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Technology, policy and research: establishing evidentiary standards for managing contract cheating cases

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Introduction

All education processes are prone to cheating behaviours (Glendinning, 2019), and technology has facilitated it since at least the industrial revolution (Curran et al., 2011). The availability of academic and scholarly material online prompted widespread anxiety that students use it for ‘copy-paste’ plagiarism (Sutherland-Smith, 2008, p. 101). In response, other technologies such as text-matching software (for example, Turnitin and SafeAssign) emerged, improving educators’ ability to detect it. Students have since sought new ways to outsource their learning, resulting in what we now refer to as ‘contract cheating’ (Clarke and Lancaster, 2006).

Contract cheating is a form of plagiarism whereby a student procures someone else to do their academic work and then submits it to an educational institution as if it were their own. The ‘contractual’ arrangement does not necessarily involve payment. By its very nature, contract cheating is duplicitous and covert; it depends for its efficacy on avoiding detection. In a recent large survey of Australian higher education students, nearly 6 per cent admitted that they had engaged in one or more cheating behaviours, with 2.2 per cent admitting to obtaining an assignment to submit as their own (Bretag et al., 2019a). The students identified that there are many opportunities to cheat, and only a fifth said that staff had spoken to them about contract cheating (Bretag et al., 2019a). While many students are flooded with advertisements for contract cheating services via social media (Rowland et al., 2018), awareness of it remains low amongst staff at educational institutions. This means that only a tiny fraction

of actual incidents of contract cheating are currently being reported, investigated and substantiated (Amigud and Dawson, 2020; Harper et al., 2019; Maio et al., 2019). This discrepancy is starting to attract media attention (Lee, 2019).

Globally, regulators and legislators are grappling with the challenge of how to address this large and insidious problem (see QAA, 2017; TEQSA, 2017). In response, a growing body of research is emerging which is now contributing to our understanding of the nature of the problem, most of which has been published since 2017 (Bretag, 2019). Central to this problem is the role that educational institutions play in verifying authorship of submitted work, and reporting and managing suspected academic integrity breaches. This chapter argues that there remains an important gap in the extant scholarly literature that can support this work, particularly in the procedural steps involved in managing contract cheating cases and evidence to support decision-making.

Our work is informed by recommendations from the Exemplary Academic Integrity Policy project in 2013. In particular, what we propose sits within a conceptual framework from that project, which guides the implementation of policy (Bretag and Mahmud, 2016). While the framework remains useful and important, it was built before awareness of contract cheating had developed into what it is now, and before the more recent body of research emerged. Given the inevitable lag between cheating behaviours and policy responses to them, the majority of extant institutional academic integrity policies and procedures were developed at a time when contract cheating was generally regarded as being highly egregious but infrequent. Because of this, institutional policies and procedures tend to have serious outcomes for students and need to be labour-intensive. Now that there is evidence that contract cheating behaviours are occurring more frequently than previously imagined, these institutional policies may no longer be fit for purpose. Within Bretag and Mahmud's conceptual framework is a set of 'interrelated procedure components' that contribute to a culture of academic integrity, including 'regular review of policies and procedures' (Bretag and Mahmud, 2016, p. 473).

This chapter aims to assist educational institutions to do precisely this: undertake a review of policies and procedures in a context in which contract cheating is occurring more frequently than previously anticipated. As such, our chapter contributes to Bretag and Mahmud's conceptual framework in the light of the challenges presented by contract cheating. Specifically, it advocates for more research attention being paid to the development of evidentiary standards that can be applied during the various stages of an academic misconduct case. To support this endeavour, this chapter describes three 'evidentiary thresholds' at which these standards should be applied in order to support the management

of academic misconduct cases and, ultimately, result in a higher proportion of contract cheating incidents being detected.

This research endeavour is vital because, alongside Bretag and Mahmud, we too advocate for a paradigm shift from misconduct to integrity, which we argue is particularly important as various nations craft and implement new legislation designed to outlaw certain aspects of the contract cheating problem. Improving education providers' capacity in their administrative compliance function becomes even more important in jurisdictions where contract cheating is illegal. This is because of the likelihood that academic research, new legislation and attendant media interest will increase awareness of the problem and, ideally, improve academic teaching staff's reporting of contract cheating. If the capacity for educational institutions to substantiate allegations of contract cheating does not improve, it may further entrench perceptions that contract cheating is difficult or impossible to prove. Similarly, legal and legislative instruments that are not underpinned by sound evidentiary standards on which to base decisions may generate disgruntlement both inside and outside the academy. In combination, this may, at best, result in a perpetuation of our current situation – where in effect students are 'getting away with' contract cheating – or, at worst, result in further erosion of public confidence in the quality, role and purpose of higher education despite a considerable investment of time, effort and money.

This chapter proposes to build upon Bretag and Mahmud's conceptual framework so as to respond to the challenge of developing a set of evidentiary standards on which educational institutions can rely to determine that contract cheating has occurred. It is not based upon empirical evidence itself; rather, it sets out the context in which contract cheating cases need to be managed and, therefore, where research needs to be focused in order to address this challenge. It describes the evidentiary thresholds at which these standards need to be applied, thereby providing a common language that researchers can use such that evidentiary standards can be accepted and applied consistently across educational institutions, sectors and jurisdictions. It also proposes where new technologies may be of most use to support the application of these standards.

It is important, at this point, to clarify the terms we use in this framework. We define an 'incidence' as a situation where contract cheating has occurred, whether it has been detected or not; and 'detection' as a situation where an allegation of contract cheating has been upheld. The term 'successful investigation' has been chosen deliberately to include outcomes that (rightly) find that a student has no case to answer.

The scope of this chapter does not include cases that can reasonably be interpreted as resulting from as yet undeveloped academic skills, but instead is concerned with conduct that can only be interpreted as a deliberate intent to cheat (see Carroll, 2016). Furthermore, it is concerned with behaviours that are so serious that they could, in certain circumstances, result in expulsion. A benchmarking study of the range of penalties available for academic misconduct amongst higher education institutions in the United Kingdom (UK) found that ‘by far the most commonly cited penalty was expulsion, which was listed in the regulations of 98.7% of institutions’ (Tennant et al., 2007, p. 8). This makes sense; every institution should want to retain the right to expel students whose conduct is at odds with the values underpinning academic scholarship. This penalty is, in effect, saying, ‘Your conduct means that you are unsuitable to remain as a member of our academic community’. We argue that contract cheating is indeed a form of conduct which, in certain circumstances, may reasonably warrant a penalty of expulsion.

The main focus of this chapter is on the work involved in managing contract cheating cases. This work is, in most institutions, mostly undertaken by academic and professional staff. It is beyond the scope of this chapter to explore in detail the perceptions and experiences of students. However, institutions’ obligations to upholding academic integrity needs to be balanced with duty-of-care obligations to students. As Evans and Levine point out, ‘an allegation of misconduct can be extremely stressful for a student, and can exacerbate student anxiety and other mental health issues’ (Evans and Levine, 2016, p. 341). While there is some research on academic misconduct being a result of poor student mental health (Vengoechea et al., 2008), there is little research that specifically analyses the experiences of students who have received a contract cheating allegation. We advocate for a process that is mindful of student health and safety as well as remaining vigilant to the damage that ‘false positives’ might inflict on students who have not behaved inappropriately. An important part of every institution’s obligations is ensuring that students are afforded procedural fairness, including receiving a fair hearing and decisions which are unaffected by bias, actual or apprehended (see Evans and Levine, 2016; *Ex parte Lam*, 2003). Having access to advocacy and other support services can assist in minimizing stress. Similarly, it behoves educational institutions to provide opportunities for students who are found to have engaged in academic misconduct, and who are entitled to retrieve their academic standing, to progress with their programme of study.

Literature review

The volume of research into the problem of contract cheating has increased substantially in recent years and focuses both on the ‘academic’ side of the problem and on potential ‘legal and legislative’ solutions. The ‘academic’ side examines student behaviours and attitudes (see Bretag et al., 2019a; Bretag et al., 2019b; Newton, 2016; Rogerson, 2017), academic staff attitudes and behaviours (see Awdry and Newton, 2019; Harper et al., 2019; Maio et al., 2019), what role, if any, assessment design can play (see Bretag et al., 2018; Ellis et al., 2019), and the ‘academic custom writing’ industry itself (see Ellis et al., 2018; Lines, 2016; Rowland et al., 2018; Sutherland-Smith and Dullaghan, 2019).

The ‘legal and legislative’ research has primarily examined the effectiveness of responses to contract cheating under existing criminal and civil law, proposing new legislative action or critiquing judicial opinion (see Draper et al., 2017; Draper and Newton, 2017; Steel, 2017; Tauginienė and Jurkevičius, 2017). An amendment to legislation in New Zealand has made it an offence to advertise or provide cheating services (Education Act, 1989), and other offences against cheating services operate in 17 states in the United States under older legislation (Draper et al., 2017; Draper and Newton, 2017; Steel, 2017). Only a single circumstance has been considered under the New Zealand legislation; it was not pursued due to concerns about the prospects of success at trial, and a forfeiture agreement was finalized, requiring a lesser burden of proof, to recover the proceeds of crime from the cheating service (*Commissioner of Police v Li*, 2014; *Commissioner of Police v Li* [2018] NZHC 1566 (27 June 2018), n.d.). There are plans to create similar offences to that in New Zealand in the UK, Ireland and Australia. Most of the legal actions taken against contract cheating providers to date have been directed at conduct adjacent to the services rather than the services themselves (Advertising Standards Authority, 2013, 2019; Redden, 2017).

There is a significant gap between these two bodies of research as well as empirical studies to support the efficacy of educational institutions in their administrative compliance function of upholding standards of academic integrity. This pressing requirement sits within a context whereby new technology solutions designed to aid in the detection of contract cheating are entering the marketplace. As with previous tools designed to assist in the management of academic integrity policy and procedures, all that these tools can and should do is to trigger a procedure that is fair, transparent, efficient and consistent. We stress that these tools will not and should not be the solutions in themselves. Because these tools aim to aid detection, if they are successful they

will improve identification of potential instances and therefore increase the case load that may, in turn, address the discrepancy between the self-reported incidence of contract cheating behaviours and rates of successful investigation and therefore detection.

Evidentiary thresholds

We argue that there are three evidentiary thresholds:

1. suspicion at the point of marking;
2. turning suspicion into evidence;
3. findings of fact and upholding allegations.

We now turn to describe the thresholds in more detail, by first outlining the key roles involved in the management of contract cheating cases and, in so doing, the three stages and evidentiary thresholds through which each case passes. Our approach here is to be as generic as possible. Depending on the procedural structure of the institution, these roles might be performed by different staff members, or one staff member may undertake more than one of them. Similarly, in some institutions some of these roles may be undertaken by panels or committees rather than individuals, and in other institutions some of these roles may be performed by student peers.

Our descriptions are based on action research undertaken in the roles that we play within our respective institutions. Between the three authors, we fulfil a variety of roles within this framework: including initial suspicion at the point of marking through to management of cases, advice to decision-makers, and support for the review and appeal of those decisions. The thresholds described in this chapter are, therefore, based on the work that we do, the roles that we hold, and are informed by observations made in contract cheating cases in which we have been involved, which, between us, amount to hundreds of cases of contract cheating.

Evidentiary threshold one: suspicion at the point of marking

The first evidentiary threshold is faced by academic staff who are involved in marking student work. In our experience, they trigger the bulk of cases. Importantly, reporting academic misconduct is a small component of their jobs, which should remain focused on teaching and research. In many institutions these will be a mixture of fixed-term or ongoing academic staff members and sessional staff engaged on an hourly paid basis. In our experience, these staff are often reluctant to undertake what they see as 'extra' tasks

outside of their main duties. This observation is reinforced by the findings of a recent survey of over 1100 academic staff. It found that over two-thirds of respondents reported that they had ‘encountered an assessment task that they suspected was written by someone other than the student who submitted it’ (Harper et al., 2019, p. 1860), but only half of them went on to report their suspicions to an academic integrity decision-maker. Nearly a quarter of these respondents indicated that the reason they chose not to report was because ‘it is too time consuming’ (Harper et al., 2019, p. 1861). These staff have varied levels of skill with, awareness of and commitment to academic integrity issues. While academic staff asked to identify contract cheating can often do so, rates of detection and reporting are much lower in the context of the routine marking of student work (Dawson and Sutherland-Smith, 2018, 2019).

While reporting suspicions of academic misconduct is arguably part of the main teaching role, the workload required for an incidence of contract cheating is greater than that required for a case of ‘copy-paste’ plagiarism because ‘it requires validation of both identity *and* authorship’ (Amigud and Dawson, 2020, p. 2). These staff need a process for reporting their suspicions quickly and easily. To return to the survey of academic staff, nearly a quarter of the respondents who did not report their suspicions indicated that they perceived that senior managers did not support academic staff to pursue cases; whilst nearly a fifth said that they did not know how to pursue it; and a comparable number said that they did not trust their institution’s policies and procedures (Harper et al., 2019). This indicates that academic staff need an incentive to report.

In the usual assessment management workflow, markers generally only see the ‘surface features’ of the documents students submit, either as printed paper copy or via an online marking tool (Ellis, 2012). These staff also have valuable information relating to the student, their behaviour in class and the online learning environment, as well as their performance and behaviour relative to other students in the cohort and previous cohorts. They also know the content of the course, the scholarship in the field of education, the assessment task and what a typical response to the task is like. In our experience, this academic expertise can bring valuable information and evidence to a case of misconduct. For most of the respondents in the staff survey who reported that they had suspected contract cheating, it was their knowledge of the student and their language ability that were the most common things that prompted their suspicions. For those staff who are aware of the contract cheating problem and are committed to reporting it (even in the face of the myriad reasons that make them reluctant), they are faced with the first evidentiary threshold: is there enough suspicion to justify reporting? The fact that only half of staff who

suspect contract cheating go on to report it demonstrates that this first evidentiary threshold is presently a difficult one to cross.

In order to implement exemplary academic integrity policy in a context where contract cheating prevails, the five core elements outlined by Bretag and Mahmud remain crucial (Bretag and Mahmud, 2016). In the first instance, academic teaching staff need clear information, which is based on empirical evidence, about what should arouse their suspicions, as well as clear policies and procedures that make explicit reference to contract cheating, what their reporting obligations are and what performance expectations senior managers hold about them. These staff also need support and detail in the form of tools, procedures and policies that will assist them in this reporting function. Given the increased volume of work relative to reporting copy-paste plagiarism, the reporting process must be as transparent and efficient as possible. Academic staff need tools that do three things. Firstly, they need tools that alert them to areas in student submissions that are of suspicion. Research into the new tools that are entering the market has already begun, but much more needs to be undertaken to hone their accuracy and application (Dawson et al., 2019). Secondly, they need tools that allow them to report student assessment work which is of concern; and, thirdly, tools that allow them to provide further relevant contextual information about the student's behaviour, the learning context and the cohort. Research that can inform and support academic staff suspicion can add to the specialist academic expertise and judgement that they already bring. It is important at this stage to point out that the information that triggers academic staff suspicion at the point of marking may not, and in many cases does not, in itself constitute evidence. Turning suspicion into evidence is the next stage of the process.

Evidentiary threshold two: turning suspicion into evidence

The second evidentiary threshold is faced by those to whom academic teaching staff report their concerns. They are given different titles at different institutions but we will call them 'academic integrity officers'. In some institutions, this role is undertaken by the individual academic staff who are also responsible for marking student work, but in other institutions it is a role undertaken by designated academic or professional staff who have academic misconduct management duties allocated as part of their workload. Regardless, ideally these staff are provided with regular training and participate in a formal or informal community of practice (Wenger, 1998).

When assessing and processing 'copy-paste' plagiarism cases, a great deal of the labour of gathering evidence is automated by text-matching software

that both highlights the unoriginal text and locates the document to which it has been matched. In our experience, the vast majority are confident in interpreting originality reports and in their management of 'copy-paste' plagiarism cases. In contrast, they tend to be less aware and less confident when addressing contract cheating cases. The best-informed and most confident accept that they are in a position to scrutinize closely the student's behaviour. Upon receipt of a report of an academic staff member's suspicion, these staff encounter the second evidentiary threshold: is there enough evidence to prove that contract cheating has occurred? They gather broader evidence, including other documents submitted by the student for assessment and logs from the learning management system. In our experience, the first task of gathering documents together is onerous, requiring access to multiple online systems in which student academic work is stored. The systematic examination of documents has also proven to be laborious and time-consuming, much of which is relatively simple and administrative: sifting and sorting of information that, depending on the student's duration of study, can come from dozens of documents. These staff need tools to help gather this information and are assisted by templates into which they can collect and organize the evidence they discover. From this they need to distil the key information into a brief of evidence that will support a formal allegation that can be put to the student.

In our experience, the quality of the brief is critical for a successful investigation. This puts pressure on those in this role. Given that, in our experience, they tend to be permanent and sometimes senior academic roles, these people are also under pressure to minimize the volume of 'lower-level' administrative work they undertake. The effectiveness of people in these roles may be significantly enhanced by 'para-academic' roles – staff who have academic qualifications and skills – while ensuring academic judgements and the ultimate decision about whether or not to draft the brief remains with the academic integrity officer. These staff need tools that assist them in case management and in the collection of information (such as all documents submitted by a student for assessment), and can automate at least some of the comparative analysis of this information. Research that identifies which indicators within and between documents submitted for assessment by a student are significant, and that can be relied upon to substantiate allegations of contract cheating, will make a valuable contribution to the important work of establishing reliable evidentiary standards.

Evidentiary threshold three: findings of fact and upholding allegations

The third evidentiary threshold is faced by decision-makers. For these people, managing academic misconduct cases is a substantial part, if not the whole part, of their role. They receive briefs of evidence but also see the student responses to allegations. They should have expertise and experience that allows them to ensure procedural fairness, and be aware of institutional precedents and the institution's risk appetite. In our experience, they are influential in the institution, in that they provide advice both to local areas as well as to senior managers and educational leaders. They can be either academic staff or professional staff with academic and/or legal skills and qualifications who are working in a quasi-legal context. In some institutions this role may be performed by a panel, which may also include or be entirely composed of student members.

Upon receipt of briefs of evidence, people in these roles face the final evidentiary threshold: is there enough evidence to support an allegation that can be upheld on the balance of probability? If there is, this prompts a process whereby the brief of evidence is used to support findings of fact to determine whether or not the allegation is substantiated on the balance of probabilities. This then results in an outcome and, in cases where the allegation is upheld, a penalty. Despite everyone's best efforts, the process is in itself punitive; in the best interests of the student and the institution, everyone needs to be sure that there are grounds both to make an allegation as well as to uphold it. In our experience, this is the most difficult evidentiary threshold to cross, and appropriately so, given the severity of the potential outcomes. Ideally, this is followed up with some kind of educative intervention for the student which aligns with one of the other core elements outlined by Bretag and Mahmud: an approach whereby 'academic integrity is viewed as an educative process' (Bretag and Mahmud, 2016, p. 473).

To do their work well, in our experience, people in these roles need good support from both directions: good briefs coming from academic integrity officers, and courageous institutional leadership. Of course, decisions should always be made on reliable and relevant evidence, not guesswork, preconceptions or assumptions. Research that provides empirical evidence to support this decision-making is critically important. In reaching a decision, the standard which applies is the balance of probability, or the conclusion which might be reached by a reasonable person on the available information. A reasonable decision is one that balances the judgement of the decision-maker, any miti-

gating circumstances which may have a bearing on the decision, obligations and the interests of all parties affected. Again, tools that facilitate efficient case management are critically important. Research that can inform how best to support students through the process, and effective ways to draft briefs of evidence and notices of allegation to ensure fair and consistent outcomes, is fundamentally important to support this stage of the process.

Conclusion

The large and growing body of research into the problem of contract cheating is undoubtedly making a valuable contribution to our understanding of this insidious and wicked problem. The challenge now remains to find practicable solutions that can be applied within educational institutions that are fair, effective and efficient as they carry out their administrative compliance function in managing academic misconduct cases. This chapter works within a conceptual framework previously outlined by Bretag and Mahmud, and builds upon it for an academic context in which contract cheating is more common than previously imagined. It describes three evidentiary thresholds that need to be crossed in the management of contract cheating cases. We offer these descriptions to draw attention to them, so as to inform future research endeavours that provide empirical evidence to support and guide this important work. Our aim in this chapter is to encourage future researchers to retain a clear focus on solutions, while keeping procedural fairness and student welfare at the front of their minds.

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