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Essay mills row: how to treat a student cheat

Plagiarism penalties tend to be down to a tutor's whim. Is it time for a fairer way?

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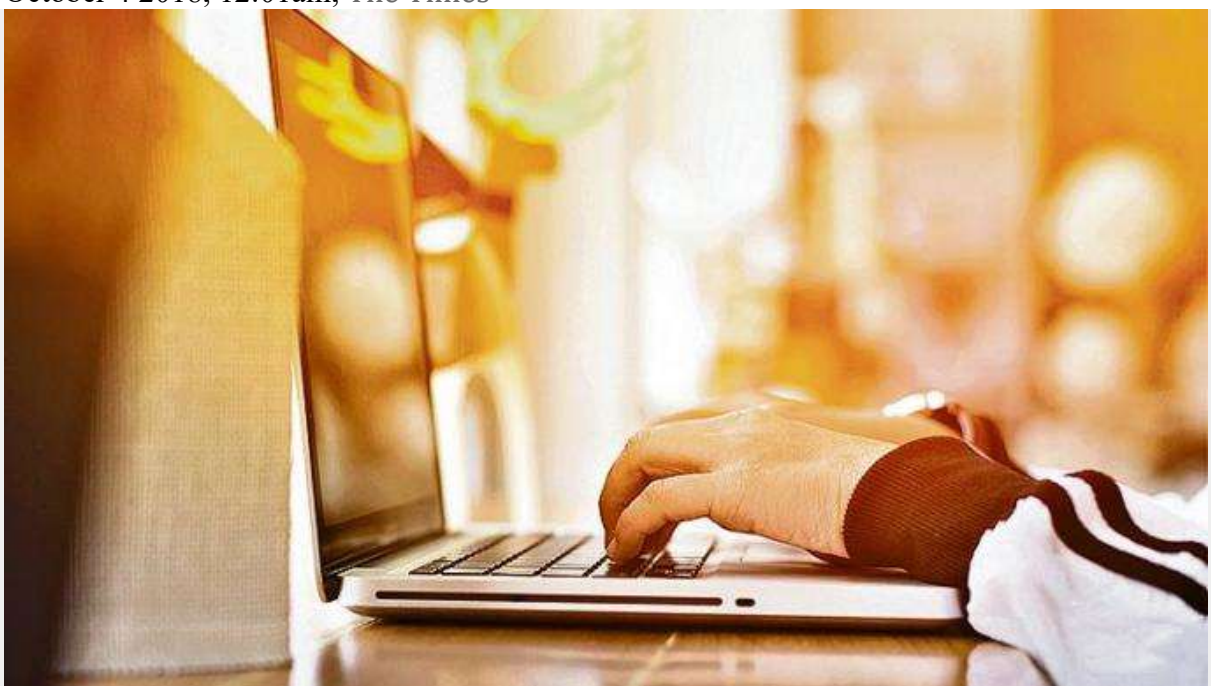

OK, I'll come clean. You've got me bang to rights, I admit it. In the article that you are about to read I've copied from reliable sources words, clauses and maybe, in some cases, even whole sentences. Admittedly I have mostly given attributions. But maybe not quite every time — especially on the juicier points that I should like to present as my own. What happens next?

Well, if I were a university student or junior researcher, I could be in deep trouble. The row about "essay mills" that surfaced last week, and calls from universities to ban such companies, exposed just how insidious and invasive the plagiarism issue has become in higher education. "Enacting and enforcing such a ban presents a host of legal and practical problems," says Fenella Morris, QC, of 39 Essex Chambers. "Regulators have been asked to consider other options for reducing the access students have to essay-writing services. Universities, in turn, are being asked to ensure that they are taking all appropriate steps to discipline those who use them."

In fact, many universities already discipline students for academic misconduct by cheating. But the existing internal systems are under fire from some lawyers for being flaky exercises in justice. That is why, William Charrington of Farrer & Co says, the Quality Assurance Agency for Higher Education (QAA) is encouraging colleges to produce written procedures to create a consistent approach across the sector.

What is particularly alarming considering the impact of the penalties (ranging from mark restrictions to expulsion) is the apparently arbitrary and subjective nature of the process in some institutions. Charrington says: “The QAA recommends the ‘balance of probabilities’, ie for a finding of cheating, it must be more probable than not that the alleged cheating occurred, which is the usual standard of proof in civil proceedings.” He points out that the more onerous standard applied in criminal cases is, of course, beyond reasonable doubt.

“The QAA acknowledges that the higher criminal standard may appear to be proportionate given the seriousness of the potential sanctions, but concludes that it ‘may be too strict to enable effective decision-making’.” In other words, the bar is set low because the higher bar, the criminal standard, is unlikely ever to be reached.

The reality of what this means in practice is described by Robin Jacobs of Sinclairslaw, who highlights the case of students for whom English is not their first language. “You have a student who submits a piece of coursework and a couple of weeks later, a lecturer or tutor, invites them to attend a meeting in order to discuss concerns about misconduct or something similarly vague.

“At the meeting, the student is ambushed and grilled by university staff, who accuse them of having submitted work which is ‘not their own’. Given the stressful situation and the additional difficulty of having to communicate in their second or third language, the student understandably struggles to answer questions about the content of the coursework and the way in which it has been produced.”

The student is later notified that they have been found guilty of an academic offence. “Importantly, this finding is based not on a high similarity index or any objective evidence such as emails or statements, but on the ‘academic judgment’ of the lecturer or tutor.”

Rough justice? Sounds like it.

The time has come for a system of proper hearings (undertaken independently and with the right procedures) to be put in place across UK higher education, says Michael Charles, also of Sinclairslaw. “Students are in danger of seeing their careers ruined at a time when they are under more pressure than ever financially, through social media and mental health issues,” he says. “Meanwhile they are often poorly supervised and issues such as disability, autism and depression are not being picked up.”

Any kind of redress is hard to secure. “Tuition fees have increased student expectation of what they receive in return,” says Clare Mackay of SA Law. “An aggrieved student can make a complaint to the Office of the Independent Adjudicator (OIA) or issue court proceedings for breach of contract and/or negligence.” But little can be expected from the OIA, she says, and the courts will be equally unfruitful. “Neither avenue of redress boasts very good odds of a successful outcome for the student. According to its 2017 annual report, only 15 per cent of complaints made to the OIA were found to be either justified or partly justified. Few litigated cases make it to trial and even fewer of those succeed.”

No one disputes that cheating cannot be tolerated. However, there appears to be a lack of rigour and consistency in the way that these cases are handled, which is not in keeping with a higher education system that boasts it is among the best in the world.