going until existing students have completed their studies”.

That last phrase is rather ambiguous, and it would be good to hear the Minister's thoughts on it. Whether in his response to the amendment or later this morning, it would be useful to hear whether there are any thoughts on the timeframe of that option.

All the options are sensible. I do not think that any member of the Committee would suggest that they should not be pursued by the education administrator if students' education were put in jeopardy by insolvency, but there are questions about the finessing of those options, about which option the administrator thinks it best to pursue, and about the timeframes. Again, the Minister may want to say something about potential timeframes as we go along. Sometimes the education administrator might need to use more than one of those four options, perhaps at different points in the process.

Our amendment addresses what that will mean for students in those different circumstances. To do that, we propose that an assessment be made of the impact of the administrator's decision on students and the local community, enabling any negative impacts to be appropriately mitigated.

We are realistic. We know that sometimes difficult situations bubble up over a long period of time and there are amber warnings, but sometimes, because some of the problems have been concealed, they blow up very rapidly and hit the headlines. Ministers, the new institute or, indeed, the Skills Funding Agency may have to move swiftly in such circumstances. We understand that. We do not want this to become an over-bureaucratic, long-winded, time-consuming process, but we believe that a definitive assessment is needed somewhere in the process.

We have several concerns. If an administrator keeps a college going so that existing students can finish, for example, one can see the potential benefits for the students. While it will depend on the nature of their contract—the University and College Union and others have previously raised concerns that the FE sector is becoming a *mélange* of shorter term contracts—there will be lecturers and staff on contracts of significant duration, and it would be understandable, perhaps highly probable, that they would seek to leave. After all, the involvement of an education administrator is essentially a sign of a potentially failed college and that their employer, at least in the way that he, she or it employs them, will either close or change in the near future. Any exodus of staff in such circumstances could have untold impacts on the quality of education that students receive. We, and I am sure the students at such colleges, want to know what transitional measures are envisaged to maintain the delicate balance needed to protect the quality of education that students receive at a college that is being kept open on life support. That is option 1.

Option 2 is an administrator deciding to begin selling off college assets to address the insolvency issues, or just to keep the college afloat. What protections will there be so that resources that are integral to a learner's studies will not be sold off? I understand that it is impossible to make an absolute judgment in every case on whether an administrator should do one or the other. It will obviously depend on the individual circumstances and assets and so on, but computers and ICT—I think “digital services” is the more up-to-date term—spring to mind. Often worth a significant sum, they may be an attractive asset that is easy to sell quickly for a good taking; on the other hand, selling them off could leave less equipment to share between the college's remaining students, which would have a negative impact on their learning experience.

Additionally, the area reviews and mergers need to be thought about in great detail. In our evidence session I traded questions with the FE commissioner on the impact of that. He takes a more sanguine view of that process than the Committee and I do, but time will tell. What we know is that in circumstances where learners need to be transferred to another college—that does not necessarily mean that the whole body will close, as someone suggested—the college building could continue but, for whatever reason, the students in a particular department or area are transferred to another college, possibly for economies of scale. It is not necessarily that one particular college is closed and absorbed into another.

11.45 am

Kelvin Hopkins: These events would be of great concern to students and staff alike if they happened, but we hope they will not and we will try to ensure that they do not. However, if there are to be changes, would it not be wise—or essential—to make sure they take place during the long summer vacation, so that they do not disrupt students in the middle of courses during in the academic year?

Gordon Marsden: My hon. Friend, as always, makes a good and practical point. I have two observations. One is that crises cannot always be managed and sometimes they blow up from nowhere. My other observation is that among the pressures on FE colleges these days is the fact that the long summer break is becoming less long. That is true for FE students as well as other students. However, my hon. Friend's general point is absolutely right and needs to be taken into account.

There are plenty of questions to be answered for students. How close to their home and their old college would the new college or facility—it may not be a completely new college—be? How much more expensive and time consuming would it be to get there? We know that college students have to spend a considerable amount of money on travel and we know that the mechanisms for supporting them are highly variable, particularly with local authorities' discretionary spending being cut to the bone in a range of areas. There is already a risk of making some education and courses inaccessible for the less well-off.

What financial support does the Minister envisage might be available to help such students to access education at a new institution if it turns out that the challenges are considerably greater? For example, would the new college have the capacity to respond to any influx of new students? As I have indicated, insolvency might result in some students finding themselves forced to travel longer distances to continue their studies, but there is no reference in the Bill to mechanisms by which they might be supported or compensated. I understand that that is not something that should necessarily go into the Bill, but while I appreciate that a lot of things must be worked out, it is a bit worrying that it seems that, even at this stage, not much thought is being given to some of these issues. If it is, I apologise.

Mergers between colleges can be harmful to the social fabric and social mobility, particularly for young people in rural and suburban areas, and might force them to travel 30 or 40 miles to college. I raised this point in Westminster Hall about a year ago with the Minister's predecessor, who seemed to be somewhat miffed that I referred to his predecessor, the right hon. Member for South Holland and The Deepings (Mr Hayes), being decidedly agnostic about the prospect of mergers. That was the case, however, and it was because the right hon. Gentleman's constituency is very rural, so he has a lot of knowledge and concern about the issue.

We must make a distinction between the geographical situation when there is insolvency and the mechanisms to deal with it. For example, when two colleges merge in a suburban or rural setting, the implications for the ability to maintain courses, and thus viability, will be significant if issues such as travel loom large and make it impossible for existing students to go there or for future students to want to go there. Even in urban

areas—parts of Greater Manchester, for example—public transport is not necessarily good. In my constituency, travelling west to east or east to west on public transport tends to be more difficult than going north to south. There is a range of concerns.

We have seen during the ongoing area review process that the Government have encouraged colleges either to merge or to close. The new FE commissioner said in evidence that provision at levels 1 and 2 in particular needs to be as local as possible to learners, whether in an urban or a rural area, but he accepted that if people do not have the wherewithal to travel, they will not be able to do so. Shakira Martin of the NUS said in the evidence session:

“It is also not clear how the Government will make sure that the education the student receives in the college is kept open and to a high-quality standard. For example, the area review process may have unintended impacts. There will be fewer colleges, further apart. How will travel costs and access?”—

time is an issue as well, not simply cost—

“be addressed?”—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 51, Q69.]

In evidence, Bev Robinson, the principal and chief executive of Blackpool and The Fylde College, who was a member of—[*Interruption.*]

The Chair: Order. There is a Division in the House.

11.51 am

Sitting suspended for a Division in the House.

12.3 pm

On resuming—

Gordon Marsden: I was talking about how travel costs and access would be dealt with and I was about to quote the comments of a witness, Bev Robinson, the principal and chief executive of Blackpool and The Fylde College. She said:

“I would wish to make sure that learning within a reasonable travel-to-learn pattern was protected as well as students.”—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 51, Q70.]

I see nothing in the Bill about where the funding to support this process will come from, and Ministers have not said a great deal about it.

Research released in 2015 by the National Union of Students and the AOC showed that only 49% of further education students can always afford their travel costs. The average travel time for those surveyed was two hours and 48 minutes a day, for an average distance of 11 miles. Many young people—about 40%—rely on financial support from parents or guardians for travel costs. The problem is of course exacerbated by the lack of national funding schemes to get young people to college. Even the minority of councils that offered discounted travel for young people on a discretionary basis are now less likely to do so, following major Government cuts. The amendment would require those matters to be considered so that appropriate measures could be put in place, although such issues are difficult to legislate for and there are unknown consequential effects. Invoking education administration powers may affect students, but that is precisely the point of the amendment: it would ensure that whatever impacts the

powers have in practice, they are assessed within the local circumstances of the college in which the powers are needed. That is an important part of the education administrator's responsibilities.

If students have to travel longer distances to college, incurring higher costs, it strengthens our argument that education maintenance allowance should be reintroduced to help cover those expenses.

Kelvin Hopkins: My hon. Friend makes a very strong point. For poorer students travel to colleges is expensive even now, particularly in sparsely populated rural areas. The closure of a college in one town and having to go to a town many miles further on will cause great difficulty in financial terms and in terms of the time spent travelling and the reliability of public transport.

Gordon Marsden: My hon. Friend again makes a very good point. It underlines our concerns and why we think such issues need to be taken into account.

Amendment 2 is designed to ensure that, within the circumstances in which the process takes place, all relevant stakeholders are fully consulted about decisions taken by the education administrator in respect of the future of the institution. This touches on a theme not dissimilar to that which we discussed during the debates on schedule 1 to the Higher Education and Research Bill, where consultation with staff and students was a high priority.

The amendment would ensure that there is full consultation with various bodies or groups representing further education staff and students. Members of the Committee might ask, "Is this necessary? Surely the students and the student body are bound to be informed," but I have to say—Members may have experience of this—that is supposed to be the case when businesses fail and companies go bust or when something cataclysmic happens, but often workers or employees are not kept in the loop. We should legislate for the worst scenarios and the worst employers, not for the best.

It is important that the education administrator should consider representations from relevant stakeholders such as students and staff, as they have invested two or three years of their time and money in studying and their livelihoods will depend on the institution in question. It is surely not too much to ask that the education administrator should have the responsibility placed on him or her to consider those representations, too.

The other group it is vital to consult are recognised trade unions at the further education body. The positive influence of unions on training and skills in the workplace and in colleges is another key reason why unions should be consulted. Research by Unionlearn has shown, as I have mentioned before, that the union effect on skills across the whole economy is significant and has strengthened in recent years. I am obviously referring to the training that goes on at work, but often the trade union representatives who operate in a college will be either union learning reps themselves or closely associated with union learning reps. That point needs to be made. On the union learning fund, an independent evaluation has demonstrated a range of new findings about the positive impact of union learning for both employers and employees. That also has a bearing on the necessity and advisability of consulting the recognised trade unions at the further education college in question.

I will finish with those remarks, but I ask that the Minister gives some thought to both amendments. These are things that should happen, and by making the amendments we would ensure that they do happen.

Robert Halfon: I thank the hon. Gentleman for his thoughtful amendments. I will comment on a few of the points he made, then go into the substance of the amendments.

The hon. Gentleman will know that the AOC, the Sixth Form Colleges Association and the Collab Group work closely with the Government and will continue to do so as we develop secondary legislation to address their concerns. On trade unions, I will come on to the general point about consultation, but first let me quote the TUC:

"Whilst the TUC continues to express concerns about the financial pressures colleges are facing due to the major cuts to the sector... we do welcome the new safeguards that will enable students to complete their courses in the event of a college becoming insolvent."

In addition, we have committed £12 million to Unionlearn.

The hon. Gentleman asked where the funding was coming from. Crucially, clause 25 states that the Secretary of State will have the power to fund special administration as long as the funding is for the purpose of achieving a special objective through either a grant or a loan, and the decision on funding will obviously be taken on a case-by-case basis. The whole purpose of the education administrator is to speed things up. If we look at this in a general context, at the moment there is no protection; there is nothing. We are creating a protection regime for students with the purpose of ensuring that the education administrator acts quickly.

The hon. Gentleman talked about an exodus of staff. If colleges reach such a situation, it is likely that there will have been some kind of intervention, perhaps by the FE commissioner, way in advance. I do not think that would suddenly come about just because of the insolvency regime. All staff will be subject to statutory legislation on terms of employment and so on. That is worth noting. There cannot be a one-size-fits-all solution.

I am talking as though these circumstances will arise regularly. They will not. The whole purpose of the SAR is, as I said last week, to be an insurance against the worst possible outcome, which I think, given what is happening with the area reviews, will be very rare indeed.

Gordon Marsden: I understand that this will have to be done on a case-by-case basis, but has the amount of money that might be needed in a calendar year to deal with this been assessed? Obviously, it will have to be agreed with the Treasury. The Minister says he does not think this scenario is likely, given the area reviews. I hope he is right, but I am very conscious that the FE commissioner said the number of colleges that may merge on this basis might be in the 80s. Surely there might be problems with at least some of those, and surely that should have been taken into account.

Robert Halfon: There is a substantial restructuring fund, which I believe is about £756 million. As I say, funding of a SAR has to be done on a case-by-case basis because every case will be completely different. It will be up to the education administrator to decide how to proceed. The hon. Gentleman mentioned the different options.

12.15 pm

Tracy Brabin (Batley and Spen) (Lab): Before I make my comment, I thank the Minister for his letter this morning on the Careers & Enterprise Company. I was grateful to receive it and I thank him for sending it in such a timely fashion. I have been monitoring the situation locally, and if things work, I will be encouraging other sixth-form departments in schools to get involved, because some schools are not doing so.

The Minister says that the measure will speed things up, but there is one thing on which I could do with some clarification. Clause 23 relates to transfer schemes. The explanatory notes say that:

“Such schemes can be used to override some third party rights, e.g. transferring a lease without the landlord’s consent”.

I want to double-check something. If that were to happen with Kirklees Council and someone wanted to take back a building, that could lead to some sort of legal dispute. Would that not hold up the transfer of the students to another college and the process of their learning?

Robert Halfon: Will the hon. Lady allow me to think about that example? We will consider transfer schemes in detail later, but I do not think the issue she highlights would arise. The transfer schemes are particularly about looking after the students and establishing who the provider is if the existing college management are no longer looking after the students. There might be a different provider, but we will come on to that point later in our consideration.

Mr Ranil Jayawardena (North East Hampshire) (Con): Is not the point, as we heard in the evidence from the banks, that some banks may take a view that they should realise their security? The provision allows for learners to be prioritised in any transfer or land, property and so on, so that that is to their interests. They should come first.

Robert Halfon: My hon. Friend has it exactly right. He asked that question in our evidence sessions, and one of the banks said, “No, our whole purpose is to act in the interest of the lenders.” The whole purpose of this provision, however, is to act in the students’ interest. Creditors will get a fair deal, but one that is in the interest of students.

I will come on to transfer schemes in a minute. The area review mergers are different, but it is important to quote Richard Atkins, the FE Commissioner, from the evidence session. He said:

“Mergers do not necessarily mean the closure of sites, so they do not mean the end of provision for students locally. Clearly, in rural areas, for example, the history of the sector has been that provision has not gone even when there have been mergers. When Truro and Penwith came together, that did not end provision in Penzance. In fact, it regenerated the provision in Penzance to a higher standard. You can see that across the country.”

I accept he is talking about area reviews, but he went on to say:

“The idea that you close provision down in a particular district, borough or town is not something I would be in favour of at all. I would be looking for merger solutions that bring together back-room services, avoid duplication and so on.”—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 26, Q34.]

This will not always be the case, but it is important to say that a merger does not necessarily mean the closure of provision in an area.

Gordon Marsden: I entirely accept what the Minister has just said, but at the risk of over-stressing the point, decisions about transferring students can affect the closure of courses. The closure of courses is not necessarily the same as closing a site, but it can have a deleterious effect on an area. One can think of a college where lots of people are doing accountancy and that course becomes no longer available in that town, even though the college is still going to be there. That is the only point I want to make. The issue is broader than simply saying, “You either close the college or you don’t.” There is a suite of potential impacts there.

Robert Halfon: I accept that completely, but I was just trying to again make the point that currently if a college has financial difficulties, it can close a particular bit of provision and no one has any guarantees whatever. This measure will change that.

On the transfer schemes, it is important to talk about the statutory duties. We all know that under the Education Act 1996, the Secretary of State has a general duty to promote education and exercise his or her powers

“with a view to...improving standards, encouraging diversity and increasing opportunities for choice.”

Local authorities have a duty to ensure that their areas have sufficient education and training provision. They also have a duty to publish a transport statement setting out what arrangements they consider necessary to support young people to access education or training.

The hon. Gentleman mentioned education maintenance allowance. We took the view that we want to give funds to those who most need it, and the problem with the education maintenance allowance was that it went to everyone. It was paid to 45% of all 16 to 18-year-olds in further education and it was not income-related, which is why we introduced the 16-to-19 bursary fund.

Gordon Marsden: I hesitate to cross swords with the Minister but I think that is factually not entirely correct. The education maintenance allowance came in at least two—I think were three—different tiers. The top tier, which from memory was about £30 a week, was specifically focused in many cases on travel. I do not wish to move outside of the scope of the amendment, Mr Bailey, but it is important to make this point: subsequent assessments of the impact on students who had had it taken away showed significantly that the travel aspect of the different elements was most well regarded. I am not here to open up a debate about EMA—we have given our points of view—but it is important for the Minister to take those points on board.

Robert Halfon: I do, but an independent evaluation found that only about one in 10 of those who received EMA said that they would not be able to participate without it. That is why we introduced the 16-to-19 bursary fund—to ensure that the money goes to those who need it—which amounts to £177 million for 2015-16. That is why, as the hon. Gentleman knows, I campaigned successfully with the hon. Member for Scunthorpe (Nic Dakin) for free school meals for students from

disadvantaged backgrounds in FE colleges. The Government are spending £39 million on that. That is separate from the £500 million that is given to the FE sector to spend on what FE bodies like, but primarily for helping the disadvantaged. The Government are doing everything that they can to ensure that those in need are getting the right support.

Let me move on to the substance of the amendment. We want to be sure that, as far as possible, if their college finds itself in financial distress students are able to continue their studies with little or no disruption. The clause does that by setting out the overarching objective for the education administration: to “avoid or minimise disruption” to the students.

The hon. Member for Blackpool South noted that the special objective can be achieved in a number of ways, and we do not believe that one size fits all. It could be done by rescuing the body as a going concern, with a new principal and governors if necessary; by merging with another body, perhaps another college nearby; by keeping the college open to teach out the existing students; or by arranging for students to transfer to another college to complete their studies. That list is not exhaustive, nor is it intended to be prescriptive. There may be other options, and those are not intended to be mutually exclusive. Occasionally some students might be transferred to another college and others taught out. It will be for the education administrator to decide what is best, based on the circumstances of each case.

I appreciate the suggestions made by the hon. Gentleman, but I assure him that it is inconceivable that the education administrator would take decisions on how the special objective would be met without first having had conversations with a wide range of stakeholders. Let me be clear: I and the Government would expect, in an appropriate case, the education administrator to liaise with the FE commissioner—that view was shared by the FE commissioner last week in his evidence—who might be able to advise the education administrator whom they should be speaking to in addition to staff, students, local authorities and the other providers. We would expect that the EA, in seeking to fulfil the special objective to avoid or minimise disruption to students’ studies, would seek to satisfy themselves that, as far as possible, the quality of the education or training that students have been receiving at the college is maintained. That may be achieved by transferring students to another provider or by continuing to teach them in the FE body until they complete their courses.

We expect the education administrator to take travel distances into account when considering the transfer of students to another provider, on the basis that the special objective is about avoiding or minimising disruption to the studies of existing students. Where possible he may choose to take into account the generally used guideline of travel for learners of no more than 75 minutes to and from their place of study, even though the FE commissioner observed to the Committee that some—not all; not those who are not able to—learners are happy to travel considerable distances for the right provision.

I understand the concerns that amendment 1 seeks to address in relation to additional transport-related costs for students in the event that they are transferred to another body. For those who are transferred, there may be scope for the EA to set up a scheme to cover some or

more of the additional travel costs from any funding provided by the Secretary of State or Welsh Ministers, as I highlighted a moment ago in terms of clause 25. Although there is no obligation on FE bodies to provide student transport, it is open for them to use the resources that are available to best support their students because, as I mentioned, disadvantage funding is not ring-fenced. Where students attract such funding, FE bodies can decide upon the most appropriate offer for their students. Often they do give those students free transport.

The education administrator will want to be sure that in deciding the right option for dealing with the particular body in insolvency, they have assessed a wide range of factors, including those set out in the amendment, calling on advice and input as necessary from those best placed to help. It is therefore unnecessary for the Secretary of State to make regulations to specify “suitable bodies” for making the assessments described in the hon. Gentleman’s amendment.

We are keen to strike the balance between a fair and thorough process that generates well thought through conclusions, and a system that is not so rigid that it ends up working against the interests of students by being drawn out and cumbersome. The hon. Gentleman observed that himself. The longer it takes to end the education administration, the longer students face uncertainty and possible disruption. The number of FE bodies and their different circumstances mean that there would be no single solution in the event of an insolvency, and the education administrator needs the flexibility to be able to do what is right in the circumstances.

As the hon. Member for Batley and Spen said in the evidence session on 22 November, we need to give students certainty about what will happen as quickly as possible; that is as much true for the staff, and for the creditors. Of course, if students, or anyone else, are unhappy with the EA’s actions, they can bring their concerns to the attention of the Secretary of State, or the Welsh Ministers, who have the power to be able to challenge the education administrator through the courts if the EA is not carrying out their functions for the purposes of achieving the special objective or the objective relating to the creditors.

I recognise the intention behind the amendments and believe that, as much as possible, the Bill covers the issues that the hon. Gentleman has raised. I hope that he is reassured enough to withdraw the amendment.

Gordon Marsden: I am grateful to the Minister for the detail that he has gone into. It is particularly useful that he made the point about there being scope for the EA to get supplementary funding in certain circumstances. That is welcome. We may want to look again at this issue on Report, but at the moment I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 14 ordered to stand part of the Bill.

Clause 15

EDUCATION ADMINISTRATION ORDER

12.30 pm

Gordon Marsden: I beg to move amendment 34, in clause 15, page 8, line 11, at end insert

“and has relevant experience and knowledge of the further education sector.”

[Gordon Marsden]

To ensure that the education administrator has experience and knowledge of the further education sector so that decisions made are not exclusively in the context of insolvency and takes into account the needs of students.

I am pleased to move the amendment, because it enables us—I hope in a positive fashion—to probe further about the important role of the education administrator. As I said earlier, and notwithstanding what the Minister has said about the general welcome that the Association of Colleges and other bodies have given to these provisions, the association is keen to probe further in this area, and we have taken many of its points on board in drafting the amendment. The purpose of the amendment is to ensure so far as possible that the education administrator has experience and knowledge of the further education sector—that may sound like a no-brainer, but we nevertheless need to make the point—so decisions are not made exclusively in the context of insolvency but take into account the needs of students.

This is not a criticism, but the first time I went through the Bill in detail, I was conscious that there would inevitably be a tension—a creative one, I hope—between a traditional insolvency process and the needs of students. The Minister has rightly emphasised firmly that students will be the priority, but the devil is in the detail and there are sometimes even more devils in the process, as was interestingly illustrated in our evidence session with the representatives of the banks. The hon. Member for North East Hampshire pressed them on this point, but I also saw it from the other point of view. There will always be that tension, because although the education administrator has a primary responsibility, he or she has dual responsibilities. Other clauses make that clear, so we will come to it when we look at those.

The Government foresee that this regime will be used rarely. It was helpful to have Mr Harris from Ernst and Young at the evidence session, because he had specific experience in other sectors, including energy, health and railways. The Association of Colleges points out that the idea of protecting

“a public service while creating a financial framework to govern the independent organisations that provide them”

is not entirely new and can be summarised as:

“the service continues; the service provider may not.”

The AOC wants to emphasise, as both the Minister and I have referred to, that the

“vast majority of colleges have strong governance, professional management and sound finances”,

but the fact is—we will not go into the detail or cross swords about this again today—that

“the sector is under increasing financial pressure mainly as a result of government spending cuts, and questions remain over where responsibility in this area lies.”

The association also notes that the Bill will give

“the Secretary of State the power to appoint a special administrator who will have duties not just towards the college’s creditors (banks, Local Government Pension Scheme, staff and suppliers) but also a duty to avoid or minimize disruption to the studies of existing students as a whole.”

As I understand it—the Minister will correct me if I am wrong—the education administrator is required to be an insolvency practitioner, yet there is a tension, as I

have mentioned, because a critical part of their role is to protect student interests rather than simply those of financial creditors. It is therefore essential that the criteria for appointing the EA include experience and knowledge of education administration, so that they can make decisions in the context strongly of an educational institution with the needs of students at the forefront. It would therefore be worth clarifying the criteria for when an EA is appointed and whether a specific action will trigger that.

With the amendment, we are also probing what the relationship between the education administrator and the further education commissioner will be. The Bill does not make clear what interaction there will be between the EA and the FE commissioner, who will intervene or at what point, although I accept that the Minister has already alluded to the circumstances in which the FE commissioner might become involved. Although we recognise that FE commissioner is not a statutory post, it might be useful to have more clarification—not necessarily today, but in a guidance document or whatever at some point—of what the relationship will be and at what point interactions between the two post holders will take place.

It is worth emphasising that Bev Robinson, who as well as being a principal served on the Sainsbury panel, said in the evidence session:

“I welcome the idea of an education administrator with hopefully an FE background”—

we can interpret “FE background” as we wish—

“but it might benefit from having clarity around the different roles of the different people in play—for example, the FE commissioner: how that would work.”—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 51, Q70.]

I have made the more general point about the plethora of organisations in this area and referred to it perhaps slightly unkindly as an alphabet soup—that is what it sometimes looks like—in the context of the creation of the new institute, but even if we leave aside the new institute, there is already a complex landscape for financial oversight. There are currently four different Government bodies with that role. They are the Education Funding Agency, the Skills Funding Agency, the FE commissioner and the transaction unit. All those bodies, I am assured, report to the joint SFA-EFA chief executive, who is at present Peter Lauener, but they all use differing measures of financial performance. That is, to put it mildly, an aspect of inconsistency, which I and the AOC believe will need to be resolved by 2018, because it is likely that if that complexity continues—I am thinking particularly of the issues with differing measures of financial performance—it could slow down the investment and other decisions that the education administrator might need to make in the event of insolvency and, as I think both the Minister and I have agreed, in circumstances whose urgency will vary considerably.

I am interested in what further the Minister has to offer us in terms of how experience and knowledge of the sector is to be gained. Perhaps he will also, if he is able to at this stage, comment on the relationship between the administrator and the FE commissioner and the issues that I have raised about the landscape for financial oversight.

Robert Halfon: I again thank the hon. Gentleman for his remarks and his thoughtful amendment. I not only understand the concerns but, when looking at the Bill in the early stages, asked those questions myself. I hope that I can reassure him. I will answer some parts of what he said and then go into the substance, if I may.

On a point of clarification, it will be for the Secretary of State or the Welsh Minister to decide whether to apply for an education administration order, but they can do so only if the FE body is insolvent in accordance with the definition in clause 17—if it is unable or unlikely to pay the debt. It does not happen automatically.

The hon. Member for Blackpool South will know that insolvency practitioners are very qualified individuals—usually accountants or insolvency specialists. Practitioners with experience in FE and education do exist; I met one only a few days ago who happens to work for the Skills Funding Agency, to talk through these very issues. However, we must make it clear that according to the laws of insolvency, only insolvency practitioners can legally act as office holders in insolvency proceedings—liquidators, administrators and administrative receivers of companies. They are regulated through the Insolvency Act 1986.

The key qualification of the insolvency practitioner to deal with an insolvent college is their expertise with respect to a business or non-profit-making organisation that is insolvent. There are special administrative regimes in other areas such as utilities and the postal service. In addition, they can draw on the knowledge of the governors and staff at the college, and the wider sector. As I said in a previous debate, it is possible—it is most likely—that the insolvent college will have undergone a period of intervention before becoming insolvent, so the education administrator will also be able to consult the Further Education Commissioner. I repeat—I want it to be clear—that we would expect, in an appropriate case, the Education Minister to liaise with the FE Commissioner.

It has also been said that it is inconceivable that the education administrator would take decisions on how to meet the special objective without first having conversations with the range of key stakeholders. Mention has been made of Mr Harris's evidence to the Committee. He said:

“From an insolvency practitioner's perspective, it is worth standing back and recognising that insolvency practitioners are not train drivers, or people who spend their life in the railway or the London Underground, when it comes to a special administration regime, nor are they specialist property developers. They come to each situation afresh. One comforting thing that insolvency practitioners bring is recognising when they need to keep in place the existing management structure in a corporate sense, or the workforce in a pastoral sense, recognising that those people have skills and qualifications that they as an office holder do not necessarily have, and also recognising that they can bring outside specialist help to continuing the duties of education administrator, should the need arise. That is all part and parcel of any trading insolvency regime, and I would imagine that any office holder stepping into the role of an education administrator would have that at the forefront of their mind. I do not think it presents a unique challenge; it is very similar to all the other special administration roles. There is an extra dynamic—there is a pastoral element.”—*[Official Report, Technical and Further Education Public Bill Committee, 22 November 2016; c. 46, Q60.]*

Of course, as Stephen Harris pointed out, when an institution is insolvent, there is a critical need for someone who understands and can deploy the tools necessary to ensure that the education administration is properly

managed. Given what I have told the Committee, we expect that that is exactly how the education administrator will operate. Many insolvency practitioners come from big companies that have huge amounts of expertise in a range of fields, including education. The leadership team of the FE body would be in place to provide support on the day-to-day running of the college and information to assist the education administrator in his task of achieving the special objective. So would the Further Education Commissioner and Sixth Form College Commissioner and their teams, and officials in the Department for Education. That is how the interaction between the various bodies highlighted by the hon. Gentleman works.

Of course, the education administrator will be free to seek advice from any other source, but I think that introducing unnecessary requirements as to the appointment of an education administrator would limit the pool of insolvency practitioners from which we could draw, in the event that we needed to use the special administrative regime.

Mr Jayawardena: The Minister is making a very important point. Does he agree that the arguments the hon. Member for Blackpool South outlined earlier about the complexity of such insolvency regimes and the unwinding, possibly, of certain troubles that FE colleges might get into—on rare occasions, as the Minister said—is actually the reason why it is important that insolvency practitioners are the people appointed to deal with these situations, because they are aware of how to deal with these complexities?

12.45 pm

Robert Halfon: My hon. Friend is exactly right, but the crucial thing—I must mention this at almost every opportunity—is that it is unlike when I have seen receivers come in in my constituency who just care about the creditors. If I may just speak personally for a moment, I remember being in a hotel with the staff, some of whom lived on the premises, and the receiver literally said they had to leave on that day, when they had lived there for a long time. This situation is completely different. The whole purpose of this measure is that that kind of individual will not be involved. There will be somebody who has to fulfil the special objective of protecting the students.

Gordon Marsden: I accept that, and for the avoidance of any doubt, and with respect to what the hon. Member for North East Hampshire has just said, I did not at any stage query the fact that it would need to be an insolvency practitioner. The Minister is saying some reassuring things. The only point I would gently make to him is that there is a difference between saying that someone has to acquire a set of skills that might be tested by some mechanism or other, and having a sense of—I think Stephen Harris talked about a “pastoral element”; perhaps I would have said “empathy”, which is possibly the same thing. I am sure that aspect has given the AOC some pause for thought, because I do not know—perhaps the Minister does—how many insolvency experts have the admirable background of the gentleman he met.

Robert Halfon: The gentleman I met has a direct background, but as Stephen Harris said, that is not necessarily a requirement. However, it is inconceivable

[Robert Halfon]

that the individuals involved will not have access or that they will not be working with all the relevant institutions. Having said that, they have to be first and foremost an insolvency practitioner, according to the law, but with the special objective.

Given that, I hope that the hon. Gentleman is more reassured and will agree to withdraw the amendment.

Gordon Marsden: We have had a helpful exchange and it has been useful to probe on this issue and in particular the relationship with the Education Funding Agency. The one point the Minister has not answered—I do not ask him to come back on it now, but it would be useful if he produced a note—is the point that I raised about the different measures of financial performance.

Robert Halfon: If the hon. Gentleman is happy for me to do that, I will. We will always require different information to test different issues, for different institution types or in different circumstances. There is a continuous improvement process for the systems and processes for identifying financial risk. The whole function of the area review process is to use it, where relevant, to review the financial management processes. I hope that answers his question some way.

Gordon Marsden: I am not entirely sure that it does, but I will not pursue the matter. However, these are technical issues and ones that I am sure the AOC and others may wish to take up with the Minister in a less formal capacity.

I am reassured by what the Minister has said today so far. The organisations may wish to probe further on some of the details, but I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 15 ordered to stand part of the Bill.

Clauses 16 to 21 ordered to stand part of the Bill.

Clause 22

GENERAL FUNCTIONS OF EDUCATION ADMINISTRATOR

Gordon Marsden: I beg to move amendment 3, in clause 22, page 10, line 6, leave out “for the” and insert “with the primary”.

This amendment would ensure that the primary concern of the education administrator is the special education administration objective, that is minimising disruption to learners.

The Chair: With this it will be convenient to discuss amendment 4, in clause 22, page 10, line 7, leave out “(if possible)”.

This amendment would ensure that the primary concern of the education administrator is the special education administration objective, that is minimising disruption to learners.

Gordon Marsden: The amendments are again intended to probe the primary concern of the education administrator. They are relatively terse because they remove particular references and lines. Before I comment on them, I will make the point about why we are concerned and then talk about the broader issues.

Amendment 3 expresses our belief that it is important to say that the education administration objective is the primary purpose. The Minister has given strong indications, notwithstanding the nature of the education administrator’s position and background, but we think it is important to say that the primary concern should be the special education administration objective, minimising disruption to learners.

With regard to amendment 4, I have sat on a number of Delegated Legislation Committees and, to be honest, I do not think I have ever seen such a meandering and imprecise phrase in brackets as “if possible”. That could cover a multitude of sins. That is not the sort of draftsmanship that one normally expects to see in a Bill of this nature, and that, too, makes us concerned to ensure that the education administration objective is the primary concern.

This is not just an issue that concerns us. The Association of School and College Leaders raised a number of questions about the education administrator in its written evidence to the Committee. It states:

“The proposed mechanism itself gives rise to numerous concerns and uncertainties.”

It refers to the powers that have been transferred to the education administrator, such as whether he or she can “dissolve a corporation established by Act of Parliament”.

We may touch on some of those points later. It goes on to raise the issue we discussed earlier with amendment 34 about the licensed insolvency practitioner. It also asks

“what lines of responsibility there would be during that period over matters such as safeguarding. If that were found to be inadequate, who would then have oversight...?”

Would that be the education administrator? If so, what would the implications be for the college in question?

The Government’s own consultation response document raised issues surrounding the need for further protection of learners. The House of Commons Library briefing reports:

“Of particular interest to respondents was the proposed introduction of the SAR, and the special objective that would require the education administrator to avoid or minimise disruption of the studies of the existing students, and ensure that it became unnecessary for the FE body to remain in education administration for that purpose. Although many respondents were supportive of the need and ‘ambition’ for the special objective, almost two-thirds questioned whether it sufficiently reflected the needs of learners and creditors.”

I assume that means the issue that the Minister and I have been discussing about where the balance is between those two separate processes. For example, the Association of Teachers and Lecturers stated in its response that the proposed SAR, in focusing on students as consumers, did not recognise

“the individual and societal benefits of further education”

or

“the instability and disruption to learners and their studies that they will inevitably experience as a result of their college going into administration.”

The Minister may disagree with those assessments, but they shine a light on the concerns among people who teach in colleges of this nature, so they are germane to the amendments that we have tabled.

Last week's evidence session with the banks was particularly concerning in relation to the lack of information on finances and their ability to lend in future—hence some of the questions I asked.

Mr Jayawardena: I respect the point that the hon. Gentleman is making, but he mentioned, in reference to subsection (2), a lack of clarity. Is it not true that the objective of education administration is set out very clearly in clause 14? It sets out that learners come first, ensuring that it becomes unnecessary wherever possible for the body to remain in education administration. However, on even rarer occasions it might be necessary for people to act in a different way in order to put learners first. That is what the Bill is trying to achieve.

Gordon Marsden: I know that is what the Bill is trying to achieve; the question that we are here to decide is whether the Bill, as drafted, actually achieves that. I do not want to trade clauses with the hon. Gentleman, so I will only say, as I have observed previously, that clauses 14 and 22, although they deal with different aspects of the functions of the education administrator, are somewhat ambiguous in that respect. I will not take up the Committee's time, but I refer the hon. Gentleman to the explanatory notes to both clauses. He will see that there is some tension there, which is why we are probing in the way that we are.

We must take into account the pressures that the administrator will face. It was particularly interesting to hear what Richard Meddelton from Lloyds said. As we know, Lloyds is an extremely important player in the college funding world. He said:

"As a lender, the ranking—again, it is unclear at the moment—may well sit behind a creditor. In addition, as we interpret it, even as a secured creditor the security could be transferred into a separate entity."—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 41-42, Q48.]

Richard Robinson said:

"The issue is that it does not specify where that ranking lies. That, for us, is very important. Although it could rank at the back, it could also rank ahead of us."—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 48, Q65.]

Mr Jayawardena rose—

Gordon Marsden: If the hon. Gentleman will allow me to finish the quotation, I will happily let him intervene.

Richard Meddelton went on to say that

"under the current system if we have security, we have priority. The reality is that we have viewed it as quasi-Government because in the past—obviously the past is no prediction of the future—that money has been forthcoming".—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 42, Q49.]

The banks have concerns about how the insolvency framework will work for them in financial terms. That will inevitably affect what the education administrator can do to fulfil the broader function that the Minister made.

Mr Jayawardena: I thank the hon. Gentleman for reminding us of the evidence we heard. Again, as we are discussing Lloyds, I refer Members to my entry in the Register of Members' Financial Interests. Did Lloyds not also say, though, that at the moment they are not necessarily able to say that they would protect learners first, so in that respect this is a good thing for learners? However, the other banks, particularly Santander, said that the certainty would allow them to lend more. One bank does not necessarily speak for all.

Gordon Marsden: I accept that. I would only observe that Lloyds, as we know, is a particularly large and extremely important lender to colleges.

To sum up, although I will refer to these issues in relation to future amendments, we want to hear more detail on them from the Minister. On that point, I will conclude my remarks.

Ordered, That the debate be now adjourned.—(*David Evennett.*)

1 pm

Adjourned till this day at Two o'clock.

