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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Fifth Sitting

Wednesday 15 September 2021

(Morning)

CONTENTS

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Sunday 19 September 2021

The Committee consisted of the following Members:

Chairs: † Sir Christopher Chope, Judith Cummins

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

Kevin Maddison, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Wednesday 15 September 2021

(Morning)

[Sir Christopher Chope *in the Chair*]

Higher Education (Freedom of Speech) Bill

9.25 am

The Chair: We will now start dealing with amendments. These proceedings are being broadcast, and I think that the best way forward is for people to learn from their mistakes during proceedings, if they make any, rather than for me to remind them of the procedure at the beginning.

Clause 1

Duties of registered higher education providers

Matt Western (Warwick and Leamington) (Lab): I beg to move amendment 50, in clause 1, page 1, line 8, leave out from beginning to "must" and insert:

"Every individual and body of persons concerned in the government or management of a registered higher education provider".

This amendment expands the duty on a governing body of a registered higher education provider to take steps that are reasonably practicable to secure freedom of speech within the law to include any individual or body of persons concerned in the government or management of a registered higher education provider.

I thank you, Sir Christopher, and your co-Chair, Mrs Cummins, for your chairmanship up to this point. I also thank the Clerks for all their work keeping us in order and for putting everything together.

I have not checked the numbers this morning, but it is interesting that some 84 amendments and counting have been tabled. That underlines the fact that many of us, especially Opposition Members, have profound reservations not only about whether the Bill is needed but about its extent and its detail. If it was a dog's breakfast before, it looks like a bit of a canine meal plan this morning.

Amendment 50 covers a small but important detail. We are here to be constructive and to try to make the best of the Bill, and this is the first example of that. We are seeking to broaden the meaning of the "governance" of an institution. We do not want it to be too narrow, or to simply mean the senate or board of trustees. Recognising the complex nature of modern higher education institutions, we want the term to reflect the wide array of professionals involved in university administration who should be subject to the legal requirement to uphold freedom of speech and academic freedom

It is important that we recognise the diversification of the management of the HE sector. It seems that the Bill's wording is a carbon copy of the section 43 duty under the Education (No. 2) Act 1986. We have repeatedly heard from the hon. Member for Congleton about the need to develop the 1986 Act to reflect today's reality, and that is what the amendment seeks to do.

All we are asking is that the legal duty be expanded to include anyone involved in the government or management of a higher education provider, rather than solely the governing body, as is the case in the Bill as drafted. The definition is far too narrow. It is the wording of yesteryear and does not reflect the complex nature and structure of the governance of the universities and higher education institutions of today. Indeed, Professor Stock said in her evidence that, thanks to the consumer dynamic, universities are presenting their best public relations face to prospective students, and that involves a plethora of people behind the scenes, including human resources professionals. Tom Simpson, likewise, in his evidence, stated:

"At the moment, the crucial question is the position of those involved in university leadership and administration."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 71, Q148.]

We wish to be constructive today and in the coming days, and will do our best to try to refine the Bill to make it workable. We do not believe clause 1 is absolutely necessary, but we will do our best to refine it and make it practical. That is what amendment 50 seeks to do.

The Minister for Universities (Michelle Donelan): I, too, thank the Clerks for their work in facilitating this Committee.

Amendment 50 would reinstate the wording currently in section 43(1) of the Education (No. 2) Act 1986, where the freedom of speech duty applies to individuals and bodies involved in a higher education provider's governance or management. The approach in the Bill, which is to impose the duty on the provider's governing body, is taken for a number of reasons. A key plank of the Bill is introducing new enforcement measures, including a new Office for Students complaints scheme and a statutory tort. In the light of the potential for tortious liability, it would not be appropriate for the duties to apply to any individual in that management. It should be the provider that is held responsible by the OfS or the courts. Of course, the provider will generally be liable for the acts of its staff in any event, so the change in emphasis will not necessarily make any difference on the ground. The provider will require its staff to act in accordance with the duty, as it will be held liable for their conduct. This approach mirrors other statutory duties imposed on the governing bodies of higher education providers, for example under the Equality Act 2010. It therefore makes sense for the same body to be responsible for all relevant duties under consideration.

I hope that reassures the Committee that the amendment is not needed. The Bill ensures that responsibility for the freedom of speech duties will lie with higher education providers, and and that where they are found to be in breach of those duties, they can be held to account.

Matt Western: I hear what the Minister says, but the amendment is not aimed at every individual in a higher education institution. It is specifically about every individual and body of persons concerned in the government or management of a registered higher education provider. The crucial point is that it absolutely is about those involved in the governance and wider management of the institution, not every individual within that university or higher education institution. I stand by the amendment and wish to push it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 1]

AYES

Glindon, Mary	Nichols, Charlotte
Hardy, Emma	
McDonnell, rh John	Western, Matt

NOES

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

Question accordingly negatived.

Matt Western: I beg to move amendment 51, in clause 1, page 1, line 9, leave out "importance" and insert "primacy".

The Chair: With this, it will be convenient to discuss amendment 43, in clause 1, page 1, line 10, after "speech" insert "and academic freedom".

This amendment would require the governing body of a higher education provider to also have particular regard to the importance of academic freedom.

Matt Western: As I said in my opening remarks, I believe that numerous small-detail changes to clause 1 that might make some difference can certainly be made, albeit that we believe that much, if not all, of this has already been written and is already in legislation. Nevertheless, changes can be made that could bring about a certain pragmatism and greater effectiveness to what is being proposed by the Government.

These two amendments involve just a couple of words. Amendment 51 relates to a perhaps slightly nuanced, but none the less important, interpretation. On the first Bill that I examined, I was in the company of the right hon. Member for South Holland and The Deepings, who was leading for the Government on their Bill on electric and autonomous vehicles. Listening to him and to others, I realised just how important language can be. The nuance of language is certainly important in both amendments.

Amendment 43 is quite specific and extremely important. I use the word "important", and I am just about to examine the word "importance". It is vital that we understand the significance of the amendment. The amendments address the relative importance of freedom of speech and academic freedom. We heard in the witness sessions that some people speak of a "chilling effect", and it is interesting how language gets adopted and then becomes an assumed state. I think there is some appreciation that there are concerns out there and that things can and need to improve, but through the amendments I want to consider the weight we place on these two distinguishable concepts in the Bill, which arguably will affect how effective the Bill is at reducing the issues described by various witnesses.

Amendment 51 stresses the "primacy" of freedom of speech. Clause 1 inserts in the Higher Education and Research Act 2017 new part A1, which stresses that to secure freedom of speech within the law:

"The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable".

"Importance" is such an important word. Often, it is overly important and very subjective. What does it actually bring? As we heard during the evidence sessions, the importance that one person places on freedom of speech can vary, whether it be unparalleled—I am thinking of the evidence we heard from Professor Goodwin, and his desire to invite fascist groups such as the National Front to speak on campus, infringing upon the wellbeing of minority students—or limited. On the latter, I am thinking of the evidence from the vice-president of the National Union of Students, Hillary Gyebi-Ababi, and her explanation of the NUS no-platform policy for six proscribed bodies.

That is vague and subjective. We all think we know what is meant by importance or important, but how often have we read that something is important, when in fact we viewed it as not being so? That is why the concept of mere importance may be deemed to be too low a threshold. I propose to address that by elevating the threshold to one that is more objective and more concrete by using the word "primacy".

In the oral evidence sessions, Professor Nigel Biggar, the Government's own witness, addressed the concerns that freedom of speech would take primacy over academic freedom when the duty is balanced in practice. That is what I am seeking to address with my amendment. When asked by my hon. Friend the Member for Kingston upon Hull West and Hessle whether he would recommend that the Bill as written should deal with that imbalance, he replied: "Yes, I would." That is pretty categoric. Primacy is absolute; that is the important thing. "Importance" is a value term, and that is why we will be pressing for "primacy" to be in the Bill.

Let me turn to amendment 43. Academic freedom and freedom of speech are of course interdependent, but they are also independent concepts. To avoid an imbalance of one in favour of the other, the values of both should be elevated to prime status, recognising the importance of both concepts simultaneously working with each other. That would address the policy objectives outlined by the Government in their Department for Education impact assessment: first, to

"embed principles that enable students, staff and visiting speakers to feel actively encouraged to express, debate and expand their views on campus"

and, secondly, to ensure that

"staff are able to exercise freedom to question and test received wisdom".

I believe that the two amendments are equally important, establishing primacy versus importance, but also stressing the vital nature of freedom of speech and addressing through this the policy objectives as outlined by the Government's own Department for Education.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): I thank all the Clerks for the work they have done on the amendments. I

Academic freedom came up from our witnesses time and again. I joked about it, but it is a truth that I managed to unite differing academics with wildly different opinions on many different issues on a single point: they all agreed that academic freedom was important and therefore should be on the face of the Bill. I will not keep the Committee long, but I am going to quote three of them.

[Emma Hardy]

Professor Stock "took it as implicit" that academic freedom was included within freedom of speech, but agreed that it was

"a bit confusing that 'freedom of speech' is the phrase."

She went on to say that

"in terms of drafting, that could be clarified."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 12, Q20.]

When I asked whether we should have academic freedom in the Bill, she was supportive of the idea. Dr Ahmed agreed that if academic freedom was to be genuinely protected, it needed to be more explicit in the Bill. That was another of the Government's witnesses.

Professor Biggar, another of the Government's witnesses, said that

"academic freedom needs to have equal standing, because free speech and academic freedom are not the same things."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 29, Q54.]

He recommended that the imbalance in the Bill as written—that is, mentioning only freedom of speech—be addressed. He agreed with Taylor Vinters, whose submission has been referred to, that it was

"arguable that freedom of speech would take primacy over academic freedom when the duty is balanced in practice".

I hope that the Government will listen to their own witnesses who gave evidence on the importance of having both freedom of speech and academic freedom.

9.45 am

John McDonnell (Hayes and Harlington) (Lab): I rise to make a general point and a specific point. The general point is that you, Sir Christopher, have been around for longer than me and you know how these Committees work: we can either work together to improve the legislation or we can all turn up and allow individuals to speak while the rest do their correspondence. I hope that this Committee will be one that works together to improve the legislation.

I do not support the legislation in principle. It is unnecessary, over the top and a hammer to crack a nut, but the Government have a right to introduce their legislation. They have a big majority and therefore the legislation will go through in some form. The responsibility therefore falls upon us all to try to ensure that it does so in a form that is implementable and does not cause problems in the future. We have to take that attitude on the Bill, and work together to improve it. This first stage is part of that test.

We listened to a large number of witnesses, chosen cross-party by both sides. The Government brought their witnesses forward and the Opposition were able to insert some of the views of others as well. It was interesting, and at times entertaining, and it threw a fair amount of light on the overall process that the Bill would eventually implement as a result of the Government's wishes to legislate in this field. One of the issues that came up, which my hon. Friends referred to, is the need to broaden the definition. What I heard from the witnesses was almost a consensus on that. Whatever political position they were coming from, they expressed the need to strengthen this aspect of the Bill.

We may well come back to that on Report, depending on the Speaker's selection of amendments, but we could deal with it at this stage, and we might be able to build consensus on the Committee about designing a Bill that will deliver on the intention that we all have, I think, to ensure freedom of speech and guarantee academic freedom. That came from all the witnesses and all the contributions in our sessions so far, interrogating those witnesses. I hope that there will be a constructive response to a number of the amendments, rather than the traditional response that whatever the Opposition table has to be opposed, while everyone else sits on their hands and busies themselves with other matters.

Michelle Donelan: The amendments relate to the new aspect of the free speech duty that will require higher education providers to pay particular regard to the importance of lawful freedom of speech when considering what "reasonably practicable" steps they can take to secure it.

Amendment 43 would add a reference to academic freedom. The Bill refers to that in a provision on freedom of speech, which is a broad concept protected under article 10 of the European convention on human rights. Academic freedom is considered to be a subset of freedom of speech—a distinct element with particular considerations within the broader concept. As a result, there is no need for this provision to specify academic freedom separately, as it is already covered.

John McDonnell: What harm would it do to insert it into the legislation, on the basis of the witnesses that we heard?

Michelle Donelan: I thank the right hon. Member for his question. There is no point in duplicating in the Bill, because academic freedom is a subset of freedom of speech. That is clearly accepted.

Emma Hardy: Will the Minister give way?

Michelle Donelan: I will continue a little bit. Amendment 51 proposes primacy instead of importance. The Government are clear that freedom of speech is a fundamental right. Indeed, the new requirement to have "particular regard" is intended to shift the dial in the balancing act that providers have to undertake in order to give more weight in favour of freedom of speech than currently. However, this does not mean that freedom of speech must always outweigh other considerations; rather, it indicates that it is a very important factor. This is the right approach. The Bill does not place on providers a requirement to prioritise freedom of speech over other rights, such as freedom of religion. The requirement to have particular regard to the importance of freedom of speech may, in a particular case, prompt a provider to prioritise freedom of speech over another right, but this would always be subject to the provider's assessment of what is reasonably practical, and would need to be lawful. The Bill does not create an obligation on the provider to reach a particular outcome. It is vital to remember that, in context, the right to freedom of speech is not, and should never be, absolute.

Emma Hardy: I apologise for returning to the previous point, but is the Minister aware how remarkable it is to have a group of different academics agreeing on one issue? It is truly remarkable; we achieved the almost

impossible by getting them united on the issue of academic freedom. Therefore, it does seem rather preposterous that we have a Bill claiming to be about freedom of speech that does not include the two words "academic freedom". I wonder, with the greatest of respect, what the point was of having all those witnesses give evidence if everything they said is disregarded, and the Government intend to stick with what they already published before those sessions.

Michelle Donelan: I refute the point that everything in the evidence was disregarded. The Government reserve the right to stick by their opinion, which is that this Bill will protect academic freedom and freedom of speech. Academic freedom is a subset of freedom of speech.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Will the Minister give way?

Michelle Donelan: If I could continue, the Government recognise that a provider will be best placed to consider, on a case-by-case basis, how to fulfil its duties under the Bill while also meeting its other duties, including those under the Equality Act 2010 and the Prevent duty. The provision in the Bill requires reasonably practical steps alongside the particular regard duty, which allows for the balancing exercise to be properly done.

Once the Bill has completed its passage through both Houses, I expect that the new director for freedom of speech and academic freedom will issue comprehensive guidance to the sector on the expectations of the Office for Students. I am confident that providers will be well equipped to strike an appropriate balance when exercising their various duties. I trust that the Committee members are reassured that this amendment is not necessary.

John McDonnell: Actually, I think there might be a bit of movement here. Can the Minister assure us that the Government will indicate to the director for freedom of speech and academic freedom that there should be a specific reference in the guidance to academic freedom?

Michelle Donelan: The director and the OfS will be publishing their own guidance, and it would not be appropriate for me to pre-empt that. I would, however, expect there to be a reference to academic freedom within that guidance. I hope the Committee is reassured that the Bill strikes the right balance.

Matt Western: I thank my colleagues for their contributions, which flesh out these points. As my right hon. Friend the Member for Hayes and Harlington said, we have approached this Committee in a spirit of co-operation and constructive thought, to try and improve the Bill. As my hon. Friend the Member for Kingston upon Hull West and Hessle said, there was a surprising, perhaps staggering, consensus from the witnesses about the need to clarify the importance of academic freedom, from whichever side we sit on. The Minister may be right that academic freedom technically falls within freedom of speech, but this is a higher education Bill—legislation about higher education—so surely the emphasis must be on how freedom of speech relates to higher education. I urge us as a Committee to stress the importance of academic freedom in the Bill and give real emphasis to it.

Sir John Hayes (South Holland and The Deepings) (Con): I am sympathetic to the hon. Gentleman's view, and I entirely endorse the view articulated by the right hon. Member for Hayes and Harlington about how legislation is improved through scrutiny, and how these Committees can work at their best. When I was on the Front Bench doing the Minister's job, I always adopted that approach with shadow Ministers and others. *[Interruption.]* I shall ignore the sedentary comment, although I will give way if it was not a sedentary comment.

John McDonnell: I simply said that the right hon. Gentleman always spoke with literary skill as well.

Sir John Hayes: I am grateful to the right hon. Gentleman. Like him, I certainly never compromised on what I believe.

On the point that was made—I invite the hon. Gentleman to acknowledge this—these things, generally speaking, are dealt with in guidance, as the Minister said, for the very reason that once the Bill becomes an Act, as we hope it will, and it beds down, we will need to refine precisely how universities interpret it, and the guidance will reflect that continuing work. I therefore think we have got a win in the Minister saying that she would expect the guidance to include that, and we should take that win and move on.

Matt Western: I thank the right hon. Gentleman for that intervention. I genuinely respect him and would like to accept his point. However, I have profound concerns over the direction of the Office for Students and its leadership. He said that generally these things are put in place, but "generally" is not good enough for me, and I do not think it can be for any of us today.

Lloyd Russell-Moyle: Most pre-1984 universities have a reference in their charter to academic freedom as opposed to freedom of speech, and most post-'84 universities have it within their other governing documents. Is it not therefore important that the wording in the Bill reflects those governing documents, or at least ensures a clear dovetail, rather than leaving it ambiguous, which might cause greater problems, particularly if, as we know, the charter is used quite often in employment law and tribunals? These provisions, according to evidence that we heard, need to dovetail better into that process.

Matt Western: My hon. Friend is right. His knowledge and experience in these matters greatly exceed mine, so I thank him for bringing that to the table.

The Minister said that she would expect the guidance to include academic freedom. Again, I cannot accept that "generally" or "expect" is good enough when it is so fundamental, vital and central to the work and role of our higher education institutions and academics. As my hon. Friend said in his intervention, the words "academic freedom" are written into the governance of universities and higher education institutions.

We are here to be constructive. I cannot stress that point enough. We accept that there is a huge majority on the Government side. They can do as they wish, but we are here for the coming four days to be constructive and to try to make the best of what we think is very poor legislation. I wish to press the matter to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 2]

AYES

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

NOES

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

Question accordingly negatived.

10 am

Amendment proposed: 43, in clause 1, page 1, line 10, after "speech" insert "and academic freedom".—*(Matt Western.)*

This amendment would require the governing body of a higher education provider to also have particular regard to the importance of academic freedom.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 3]

AYES

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

NOES

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

Question accordingly negatived.

Matt Western: I beg to move amendment 52, in clause 1, page 1, line 18, after "premises" insert "or online platforms".

This amendment expands the objective of securing freedom of speech within the law for staff, members, students and visiting speakers to include securing the use of online platforms.

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

Amendment 31, in clause 1, page 1, line 18, after the second "of" insert "or occupied by".

This amendment expands the duty on higher education providers to not deny the use of any premises, including premises occupied by the provider, to the staff of the provider, the members of the provider, the students of the provider and visiting speakers.

Amendment 53, in clause 1, page 2, line 6, at end insert—

"(c) The financial cost of providing physical security for any individual or body, except where such a cost would be greatly disproportionate.

(4A) In circumstances where subsection (c) applies, the provider must ensure that an online platform can be used as an alternative."

This amendment would ensure that the use of premises and the terms on which those premises are used are not limited by financial security costs, save where the costs would be disproportionate. In the event the costs are disproportionate, an alternative online platform has to be found by the provider.

Matt Western: I may be bloodied, but I am unbowed. We press on.

I wish to speak in favour of all the amendments in the group. They seek to expand the free speech duty to online platforms, if that is where a speaker is being posted. This is pretty common-sense stuff, given that the past 18 or 19 months of the covid-19 pandemic have fundamentally changed the nature of teaching and hosting events. All of us in the Committee appreciate that online events have become almost a de facto norm when face-to-face meetings for teaching or other events have not been possible over this past year and a half.

That is the same for higher education settings. As we approach the new academic year, increased numbers of student are arriving on campus, following all the changes made to A-level examinations, placing greater pressures on our universities and higher education institutions to meet higher capacity needs, with real pressures arising where they are unable to, and also to support venues where there is insufficient ventilation. Online is therefore an important part of what happens in higher education, whether we like it or not. Some see it as a progressive change, while others might see it as unwanted, but on balance most would accept that it has enhanced the possibilities of higher education provision.

Amendment 52 reflects the fact that many meetings and events will continue to be held online and would ensure that the same law applying to those held in person on university premises would rightly apply to those held online. Clearly, we cannot and should not create a two-tier system where in-person meetings are required to uphold free speech—and yet people have to jump through hoops to facilitate that—while online meetings go unregulated. Professor Stock believes that

"the traditional problem of academic freedom has expanded. Several relevant factors are now in play that were not before, including the internet, which is the most obvious one, social media, academics being encouraged to engage online"—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 5, Q1.]

I did not necessarily agree with a great deal of what Bryn Harris of the Free Speech Union had to say, but I entirely accept his point that

"There needs to be a joined-up approach between the various instances of reform. The danger is that we end up with an anomaly. For example, Twitter's house rules under the online safety Bill will have to be consistent with Ofcom codes of practice. There is a danger that something might be perfectly allowable under Twitter's house rules, but unlawful in some other way."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 82, Q174.]

In fact, the whole Online Safety Bill is a very important part of what we have been discussing in this Bill: it is fundamental to some of the issues faced by academics, students and wider society when it comes to what free speech is.

The DFE's own impact assessment stated that one of the policy objectives was

"to embed principles that enable students, staff and visiting speakers to feel actively encouraged to express, debate and expand their views on campus and online, within the law".

In turn, the Regulatory Policy Committee's review of the impact assessment commented—quite rightly, as this is so important—that

"The IA should discuss how the proposal interacts with other government policies and proposals such as those relating to online harms."

To address and relate to online harms, beyond the premises where we can have issues—I mentioned Dr Bryn Harris—surely the duty should be extended to the online sphere as well. It seems anomalous for the Government not to wish to incentivise holding online instead of in-person meetings and for them not to accept the amendment. I very much hope that they will see that the amendment introduces a constructive, small detail that aims to improve the legislation in a way highlighted by the impact assessment of the DfE itself. The idea that the online sphere should be included has come from within the Government.

Amendment 53 seeks to build on amendment 52. It would ensure that when the financial costs of hosting speakers were unreasonable and disproportionate, a suitable online platform would have to be provided as an alternative. We have seen over the past year and a half how easily that can be done. Costs are much lower and more people can access the events. It gets around the significant costs of hosting an event.

The truth is that the cancellation of events on campuses has been incredibly rare. Since I assumed this role six months ago, I have been talking to universities and student unions. They have raised certain concerns with me, particularly about when the costs of accommodating a person on campus become prohibitive. Typically, that relates to the security costs of posting that—the security of individuals involved as well as the wider safety of those on campus. There was the case, to which frequent reference has been made, of the former Israeli ambassador, Mark Regev, who was prevented, I believe, from speaking at one university. I think we were talking about a five-figure number for costs. Security costs, whether they are established by the embassy or whether the police deem that a certain level of security is needed for the safety of the speaker and attendees, can be considerable, and I want to come on to that. For student societies, these are significant sums of money—as I said, they can be five-figure sums. When we think of higher education institutions it is all too easy to think of the larger providers where these events are perhaps more typical, but the legislation covers all higher education institutions, many of which have just a few hundred students.

Universities UK produced a report in 2011 entitled "Freedom of speech on campus", in which it recommended that universities should have someone who was responsible for campus security and who would ensure that those making decisions based on campus security, academic freedom and freedom of speech were all aware of existing legislative duties. It is out there—there should be someone doing that, and they would be there to establish the impact, risk or threat of such an event.

Dr Bryn Harris, in his evidence, said:

"Ideally, what we would see here is an elaboration of what 'reasonably practicable steps' means. You could say it shall include a duty to cover such security costs as are necessary to enable an event to take place safely."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 79, Q166.]

While that comment is in relation to proposed new part A1, there is clearly support among Government witnesses for not allowing security costs to impinge on the duty to secure freedom of speech.

Perhaps the inclusion of an upper bar of disproportionate costs is required, because it is not right that costs should never limit the restriction of an event. I believe that that should be determined by each institution—each higher education provider. It should be within their gift to decide what is reasonable with regard to affording security and safety, which is of paramount importance to them as an establishment. Relevant in that regard is the case cited by Bryn Harris of R *v.* The University of Southampton, in which an administrative court struck out a judicial review claim of the university's decision to pull an event, given the risks of holding it. Costs were deemed to justify interference with the claimant's rights. Our amendment would ensure that if in-person events cannot go ahead due to sizeable costs, an online event must be facilitated instead, thereby ensuring that freedom of speech can be exercised. It would also ensure that public safety is paramount.

Amendment 31 addresses the issue of what constitutes premises. We clearly wish to extend the provision to the online forum, but there are still questions to be asked about how that would apply to the myriad premises that universities can occupy under various contractual arrangements. Universities are not uniform places. Trusts may have premises on site, or have other premises that may be used by universities. Private companies may also have facilities and premises that can be used by the university. Going back to the point that we are here in the spirit of trying to improve the legislation, making the change about premises "occupied by" rather than necessarily being owned by a university is an important tweak to the legislation, to ensure that all those sorts of premises are included in the remit of the Bill. It would address the subcontracting and private bodies that are used to facilitate student services, such as the absolute explosion in the private provision of student halls of residence that we are seeing across the country.

10.15 am

If this amendment is not adopted, there is a real risk that free speech requirements would not apply to those spaces. It is as simple as that. We must ensure that this Bill is as good as it can be. We do not believe it is necessary, but if it is to go through it has to be as good as it possibly can be, and it is essential to include these sorts of details. This is a sensible proposal, and it is needed in practice.

Emma Hardy: I shall be extremely brief, Sir Christopher. Yesterday, in a meeting with the Jewish Leadership Council, I was reminiscing about my time as shadow Universities Minister, when I met the Union of Jewish Students. One of the points that it wanted to reinforce was the difficulty it had holding events because of the extortionate costs that can result from security, given some of the speakers it wished to invite on to campus. I therefore hope that the Minister takes this amendment seriously, because it seems to be a very simple way of allowing people to invite speakers who could be deemed controversial and require extortionate security costs, and to continue their events in the online sphere.

[Emma Hardy]

Sir John Hayes: I very much welcome the tone that the hon. Member for Warwick and Leamington has adopted this morning, following the advice of his senior colleague—he is senior in so many ways—the right hon. Member for Hayes and Harlington. In particular, the hon. Gentleman made a profoundly important point about the online transmission of information, because of course that is pertinent given the events of the past couple of years. Many universities have taught exclusively online. Seminars and lectures have been provided by that means by necessity. Others have adopted a more flexible approach, and so on.

Nevertheless, mindful of that, I think the hon. Gentleman makes a good point. This is an improvement to the Bill. I had not given it as much consideration as I might have done until I read his amendment and heard him articulate it, but it seems self-evidently an improvement to the spirit and tone of what the Government are hoping to achieve. Far be it for me to teach the Minister to do her job—if I start doing that, I will get chastised by both her and my Whip, no doubt—but this is a very good example of where a Bill can be improved by sensible Opposition amendments. I hope we will have a lot more sensible amendments from them, and no wrecking or destructive ones.

Matt Western: I very much welcome the right hon. Gentleman's tone, too, and I thank him for it. This is absolutely about trying to do the best. I described the Bill as a bit of a dog's breakfast. I do not know whether, in his experience, he has had a 17-page Bill to which so many amendments have been tabled, but this is certainly the first time I have come across quite so many per page. I would also welcome the right hon. Gentleman's comments on amendment 31, which he is perhaps about to move on to.

Sir John Hayes: I am coming to that. The hon. Gentleman anticipates my next contribution—which will be brief, I hasten to add. I think that the point he makes with amendment 31 is also good. He is right that where universities deliver what they do is not a simple matter, not just because of the changes in technology and the way in which they operate, but in other respects as well. There are many premises, many different kinds of operators and many people involved in the university community. That has become increasingly true over time, and again I think the hon. Gentleman makes an extremely reasonable and valid point. I have been inspired by the right hon. Member for Hayes and Harlington to embrace the spirit of collaboration and helpfulness, and I hope that the Minister will do so, too.

John McDonnell: I would not want the right hon. Gentleman to go too far, because I still think that it is a rubbish Bill. I want to address the issue of occupied premises; the online point has been made well by Members across the Committee.

The issue of the occupation of premises is important in a number of areas where the university is not sited in the constituency but uses, often temporarily, premises around the area. Without the amendment, the Bill will have a potential loophole that could be exploited. My hon. Friend the Member for Warwick and Leamington made a valid point about that.

On the online issue, if we do not build it in early, we will really miss a trick. The scale of online abuse that most of us receive is enormous—perhaps I receive more than others; I do not know—and if we do not venture into that territory and secure it, we will not be seen to be actually operating in the real world as it now is. Most of the universities that I have been dealing with recently are only now going back to any form of physical participation; virtually everything up until now has been online. They have also encouraged students to maintain some form of student life as well, such that where physical meetings cannot take place, student societies go online, using Zoom, Teams and so on. The Bill could make explicit reference to that. Failing that, I would welcome the Minister's views on any alternative solution, but we need to be convinced that the issue is being addressed.

Michelle Donelan: Amendment 52 seeks to make clear that the duty of higher education providers to take reasonably practicable steps to secure freedom of speech applies in relation to the use of online platforms as well as physical premises. As drafted, section A1(3) requires that providers must take reasonably practicable steps to secure freedom of speech, including by securing that the use of premises is not denied because of the ideas, beliefs and views of an individual or body, and that the terms of the use are not based on such grounds.

Importantly, the provision uses the word "includes". In other words, the duty in section A1(1) is not limited to what happens on the physical premises. Therefore, the requirement for a provider to take reasonably practicable steps may apply to online events hosted by the provider every bit as much as to physical events held by the provider.

Of course, it is important to be clear that the lawful speech of students, staff, members and visiting speakers in online spaces is covered by the Bill. The Government believe that the Bill as drafted achieves that aim, and I absolutely expect that the new director for freedom of speech and academic freedom will set that out clearly in the guidance in due course. I hope that I have reassured the Committee. However, I also commit to the Committee to keep this under further consideration.

Mr Kevan Jones (North Durham) (Lab): I am concerned that a lot is going to be left to guidance. I want to explore the Minister's role in ensuring that the commitment that she has given today will actually get into that guidance. If the operation of the Bill is going to be reliant on the guidance, that guidance is going to be very important.

Michelle Donelan: I have committed to the Committee today to consider this further as the Bill progresses through the House.

Mr Jones: Over the past few years it has increasingly been the case that the bite is found in guidance rather than on the face of the Bill. I am trying to understand what the Minister or the Department's input will be in terms of framing that guidance, because that is going to be very important in determining whether the Bill works.

Michelle Donelan: The right hon. Gentleman can be assured that I work very closely with the Office for Students and intend to continue to do so in the formulation

of the guidance. It is important that that guidance is robust and comprehensive and that it enables both universities and student unions to know exactly how to work with the legislation. It would be impossible for the Bill to detail all of the things that the guidance needs to address.

I now want to turn to amendment 31.

John McDonnell: Will the Minister give way?

Michelle Donelan: I really do want to get to amendment 31, but I will let the right hon. Gentleman in.

John McDonnell: I am grateful to the hon. Lady. I just want to get this clear, because I might have missed this: the guidance itself will be prepared by the director. That guidance will not be subject to parliamentary approval or amendment in any form, and therefore the opportunity for Members of the House to influence that guidance does not exist. That is my worry, and that is why having things on the face of the Bill shapes the guidance in due course. The hon. Lady has said that she will give this further consideration, but could I suggest that she offers the Opposition lead, my hon. Friend the Member for Warwick and Leamington, the opportunity to meet her and go through the potential for an amendment on this topic on Report?

Michelle Donelan: I am always only too happy to meet the hon. Member for Stretford and Urmston, and to discuss this Bill in particular, so I can commit to that.

Amendment 31 seeks to expand the duty on higher education providers to secure freedom of speech by not denying the use of its premises to an individual or group because of their ideas, beliefs or views. It seeks to do so by explicitly including premises that a provider occupies. The Bill strengthens and expands the existing freedom of speech duty on providers contained in section 43 of the Education (No. 2) Act 1986. The wording of this Bill—

"any premises of the provider"—

is effectively carried over from section 43 of that Act. The Bill requires providers to take "reasonably practicable" steps to secure lawful freedom of speech for its members, staff, students and visiting speakers.

In this context, proposed new section A1(3) to the Higher Education and Research Act 2017 deals with university procedures, namely room booking systems. It requires that the use of providers' premises is not denied because of someone's ideas, beliefs or views, and that the terms of use are not based on such grounds. If the provider is responsible for such decisions in relation to the premises, this provision will apply. That is likely to be the case when the provider owns the premises or is in a long-term leasehold, for example; "the premises of the provider" will apply in both cases, noting that the Bill does not say "premises owned by the provider".

However, where a provider hires rooms on a short-term basis, it is unlikely to be within its control to decide who can access rooms owned by an external party and how those rooms are used. Accordingly, such premises would not be the premises of the provider under the Bill. Of course, as I have said, the provider must still take reasonably practicable steps to ensure that there is lawful freedom of speech, but that would not apply to booking decisions about external parties' rooms.

Lloyd Russell-Moyle: I understand exactly what the Minister is saying, and the difficulty of requiring a university to secure premises that it might not directly run. The difficulty is that more and more higher education provision is done at a distance from the main location of the university, so while the university might make reasonable adjustments to provide that speaker or activity in its central location, that has the effect of denying a voice to speakers in a location that might be hundreds of miles away, and to students and staff who may never be able to access it. Making sure that there is a reasonable duty regarding premises that are "occupied by" a university does not specify a particular room, but does give an inference that the wider premises and the area occupied must be provided for. I understand that the wording of the amendment might not be the Minister's preferred wording, but is this something she would come back to in order to ensure that there is a location-based understanding of this, as well as an ownership and long-term lease-based understanding of it, so that students who might be studying 100 or so miles away from the central premises of the university have in their locality the ability to hear and host external speakers, for example, or have lecturers who are able to have academic freedom?

The Chair: That was a very long intervention, which I allowed in order to facilitate debate, but I do not want that to be a precedent for the future.

Michelle Donelan: Thank you, Sir Christopher. While I recognise the hon. Gentleman's points, this Bill does cover accommodation that is in different locations. Multiple universities and higher education providers will have satellite campuses: this amendment is about who owns the premises, and the kind of lease it is. We cannot get into a predicament where universities are tied in bureaucracy and are being asked to be responsible for the freedom of speech of other organisations that hold leases on buildings.

10.30 am

Amendment 53 seeks to deal with cases where security costs required for an event may result in the event's not being able to go ahead. It would require the amount of cost not to be taken into account when a provider is deciding on the use of its premises or the terms of its use, unless the costs are greatly disproportionate, in which case online provision should be made available. I agree it would be concerning if events could not go ahead because of security costs and I am aware of several examples reported in the media of that happening. I too have met some groups that have been impacted.

Higher education providers should not be no-platforming by the back door. The Bill already requires providers to take "reasonably practicable" steps to secure freedom of speech, and that duty will apply when providers are making decisions around security costs for the use of such premises. Notwithstanding that, I have heard and noted the reasonable concerns raised by hon. Members about amendment 53 and I commit to the Committee to look at this. I hope that will reassure the Committee that the amendments are not necessary.

Matt Western: I thank those on both sides of the Committee who contributed to the debate. I think where we are coming from is increasingly being understood as

[Matt Western]

constructive. If we were working through this legislation in September 2019, there would be a lot of stuff that we had not imagined would be required. These amendments seek to future-proof what might happen in the future evolution of higher education. Forty years ago, they might have been these fixed, established, campus-based city centre location universities. They had not spread and assumed sites in Singapore or other towns in the UK. They were not renting spaces and they did not have the plethora of private property that there is on campuses today. It was a very different situation. We need to think about how higher education has evolved over the last year and a half and how it will continue to evolve.

As my right hon. Friend the Member for Hayes and Harlington alluded to, mischievous organisations, societies or whatever we want to call them might seek out venues located within a premise or site that they knew would not be within the letter of the law of this legislation. I agree entirely that leaving so much to guidance must be a concern for us all. We are here, as parliamentarians, to make legislation and set policy, and I do not think it is healthy for too much to be left in the remit of, say, one individual, as would be the case with a director for freedom of speech and academic freedom.

I also agree with the point raised by my right hon. Friend the Member for North Durham. I think he was referring to the point that, as was suggested by certain witnesses in our evidence sessions, this guidance will be laid down by a person who is likely to be a political appointee and therefore the way that this guidance is formulated is extremely important. That is why more detail must be included in the legislation; and if that does not happen in this place, I am sure that the House of Lords will seek to do that.

I take on board the Minister's positive comments, particularly on amendment 53. However, I would like to press amendment 52 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 4]

AYES

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

NOES

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

Question accordingly negatived.

The Chair: Does the shadow Minister wish to move amendment 31?

Matt Western: I take the Minister at her word and look forward to being able to work with her. At this point, I do not wish to move the amendment.

Sir John Hayes: I beg to move amendment 71, in clause 1, page 2, line 2, at end insert—

"(3A) Any conduct that would otherwise constitute conduct having the effect of harassment in accordance with section 26(1) of the Equality Act 2010 shall, notwithstanding any provision to the contrary in that Act, constitute freedom of speech within the law for the purposes of subsection (2), provided the conduct constitutes, or forms part of, discussion of an academic or scientific matter in a higher education setting.".

The amendment draws attention to the concern that was expressed during our evidence sessions about the possible relationship between this legislation and existing statutes, notably the Equality Act.

The point was raised by witnesses and I am particularly mindful of what Professor Biggar said when he spoke to us. He said that,

"the Bill is not proposing to amend the Equality Act. That is quite clear; however, there is tension between the requirements of the Equality Act and the duties to secure and promote free speech and academic freedom that the Bill would establish. The tension arises around the definition of harassment. It is quite right that those with protected characteristics should be protected from harassment. The problem is that harassment is often interpreted by universities—not so much by courts—in such a fashion that dissent from, disagreement with and criticism of becomes harassment."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 30, Q59.]

We heard something on that in the evidence from the National Union of Students. When I challenged the witness on whether she believed in the right to disturb or to shock and offend, she claimed she believed in free speech, but went on to defend the idea of no platform. She talked about vulnerable people. It is hard to know who these vulnerable people are. We cannot be talking about shy or reticent people—after all, the meek are so blessed they are going to inherit the Earth, so it cannot have been them—but there is a concern that the broadening of the definition of vulnerability and harassment could inhibit the intentions of the legislation.

Of course it is true that we all abhor offensive, discourteous and other unsavoury or unpalatable kinds of speech, but in a free society it must be permitted if it is lawful. It is necessary sometimes, as several witnesses told us, to challenge orthodox thinking. If orthodox thinking becomes so narrow that it prohibits those who question the status quo and the zeitgeist, nothing would ever alter. Most innovators through time, from Socrates onwards, have done just that. It made him very unpopular with Athenians—in the end, so unpopular that it brought about his demise. Indeed, I was reading Socrates this morning, on just that point—on Meno's paradox. Let us not go into that, Sir Christopher; you will no doubt not let me depart from the subject in hand to that degree.

The amendment is straightforward. It tries to address the challenge identified by Professor Biggar and others to reconcile the legislation with the other requirements that will affect universities in its interpretation. Indeed, other witnesses from the sector draw attention to this more critically than Professor Biggar, who is, broadly speaking, in favour of the legislation. They suggest that it is a problem with the legislation per se, and they feel that it cannot be reconciled with the need to balance their legal responsibilities. I do not share their view, because I think it can be reconciled. The Government can help with that by clarifying the different responsibilities on the face of the Bill, which is what the amendment is designed to do.

The spirit in which the Committee operates will, I hope, be one of helpfulness, collaboration and scrutiny, so that we can improve the legislation. I can tell from what the Minister has said that she shares that spirit, because she has already said that she will go and think about things afresh during the passage of the Bill. Moreover, the work that she does with the new regulatory regime will reflect such further consideration, given the comments from members of the Committee, and no doubt in the other place and on Report. I am most grateful to the Minister for adopting that tone, and I hope she will do just that when she deals with my amendment.

Emma Hardy: Before I start, I want to say that I genuinely hold the right hon. Member for South Holland and The Deepings in high regard, especially since we discovered a shared love of skills and FE. However, I think the amendment is gravely mistaken. It is perhaps worth reminding ourselves of the explanatory notes on what constitutes harassment under the Equality Act 2010, so that we know what we are talking about:

"The first type, which applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership, involves unwanted conduct which is related to a relevant characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity."

I am not aware of any debate, discussion or event in a university that we could rightly say creates

"an intimidating, hostile, degrading, humiliating or offensive environment for the complainant"

or violates

"the complainant's dignity".

The second type is sexual harassment, which is

"unwanted conduct of a sexual nature".

That is surely not something that we would want in a university. The third type is

"treating someone less favourably because he or she has either submitted to or rejected sexual harassment",

which could indeed become the lecherous lecturers clause. The explanatory notes for the Equality Act 2010 give three examples of harassment:

"A white worker who sees a black colleague being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her.

An employer who displays any material of a sexual nature, such as a topless calendar, may be harassing her employees where this makes the workplace an offensive place to work for any employee, female or male.

A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for promotion."

That is what we mean when we are talking about harassment under the Act, so we need to think about whether we should amend it for universities. Do we really want to encourage this kind of behaviour? It is important to state that universities are not separate from our community or our country. Something that is permitted when people are inside a university cannot become something that is suddenly not permitted when they step outside the university grounds. In fact, the best types of universities are those that I call civic universities—universities that do not just exist in their communities, but are part of them. Therefore, why do we need a separate law? It would mean that people could be offensive within the university grounds but would suddenly have to remember to be polite to their same colleagues when they step outside. We need to think incredibly seriously when we are discussing using the Bill to amend something as important as the Equality Act 2010.

10.45 am

Sir John Hayes: I am grateful to the hon. Lady for her introductory remarks about our mutual regard. The amendment does not do what she is saying. Clearly, universities have a responsibility under the Equality Act 2010 to counter, prevent and act on the kind of harassment that she describes, but Professor Biggar says that the risk with the Bill as it stands is in exaggerating harassment to include, as my amendment describes it,

"discussion of an academic or scientific matter".

I entirely agree with the essence of what the hon. Lady said, but my worry is that the tension between the duties she has described and this legislation will be hard to reconcile for universities unless we are clearer in the Bill about that distinction.

Emma Hardy: I thank the right hon. Gentleman. I will not continue to give my opinion; instead, I sought legal advice on the amendment. The quote that I shall read is from the highly regarded human rights barrister and expert, Adam Wagner, who gave me permission to read out his statement in full:

"This is a bizarre and retrogressive amendment. All speech is already protected by 'freedom of speech', i.e. Article 10 of the European Convention on Human Rights, but that right is qualified and will always be balanced against the rights of others, the prohibition on discrimination and generally the interests of the public. The implication of this amendment would be that, for example, hostile and degrading antisemitic speech targeted at a Jewish individual—i.e. hate speech—during an 'academic discussion' would no longer be unlawful. A neo-Nazi could repeatedly refer to a Jewish speaker as 'Jewish scum' during an academic discussion and this could—on the face of it—be lawful, as would referring to a black speaker as 'subhuman' and so on. Hate speech has never been protected by free speech rights and I would not be surprised if this amendment, if it became law, was not ruled to be in breach of the UK's human rights obligations by a court here and/or in the European Court of Human Rights."

I completely respect what the right hon. Gentleman is trying to do with the amendment. Indeed, we need a full and frank discussion later on how we balance the different aspects of the Equality Act 2010 with the Bill and still allow free speech. With the greatest respect, however, the amendment should not be accepted.

Charlotte Nichols (Warrington North) (Lab): I want to follow up on my hon. Friend's comments about what the Bill means in relation to the Equality Act 2010. As someone who is Jewish, one of my key areas of concern is what it would mean for Jewish students—an issue I have raised a number of times throughout the passage of the Bill. I have raised concerns about what it would mean for Holocaust denial, after the Minister appeared to suggest on the radio that that would be protected speech under the Bill. In fact, we heard from witnesses such as Professor Goodwin that he would invite a speaker from the National Front or the British National party, if they were available, to address his students. We have heard evidence that that is what some academics would seek to do, if the Bill were in place.

[Charlotte Nichols]

We need only look at the British National party. Nick Griffin, along with a number of members of the British National party and the National Front, has been repeatedly prosecuted for hate crimes, incitement to racial hatred and Holocaust denial. Inviting someone with those sorts of views to address students on campus—for example, in a politics lecture—might mean someone like Nick Griffin laying out all the reasons why he believes that anyone who is not white British should be repatriated to a different country, why he believes that the Holocaust did not happen, and so forth. Clearly, if he made those remarks outside a university setting, in a discussion that was not about an academic or scientific matter in a higher education setting, he could be prosecuted for that, as he has been repeatedly.

The amendment would allow a loophole for Nazis, fascists and people who hold absolutely objectionable views. As we have heard, those people have, in the public interest, always had their right to absolute freedom of speech, qualified by that public interest, libel laws, the Equality Act 2010 and so on. The unintended consequence would be to drive a wedge in the Equality Act. Our university campuses would become less safe spaces than the street outside them, where those rules would still be in place.

Like my hon. Friend the Member for Kingston upon Hull West and Hessle, I have nothing but respect for the right hon. Member for South Holland and The Deepings, but if his amendment formed part of the Bill, it could have really adverse consequences.

Lloyd Russell-Moyle: I became quite fond of the right hon. Member for South Holland and The Deepings during the evidence sessions, and during our discussions about the necessity for broader academic reform in our universities and about how tenure works. There is a lot of agreement on that. However, for three reasons, I am worried that the amendment creates an outcome that he is not actually seeking. First, Professor Stock described how her academic freedom and free speech was not limited just by—I would argue not at all by—the university and the institution, but by the harassment from colleagues, students and the academic community more broadly. They called her names such as TERF, which she found objectionable, and said that she was not academically rigorous. In effect, she described what we would call harassment, because she was exerting her right under sex protections to talk about sex, and they were harassing her for that. I disagree with her views on the sex agenda, but it is her right to express them without fear of harassment.

This amendment would be a harasser's charter—a charter to harass her outside the university, making snide remarks online or in academic forums, degrading her and ridiculing her. We heard in the last evidence session—it feels like yesterday—how many academics feel mocked and ridiculed by their colleagues because of their activities, and that sometimes leads to harassment, because they have protected characteristics. This would be a charter for those academics to be harassed out of their practice. That would be very worrying. I do not think that is what the right hon. Gentleman wants, but I am worried that is what the amendment would do.

We also heard from Trevor Phillips, with whom I disagree on a number of matters, who said that the importance of the Bill is not about directing details but empowering a regulator to provide guidance about where these things need deliberation. Bizarrely, whereas the Minister has previously said, "This needs to be dealt with by the Office for Students", and I have disagreed, on this issue I would take the line that the Minister has taken: this is an area where we need decent guidance from the Office for Students to ensure that universities are balancing that duty.

The right hon. Gentleman is right that sometimes universities incorrectly interpret the balance of where they should be on harassment and academic rigour. The clunky nature of this amendment might not fix that, but decent guidelines will change the way universities work, so I hope the Minister will say that she will push for them.

Sir John Hayes: The hon. Gentleman is taking us towards some sort of Hegelian synthesis of my intention, which is to ensure that, as Professor Biggar said, universities do not over-interpret their duties and define harassment so broadly that it closes down debate, while ensuring, on the other hand, that universities do the right thing, in the terms that the hon. Member for Kingston upon Hull West and Hessle was describing, in protecting people from the kind of activities that the hon. Gentleman spoke of. Maybe, as he says, that is best achieved in guidance, because he acknowledges that there is a tension, or a risk of it, as I tried to point out,.

Lloyd Russell-Moyle: The whole Bill is full of tensions, which is why many of us would say this is not best put in legislation; instead, it could be done through other mechanisms, such as guidance and support for universities, given that we already have the Office for Students. That is the Opposition's whole argument on whether we need a Bill. However, we have a Bill, so we need to create a framework to ensure that those tensions are dealt with sensitively.

John McDonnell: May I add to my hon. Friend's note of caution? In 2010, when the equalities legislation was introduced by the then Conservative Government, there was extensive debate. He will remember the debates around what constituted an appropriate joke, and whether that was encompassed in legislation. We now have 11 years of experience of that legislation, and precedent has built up, after court actions. I am fearful to tread into an area where I think we have a settled opinion at the moment. This amendment could be counterproductive, because it would reopen that whole debate, which I thought we had comfortably settled.

Lloyd Russell-Moyle: I totally agree. Again, that is the importance of the guidance. The Office for Students can sit down with other regulators and work out a settled opinion, which might be that there is not enough guidance for universities to interpret things correctly.

The right hon. Gentleman has mentioned a number of times the no-platform policy of the National Union of Students. That is a policy that bans National Action, a proscribed, illegal organisation in this country. It is a policy that bans Hizb ut-Tahrir, an organisation that is prevented from entering campuses under Prevent. It bans only a small handful of organisations—literally fewer than 10.

Emma Hardy: Six.

Lloyd Russell-Moyle: Six—I thank my hon. Friend. Those bans usually have national governmental guidelines behind them, because the organisations are proscribed

under Prevent or under other duties. We need to be careful when we lambast the no-platform policy of the NUS, because it is a policy that furthers Government policy and guidelines for keeping our campuses safe. Sometimes the phrase no-platforming is used, but it is actually a policy that is implementing Government guidelines.

Sir John Hayes: Of course the hon. Gentleman is right that, where organisations are proscribed or by law prohibited from operating or existing, they should not come. Furthermore, it may be that other organisations are not welcomed into particular forums, but he will know that, over the years, no-platform policies have been used in all kinds of different institutions to prohibit a much wider range of outside speakers, including in some cases speakers from the Conservative party and other perfectly legitimate and indeed noble political organisations of that kind.

Lloyd Russell-Moyle: In a previous sitting, the Chair mentioned facing this issue when he was a student. That is exactly why the NUS has laid down a national policy that refers to six named organisations—so that individual student union branches or universities cannot erroneously put forward others. The right hon. Gentleman's exact concerns have been implemented by the NUS, which has listed the organisations—only six, and all backed up by national guidelines. An individual student union cannot just say, "We do not like that Conservative," or "We do not like that academic." I agree with him that there is concern that that has been misapplied in the past. That is why we now have national guidelines. Again, that is an example of where these things are best settled under guidelines, through negotiations with the national unions and through the regulator, and not put in legislation, which might lead to unforeseen circumstances.

11 am

Matt Western: I echo the comments of colleagues, who have made the case so well. We have profound concerns about the amendment, I am afraid. We understand what it is trying to do, but it could be very broad if accepted as it is. On Second Reading, the Secretary of State made it crystal clear that

"the right to lawful free speech will remain balanced by the important safeguards against harassment, abuse and threats of violence as set out in the Equality Act 2010".—[*Official Report*, 12 July 2021; Vol. 699, c. 49.]

The amendment could strip out that safeguard of harassment protection. The Minister, too, stressed the point on Second Reading. She said:

"To be absolutely clear, the Bill does not override the existing duties under the Equality Act regarding harassment and unlawful discrimination."—[*Official Report*, 12 July 2021; Vol. 699, c. 120.]

We should be very careful about the existing duties, and we need to ensure that they are protected in future as well. That could be a real problem for us, if the Bill is amended.

Professor Stephen Whittle said:

"The Equality Act provides little protection for anybody who feels that their rights are being disturbed by somebody else's freedom of speech. For example, if somebody is speaking and they are antisemitic, unless it directly relates to that person, unless they have some sort of standing, the Equality Act cannot protect them as such."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 43-44, Q80.]

The Equality Act is already a fairly flimsy tool for interfering with freedom of speech, so I really want to know why the amendment should so brutally cut the legs from under the Act's harassment provisions. Even Bryn Harris commented:

"I accept that getting into the Equality Act is very controversial and tricky terrain".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 80, Q168.]

I fear the Government's approach is a bit of a sledgehammer to crack a nut. The concern is about a fundamental change to the Equality Act. As the right hon. Member for South Holland and The Deepings said, universities are trying to do, or should do, the right thing. That is what has always been sought. In one evidence session, Professor Grant referred to the Chicago principles, under which a university can restrict expression that violates the law, that falsely defames a specific individual, or that constitutes a genuine threat or harassment. The amendment would be counter to those principles, which is why we will oppose it.

Michelle Donelan: Amendment 71 seeks to override the law on harassment so that higher education providers would be required to take reasonably practicable steps to secure freedom of speech in scientific or academic discussions, even where that would constitute harassment under the Equality Act 2010. Freedom of speech, which generates rigorous debate and advances understanding, is vital. To uphold freedom of speech in higher education, students, staff and members must be able to express their ideas within the law that may be controversial, unpalatable or even deeply offensive. That is how students develop the ability to think critically, to challenge extremist narratives and to put forward new and controversial ideas.

As is the case now, providers must consider each case on its own facts, and work collaboratively with those involved to ensure that there is an appropriate balance across the range of relevant duties, including in relation to equality protections. It is already the case that, when considering a claim of harassment, courts and tribunals must balance competing rights on the facts of a particular case, which could include the rights of freedom of expression, as set out in article 10, and academic freedom. Guidance has made it clear that the harassment provision within the Equality Act cannot be used to undermine academic freedom. I expect that that will be reiterated in the new Office for Students guidance.

Students' learning experience may include exposure to course material, discussion or speakers' views that they find offensive or unacceptable. That is very unlikely to be considered harassment under the Equality Act. Also, if the subject matter of a talk is clear from the material promoting an event, people who attend are very unlikely to succeed in a claim for harassment arising from views expressed by the speaker. At the same time, if speech does constitute harassment, it should not be tolerated, even in the context of academic discussion in higher education. Any form of harassment is abhorrent and unacceptable anywhere in our society, including in universities. It is vital that the Bill makes clear that it protects only lawful free speech. Although I hugely respect my right hon. Friend the Member for South Holland and The Deepings—as, it seems, does the Committee—I must ask the Committee to agree that the amendment is unnecessary. The Bill meaningfully strengthens protections for lawful freedom of speech and academic freedom.

Sir John Hayes: The Minister may persuade me to withdraw the amendment, in the spirit that has pervaded the Committee so far, if she addresses the issue raised by Professor Biggar and other academics, who said that at the moment, universities may be over-interpreting their responsibilities in respect of the Equality Act. Professor Biggar made clear that they are interpreting it in a way that the courts would not. All I ask is that universities stick to the law and what the courts would do on harassment, rather than over-interpreting in the way that Professor Biggar suggested. If she included that in her remarks and in the subsequent guidance, I would be happy to withdraw my amendment, but I will wait to hear what she says.

Michelle Donelan: I wholeheartedly agree with my right hon. Friend that neither universities nor anybody else should be over-interpreting the Equality Act. That will be made clear in the guidance that the Office for Students will bring forward, and I fully expect that to help clarify the situation and ensure that freedom of speech is prevalent on our campuses. With that in mind, the Bill meaningfully strengthens protections for lawful freedom of speech and academic freedom, but absolutely does not, and should not, provide a vehicle for people to harass one another.

Sir John Hayes: With that hearty recognition of my point, I will happily withdraw the amendment. I take the points that have been made on both sides of the Committee about how vital it is to protect students from all the things that I think we would all regard as fundamentally unacceptable. In the light of the comments from Professor Biggar and others on the need to get the balance right, and with the Minister's assurances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matt Western: I beg to move amendment 55, in clause 1, page 2, line 7, at end insert—

"members and visiting academic speakers"

This amendment would ensure that the objective of securing freedom of speech within the law includes securing the academic freedom of members and visiting academic speakers.

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

Amendment 29, in clause 1, page 2, line 36, at end insert—

"references to "members of the provider" include any affiliated academics and any other person holding an academic position at the provider;"

This amendment widens the definition of academic members to include affiliated academics and other individuals holding academic positions at higher education providers.

Amendment 56, in clause 1, page 2, line 36, at end insert—

'"visiting academic speaker" shall mean any individual who is an academic member of another registered education provider or equivalent institution or organisation.'

This amendment defines academic visiting speaker.

Matt Western: I am conscious of time so I will not spend too much of it on this. I really hope that amendment 55 is yet another constructive, common-sense tweak to the Bill, to ensure that there is comprehensive coverage of who a member or speaker may be. The amendment would ensure that the protection of academic freedom is provided to academic speakers as well. Many of the events that the legislation covers are most relevant to external speakers, so it should be very clear and obvious that the amendment should be included. If the Government are seeking an end to no-platforming, we need to ensure that existing academic speakers are included in that.

Tom Simpson put it this way in his evidence:

"The coverage of the duty is currently specified as the staff of the provider, members, students and visiting speakers. In academic life, there is a really important category of what you might call affiliated academics".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 67, Q136.]

That is quite obvious. Increasingly, there are many more guest scholars or people on visiting fellowships who are not necessarily members of the university. Currently, the wording does not make it plain that such people would be included, and they need to be.

The issue has also been raised with me by various representative bodies and institutions, and they urge that my amendments 55 and 56, which define a "visiting academic speaker", be included. The amendments are not controversial; they are common sense, and I hope that they will be adopted by the Government.

Fiona Bruce (Congleton) (Con): I tabled amendment 29, as other Members have tabled other amendments, on a constructive basis, seeking to improve a Bill that I strongly support.

Amendment 29 would clarify that

"references to "members of the provider"—

that is, the higher academic provider—

"include any affiliated academics and any other person holding an academic position at the provider".

Why is this important? It is to ensure that those who are undoubtedly intended to be covered by the Bill, such as visiting fellows, research associates, life fellows, guest scholars and emeritus fellows do not fall outside the scope of the Bill's protection. Many within the higher education sector would not view these categories of affiliated academics as "members", on the basis of what I understand is a commonly accepted understanding of that word. The simple remedy provided by amendment 29 would be to clarify and broaden the meaning of "members" to include affiliated academics and anyone held to be occupying an academic position within the university.

I will just refer to two remarks from witnesses who gave evidence to the Committee. Associate Professor Tom Simpson told the Committee:

"In academic life, there is a really important category of what you might call affiliated academics—people with visiting fellowships or emeritus professorships, guest scholars or life fellows. The wording does not make it plain that such people would be included."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 67, Q136.]

And Professor Matthew Goodwin told us of academics being "disinvited from workshops", who I rather think might not necessarily be a member of the higher academic provider, when he said that

"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."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 91, Q185.]

I do not propose to press this amendment to a vote, but I hope that the Minister will confirm in her closing remarks that she will consider taking this matter away for consideration as the Bill progresses through the House.

Michelle Donelan: Amendment 29 seeks to expand the notion of who is a member of a higher education provider to include affiliated academics and other individuals holding academic positions. Amendments 55 and 56 seek to extend academic freedom to members and visiting academic speakers.

Clause 1 will insert part A1 into the Higher Education and Research Act 2017. Part A1 (1) and (2) require registered higher education providers to take "reasonably practicable" steps to secure lawful freedom of speech for their

"staff…members…students…and…visiting speakers."

Turning to amendment 29, we have used the term "staff" to broaden the existing reference to "employees" in the Education (No. 2) Act 1986, because not all of those who work at a provider have an employment contract or employee status. To be clear, expanding the protections to these individuals is a key aspect of the Bill and ensures that all academic staff have access to redress. It is important to note that the term "staff" is already used in the current definition of academic freedom in the Higher Education and Research Act, so it is an understood term in this context. Similarly, "members" is a commonly used term in the sector, as well as in legislation. It is included in the existing provision in the Education (No. 2) Act, which is carried over into the Bill to ensure that individuals who are currently covered do not lose that protection. Members of a university include members of the governing council, for example.

I now turn to the proposed extension of academic freedom to members and visiting academic speakers in amendments 55 and 56. As already defined in the Higher Education and Research Act and strengthened in clause 1, academic freedom is necessary for academic staff who may be at risk of losing privileges and jobs or with reduced likelihood of securing a new academic role because of their views. Visiting academic speakers will therefore have academic freedom in relation to their own universities. A visiting speaker who speaks controversially at another university will have the benefit of the provision at their own university, but they do not need it at the university they are visiting, as they do not have a job or promotion prospects at that university that they are at risk of losing.

Lloyd Russell-Moyle: Very often, an academic seeking promotion has to demonstrate that they have published work and have spoken at an event external to the institution that they work in. If they are unable to prove that they have spoken at a number of events, they are unable to secure promotion. Therefore, the protection that the Minister talks about is a protection in the institution, but if academics are not protected in external institutions they will not even be able to apply for promotion. Does she understand that there does need to be an extension, and would she consider how that could be done?

Michelle Donelan: Importantly, they will be covered by the overarching protections in relation to freedom of speech when they speak at other institutions. As for members, they are specifically covered under proposed new part A1(2). Strasbourg case law has confirmed that, in determining whether speech has an academic element, it is necessary to establish whether the speaker can be considered an academic. To the extent that a member of a university could also come within the category of academic staff will be a question of fact. Quite simply, if they are covered they will have academic freedom as defined in the Bill. I hope that reassures members of the Committee that these amendments are not needed, as the members and types of academics mentioned can already be assured that they will be protected under the Bill.

Matt Western: I am reassured by what the Minister says. It seems there is coverage for visiting academic speakers. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That the debate be now adjourned.—*(Michael Tomlinson.)*

11.17 am

Adjourned till this day at Two o'clock.