



Baroness Barran

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Baroness Sherlock
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Dear Maeve,

I am writing to you to follow up on your questions and express my gratitude for your thoughtful contributions to the second day of Report Stage of the Skills and Post-16 Education Bill on 21 October 2021. During the debate, I promised to write to you on a number of issues which I have covered below. I will place a copy of this letter in the House of Lords Library.

Data protection

Clause 11 of the Bill supports effective collaboration between Ofqual and other key bodies in relation to technical education qualifications by introducing information-sharing powers similar to those already held by the Institute for Apprenticeships & Technical Education under the Apprenticeships, Skills, Children and Learning Act 2009. Ofqual, as the regulator of qualifications in England collects and maintains crucial quality, performance and delivery data on qualifications, including technical qualifications approved by the Institute, for the purpose of discharging its functions. Clause 11 supports a critical aspect of the joint working needed to ensure that the whole technical education system works together to deliver the skills that employers need.

The information sharing powers enabled by this clause will help remove duplication and burdens on the system by ensuring that information needed by more than one body can be collected once and then shared where necessary, rather than collecting the same information multiple times for their individual purposes. The clause would, for instance, allow Ofqual to share information it already gathers from awarding organisations with other bodies; this will avoid those other bodies needing to duplicate data gathering exercises and will help to reduce administrative workload and burdens on the system.

With reference to the scope of Clause 11 beyond England, it technically extends to Northern Ireland, Scotland, and Wales for consistency with the Act being amended. However, there will be no application of the provision outside England. This is because the provisions only relate to the functions of bodies so far as they relate to England and there is no intention to prescribe devolved ministers, or bodies outside England or to share devolved information.

You asked me to clarify the provisions around personal data, and I can confirm that Ofqual collects a range of student-level data that might be shared under this clause. This includes, for instance, data relating to entries, assessment and outcomes of qualifications, complaints about malpractice and appeals and reviews of results. Ofqual would expect to share data only where it is lawful, necessary and proportionate for another public body's functions, and this will be determined on a case-by-case basis. Wherever possible, personal data will be anonymised prior to sharing. However, in some cases, it may be necessary to share personal data. In such circumstances, Ofqual will only share personal data where there is a valid reason to do so, and appropriate safeguards are in place to protect the rights and freedoms of individuals.

Ofqual has policies and procedures in place to protect personal data stored virtually in line with Government standards. This includes firewalls, malware protection, back-ups and anti-virus protection. Any sharing of personal data takes place within a secure area. Access to this area will be controlled by Ofqual and only designated individuals are granted access. Where personal data is shared, a data protection impact assessment will be conducted and data sharing agreement will be entered into with the relevant body prior to any sharing of personal data taking place.

Kickstart

Despite the challenges posed by the pandemic, Kickstart has seen young people start jobs at almost twice the pace of the Future Jobs Fund programme introduced under a previous Government. We have achieved this at pace, with the scheme announced in July last year and the first young people starting roles in November. Since then, as of the 26 October Kickstart has supported almost 94,000 young people, compared to the 56,000 young people at the equivalent point for the Future Jobs Fund.

With the current pace of starts, we are confident that in early November over 100,000 young people will have started in a Kickstart job, with the first jobs having started only a year ago. We will continue to offer Kickstart jobs to many thousands more.

In regards to why those on the scheme do not always start these roles straight away, I would highlight that in filling these vacancies, we are seeking to ensure that we find an appropriate job match for each young person and the employer. The employer also is not obliged to seek to fill a Kickstart job as soon as we have approved it – it can start anytime within the lifetime of the scheme – for example, some employers have secured approval for a number of jobs and filled them in batches over several months so that they can provide appropriate support to the young people in them.

We are deploying a range of measures to encourage young people into Kickstart jobs, such as promoting vacancies more widely on various platforms, and initiatives such as Quickstart to match young people to jobs on the same day they are referred to the scheme.

Employers have already advertised over 213,000 Kickstart jobs to young people and are still able to apply to add more jobs until 17 December 2021.

Eligible young people will continue to be able to start a Kickstart job up to the 31 March 2022. Our focus remains to get as many young people who need one into a Kickstart job. We are pleased that our effort to build back better has seen the wider labour market open up and more jobs become available for young people and we are committed to supporting the wider labour market rather than displacing it.

The Lifelong Loan Entitlement (LLE)

I promised to provide a full detailed response in regards to your question on the definition of a module in the Bill. I understand you received an email from the Bill Manager on 15 October outlining this, but I am including below for completeness.

Clause 15 of the Bill amends THEA while Clause 16 amends HERA. THEA and HERA have two very different purposes. The former makes provision for loan funding via a broad set of regulation-making powers for the Secretary of State; the latter is principally about the regulatory regime (OfS powers) and specifically enables the setting of fee limits for HE courses by the Secretary of State.

Clause 15(1)(e) of the Bill modifies section 22 of THEA, by inserting new subsection (2ZA). That enables the Secretary of State to define what “module” means in relation to a higher or further education course for the purposes of making loan regulations. Some examples of what might be included in such a definition are set out in new 2ZA. This follows the existing approach taken in THEA to the definition of “further education course” and “higher education course” – under section 28(1) of that Act those terms are left to be defined by regulations.

Clause 16 of the Bill takes a slightly different approach due to the different regime it covers. It clarifies that a module of a “full course” (i.e. an HE course mentioned in Schedule 6 to the Education Reform Act 1988) is itself a category of HE course for the purposes of Part 1 of HERA 2017, when it is taken separately from the course from which it is derived.

Student mental health

Office for Students (OfS) role in supporting student mental health

The OfS’s proposed new criteria on quality and standards only relate to academic support. However, this government and the OfS take the mental health of students extremely seriously and we continue to work closely with the HE sector to fund and promote effective practice. Whilst it is for HE providers to determine what welfare and counselling services they need to support their students, the Department and OfS are proactive in working with the HE sector and across government with the Department for Health and Social Care (DHSC) to ensure that university students can access the support they need.

Student mental health continues to be a strategic priority for the OfS which undertakes a range of work in this area. I have attached as an annex a summary of the OfS' work with the sector to ensure HE providers have the necessary funding and tools to support the mental health of their students. The OfS considers that the range of levers it has in this area, alongside the proactive work led by the sector, is sufficient to ensure that students are well provided with non-academic support during their time at university.

Cross government work with health colleagues to ensure adequate NHS provision for HE students

As you are aware, DHSC has lead responsibility for young people's mental health and we continue to work closely with them. This year, DfE ministers convened the Mental Health in Education Action group to bring the education and health sectors together to drive action to mitigate the impact of the pandemic on the mental health and wellbeing of children, young people and staff in nurseries, schools, colleges and universities.

The government is committed, through the NHS Long Term Plan, to investing at least £2.3 billion of extra funding a year into mental health services by 2023-2024. This will see an additional 345,000 children and young people, and adults able to access support through NHS-funded services. £500 million of additional funding was provided this financial year as part of the Mental Health Recovery Action Plan. This includes £13 million to ensure young adults aged 18 to 25, including university students, are supported with tailored mental health services, helping bridge the gap between children's and adult services. This will support a cohort which has historically faced a 'cliff-edge' in support and is being especially impacted by Covid-19 with a rising prevalence of mental health problems and changes to the economy and labour market.

Working in partnership with health care provision is key to addressing the challenges faced by HE students. The OfS is supporting HE providers to develop innovative solutions to support student mental health via challenge competition funding. One particularly impactful project led by the University of the West of England focuses on improving care for students in need of mental health support through the development of local partnerships between universities, NHS, and student unions, connected together through a National Learning Collaborative to develop a new joined-up approach to provision. Five regional hubs in Bristol, Liverpool, Manchester, North London and Sheffield have developed new models of partnership with the NHS. This year, the DHSC have provided £1 million to the OfS to support projects to develop digital and innovative proposals that drive improvements in mental health support and early intervention for HE students.

Resources directed towards support services in higher education.

Moving onto the points you raised around allocation of resources and fee income, HE providers are autonomous bodies who are independent from government. As experts in their own student populations, HE providers have discretion over how they allocate funding internally to support their particular student body most effectively. OfS provides funding to providers through the Strategic Priorities Grant to support disabled students (including students with

mental health conditions) and an additional £15 million in 2021/2022 was allocated to help address the challenges to student mental health posed by the transition to university, £12 million of which was allocated directly to HE providers. This funding is specifically allocated for these purposes.

In addition to this funding, the government and OfS are proactively working with the HE sector to ensure they are able to support their students, including collaborative work to establish and promote key frameworks to drive up standards of practice. This includes [the University Mental Health Charter](#), developed in collaboration with students, staff and partner organisations, focusing on leadership, early intervention and data collection. Launched this year, 41 HE providers have joined the first cohort of the [University Mental Health Charter Programme](#) which enables members to work towards the Charter Award. The Parliamentary Under Secretary of State for Skills, Minister Burghart attended the UUK student mental health conference on the 3 November to outline his ambitions for student mental health, and highlight to ongoing work led by the sector to support student mental health. He has also made clear the ambition for all HE providers to sign up to the Charter programme within 5 years.

We hope this information has provided you with further reassurance that the mental health and wellbeing of young people is a priority for this government, and together with the OfS we continue to direct funding and resources to ensure that students are well supported during their time at university.

Criminalisation of cheating services

Who commits the offence

The legislation creates two criminal offences in England and Wales:

- The first offence will be committed when an organisation or an individual (e.g., a freelancer) completes, or arranges for someone else to complete, in commercial circumstances, all or part of an assignment on behalf of a student, such that it can no longer be considered to be their own work.
 - In order for the offence to be committed, the assignment has to be one which the student must complete personally, for the qualification/course they are taking.
 - The students in scope are those attending a sixth-form or post-16 institution in England (this includes higher education providers), or any other person over compulsory school age who has been entered to take an examination relating to a regulated qualification in England (such as a student who is home educated).
- The second offence relates to advertising the provision of cheating services. The person or persons who arranges an advert in which that person offers or is presented as available to provide a relevant service commit this offence.

Depending on the governance of the cheating service who provides or makes these arrangements, this means that a prosecution could, for example, be brought against the essay mill organisation, the owner and/or a member of staff, or an individual commissioned by them to undertake the student assignment.

Others who assist with publishing adverts for cheating services, such as an advertising company can be charged with aiding and abetting the principal advertising offence.

Location of the offence

You asked what it meant for the offence(s) to be committed in England and Wales. This matter is not simply determined by the location of the registered cheating service website/organisation, or where the person arranging, promoting the service or the writer is based. For an offence to be committed in England and Wales the courts have held that the substantial part of the offence must take place in the jurisdiction, therefore some elements of the offence may take place elsewhere and could in theory still lead to a prosecution. This will depend on the facts of each case and prosecutions are only likely to be brought where the person charged is based within the UK.

Likely number of prosecutions

In terms of enforcement activity, the Department has been working closely with the Ministry of Justice (MoJ) and Crown Prosecution Service as we develop our policy proposals to help ensure this legislation achieves our policy aims whilst minimising the impact on the justice system. As mentioned during the debate, we expect this legislation will have a strong deterrent impact on the provision and advertising of cheating services to students in England. However, if individuals or companies break the law they can be prosecuted. It is difficult to determine exactly how many prosecutions are likely in a typical year, as it is unclear what the behavioural responses of businesses would be. For example, cheating service providers might change their operating model or relocate in response to the passing of this legislation as we have seen in other countries, such as Australia. We will continue working closely with the sector to develop a robust plan for monitoring, oversight, and reporting.

Likely benchmark for fines

I would like to clarify an answer given by Baroness Chisholm in the House. Those found guilty of this offence can be fined if convicted; the appropriate fine will be determined by the courts in accordance with Sentencing Council guidelines and the powers of the magistrates to issue fines are uncapped by the legislation. The court would need to refer to the Sentencing Council guidelines to make a decision as to the level of fine to be imposed in each individual case. The fine must reflect the seriousness of the offence and the means of the defendant. Since 12 March 2015 the magistrate's court hold the power to issue 'uncapped' fines. Therefore, we cannot provide a specific

or ballpark fine for this offence because the fine needs to be in accordance with Sentencing Council guidelines and it is at the discretion of the magistrates' powers to issue 'uncapped fines'.

I hope the above answers your questions, but if you would like to discuss this further, please do not hesitate to get in touch with my office so we can arrange further engagement with the Bill team.

Yours sincerely,

A handwritten signature in cursive script that reads "Diana Barran".

BARONESS BARRAN

PARLIAMENTARY UNDER-SECRETARY OF STATE

ANNEX: OfS mental health strategy

Student mental health continues to be a strategic priority for the Office for Students (OfS). Through access and participation regulation, HE providers are challenged to address gaps in outcomes between disabled students, including students with mental health conditions, and their peers, particularly where there is evidence of gaps in access, progression and attainment. This is to enable all students to fully participate and succeed at university. The OfS can also receive notifications from students, their families or third parties where they consider there have been systemic failures to provide adequate student support, and will consider regulatory action where this risks breaching conditions of registration.

The OfS have funded [Student Space](#) with up to £3 million, which is a mental health and wellbeing platform designed to bridge any gaps in support for students arising from the pandemic. Student Space is designed to work alongside existing services, providing dedicated one-to-one phone, text and web chat facilities as well as a collaborative online platform providing vital mental health and wellbeing resources. The OfS is continuing to fund Student Space into the new academic year, which will mean that students can continue to receive this expert advice and support.

The OfS have invested £6m in ten large-scale projects through a [Challenge Competition](#) to develop innovative approaches to address student mental health issues. The projects involve over 60 different universities, colleges and other organisations including NHS services, the police and charities, together contributing matched funding taking the investment up to £14.5m. An additional £3m of funding will be invested in the 2021/22 academic year to develop digital and innovative proposals to drive improvements in mental health support and early intervention for HE students. The [18 successful projects](#) were announced in August 2021 to develop partnership working between the health and higher education sectors.

Through [strategic](#) guidance to the OfS in February 2021, DfE asked that it continue to support initiatives in relation to mental health in the short and long term, and asked the OfS to allocate an additional £15 million towards student mental health in 2021-2022 to help address the challenges to student mental health posed by the transition to university, given the increasing demand for mental health services. This will target those students in greatest need of such services, including vulnerable groups and hard to reach students.