PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

Eleventh Sitting

Wednesday 22 September 2021

(Morning)

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Sunday 26 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 22 September 2021

(Morning)

[Sir Christopher Chope *in the Chair*]

Higher Education (Freedom of Speech) Bill

Clause 7

Complaints scheme

9.25 am

Amendment proposed: 36, in clause 7, page 8, line 24, leave out "at any time".—*(Matt Western.)*

See the explanatory statement for Amendment 37.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 19]

AYES

Glindon, Mary	Russell-Moyle, Lloyd
Hardy, Emma	
McDonnell, rh John	Western, Matt

NOES

Bacon, Gareth	Holden, Mr Richard
Bruce, Fiona	Tomlinson, Michael
Buchan, Felicity	
Donelan, rh Michelle	Webb, Suzanne

Question accordingly negatived.

Amendments made: 12, in clause 7, page 8, leave out lines 40 to 42 and insert—

"(i) a student of the provider, or

(ii) a member or member of staff of the provider or of any of its constituent institutions, or".

See explanatory statement to Amendment 8.

Amendment 13, in clause 7, page 9, line 6, after "provider" insert "or constituent institution".

See explanatory statement to Amendment 8.

Amendment 14, in clause 7, page 9, line 18, after "provider" insert ", constituent institution".—*(Michelle Donelan.)*

See explanatory statement to Amendment 8.

Matt Western (Warwick and Leamington) (Lab): I beg to move amendment 38, in clause 7, page 9, line 27, at end insert—

"(e) A free speech complaint is not to be referred to the OfS under the scheme if a complaint relating to the same subject-matter is being, or has been, dealt with by the Office of the Independent Adjudicator."

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

Amendment 39, in clause 7, page 9, line 37, at end insert—

"(1A) In reaching a decision under subsection (1)(a), the OfS must consider the other legal duties of governing bodies and students' unions, such as but not limited to those under the Equalities Act 2010 and section 26 of the Counter-Terrorism and Security Act 2015."

This amendment would require the OfS to consider other legal duties incumbent on higher education providers and students' unions when reaching a decision as to the extent to which a free speech complaint is justified.

Amendment 40, in clause 7, page 9, line 42, after "may" insert—

"issue guidance, give a warning or".

This amendment would allow the OfS to issue guidance or give a warning, instead of a recommendation, to governing bodies or students' unions against which a complaint has been upheld.

Amendment 41, in clause 7, page 10, line 2, at end insert—

"(2A) In assessing whether to issue guidance, give a warning or make a recommendation, the OfS must consider the seriousness of the free speech complaint and whether the governing body or students' union to which the complaint relates has repeatedly breached its freedom of speech duty."

This amendment would require the OfS to gradate the penalty it issues to a governing body or students' union according to the seriousness of the complaint that has been upheld against it.

Amendment 42, in clause 7, page 10, line 21, at end insert—

"(8A) The scheme must provide an appeals process for governing bodies and students' unions that have had free speech complaints upheld against them."

This amendment would require the free speech complaints scheme to have an appeals process for higher education providers and students' unions.

New clause 8—*Guidance on making a complaint*—

"(1) Notwithstanding clause 11, this Act cannot come into force until the Secretary of State publishes guidance for students, university staff, and others setting out which complaint route each should pursue, through which regulatory bodies, and in which order, when making a complaint relating to freedom of speech."

This new clause would ensure that those engaging with universities knew which was the appropriate route to make complaints in the first instance, and how to escalate the process should that be necessary.

Clause, as amended, stand part.

Matt Western: It is a pleasure to see you back in the Chair, Sir Christopher.

The amendments collectively address the issues of duplication and confusion we see in the complaints process and identify what we regard as an essential matter, which is the serious omission from the Bill of an appeals process. Our proposals are designed to clarify certain points.

Amendment 38 is designed principally to clarify the relationship between the Office for Students and the Office of the Independent Adjudicator, the ombudsman. In the witness sessions, I asked the chief executive of the Office for Students, Nicola Dandridge, whether she could imagine any situations in which one body or individual might go to the Office of the Independent Adjudicator and another to the Office for Students, and how that might be reconciled. She replied:

"That is exactly the sort of thing that we need to make clear. I do not see that that is an insuperable problem. We just need to make sure that we have sorted it out and that there is clarity for everyone involved."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 111, Q237.]

That is one of those answers that we sometimes get, where there are a couple of double negatives and we are left wondering how nuanced a particular point is. In an online comment, Jim Dickinson of Wonkhe said that is not good enough and that we cannot informally discuss how to arrange the relationship when in the Bill itself there is no provision to lay out the framework. That is the root of the problem: the lack of clarity between both bodies is a serious structural issue in the Bill, which therefore needs structural modification.

We have the prospect of what I understand in legal terms is referred to as res judicata issues, which is the possibility of a case having already been decided if the same aspects apply. In its own impact assessment, the Department for Education said that in its cost-benefit analysis, one of the costs of the implementation of the complaints scheme was the cost to students of not knowing which route to go. During a meeting I had a while back with the University Alliance, it stressed that there was serious confusion between the responsibilities of the OIA and the OfS. The Universities UK advisory board has also said that the Bill could duplicate the existing complaints system of the OIA.

The OIA itself says:

"We remain concerned that having two complaints schemes for student complaints, with overlapping but not identical remits, is very likely to cause confusion and put additional pressure on students having to choose where to take their complaint about freedom of speech issues."

It added:

"We are concerned that creating a second complaint route with overlapping, but not identical remits, will be confusing for students and add complexity for higher education providers as well as students' unions and other student representative bodies advising students."

We have the situation where it is possible for an incident to result in some individuals complaining to the OfS, others complaining to the OIA about the same incident and both receiving a different remedy, depending on the context of the complaint. In the case of David Palmer, a Catholic chaplain at the University of Nottingham, the student could go to the OIA, and David Palmer could go to the scheme. It was the same issue: two bodies, two remedies. That leads to an administrative nightmare.

Amendment 39 would require institutions to balance out other legal duties in the assessment of free speech complaints. Danny Stone of the Antisemitism Policy Trust told us:

"The Prevent guidance that followed talked about freedom of speech and moral obligations to address harms. We have seen it in Government guidance from 2008 about free speech, which said that everyone can be safe and not intimidated at university. In fact, the human rights memorandum for this Bill says that there will be competing freedoms, but it suggests leaving it to the end point: the universities. You have heard from people today who say, "Well, the universities aren't getting it right." My view is that it should be on the face of the Bill".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 129, Q283.]

Even the former Education Secretary, the right hon. Member for South Staffordshire (Gavin Williamson), said:

"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, the Prevent duty and other legislation, none of which we are changing."—[*Official Report*, 12 July 2021; Vol. 699, c. 49.]

I accept that those duties already exist, but why not make it clear in the Bill that they interact with freedom of speech issues?

The Minister for Universities (Michelle Donelan): I can answer that question quite swiftly. We cannot get into the business of listing every single law in every Bill. The Bill, as the hon. Gentleman will recognise, does not supersede, contradict or replace existing law in relation to the Prevent duty—which is not a law, actually—or the Equality Act 2010. It is quite simple: we cannot get into the practice of having legislation where we list every other law on the face of each Bill.

Matt Western: I think it is important that there are references to other legislation in the Bill. Such elements are critical to the foundation of a freedom of speech Bill.

Amendment 40 would allow the scheme to result in a warning rather than a recommendation or a fine. This is about recognising that in most, if not all, cases, there is a fine line. It would allow universities to make judgment calls that were wrong and give them room to change their mind, rather than leap towards fines. We heard, for example, from Bryn Harris, who commented on how to balance

"the potential conflict that we were talking about, between the Equality Act"—

harassment provisions "and this Bill", which would have to

"have guidance to help universities navigate this very fine line."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 80, Q168.]

Hand in hand with the guidance—not mandatory—is warnings, or gentle persuasion. The vice president of the National Union of Students, Hillary Gyebi-Ababio, said that it is

"really concerning, such as measures under which people could get monetary sanctions for breaches of freedom of speech. Not only will that involve lots of bureaucracy for universities and student unions to make sure they are complying with the Bill, but it will take away from their ability to freely and fairly facilitate freedom of speech on campus."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 128, Q281.]

That, of course, will have a disproportionate impact on smaller institutions, as we have heard. We have repeatedly made the point about the smaller institutions, typically higher education bodies, but also further education colleges, that were not consulted at all in the drawing up of the legislation.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): It is a shame that the evidence from the Association of Colleges came late. I want to draw Members' attention to it. I said previously that the provision would apply to 170 FE colleges, and in its evidence the AOC gives the number as 169. It states that if the Government are able to exempt junior common rooms from the legislation, they should be able to exempt FE colleges, as there is no evidence of issues relating to freedom of speech in any FE college. As my hon. Friend the Member for Brighton, Kemptown has already mentioned, FE colleges are additionally regulated by Ofsted.

Matt Western: It is indeed surprising and disappointing, if not a failure of the process, that the further education colleges were not consulted. That point has been made

[Matt Western]

clear and loud by the Association of Colleges, which feels alienated from this process, yet it will bear the same burdens as higher education institutions.

Turning to amendment 42, it is vital to include an appeals process. Appealing an administrative or judicial decision is the hallmark of any liberal democracy. The existing process overseen by the Office of the Independent Adjudicator does have an appeals process, but revealingly the Bill promises none. My hon. Friend the Member for Kingston upon Hull West and Hessle put that point to the only lawyer that we heard from in oral evidence, Smita Jamdar of Shakespeare Martineau. My hon. Friend asked her whether she was

"supportive of the idea of the right to appeal decisions made by the freedom of speech director, as submitted from Universities UK",

to whch Ms Jamdar replied:

"Absolutely. As I alluded to earlier, my concern about having a stop at the OfS is that that individual may be required to interpret law, so they may well be required to decide if something is defamatory, harassment, contrary to the Equality Act or potentially a public order offence. I find the idea that those legal judgments cannot then be appealed to the people who are actually able to make legal judgments really quite worrying."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 57, Q111.]

Both the OIA and Universities UK highlighted the fact that in the Bill the Government are proposing a director of freedom of speech who is judge and jury in decisions on universities, and there is no right to appeal. Professor Paul Layzell from Universities UK picked up that point when he said, in what I think was a masterly understatement:

"I think we would have a concern."—[Official Report, Higher Education (Freedom of Speech) Public Bill Committee, 13 September 2021; c. 126, Q276.]

The OIA has an appeals process. Why does the OfS not have one or one that will be included in the Bill? Universities UK says there would be

"no right to appeal an OfS decision."

It says that if there were a decision that a university student union felt was genuinely unfair, it would be forced to implement it, irrespective of whether it felt there was a right of reply. UUK underscored the fact that existing routes, such as the OIA, have an appeals mechanism. UUK feels that this is absolutely appropriate, and such a mechanism must be brought into the OfS scheme as well.

New clause 8, which stands in my name and that of my right hon. Friend the Member for Hayes and Harlington, has become significantly more relevant since we tabled it. The Minister has consistently referred to guidance in her replies to more or less all of our amendments. Now, she has the chance to let us see that guidance before the Bill is put in the statute book. We urge that that guidance be made available, before Report and certainly before the Bill passes into law.

We are not the only ones who want to see that in legislation. I recall Professor Stock's comment:

"The Bill is quite vague, so it is going to need a lot of guidance, concrete examples and accompanying notes."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 6, Q3.]

In his testimony, Dr Ahmed said:

"With regard to tension with other legislation, I suspect there might well be tension with the Equality Act and difficult decisions to make about a breach of the duty to promote freedom of speech versus the duties imposed under the Equality Act, so I think there are issues that guidance should be able to sort out with regard to what counts."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 18, Q31.]

If the relationship between the duties in this Bill and the Equality Act 2010 are to be decided in guidance, as Dr Ahmed suggests, surely we have to see the guidance before the Bill is enacted. The force of the Equality Act 2010 could be undermined through the backdoor, with no parliamentary scrutiny. As Smita Jamdar said:

"I would have thought that one of the most useful things the OfS could do is give the guidance, and look at this through its regulatory lens."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 58, Q113.]

As I have said repeatedly, we need to see guidance on this before Report or, at the very latest, before the Bill receives Royal Assent. All these amendments tighten up the legislation, reduce or delete duplication and confusion, and underline the importance of an appeals process for all bodies, so that they can challenge any ruling from the OfS director of free speech.

Emma Hardy: It is a pleasure to serve under your chairship, Sir Christopher. I have to correct the record on the number of FE colleges affected. I originally said 170, then I said 167, but for the record this relates to 165 FE colleges.

My hon. Friend talked about amendment 39 and the reason we want to set out in the Bill the different pieces of legislation that could have an impact on free speech. The oral evidence we heard shows that there is confusion about how the Bill will interact with existing legislation.

UUK asks that the Government

"clearly outline how this Bill will interact with existing legislation and other duties which relate to free speech and academic freedom".

Sheffield Hallam submits that:

"the Bill would set a higher standard for freedom of speech expectations, with consequent potential difficulties in relation to the 1986 Education Act, the 1998 Human Rights Act and the 2010 Equality Act."

9.45 am

There is a lot of confusion about how the different pieces of legislation will fit together. I accept that my amendment might not be perfect in resolving that confusion, but that is the purpose behind it, so I hope that when the Minister replies she will acknowledge that the reason for tabling it was to offer some clarity to universities. How do they balance existing legislation with this new piece of legislation, which is meant to give freedom of speech?

Graduated sanctions are fairly standard practice in most situations for most organisations. Anyone familiar with employment law will understand that someone gets a written warning and then perhaps a final written warning—there are stages to go through before reaching the final sanction. That is what graded sanctions are about. At the moment, the OfS has only one option, which is to enforce compliance through monetary penalties. Many times we have discussed the different sizes of student unions and their different capabilities and amount of resource behind them. For a smaller student union, perhaps with only one or two full-time members of staff, surely there could be some form of graduated

sanction, before moving into the heavy-handed fining system proposed. That is what we want to look at—the guidance and support before we reach sanctions.

As a primary school teacher, I like to think that I have some knowledge of the best way to ensure that people behave and work together well. As every good parent knows as well, we encourage and support before we reach, "You're going to bed," or, "You're grounded." The amendment is about putting in some reasonable steps before getting to the final stage.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): My hon. Friend is explaining exactly what Trevor Phillips described. He said that a regulator does not go to the final fine or nth degree immediately; it works with, issues guidelines or goes in to provide support, and sometimes that is compulsory. The amendment would provide for what our witnesses said needs to happen.

Emma Hardy: The University of Cambridge submitted:

"A range of sanctions would allow for interventions which are more proportionate to the facts of individual cases, recognizing that some cases are more likely than others to constitute evidence of repeat or serious breaches of duty."

Professor Kathleen Stock said:

"This legislation says that there should be a positive duty to promote academic culture. That could be a very positive, forward-looking initiative; it does not have to be heavy-handed, although obviously it has the capacity to be punitive. But there is also the dimension of encouraging universities to examine what the value is of academic freedom".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 7, Q6.]

As my hon. Friend the Member for Brighton, Kemptown mentioned: lots of witnesses said that we do not have to move straight to fines; there can be a range of sanctions.

A more concrete example of a good approach to graduated sanctions is that of the Advertising Standards Authority. It focuses on guidance before punitive action. Its website states:

"The vast majority of advertisers and broadcasters agree to follow ASA rulings and for those that are having difficulty doing so, rather than punish them, our aim is to work with them to help them stick to the Advertising Codes. However, for the small minority of advertisers who are either unable or unwilling to work with us, some of the sanctions at our disposal can have negative consequences."

That is one example of a regulator encouraging and supporting before moving to punitive sanctions. The amendment, too, is saying, "Let's have a look at a range of options."

Regarding the appeals process, it is slightly bonkers—my right hon. Friend the Member for Hayes and Harlington pointed this out to me the other day, which made me chuckle—that we have more rights to appeal a parking ticket than a decision of the director for freedom of speech. If people get a parking ticket, they can make an informal appeal to the council, giving evidence and an argument as to why the ticket should not have been issued, but with the director for free speech there is no appeals process. That is slightly silly.

Most systems and organisations, such as Ofsted or the OIA, allow some form of appeals process—some way of going back to them to say, "I would like to appeal the decision. I don't think you saw this piece of evidence." Generally, with most regulators, an attempt at some form of appeal is involved, bringing it into line with existing practice. The amendments are sensible and straightforward. They would give people the right to appeal and provide for graduated sanctions, and I hope the Minister will accept them.

John McDonnell (Hayes and Harlington) (Lab): New clause 8 is a simple request to the Minister to issue some form of guidance about the relevant route for appeals before the legislation comes into force. I think it is quite significant. We are introducing a complex system of complaints and processes, as well as the potential for civil action. It is not much to ask that we get absolute clarity, so that those who will implement the legislation or be the victims of it know how the complaints system will work. I would welcome a commitment from the Minister that we could take to the Floor of the House to reassure people.

With regard to the issue about the rush to sanction, my only comment is that we are dealing with a pretty contentious area, where an element of mediation might resolve most of the problems. Previous progressive equalities legislation that some people have initially opposed has not involved heavy sanctions. In the main, the results have been resolution and progress through a process of education, engagement, mediation and resolution. I think the rush towards sanction will undermine the ability to mediate.

Sir John Hayes (South Holland and The Deepings) (Con): I apologise, Sir Christopher, for not being here at the outset. I always take the opportunity to declare my interests in the Register of Members' Financial Interested. I am interested particularly in the University of Bolton.

Mediation would be an option available to the director. When the director receives a complaint or identifies a problem, I have no doubt that he will have at his disposal a range of mechanisms for dealing with it. This is not an either/or; it will depend on the severity of the problem, and sanctions will occur only where the matter is not dealt with satisfactorily. I do not think it is an either/or.

John McDonnell: It would be helpful if we got on the record from the Minister the process that the Government envisage the director undertaking. I agree with the right hon. Gentleman that it is not an either/or, but let us make that explicit on the face of the Bill. If we can get a statement from the Minister to that effect, I will be happy.

I use the example of a parking ticket, but even with a speeding fine—I admit nothing—there is the offer of going on a course to address speeding behaviour. We are not even building that into the Bill. I would welcome the Minister making a statement that she expects the director to undertake that process of engagement, mediation and warning before arriving at a sanction, which could be counterproductive to that process of engagement.

Michelle Donelan: Amendment 38 seeks to ensure that a complaint cannot be made to the new OfS complaints scheme if a complaint relating to the same subject matter is being or has been dealt with by the OIA. Proposed new schedule 6A to the Higher Education and Research Act 2017 enables the OfS to design the scheme. We expect it to provide that a free speech complaint is not to be referred to the OfS if a complaint

[Michelle Donelan]

relating to the same subject matter is being or has been dealt with under the student complaints scheme of the OfS. This is stated in sub-paragraph (2)(d) of paragraph 5 of schedule 6A to the Higher Education and Research Act 2017. I hope that reassures Members that this provision is already present in the Bill.

Amendment 39 seeks to set out on the face of the Bill that the OfS will have to consider the other legal duties placed on a higher education providers and student unions when making their decisions under the complaints scheme. Under clause 7, we fully expect the OfS to make a decision under the new complaints scheme as to whether an individual has suffered adverse consequences as a result of a breach of freedom of speech duties set out in proposed new sections A1 and A4 of the 2017 Act, as found in clauses 1 and 2 respectively. Those provisions are clear that the duty is to take "reasonably practicable" steps to secure freedom of speech.

The Bill does not say that the freedom of speech duties override other duties, and so it must be read consistently with other legislation. Let me be clear also that it would not be reasonably practicable for a provider or student union to act in a way that meant it was in breach of its other legal duties. Accordingly, when the OfS considers whether there has been a breach of freedom of speech duties, it will already have to consider all the circumstances, including other legal duties on the provider or the student union. I am grateful to be able to clarify this important point, and I hope that that reassures Members that the Bill does not override existing legal duties set out in the Equality Act 2010 or those under the Prevent duty.

Amendment 40 seeks to provide that when the OfS finds a complaint to be justified, it can issue guidance or a warning, not just a recommendation. Amendment 41 would require the OfS to take into account the seriousness of the complaint, as well as whether the provider or student union had repeatedly breached the freedom of speech duties. Paragraph 7(1) of proposed new schedule 6A to the Higher Education and Research Act 2017, as set out in clause 7, provides that the OfS "may make a recommendation" to a provider or student union where it considers a complaint to be wholly or partially justified. "Recommendation" is defined in paragraph 7(3) as a recommendation

"to do anything specified…or…to refrain from doing anything specified",

and it may include a recommendation for the payment of compensation. To be clear, the OfS is not required to recommend the payment of compensation as part of its decision. However, where an individual has suffered adverse consequences as a result of the breach of these duties, it may be appropriate to do so.

In respect of the aims of amendment 40, the current drafting of the Bill gives the OfS sufficient flexibility to recommend to the provider or the student union that it should review its internal processes to ensure that they are fit for purpose, or that it should provide additional training to staff members. The OfS does not have to introduce penalties. A recommendation can cover any aspect that is relevant to the complaint, and in that sense it could be considered similar to providing guidance, or indeed a warning, on compliance with the freedom of speech duties in the future.

On amendment 41, as a matter of good decision making and the principles of public law, the OfS will need to take into account all relevant considerations when making decisions on complaints. This means that issues such as the seriousness of the complaint, and whether the provider or student union was repeatedly at fault, can be considered. The Bill provides for the OfS to set up the complaints scheme. The scheme must include certain provisions and may include others, as set out in the Bill. The OfS will be responsible for developing the finer detail of the scheme, and the Government expect that that will be done in thorough consultation with the sector and wider stakeholders.

Emma Hardy: I should have waited an extra moment, because I think the Minister just answered my question, which was about who else would be involved in the consultation. She mentioned wider stakeholders. Will she clarify whether that includes the National Union of Students?

Michelle Donelan: Absolutely; we would expect the OfS to consult the NUS, as well as additional student unions and student representative bodies, to ensure that it hears a comprehensive range of views when developing the guidance. That will ensure that the details of the scheme can be developed as appropriate, as it would not be appropriate for primary legislation to set out every aspect of the detail. That is similar to how the complaints scheme operated for the Office of the Independent Adjudicator for Higher Education when it was established. The structure of the complaints scheme was set out in the Higher Education Act 2004, but its details were developed subsequently. I hope that that reassures Members that the Bill as drafted ensures that justified freedom of speech complaints can be dealt with by the OfS in the way that is most appropriate to each individual case.

Amendment 42 would allow higher education providers and student unions to appeal against a decision of the OfS under the complaints scheme. Clause 7 provides that the OfS may make a recommendation where a freedom of speech complaint is found to be wholly or partially justified. That gives rise to recommendations that are not legally binding, although of course we expect providers and student unions to comply. That is in line with many other redress schemes, including the scheme operated by the Office of the Independent Adjudicator, against whose recommendations there is no right to appeal. I think there is a little bit of confusion about that in the Committee, but I hope that I have clarified that on the record. As the recommendations are not binding on a provider or an student union, it is not necessary for there to be a route of appeal, because they are not legally required to comply.

In a case of non-compliance, of course, the complainant would have the option of bringing proceedings before the court via the new statutory tort. In doing so, the decision of the OfS in its complaints scheme, including reasons for the decision, will be part of the evidence put before the court. The approach of the complaints scheme is "distinct from" where a legally binding sanction is imposed on a provider by the OfS as a result of a breach of one of its registration conditions.

10 am

Emma Hardy: I thank the Minister for that point about the OIA, but the OIA website states:

"A student or provider may ask us to consider reopening our review if they have new evidence that could not have been given to us earlier or think there is an error in the Complaint Outcome… Requests must be made within 28 days of the date of the Complaint Outcome or Recommendations."

That sounds awfully like an appeals process.

Michelle Donelan: There is no formal right of appeal. If a provider or student felt that there was a factual error, of course that would be outlined in the guidance by the OfS director in relation to this Bill as well.

In the case of a monetary penalty, which is something that hon. Members have raised multiple times, there is a right of appeal set out in schedule 3 to the 2017 Act. That will be available if a monetary penalty is imposed because of a breach of the new freedom of speech registration conditions in clause 5 of the Bill.

Sir John Hayes: I am grateful to my right hon. Friend for drawing attention to the connection between this legislation and existing provisions. In the guardian of free speech's dutiful determination to preserve that freedom, it is right that the watchdog barks before it bites. Equally, however, and as with some of the examples given in evidence by Professor Kaufmann, Professor Goodwin, Dr Ahmed and Professor Biggar, it seems to me that there has to be a righteous severity in the cases of those who cajole, bully, intimidate and cause fear across our universities, for that is exactly what is happening.

Michelle Donelan: I absolutely agree with my right hon. Friend, which is exactly why we are bringing forward this legislation, which really will have teeth to tackle the issue at hand.

I hope that hon. Members are reassured that for binding decisions made by the OfS there is already a route of appeal in place, and that it is not necessary to have a route of appeal against non-binding recommendations.

New clause 8 would require the Secretary of State to publish guidance before the Act comes into force, setting out which complaints routes to use and in which order. The Bill provides for two new specific routes for redress: a complaints scheme operated by the OfS and a statutory tort. These replace what is currently available for breach of section 43 of the Education (No. 2) Act 1986, which is judicial review, giving the duties real teeth. These new complaint routes will be available in addition to other possible complaint routes, depending on the circumstances for students: the Office of the Independent Adjudicator for higher education and the employment tribunal for employees.

It is of course important that individuals are well informed about the most appropriate route for their complaint. For example, in certain cases a student may decide to go to the OIA rather than the OfS, for instance where freedom of speech is only a small part of their complaint. That is because the OfS will be able to make recommendations only on the free speech element of the complaint. The OIA and the OfS currently already work together in a variety of ways, and the Government will work with them to ensure that these processes are clear and accessible, so that students understand their options and both schemes are free of charge.

It is important to note that proposed new schedule 6A to 2017 Act, as set out in clause 7, will allow the OfS to provide in the scheme that it will not consider complaints where the same subject matter is being, or has been, dealt with by the OIA. A similar provision will apply the other way around, so the OIA will not consider complaints already dealt with by the OfS. As for the use of the tort proceedings, the Government expect that in most cases this will be used only as a last resort, as the Committee has already discussed, noting the availability of free routes of seeking redress.

Finally, it is likely that employment cases will be appropriate for those who have had employment disputes where there might be a number of employment-related issues to consider, not just academic freedom. The tribunal will be able to consider the question of academic freedom and alleged breached of the duty in this context, although the Bill does not give them jurisdiction to hear freedom of speech cases. New schedule 6A will enable the OfS to provide in a scheme that it will not consider complaints where the same subject matter is being, or has been, dealt with by a court or tribunal.

Now that I have made clear what each complaint route does and who they will be suitable for, I note that the main provisions of the Bill will not come into force until the day set by the regulations. One of the reasons for that is to allow time for the OfS to develop the new complaints scheme and draft comprehensive guidance, including guidance on the new complaints scheme, and consult as appropriate.

I hope hon. Members are reassured that the Government will work with the OfS to ensure that clear guidance is in place before the duties in the Bill come into force and the new complaints scheme and the tort become available. This will ensure that individuals are aware of their various options when seeking to bring a freedom of speech-related complaint.

The strengthened freedom of speech duties set out in clauses 1 and 2 will ensure that higher education providers and student unions are under clear legal obligations to take steps to secure lawful freedom of speech and academic freedom. Nevertheless, it is important that individuals can access a route to raise complaints where they have suffered a loss as a result of a breach of those duties.

Clause 7 ensures that by providing for the establishment of a new complaints scheme within the Office for Students for complaints relating to a breach of the new freedom of speech duties. This will operate alongside the complaints scheme run by the Office of the Independent Adjudicator for Higher Education, a scheme for students with complaints against their provider.

The OfS complaints scheme will provide an accessible, free route for individuals to bring freedom of speech and academic freedom-related complaints against a higher education provider or student union where they have suffered adverse consequences as the result of a breach of duties in new sections A1 and A4 respectively. The scheme will be overseen, as we have talked about extensively, by the new director for freedom of speech and academic freedom.

The scheme will be available for those to whom duties are owed under new sections A1 and A4—students, members, staff and visiting speakers—which will significantly extend access to redress in terms of freedom of speech and academic freedom cases. There is currently no similar route for anyone other than students to bring complaints against their provider.

Emma Hardy: I know it was not strictly in our amendments, but I hope that before the Minister sits down she will respond to the points made about the inclusion of further education colleges, and how all this relates to the 165 further education colleges that are registered as higher education providers.

Michelle Donelan: To respond directly to the hon. Lady's point, we think it is right that FE colleges are in scope within the Bill. They are already regulated by the OfS when they put on courses of higher education, so this is not a change for them. They are already subject to working with that regulator, as well as Ofsted and so on. It is right that we ensure that this provision is comprehensive and that we protect freedom of speech for students who are studying higher education in further education settings as well as those studying in higher education settings.

Students will continue to be able to raise complaints with the OIA, but will also benefit from the new complaints scheme in the OfS. Students will have the option to raise freedom of speech and academic freedom-related complaints via the OfS scheme, or to raise their complaint with the OIA, as they can now. Where a complaint has been found to be wholly or partially justified, the OfS will be able to make a recommendation to the higher education provider or student union, which could include a recommendation to pay a specified sum in compensation or, for example, a recommendation to reinstate a complainant's job or place on a course.

Without this new complaints scheme, staff in the higher education sector and visiting speakers would have no access to a cost-free route to seek redress against a provider, and there would be no way to complain about the student union. This clause provides a free complaints route to individuals, whether higher education staff, students, academics or visiting speakers, to seek redress for an improper restriction of their lawful free speech. The scheme will ensure an accessible route to individual redress that is backed up by new, strengthened duties provided in this Bill.

Matt Western: So much of what is being promised will be guidance or provided in due course by the OfS, but it is far from concrete in the way the witnesses asked for. I am surprised and disappointed that the Minister has still not made one reference in the entire time this Committee has been sitting to the Charity Commission and the role it will have in this system. It is far from clear how the OIA and the OfS will work. I appreciate that it has been said there will be some guidance on that, but as we have said throughout, there is a duplication here that will be extremely hard for people to navigate way through.

John McDonnell: I think it is fairly easy. A person can pursue an HEP against the NUS via the OIA or the OfS, or an ET, overseen by the DFSAF, and of course the DFE. What is the problem?

Matt Western: My right hon. Friend expresses the nature of the problem: it is as clear as mud. It will be impossible for most students to navigate their way through this, and that may be a major part of the problem.

I have taken on board some of the Minister's comments on our amendments. However, I really think the appeals process should be written into the legislation at this stage, and therefore we wish to press amendment 42 and new clause 8 to a vote. This part of the Bill is clearly important, but there is so little clarity about how it will work in practice. It must therefore be a real concern to all of us. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 15, in clause 7, page 10, line 29, after "provider" insert

", a constituent institution of such a provider".

See explanatory statement to Amendment 8.

Amendment 16, in clause 7, page 10, line 32, after "provider" insert

", a constituent institution".—(*Michelle Donelan.*)

See explanatory statement to Amendment 8.

Amendment proposed: 42, in clause 7, page 10, line 21, at end insert—

"(8A) The scheme must provide an appeals process for governing bodies and students' unions that have had free speech complaints upheld against them."—(*Matt Western.*)

This amendment would require the free speech complaints scheme to have an appeals process for higher education providers and students' unions.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 20]

AYES

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

NOES

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

Question accordingly negatived.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8

Director for Freedom of Speech and Academic Freedom

Matt Western: I beg to move amendment 78, in clause 8, page 11, line 22, after "OfS" insert

"and an advisory board consisting of sector bodies".

This amendment would ensure that there is the involvement of relevant sector bodies in the sector.

The Chair: With this it will be convenient to discuss new clause 7—*Independent Advisory Body to advise the Director and OfS on the operation of the scheme*—

"(1) Following the passing of this Act, the Secretary of State shall establish an independent advisory body (IAB) to give independent advice to the Director and OfS on the operation of the Act.

(2) The independent advisory body shall comprise of representatives of Universities UK, the Universities and Colleges Union and the National Union of Students.

(3) The advice of IAB shall be public except where mutually agreed by the Director and the IAB."

This new clause would establish an advisory body of representative bodies within the sector to advise the Director and the OfS.

Matt Western: We come to the responsibilities of the director for freedom of speech. Amendment 78 simply seeks to ensure that one of the director's roles is to report on the OfS's free speech functions to a representative sample of sector bodies—something that we believe is vital. We heard from the witnesses in the evidence sessions about the potential power that the director could have. English PEN raised concerns about whether the director will be an adjudicator, a regulator or an advocate—it is not clear. Given that they will have such wide-ranging powers, it is surely only right that their reports are shared as widely and with as many stakeholders as possible.

This amendment is about collaboration—not a top-down approach, but a sector-wide, collaborative approach. Although I do not believe the post is needed, Trevor Phillips said in his evidence:

"The important point about this post is that he or she should be a protector of the freedom of expression of students and academics".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 21, Q39.]

How can one be a protector of the freedom of expression of students and academics without involving sector-wide bodies that represent those concerned?

10.15 am

New clause 7 seeks to ensure that the director is advised by an independent advisory board comprising representatives from each of the sector bodies. My right hon. Friend the Member for North Durham repeatedly alerted us to his concerns that the director could be used as a prop by an extremist Government—of any persuasion, as he made clear—to alter the parameters of the right to freedom of speech and academic freedom. Smita Jamdar raised concerns that retrospective administrative decision making and application is already on the rise.

The new clause is about ensuring greater protection for freedom of speech and academic freedom, and holding the director accountable to the advice they receive. It is vital that the board be made up of the constituent parts of the sector because of their value and expertise, and because they are on the ground, facing the reality of how this will work in practice. I hope the Government are attracted to this very progressive new clause and accept it. Since they have voted against our amendment to ensure that an appeals process is written into the Bill, the buck will now stop with the director. As we have said throughout, this is a dangerous centralisation of power in an individual. Professor Kaufmann said that the appointment would inevitably be political, and it is likely, as others have said, that this person will be partial to certain perspectives. This incredibly influential and powerful individual may not necessarily have the interests of all at heart when they decide on cases and incidents on our campuses.

Surely, stakeholder engagement is vital if this problematic Bill is to become effective on our campuses and in the higher education sector. One of the problems with the Bill, and one reason why it contains so many issues and loopholes, is that there has not been enough stakeholder engagement over the past 18 to 24 months. Here is an opportunity to amend the Bill to establish an advisory board of sector bodies to help the direction of the director for free speech.

New clause 7 outlines that that board could comprise Universities UK, the University and College Union and the National Union of Students. Any advice that the independent advisory board comes up with should be made public, because there should be the utmost transparency in the operation of the board and the delivery of its advice. That should be agreed between the director and the board.

John McDonnell: In my view, this issue will evolve over time. Some of the issues that are contentious today may not be in the future, and some issues that we cannot foresee at the moment may well become contentious. On that basis, the director is going to be in a difficult position unless there is a strong network of advice provided to him or her. Amendment 78 would establish in the Bill the independence of that advice and the inclusiveness of the range of bodies from which the director will receive advice. As I have said, this is a bad Bill, but if it is going to go through, this provision would give confidence to those who implement or respond to the legislation.

In some ways, I feel for the director, because their position is vulnerable and they could be the butt of a lot of contentious debates. Having an advisory body provides a buffer—protection for that individual against being targeted in relation to key decisions. It is much better for the director to arrive at a decision having consulted a range of independent bodies. I am convinced that there will be an element of consensus about the implementation of most of the legislation, but when it comes to this issue, one needs advice from those at the coalface who are dealing with this on a day-to-day basis. Amendment 78 would make that possible.

I am sure that, as the Minister has said, the director will want to engage in those discussions. However, including in the Bill this provision for a more formal body, the independence of which is guaranteed in legislation, would strengthen the advice and therefore give the director much more authority. The amendment is designed to enable the whole system to evolve over time in response to the challenges that emerge. Some issues relating to freedom of speech that we would not even have discussed 10, 15 or 20 years ago have evolved into contentious matters. The only people who can advise us on that are those who deliver the legislation.

Most of the witnesses did not want their role to be simply that of a one-off witness to the Committee; they had an ongoing interest, and they wanted to continue to engage through their professional bodies or institutions. Amendment would 78 give them the opportunity to do so with guaranteed independence and an element of authority, working alongside the director. I see the amendment as constructive, and I hope the Government will take it on board.

Michelle Donelan: As we have heard, amendment 78 and new clause 7 seek to introduce an advisory board to work with the new director for freedom of speech and academic freedom and to advise the Office for Students on the operation of the Bill when it is enacted. Clause 8 provides that the director for freedom of speech and academic freedom will be responsible for overseeing the

[Michelle Donelan]

performance of the OfS free speech functions, including the monitoring and enforcement of free speech registration conditions, the new student union duties and the new complaints scheme.

As part of those responsibilities, the director will be responsible for reporting to the other members of the OfS on their performance of the OfS free speech functions. This reflects a similar provision in schedule 1 of the Higher Education and Research Act 2017, which makes the director for fair access and participation responsible for reporting to other members of the OfS on the performance of OfS access and participation functions.

Emma Hardy: With respect, the Bill brings the student unions under the direct control of the OfS, and, as it is, the student unions do not have a direct voice through the Office for Students. I accept the Minister's comments so far, but can she explain how the NUS and students can feed into the director for freedom of speech?

Michelle Donelan: When the new director is in place, they will produce comprehensive guidance in consultation with the sector, including student unions. I am confident that the individual who is awarded the position will be someone who listens and works collaboratively across the sector.

Not only will the measure ensure oversight of the role of the director for freedom of speech and academic freedom for the rest of the OfS board, but it will allow the OfS to better co-ordinate and monitor its free speech functions. It is, of course, important that the OfS should be held to account in the performance of its functions. That is one reason why paragraph 12 of proposed new schedule 6A, which clause 7 will insert into the Higher Education and Research Act 2017, will require that the OfS conduct a review of the complaints scheme or its operation and report the results of that review to the Secretary of State, where such a report is requested. The Secretary of State may also require the OfS to report in its annual report, or a special report, on matters relating to freedom of speech and academic freedom. That report must be laid before Parliament, as laid out in clause 4.

The Government expect that the OfS will consult widely, including with sector representatives, as I have made clear throughout the Committee, when developing the details of the complaints scheme, as well as on changes to the regulatory framework. There will be guidance to help providers and student unions to comply with their duties under clause 4, which specifically provides for the OfS to give advice to providers on good practice on the promotion of freedom of speech and academic freedom. It is important that the OfS works closely and effectively with the sector, including with student unions—freedom of speech is no different in that respect.

There is no need to set up the bureaucracy of a non-statutory advisory body, as suggested by the amendment. The OfS is independent of the Government, so to do so would simply duplicate its role as set out in the statute.

Emma Hardy: With the greatest respect, the Minister has just said that the OfS is independent of the Government, but the chair of the OfS is a Conservative peer, who was a Conservative Member of Parliament. We cannot say that the OfS is independent of the Government when we all know that its chair sits in the House of Lords and takes the Conservative party whip.

Michelle Donelan: The hon. Member has made that point before. The chair of the OfS was appointed accordingly, and the director for freedom of speech and academic freedom will be as well. I hope that Members are reassured that the Bill already ensures the accountability of the director for freedom of speech and academic freedom, and the OfS itself.

Matt Western: This is a common-sense suggestion about engaging and involving the various sector bodies to assist the director. The director's role will be a fairly lonely one, sat in a swanky office somewhere, and the amendment represents a constructive suggestion. As we have said from the start of proceedings on the Bill, we are trying to put forward ideas to mitigate some of the damage that the legislation may cause. Engaging those at the coalface, as my hon. Friend the Member for Kingston upon Hull West and Hessle put it, who see how the measures play out in practice, will be really important.

I do not accept the Minister's suggestion that the director for freedom of speech is going to be an independent person, or that the chair of the Office for Students is independent. People can make all sorts of suggestions about the process that was followed, but the Opposition has profound concerns, as most people do, about how that was pursued. We also have concerns about what will happen to the director for fair access and participation when that position is filled in a matter of weeks. It seems as though there is a siege mentality at the OfS, and a very determined attempt to centralise powers. I wish to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 21]

AYES

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

NOES

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

Question accordingly negatived.

10.30 am

Matt Western: I beg to move amendment 79, in clause 8, page 11, line 23, at end insert—

"(d) providing an annual update made available to students' unions and higher education institutions on—

(i) the number and nature of complaints made to OfS regarding freedom of speech; and

(ii) examples of what OfS believes to constitute unacceptable infringements of freedom of speech as set out in this Act."

This amendment would help monitor this impact of the legislation and assist student unions and higher education institutions to stay within the law as set out in the Act by providing examples of bad practice.

The amendment stands in my name and that of my right hon. Friend the Member for Hayes and Harlington. It simply seeks an annual update that would be made available to student unions and higher education providers to enable them to understand the nature and scale of the complaints being made to the OfS about freedom of speech, along with examples that the OfS believes to be infringements of freedom of speech as set out in the Act. The amendment seeks to address the undefinable nature of the so-called chilling effect and help institutions and others to navigate this tricky territory. As Dr Bryn Harris noted,

"one way to resolve the potential conflict that we were talking about, between the Equality Act and this Bill, would be to have guidance to help universities navigate this very fine line."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 80, Q169.]

Although the amendment does not relate to the guidance to be published by the OfS, it would inevitably form part of a wider subset of guidance that universities and student unions could look to to help them craft their codes of practice to try to make this work in reality—day to day, and week to week—on campus. That would, in turn, help student unions to reduce their budgets and the cost to their members, and it would help to reduce the costs for higher education providers as well, because they would be able to rely on what we imagine will be an expanding set of guidance examples. That is important because, as the Government's own impact assessment states,

"SUs are the main affected groups that we expect to incur costs including: familiarisation costs; compliance costs: the direct costs of complying with the regulation and enforcement".

My real concern is what the intended or unintended consequences of the legislation will be for the viability of our student unions. Irrespective of our political positions, we know that their vitality and viability is important to life on our university and further education campuses.

The amendment would also provide evidence of whether the Act was working. Thomas Simpson said in evidence:

"The test for success is in 10 years' time, when it is more embedded."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 63, Q125.]

I am not sure we can wait that long. If it is to work—I do not believe it will—it needs to be effective immediately. We need to see some significant changes in the months of the first year. If the test for success means waiting 10 years, how can the Government claim to be meeting the test if there is insufficient data to back up the claim? That is why reporting is so important. As I have said before, the OfS already collates data on the number of events that are cancelled as a result of the Prevent duty. The amendment is simply an expansion of that duty.

Fiona Bruce (Congleton) (Con): I want to speak to the amendment because it is important that there is public understanding of what the amendment calls the "nature of complaints made". I am not sure whether the amendment would add anything to the regular reviews and reports in the amendment proposed by my right hon. Friend the Member for South Holland and The Deepings, which the very thoughtful Minister—she has promised to do a lot of thinking following comments made during this Committee—is going to consider.

It is essential that there is a good, clear understanding of the deliberations of the director. I very much support clause 8 and having the office of an individual who is responsible for looking at this kind of issue. It is really important that there is clarity on the deliberations and decisions of the director about the concerns referred to him.

I want to highlight an example of the nature of complaint that we are talking about. Yesterday, after the Committee last sat, an article entitled "Oxford college run by former equalities head apologises for hosting Christian conference" appeared in *The Daily Telegraph.* It said:

"New case of 'cancel culture' as Worcester College acknowledges 'distress' caused to students.

An Oxford college run by the former head of the equalities watchdog has apologised to students for hosting a Christian conference…In what has been described as the latest incident of 'cancel culture' at British Universities, Worcester College acknowledged the 'distress' that it had caused students by hosting a Christian Concern training camp… Christian Concern held its annual week-long Wilberforce Academy at the beginning of September, whilst Worcester College was closed for the summer break. The evangelical… group says that more than 100 young people were 'very warmly welcomed, including by the Provost, received many compliments from the staff, and were not aware of any complaints or concerns'."

However, students, presumably from Worcester College, are

"understood to have complained that the curriculum for the residential camp was Islamophobic as it included a discussion on the 'nature of Islam'".

Lloyd Russell-Moyle: The hon. Lady is describing an event that went ahead—it was not cancelled. Some students had complained about it and the college has acknowledged the hurt, but it is not proposing to cancel it in the future. So what is the point?

Fiona Bruce: Actually, I think the endeavour is to cancel this in the future.

Lloyd Russell-Moyle: Have they said that?

Fiona Bruce: No, but it is my opinion that the endeavour is to cancel this in the future.

The definition of Islamophobia was actually debated in this place just a few days ago. The Under-Secretary of State for Levelling Up, Housing and Communities, my hon. Friend the Member for Walsall North (Eddie Hughes), said:

"we cannot accept a definition of Islamophobia that shuts down legitimate criticism and debate. Freedom of speech is the foundation of a healthy society, allowing for debate and disagreement underpinned by the values that bind people together—tolerance, equality and fairness."—[*Official Report,* 9 September 2021; Vol. 700, c. 204WH.]

It seems to me that the mere discussion of the nature of Islam, which seems to be the allegation here, cannot possibly be construed as Islamophobic.

Sir John Hayes: I entirely endorse what my hon. Friend is saying. Once the master had apologised, it is unlikely that the conference would be run there again. That is the point. Often, the people who issue these apologies are not malign or malevolent, but weak and weary or befuddled and bemused. This master may not be the brightest spark in the fuse box—we do not know—but clearly he was not shining brightly on this occasion.

Fiona Bruce: I thank my right hon. Friend for that comment.

Finally, the Wilberforce Academy has been held at Oxbridge colleges for the last 11 years. I have actually spoken at one of its conferences; the students who attend the conference are serious young people seeking to inform themselves about issues of the day. We need to encourage that, not shut it down.

Michelle Donelan: Amendment 79 would make the director for freedom of speech and academic freedom responsible for providing an annual update to higher education providers and student unions on the number and nature of freedom of speech complaints that the Office for Students has dealt with, as well as examples of unacceptable infringements of freedom of speech.

It is important that the OfS is accountable for the operation of the complaints scheme. That is why clause 4 provides that the Secretary of State may require it to include a special report in its annual report on matters relating to freedom of speech and academic freedom. Such a report must be laid before Parliament so that Parliament and the sector may scrutinise it. Equally, paragraph 12 of proposed new schedule 6A to the Higher Education and Research Act 2017 provides that the Secretary of State may request that the OfS conduct a review of the complaints scheme or its operation and report on the results.

As for what the OfS believes constitutes unacceptable infringements of freedom of speech, it will issue guidance to providers and student unions to help them to comply with their duties under the Bill. In particular, it will consult on and issue changes to the regulatory framework, under section 75 of the 2017 Act, which states that the OFS

"must include guidance for the purpose of helping to determine whether or not behaviour complies with the general ongoing registration conditions."

That guidance may specify

"descriptions of behaviour which the OfS considers compliant with, or not compliant with, a general ongoing registration condition"

as well as

"factors which the OfS will take into account in determining whether or not behaviour is compliant".

Similar guidance will be included for student unions.

Lloyd Russell-Moyle: Does the Minister imagine that inappropriate apologies will now not be allowed under that guidance?

Michelle Donelan: I do not want to get into the individual example, because I am not fully familiar with the details. My hon. Friend the hon. Member for Congleton said that she was concerned that that event would not happen in future because of that apology. I will look into the details.

Clause 4 also provides that the OfS may identify good practice relating to the promotion of freedom of speech and academic freedom and give advice about that to providers. The Government expect the OfS to work with the sector and a range of relevant stakeholders to ensure that there is clear and relevant advice to help higher education providers and student unions feel confident in fulfilling their duties. I therefore hope that Members will be reassured that the Bill ensures transparency in relation to freedom of speech functions at the OfS, and that guidance will be given to the sector to help it to understand how it comply with its duties. However, as I have previously committed, I will take away the issue of reporting and consider what more we can do on it.

Matt Western: I thank the Minister for her remarks, which I accept at face value. I look forward to seeing what form the reporting will take. We would be very open to having some input on how best we can make that work. We do not want to be burdensome in terms of placing bureaucracy on anyone, but I think both sides of the House agree how useful reports can be to help people understand how this legislation might work in practice, by providing not just data but examples. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matt Western: I beg to move amendment 85, in clause 8, page 11, line 23, at end insert—

"(1A) A person may not be appointed as the Director for Freedom of Speech and Academic Freedom if the person has at any time within the last three years made a donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.

(1B) The person appointed as the Director for Freedom of Speech and Academic Freedom may not whilst in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000."

This amendment would ensure that the Director of Freedom of Speech and Academic Freedom had not donated to any political party in the last three years and that they may not make any further donations to political parties for the duration of his tenure.

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

New clause 9—*Appointment of the Director for Freedom of Speech and Academic Freedom—*

"(1) The appointment of the Director for Freedom of Speech and Academic Freedom shall be subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.

(2) The Secretary of State shall when appointing the Director for Freedom of Speech and Academic Freedom have regard to the views of an Independent Advisory Body."

This new clause would require the appointment of the Director for Freedom of Speech and Academic Freedom to be confirmed by the Education Select Committee, and for the Secretary of State to consult the Independent Advisory Body when appointing the Director for Freedom of Speech and Academic Freedom.

New clause 11—*Review of the appointment process for the Director for Freedom of Speech and Academic Freedom—*

"(1) The Secretary of State must conduct a review of the appointment process for the Director for Freedom of Speech and Academic Freedom within six months following the calling of a new Parliament.

(2) Any review conducted under subsection (1) must assess the suitability of the appointment process for selecting politically impartial candidates.

(3) The Secretary of State must lay the report of the review before Parliament."

This new clause would require the Secretary of State to review the appointment process for the Director for Freedom of Speech within six months following the calling of a new Parliament, and lay the report of this review before Parliament. The review must include an assessment of the suitability of the appointment process for selecting politically impartial candidates.

10.45 am

Matt Western: It is pretty obvious what little faith we have in the potential appointment of a director of free speech. Often in life, it is not a case of what is said but who says it. We can look at this legislation and then try to interpret what is behind it. It seems obvious that this is a clear next stage in the Government's power grab over the supposedly independent Office for Students. Until recently, the OfS was genuinely independent, but that power grab is laid bare for all to see in the Bill.

To put that in a wider context, it is fair to say that the Government have widely abused the public appointments process. It is not clear whether the director of free speech will be recruited through open competition or essentially appointed by the Prime Minister. On numerous occasions, I have raised the appointment of Lord Wharton as chair of the Office for Students. He is a Conservative party donor and takes the Conservative party Whip. He is a political appointee, so it is not a good record. To clarify, people can of course be donors. But in this case a person is appointed to the independent Office for Students one month, and the next month, having taken a pay cheque from the Government, he pays £8,000 to the Conservative party.

I would like to see the director of free speech appointed through the Committee on Standards in Public Life. On the wider problem of political appointees, I read just a few weeks ago that another of the Prime Minister's mates, Ewen Fergusson, who happens to be another Bullingdon lad, was appointed to the Committee on Standards in Public Life. The pattern that is emerging is not good for anyone across the political spectrum. It is vital that trust in all these systems is maintained, irrespective of who happens to be in power. That trust can be eroded quickly and we have to ensure that all of us do our best to uphold it.

Many academics view what is happening as a creeping appointment of Government Members, not just to these sorts of bodies but to museums as well. I mentioned earlier the resignation of Sir Charles Dunstone as chair of the Royal Museums Greenwich, which was prompted by the Government's refusal to reappoint an allegedly decolonising trustee, Aminul Hoque.

Our cluster of amendments seek to limit the interventionist role of Government in supposedly independent positions in public bodies. The concern about that role was highlighted by Professor Biggar in oral evidence, when he said:

"someone like me, who thinks there is a problem—and I guess the Government do, given the legislation—wants a director who has a certain partiality of that kind."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 22, Q40.]

That is clear then, isn't? We want a partial person to be going into the independent Office for Students to preside over this important role of the director of free speech.

Dr Ahmed said:

"There are always concerns with the regulator—that it has to be impartial—and there are also concerns in this particular case."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 20, Q36.]

Dr Ahmed was a Government witness, and I think he was referring to the case of Lord Wharton. Another witness, Smita Jamdar, a lawyer from Shakespeare Martineau, said:

"you could end up with somebody who is effectively an appointment of whatever Government is in place at the time, and who does not necessarily have any skills or expertise to make those judgments but is the last word on them. Again, in terms of freedom, that does not feel terribly free."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 57, Q111.]

David Simmonds (Ruislip, Northwood and Pinner) (Con): Does the hon. Member agree that it is important that, although these individuals are independent, they are also accountable? Does he recognise, as I do, having been part of a number of confirmation hearings for individuals appointed by the Government to significant roles in which they are expected to exercise independence, that that public, cross-party scrutiny—in this case, through the Education Committee—ensures that individuals can be questioned, and that the concerns that have been highlighted can be addressed, before the person assumes office, and that that happens in public and in a transparent manner?

Matt Western: Of course, we all want to believe in those processes, but when the processes end up consistently with mates of the Prime Minister being appointed, it is pretty disturbing.

Mr Kevan Jones (North Durham) (Lab): What the hon. Member for Ruislip, Northwood and Pinner said about transparency is correct. There might be a Select Committee looking at the individuals, but unlike the US system, there is no power of veto to stop those individuals being appointed. If a party has a majority, it will have its person, whether other people like it or not.

Matt Western: My right hon. Friend makes a very important point. That is one of the failings of our process in this country. I came across that when looking at international trade and the trade deals that might be struck by the US representative body. In the US, a trade deal would go before another Committee, which would have a veto on the criteria of the deal and whether it should be approved. The same thing should apply to this as well.

Emma Hardy: My hon. Friend might recall that the Education Committee did not approve the appointment of Amanda Spielman as chair of Ofsted, but that was ignored by the Government and she was appointed. It does not even say in the Bill that there would be scrutiny through the Education Committee, which is something the Minister could at least clarify.

Matt Western: I was not aware of the case of Amanda Spielman, but we are increasingly seeing this sort of interference across the board. I have mentioned the case of the museum, and there is also the case that my hon. Friend has cited. What we want to do is put checks and balances in the system. If we were in government, we would expect the Conservative party to be saying the same of us. An honest and appropriate approach is needed. My right hon. Friend the Member for North Durham mentioned the US system, which is far tighter than so much that we have in this country. I just do not understand how the US can be doing it so well, yet we are not.

Mr Richard Holden (North West Durham) (Con): We have ended up in a discussion about the US system versus our system, but the US system also has substantial flaws. One thing on which we probably agree on both

[Mr Richard Holden]

sides of the House is that we want to see a minimum rate of corporation tax across the globe, which looks like it will probably be held up by Committees in the United States. There is give and take in both the systems that we are looking at. The hon. Gentleman suggests that the US's system is perfect or is something that we should be moving towards, but it actually allows vested interests to block really sensible proposals that are liked by many other countries around the world. I would like him to reflect on that in his comments.

Matt Western: I am not saying that the US has a perfect system; far from it. I am saying that the parliamentary process, or the process that involves bodies from within the democratic systems of this place, generally pales in comparison to the way the US does this.

Mr Jones: I agree that the US system is not perfect, but would my hon. Friend support something like the NHS appointments commission, which the Labour Government introduced? It took Ministers and politicians out of the process of appointing people to health boards, and took as its bedrock the principles on standards in public life, which were the main criteria in taking decisions. Would that not be a better system, rather than allowing the Government of the day to appoint who they want?

Matt Western: I was not aware of that, so there is a gap in my knowledge, but I think that is exactly the right sort of approach. We need this appointment to have credibility.

Sir John Hayes: I am not going to continue the debate about the United States, although there are some virtues in its system—appointments to the Supreme Court spring to mind. To bring matters back to hand, Dr Ahmed, whom the hon. Gentleman has quoted, was very clear. He said:

"There is no evidence that I am aware of that there would be any problems with the appointments process."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 20, Q37.]

When it comes to credibility, he said that what matters is having someone who has "guts and principles." That is what we need in this role—someone who can grasp the nettle. The prickly nettle is the absence of free speech, which is becoming increasingly common in our higher education system.

Matt Western: It sounds as though we may be being slightly selective in our quotes from Dr Ahmed, because I take something slightly different from what he said. I take on board the point that the right hon. Gentleman has made, but I reiterate that, as Dr Ahmed has said:

"There are always concerns with the regulator—that it has to be impartial".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 20, Q36.]

That is where we have real concerns about the direction of travel with the OfS.

Emma Hardy: To clarify, and to put this as succinctly as possible, we are asking for the person to be appointed on the basis of what they know, not who they know. That is pretty much what all these amendments amount to. I draw the Committee's attention to the appointment process for the OIA chair, because it looks much fairer. It focuses on the need for relevant skills and expertise, and the chair is

"appointed through fair and open competition in line with the Nolan Principles because of the value and relevance of their skills and experience."

The OIA is not Government-owned or funded, and the chair is appointed as an independent trustee. That is the kind of thing that we are looking at here. If we refer back to the evidence given by UUK and many others, including the lawyer, we can see that they were looking for someone with some kind of legal experience and knowledge of the sector, who was appointed independently. Everybody from those evidence sessions would say the same thing if they were sitting here: "Let's have some independence in this process."

Matt Western: I thank my hon. Friend, who has mentioned points that I was just about to come to.

Emma Hardy: Sorry.

Matt Western: It is absolutely fine, and I appreciate it. The Universities UK advisory board said quite explicitly that openness and transparency are needed in this appointment.

I wanted to come on to the models that we could be using to improve the appointment of the director for freedom of speech; we recognise that the Government are determined to have such a position. In the Office of the Independent Adjudicator, nine of the board of trustees, including the chair, are independent director-trustees. They are appointed through a fair and open competition in line with the Nolan principles, as my right hon. Friend the Member for North Durham has just mentioned, based on the value and relevance of their skills and experience. From what we heard in the evidence sessions, it was not absolutely clear what skills and experience the director for freedom of speech might need, but we certainly had some insight into the values that they might have.

In December 2016, the Cabinet Office published its governance code for public appointments, in which it was made clear that all public appointments should be governed by the principle of appointment on merit. I accept that there were conflicting views in the evidence sessions on whether the director should have legal experience—personally, I believe that that is necessary—but surely we can all agree that the position should be awarded on the basis of merit, as defined by the Government's own governance code.

11 am

I mentioned the appointment of Ewan Fergusson, the friend of the Prime Minister. One hundred and fifty people were candidates for that position. The fact of a close friendship between Ewan Fergusson and the Prime Minister is a good reason for that person not to be appointed. Certainly, were I in that position, I would not be appointing friends, for the very reason that perception is everything—for credibility, perception is vital. I urge the Minister to consider the inclusion of our proposal in the appointments process for the director and to look further into how to protect the appointment from political persuasion. That was my final point.

John McDonnell: The simple point is that this is possibly one of the most contentious appointments in government, because it deals with contentious issues.

Without some element of robust non-partisan protection in the appointment process, the whole operation of the Bill might be undermined. That is why extra safeguards are needed to ensure a buffer between the individual and party political activity. That is what one of the amendments seeks to address.

Lloyd Russell-Moyle: Historically, universities were set up by royal charter, specifically to ensure that Governments of the day were not meddling in appointments at university and that free speech was thus preserved. That was the ancient, as well as the more modern right of universities. Surely there is a requirement for those principles to be extended to the body that will now interfere in the operation of universities. Otherwise, we undermine the whole principle of independence, autonomy and therefore free speech in our higher education sector.

John McDonnell: I caution Government Members. There have been reports recently of a pattern of behaviour by Government of making appointments of, in effect, members of and donors to the Tory party—some have described them as cronies. That evidences, I think, an attitude in some parts of Government that overrides the very principles that my hon. Friend refers to and, to be honest, the traditional practice that we have come to expect of Governments. We are nearing a limit on that.

Emma Hardy: It is worth pointing out that we have no written constitution in this country. Everything we have is based on practice and tradition, because of the lack of a written constitution. Our university sector has always acted as a counterbalance to any Government of the day in offering criticism and scrutiny, forming another counterweight in our democracy. Any attempt to undermine that by politicising it through a political appointment exercising the powers in the Bill should concern each and every one of us. Governments and parties change and, as I said before and was agreed with, the people sitting on the Government Benches would be very concerned if the proposals in the Bill were those of the Labour party and we were wishing to exercise the kind of political control over the universities of the day that the Government do with this Bill.

John McDonnell: To follow up on that point, we and a large number of organisations and individuals will be extremely interested in the appointment of this individual. If there is any whiff of a political appointment, it will completely undermine the Bill and the Government's intentions, whether we agree with them or not—I caution them on that point. That is why building additional safeguards into the Bill is important.

I have been a strong supporter of the establishment and development of Select Committees. As shadow Chancellor, I argued for a greater role for Select Committees in the formal appointment of the Governor of the Bank of England and others. If we cannot secure the role of the Select Committee in the confirmation of an appointment, it would be valuable to hear the Minister's views on a pre-appointment hearing. As the hon. Member for Ruislip, Northwood and Pinner said, that would at least provide an opportunity for greater scrutiny of the individual and the process.

I caution the Government. There is often an element in a piece of legislation that can unpick the whole of the legislation's import. I think this is a banana skin waiting to be stood upon if the Government are not careful and do not ensure that the process is above reproach and free from any party political interference. That could poison the well altogether.

Mr Jones: As I have already stated, I have deep concerns about the Bill. It comes back to what we define as freedom of speech. In the evidence sessions, we found different views and different incidents, in terms of no-platforming and organisations being stopped from using buildings. The hon. Member for Congleton raised Christian Concern. I have read its website. It holds some quite extreme views, and I could understand why it would cause offence to certain students. In my opinion, it is down to the institution whether they allow such an organisation's event to take place. For example, a gay student would be concerned that the organisation in question was questioning things such as the ban on gay conversion therapy. I understand why people might think that is what their institution should be about—disagreements.

Fiona Bruce: I am actually very glad that the right hon. Member mentioned that point. That is the other issue that was mentioned in the press report that appeared to cause concern to the students who complained about it. Conversion therapy is going to be the subject of a Government consultation. It is a current, contentious issue, on which people have different views.

Mr Jones: They do. I think it is up to an institution whether they allow people to complain, if they want to complain about that. I am a bit concerned that Gerald Batten, a former UK Independence party leader, who has some quite horrific views on Islam, for example, wrote the foreword to one of the organisation's documents. Putting that point to one side, people can complain about these organisations, which is good. I personally think it is down to the institution to decide whether it should allow its buildings to be used.

As I have said before, the reason the appointment is so important is that the individual will have a lot of power in deciding what is defined as freedom of speech. In the Bill, we skirt around the issue; we have not got a clear definition of freedom of speech. We know from the discussions that we have had in Committee that the definition varies between different individuals. The right hon. Member for South Holland and The Deepings, whom I have huge respect for, said that it is about people's principles. That is what concerns me, because people's principles are very different, and that is the problem. Today, it will be the Conservatives who can make political appointments, because they have a majority in this Parliament. They can appoint who they wish. But what happens if we have a Government of a very different complexion—they could be extreme right or extreme left—who want to put forward someone who will interpret the definition of freedom of speech? That could have a chilling—I will use that word again, because it is the in word—effect on the way the state or the Government of the day dictate to independent institutions what they can and cannot discuss, and what they can and cannot do. I say again that the Bill is very unconservative in that respect.

I do not think my hon. Friend the Member for Warwick and Leamington is asking for something radical. I know it is out of favour with the current Government, but he is basically saying that we should have a system

[Mr Kevan Jones]

underpinned by the Nolan principles. Sir Christopher, you are long enough in the tooth to know why those principles were brought in. Let us be honest: they were brought in during a very squalid period of our history in the early 1990s, when individuals connected to the Government of the day were involved in some quite unsavoury practices. I am always wary that things such as the Nolan principles should not become like tablets of stone. However, they have served us as a nation well, not just for national appointments, but in local government and other institutions. We should ensure that people are appointed on merit and because of their abilities and expertise in an area.

If the Government's current direction of travel is to ignore the Nolan principles in large part, I would be quite relaxed about it, but we have a Prime Minister who is determined to put a Government stamp on an array of institutions, from museums right through to universities. It concerns me that we do not have safeguards in the Bill as regards an individual who will have a lot of power.

Sir John Hayes: I am grateful to the right hon. Gentleman for his remarks about me, which he knows are reciprocated. He is always worth listening to and has great experience, both in this House and in Government. However, almost in the same breath, and certainly in the same intervention, he challenged the idea of principles—I was quoting Dr Ahmed about that, by the way—and then made a case for the Nolan principles. He is implicitly accepting that there is a series of measures that can be established and that are the proper means by which the new director can do his job. If we can devise and implement the Nolan principles, I am sure the new director would advise and implement principles in a similar vein.

Mr Jones: I thank the right hon. Gentleman for his intervention, but he is confusing people's political principles with the Nolan principles. If Dr Ahmed was suggesting that the Government believe passionately in the Nolan principles, I would have no problem with that, but I do not think that is a fair interpretation. Do the Government have form in this area? They clearly do in the appointment of Lord Wharton as the head of the Office for Students. I actually quite like the individual as an individual, but what are his qualifications for that job, apart from having been the former Member for Stockton South?

Emma Hardy: On the point about qualifications for the job, it would be helpful if the Minister could say whether those involve having legal knowledge and an understanding of the sector, which are things that much of the written evidence stated were needed.

Mr Jones: Another qualification might be being a very keen supporter of the Prime Minister on Brexit. However, in response to my hon. Friend, yes, we need that, and we are flying blind on the job description. It is quite common for public appointments to have a job spec. I have been involved in appointments, and we usually use that in the process.

11.15 am

What usually happens, in the best of practice, is that the selection process is done blind—the names of the individuals are not included and just the CVs are looked at. I doubt that that was the case with Lord Wharton, because I am not sure he would have passed the tests for the individuals. Do I have a problem with political appointments? No, I do not—but say they are political appointments. That is fine, if the Government want to do that.

What is particularly important about this role, however, is that this individual will have a lot of power to determine interpretations of free speech and what is discussed on our campuses. When the Bill becomes an Act, it will tie the courts up for years, frankly, because case law will bounce backwards and forwards on some things, and the role of the director will be challenged on numerous occasions. With no disrespect to any lawyers in the room, anything that feeds lawyers I have a gut distaste of, and the Bill will do that. A blatant political appointment cannot be right.

The Bill will be stronger if it has a system to ensure that the individual is independent, using the Nolan principles. I cannot understand why the Government are opposed to that.

Michelle Donelan: Amendment 85 seeks to ensure that the director is a person who has not donated to any political party in the last three years, and it would prohibit the director from making donations to political parties for the duration of their tenure. New clause 9 seeks to set out additional requirements for the appointment process of the new director for freedom of speech and academic freedom at the Office for Students, requiring approval by the Education Committee and that the Secretary of State take into account the views of an independent advisory body. New clause 11 would require the Secretary of State to conduct a review of the appointment process for the director within six months of the calling of a new Parliament. That review would assess the suitability of the process for selecting politically impartial candidates. The Secretary of State would be required to lay a copy of the review report before Parliament.

The director for freedom of speech and academic freedom will be appointed in the same way as other members of the board of the Office for Students, under the Higher Education and Research Act 2017 by the Secretary of State. I assure Members that that will be done in the usual way, in accordance with the public appointments process. I emphasise, as has been demonstrated in our sittings, that freedom of speech and academic freedom are fundamental principles in higher education; they are not the preserve of one political party.

Emma Hardy: The Minister is genuinely very generous in giving way. She always lets me in, and I appreciate that. Will the job description for this brand-new role be written, as discussed previously, in consultation with the sector, including the National Union of Students, so that we get the right description to ensure that we get the right person?

Michelle Donelan: Throughout my tenure as Minister of State for Universities, I have worked closely with the sector, listening to its views and its requirements for the role, as the Department has done. We will continue to do that.

Matt Western: On the appointment and the process, the Minister was in place as the Minister of State for Higher Education for the appointment of Lord Wharton. What were the skills and expertise that got him the job?

Michelle Donelan: We are going very off topic. We have a lot of clauses to get through, so I will continue.

There will also be important oversight built into the system when the director has been appointed. The director will be responsible for reporting to other members of the OfS on the performance of the OfS's free speech functions. That reflects a similar provision in paragraph 3(1)(c) of schedule 1 to the Higher Education and Research Act 2017, which makes the director for fair access and participation responsible for

"reporting to the other members of the OfS on the performance of the OfS's access and participation functions."

That will not only ensure oversight of the role of the director for freedom of speech and academic freedom, but the rest of the OfS board will also allow the OfS to better co-ordinate and monitor its free speech functions.

I therefore hope that Members will be reassured that the appointment of the director will be in line with the usual public appointments process and that the role of the director is ultimately overseen by the rest of the OfS board.

Emma Hardy *rose—*

Michelle Donelan: I have finished.

The Chair: The Minister is not giving way.

Matt Western: This has been an important debate. As we have said, this will be way too much power invested in one individual. That will then lead to that individual's interpretations of situations against their personal set of values and principles.

Emma Hardy: Hopefully, the next time the Minister stands up she might be able to clarify whether the appointment of the director for freedom of speech and academic freedom will be subjected to a pre-appointment process with the Education Committee, in the way that Amanda Spielman was when she was appointed to Ofsted, for example, and in the way that the Committee deals with other educational appointments? Will we have that pre-appointment hearing?

Matt Western: Indeed. The purpose behind new clause 9 is to have a process whereby the appointment goes through the appropriate body in the House of Commons, which we suggest is the Education Committee.

The bottom line is that we do not see any safeguards in the process. We do not see any checks or balances to ensure that this individual does not abuse the power and influence that they may weald. It is important to have some trust in the appointment process, which is why new clause 9 says the appointment should go through the Education Committee, ideally with some pre-appointment consideration. There are many advantages to that, not just in terms of the power to veto.

The Education Committee should have more say anyway. It is important to empower these bodies, as my right hon. Friend the Member for North Durham described when he talked about the veto processes that exist in the US system but that we seem to ignore completely. Those are the sorts of checks and balances that we want to see introduced.

Emma Hardy: The reason for talking about the Education Committee is that people said in some of the evidence that they wanted democratic oversight. We are fully aware that the Education Committee is balanced by who has the majority in Government, so there would currently be a Conversative majority, but it is still an important democratic safeguard to have a separate body to scrutinise the appointment and have a veto. I hope that is something the Minister will take away and seriously consider.

Matt Western: I am sure that the Minister is listening to these points. I think the Education Committee should have certain powers and status, and its involvement in these processes would be useful. I would even widen this to a broader panel if possible, with sector involvement as well, because experience, expertise and understanding of the reality on the ground is important. Having someone parachuted in because their political persuasion suits the Prime Minister is not a good way to govern such an important part of our democratic landscape.

The concern is that there will be a clear differentiation between—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No.88).

Adjourned till this day at Two o'clock.