

PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Third Sitting

Monday 13 September 2021

(Morning)

CONTENTS

Examination of witnesses.
Adjourned till this day at half past Five 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

Friday 17 September 2021

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The Committee consisted of the following Members:

Chairs: † SIR CHRISTOPHER CHOPE, JUDITH CUMMINS

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

Witnesses:

Professor Eric Kaufmann, Professor of Politics, Birkbeck College, University of London

Professor Matthew Goodwin, Professor of Politics, School of Politics and International Relations at the University of Kent (also Associate Fellow at Chatham House and Director of the Legatum Institute's Centre for UK Prosperity)

Sunder Katwala, Director, British Future

Nicola Dandridge, Chief Executive, Office for Students

Public Bill Committee

Monday 13 September 2021

(Afternoon)

[SIR CHRISTOPHER CHOPE *in the Chair*]

Higher Education (Freedom of Speech) Bill

3.30 pm

The Committee deliberated in private.

Examination of Witnesses

Professor Eric Kaufmann and Professor Matthew Goodwin gave evidence.

3.32 pm

The Chair: Good afternoon. We will now hear oral evidence from Professor Eric Kaufmann, professor of politics at Birkbeck College, University of London, and Professor Matthew Goodwin, professor of politics and international relations at the University of Kent.

Q181 Matt Western (Warwick and Leamington) (Lab): Good afternoon to you both. Thank you for joining us today, and for your submissions. I have several questions to start with. Academic freedom is much referred to, and I have always viewed it as something of a privilege. Perhaps you could describe your definition, and why it has such an important status.

Professor Kaufmann: The right to question received wisdom, the right of academics to question—

The Chair: I am afraid the acoustics in this room are very poor. Do you think that you could speak up as though you were addressing a hall of 500 students?

Professor Kaufmann: I have not done that in a while. The freedom of academics to test and question received wisdom, including public commentary and extramural speech, is how I would define academic freedom. It needs to be protected to a greater extent, perhaps, than in other professions to allow academics really to challenge convention without risking a detriment. The special thing about universities is that you can do that.

Q182 Matt Western: Is that something that you earn as an academic?

Professor Kaufmann: No, it is something that you have as an academic. It needs to be protected. If it is something that you have to earn, that would suggest that there are two tiers. I think that even a temporary, adjunct academic should have it.

Professor Goodwin: I would agree. I would define academic freedom as the ability to challenge conventional wisdom, to voice unpopular opinions and to go against the grain without suffering adverse consequences from within your institution.

Q183 Matt Western: This question is for Professor Kaufmann. About 50 years ago, during the Red Lion Square disorders, Warwick University student Kevin Gately was sadly killed in trouble between fascists and a group called Liberation. He was the first person to die in public disorder for 55 years. Does the legislation protect our students of today and tomorrow, to avoid those sorts of confrontations in future?

Professor Kaufmann: I do not think anyone can predict. That is a public order question and the determination of the risk would have to be made by the police, for example. I think this is quite far from the situation that has given rise to the need for the Bill. It is not really a public order Bill; it is much more about protecting the everyday rights of academics to speak out, speak their beliefs and research without detriment. Yes, if there is likely to be some kind of public order incident, the police will have to give advice on that.

Q184 Matt Western: That protest was about no-platforming, so I think it is related to the legislation—I am not raising a random thing with you. Do you see in the Bill consequences for the future of free speech and hate speech on our campuses?

Professor Kaufmann: The Bill will have a very important effect. Sometimes the point is missed when we focus in on a few incidents of no-platforming. Really, the big, big issue here is the monumental chilling effect that academics feel: in a UCU-sponsored study, 35% of academics—UCU members—said that they felt restricted in saying what they believe. That is 35,000 academics. In a King's study, 25% of students claim that they will not say what they believe—that is 500,000 people. We are talking about an absolutely massive problem here, and I think it is very important to get that point across. Issues around no-platforming are the tip of a vast iceberg of chilling effects and self-censorship that I believe is distorting the truth-seeking mission of the university. The university has to be a place where we can pursue truths, even if they go against conventions and mores of the time. The no-platforming incidence is really the crux of the issue, which the Bill will address.

Q185 Matt Western: Professor Goodwin, we have heard a lot about self-censoring. I am not an academic or a scholar of Freud, but he suggested that we all self-censor all the time, so what is the issue here?

Professor Goodwin: I will speak from personal experience to give you an idea. I publicly accepted the vote for Brexit in an environment where only around 10% of academics either supported Brexit or tend to support conservative or right-wing political parties, and that really makes me an outlier. The only reason why I, and colleagues who might hold gender critical views or a more nuanced interpretation of British history, have been able to speak up about some of those issues is because we have often been professors with job security and tenure, and are very difficult to sack.

If you are a junior academic or are on a fixed-term contract, speaking out about issues that go against the monoculture in many of our universities comes with very real consequences, and I know that from the many emails that I have received from junior academics and members of staff at universities who simply feel unable to voice their true views on those issues because they are

fearful of what will happen to their careers. Indeed, in some cases—including friends of mine—they have been sacked or disinvited from workshops. As Professor Kaufmann points out, the temptation in this debate is to say, “There are only a few cases. Isn’t this about using a sledgehammer to crack a nut?” When you are looking at rigorous and robust surveys that suggest that one in three academics are self-censoring, that is a very big problem in a country that has long prided itself on having some of the best universities in the world, which are based on viewpoint diversity—being able to challenge, critique and voice unpopular opinions. However, many of my colleagues do not feel able to do that, as you heard last week and as I am sure you will hear this week, as well.

Q186 Matt Western: Do you not think that we are all outliers in one way or another?

Professor Goodwin: When you look at institutions that lean very heavily in one particular direction—75%, 80% leaning toward the left of the political spectrum—we know from research that those kinds of monocultures also encourage people to become more radical over time; Cass Sunstein, for example, has written a book about that.

However, we are also dealing with institutions that are responsible for the next generation. I would want my students to disagree with me on a whole range of issues, but I would also want them to be exposed to very different viewpoints throughout their university experience: viewpoints on the left, on the right, from above and from below. Ultimately, that is what gives us the ability to think critically and it strengthens our democracy. At the moment, however, we know clearly from the King’s study—I think you are speaking to the author later—that a quarter of all university students in the UK are self-censoring, which is a very depressing statistic.

Q187 Matt Western: You have talked of the fear of many left-wing academics of normalisation, whereby giving a platform to fascists and the like would normalise their views. Whether or not their views become normalised, would you be prepared to see an overt fascist speak on your campus and, if so, how do you think that would square with university management’s myriad duties to student welfare and social cohesion?

Professor Goodwin: I can speak from personal experience; I have invited people from across the political spectrum to speak to my students over the years. I have had Conservative, Labour and UK Independence party candidates come to speak to students. I would have invited somebody from the British National party or the National Front, were they available.

Those experiences taught me and demonstrated very clearly that students are more than capable of being exposed to a range of different views and of challenging those views, because ultimately we are here to develop critical thinkers; we are not here to put students in ideological monocultures that only give them one view of the world.

One thing I would say, which I think is a very important point for this Committee, is this: if you look at the United States and at levels of trust in universities in America over the last 10 years, you will see that they have declined significantly, as this debate has become very polarised. The last thing that I think we would

want in the UK is to repeat that experience, because people are increasingly looking at higher education institutions as being very political institutions—being very lopsided. It would be a great shame if that were to happen in this country.

Q188 Matt Western: Professor Kaufmann, I will put a question to you, if I may. In the Policy Exchange report that you co-authored, a very negligible number of academics were ready to support a dismissal campaign; according to my notes, the figure was 12.5%. If so few are willing to support such campaigns, are right-leaning academics’ fears about cancel culture not just a backlash reaction to a general left-leaning academy?

Professor Kaufmann: That is a really good point: very few academics—only about one in 10—are willing to support a given cancel campaign, which is good news.

The problem, in a way, is that all it really takes is only a very small minority of radical activists to get, let us say, an attack on a gender critical feminist. I mean, these are small, tightly organised networks, but they are able to move mountains because nobody necessarily wants to stand up to them.

Most academics are not in favour of this stuff, but they are also scared to stand up to it, because if you stand up to people who are attacking gender critical feminists, you might be labelled as a transphobe. You are not a transphobe, but by critiquing people who claim to be acting for the benefit of the trans community, you fear that that aura will stick to you. What happened at Cambridge, with Arif Ahmed, is instructive. You have heard from him, and essentially he struggled to get 25 signatures of people who were willing to put something to a vote on whether to change the wording of the university’s policy. Once it was put to the vote, it passed by 80%.

There is a lot of reluctance; people do not want to stick their heads above the parapet. That is the issue that we face. I have looked at survey data on this: an academic individual is actually more pro-free speech than a non-academic individual, when you account for their ideology; a far leftist who is not an academic is less supportive of free speech than a far leftist academic.

The issue, however, is that in the university we have such a skew, because most of these claims of coming from the far left. Because they make up 25% to 30% of academic staff in the social sciences and humanities and because they make up a significant share of students, we are going to see a lot more of these challenges to free speech. It is not because academics are any more anti-free speech than non-academics—in fact, it is the reverse. It is just that it is a function of the ideological distribution of academics. That is why we see more of these events in universities.

Q189 Matt Western: I have a final question for Professor Kaufmann. Why is it that, as you made clear in your October 2020 article for UnHerd, active mobilisation by representative Government is necessary to reverse critical race theory’s grip on elite institutions? Is not a softer approach more desirable?

Professor Kaufmann: On critical race theory?

Matt Western: Yes.

Professor Kaufmann: I never endorsed any Government action on critical race theory in universities—only in schools where the teaching is compulsory and you have

to pass the element. In a university, it absolutely should be taught; people are free to take it and to teach it. It is a different thing: you are dealing with adults. In a school where every pupil has to be taught critical race theory, we have a compelled speech issue, a freedom of conscience issue.

I think critical race theory is a conspiracy theory. I am quite open about that. However, there is high critical race theory, which is interesting, is worth teaching and has some insights. The vulgar critical race theory that is appearing in schools and some diversity training, where they separate pupils by race and say that some are oppressors and some are oppressed, is nonsense. However, in a university classroom, people are free to take what they want and teach what they want. In schools, where we are not dealing with adults and it is compulsory, there is a freedom of conscience issue. I make that distinction very clearly.

Q190 The Minister for Universities (Michelle Donelan):

Thank you both for coming in. Professor Kaufmann, in the Policy Exchange paper you co-authored you recommended a statutory tort. I wanted to ask you why you think that that is so important, and how you think it will work in conjunction with the Office for Students complaints scheme.

Professor Kaufmann: It is important for academics who might find themselves in a situation in which they are disciplined for speech to have recourse against their institution if that institution is not upholding their rights to freedom of speech. The point of the statutory tort is simply to allow an avenue for those with grievances that cannot be met within their institutions. Very often, I am sad to say, many institutions are not doing a successful job of upholding this right for many academics—hence the need for recourse to the court system.

Q191 Michelle Donelan: This is a question for both of you. How do you think that we can best ensure an atmosphere on campus that allows difficult and controversial topics to be discussed while maintaining an inclusive environment?

Professor Goodwin: From my experience, this debate is already actually beginning to bring about some important culture change. The shift from protecting to promoting is incredibly important. Universities are, by their nature, very bureaucratic organisations, and, once this change gives a signal about the renewed importance of protecting academic freedom, it will have a profound impact on universities. I can speak from experience of my university, the University of Kent, which is already having a vigorous debate about academic freedom and I am sure will emerge as a sector leader in promoting academic freedom. It is reassuring to see the way in which this national discussion is already bringing about change.

For many of my colleagues, who have in some cases been sacked, disinvited, intimidated, harassed, undermined and mocked, this piece of legislation is very important, for obvious reasons. We are not talking about small numbers, as Professor Kaufmann points out. I know from personal experience that having the ability to go to an external entity to ensure that cases are explored and examined will play a critical role in ensuring viewpoint diversity within the sector. I think it is already having an impact, and I suspect that, much like the legislation

around equalities, we will probably find that within a few years universities will suddenly be arranging league tables of academic freedom and all the kinds of things that tend to come with changes that are brought about by law.

There is a massive opportunity to emerge globally as a leader in the promotion of academic freedom in a debate that is global. The Canadians, the French and the Americans are talking about it, and nobody has really got a hold of it and demonstrated what it means in practice, so I think there is an opportunity for the UK to be that model.

Q192 Michelle Donelan: Professor Kaufmann, did you want to come in on that?

Professor Kaufmann: I am Canadian, and it is interesting to look at what has happened in the province of Ontario. Ontario and Alberta have both adopted elements of this kind of legislation, and it has been very ineffective because it has not gone the same distance that this legislation has. In the province of Ontario, all universities have to adopt a sort of Chicago principles-style free speech document and issue an annual free speech report, and there is an ombudsman for complaints. However, there is not anything like a director of academic freedom to spearhead the process, so even though there is an ombudsman, that individual is in fact not on board with this agenda. Therefore, when people have made complaints, they have gone nowhere.

It is incredibly important, therefore, to have a director of academic freedom who believes in promoting academic freedom, can see this through and can proactively make sure the legislation is applied. That is an absolutely critical part of this legislation. That is one of the reasons that this is so path-breaking. William McNally, who is a professor in a Canadian university called Wilfrid Laurier, looks at the UK and says, “I wish we could have something like the UK’s Higher Education (Freedom of Speech) Bill.” I think this could very well be world-leading.

Q193 Michelle Donelan: My last question is to both of you. What is the biggest threat, as you perceive it, to freedom of speech in our universities?

Professor Goodwin: I think there are multiple threats relating to debates we are having around the role of China; indeed, that was in the newspapers again over the weekend, relating to the University of Cambridge. We also have parallel issues around the ability of gender-critical academics, some of whom you heard from last week, to be able just to conduct themselves on campus without requiring security, which is an incredible state of affairs for anyone to be in. There is also the ability of some of our colleagues in history and psychology to challenge conventional wisdom on issues ranging from the role of Britain’s empire through to intelligence and unconscious bias testing—you name it. All that should be on the table, and we should be interrogating, exploring and examining it. The threats are multi-faceted and are not just coming from one direction. That underlines the need for some action in this area.

Professor Kaufmann: I would add that even though conservative academics are reporting much higher levels of self-censorship—two to three times as high as the left—it is also the case that this is not just about

protecting conservatives. Certain types of left-wing research around the middle east, for example, and Islam will also benefit from this protection. It is worth noting that. In our Policy Exchange study, we had a number of left-wing academics making that exact point. They are worried about some off-campus groups such as Turning Point UK. They are worried about Prevent and discussions around Israel-Palestine, so this Bill will benefit not just conservatives.

Of course, it is the case that political minorities are reporting much higher levels of self-censorship. For example, in the King's study—you will be hearing from one of the authors later—they asked about the statement:

“Students with conservative views are reluctant to express them at my university”.

Conservative students agreed by a 59:26 ratio. There is a much higher level of censorship and chilling going on for Conservatives, but it is not only Conservatives—certain kinds of left-wing speech are also being chilled. The Bill will benefit both kinds of speech.

The Chair: More than half of the time allocated has already been used up. I hope that colleagues will make their questions very brief, in the hope of encouraging succinct answers.

Q194 Mr Kevan Jones (North Durham) (Lab): Professor Kaufmann, you used the words “chilling effect” and “tip of the iceberg”. We heard this the other day from other witnesses. Getting your head around the idea of self-censorship is like having blancmange in your hands. Frankly, there is no firm evidence for it. My problem with the Bill is that it is a very un-Conservative piece of legislation. It is about involving the state directly in the running of universities. You mentioned the director for freedom of speech, and that may be fine, under the present Conservative Government, but, as I said last week—

The Chair: I am going to interrupt, because we are not taking evidence from you. We are trying to invite the witnesses to express their views.

Mr Jones: As you cannot challenge the director, if you had an authoritarian Government, that could potentially be very difficult. The other point, to Professor Goodwin, is on employment: the Bill will not stop academics being sacked. Surely there should be something in the Bill, or some change in terms of employment law, to give protection to those individuals you talked about? Finally, Professor Kaufmann, on the tort issue: does the Bill not open universities up to a huge amount of litigation? For example, the United Front—a front for the Chinese Communist party—operates widely on our campuses today; will it not use the Bill as a mechanism to ensure that it gets across its ideas and arguments, while being possibly well-funded by the Chinese Communist party and Chinese Government? Is there not a danger of giving weapons to our opponents, and doing the opposite of what we are trying to achieve?

Professor Kaufmann: There are some really good questions there; the one about the state is interesting. It can seem paradoxical that the state is needed to protect individual liberty, but actually it has happened many times in the past. Think of society as three layers, Government, institutions and individuals, instead of two, Government and individuals. The institutions can

become illiberal, in which case the Government need to step in to protect the liberty of the individuals. In the United States, in the early 1960s, there were universities that segregated black and white students—essentially barring black students from entering the university, such as at the University of Mississippi. The US federal Government had to more or less step in and desegregate those universities, and they essentially violated the universities' autonomy to do so. That is an example of where the Government were needed to protect the freedoms of students.

Q195 Mr Jones: Also McCarthyism, which was the reverse of that.

Professor Kaufmann: Sure, McCarthyism. All I am saying is: it is not unusual. If you have a corrupt police department or a school that is taken into special measures, government action is needed to protect liberties. This is clearly one of those situations.

I do not think that universities can reform themselves. The pressures on them are simply too powerful. I have seen this up close, as a head of department: in committee meetings, no one will speak up against what is an illiberal policy but will make them look like a racist or transphobe, and so the policy gets through. In the US, they have had speech codes in universities since the late 1980s. There have been complaints about them—they are a violation of the first amendment right to free speech—but they persist because the institutional forces are too strong. You need an outside force to come in to reform the system. Government action is absolutely central to this, and that is why the Bill is so important.

Professor Goodwin: To keep it brief, I think the Cambridge vote was very revealing. Publicly, you have an academic who struggles to get two dozen signatures, but the moment you ask academics to express their view in an anonymous situation under secret ballot you find that most academics are willing to speak up and challenge the consensus. That is, to me, direct evidence of the chilling effect, and the way in which once you remove the threat of being exposed people are more than willing to challenge that orthodoxy.

If the current system with regard to sacking and dismissal were working, we would not be having this conversation. We would not have had dozens of academics appearing in the newspapers. There was another one this weekend from the University of Bristol who was accused of being Islamophobic. The university had ruled that he was not Islamophobic, but had none the less removed his course in response to student satisfaction.

That is another example of how, to be frank, the broader system needs a good overhaul. We have generated a market-based system that is overwhelmingly skewed around student satisfaction rather than the pursuit of truth and intellectual exploration. If the current system were working, we would not be having this conversation. It is why, on the director of academic freedom, people who are dismissed for, they feel, political reasons need to have somebody to whom they can turn to explore their case and interrogate it.

Q196 Fiona Bruce (Congleton) (Con): Thank you, gentlemen, for coming today. The Bill speaks of freedom of speech in relation to students as well as staff; however, academic freedom in the Bill is defined in relation only

[Fiona Bruce]

to academic staff. Should that definition also include students? I am thinking not only that academic freedom is important generally for anyone at a university, but that some students, such as doctoral students, may also be tutoring.

Professor Goodwin: My view would be that the protection of academic freedom should apply not just to established academics but, in particular in some cases, to academics who are at the beginning of their career and perhaps on fixed-term contracts, or who perhaps are doctoral students. They are the most likely to self-censor, for obvious reasons. They do not want to irritate their colleagues. They do not want to suffer reputational consequences.

My view would be that it should also apply to students, given that we have around a quarter, if we look at the King's study, for example—I would add lots of emails from students in my 20-year career of teaching in universities—of students feeling that they cannot speak out about particular issues. I think you heard from Tom Simpson who made that point regarding his experience at Oxford, so I think that students definitely need to be included.

Professor Kaufmann: I agree with that absolutely.

Fiona Bruce: Thank you. That gives me time for a second question, if I may, Sir Christopher.

The Chair: Very quickly.

Q197 Fiona Bruce: You reflected on the implications of exercising academic freedom. I think Professor Goodwin hinted on the loss of posts by some colleagues. I would be interested if you could reflect a little more on that, because it is a very important issue. Should a right to apply to the employment tribunal be included in the Bill? You said that going to an external entity is important.

Professor Goodwin: This is how it typically works: a group of students will make a complaint about an academic. They may take that academic's words out of context. They may imply that something was said that may not have been said—who knows? That academic is typically investigated and, as we saw in the case at Edinburgh recently, they are suspended and asked to leave campus for six weeks or so while the case is investigated. There is a reason why academics says that the punishment is the process. The reputation of that academic is now in tatters. Nobody will hire that academic. His or her chances of getting a research grant are probably minimal, and those of getting published have been severely damaged.

That individual is tainted. We are tainted simply for making some of the arguments that we have made today. The protections and the right to recourse that we give to academics who find themselves in that situation should be as strong as possible. Our entire world is dependent on reputation. Everything we do is under our name. If allegations are made that may even be free of evidence, the onus is very much on the academic to defend themselves against something that often has detrimental consequences.

I personally know many professors, for example, who are on medication to sleep because of the stress and strain that comes with this new culture that we have

had. In America, Jonathan Haidt's "The Coddling of the American Mind" has documented this in detail. From 2010 onwards we have seen a dramatic increase in the number of student protests, and much more robust, assertive activities to try to constrain what can and cannot be said on campus. I will allow Eric to come in.

Professor Kaufmann: I want to add one thing. The nature of the academic employment market is such that any permanent academic job in a lot of universities will get 100 or 200 applications for each position. To get a position in your field of specialty in a place you want to be is not impossible, but it is extremely difficult. If you lose at it, it is not enough to pay somebody a year's salary. This is why we need recourse to an employment tribunal that can recommend reinstatement. You need reinstatement, not just a year of salary. A year of salary is not going to cut it when you are unemployable, so it is vital that this amendment goes through.

Q198 Emma Hardy (Kingston upon Hull West and Hessle) (Lab): I am going to ask the witnesses to be as brief as possible, because there are hundreds of things that I would like to ask, but I will try to limit them to just a couple. Professor Kaufmann, in your written evidence, you stated:

"Only in this manner can academics have the confidence that they are protected from ideological opponents who wish to punish them for their views."

I support you in wanting to protect academics from ideological opponents. How can we ensure the independence of the director of freedom of speech? Interestingly, further on in your written evidence, you refer to an ombudsman system in other countries. How can we ensure the independence of the director of freedom of speech to prevent "ideological opponents" who wish to punish academics?

Professor Kaufmann: All that the director of academic freedom has to do is enforce the letter of the law.

Q199 Emma Hardy: Sorry, I am going to quickly interrupt. To enforce the letter of the law, should the director be legally trained? Should they be a legal expert if their duty is to enforce the letter of the law?

Professor Kaufmann: No, I do not think you need to have a lawyer in there. You just need somebody who understands the spirit of the legislation—it is not too difficult—but who is proactive.

Q200 Emma Hardy: But they would have to make decisions on where freedom of speech falls between the Equality Act 2010, this piece of legislation and of course the Counter-terrorism and Security Act 2015. Would you not therefore presume that they should have at least some knowledge of the law if they make rulings?

Professor Kaufmann: I think their office and the legal advice that they take can guide them. Those kinds of details—

Q201 Emma Hardy: So you would expect them to be surrounded by lawyers who could give them legal advice in their role?

Professor Kaufmann: They could take legal advice, certainly.

Q202 Emma Hardy: Provided by the Office for Students to accompany the director?

Professor Kaufmann: I am probably not enough of a policy wonk to know where such an individual would sit. Would you contract it out or have it in-house? That is a decision for somebody else to make, but I think that you need to make a legally informed decision that is in alignment with what a court would decide and what the intent of the legislation is.

Q203 Emma Hardy: You foresee the director making decisions in alignment with what a court would decide, not within a court, so they make legal decisions, but not within a court. Is that correct?

Professor Kaufmann: No, I think they proactively apply the law so that it does not go to a court. Another system could be to allow everybody to sue, but that is reactive. It is very difficult and expensive to go through these court cases. We have seen that in the US in first amendment court cases.

Emma Hardy: It is hugely expensive.

Professor Kaufmann: I would much rather be proactive. Also, you need it to be proactive in order to give academics assurance. If they have to sue—*[Interruption.]*

The Chair: Emma, would you please allow some academic freedom to this witness? You may disagree with what he says, but you must allow him to answer your question.

Q204 Emma Hardy: I will. I would just ask you to be as precise as possible.

Professor Kaufmann: Of course.

Emma Hardy: You are talking about how this director of freedom will have some knowledge of the law but will not be a lawyer, and will make law-based decisions but not in a court. How should they obtain this position, then, to ensure this academic freedom and prevent ideological opponents from being punished?

Professor Kaufmann: The criteria would involve somebody who is knowledgeable about the sector, who would also be on board with the mission of protecting academic freedom and would care about it. I think those are the two most important qualities for an individual.

Q205 Emma Hardy: I agree, but how would you foresee them obtaining this? Who is going to appoint them? How are they going to reach this position? As we know, this position is the first time that a higher education regulator will have the power to intervene in student unions. This is a massive expansion of the state's powers over universities. Who gets to choose who this person is?

Professor Kaufmann: I wish I were an expert. There has to be some sort of precedent in terms of these bodies. I guess they would be advertised; you would have the criteria. The Office for Students would presumably be involved, and the Government would be involved. That is the best I can give you.

Q206 Emma Hardy: Would you expect the Government of the day to be involved in appointing the director of free speech?

Professor Kaufmann: Yes, I would. I think it is important that they are accountable to the voters. They need to be sure that the person is upholding the values that are important for this role, because I think there is a problem that sometimes, bodies can be captured by a particular stream of opinion. As we know, this can happen in academia, so you have to have a check on that.

The Chair: I am going to stop this now and ask Gareth Bacon to ask a question, because we have only three minutes left.

Q207 Gareth Bacon: Thank you very much, Sir Christopher. This is to Professor Goodwin. I graduated from the University of Kent 25 years ago, and my experiences in Canterbury are very different from what you have described. Do you agree that in a free and democratic society, the best way to deal with views you disagree with or, indeed, find repugnant is to be able to openly challenge them, debate them, and expose their weaknesses in an open debate?

Professor Goodwin: I do agree. I would just add on the record that most of the problems I have encountered personally have not come from within the University of Kent, but from within the broader higher education sector.

Q208 Gareth Bacon: My final question—I am conscious of time—is to both witnesses, if I may. Both of you, in common with academics who gave evidence last week, have talked about the chilling effect that is going through academia. If the Government were to drop this Bill and take no action, what do you foresee being the long to medium-term, five to 10-year consequences?

Professor Goodwin: Again, just to revert to personal experience, I would certainly leave academia, and I know that many other of my colleagues would probably come to the same conclusion. I think there are a large number of researchers, junior and senior, who now feel that viewpoint diversity is no longer really in existence or being protected adequately within Britain's institutions, and that is a very depressing thing for somebody who has spent 20 years building up their academic career to say.

I know for a fact that many of my colleagues no longer feel particularly welcome, safe, secure, or ultimately able to say what they really think, and for every one of me, there are 20 or 30 people behind me who do not feel able to come and speak and voice their concerns as we are doing today. For every Kathleen Stock, there are 50 other gender-critical academics. I had a message from one this morning who is going through a very similar case and is being chased out of a department for reasons similar to those Kathleen raised. The most frustrating thing, just to put this on the record, is for people like me to hear people who are not in higher education say that this is all a myth and that it does not exist. They clearly do not have an understanding of what is happening in higher education.

Professor Kaufmann: To reiterate, I think that what will happen is that the truth-seeking mission of the university will be warped, because many questions that we need to ask will not be asked and many answers that we need are not going to be given, for career reasons.

On Matt's point about the idea that this is somehow a moral panic or a new thing, a recent paper by a leading Harvard political scientist, Pippa Norris, called "Cancel Culture: Myth or Reality?", was published in *Political Studies* a few months ago. She asked three questions: "Have the following got better or worse in the last five years: academic freedom to teach and research; respect for open debate from diverse perspectives; pressures to be politically correct?" The modal answer, even from left-wing academics, was that those things had got worse in the last five years. For those on the right, the percentage was in the 80s. We have a problem, in that people are saying that it has got worse in the last five years, and the King's surveys of students found similar. If we do not address this, the truth-seeking mission of the university is going to be severely impacted.

The Chair: Thank you very much indeed, both of you. We now have to move on to the next session. If any colleagues have complaints about the length of time allocated, I am told that they must be referred to the Whips, as they were the people who dictated that there should be such limited time to hear your expert evidence.

Examination of Witness

Sunder Katwala gave evidence.

4.16 pm

The Chair: Mr Katwala, please could you introduce yourself for the record?

Sunder Katwala: I am Sunder Katwala and am director of British Future, which is an independent, non-partisan think-tank and charity that engages the public on identity and related issues.

The Chair: We have until 4.45 pm, so I hope that questions will be brief.

Q209 Matt Western: Thank you, Mr Katwala, for joining us today. I want to ask you a few questions. You have put on record your concern about this Bill opening up universities and student unions to being sued an unlimited number of times by people such as David Irving. Could you expand on those concerns?

Sunder Katwala: The underlying thought is that the legitimate concern of the Bill is to protect academic freedom expansively, to symbolically reinforce that that is the case, and to provide new mechanisms to deal with disputes. Everybody who is interested in academic freedom would say that it is in law and we should be protecting it, and that is being driven by the fear that there is overcreep from the side that wants to take away academic freedom. In terms of how you implement that, if you say, "Let's defend lawful speech because lawful speech is free speech, and lawful speech is academic freedom," that sounds very good, as long as you can answer the question: is all lawful speech something we want to defend as academic freedom, or are there categories of lawful speech that we do not want to defend?

Most racist and antisemitic speech does not meet the legal threshold of being unlawful. Intimidation and violence are unlawful, and other forms of stirring up are unlawful, but holocaust denial is not unlawful. We may wish to stigmatise it—we would not want it on our charity board or in our political parties, but different

institutions have different rules. In this case, what are the principles and categories by which we might say that there is a form of lawful speech that we should not be protecting under academic freedom because it is inimical to academic freedom? That is the tension.

For example, if the Government say to universities that they should adopt the International Holocaust Remembrance Alliance definition of antisemitism, that is an important thing to do for antisemitism. There are two reasons to do that: one is symbolism—antisemitism is bad—and the other is to prohibit on campus speech that is currently lawful but also antisemitic. Comparing the Israeli Government to Nazi Germany, for example, is a lawful position that we wish to stigmatise. If you have this measure and the IHRA definition, you have potential tension at the boundary between the lawful speech that you are trying to exclude and the lawful speech that you are trying to protect.

Q210 Matt Western: Briefly, what sort of impact do you think this is going to have on student unions?

Sunder Katwala: With student unions, it is there to push back against not inviting, disinviting or protesting against someone whose political views you do not share. Wide boundaries are good, but are the boundaries of lawful speech exactly the boundaries you want to protect as academic freedom, or are there some hard cases? I will come on to this, but I think there are probably three different sets of hard cases where the boundary gets complicated.

Q211 Matt Western: You said you can imagine cases of hypothetically cancelled speakers claiming or pursuing hypothetically lost fees. Will you explain that further, and what amendments would you like to be made to the legislation in order to combat it?

Sunder Katwala: What I am not clear about at this stage concerning the legislation, the principles, the operationalisation and so on is how far these things are going to be broadly symbolic—so that they are just there—or how far it goes. What are the damages? If I am disinvited because I am David Irving—I have published a book and then I was disinvited because people read the High Court judgment—what is the material loss to David Irving? I suspect that it is quite small, but we do not know. That is the level of detail that the legislation does not take us to.

Q212 Matt Western: Could that include reputational damage?

Sunder Katwala: Yes. Mr Irving has a very low reputation, because the High Court has said what it said about him, so him not being allowed to proceed with his event at the University of Cambridge and so on would add to the reprehensible reputation of a man with an already low reputation. There might be other cases in which somebody loses significant amounts of reputation by being cancelled for the first time. This is a level of operational detail that, obviously, I do not think that the legislation is designed to get to. What are the scales of these kinds of interventions?

Q213 Matt Western: I am interested in your view of how this will interface with the proposed online harms Bill. Do you have any thoughts on that?

Sunder Katwala: The online harms Bill has the opposite principle—again, it is a good principle—which is that there is some lawful speech that is reprehensible and we wish to stigmatise it, even though it is lawful. The example that I put to one of the social media platforms was, “No blacks in the England team—keep our team white.” It is lawful, reprehensible racist speech. It is also within the rules of Twitter, Facebook and Instagram at the moment, and they are embarrassed about that and looking into it. I feel that an event at a student union, “No blacks in the England team—keep our team white,” does not seem to be the kind of event that we want to protect, and yet that is lawful but reprehensible speech, which we want to stigmatise, even though it is free speech within the law.

If I sit in my living room or go to the pub and say, “Marcus Rashford isn’t English—keep our team white,” I am not breaking the law. I might be if I put it on the internet in particular ways, but I am not in that case—I have not hit the threshold for racist abuse. If I sent it to him with the wrong kind of epithets, maybe I would. This is a question of wide boundaries for sure, but are there hard cases for how far those boundaries go?

Q214 Matt Western: You heard the previous session. There was a lot of talk from the previous two witnesses about self-censoring and so on. Do you share those concerns, or do you think, as I was perhaps suggesting, that we all self-censor to a certain extent? As we heard from a witness last week, that is just the way of the world—you get on with it and you make your case.

Sunder Katwala: The harder question about self-censorship is: what will these mechanisms do about self-censorship? They might change the culture in a very positive way, because everyone feels reinforced and is not worried about stigmatisation, but they might change the culture in a rather negative way, where everyone is bringing cases and counter-cases against each other, and the processes, the punishment, could get worse if we have a lot of tit-for-tat things. There might be something in the culture of a regulator about the treatment of, say, vexatious cases as opposed to substantive cases, which might be quite important if the stress actually comes from the possibility of the cases. Because self-censorship and chilling effects are cultural points, it is not obvious to me that we know how these mechanisms affect that broader cultural plane.

Q215 Michelle Donelan: Your recent research suggests that more divisive voices and controversial issues are often amplified online. Do you agree that that influences how freely the majority of people feel able to express themselves?

Sunder Katwala: On the whole, in terms of the British public and the general population, these current issues of free speech and academic freedom are important issues in our political and media culture and so on; they are not gripping the broad public. It is a much less heated and polarised debate about these issues in Britain than in the United States of America. It might be the case that in five, 10 or 15 years, we have a much more heightened culture, but there is a very broad balance, a middle, in British society. When we have engaged in conversations about the worry about people being called racist before they have been racist, but also about wanting decent debates about race and integration that

do not cross boundaries, a great many people are trying to strike those balances in a way that is good for freedom of speech but has boundaries.

A lot of people think political correctness can go too far if you take it too far, but they will then say, “But it had a point in the first place.” To give an example, research by More in Common found that seven out of 10 people in this county think that political correctness can be a problem if you overapply it, overreach with it and go for trivia. Seven out of 10 people think that hate speech can be a problem, because we are letting too much go. The median person in Britain thinks that both those things are true. At the same time, they are probably frustrated that we are removing episodes of “Fawlty Towers” from archives. It is entirely trivial, while we are letting neo-Nazi content run riot on Facebook. There is awareness of this tension, and frustration that you could overreach in different directions.

What is much more the case in America is that people have picked a side. Therefore, they are always on one side of every question. We definitely have the possibility of having that culture among the most politically engaged—the people who spend most of their time on the internet, and perhaps the people who write the most newspaper columns—but most people are quite frustrated with that, because they would see that there are good public goals here that might be complicated to get right.

Q216 Michelle Donelan: I will ask just one more question, because I know that a number of Members want to come in. Do you agree that it is important to create an atmosphere on our campuses whereby difficult issues can be openly discussed, to create the critical thinkers of tomorrow?

Sunder Katwala: Completely, yes. It is the question of whether there are any boundaries where you would be allowing reprehensible content that undermined academic freedom, liberal democracy or the role of the university, if you did not get those difficult cases right.

Q217 Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Thank you very much for your evidence. I should declare my interests, as I have done in previous sessions—Sussex University, the University of Bradford and the University and College Union.

Is there a problem that expanding this to student unions might have detrimental effects? Student unions traditionally allow students to self-organise ginger groups, different political groups and so forth. If you require the Conservative club to enforce academic freedom, does not that make a mockery of having a club of Conservatives in which they can talk and debate issues among themselves?

Sunder Katwala: In principle, I do not see why it should do so—unless you have organisation of it wrong. As I see it, the principle is that the Bill should protect the difficult conversations that different people want to have. In theory, it should be blocking people saying, “I don’t like you saying that about Winston Churchill or the British empire—that’s too tough,” as well as stopping other things. But the devil is in the detail.

Q218 Lloyd Russell-Moyle: Our last witness, Matthew Goodwin, said that he wants the Bill to stop people making a mockery of academics. Last week, Dr Ahmed

[Lloyd Russell-Moyle]

said that he wanted the Bill to allow him and his colleagues to be able mock religion and different people's ideas, and Trevor Phillips said that he wants the Bill to stop people calling him racist on campus. Is this a Bill in which everyone has put their desires but which does not actually fulfil any of them?

Sunder Katwala: Mocking academics is part of free speech, so I do not think the Bill will stop people mocking academics.

Q219 Lloyd Russell-Moyle: Exactly.

Finally, I want to talk about self-censorship. According to Facebook, 71% of its users self-censor. The UCU study says that only 35% of academics self-censor, and the King's study says that, among right-wing academics, the figure is only 32%. Would that be evidence that, actually, right-wing academics are the least likely to self-censor and there is no problem?

Sunder Katwala: We are looking for cultural change whereby we have more confidence in having difficult conversations. The way to do that—I have tried doing this, and it is quite an interesting thing to do—is to say to people, “Give me a list of things that you think we can't talk about any more. Let's stay in the room and see whether we can have a conversation about them.” I have a concern: do we have that conversation with the right boundaries and the right culture? This is where I think people are balancers on these issues.

For example, people think there is a view about language that we do not want to use and there are labels not to use about people. Political correctness has civility and kindness, and it has a value for people, but when it is a code and you did not get the memo last week and now you are on the wrong side of it, people get a bit worried about how fast it moves.

I am not an expert on this, but, for example, people find this with debates about gender and sexuality. They know that we have changed our minds about the way we treat gay people in our society, but they find that very confusing and they do not know where to go to have that conversation and ask people about that. It is that navigation. Maybe we should be putting more emphasis into seeing how we have these sites of constructive engagement with difference, rather than having a regulatory process about who do you want to fine.

Q220 Lloyd Russell-Moyle: Finally, what you have just explained seems laudable and admirable, and what I want every university to be doing. Just so we are clear: are you saying that providing a legal tort process could actually undermine the ability to get people around to have a decent conversation, because they will be running to the courts?

Sunder Katwala: We do not know what the cultural impact of that will be, and whether that will be weaponised or used sensibly. I think the culture of the regulator in dealing with vexatious cases will be quite important. We see it in the sector of charities now and other things; we probably see it in politics, as well. If you create a regulatory thing, then people want to use up the time of people they do not like by reporting them to things. Pushing back against that, while doing the job it is trying to do, is important.

Q221 Sir John Hayes (South Holland and The Deepings) (Con): You do not work at a university and you are a journalist by background, are you not?

Sunder Katwala: I have worked in think-tanks, journalism and so on.

Q222 Sir John Hayes: The previous witness said that no one who had not worked in a university could quite understand both the climate of fear and the culture of silence that prevails in many universities. Do you think you are better placed to make a judgment about that than someone who works in a university or not?

Sunder Katwala: No, I am not. I am not trying to bring you evidence on that. At the level of public policy, we are trying to decide on the principles we should be legislating for in our country, about where is the expanse of free speech we want to protect and where are there dangerous misuses by people who are claiming to use free speech to do something to undermine liberal democracy. That is my work. I am not telling you what is going on in universities.

Q223 Sir John Hayes: In common with my colleagues, I have to declare my entry in the Register of Members' Financial Interests: I am an academic at Bolton University.

The point you are making is that some speech should be prohibited that is legally lawful. Who would arbitrate that? Would it be university authorities, Governments or the mass of students? Once you get into the territory that you are describing, which could lead to a liberal tyranny, as I am sure you appreciate, who is going to decide what is acceptable or unacceptable, if it is not the law?

Sunder Katwala: All sorts of institutions make these decisions. The Labour party, the Conservative party and the Democratic Unionist party make these decisions. They prohibit people from saying things that are lawful and reprehensible. Newspapers make these decisions about lawful speech. As I say, social media companies are coming under more pressure. What should happen in the universities? Let me give you the three case versions that I think you should examine.

One is where the content is directly discriminatory: this would be the clash with the Equality Act. If somebody said, “Let's have a lecture on how women are not fit to study maths and sciences,” and they brought the Taliban over to advocate their view on that, you could say, “Let's just stand up and tell them that's wrong.” Fine, we could do that, but, as with the Government's position on antisemitism, there might be some kinds of versions of that—like no gays, Jews or blacks on campus, or whatever—where the responsibilities to treat students equally might be undermined.

My second category would be where people are advocating against academic freedom. If I held a campus event called “The burning books party” on 5 November, I might be burning the books that Hitler burned or burning “Mein Kampf,” but burning books or advocating the burning of books is against academic freedom. Should we have that debate? Clearly, burning a book is, in a sense, freedom of expression of a particular kind, but I don't think we would invite people to have bonfires of books on campus. Would that be a public order offence or not? There might be an argument saying, “There are some books we should ban,” or “Women

should not be allowed to write books. My vision of society is ‘The Handmaid’s Tale’.” That is a stupid view, but it is a lawful view. Are we protecting that as academic freedom?

My third case would be very extreme conspiracy theories. Here we have a real dilemma. We know about Galileo, Darwin and so on, but when it comes to 9/11 “Truthers” and people who have David Icke’s view of covid—that it does not exist anywhere; it is just a plot by Bill Gates—where is the balance between the sunlight on that being right and the expression of that view? These things blend into each other. Why is there a conspiracy theory?

Those are the categories where I think that you need to think about whether there are versions of reprehensible but lawful speech that are inimical to academic freedom rather than needing to be protected as academic freedom. The Government have taken that position on holocaust denial, as I understand it, but they have not outlined a set of principles on what is wrong with holocaust denial. How does that relate to the denial of other genocides? How does that relate to the identical position of other minority groups who are not Jewish?

Q224 Sir John Hayes: I just want a straightforward answer, really. You are right, of course, that many things are offensive, rude or unsavoury. Indeed, some things are alarming, shocking and disturbing, but some things that are alarming, shocking and disturbing should be said because innovators have done that through the ages. Copernicus was alarming. Darwin was certainly alarming and shocking to many people—pretty shocking to me, actually. Having said all that, you have not really been clear about who determines what is lawful but prohibited. Is it the university?

Sunder Katwala: Is it the vice-chancellor? National Action has now been proscribed, but a very violent, aggressive group such as Britain First has not been, and the Islamist equivalent of such groups. Most people have different views about these different groups, but do you give Hizb ut-Tahrir, a group whose sole existence is to undermine liberal democracy and academic freedom, the floor and argue against it, or are there some versions of the content where you draw the line, either because of—

Q225 Sir John Hayes: Sorry to interrupt you, but I want to get to the bottom of this. The vice-chancellor in a particular university, or the university management, would determine what was unacceptable but lawful.

Sunder Katwala: Or it might be a national policy. In the case of holocaust denial, it will be a national policy that the lawful speech of holocaust denial will not be welcome on our campuses. The Government have taken that view. Do the Government want to protect 9/11 conspiracies as academic freedom or not? Do the Government want to take a view, or does the vice-chancellor take a view? It is up to the Government first—

Q226 Sir John Hayes: So it is the Government who determine it, not the vice-chancellor.

Sunder Katwala: It would depend. The Government will decide in the case of holocaust denial that it needs to be very clear that it is not welcome on campus. I am saying that there are analogous cases to holocaust denial for other reasons, for other minority groups.

Q227 Mr Jones: On that point, it is quite clear in the legislation who will decide: it will be the director of free speech, whose decisions are not even legally challengeable. To me, that is very clear.

I know that in the modern-day Conservative party there is a lot of political cross-dressing going on, but what I find quite frightening about the legislation is that one individual, or a future Government of any persuasion, will have a very Orwellian view of deciding what is and is not acceptable. That is a great departure from my usual understanding of what traditional Conservatives have argued for in this place over the years. Would you say that that one of the problems of this is that the final arbiter will be a political appointee?

Sunder Katwala: I think that there are risks if it is the whims of an individual. We will have to have a clear framework. Say we create an event titled “Are there any limits to free speech?”—I remember people used to create that event when I was an undergraduate student—and we say, “We’ll be joined by the Taliban, David Irving, Anjem Choudary and Zhirinovskiy of Russia for that debate about whether there are any limits.”

The question then for the Government, the regulator or the vice-chancellor is to say, “Is that a jolly good way to establish the debate? There are some risks of Anjem Choudary because we know that he radicalises a lot of people towards terrorism, but he dances within the law,” and so on, or is that a kind of lawful speech? I would not have that in my charity. I would have a very robust debate, but I would not have it with Anjem Choudary and Britain First. Are we going to say to universities, “You can’t make any of those choices about the boundaries within your expansive protection of free speech”? That is the key practical question.

Q228 Mr Jones: I agree, but the danger in the legislation as it is written is about those individuals. My concern is more that foreign states that want to change the direction that we argued for on freedom of speech in this country will use this to challenge academic institutions, and will be allowed to.

I mentioned earlier the issue of the operation in our universities of the United Front of China. They will be able to take cases and argue them and no doubt they will be well financed. There is a danger that they will use it to get their own way through their very deep pockets.

Sunder Katwala: You are going to have to have a transparent policy on which cases are decided. That is where my principles are about “What can you say about gays, women or Jews?” and “What can you or can’t you say about the lurid conspiracies that don’t seem to have any value to academic freedom?” How do you deal with those tensions?

Q229 Mr Richard Holden (North West Durham) (Con): You have raised three interesting points at the margins. The entire point of the legislation is that there are things that are not in these extreme examples that are currently being challenged at universities. That is basically the evidence that we have received from the academics who have appeared before us in these evidence sessions.

In light of that, do you not think that any Government in a liberal democracy such as ours would find that those three specific issues—clashes with the Equality

[Mr Richard Holden]

Act, those advocating against academic freedom and those with very extreme views that they try to cover with academic freedom—could easily be contained within that direction of free speech, thereby ensuring what we all want: the extension of free speech by the academics who tell us that they are mass self-censoring now, so that the professors who just appeared before us can be allowed their academic freedom? We are actually protecting the freedom of perfectly reasonable people, not people who are doing the things that you suggested. Do you see where I am coming from?

Sunder Katwala: In principle, I think the approach you have is very good. We have been having this debate about free speech on campus in society more broadly for several years and we never really get to the difficult issues.

What I would like is for people on both sides of the debate—there should not be sides—to look through the other end of the telescope. If you are someone who is very worried about racism and hate crime, you have got to be clear about the robust, tough stuff that you are going to allow so that you can be clear about where you draw the line.

The liberal or left side of the debate has a reputational point. The people worried about the incursion of free speech have not yet gone to these hard cases and said, “That is what we would do on this boundary, this boundary and this boundary.” If, instead of always just using their overall slogan, the two sides engaged with the value of the point on the other side, we would actually get to the hard cases.

Q230 Mr Holden: I get where you are coming from. Where do you come down? Do you think this legislation is unnecessary and that we should just trust the academic institutions as they are now or do you think there is a place for the Government to do something in this space?

Sunder Katwala: I do not have a very strong view on that. I think the Government want to symbolically commit to things that are already the case. It is creating new mechanisms and I do not know whether the new mechanisms will create a worse or a better culture.

The mechanisms are clearly the new thing: the responsibility is already there. Amplifying the responsibility is good, but we will do it by creating spaces in which we show that you have robust, difficult, democratic conversations but with boundaries.

Q231 Mr Holden: I understand. You are ambivalent in a way about whether the legislation is the best way to go.

Sunder Katwala: I think there are risks about having a set of mechanisms that tie up a lot of people’s time. What is the gain of that? I am not giving a strong view.

Q232 Mr Holden: Do you accept that there are risks from the other side at the moment of not pushing on with what we are doing?

Sunder Katwala: Yes.

Q233 Mr Holden: Finally, one of the things that Mr Jones and I tend to agree on is the concern around foreign states and foreign state actors. Although you are

not an academic yourself, do you accept that there is a danger of academics in UK academic institutions not saying things because of the enormous financial impact that some of these foreign states, particularly the People’s Republic of China, have in the UK?

Sunder Katwala: I am not an expert on that question, but I can see why you would ask it. The thing to worry about with campus culture is that, having made the very positive decision to welcome Hong Kongers to the UK, many of whom will be students, and having a very large number of Chinese students in the UK, which is a positive thing I am sure for universities, there will be more of a challenge to be proactive on the culture of student debate and so on, so that we do not have tensions on campus between those groups.

Q234 Mr Holden: Perhaps that is a reason, given the extra pressure facing the universities at the moment, to allow the legislation to come forward and for a Government body to help them in that very difficult potential situation.

Sunder Katwala: I think that is about the culture of campus, the safety on campus, as well as the principles. It is the chilling effects. There will be more of an issue there about the potential Hong Kong-China political views that different people have for different reasons.

The Chair: I am sorry, but we have now reached the end of the time allocated for this session. Thank you very much, Mr Katwala, for your evidence and for the help you have given the Committee. We now move on to the next panel, please.

Examination of Witness

Nicola Dandridge gave evidence.

4.45 pm

Q235 The Chair: We now welcome Nicola Dandridge, who is the chief executive of the Office for Students. Will you tell us a bit about what that is? What is the Office for Students?

Nicola Dandridge: We are the independent regulator for higher education in England. We have been up and running since 2018.

Q236 Matt Western: Thank you for joining us today, Ms Dandridge. Just looking through the legislation, I have a few points to make. It does not seem to be particularly clear about the future relationship between the Office for Students and the Office of the Independent Adjudicator. Is that clear to you from the Bill? Perhaps you will explain how it could work.

Nicola Dandridge: We work collaboratively with a whole range of organisations, including the OIA and other regulators. The way to make that work is to have discussions with them, to make sure that there is clarity about responsibilities and who does what, and that that is clear between ourselves and to universities, colleges and students. I am a stakeholder, so I anticipate that exactly the same will happen here. The new director for freedom of speech and academic freedom will speak with the OIA to resolve who does what and how we can make sure that that is as clear as possible to staff, students and everyone who is interested in this area of activity.

Q237 Matt Western: Can you imagine situations in which one body might go to the OIA and another to the OfS, and how that might be reconciled?

Nicola Dandridge: That is exactly the sort of thing that we need to make clear. I do not see that that is an insuperable problem. We just need to make sure that we have sorted it out and that there is clarity for everyone involved.

Q238 Matt Western: You mentioned the director for freedom of speech and academic freedom and the appointment process. I guess I have certain concerns about how the chair of the OfS was appointed. How do you imagine—it is not clear from the Bill—the director for freedom of speech and academic freedom will be appointed? Should how that will come about be included in the Bill? As we have heard in previous sessions, there are concerns—across the House, depending on which Government are in place—so who should be involved in that appointment? I assume that you would want to be involved, for example. Maybe you should have the ultimate say. Do you have any thoughts about that, and should it be included in the Bill?

Nicola Dandridge: I anticipate that the process will follow the usual public appointments process and be conducted by the DFE. That is probably a question you need to put to the DFE. It is unlikely to be a decision taken in-house by the Office for Students.

Q239 Matt Western: Do you have any thoughts on the skills that that person might need?

Nicola Dandridge: They will need to believe in the importance of freedom of speech and academic freedom, as the OfS and all of us do. That goes without saying. In this debate, I have been interested to hear that they should be a lawyer. Undoubtedly, I think a legal background would be helpful, but I really do not think that being a lawyer is essential. It is not as if we are going to lock the director up in a room somewhere with no access to any of our existing resource. We have a very talented legal team already, who will provide considerable advice and support to the director. So I do not think that being a lawyer is essential, but I do think that having a legal background might help, but absolutely not determinative of who is appointed.

Q240 Matt Western: Have you had any conversations with the current chair or the DFE about what the scale of the department—it will not be just one individual; it will be the director of freedom of speech plus X people working within the department—will be, what the cost will be and how that will be funded? Would the OfS need an additional budget?

Secondly, do you have concerns about what will happen for universities and student unions? One of the points that came out from the BEIS report, which you may have seen, is what significant costs there will be for universities and student unions, which clearly, after the past 18 months, are really struggling financially anyway.

Nicola Dandridge: It is very difficult at this stage to predict what the pressures on the Office for Students will be as a consequence of the proposals, but certainly the complaints system is likely to generate quite a lot of work. It is really important that we have the capacity to deal with that properly without compromising our

important work on quality and standards, and access and participation. This is an area that we will be keen to discuss with Government to ensure that we are properly resourced to do this work well in all its complexity, without compromising our other work.

Q241 Michelle Donelan: Thank you for attending, Ms Dandridge. When considering the impact that the new director could have, we can look at the impact that the director for fair access and participation has had. Could you outline the positive impact that you think having somebody solely responsible for that area has had?

Nicola Dandridge: In my view, and I think the view of many others, the role of the director for fair access and participation has been really significant in setting expectations, driving through the importance of what is also a very complex agenda, engaging in discussions with universities, students and student unions, and speaking publicly about the importance of access and participation. I think the impact that the director has had has been really significant, and it is a good analogy for the impact that we hope the director for freedom of speech and academic freedom will have similarly.

Q242 Michelle Donelan: What routes could students, staff and visiting speakers currently take if they wished to raise with the OfS a concern about a provider with regard to free speech?

Nicola Dandridge: We have to approach free speech in a rather oblique way, because of the way our powers are structured and set up. We have a number of public interest principles, of which one is a duty to protect academic freedom. The other is to secure free speech. What we say is that, under one of our registration conditions, all universities and colleges have to have governing documents that uphold those public interest principles, and they have to have governance and management arrangements to adequately implement those public interest principles.

The way into this is not exactly straightforward. We have a number of ongoing cases where we are looking at issues of free speech, but because of the ways our powers are framed, we are primarily looking at whether universities and colleges have the systems in place to address issues of free speech themselves, rather than our adjudicating on them. That is rather a complex explanation, because of the way our powers are structured. They are slightly, as I say, oblique, whereas what the Bill proposes is entirely different. It foregrounds the importance of free speech and, for all the reasons of which you will be aware, gives us significant additional powers in that respect.

Q243 Michelle Donelan: So as the body dedicated to students, in essence, would you say that you are constrained at the moment in assisting students with issues of free speech?

Nicola Dandridge: The way our powers are structured means that we approach it by looking at the systems that the university has in place. That is a very limited way of engaging with issues of free speech, so yes, it is constrained.

Q244 Emma Hardy: Welcome—it is great to see you here. Coming back to the point that you made about the regulatory overlap between the OfS and the OIA, you

[Emma Hardy]

said that we would need to have some sort of clarity and talk about that. Would you say that that clarity should be in the Bill—that it should explain who does what—or are you thinking more about guidance produced by the Department for Education? How can that work out so that everybody knows where to go and whom to go to?

Nicola Dandridge: I was thinking that it would be the latter. It is one of the first responsibilities that the director for free speech and academic freedom will have to undertake. Although it would be their choice, not mine, I would anticipate that they would want to produce guidance in order to provide clarity in some of these very complex areas, one of which is who does what and how it is done. I was anticipating that it would be guidance and not on the face of the Bill.

Q245 Emma Hardy: I know that the Office for Students has received two letters recently from the Secretary of State, directing you to reduce the regulatory burden on higher education providers. How does the Bill align with the Secretary of State's stated aim to reduce the regulatory burden?

Nicola Dandridge: Well, it is challenging. We take reducing the regulatory burden very seriously. It is one of our own priorities, as well as a priority for the Secretary of State, but it is like all these things. Regulatory burden is not necessarily a bad thing, but it is if it is disproportionate. It depends on what the regulator does, and there is a very serious issue here about academic freedom, for the reasons that you have been hearing this week and last. The way through this is to ensure that our response is proportionate and risk-based, and that will be one of our priorities as we go into this. Clearly it is challenging, because this is a very significant number of additional responsibilities—serious and complex responsibilities—so it needs to be done properly. That is what we will do, and we will look forward to doing it in that way.

Q246 Felicity Buchan (Kensington) (Con): May I ask a simple question? Do you welcome the Bill?

Nicola Dandridge: Yes. We think that there is a serious and significant issue in relation to academic freedom and free speech in higher education, and the proposals in the Bill seek to address that and create mechanisms for tackling such issues.

Q247 Lloyd Russell-Moyle: The Bill would allow a complainant to bypass the Office for Students and go straight to the courts. Is that something you welcome—that there is an ability to run rings around each process—or should they be interrelated?

Nicola Dandridge: The Bill does acknowledge that the different mechanisms might need to be interrelated, so that a student or an academic member of staff can take recourse through only one mechanism before they engage with another. That is in the Bill. I do not think it is a question of running rings around the Office for Students. It will be a question of making clear what the advantages and disadvantages are for each route, so that the student, member of staff or any third party affected can pursue the most appropriate recourse for them.

Q248 Lloyd Russell-Moyle: Currently, there is no requirement in the Bill to go through any internal or external process before you go to the courts.

Nicola Dandridge: But the Bill allows for that.

Q249 Lloyd Russell-Moyle: Is that something that you think should be more explicit in the Bill—to require someone to have sought other dispute mechanisms first, like you do with other requirements, such as before you go to court for a judicial review?

Nicola Dandridge: The Bill does acknowledge that that may be something that needs to happen. I do not know whether it needs to be on the face of the Bill, but the Bill does acknowledge that that sort of thing needs to happen, and I think it is quite important. The main thing is about making sure that there are clear and proportionate paths for claimants to follow. Of course, the advantage of the complaints system—for example, with the Office for Students—is that it would be free to the claimant, whereas going to the courts can be very expensive. Things such as that need to be made clear, so that people can make the appropriate choice.

Q250 Lloyd Russell-Moyle: Do you think it is right that the outcome and annual report made by the Office for Students would be privileged and, therefore, not open for judicial review or oversight?

Nicola Dandridge: We would normally publish our reports. It depends on the circumstances, but I cannot imagine why we would not want to publish a report of this sort.

Q251 Lloyd Russell-Moyle: But my understanding is that the report being privileged means that a complainant who might feel that it has not fairly reflected their views would not have recourse to judicial review. Do you think it right that a public body has that unusual level of privilege?

Nicola Dandridge: My understanding is that the Bill protects against defamation—that is very common with other regulators, too—but that does not mean that the decisions of the director for free speech and academic freedom cannot be judicially challenged. All our regulatory decisions—or most, as far as I am aware—can be judicially challenged, and I do not see that the decision of the director would be any different.

Lloyd Russell-Moyle: That is very helpful—thank you very much.

Q252 Sir John Hayes: The witness immediately before you suggested that lawful speech on campus might be mitigated, restrained or even prohibited, and said that that job would perhaps fall to the Government or vice-chancellors. What is your view on that?

Nicola Dandridge: These sorts of decisions about what is lawful and what is not are both hugely complex and very facts-specific, so I think it would be very hard for the Government to anticipate those sorts of decisions. I think it is appropriate for that to fall to someone like the director and the Office for Students, who could take all the facts into account to make the appropriate decision.

Q253 Sir John Hayes: Presumably, with lawful free speech on campus assumed to be a given, it is important that its defence is not in the hands of particular vice-chancellors or university management but carried out by an independent third party on the grounds of consistency.

Nicola Dandridge: I think the whole point behind setting up a director is that those will be independent decisions, whether for the university or for anyone else. That is fundamental to the way the role is cast, and I think it is fundamentally important.

Q254 Fiona Bruce: One students union has submitted to us:

“This bill addresses a non-problem”

—certainly at their student union and university. Do you agree?

Nicola Dandridge: The evidence suggests that there is an issue.

Q255 Fiona Bruce: Thank you. Would you also reflect on another statement made in that submission?

“Speakers”

—presumably at events—

“should be of the highest quality and have expertise in their field. Therefore, if speakers are known to have contradictory, erroneous or conspiratorial ideas on subjects for which they are speaking”,

our student union

“is obliged to discourage the spread of disinformation on its premises and within its societies.”

What are your reflections on that statement?

Nicola Dandridge: I do not know the context in which it was made—in all these things, context is rather important—but it does seem to fly in the face of the principles of free speech and academic freedom.

Q256 Fiona Bruce: The context is a response to the Bill, under the heading “Thought leaders”.

Nicola Dandridge: It is worth adding that we at the Office for Students work very closely, collaboratively and constructively with the NUS and student unions across the country. I have yet to have a discussion with a student union that does not think that free speech and academic freedom are really important.

The Chair: There are no further questions, so I thank our witness very much for her contribution.

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

5.4 pm

Adjourned till this day at half-past Five o'clock.

