



Skills and Post-16 Education Bill
House of Commons Public Bill Committee

30 November 2021

Written evidence submitted by Course Hero

Dear Members of the Public Bill Committee,

Skills and Post - 16 Education Bill ("the Bill")

Part 4: Chapter 1 (clauses 29 to 33): New offences criminalising cheating services for post - 16 students in England

1. Executive Summary

- 1.1 As currently drafted, the Bill would likely criminalise activities undertaken in furtherance of the Government's own flagship National Tutoring Programme. The bill would also criminalise the use of Microsoft Word spellcheck when competing a university essay.
- 1.2 We have suggested two concise amendments at section 4 of this letter which would remedy these unforeseen consequences.
- 1.3 The consultation currently being conducted by the Public Bill Committee falls short of the accepted standards of public consultation, and this failure to consult properly has given rise to the present defects.

2. Background

- 2.1 I am the General Counsel and Chief Compliance Officer of Course Hero, an online learning platform providing studying resources and tutoring services in several countries, including the UK (further background is included as an annex to this letter). Our purpose is to support students to be their best selves and to progress in spite of any personal circumstances or disadvantages that they might suffer (whether societal, financial or relating to mental health). It goes without saying that we strongly oppose cheating in any form.
- 2.2 We are supportive of the UK Government's overall purpose in bringing forward this legislation, and agree in principle with the regulation of new and innovative technologies. However, proper stakeholder review is needed to ensure that regulation keeps pace with ever-evolving technology.
- 2.3 Unfortunately, no such review or consultation having been carried out, the drastic new offences included in Chapter 1 of Part 4 are likely to prevent students from accessing much-needed resources, and have a range of unintended consequences on the companies that it seeks to regulate.

3. Conflict with the government's own National Tutoring Programme

- 3.1 As currently drafted the legislation would hinder the Government's own initiatives in this area. The National Tutoring Programme is a £450m scheme launched by the Government to help students catch up in the wake of the pandemic. It deploys online resources very similar to those offered by our company. As drafted, the Bill would make it effectively unlawful for the services needed to fulfil this scheme to be provided. Details of the scheme can be viewed at, for example, <https://www.mytutor.co.uk/schools/national-tutoring-programme>.
- 3.2 Similarly to our site, the MyTutor website works by arranging for support to be provided by individual tutors to students. It would be impossible for such support never to drift into the passing of some information that a student might then use as some *part of* a formal assignment.¹ Indeed, this is how teaching works – the government's own flagship programme recognises this.
- 3.3 Tutors providing such support would end up committing an offence by participating in the programme, if this legislation is passed in its current form, as would an organisation (for example MyTutor) facilitating or arranging the provision of this service .
- 3.4 It is therefore clear that not only has the Government recognised the benefits of such services, and the role of an efficiently-run commercial organisation to arrange it, but it has also deployed vast national resources to ensure that students are able to access them.
- 3.5 Our second suggested amendment below addresses this issue and, if adopted, would enable the National Tutoring Programme to proceed.

4. Unforeseen consequences of current drafting and suggested changes

Suggested amendment 1: "Part of" to be amended to "a substantial part of" in clause 29(2)

- 4.1 As drafted, the definition of "Relevant Service" in clause 29(2) would capture the use of spellcheck in Microsoft Word when completing an essay at University. Accurate spelling and grammar is clearly "part of" the assignment of writing an essay. This cannot be the mischief that the legislature has in mind to prohibit.
- 4.2 Australian legislation which came into force earlier this year, and on which we assume these provisions were based, has drafted the definition of "Relevant Service" differently. Rather than extending the scope as far as "part of" an assignment, that scope is slightly narrower, and applies to the completion of "all or a substantial part of" an assignment. This would exclude our example above (Microsoft Word spellcheck).
- 4.3 On the other hand in the case of a language assignment, spellcheck may enable our students to complete a substantial part of the assignment and as such use of it would be prohibited in that narrower context. In that way, the Australian precedent helps to avoid such unreasonable or simply unforeseen consequences.

Suggested amendment 2: Additional defence needed in clause 30

- 4.4 In addition to amending the definition of "Relevant Service", clause 30 would benefit from the inclusion of an additional defence, to be available where a tutor has attended a course or training programme on what is and is not permissible in terms of assisting with a substantial part of an assignment. Such an inclusion could be by amendment to sub-clause (3) or by the addition of a new subclause.

¹ Clause 29(5) of the Bill would make it an offence to arrange for tutors to help students complete "part of" an assignment (see above), such that the Service Provider for the My Tutor scheme would be guilty of an offence for fulfilling the Government's contract.

- 4.5 The additional defence would clarify that it is sufficient for an organisation arranging for tutor services to demonstrate that their tutors have attended a course setting out what they can and cannot do in terms of helping a student complete an "substantial part of" an assignment.
- 4.6 The content of such a course could easily be specified by the Government in statutory or non-statutory guidance – indeed any amended defence could be by reference to statutory guidance to be made under these provisions in due course.

5. Lack of proper consultation resulting in unintended consequences

- 5.1 As you are no doubt aware, the 'Have Your Say' consultation currently being carried out by the Public Bill Committee does not meet the normal standards applicable to government consultations generally (including the Gunning Principles).
- 5.2 The proposals are not formative, they are at a late stage of consideration (having been introduced 'in flight' as Government-sponsored amendments in the Lords). The "Have Your Say" website does not provide sufficient reasons, including the reason for making the provisions far wider than the Australian precedent, so as to permit intelligent consideration and response. There is not adequate time to respond in full; responses are requested as soon as possible, and in any event before 30 November 2021. Whilst we appreciate the Public Bill Committee's stated desire to take into account the responses, the legislation has clearly already been formulated, there is no opportunity for the Government to take into account responses when formulating that legislation.
- 5.3 In our view, the failure to adhere to commonly accepted standards of consultation is what has caused the lacunae in the current draft of the Bill and the over-extended scope of application.

6. Closing

- 6.1 In summary, while we commend the Government for seeking to tackle cheating online, for the reasons set out above we do not consider that the legislation as drafted is fit for purpose, nor future-proofed, and suggest the changes listed above.

Yours faithfully,



CC.
Alex Burghart, Minister for Skills
Michelle Donelan, Minister for Higher and Further Education (Department for Education)
Robert Halfon, Chair of the Education Select Committee (House of Commons)
Paul Kett, Director-General for Higher and Further Education (Department for Education)



Annex: Further background in respect of Course Hero

Course Hero is on a mission to help students make every study hour count, and graduate confident and prepared. Our online learning platform now offers more than 70 million course-specific study resources created by and for students and educators, as well as 24/7 tutor help.

The range of learning materials includes practice problems, study guides, textbook solutions, videos, class notes, and step-by-step explanations for every subject.

More than 70,000 faculty across the U.S. and Canada use Course Hero to share their resources with the community, collaborate with other faculty, and hone new strategies for instruction.