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GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Ninth Sitting

Monday 20 September 2021

(Afternoon)

CONTENTS

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not later than

Friday 24 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

Monday 20 September 2021

[Judith Cummins *in the Chair*]

Higher Education (Freedom of Speech) Bill

3.30 pm

The Chair: Before we begin, I have a few announcements. I encourage Members to wear face coverings except when speaking or if they are exempt. That is in line with the Commission's recommendations. *Hansard* colleagues would be extremely grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please remember to switch electronic devices to silent. Tea and coffee are not allowed during sittings. I also ask Members to declare any interests before we resume line-by-line consideration.

Matt Western (Warwick and Leamington) (Lab): I wish to place on the record the fact that my wife works at a university.

David Simmonds (Ruislip, Northwood and Pinner) (Con): I am an honorary fellow at Birkbeck College, University of London.

John McDonnell (Hayes and Harlington) (Lab): The same.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): My partner works at the University of Hull on the degree apprenticeship programme.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): I am a trustee at the University of Bradford union. I have received payment from the University of Sussex to provide educational opportunities, and I have received money from the University and College Union.

Mr Richard Holden (North West Durham) (Con): I am vice-chair of the all-party parliamentary group for friends of Durham University

Clause 3

Civil claims

Amendment made: 4, in clause 3, page 5, line 21, at end insert—

"(aa) a constituent institution of a registered higher education provider, in respect of a breach by the governing body of the institution of any of its duties under section A1, or". —*(Michelle Donelan.)*

This amendment is consequential on NC1.

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

The Minister for Universities (Michelle Donelan): Clauses 1 and 2 strengthen freedom of speech duties on registered higher education providers and extend them to students unions at approved fee cap providers. Clause 3 plugs an identifiable and substantive gap in the current legislative framework by providing individuals with a route of redress for loss suffered as a result of a breach of these freedom of speech duties. Clause 3 therefore creates a new statutory tort. This enables civil proceedings to be brought against a higher education provider in respect of a breach of the new duties under section A1 of the Higher Education and Research Act 2017, or against a student union in respect of a breach of the section A4 duty.

Individuals can still complain in the first instance—for free—to their higher education provider or student union if they consider that there has been such a breach. They can subsequently complain for free to the new complaints scheme that will be operated by the Office for Students, and students will still be able to complain for free about their provider to the Office of the Independent Adjudicator for Higher Education. However, the statutory tort will also be available, although we are clear that it is intended to be a route of last resort.

Lloyd Russell-Moyle: If that is to be a last resort, as the Minister claims—I take her at her word on that, because she is an hon. Member—someone could as a first step go to the courts. Will she ensure that they can do that only if they have exhausted all the other opportunities?

Michelle Donelan: I thank the hon. Gentleman for his comment. The problem is that if someone is a visiting speaker at a university, there would be no internal process that they could follow. We want to be as comprehensive as possible and allow this option to be available.

Lloyd Russell-Moyle: Will the Minister give way?

Michelle Donelan: I will make some progress and then give way.

As individuals will be able to seek redress for free via the OfS or the Office of the Independent Adjudicator, we expect individuals to make a complaint to the OfS or the OIA before relying on the tort.

Emma Hardy: I thank the right hon. Lady for giving way.

I refer the Minister to the Office for the Independent Adjudicator's written evidence, where it said:

"It is generally accepted that it is not good practice to have multiple routes of ADR redress for the resolution of a complaint because it can make the landscape difficult to navigate and make it harder for individuals to make the right choice for them—particularly if they are vulnerable."

I wonder how the OIA's concerns can be satisfied by the clause the Minister is moving?

Michelle Donelan: I thank the hon. Member for their comments. It is a good point that students, academics and visiting speakers all need to know the routes available to them. That will be a fundamental part of the new director's job; I fully anticipate that they will not only set out comprehensive guidance, but communicate with all the different individuals so that they know the options available.

Emma Hardy: Going back to the evidence, one of the points made by the OIA is that

"if a student isn't fully informed or does not understand"—

bearing in mind its previous point about vulnerable students—

"all the consequences of their choice, the decision they make may not be the most beneficial for their particular circumstances."

The evidence points out that people rarely make a complaint relating just to freedom of speech; rather, it often involves many other different aspects, which the director of freedom of speech would not be able to address. This is a highly complex and difficult procedure for an individual student to be able to understand and navigate, and I am not sure that written guidance from the Office for Students would fully address that.

Michelle Donelan: One thing we must be clear on is that the current system is not working. It is failing individuals who are having their freedom of speech breached, as we also heard from multiple sources in the evidence. At the heart of this Bill is unlocking a greater choice for individuals, whether that is going down the OIA route or the one-stop shop of the director who will be responsible for free speech and academic freedom. While it is true that at the moment not many cases that are brought forward are purely to do with freedom of speech, I argue that that is because we need this Bill in place and the new director in their position.

Given that individuals may not want to incur the legal costs and risks associated with bringing a claim before the courts, we do not expect this provision to give rise to many claims. It will operate more as a backstop for complainants, to cover claims by individuals who may feel they have no other recourse.

Lloyd Russell-Moyle: Will the Minister give way?

Michelle Donelan: I will, but we are going to have to let me do more than two lines at a time or we will never get through the Bill.

Lloyd Russell-Moyle: I am grateful to the Minister. She talks about last resort, and in response to my last intervention she said that that could not be put in legislation because external speakers will need it. Is she therefore saying that external speakers have no form of redress apart from the tort—that they do not have access to the other forms of redress?

Michelle Donelan: To clarify my comments, I believed that the hon. Member was talking about going through internal processes before addressing the tort.

Lloyd Russell-Moyle: I meant all processes.

Michelle Donelan: There will be a variety of options available. Going to the director will be the free option and the first instance, but we cannot mandate that they have to have gone through the internal processes of an institution, because those will not be available to everybody that the Bill seeks to represent.

For example, this clause will provide a means of redress for individuals who do not have employment protections, such as visiting fellows—the point I was making earlier. Let us bear in mind that the purpose of the tort is to bolster the enforcement of the new freedom of speech duties on higher education providers and student unions, so that there are clear consequences for those who breach those duties.

The clause will ensure a clear route to individual redress for all who have suffered loss where freedom of speech duties have been breached, and will give those duties real teeth. This is therefore a vital part of the Bill, as part of a suite of measures to strengthen free speech in higher education.

John McDonnell: Will the Minister give way?

Michelle Donelan: I am afraid I am going to end there, and give the right hon. Gentleman an opportunity after that.

Matt Western: I was not expecting to speak so soon; I thought the Minister might speak at greater length on this.

John McDonnell: May I ask my hon. Friend the same question, then, and maybe the Minister can intervene on him?

Matt Western: I would love to hear from my right hon. Friend.

John McDonnell: I want to know who has standing in this matter. In my hon. Friend's interpretation, is it the same person or people who have standing in the complaints process, or is it anybody? I might have got this wrong, but I cannot identify the breadth or narrowness of who has standing in these cases.

Matt Western: I am sure the Minister has heard my right hon. Friend's question. It is certainly not clear to me who has standing, and I hope she will come to that. It is quite clear from the questions that have been posed by my colleagues that there is so little clarity about how this is going to work. I have not seen any reference to the Charity Commission, for example. Where does the Charity Commission fit into this? Surely it is part of the process for students to refer a complaint to that organisation, but there has been nothing about it in any of the papers from the Government that I have seen, nothing in debate, and nothing, so far, during two days of debate in this Committee.

Emma Hardy: It is worth pointing out that what is proposed in the Bill does not come cost-free. The impact assessment estimated that the cost of compliance with the Bill would be around £48.1 million. Bearing in mind the points I have made previously about the overlap with the Office of the Independent Adjudicator for Higher Education and the confusion that some students will have, it seems fairly ludicrous that the Government wish to spend £48.1 million replicating something that already exists in another form.

Matt Western: I thank my hon. Friend for her intervention, and she is absolutely right: this is not just something that already exists, but something that exists

[Matt Western]

relatively cost-free. The cost of £48.1 million that she has mentioned—which is the Department's estimate of what the Bill will cost student unions and universities across the country—should not be ignored.

We sought to remove the whole of this clause through amendment 30. We are of course disappointed that it was not accepted—although I sort of understand why that was the case—but I am sure that the House of Lords will be extremely interested in the clause. While we do not believe this Bill is necessary, we have been doing our very best throughout this process—as my right hon. Friend the Member for Hayes and Harlington said last week—to be constructive about mitigating the problems and costs of what we think will be a disastrous piece of legislation, in terms of its impact on our students, student unions and universities. However, we feel that this clause is a huge mistake, because as we have heard, it enables individuals to seek compensation through the courts if they suffer loss as a result of a breach of the freedom of speech duties.

In its submission, the Russell Group—as so many have said—puts it like this:

"The lack of clarity over how a new statutory tort offering a route to civil legal claims around free speech will interact with existing internal and external complaints procedures"

is absolutely—well, it did not say "shocking", but I think the Russell Group is very frustrated and concerned about it. It also said:

"At present, internal grievance and complaints processes offer staff and students significant opportunities to seek redress when they feel their right to free speech has been infringed. These include comprehensive rights to appeal. In the event internal processes do not conclude in a way that satisfies an individual, then students can take their grievance to the Office of the Independent Adjudicator (OIA)"—

a point made by my hon. Friend the Member for Kingston upon Hull West and Hessle. The Russell Group also said:

"Where free speech concerns interact with employment decisions, university staff have recourse through employment law and tribunals."

It is pretty clear that the system was working. Perhaps it could have been tightened up—maybe there could have been better practice across different institutions—but I see that as a failure by the Government to engage with the sector and the OIA, and to work with the Charity Commission and all the other representative bodies to bring about a better or a tighter system, rather than resorting to this clunky Bill, which is so onerous, burdensome and potentially hugely costly to the sector.

We are against this clause for three reasons. First, as I have said, we believe it is unnecessary. Secondly, we believe it could create a culture of lawfare, as it is described in legal circles, that will take vital money away from students and researchers. Thirdly, we believe that it will ultimately restrict free speech, rather than the opposite: it will be the inverse, an unintended consequence, as we have talked about on so many occasions.

Let me start with the point that this clause is unnecessary. The creation of the tort, as has been said in the opening interventions, duplicates other avenues for complaints. Students and staff have already raised complaints with their institution, which will be dealt with via an internal complaints process. Students can then complain to the Office of the Independent Adjudicator. So far, so good.

3.45 pm

The Bill, however, introduces a new route to make a free speech complaint to the Office for Students—for staff, obviously, and speakers. Suddenly we have two routes, or channels, over and above the Charity Commission. We believe that this tort will make the whole process incredibly messy and expensive. It risks creating confusion among students in particular about where they should lodge their complaint against a university. Where will they be getting advice? There is no order of complaints outlined in the Bill, so it is not clear how the processes will interact with each other, particularly if complaints are launched with different bodies at the same time. If this provision is to be introduced, it would be better as some sort of backstop.

The Russell Group says:

"The Bill also fails to explain how the tort will interact with existing modes of redress and the new complaints process".

It also says:

"An amendment to the Bill that make clear the new tort is intended to act as a backstop to the existing grievance processes in place would help ensure its introduction genuinely adds an additional layer of protection for individuals with free speech concerns who have suffered loss. This would reduce the risk of the tort creating extra bureaucracy, causing confusion for claimants faced with multiple complaints processes, or undermining existing disciplinary procedures."

Emma Hardy: It is worth pointing out what the remedies are when somebody brings a complaint forward. If the OIA upholds a complaint, it has a variety of remedies at its disposal—academic appeal, or disciplinary or fitness to practice procedure. Under the Bill, if the complaint related to freedom of speech, the OfS can offer a remedy to the student only for the freedom of speech concerned, as opposed to the OIA, which can offer a remedy for any aspect of the complaint that is upheld. Basically, the OfS is offering a narrower source of remedies than is currently available under the OIA. If anyone is confused listening to me, then, my goodness, just imagine how an 18-year-old undergraduate would feel trying to grapple with what the best route forward is for them.

Matt Western: Exactly. Where is the flow chart to help someone navigate through this? It is certainly not clear to any of the representative bodies—the student unions and so on—and it is going to be impossibly difficult for the average 18-year-old or 19-year-old to comprehend.

Emma Hardy: In its evidence, the OIA gave an example where a group of students may have the same complaint regarding freedom of speech, but go down different routes: one down the OfS route, one down the OIA route, and one down the court route—maybe because they have enough finances behind them. Each of them ends up with a slightly different solution to exactly the same problem. That is the reality of the Bill. I fail to see how enough guidance could provide clarity for each individual student. We could have a very varied system, where individual students do not know where to go and complaints are not upheld properly. Alternatively, in the case of the OfS, students make a number of complaints and only the freedom of speech issue is dealt with, not

the other, resulting issues that could be to do with the way that the course is being taught. It is as confusing as anything.

Matt Western: I will address those points in due course. It is the possibility of students going through different bodies that is quite alarming and that will cause even more complication and complexity.

To go back to the point I was making about the processes, the then Secretary of State for Education himself said during the Second Reading debate that although

"this legal route is an important backstop, we do not want all cases going to court where they could otherwise be resolved by other means."—[*Official Report*, 12 July 2021; Vol. 699, c. 50.]

I think that is what we all want, but it is certainly not clear to any of us how that is going to work in practice, particularly given the several bodies that can advise and take cases from students. The Bill as it stands does not ensure that the legal route is a backstop. During the evidence sessions, we heard from Smita Jamdar of Shakespeare Martineau—the only lawyer—who was called on by the Opposition. She gave striking and clear evidence and advice. She said:

"Built into certain types of court proceedings—judicial review, for example—is the expectation that you will first exhaust all alternative remedies, and that would include any internal remedies available under the complaints process. However, that is not the case in statutory torts; you could bring a claim outside the processes"—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 50, Q93.]

That must be a real concern: the simple fact that you can bypass all the processes and go straight to court. The clause should therefore be removed or at least amended to reflect the Government's own views on how they wish the tort to operate.

My second point is on facing the prospect of "lawfare". We have wider concerns that the Bill will create a culture of lawfare against universities. Clause 3 does not restrict the tort to those who personally feel that their speech has been restricted or those who have been directly affected. It therefore risks opening up vexatious claims against universities from those who seek to do them harm. As Dr David Renton and Professor Alison Scott-Baumann said in their written evidence, the Bill means that,

"any lecture, seminar or guest speech could lead to a lawsuit."

They pointed out that the statutory tort element of the Bill will open the floodgates to civil litigation and forms of lawfare, most likely from well-funded American groups on the hard right, or perhaps groups such as the Chinese state Communist party.

Sir John Hayes (South Holland and The Deepings) (Con): I find the hon. Gentleman's argument—I am being polite—paradoxical, or perhaps even contradictory, if I am being slightly less polite. On one hand, he and other critics of the Bill say that there is not a problem and that the Bill is not necessary, because these matters are not as numerous or severe as some suggest, despite our witnesses claiming that there is a culture of fear and a climate of silence. If there is not a problem, where does he imagine this welter of complaints will spring from? If there is not a problem and universities are dealing with these matters satisfactorily internally and settling people's concerns, it will be hard to imagine the effects he set out in his remarks.

Matt Western: I thank the right hon. Gentleman for his intervention. I will come on to a few examples of how that might play out, because I have given a lot of consideration to the extent of this issue. Given the evidence of certain witnesses in the evidence sessions, there are concerns out there—certain concerns are greatly exaggerated, but there are concerns. We have to take those on board, which is why we are approaching this in a constructive way.

As my right hon. Friend the Member for Hayes and Harlington said, the real concern, which I would like to believe that the right hon. Gentleman would accept, is that we will see ambulance chasers, for want of a better term. There will be people putting their cards around student campuses who are looking for opportunities to be mischievous and to make money out of situations that can be manufactured on our campuses.

Emma Hardy: Further to my hon. Friend's point about the "no win, no fee", "where there's blame, there's a claim" culture we have in other areas of law, there is no limit on how long ago a perceived breach of freedom of speech took place. The clause refers to a "person". There is no definition of who that person is. Does it relate to academic staff or students? How long along were they at the university? Are they someone in the vicinity who happens to feel infringed by something that has happened on the campus? It is such a broad definition. There is no limit on how long ago something could have happened and who could bring these claims forward.

Matt Western: I will come on to that. We have an amendment to that effect, which would ensure that this is not some kind of free-for-all and that we do not open the floodgates, as described by Dr Renton and Professor Scott-Baumann.

Fiona Bruce (Congleton) (Con): I do not know whether the hon. Gentleman has ever been involved in litigation, but I have—not in a professional capacity, as a solicitor, which I am, but as the subject of litigation. It is traumatic and personally debilitating not only for the individual but for their family. We need to remember that most people do not enter into litigation lightly, and it is unlikely that these young people will do that. I think they will think very seriously and carefully before going to court to make their claims.

Matt Western: I absolutely take on board the hon. Lady's point. I can answer her question honestly, and say that I have been involved in litigation at least once. I agree that young people would not enter into it lightly, and nor would academics of older years. It can be utterly corrosive to the individual and quite self-destructive; it is the sort of thing that people would want to avoid. My point is that some people will, through organisations, seek to engineer circumstances that play into their machinations on campus. We have to be extremely careful of that, because those people can be incredibly well-funded, as was made clear in the point I mentioned earlier.

John McDonnell: I am sympathetic to what the hon. Member for Congleton has said. However, we have been there in the past, with organisations and rich individuals funding cases. I can remember cases being

[John McDonnell]

funded by the late Sir James Goldsmith—I was involved in one—in which action was taken against a range of individuals and organisations, to step up to the plate on a number of issues of his concern which, at the end of the day, I do not believe had any merit. His son is a definite improvement on that, if nothing else.

Matt Western: Yes, that is a good example of what can happen where individuals or organisations are so well funded. It can be really overwhelming and frightening to an individual or organisation when they are faced with that. Universities will be extremely concerned about this. Local government is shying away from taking on developers or other organisations because it does not have the funds. It cannot justify to the public defending whatever position it has had to take for good, democratic reason. However, it then finds itself up against it because the developers have much deeper pockets.

Mr Kevan Jones (North Durham) (Lab): In a lot of cases, won't the universities settle anyway just to stop litigation, so money will be going out of the university sector? But my concern, which I raised with the witnesses, is that state actors such as the United Front, which is active on our campuses promoting the Chinese Communist party's philosophy, have very deep pockets to fund whatever they want to fund.

Matt Western: I thank my right hon. Friend for his point. I know that he is very well informed on that issue. There are bodies out there that would wish to do institutional harm on our campuses. But there is also the reputational damage that these actions can cause. Many will seek resolution out of court, and that will become more and more obvious. It is a real concern that this will see haemorrhage much-needed funding away from our universities and student unions.

Universities UK made the point that these measures will bring about a "compensation culture", and it was not the only one. Many have said that the great fear is that they will lead to the rise of spurious or vexatious claims and that the Bill provides little protection from a funded and co-ordinated campaign, which could be launched against several institutions, as my right hon. Friend the Member for North Durham alluded to.

Many universities and student unions are concerned that they will spend significant time and money fighting these battles. They have just emerged from the pandemic; funding is challenging, and the viability of student unions, in particular, is threatened. The prospect of the £48.1 million cost—of providing information to students, of the reporting and of the potential claims—is extremely concerning.

4 pm

Ms Jamdar from Shakespeare Martineau said:

"Some of the cases may be small claims, where even if the university is successful in defending the claim, it will not recover its legal costs. Even getting rid of vexatious claims by striking them out can be expensive."

So there are significant costs for the university whatever happens. She also said:

"a few thousand pounds in every case could be spent getting rid of claims that are either very trivial or unmeritorious generally."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 48, Q90.]

Do the Government really want to take money from hard-hit students and place it into the hands of far-right holocaust deniers or, as mentioned by my right hon. Friend the Member for North Durham, those state actors wishing to do us harm? If this clause is to be kept in the Bill, then it must, at the very least, be amended to ensure that there is a maximum fine, at a level that universities and student unions can afford. We will come to that in due course.

In its written evidence, the sector—Universities UK, the Russell Group and others—raised the idea of introducing amendments outlining an explicit threshold of harm before someone could make use of the tort, or restricting the tort to those directly affected, thereby reducing the volume of claims that could be taken to court. That is to restrict it to those with genuine grievances—a point made in the Russell Group's written evidence. It adds, very usefully:

"This would be consistent with the protections provided in the Defamation Act 2013 passed by the Conservative-led government of the day, while still offering a route to redress for individuals directly affected by any failure to protect freedom of speech or academic freedom."

We must remember—we have made this point on many occasions over the last few days—that many HE institutions and colleges are quite small. The Association of Colleges reminded us of that. Some of the smaller, specialist colleges or HE institutions may have only 2,000 or 3,000 students. They will not be able to cope, administratively or financially, with these additional burdens.

Clause 3 will ultimately take vital money away from teaching students and important research, as well as taking away the funding that student unions and universities need to address the crisis in mental health and the violence against women on our campuses. We therefore believe that it should be scrapped or at the very least amended.

The third point I mentioned was the unintended consequences. We have heard, from not just the National Union of Students but academics, representative bodies and the only lawyer, that this tort could, ironically, end up restricting free speech on campuses. If universities and student unions are put at risk of burdensome, costly legal action, they may decide not to invite controversial speakers. We have heard that from universities and student unions themselves, so we should not be surprised by that if this tort remains in the Bill.

Professor Layzell, representing Universities UK, said in the evidence sessions:

"There is a concern around the litigation and making both student unions and universities more risk averse".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 125, Q272.]

That concern is, I think, widely held. Hillary Gyebi-Ababio, the vice-president for higher education at the National Union of Students, said:

"I think a direct unintended consequence of this Bill could be that student unions would become more risk averse to inviting speakers, because they just cannot handle the bureaucracy; they just cannot handle the prospect of having to pay lots of money in the case of litigation."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 136, Q302.]

Patrick O'Donnell, president of the University of York students' union, said:

"The danger with the government's statutory tort is that it will have a chilling effect—students' unions or their student groups weighing up inviting an external speaker may well conclude that the risks are outside of their control yet too great. The government should work with us to broaden and deepen engagement with controversial views—not cause students to risk-assess the life out of campus."

Emma Hardy: I did not have time to table an amendment, but I hope that the Minister and other Government Members will look at whether we should include in the Bill FE student unions as well, bearing in mind the resources of FE college student unions. I refer the Committee to the evidence given by the Association of School and College Leaders. I hope this is something that the Minister will take away to look through, because if the legislation is too complicated for junior common rooms, surely it is too complicated for a small FE college.

Matt Western: Costly and burdensome, is what we were told on Thursday.

Institutions and student unions would therefore become risk averse and avoid inviting speakers, for fear of financial repercussions if they are subsequently cancelled. As a result, there would be fewer speakers, fewer debates and, we believe—not just us, but the whole sector believes—an overall reduction in free speech.

Let me give some examples and come back to the point put to me by the right hon. Member for South Holland and The Deepings about what that might mean. I was reading about the former Home Secretary, the former right hon. Member for Hastings and Rye—I never had the opportunity to speak to her in the Chamber, although I spoke to her outside it, and I had time for her. She was due to speak at the UN Women Oxford UK society in March 2020, and I remember her response when she was barred from speaking, following a vote in the UN Women Oxford UK committee on her role in the Windrush scandal. The invitation was withdrawn an hour before she was due to speak. Those sorts of things have happened through the decades on campuses and across our universities. It was the society's decision. Would I have done it? I would not have done that; I would have seen it through. I would much prefer to hear from someone and to put the point to them face to face. Sadly, that was the society's decision.

What would happen with the tort in the Bill? What would Ms Rudd, the former right hon. Member, do? Would she take the society through some legal process, or threaten to do so, or would she just walk away? Rather than getting involved in some sort of complex legal process, which might have damaged her reputationally and made everyone look stupid, I imagine she would have walked away. Certainly, that is what I would have done. What happened, however, which I think is telling, is that the University of Oxford deregistered UN Women Oxford UK from its affiliated societies and asked it to apologise to Amber Rudd. The university concluded:

"We have determined that the cancellation of this event was not carried out in accordance with university procedures, codes of practice and policies, in particular that of the freedom of speech."

I believe that was handled very well by the university and perhaps not so well by the society itself.

What damage was caused to Ms Rudd, other than in terms of her time and her train fare or whatever it was? Was her reputation damaged? I do not think that it was. In fact, even her daughter tweeted:

"Can not believe mum was 'no-platformed' at my old Uni yesterday. Mum doesn't need the platform and travelled to talk for FREE"—

good for Ms Rudd, travelling to talk for free. It is a shame that the society did not allow her to speak on campus—though of course that was their prerogative.

Let me speak next to the case of the academic Selena Todd, who was dropped from the Oxford International Women's Festival hosted by Exeter College for her views on transgender rights issues. That decision prompted the OfS to warn that there is a legal requirement on universities to take steps that are reasonably practicable. Again, I think it was a shame that she was dropped—these sorts of debates should be had—but it was the organisers' decision. I believe, as I think do most of us, that there is good practice out there; we keep citing it. We heard about the work of Professor Jonathan Grant of King's College London, who has created a collaborative, co-operative process between the students' union and the university to ensure that all the steps are gone through before the invitation goes out, so that there is no subsequent problem and the person can be heard.

The third example that I want to raise—

Sir John Hayes: Before the hon. Gentleman gets into his third example, I would like to go back to his second example; otherwise, I shall lose count of his examples. The point about the former Home Secretary, Amber Rudd, is not the inconvenience to her. Of course, one regrets the fact that it might have wasted her time and cost her her train fare, but that really is not the point. The point is that her opinions, which, broadly speaking, we take to be mainstream, were, in effect, prohibited. That is not compatible with a university environment that is, one would hope, there to stimulate debate, discussion, challenge and argument. It is not compatible with a free and open society.

Matt Western: We have tabled amendments proposing how universities and student unions should find their way through that, and we will come to some of them later.

To finish, I want to raise the much-cited case of David Irving, who was uninvited from speaking to the Oxford union as long ago as 2001 because of pressure from academics and members of the student union, who were furious that he was being given a platform for his views on the holocaust. A High Court judge had previously described him as "racist" and "antisemitic" during a libel trial. During the evidence sessions, one of the witnesses hypothesised:

"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."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 102, Q211.]

Lloyd Russell-Moyle: The contradiction in using that example is that the Bill would not make any difference, because it excludes the Oxford Union. The very thing that Government Members are worried about will not be dealt with, because the Bill excludes the bodies that have done this in the past and includes bodies that have

[Lloyd Russell-Moyle]

never done it, such as further education college student unions. It is a blunt implement pointing in the wrong direction.

Matt Western: My hon. Friend is absolutely right. The examples that are being cited by lobbyists—perhaps more on the Government side—of where there is perhaps an issue are centred around those bodies. Currently, as we debated on Thursday, they are not included in the Bill.

We believe the tort should be scrapped. We believe it is unnecessary, encourages lawfare against universities and will ultimately end up restricting discussion and debate on our campuses. At the very least, we believe it should be amended with maximum fines. A threshold of harm should be introduced, and it should be restricted to those who are directly affected.

Emma Hardy: FE colleges would love the luxury of having a high-profile, well-known speaker come to visit them; that would be a wonderful problem for them to have. As I am sure the Minister is aware now that she has both briefs in her grasp, however, that is often hugely difficult for them. To exempt JCRs and not FE colleges—I am not aware of a single incident involving free speech ever having been raised at an FE college—seems slightly absurd.

Matt Western: Indeed. It is important to repeat just how burdensome the measure will be for colleges. For decades, they have rarely had issues, but the burden is now being placed at their door.

4.15 pm

Lloyd Russell-Moyle: The difficulty with the inclusion of FE colleges is that, broadly, they are regulated by Ofsted; they have a completely different framework; and they have no relationship with the Office for Students, except in relation to some of the courses that they may run, although they usually do that via other affiliated institutions. Including FE colleges therefore brings into their sphere a whole new regulator that they have never dealt with before, creating even more bureaucracy and confusion.

Matt Western: My hon. Friend is absolutely right: there is yet another body to stir into the mix. We have not heard from the Government about how that will play. It further underlines the extraordinary complexity that the legislation will bring to our campuses, colleges, student unions and HE providers across the UK.

I repeat that all bodies mentioned the need for an exhaustive process, so that every sinew is strained to ensure that any complaint goes through the university, the Office of the Independent Adjudicator and perhaps the Charity Commission before it is escalated. There is an absolute desire—it has been demanded—that the tort should be a backstop to the existing grievance process. Otherwise, people will rush to lawyers' doors, or the lawyers will rush to them, to seek damages at great expense to individuals, and to SUs and institutions in particular. On Second Reading, the previous Secretary of State, the right hon. Member for South Staffordshire (Gavin Williamson), claimed that the tort would be a backstop, but the Bill, as drafted, does not make that clear.

We believe that the clause is unnecessary. We fear that it will encourage vexatious claims and create additional bureaucracy, and we have talked about the £48 million that it will be incumbent on universities and SUs to fund. We believe that the clause will cause confusion to claimants about their various routes to redress through Ofsted, the Charity Commission, the OIA, the OFS and the universities themselves. The clause will also undermine existing disciplinary procedures. For those reasons, we oppose it and wish it to be removed in its entirety.

Lloyd Russell-Moyle: We have heard why the clause is dangerous, and I will talk briefly about two reasons why it should be opposed.

First, I will touch on the real chilling effect that I believe the measure will have on institutions. It is a lawfare charter, or an ambulance-chasing lawyer's charter. Lawyers will go around knocking at institutions' doors, and they will say to those three students who did not fill in the paperwork correctly to register their student club, "Do you think you've been slighted?" because the clause gives them the right to seek damages if the club is not registered. Those people, not the students or staff, will push the boundaries in all different directions.

There are people out there who look to make a quick buck when law is bad. In the past, we have had to rewrite law in this place and remove such opportunities because we had allowed massive loopholes. The easiest and cleanest way to stop that from happening is by following the evidence that we have heard, according to which the tort should be a backstop, not a front foot. At the moment, the Bill allows it to be a front foot.

The Amber Rudds of this world may not go running to the lawyers, but lawyers may come knocking on the door of a poor student or someone on a casual contract who is struggling to pay their rent. Large numbers of university academics struggle to pay their rent day in and day out, because their occupation is a very poorly paid one with low job security, except at the very top. We all have experienced something similar after car crashes, and it drives people crazy. It drove me crazy when I had a little prang at Bradford airport, which did not even cause a dent on either car, because for months afterwards I had lawyers ringing me and saying, "Do you want to claim compensation for whiplash?" The crash caused no damage to me whatsoever, but if I had been struggling to pay my rent or make ends meet, that would have been a temptation. I am afraid this clause opens up that possibility.

The first way to stop that happening is by requiring people to pursue the complaints procedures internally. I do not understand the Minister's point about an external speaker being unable to complain using an internal process. In fact, we heard how an hon. Member in this room had managed to complain, although it was difficult. Perhaps external people should be able to complain internally. I think most people would like there to be a clear complaints process for external speakers as well.

Fiona Bruce: I remind the hon. Gentleman that even though the complaint that I made was upheld, it was futile, because only a year or two later there was an attempt to no-platform me again by the same group, in

the same college. That is why this Bill and the recompense—this tort that we are talking about now—are so necessary.

Lloyd Russell-Moyle: The hon. Lady is exactly right that it is necessary to clarify that process to ensure that it is streamlined and clear, but under this Bill she might have complained first to the institution, the next time to the Office of the Independent Adjudicator and the next time to the person for free speech. There is no process for creating case law, for want of a better word, and setting a decent precedent. There is no precedent to be set here.

In fact, there are so many ways to complain that it will frustrate the process even more. It would be better to say, "This is the process you have to go through," so the regulator can see that there is another complaint coming through about the same thing and can escalate it. One way would be to require people to go through a single process; first a free process in the institution and then a free process with one of the regulators. I am easy about whether it is with the Office of the Independent Adjudicator or the director for freedom of speech, as long as it is clear what powers they have.

If all ends are lost or the complainant feels that those offices have come to the wrong decision, they can take it directly to tort. That would allow a quasi-appeal process. At the moment, the director for free speech does not have an appeal process, so if someone thinks that it has come down on the wrong side, they will be stymied and unable to do anything. If it were clear that after going to the director for free speech, people could go to courts for tort, there would be an appeal process.

We do not know who the director for free speech is. Although I trust lots of people who are experts, everyone is fallible and will sometimes make the wrong decision. It seems wrong and unfair to rely on the director for free speech alone to make decisions that people will always be happy with. The director will not rely on case law or precedent, because they will be a law unto themselves when it comes to precedent.

The other way of making this tort section half-decent would be to limit costs. Most student societies have probably about £100 in their bank account. Are we asking a student society, which we have been told will be covered by this provision, to have a liability that is beyond what is in its bank account? Or are we saying that the student union should hold the liability for every single private student association?

Let me make the situation very clear. A student club in a university is a private association of private individuals, which sits under the university and chooses to affiliate to the union. In this Bill, we are proposing, as a Parliament, to include such associations and make their actions a liability of the student union. I know of no other organisation that is liable for the actions of a group of private clubs that happen to affiliate to it. It would be like making working men's club associations or Conservative club associations—I cannot remember their detailed names now—liable for what happens in every single constitutional club or working men's club in the country. It is absolutely bonkers, wrong and beyond the pale to engage in giving institutions this level of liability for small clubs that have very little to do with them, apart from an affiliation with them and the fact that one or two students might be members.

Another simple thing that could be done with the tort is to make it very clear that damages can be sought only if damage has been caused directly by the institution or the student union, not just by some of its affiliate bodies, over which it might have no regulatory role. The other way to make the tort sensible and limited is to put a cost cap on it. At the moment, unlimited liability means that institutions and student unions will settle, because there is a risk. If there is no cap, they cannot go to court and say, "We think we might have a bit of an argument here, and we think we have made best endeavours." As the Minister will say, it is about best endeavours, and there is no case if the university has done its best and things still could not go ahead. That argument will be irrelevant, because if there is unlimited liability, there is a real danger that the university will say, "Okay, we'll pay out £1,000 out here, and we'll pay it out there." Soon, those thousands of pounds will be tens of thousands of pounds.

That could cripple a student union in one go. I know that Government Members might not really understand this, but most student unions are small institutions that have only a few thousand pounds in their bank account. They do not even have £10,000. This idea that student unions are some big organisation that people can draw some sort of tort from is so out of touch with the sector.

It is so disappointing. I might disagree with the need for this measure to be in a Bill—I think that the same thing could have been done through regulation or by bumping up the Office for Students within its framework, but we can agree to disagree on that, and it is the Government's right to introduce legislation if they wish—but bringing in a tort destroys the whole point of trying to secure people's free speech. It will mean that student unions will say, "No, we can't have your societies registering with us at all. We can discriminate against all, or we have to regulate every single thing that you do, so now you just cannot affiliate." With all those student societies—including the student politics society that I will speak next week or the week after at Sussex University, or the Labour club at Bradford University where I plan to speak in a few weeks' time—the universities will just say, "It's too complicated. We'll shut them down."

It will be the same for Government Members. They consider free speech societies to be so important, and I agree; they are important for a student's educational experience. Those societies and the Conservative clubs, or Conservative Future clubs—whatever the youth wing of the Conservative party is called nowadays; I can never keep up—will all be automatically disaffiliated. We have already seen that happen in Oxford; I am not making this up. Oxford University student union did it with the UN women's society. The student union just disaffiliated that society, which still exists and still meets. The society can be as rude as it was with Ms Rudd, because it is no longer affiliated.

4.30 pm

We need to be clear that we want societies to be affiliated, and we want them to come under general provisions of good conduct, but they cannot be held liable because it is too much of a risk for the trustees of the organisations, the council members of the institutions or the governors of those bodies. That is why the clause needs to be totally redrafted and amended, or, even better, taken out. Even as it stands, this route is the

most expensive and burdensome for someone to go down, and they will not go down it unless their lawyer—"no win, no fee"—offers them indemnity. The amounts that people pursue will be a pressure upwards, not downwards, because we know it will cost in the ten thousands or twenty thousands to pursue a case through these means. There is no way that the charges will be accepted for less than that.

I am deeply against the clause. I beg the Minister to consider the amendments, just to make sure there are safeguards so that this cannot go mad—I should not say "mad"—or blow up in our faces. If she is determined about the tort, there are safeguards she can put in, but I genuinely think there are significant things under the current regulations. If she wants, she could include the ability for the Office for Students and the adjudicator for free speech to have greater fining powers when institutions go via that route, so there could be a financial penalty, but the penalties would be seen in a one-track process without ambulance-chasing lawyers after them.

John McDonnell: The arguments have been cogently made by my hon. Friend the Member for Brighton, Kemptown. I have one simple question. Clause 3 states:

"A person may bring civil proceedings against",

but who is that person? Who has standing in this? The schedule, which sets out the complaints scheme, it is very specific about who has standing in paragraphs 1, 2 and 3, and in paragraph 4 to a certain extent. It designates that an eligible person means,

"a person who is or was…a member or member of staff of the students' union, or…a student, member or member of staff of the provider, or…a person who was, or was at any time invited to be, a visiting speaker."

That is not set out in clause 3. I might have misread it; perhaps it is written down somewhere, but I cannot find it in the legislation at all.

If there was a link between the appeals process as a process that was exhausted and then an individual went on to the tort, they would probably be able to rely on the definitions set out in the schedule, but at the moment there is no definition at all. That is why I ask the question. I am not being obstreperous. I simply cannot find it in the Bill.

I will give an example. If I buy a ticket to attend a lecture or speech that is then cancelled, am I a person who is eligible to bring civil proceedings as a result of the damage—no matter how slight—caused to me by not hearing that person? Do I have standing? Can I sue the provider, the student union, or whatever? I just want clarity on that. Whenever we introduce a tort, it is a bit like that American baseball film—"If you build it, they will come." If we create a tort, the lawyers will come, as will other organisations that wish to make money, or in some way frustrate the process of trying to secure freedom of speech, The clause as it stands could be counterproductive.

I want to make a simple point. People volunteer to be elected to student unions, and the president, vice-president and those on the executive committee are the ones who usually have the political fight to get on there. It is largely around the nature of the students and what activities they want to pursue. However, there are some people who altruistically become the trustees. It is completely altruistic and goes beyond making a political point by standing for president or to be on the executive committee.

What worries me is that, as soon as we get into litigation like this, the student body does not have the resources to settle the claim. One way around that is expensive insurance, but even that might be beyond some of these bodies. I am fearful of it then falling onto the shoulders of those trustees, who could incur quite significant financial costs. Even the fear of that may well prevent people coming forward as trustees. By inserting this into the legislation, we are building a dark hole for people to fall into, and I think it could cause considerable problems.

I do not understand why we cannot rely upon the complaints procedure set out in new schedule 6A of the Higher Education and Research Act 2017. If that does not, as the Minister says, cover visiting speakers and such, I do not understand why can we not amend the schedule to make it all-encompassing?This is abysmal legislation, and here we are—the Opposition—virtually rewriting it for the Government. I suppose we are trying to mitigate the damage that will be done if it passes the whole House unamended. If we are going to legislate in this way, let us at least not undermine the ability of young people to participate in the structures that actually do develop their concept of what democracy is all about.

That is what we are doing here, I think. We are putting large numbers of people at risk, and if they are not at risk, we are putting them off participating in bodies that perform a service, not just for students but wider society.

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

The Committee divided: Ayes 9, Noes 7.

Division No. 15]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4

General functions

Amendments made: 5, in clause 4, page 6, line 2, after "providers" insert "and their constituent institutions".

This amendment and the Minister's other amendments to clause 4 make clear that the OfS's new functions relating to freedom of speech extend to constituent institutions of registered higher education providers.

Amendment 6, in clause 4, page 6, line 3, after "providers" insert "and their constituent institutions".

See explanatory statement to Amendment 5.

Amendment 7, in clause 4, page 6, line 8, after "providers" insert "and their constituent institutions".—*(Michelle Donelan.)*

See explanatory statement to Amendment 5.

Sir John Hayes: I beg to move amendment 73, in clause 4, page 6, line 8, at end insert—

'(2A) The OfS will compile an annual review of registered higher education providers, ranking their compliance with their duties under sections A1 to A3; to be made publicly available by such means as the OfS considers appropriate."

In moving the amendment, I draw attention to my entry in the Register of Members' Financial Interests, which details my role as an academic at Bolton University.

I was speaking at the weekend at a dinner with a group of friends who are academics. We addressed in conversation how we could ensure that universities will comply with the terms of the Bill, should it become an Act, as I expect it to do. I talked about the amendment we debated earlier—I will not seek to do so again, Mrs Cummins, because you would not let me—in which I recommended a periodical report. I suggested quarterly, but I am open-minded about what that period might be and its precise terms.

There is an alternative that I now suggest in the form of an amendment to this clause, which is for the OfS and, in particular, the new director, to provide information annually about compliance with the duties in new sections A1 to A3 and to make that publicly available. It would be less onerous, so it would pass the test that the Minister set of not being excessively bureaucratic, which was the argument that she used—in my view rather surprisingly—in resisting my first amendment, although she said that she would give it further consideration, for which I am grateful. It would certainly pass that test, but also give reassurance that universities will be expected to respond, and respond consistently.

My doubt about the legislation is not about its principles—I agree with them entirely. It is not about the practice, which I expect to be effective. It is more about the universities and how they respond. I suspect that, if we are not careful, it will be a variable response. Some will feel that they can comply with these duties more straightforwardly than others and some may even be reticent to do so. I am very keen to avoid creating what might be described as a littered landscape of all kinds of universities acting in all kinds of different ways.

Emma Hardy: I recognise the point that the right hon. Gentleman is making about how when a list is compiled, it can be influential on students choosing a university. They often look at rankings. My concern about the amendment is with the resource implication. I have mentioned before about higher education provided by FE. How much resource would student unions have to comply with this duty by putting on these kinds of events? Could smaller universities or colleges be downgraded in the ranking he referred to because they do not have the resources to offer the greater breadth that, for example, Oxford or Cambridge would be able to offer?

Sir John Hayes: It was at Cambridge that I had the discussion with the academics that I mentioned, by the way. I am involved with some postgraduate work there, which is not registered in the Register of Members' Financial Interests because it provides no financial reward, so it is not a pecuniary interest, but I mention it in passing for the benefit of the Committee and others.

The hon. Lady is right that there is a challenge in respect of smaller providers, and I accept that. A good point was made in the earlier part of our consideration about FE colleges and about thresholds. There does seem to me to be an argument around thresholds. I would hope that that would become clear in the guidance. The hon. Member for Warwick and Leamington made a good point about that. Good practice will necessitate the new director establishing some protocols that do not allow the free for all that he suggested might be the consequence of not being clear about the sort of things that would stimulate his interest and lead to further steps. To be honest, I think that the good practice detailed in the Bill would include the director making clear his expectations of universities. The Minister will no doubt confirm this when she speaks, but I find it inconceivable that the director will not set those expectations out in guidance. He is missioned, after all, to provide advice, and it is inconceivable that that advice will not include some mention of the kind of circumstances in which universities might want to draw matters to his attention.

4.45 pm

There is an argument to go further and to say that, if universities are going to take any steps which they think might inhibit free speech, they should, before doing so, report to the director. That might also be included in guidance. If there were an issue about the curriculum, where a course was in the eyes of some people contentious and there were changes to practice which were unconventional—all things that we have debated previously in our scrutiny—there is an argument that that ought to stimulate some report to the director. That is not what I am suggesting here. You will recognise that, Mrs Cummins, and call me to order if I carry on talking about it too much.

What I am proposing is very straightforward: simply, that there is an annual review of registers of higher education providers and that they are publicly ranked. This is not uncommon for universities; indeed, they are well used to that approach. Student satisfaction, for example, is gauged and universities are ranked accordingly. Over time, we have become more accustomed to universities being required—helpfully, I think—to be very open about what they are doing and how well they are doing it. It helps students to make informed choices and it helps others to assess the success and effectiveness of the regime in different places of higher and further education.

The Minister might find this amendment altogether more agreeable. Last time, I said that I anticipated her seizing on my amendment with enthusiasm and, frankly, I was a little disappointed that she did not. The response was rather less fulsome than perhaps I had hoped. This is a more modest suggestion; it is in line with her concerns about bureaucracy and in keeping with the idea of the existing practice of the OfS, but it would provide more structure and the prospect of greater consistency. I am hoping that both the shadow Minister and the Minister will recognise the amendment as a helpful addition to the Bill, entirely in the spirit of its

purpose, but one seeking to improve it in terms of compliance and consistency. On that basis and awaiting that enthusiastic response, I will leave it there and reserve the right to speak again and decide whether to press my amendment.

Matt Western: I wish to grab the amendment with some enthusiasm, but maybe in the wrong direction from what the right hon. Gentleman is hoping for. I do worry about bureaucracy, particularly among smaller institutions, and the general cost and responsibility and burden that falls with it. As I said the other day, I believe that the demands that the Government are looking to place on institutions through this legislation is just another example of the head office wanting yet more reports from various institutions. It will be another form to fill in, and the Government will do what they want with it—maybe just sit on it, like so many reports.

I struggle with the amendment, because I think it misjudges the benefit of bureaucracy. As the right hon. Gentleman knows, we have tabled amendments on looking for best practice. We want to understand what is good out there, as well as examples of events being cancelled unduly. That is of interest to all across the sector, it is right and it is proportionate, but ranking universities according to their obligations under the Bill would be impractical and undesirable. I will expand on those two points in just a moment.

Emma Hardy: I understand what the right hon. Member for South Holland and The Deepings is trying to do. Would it help him to know that there were consultations on the national student survey—the annual review of student satisfaction—and that one of the questions looked at related to free speech? Might that satisfy his aim, without having a negative impact on smaller providers, which will end up further down the rankings because they lack the resources to put on the events that wealthier institutions can?

Matt Western: I thank my hon. Friend for that suggestion.

What the amendment proposes is impractical. In evidence, we heard about the undefinable nature of the chilling effect. One of the Bill's stated aims is to erode that effect, but how can the OfS be expected to rank universities on how they do that? As my right hon. Friend the Member for North Durham put it:

"Getting your head around the idea of self-censorship is like having blancmange in your hands."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 95, Q194.]

How is it substantive? How is it made quantifiable and therefore a true measure?

Sir John Hayes: On that point, I want to get to the bottom of this issue of good practice. As the hon. Gentleman knows, clause 4 already states:

"The OfS may…identify good practice relating to the promotion of freedom of speech and academic freedom".

As well as giving advice—dealt with in the next paragraph—the identification of good practice will end up ranking universities, because where good practice is identified it will be clear, and where it is absent it will be equally clear.

Matt Western: I thank the right hon. Gentleman for that point of clarification, but even where good practice is identified, that is a qualitative judgment being made, in this case, by an individual or perhaps a small team of people; and while that is accepted and understood, and most people recognise good practice when they see or hear it, how it is quantified into some measure is a concern. Is it a matter of giving five points for this and three points for that? How is a genuinely substantive and transparent ranking system that people can understand to be arrived at? I understand the right hon. Gentleman's intention, but I believe there are better ways of understanding where there is good or bad practice. One of the witnesses, Sunder Katwala, said:

"self-censorship and chilling effects are cultural points".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 103, Q214.]

When you need to do some quantitative analysis, how do you quantify what is essentially a cultural phenomenon?

The point made by the chief executive of the OfS was that

"Regulatory burden is not necessarily a bad thing,"

unless "it is disproportionate." She added:

"The way through this is to ensure that our response is proportionate and risk-based".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 113, Q245.]

I would say that what is coming from the OfS is some direction. They might want some sort of reporting, but it has to be proportionate to identifying risk, rather than some sort of beauty parade showing how different universities are performing.

In their impact assessment, the Government claimed that non-legislative work, including the OfS-led review and guidance is not sufficient to solve the problems identified. Non-legislative proposals would not have the desired effect because they are based on a voluntary approach. The amendment is fundamentally illiberal, putting the OfS in the position of an ombudsman that sits above the sector. Dr Greg Walker, the former chief executive officer of MillionPlus, was concerned about the OfS becoming an arbiter. He described it as being much like the British Board of Film Classification. How would that work? The Association of Colleges reminded me in our meeting that the OfS is provider-blind. How, then, can it be expected to rank institutions? The former Secretary of State, the right hon. Member for South Staffordshire (Gavin Williamson), said on Second Reading:

"The OFS will also play an important role in identifying best practice and providing advice in relation to the promotion of these rights."—[*Official Report*, 12 July 2021; Vol. 699, c. 50.]

Why have not the Government put that in place more, rather than potentially wasting thousands of pounds on implementing this legislation?

The amendment goes beyond identifying best practice and advice and into intrusive review and value-based judgments on a university's attempts to navigate freedom of speech issues.

Sir John Hayes: The hon. Gentleman is being generous in giving way. What he describes is not uncommon when we look at universities. We heard earlier that student satisfaction is measured. Student satisfaction is,

by its nature, a subjective judgment: students gauging their view of their university—the teaching, care and stewardship. Of course those judgments are subjective, but they are none the less valuable.

Matt Western: I understand that. My understanding of that student survey is that they complete it and assign a score, on different categories and measures, to how the university has met their expectations, to try to quantify that experience. It covers teaching, accommodation and how the curriculum has been delivered compared with their expectations. That is a positive thing.

The Opposition do not believe that there is a need for ranking. It is a qualitative measure and I think it is a stick to beat and bully those the Government may not like. I have real fears about the Bill. Increasingly, I sense that it is the work of the McCarthyite tendency, and the amendment would simply aid them in their subjective assault on the sector.

Mr Kevan Jones: It is a pleasure to serve under your chairmanship, Ms Cummins. I say to the right hon. Member for South Holland and The Deepings that God loves a tryer. He has come back with another amendment to try to quantify the need for the Bill. As I said last week, I feel uncomfortable with the Bill's intervention in areas where it should not go.

I look back, possibly with rose-tinted spectacles, to the halcyon days when Conservatives argued for smaller states, less intervention and less red tape. The Bill—and the right hon. Gentleman's amendment—puts more red tape and bureaucracy on institutions. We have just had a discussion on tort. I look back fondly to great Conservative speeches that argued for less regulation and how we should keep lawyers out of things wherever possible. Today we have a Government who argue for giving a freedom charter to lawyers, which I have never been in favour of.

There is a—perhaps inadvertently—useful part to the amendment: it might produce the evidence for the need for the Bill in the first place. One of the problems with the Bill is that we have seen very little evidence, in terms of figures, for why it is required. If the amendment is an attempt to provide that, it seems to put the cart before the horse. One problem, as my hon. Friend the Member for Warwick and Leamington said, is how we quantify this, because these will be value judgments that vary from year to year for institutions. Let us be honest: the institutions themselves will have no control over them at all, because student unions and other organisations will invite speakers and get challenged, which will be problematic.

5 pm

I understand what the right hon. Member for South Holland and The Deepings is trying to do in terms of justifying the existence of the Bill, but I am not sure that the amendment will do that. I also, like my hon. Friend the Member for Warwick and Leamington, do not understand how we would do the ranking and how we would quantify it. What we found throughout the evidence sessions is that, although we have such things as the Chicago principles in terms of freedom of speech, it becomes a very subjective test. Trying to rank universities simplistically like this would be very difficult.

Also, if we agree that limitless legal actions could be taken against universities and institutions, lumbering them with financial burdens, we will put more burdens on them if they have to quantity these things every year to the Government. I think that would be unwelcome to our university sector. The sector is telling us that it has gone through a very difficult time during covid and that it needs more money. I do not think that any of us would not argue for more money for the education sector, but we are giving them additional burdens.

I come back to the point made by my hon. Friend the Member for Brighton, Kemptown: these institutions are not one size fits all. There are some very small organisations that will find having to do this every year burdensome. I accept that the right hon. Member for South Holland and The Deepings has moved from where he was last week in terms of wanting it on a more regular basis, but there will be huge burdens. It would be unfortunate to tie up academic time and money in compiling lists that I am not sure will be the top thing that students will look at when they decide which academic institution to go to.

Michelle Donelan: As discussed, the amendment seeks to introduce a requirement on the Office for Students to publish an annual report that would assess and rank higher education providers on their compliance with their freedom of speech duties. Schedule 1 to the Higher Education and Research Act 2017 sets out existing reporting requirements placed on the OfS. Paragraph 13 of that schedule requires it to prepare a report on the performance of its functions during each financial year. That annual report already summarises the regulatory activity of the OfS as undertaken in that year. Following the Bill, that report will be able to include the regulatory work that the OfS has undertaken in relation to the new registration condition on freedom of speech and academic freedom, as well as information on the operation of the new complaints scheme.

In that context, proposed new section 69A in clause 4(2) of the Bill also provides that the Secretary of State may, by direction, require the OfS to report on specific freedom of speech and academic freedom matters in its annual report, or in a special report. Both those reports must be laid before Parliament, so they will be subject to scrutiny and can be considered by the sector itself. Members should be aware that another provision of the Bill—paragraph 12 of proposed new schedule 6A in clause 7(2)—requires the OfS to conduct a review of the complaints scheme or its operation and to report the results to the Secretary of State at the Secretary of State's request. To impose further reporting, as required by the amendment, could be overly bureaucratic. However, as previously discussed, I am happy to reconsider the reporting requirements. I hope that that will satisfy my right hon. Friend the Member for South Holland and The Deepings. I will take the matter away and continue to consider it.

Sir John Hayes: The Minister is becoming increasingly characterised by her willingness to listen, and that is the mark of any good member of the Government. All people who have been Ministers know that Bills improve through scrutiny—I am thinking of the right hon. Member for North Durham, and I am looking around for others. The right hon. Member for Hayes and Harlington was

[Sir John Hayes]

an aspirant Minister—an aspirant Chancellor, indeed. Governments that listen usually end up with better legislation, so it is of great credit to the Minister that she is listening to the scrutiny and responding with the tone that she is.

The hon. Member for Warwick and Leamington said that freedom is hard to quantify and that the measures in the Bill will be hard to measure. Freedom is like happiness. Neither is absolute, both are hard to define, but the pain of the absence of either is keenly felt and better cured. That is what the Bill tries to begin to do. I am anxious that it has the effect that the Government desire, and keen that we produce some means by which we measure that effect. The amendment may not be the ideal way of doing so, but I am grateful for the comments that have been made from across the Committee recognising that my attempt is to make the Bill as consistent in its application as possible, and as clear to those who will have to work with it.

On the basis of the Minister's welcome willingness to listen and respond subsequently, and with one final caveat, I am minded to withdraw the amendment. The caveat is on my point about universities being obliged to report to the new director in those instances where there are matters of contention, such as changes to the curriculum, courses that are not run, or events that are stopped in some way. I have no doubt that that might form an amendment when this matter comes to the other place. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

5.7 pm

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