

House of Lords  
MINUTES OF EVIDENCE  
taken before the  
UNOPPOSED BILL COMMITTEE  
on the

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University of London Bill [HL]

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Tuesday 6 February 2018

Before:

Lord McFall of Alcluith, Senior Deputy Speaker,  
House of Lords, with the assistance of his Counsel,  
Mr James Cooper.

RICHARD BULL, Pinsent Masons, Parliamentary Agent for the Bill

There also appeared:

MAUREEN BOYLAN MBE, Acting University of London Secretary  
GAYLE DITCHBURN, Partner, Pinsent Masons

(11.04 am)

1. **THE CHAIRMAN:** Welcome to the Unopposed Bill Committee. I am Lord McFall, the Senior Deputy Speaker. On my right is James Cooper, my counsel. Mr Bull, can I ask you to introduce the Bill and describe its main provisions, please?

2. **MR BULL:** Thank you. May I begin, as you did, with introductions? My name is Richard Bull and I am the parliamentary agent for the promoters

of the Bill. Sitting on my immediate left is Ms Maureen Boylan, the acting secretary of the University of London, and on her left is Mrs Gayle Ditchburn, a partner at Pinsent Masons specialising in education law, particularly in its application to the higher education sector. To the extent that I am unable to, Ms Boylan and Mrs Ditchburn will be able to take any factual questions that you may have.

3. You have, of course, received a policy background paper on the Bill and our responses to your questions on it. What I am about to say puts that background on record.

4. The University of London was established by charter in 1836, although its history predates this. It is presently incorporated by royal charter granted in 1863. The charter has been supplemented by a number of Acts of Parliament.

5. The current statutory governance arrangements of the university are enshrined in the University of London Act 1994, which confers powers on the university's governing body to make statutes for the governance of the university from time to time.

6. The university is a federal university. It has 18 member institutions, which are colleges or institutes, all of which are self-governing and autonomous. These include University College London, King's College London, the London School of Economics, Birkbeck and the newest arrival, City University, London—formerly City University—which joined the federation in 2016.

7. The university provides a range of central services to its member institutions, including the university library at Senate House, a careers service

and the opportunity to collaborate with the university on its International Academy programmes, which provide distance-learning education to over 50,000 students across the world. It gives access to intercollegiate halls of residence and to Student Central, which is the body formerly known as the University of London Union.

8. The member institutions pay an annual subscription to the university. The terms of membership of the federation are prescribed in the university's statutes. The statutes set out the objects and powers of the university, the governing and decision-making bodies, their composition and functions, and, as mentioned, the university's relationship with the member institutions.

9. To explain the procedure for making statutes is immediately to identify one pressing reason for the Bill. The power to make statutes is conferred on the Council of the university. The Council no longer exists. It so happens that the drafters of the 1994 Act anticipated changes in university governance and so extended the definition of "the Council" to mean "such other bodies as the statutes may from time to time designate as the governing and executive body of the University".

10. Since 2003, the governing body has been known as the Board of Trustees, and so, in accordance with this flexible definition of the Council in the 1994 Act, the statutes may be made by the Board of Trustees. This is not, however, clear from the 1994 Act.

11. **THE CHAIRMAN:** Since 2003 the Board of Trustees has been able to make statutes.

12. **MR BULL:** That is correct.

13. I now turn to the current procedure for making statutes. Under section 3 of the 1994 Act, the text of the proposed statutes must be sent to the University of London Convocation, to each of the college governing bodies and to any trade union recognised by the university. These bodies have four months in which to make representations.

14. Having considered the representations, the Board of Trustees must pass two resolutions, with an interval of at least a month, and no more than six months between resolutions, in order for the statutes to be made.

15. The statutes take effect only following approval by Her Majesty in Council. This process involves a process of consultation with the Privy Council and its advisers whereby the Privy Council's informal approval is received prior to the Board of Trustees passing the first resolution to make the statutes.

16. Once the Board of Trustees has passed the second resolution, application is made for formal approval of Her Majesty in Council. Notice of Privy Council approval, once given, is required to be published in the *London Gazette*.

17. As I have indicated, the requirements that are currently in place for the making of statutes no longer reflect the university's institutional arrangements. The Convocation, an association of graduates of the university, ceased to exist in 2003 and, as mentioned, the Council is no longer referred to as such.

18. However, the process itself is, in the view of the university and the member institutions, unnecessarily cumbersome and protracted. Due to its ever-evolving relationship with member institutions, and to keep in line with

the regular changes to higher education regulation, the university needs to be able to refresh its statutes from time to time in a more dynamic way.

19. Now I turn to the arrangements for making the statutes under the Bill. The power conferred on the Board of Trustees in Clause 3 to make statutes is qualified only by a requirement to consult first the Collegiate Council.

20. The Collegiate Council was established in its current form in 2003 and is the body that represents the collective view of the member institutions to the Board of Trustees. Its membership comprises the head of each of the member institutions as well as the vice-chancellor, the deputy vice-chancellor and the research and international pro-vice-chancellors.

21. It is this body that is the forum for guiding the strategic direction of the university. Under Clause 3, the university is also obliged to consult such other persons as the Board of Trustees considers appropriate.

22. This is clearly not prescriptive and allows the university to determine who to consult, having regard to the subject matter of the proposed statutes. In all likelihood, the university will wish to consult the trade unions, although the subject matter of the statutes is rarely of any practical interest to them.

23. This is underlined by the fact that they have not made representations either on the possible repeal of their statutory right to be consulted or, indeed, on the amendments made to the statutes in recent times.

24. I should add that the university intends to adopt an ordinance to supplement the statutes, in which a process of consultation will be set out

and which will describe the circumstances in which particular stakeholders, including the trade unions, will be consulted.

25. **THE CHAIRMAN:** Has that been done already?

26. **MR BULL:** A draft ordinance is in gestation.

27. **THE CHAIRMAN:** Can you share that with us?

28. **MR BULL:** We can indeed. We have a copy of it with us today if you would like to see it.

29. **THE CHAIRMAN:** I think we would, yes.

30. **MR BULL:** The Collegiate Council may also initiate the process of making statutes by proposing its own set of statutes. Ultimately, however, the Board of Trustees can reject both the Collegiate Council's initiative and comments on any proposals which emanate from the board. This reflects the fact that the Board of Trustees is the supreme decision-making body of the university.

31. **THE CHAIRMAN:** We have two bodies here: the Collegiate Council and the Board of Trustees. The Collegiate Council consists of representatives of the 18 member bodies, the principals, the vice-principals and whoever else. How many members does the Board of Trustees comprise, and where are they from?

32. **MS BOYLAN:** There are 17 members, 11 of whom are independent lay people.

33. **THE CHAIRMAN:** They are independent?

34. **MS BOYLAN:** Yes.

35. **THE CHAIRMAN:** Who are they appointed by?

36. **MS BOYLAN:** They are appointed by the Board of Trustees, after national recruitment essentially. There are four heads of colleges in membership, the vice-chancellor and the deputy vice-chancellor, who is also a head of college. There are four heads of college plus one—five altogether—plus the vice-chancellor, which comes to 17.

37. **THE CHAIRMAN:** I make it 17.

38. **MS BOYLAN:** Yes.

39. **THE CHAIRMAN:** It is up to the four heads of college, the chancellor and vice-chancellor to decide who the 11 independent members will be?

40. **MS BOYLAN:** No, it does not really work like that. As with any board of trustees, vacancies occur at the end of a period of membership. The university advertises nationally to recruit, so in any one year there may be no vacancies and no recruitment or there might be two or three.

41. **THE CHAIRMAN:** What qualities do you require from these 11 independent members?

42. **MS BOYLAN:** We do a skills audit. The University of London has a very big estate. We always need people with estates expertise and we look for that, or for financial expertise or risk expertise, and a commitment to higher education and to London. The board has a nominations committee that makes a recommendation to the board.

43. **THE CHAIRMAN:** So there is good corporate governance. Would any of these independent members be members of the 18 bodies?

44. **MS BOYLAN:** The independent ones would not be, exactly because the member institutions already have four heads of institution in membership plus the deputy vice-chancellor who is a fifth.

45. **THE CHAIRMAN:** The decisions taken by the Board of Trustees could affect the members and their organisations.

46. **MS BOYLAN:** No, they cannot directly impact on member institutions, but, of course, their decisions affect the well-being of the wider university.

47. **THE CHAIRMAN:** I am a bit lost. What type of decisions does the Board of Trustees take?

48. **MS BOYLAN:** Major investment decisions and decisions on estates, financial budgeting, audit, risk.

49. **THE CHAIRMAN:** That could affect individual member entities. If you are taking financial decisions, some of them might come to you and say, "We have been affected as a result of the decisions that you have taken in the Board of Trustees".

50. **MS BOYLAN:** There could be an indirect impact.

51. **THE CHAIRMAN:** There might be big decisions here.

52. **MS BOYLAN:** The Board of Trustees cannot do anything that impacts directly on the administration and governance of a college. If the board decides, as it did recently, to buy a big building in Stratford and renovate it to provide intercollegiate accommodation, that is exactly the kind of thing that the board makes a decision about, and that impacts on the colleges, because they can send their students into those halls of residence.

53. **THE CHAIRMAN:** That is a very favourable or good impact. There could be some decisions that are less favourable or unfavourable.

54. **MS BOYLAN:** Potentially that is true.

55. **THE CHAIRMAN:** That is what I am grappling with. I ask this, because you have a hands-off body of trustees comprising four individuals—the principal, vice-principal, et cetera—and 11 independent people, and they are making decisions on behalf of 18 member bodies, which could be difficult. The need for integration rather than a hands-off approach is important.

56. **MRS DITCHBURN:** It might assist if I give a little more background to the structure and operation of the University of London and the federation. It is very different from the University of Oxford or Cambridge, where the colleges are much more integrated into the institution itself.

57. The University has no financial control over the colleges. No funding flows down from the university to the colleges. They are each independently responsible for their own financial well-being and receive grants and funding directly from Student Finance England, for example.

58. **THE CHAIRMAN:** I understand that.

59. **MRS DITCHBURN:** In that sense, the university will not be making any decisions on how each college will set its own strategy or run its own operations.

60. In that sense, the Board of Trustees, in the decisions it makes, is looking only at how the federation, the umbrella organisation essentially, provides benefits to its member institutions.

61. It is a subscription model, so each institution pays an annual subscription to be a member of the University of London, in return for which it receives the benefits that my colleague has outlined.

62. **THE CHAIRMAN:** I just wondered what the need for it is.

63. **MR COOPER:** Looking at the functions of the Board of Trustees in the document that you have provided, as the Lord Chairman said earlier, there is some very important stuff here: "To consider and approve the strategic direction of the University"; "to exercise guardianship over and ensure the effective management, control and use of the University's assets and resources"; and "to consider and approve an annual budget for the University". These are matters of real significance, are they not?

64. **MS BOYLAN:** I wonder if there is a need for clarification here. The Board of Trustees' controls are only on the central university. It has no jurisdiction over the member institutions, all of which have their own boards of trustees and their own governing bodies.

65. These decisions are about the central university, not about any of its member institutions.

66. **MR COOPER:** It is still an important university, is it not, and an important federation with important responsibilities?

67. **MS BOYLAN:** Yes.

68. **THE CHAIRMAN:** It reminds me of the relationship between, say, the Government and local authorities. They are entirely separate, but decisions the Government make can impinge on local authorities' finances.

69. In fact, as a Minister I used to get regular complaints from local authorities about the decisions that Government had taken. The Government would come back and say that the decisions were for local authorities themselves to take and that they were completely autonomous on these issues.

70. However, the impact of government decisions can have an adverse effect on local authorities. I am trying to get my head around the relationship that you have. As my counsel said, you will have to take some very important decisions.

71. **MR BULL:** I am not sure that is an exact comparator.

72. **THE CHAIRMAN:** If you can explain it better, maybe I will understand it.

73. **MR BULL:** The member institutions are self-funding. They are not funded from the centre.

74. That relationship, that nexus which you have identified quite properly in the case of central government and local government, is appreciably different.

75. **THE CHAIRMAN:** Central government does not fund local government 100%. There are rates.

76. **MR BULL:** Indeed, but they do to a very large extent, whereas there is no funding from the central university to the member institutions.

77. **THE CHAIRMAN:** That is one point about the funding, but we have strategic decisions to be taken here that can impinge on members. The strategic decisions will be very important.

78. **MR COOPER:** Another point that occurs—and we have discussed this—is the question of what the statutes do and how important they are. Clearly, one of your functions is to make or amend statutes and ordinances. Could you give us a flavour as to what some of these statutes consist of?

79. **MR BULL:** Of course. Appended to the policy paper are the statutes that have been made for the time when this Bill is enacted and the statutes that are currently in place.

80. Maureen Boylan can identify the range of functions. They set out the functions of the Collegiate Council and the relationship between the Board of Trustees and the Collegiate Council.

81. They remind us—and this is important—that the member institutions are self-governing incorporated bodies with their own legal identity separate from that of the university. Their role is primarily dealing with the relationship of the central university.

82. **MR COOPER:** The essential point that we are getting at is that our understanding is that the university is a very important body, the statutes are very important instruments, and under the new regime less consultation will be necessary and fewer trustees will be involved in the decision-making process.

83. You are shaking your head, Maureen, but my understanding of the current Act—and correct me if I am wrong—is that two-thirds of the trustees present have to agree with an amendment and two-thirds must be present. Two-thirds of two-thirds is four-ninths, which is roughly 44.4% recurring.

84. At the moment, 44% of the trustees are required to agree. Under the new regime, as I understand it, a bare majority of trustees can take the decision and a quorum is seven. We have established that there are 17 trustees and a quorum is seven. Half of that, which is your quorum, is seven out of 34, which I make to be round about 21% of the trustees.

85. Under half of the trustees can make a decision under your Bill as compared with the current decision-making process, which is 44%. This is the point we are making.

86. Given that statutes are important, fewer trustees in future will be required to agree to a change. Do you agree with that? That is my understanding of section 3 of the University of London Act 1994 compared to the Bill. If I have got it wrong, tell me.

87. **MR BULL:** Formally that is of course correct. Recent attendance at trustees' meetings has been considerable. In November 2016, there were 15 trustees.

88. **MR COOPER:** That is good and that is required. The Act says that two-thirds must be present and that two-thirds of those people must agree, so that is a good thing, if I can put it that way.

89. **THE CHAIRMAN:** They need to be there.

90. **MR BULL:** Yes.

91. **MR COOPER:** But they will not need to be there under the Bill.

92. **THE CHAIRMAN:** Exactly.

93. **MRS DITCHBURN:** Yes, that is already established under the statutes as they are now.

94. The quorum is already seven, but I appreciate that the Bill will vary that for the making of the statutes, so, effectively, all decisions, including the making of statutes, will be by a simple majority with a quorum of seven.

95. It is bringing the making of the statutes in line with all the decisions that are made by the Board of Trustees.

96. **MR COOPER:** The point we are making is that far fewer trustees will need to be involved under your Bill than currently.

97. Lord McFall has established, and we have looked at the functions of the board in the documents, that there are some very important functions that the university as a whole exercises, notwithstanding that the individual federal bodies, such as UCL, King's, Birkbeck and so forth, are very important institutions in their own right. However, the University of London is also a very honourable and quite ancient university.

98. **MRS DITCHBURN:** Can I clarify whether the issue is over decisions being made by that size of quorum or the making of the statutes with only that quorum?

99. **MR COOPER:** It is the making of statutes. Under the present Act, I think we have established by the arithmetic that 44% of all the trustees need to agree to an amendment to statute.

100. Under the new system we have established that around 21%—just half—of the trustees need to agree. Given the importance of the subject matter, it is a matter for legitimate comment, I think.

101. **MR BULL:** I am reluctant to intervene on this, but I think it is fair to say, is it not, that all the decisions that are taken by the Board of Trustees are important and what we are proposing is an equivalent set of arrangements for the making of statutes.

102. These are important, most assuredly, but there are many other important decisions that the Board of Trustees will make which only require a simple majority.

103. **MR COOPER:** I know, but the point is that an Act of Parliament currently requires this extra majority.

104. **THE CHAIRMAN:** This is not the local golf club.

105. **MR COOPER:** Indeed. Given that the amendment of statutes is an important matter, one can understand why the 1994 Act took the view that it did: that it requires significant consultation and perhaps a built-in cooling-off period so that people can consider it and so on and so forth.

106. **MS BOYLAN:** May I talk about the draft ordinance that you have not seen? I will pass it to you. One thing we have put into the draft ordinance—

107. **THE CHAIRMAN:** Did you say that we have not seen the draft ordinance?

108. **MS BOYLAN:** No. It is in our process at the moment. It is going to the Board of Trustees for consideration in March.

109. **THE CHAIRMAN:** We are passing an Act of Parliament and we should be privy to as much information as possible so that we are content in our own minds when we pass it. The fact we have not seen it is a disadvantage to this process today.

110. **MR BULL:** The ordinance has not been made. It is in gestation.

111. **THE CHAIRMAN:** Exactly. The Act of Parliament has not been made either, so it would be nice if there was symmetry between the Act of Parliament and the ordinance so that we are satisfied on every point before we pass a very important Act. That is the point I am making to you.

112. **MR BULL:** I understand.

113. **MRS DITCHBURN:** Would you like me to pass this forward?

114. **THE CHAIRMAN:** I certainly would not absorb it in two minutes, that is for sure.

115. **MS BOYLAN:** I do not know if now is the time to raise it, but we had proposed to put in the ordinance a provision that retained two-thirds of members present and voting in the making of statutes.

116. **THE CHAIRMAN:** Are the current members remunerated?

117. **MS BOYLAN:** No.

118. **THE CHAIRMAN:** So it is all voluntary.

119. **MS BOYLAN:** Yes.

120. **MR COOPER:** If you are proposing to put it in the ordinance, and it is already in the Act of Parliament, why not leave it in the Act of Parliament? Why liberalise it in the Act and restore the status quo by saying, "We will go back in the ordinance to a two-thirds requirement", a requirement that you are expressly trying to remove from the current Act of Parliament?

121. **MS BOYLAN:** We have ordinances that direct the conduct of business in committees. We have an ordinance about making ordinances, in fact. It seemed to us a better level of regulation than an Act of Parliament.

122. **MR COOPER:** If the current level is two-thirds of two-thirds, you liberalise the Act, you put it in the ordinance, and you restore it to the two-thirds and two-thirds. The end result is the same; you have just changed the technique.

123. **MR BULL:** Indeed, but it gives flexibility in case the view of the university changes. It would not necessarily wish to come before Parliament to seek another Act. The ordinances are more easily amended.

124. **MR COOPER:** Indeed. I can understand that. I think the point that the Lord Chairman is making is that the Act of Parliament requires the two-thirds of two-thirds at the moment and, if you wish to change that, the Lord Chairman is asking whether you have good reason for this.

125. **MR BULL:** Yes. It may be worth putting these concerns in a wider context. Of course, in Clause 4 of the Bill we have made provision—and it is a check on the process—that the statutes can only be approved by Order in Council.

126. **MR COOPER:** Which is the current situation.

127. **MR BULL:** Yes, and we are not currently proposing to change that, although we have a mechanism to enable that to be changed. There is that safeguard, if you like.

128. **MR COOPER:** This is an important point. Currently, the safeguards in the 1994 Act operate at various levels: consultation, the number of trustees who have to accede to the change and, ultimately, the Order in Council procedure.

129. At every stage you are relaxing all the requirements. Fewer people have to be consulted, fewer trustees have to agree, and, ultimately, because of Clause 4(2), you can repeal the provision requiring the Order in Council, so there may not in future be an Order in Council.

130. I understand that, because this is the latest Act, but at each level you are liberalising the requirements, meaning that there will be less process involved in these important decision-making processes.

131. **MR BULL:** I am not sure quite where that takes us.

132. **THE CHAIRMAN:** In that area, it certainly does not take us very far, but let us go on.

133. **MR BULL:** I was describing the arrangements under the Bill. I was making an important point, and it perhaps demonstrates the importance of the relationship between the Board of Trustees and the Collegiate Council, because we have provided in the Bill for the Collegiate Council to be able to initiate the process of making statutes. It can propose its own set of statutes.

134. As the ultimate decision-making body, the Board of Trustees can reject the Collegiate Council's initiatives. That reflects the fact that the Board of Trustees is the supreme decision-making body of the university.

135. The university is exempt from registration, but it is still regulated partially by the Charity Commission. Members of the Board of Trustees are charity trustees as defined in the Charities Act 2011, and thereby have ultimate responsibility for the governance of the university. As under the 1994 Act, the board does not have the final say. I have already alluded to this.

136. Reflecting current arrangements, the Bill provides that the statutes will not be effective until approved by the Privy Council. As part of that process, the Privy Council, or its advisers such as the Department for Education, may require the university to consult more widely in relation to the statutes prior to giving its approval to the new version. This is particularly likely if an amendment to the statutes relates to employment changes.

137. The Privy Council's remit over the approval of university constitutional documentation has recently been restricted under the Higher Education and Research Act 2017. Once the Act is fully in force, English universities that are established as higher education corporations pursuant to

the Further and Higher Education Act 1992 will no longer be required to seek Privy Council approval for amendments to their governing documentation.

138. If, as might happen, the requirement for Privy Council approval for the amendment of the statutes of chartered universities is also ended, leaving only the contents of the royal charter within its remit, in order to align with the statute-making powers it confers on other universities Clause 4(2) allows the requirement for final approval to be repealed by Order in Council.

139. I now turn to what is the foremost reason for promoting the legislation: the status of the member institutions. A key rationale for the Bill is that it will facilitate the university's member institutions as defined in Clause 2 becoming universities in their own right.

140. This is not directly clear from the Bill. The member institutions are described in the 1994 Act as colleges. The term "college" suggests that the institutions are subsidiary bodies of the university. As I have explained, they are in fact self-governing higher education institutions that set their own entrance criteria and in the majority of cases have degree-awarding powers, which is a prerequisite to obtaining university status. The college descriptor or label is too restrictive.

141. Furthermore, the 1994 Act did not anticipate the colleges becoming universities in their own right. When it had responsibility for the university sector, the Department for Business, Innovation and Skills insisted that approval for a member institution's application to the Higher Education Funding Council—HEFCE—to become a university in its own right is dependent on the passing of this Bill.

142. The particular issue is that the term “college” is updated so as to make it clear that the member institutions of the university can include universities in their own right. For example, in 2016, City University was required to relinquish its university status and change its name to join the University of London federation. As a result of this Bill, City will be able to regain its university status.

143. **THE CHAIRMAN:** What is it called now?

144. **MRS DITCHBURN:** City, University of London.

145. **THE CHAIRMAN:** So “University” is in the title.

146. **MR BULL:** It is, but—

147. **THE CHAIRMAN:** I have been there fairly recently and they call themselves City University. There you are; that is another matter.

148. **MR BULL:** Indeed. My university is the University of Durham. It calls itself Durham University, but it is formally and legally the University of Durham.

149. The approach is consistent with the Higher Education and Research Act 2017, which has changed the regulatory landscape for the higher education sector. This Act has opened up the sector for new providers of higher education and has shortened the process for obtaining degree-awarding powers and university title.

150. As a result, and to maintain their competitive positions within the higher education sector, at least 12 of the member institutions now wish to seek university status and are presently applying.

151. **THE CHAIRMAN:** Which ones?

152. **MR BULL:** We have that information. Maureen will probably remember better than me.

153. **THE CHAIRMAN:** For example, is Imperial there?

154. **MS BOYLAN:** Imperial is not a member of the university federation.

155. **THE CHAIRMAN:** King's College is there. Does King's College want to call itself King's University?

156. **MS BOYLAN:** No, it does not. None of them want to change their name. It is the university status that is important to them.

157. **THE CHAIRMAN:** But King's College is eminent. What do they want it for?

158. **MS BOYLAN:** There are a number of reasons. There are jurisdictions in the world where even institutions as mighty as UCL and King's College do not appear on league tables because they are not universities. It creates confusion in the recruitment of students and of staff.

159. **THE CHAIRMAN:** Imperial College is one of the top ones in the world.

160. **MR BULL:** Imperial is not part of the federation.

161. **THE CHAIRMAN:** It is called a college.

162. **MRS DITCHBURN:** It left the university federation.

163. **THE CHAIRMAN:** So King's College cannot be in a league table.

164. **MRS BOYLAN:** There are occasions when that happens. Of course, it is in many league tables.

165. **MRS DITCHBURN:** Upon exiting the University of London federation, Imperial obtained university title but did not change its name. It can say that it is a leading university in London.

166. **MS BOYLAN:** LSE, for example, quotes the situation that it often encounters, particularly overseas, where it is the London School of Economics: "So it's a school?" "No it's not, it's a college". "It's a college?" "It's not really, because it's really a university". For all practical purposes, it is a university. This sheds light on an anachronism.

167. **THE CHAIRMAN:** From conversations with the principals of the LSE over the years—in fact, there is a former principal in the House of Lords who I speak to—not once has any of them said to me, "There's an issue with us not being a university". The LSE and others have a status all their own. I am looking for a better reason from you, that is all.

168. **MRS DITCHBURN:** Because of the new regulatory landscape that we are now finding ourselves in within the sector, potentially we will see more private institutions coming forward and obtaining degree-awarding powers and university title.

169. The Government's intention through the bringing of the Higher Education and Research Act was to allow competition and these new entrants into the market, to allow the traditional, more established institutions to become universities and to have that level playing field.

170. **THE CHAIRMAN:** What would the difference be? King's College would still call itself King's College, but would there be something in parenthesis about it being a university?

171. **MS BOYLAN:** It can call itself King's College if it wants to, or just King's, but it will have university status and it will be on a par with the new providers that are reaching levels of quality and student experience that are nothing in comparison to King's.

172. **MRS DITCHBURN:** It is a global marketplace for recruitment and it will be able to market itself as a leading university.

173. **THE CHAIRMAN:** Is there correspondence with them on that? Could you share that with us?

174. **MS BOYLAN:** I would have to go back into the records to find it.

175. **MR BULL:** I alluded to the fact that the Collegiate Council was consulted about the Bill on 1 July 2016 and agreed to recommend to the Board of Trustees that the university should submit to Parliament a draft Bill replacing the University of London Act. We have a copy of those minutes with us. I think that demonstrates that the member institutions have absolutely bought into the process that we are describing today.

176. **MS BOYLAN:** Indeed, they initiated the debate because they wanted it, and the university is trying to facilitate it.

177. **THE CHAIRMAN:** Have you had correspondence from the member institutions underlining their support for everything you are putting forward here?

178. **MS BOYLAN:** We have had two or three years of intensive discussions and minuted meetings. There will also be some correspondence.

179. **THE CHAIRMAN:** Relating to what James is saying about the arrangements for the Board of Trustees and the quorum, you are into that detail with them.

180. **MS BOYLAN:** Sorry, I was trying to answer the question about their desire to be universities.

181. **THE CHAIRMAN:** I understand that. I am talking about everything that is here in the Bill, and I am trying to satisfy myself that intensive consultation has taken place. Can we see that?

182. **MR BULL:** Yes. I also have with me a copy of council minutes of City, University of London where it was formally recorded that the University of London was introducing a Bill. This was an item brought forward by the chair, who announced that, "The University of London is to introduce a private Bill in November which would permit colleges in the federation to hold university title". It was anticipated that the Bill would become law in the summer of 2017 and would then enable City to decide to apply for university title within the federation.

183. **THE CHAIRMAN:** I understand that. Do you want to go on with your presentation?

184. **MR BULL:** The concerns of the department that prompted this Bill in the very first place have been addressed by providing for a definition of "member institution" in Clause 2 of the Bill. This refers specifically to institutions which have the status of a university.

185. Clause 5 further serves to facilitate this process. It ensures that instruments entered into by the university, for example contracts and leases, or which benefit the university, for example a will, are construed so that a now archaic reference to any school of the university is updated to cover member institutions.

186. The definition of member institution in Clause 2 includes constituent members of the university—that is, the University of London—which have the

status of a university. They will remain full members of the university federation in exactly the same way as their non-university counterparts.

187. That concludes what I wish to say about the purpose of the Bill.

188. You have before you a short paper of amendments. They are, I hope, reasonably straightforward. The proposed wording for the preamble now includes a statement which is intended to reassure the university community that the Bill does not have the effect of amending the university charter or the instrument of government of any member institution.

189. There is, of course, nothing in the Bill that amends the university charter or the charters or governing instruments of any member institution. This is why we have agreed to remove the statement as a substantive provision. It was formerly in Clause 3(6). We have instead placed it in the preamble to give that reassurance.

190. We are asking that Clause 3(3) be amended so that where the initiative to reform the statutes comes from the Collegiate Council and the board determines to make different statutes, the Collegiate Council is allowed the opportunity to suggest refinement to the Board's counterproposals.

191. We are also seeking an amendment that removes the requirement on the Board to consider responses to the consultation. This is not because the Board will not do so; it is that, as a matter of law, a person who consults must have regard to any responses, so it is not necessary for that process to be on the face of the Bill. I know this was raised by learned counsel.

192. We are seeking the deletion of Clause 7(1), which is also unnecessary.

193. Finally, I would mention that the then Minister of State for Universities, Mr Jo Johnson, has reported that he sees no reason to dispute our view that the provisions of the Bill are compatible with the European Convention on Human Rights. Similarly, the Solicitor-General, Mr Robert Buckland QC, has reported that there is nothing in the Bill that he wishes to draw to your attention. That concludes what I have to say.

194. **THE CHAIRMAN:** Thank you. James.

195. **MR COOPER:** Thank you very much, Richard. You indicate that a significant slowing-down factor under the current arrangement is the fact that the college governing bodies and trade unions and so forth have four months to give their comments on proposed amendments to statutes, but that some of the bodies only meet four times in an academic year and agendas are determined weeks in advance.

196. Is this a practical problem—four meetings a year and four months to consult? It ought to find its way on to some agenda. Given that it is an amendment to the statute, which is an important matter, is it a significant problem that these matters have to be squeezed into agendas?

197. **MR BULL:** It is not a matter that is within the University of London's control. Each of the member institutions is autonomous, with its own governing body, over which the university has very limited influence.

198. **MR COOPER:** That is understood, but if these autonomous bodies have meetings typically four or more times a year, and each consultation lasts for four months, in practice it will not be a problem getting on to the agenda of one of these independent institutions' meetings of the governing body, will it?

199. If they have four a year and there are four months to consult, it will find its way on to some agenda, and even if it does not, as it is an important matter there could be an emergency meeting.

200. **MRS DITCHBURN:** Do you want to explain whether that is the appropriate forum?

201. **MS BOYLAN:** In practical terms, looking back, when we last took proposed statute changes through this process for the statutes that are not yet in place but that we got ready for the Act coming into being, we caught college governing body meetings in a range of dates from early February to the end of May. It took that length of time to get through the 18 separate institutions. That is what causes delay.

202. If there are representations, we go round the whole thing again, and you can slip from one academic year into another, which creates unnecessary delay.

203. There is also an issue here about the appropriateness of the consultation. The governing bodies of the 18 member institutions are focused on those institutions. They are not focused on the central university, which has its own governing body: the Board of Trustees.

204. We have 18 separate notional consultations with bodies that are basically not interested in where it is coming from, whereas the Collegiate Council is a collective conversation with all the colleges in the room at the same time.

205. **MR COOPER:** You say they are not interested, but it is their university. For the six bodies that are not seeking separate university status, it will still be their university, but you say they are not interested.

206. **MS BOYLAN:** They will continue to be equal members of the federal university, whether they seek university status or not. They are paying a subscription to be members of a group.

207. **MR COOPER:** That is an even stronger point. You say that 18 bodies are not that interested in what is ultimately their university, the University of London, their ultimate brand. It is an unusual thing.

208. **THE CHAIRMAN:** I cannot get my head around it. You have the individual member bodies, but there is a nonentity on the side here, which you say they are not really interested in, because, to use your phrase, Mr Bull, they are autonomous and they do their own thing.

209. What is the purpose of this board? Why do these member institutions not just become totally independent themselves if this does not impinge on them and they are not interested at all? I want to satisfy myself on that particular point.

210. **MRS DITCHBURN:** Essentially, it is a contractual relationship between each institution and the university.

211. **THE CHAIRMAN:** Why can they not sever the contractual relationship and go their own way?

212. **MRS DITCHBURN:** They could, and this is what Imperial did. Imperial decided to leave the contractual relationship and go it alone. It can no longer access the benefits that being a member of the University of London brings.

213. Indeed, City University decided that it wanted to join and access all those benefits, and in effect signed up to the University of London brand and federation. It is a purely contractual relationship. The university provides

those central services to each of its member institutions in return for a subscription fee.

214. **THE CHAIRMAN:** Again, what is the merit in this arrangement? As we dig, we cannot see much.

215. **MRS DITCHBURN:** The merit in the—?

216. **THE CHAIRMAN:** In the arrangement that there is, because, as Maureen just said, they are not really interested in what the board is doing, so what is the merit in this? You have come to us for an Act of Parliament. Do you need to dress it up so much?

217. **MR COOPER:** They are members of the federation of University of London, but they do not appear to be that interested.

218. **MR BULL:** The promoter is the University of London, not the autonomous institutions.

219. **THE CHAIRMAN:** I understand that, because they are autonomous.

220. **MR BULL:** Indeed.

221. **MR COOPER:** My final point, which we may have touched on already but I will repeat it, is that with a much truncated timetable under the current Bill, and with individual bodies losing their automatic right to be consulted, is there a danger that amendments might go through without proper discussion and input from the individual college bodies?

222. **MR BULL:** Yes. As I think we have suggested, each of the heads of college, a position that one can liken to that of the vice-chancellor, sits on the Collegiate Council, so they will be consulted in relation to any changes to the statutes.

223. The Bill has been considered by each of the governing bodies of the colleges, and we believe they are content with the revised truncated consultation process.

224. **THE CHAIRMAN:** What do you mean when you say that you “believe” they are content? You know they are.

225. **MR BULL:** Sorry, yes.

226. **THE CHAIRMAN:** Good. You state that the removal of the requirement to consult with the trade unions in respect of “any amendment to the statutes will reduce bureaucracy and allow the university to focus any consultation with them on relevant provisions only”.

227. Do the trade unions know that they are losing the right to be consulted automatically, a right they currently have under the 1994 Act, and are they content?

228. **MS BOYLAN:** Yes, in that they have seen the draft Bill, the draft statutes, and they have discussed them in meetings.

229. **THE CHAIRMAN:** Which unions?

230. **MS BOYLAN:** UNISON and UCU.

231. **THE CHAIRMAN:** Do you have letters to that effect?

232. **MS BOYLAN:** We have minuted meetings.

233. **THE CHAIRMAN:** Can we see those?

234. **MS BOYLAN:** You have them, my Lord.

235. **MRS DITCHBURN:** We provided the extracts.

236. **MR BULL:** They were part of the policy background paper.

237. **THE CHAIRMAN:** At what level were the unions consulted? When you say minuted meetings, do they involve the representative on the individual university body rather than the central union?

238. **MS BOYLAN:** We have a standing committee, which is the joint negotiating and consultative committee, which comprises management, staff and recognised trade unions. There is a branch of UNISON and UCU within the university. They take issues back to discuss. I am not sure whether that is at regional or sub-regional level, but there is a wider consultation.

239. **THE CHAIRMAN:** There is a regional level.

240. **MS BOYLAN:** One of the minutes refers to at least one of the unions taking the discussion back to their regional level and coming back with no concerns. We have regional and university branch members sitting on that committee.

241. **THE CHAIRMAN:** Yes, I am concerned about the level.

242. **MS BOYLAN:** It reaches regional level. It does not reach any higher than that, I am sure.

243. **THE CHAIRMAN:** Maybe we could look at that further. You state that removing the requirement to consult individually with each of the governing bodies of the member institutions will be more efficient. Do the individual bodies know that they will be losing that right and have they been consulted? Do you have back-up information on that?

244. **MS BOYLAN:** Yes, absolutely. They have all seen the statutes in draft and responded, and, again, we have minuted meetings.

245. **THE CHAIRMAN:** We can see that information at a later time.

246. **MS BOYLAN:** Yes.

247. **THE CHAIRMAN:** That is fine. I would rather that we adjourn and go into private session for a moment.

248. Before you go, the questions and answers that you have given to us will be appended to today's proceedings, if that is okay.

*The sitting was suspended from 12.02 pm until 12.14 pm.*

249. **THE CHAIRMAN:** Welcome back. We have one or two points from the evidence session this morning.

250. I note that yesterday you received an email from Christine, which was sent after a meeting I had with her in which I asked for written proof to substantiate that the governing bodies of the member institutions and the trade unions were aware that they were losing a right to be consulted and they agreed to it. We need to have that in more detail from you. It is very important that you go back and look at it.

251. We also asked Richard in an email yesterday to give an indication of the major issues currently facing the University of London and examples of the more significant sorts of decisions the university's Board of Trustees might take using the new powers and what specifically has prompted the university to promote the Bill at this time. We are looking for that in more detail, and, if you do not mind, that is what we are looking for you to come back with.

252. Also, on the issue of the quorum, it seemed that that was an area that needs attention. Could you look at that and think about coming back with an amendment to us on that?

253. If you look at these two issues, I think we could clear it up and deal with that at a future time.

254. **MR BULL:** I am grateful. On the second point, Ms Boylan is very happy to set out a response now orally to your question if that would help.

255. **THE CHAIRMAN:** We have asked for the first one to be in more detail, so if you send it to us, it gives you a bit more time to think of the issue of the quorum and, in consultation with James and Christine, to come up with something. I will adjourn the Bill today and we look forward to meeting at some future date.

256. **MR BULL:** I am grateful. Thank you.

*The Committee adjourned at 12.17 pm.*

## UNIVERSITY OF LONDON BILL

### Written Answers to Questions from the Senior Deputy Speaker

1. ***How often has the present system under which the governing body of the University of London makes or amends its statutes been used?***

Since the Royal Assent of the University of London Act 1994 ("**1994 Act**"), the University of London ("**the University**") has made Statutes to make or amend its statutes on the following occasions:-

<b>Date Approved by Privy Council</b>	<b>Notes</b>
14.06.2000	
17.07.2003	
14.12.2005	
11.06.2008	
08.10.2015	
15.02.2017	
11.10.2017	Amendments to Statutes to come into effect subject to Royal Assent of the Bill. They are drafted to align with the provisions of the Bill.

2. ***You suggest that the present system for making or amending statutes is cumbersome. Whilst it is acknowledged that the present system builds in some delay, could it not be argued that there will still be substantial delays in the new system because an Order in Council will still (for the time being, at least) be needed to ratify the changes to the University's statutes?***

The University does not consider that the need to obtain an Order in Council causes undue delay in the process and recognises the public benefit in external oversight. This is consistent with the process to which all universities are established by Royal Charter are also subject when seeking to make amendments to their Statutes.

However, it is the stages which precede the application to the Privy Council for an Order in Council to approve the making of the Statutes which are cumbersome. Prior to engaging in the formal consultation as required under Section 3 of the 1994 Act, as you would expect, the draft statutes first undergo an exhaustive internal consideration within the University. In accordance with the Act and once settled internally, the draft Statutes are then submitted to the governing bodies of each of the 18 Member Institutions (known as Colleges under the 1994 Act) with a request for any representations to be made within a period of 4 months. This is where the process significantly slows down as the Member Institutions operate on individual annual cycles of meetings which do not necessarily align with each other or with that of the University. For example, the governing bodies of some institutions only meet 4 times per academic year with agendas determined weeks in advance. Obtaining a place on the agendas of the governing body meetings can therefore be very challenging.

The present arrangements under the 1994 Act mean that if representations are made by any of the Member Institutions requiring revisions to the draft Statutes to be made, they would then need to be considered by the University. If the University agrees that further amendments to the draft Statutes should be made and, if they are substantive in nature, the University considers that it is obliged to re-submit the amended proposals to the governing bodies of the 18 Member Institutions for further consultation – with a repeat of the aforementioned timetabling difficulties.

The University, in parallel with this process of consultation with the Member Institutions, also consult with the Trades Unions over any proposed changes. As explained in our policy paper, the Convocation no longer exists and so the requirement in the 1994 Act to consult with it is now redundant. The process of consultation with the Trades Unions involves the University writing to the appointed representatives of the recognised trades unions, Unison and University and Colleges Union in the same manner as that undertaken with respect to the Member Institutions, inviting representations to be made within the 4 month time limit. In respect of the amendments made by the University to the Statutes in recent times (i.e since 2015), no representations have been received from the Trades Unions as a result of such consultation. This is due to the fact that the Statutes contain limited provisions over which the Trades Unions have an interest (primarily Statute 19 in the current Statutes a copy of which was appended to the policy paper). In any event, the University would be obliged to ensure that such provisions are compliant with employment law and that consultation in relation to their amendment is undertaken from an employment relations perspective. The removal of the requirement to consult with the Trades Unions in respect of "any" amendment to the Statutes will therefore reduce bureaucracy and allow the University to focus any consultation with them on relevant provisions only. An Ordinance has been drafted which will prescribe the consultation process to be undertaken with the Trades Unions and other stakeholders as relevant to the particular Statutes under consideration.

University regulatory structures are designed to start at the beginning of the academic year (1st August) and the inherently slow moving timetable creates the risk that statute amendments started in one academic year (1 August-31 July) can slip into the subsequent year. Removing the requirement to consult individually with each of the governing bodies of the Member Institutions and removing the four month minimum consultation period would enable the University to amend its Statutes in a much more efficient way but at the same time ensuring consultation with appropriate stakeholders.

3. ***Has the present system caused problems in practice? If so, what are they?***

Yes. The University has in the past been unwilling to update its Statutes or has deferred such amendments because of the perceived difficulties and length of time built into the present the system.

The present system also reflects the historic relationship between the University and the Member Institutions which is no longer extant. The relationship is based on the contract which is enshrined in the Statutes and the Ordinances and the individual Member Institutions should not have control over the governance arrangements of the University (particularly, if they wish to seek university title in their own right).

The relationship between the University and the Member Institutions is exercised through the Heads of the institutions (meeting as the Collegiate Council) and the Board of Trustees. Thus the focus of the new Bill is on the debate and exchange between the Board and the Collegiate Council, as representative of the collective federal interest, rather than an exchange with 18 separate bodies with inherently different concerns and focus.

The Collegiate Council is therefore the appropriate forum with which the University should consult in relation to amendments to its Statutes.

This is also consistent with the approach that the University has taken in relation to its oversight of the governing documents of the Member Institutions. In recent years, whenever a Member Institution has amended its own governing documents, the University has actively encouraged it to remove any requirement contained within such documents for the Member Institution to obtain the approval of the University to such amendments. The relationship between the University and the Member Institutions means that there is no longer the need for such mutual governance oversight.

The University's experience of updating the Statutes in 2014/15 was that the governing bodies of the Member Institutions were bemused as to why they were asked to comment on proposals making minor changes and statutory updates to the governance of a third-party organisation. These amendments will therefore not only reduce bureaucracy for the University but also that for the Member Institutions.

4. ***Under the present law, the governing body must decide by a two-thirds majority of those members of the Board of Trustees who are present. And not less than two-thirds of the Board must turn up. Under the new system, will a simple majority of those present suffice? What happens if very few of the trustees turn up? Is there a quorum? The Bill is silent on all this.***

The University Statutes and Ordinances set out requirements for the conduct of Board meetings.

Statute 9.4 states that "*The quorum for a meeting of the Board of Trustees shall be seven members. Independent members must form a majority of those present*"

Ordinances 3.13 - 3.14 go on to state:

*"3.13. All or any members of the Board of Trustees may participate in a meeting by means of video or telephone conference or communication equipment which allows all participating in the meeting to hear each other. Such persons shall be counted as participating in the meeting and being in attendance for the purposes of the quorum.*

*3.14. If a meeting ceases to be quorate at any time, formal decisions may not be taken. Any outstanding business of the meeting, if not urgent, shall be placed on the agenda for the next ordinary meeting of the Board of Trustees. Any outstanding urgent business will be dealt with by the Chair under the provisions of paragraph 11 above, or by means of an extraordinary meeting, or by correspondence, as determined by the Chair. Any business transacted and decisions taken before the adjournment of the meeting shall be valid."*

Decisions are generally made by the Board of Trustees by consensus but where a vote is required this is made by simple majority voting. Ordinance 3.15 to 3.17 provides:-

*"3.15. All members of the Board of Trustees have the right to vote. Officers in attendance and observers do not have the right to vote.*

*3.16. If the view of the meeting is not clear and a vote is required, a recommendation shall be put to a vote and shall be declared approved if it receives a simple majority of votes cast. Voting shall normally be by a show of hands.*

*3.17. Each member shall have one vote. In the case of an equality of votes, the Chair shall have a second or casting vote."*

We consider that the conduct of Board meetings is appropriately managed at this level of regulation, rather than by Act of Parliament.

5. ***Under section 3 of the University of London Act 1994, before statutes can be amended, various university bodies have to be consulted plus recognised trade unions, teaching staff and students. This will be replaced by a lesser obligation to consult just the Collegiate Council and any other person the governing body considers it “appropriate” to consult. Why has this change been proposed? Could it be argued that sensible safeguards are being watered down unnecessarily?***

The arrangements for consultation under the 1994 Act need amendment partly because of anachronistic terminology (e.g. Convocation ceased to exist in 2003) and partly because of changes in the University's governance. Please refer to our responses to questions 2 and 3 for further detail in this regard.

The University no longer has a direct relationship with staff employed by the autonomous Member Institutions or with their students. The interests of the Member Institutions are, however, protected since they are represented on the Collegiate Council and thus continue to be able to make their views known in the statute-making process.

Furthermore, there is no desire to remove entirely the Trade Unions from the consultation process. It is, however, the University's view, that the detail of consultation arrangements is best regulated in the Ordinances rather than in primary legislation.

6. ***We are told that the 18 constituent bodies of the University of London have “unanimously endorsed” the reforms in the Bill. We are also told that the University’s two recognised trade unions (Unison and the University and College Union) have been consulted on the proposals and have “raised no objection to them”. Does raising no objection amount to the same thing as unanimously endorsing the proposals? How long were the unions given to consider the changes, and please could you provide written evidence of the unions’ response to the consultation?***

Yes, the recognised Trades Unions and the Member Institutions both endorsed the proposal to legislate.

The ambition to support Member Institutions in gaining university status, and the need to do this through first seeking a new University Act, was widely advertised across the University in various informal contexts during 2016. The University formally sought the recognised trades unions' views on the detail of the proposal through an email sent by its Human Resources Director, Kim Frost on 2nd August 2016, pointing out that the process of consultation in relation to the making of future Statutes would be changing. The email was sent to Franco Henman (Unison Branch chair) and Jon Bitmead (UCU Branch Chair) and included a copy of both the 1994 Act and the draft Bill. They were asked to respond by 16th September, a period of just over 8 weeks. The text of that email follows:

"Dear Franco and Jon,

***University of London Private Bill: Trades Union Consultation***

*As you may know, the University wishes to update the 1994 University of London Act and we wish to consult you as our recognised Trades Unions on proposed changes in the new Act to the University's governance arrangements.*

*At present University governance is established under the 1994 University of London Act (attached). In recent months we have held successful discussions with BIS (now the Department for Education) about how to support the colleges' ambitions to become universities in their own right while remaining within the federation. This initiative is going well, but BIS did stipulate that we would need to amend the Act to make it possible, by extending the definition of federal member to include “universities” as well as “colleges”*

*As you can see, the only substantive matter covered by the 1994 Act is the process by which we create or amend the University's statutes, and we wish to take the opportunity presented by the making of a new Act to update and simplify that procedure. In place of the persons and organisations who must be consulted at present (1994 Act sections 3-4) we propose to specify simply the Collegiate Council and Board and "such other persons as it considers appropriate" (Draft Bill, section 3). (We have taken advice on this point and "persons" here is correct because in legislation "persons" is understood normally to include organisations by virtue of the Interpretation Act 1978).*

*The draft new Bill is attached. If you have any queries on the draft or legislative process, please contact the University Secretary, Maureen Boylan.*

*I would be grateful to have your response by Friday 16 September. If you have no comments, it would still be very helpful to the formal process of the Act to have a reply to that effect in writing. An email would be fine.*

*With best wishes*

*Kim*

*Attachments: the 1994 University of London Act; draft University of London Bill"*

The Trades Unions did not respond formally in writing though they confirmed informally to at meetings of the Joint Negotiation and Consultation Committee ("JNCC") during the following months that they had no concerns.

The promotion of the Bill was further raised at a meeting of the JNCC on November 23rd November 2016. The JNCC is the vehicle for the discussion of matters of mutual concern to the University and the recognised Trade Unions. Its membership is drawn from both Unison and UCU at local branch and regional levels and from University management. The extract below from the minutes of the JNCC underlines that the trade unions were not concerned about the Bill:

**"UNIVERSITY OF LONDON ACT**

*It was reported that on Monday 28 November the University will submit a private bill to parliament to change the University of London act. This will allow the member institutions in the University of London college federation freedom to be recognised as a University/Institute or College as they would prefer. This should be granted by June/July 2017 and it is believed that 11 to 12 member institutions will action this. It is expected that the process will be completed by Summer 2018.*

*The Staff Side queried the impact this would have on the relationship between the University and the member institutions. It was confirmed the impact will be all positive and will be greatly beneficial for both the University and the colleges."*