



An analysis of legal and quasi legal approaches to contract cheating in the UK and beyond

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In a letter sent to the UK Education Secretary in September 2018, vice-chancellors from across the sector and representing many of the UK's largest and most successful universities, as well as the chief executives of major sector bodies, called for a legal ban on the basis that *“essay mills undermine the integrity of UK Higher Education and are unfair to the vast majority of honest, hard-working students.”*

Ireland, New Zealand and 17 US states have already introduced or are introducing a ban. In the letter the university leaders say *“it is time for the UK to also take the necessary action to demonstrate that the UK is not a safe haven for Essay Mills to do business, and so to safeguard the reputation of the UK Higher Education sector.”*

Freedom of Information requests have found that more than half a million emails were delivered directly to university inboxes over the last twelve months, a number likely to be a significant underestimate.

University leaders called upon for the Government to:

- Commit to introducing legislation to ban the provision and advertising of essay mills.
- Commission the Quality Assurance Agency (QAA), the higher education standards body, to develop and publish a draft Bill by or before the beginning of the next Parliamentary Session, building on their existing work with academic and legal experts.
- Support efforts by the QAA and Office for Students to tackle this issue, including through the QAA's proposal for a UK Centre for Academic Integrity, with a formal remit to research, analyse and combat academic misconduct.

The letter sent to the UK government directly cited research undertaken by the author.

Consequently in November 2018 the author was invited to produce a paper for the QAA on Essay Mills and contract cheating: Options on a Legislative response.

This paper considered a legal response to essay mills and contract cheating with the following options discussed:

1. Take no legal action
2. Take action under the Fraud Act 2006
3. Enact new Legislation: knowledge and intent
4. Take action under the Companies Act 2006

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5. Enact new Legislation: strict liability
 6. Recommendations

In accordance with the recommendations of the options paper in 2019:

- The Group and the QAA will carry out a survey of UK Institutions to determine impact of the 2017 QAA Guidance to Universities on combatting contract cheating
- The Group and the QAA will contact the Crown Prosecution Service to determine whether a test case is possible and/or likely following a change in the law of dishonesty
- The Group and the QAA will prepare a policy document for review by to submission to policy makers and politicians proposing a new strict liability offence

ETINED is a network of specialists appointed by the 50 States Parties to the European Cultural Convention (ECC) and meeting once a year to oversee the Council of Europe's work in this area and assess the progress made in the field. Its mandate stems from the 2013 Helsinki Education Ministerial Conference and has been shaped and agreed upon by the 50 States Parties to the ECC, represented within the CDPPE. It is based on the assumption that issues regarding quality education and corruption can only be effectively addressed if all relevant sections of society commit fully to fundamental positive ethical principles for public and professional life rather than rely only on top-down mechanistic regulatory measures. ETINED proposes therefore a principles-based approach to ethics, transparency and integrity in education.

At the Council of Europe ETINED platform in November 2018 it was confirmed that the evidence produced over the last year by consultant experts may lead to the drafting of a Convention in relation to academic integrity and contract cheating. The Council of Europe works mainly through conventions. By drafting conventions or international treaties, common legal standards are set for its member states. The work will begin in February 2019 with a plenary in October 2019.

Contract cheating is a serious threat to the quality and standards of Higher Education around the world. Current laws are not fit for purpose. In this presentation I offer proposals for a specific new law to target contract cheating. I will assess a number of issues that would need to be considered before any legal approach could be successful; would changing the legal status of contract cheating make it less likely to happen? Could this be achieved in a specific way? If so, who should actually be prosecuted and what offence are they committing? Would it actually address the causes of contract cheating? Are there unintended potential consequences?

The UK Advertising Standards Authority (ASA) have recently upheld complaints about the advertising used by essay mills. There is a profound mismatch between the advertising used by essay mills and the legal "small print" deployed in their terms and conditions. The work of the ASA is based on a European Directive applicable across member states and which allows for cross border enforcement through an existing legal framework.

This presentation will argue that a legal response is required because academic fraud poses manifold dangers to students, providers and the wider public as follows.



- Students committing academic fraud benefit from an unfair advantage over their peers in their academic attainment and subsequent employment or further study.
- Students committing fraud are liable to significant penalties if caught, including being disqualified from practicing in particular professions.
- Employers are vulnerable to employing graduates who lack the skills, knowledge and competencies which they (rightly) believe higher education qualifications ought to provide.
- In some sectors (for example health and social care) the public may be at risk of harm if they come into contact with people practicing on the basis of fraudulently-obtained qualifications.

Academic fraud undermines Europe's reputation for world-class academic standards. The most successful approach would be to focus largely on a law targeting the providers of contract cheating, in particular commercial services and avoiding the criminalisation of students.

A legal approach to contract cheating is possible, and, on balance desirable. Using the UK as an example and the experience of the ASA and work with ETINED, I offer a specific suggestion to lawmakers across Europe, for how this might be achieved. This would make a significant difference to the legal and cultural status of contract cheating.

The aim of the presentation will be to work through the issues identified in the options paper, consider the results of QAA action in 2019 and identify issues for action in relation to any proposed Convention by the Council of Europe in 2019.

Keywords: contract cheating, plagiarism, fraud, essay mill, law.