

Strictly Confidential
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Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 12 July 2019 and 4 October 2019.

Matters for approval

There are no matters for approval.

Notes of guidance previously circulated to Bursars (also on the Bursars' website)

| Guidance note | Minute reference | Date of email |
|---|------------------|----------------------------|
| Provision of AAI devices for emergency first aid | 12/7 min 5 | 12 July 2019 |
| Criminal Finances Act 2017 | 12/7 min 6 | 22 July 2019 |
| Tier 4 worker's agreement 2019-20 | 12/7 min 11 | 23 Jul 2019 12 Aug 2019 |
| Consideration of the use of Emotional Support Animals | 4/10 min 6 | 5 Sep 2019 |
| Section 21 of the Housing Act – government consultation | 4/10 min 8 | 4 Oct 2019 |
| HR Committee consultations | 4/10 min 14 | 2 Oct 2019 |
| Annual surveys: Fellows Stipend and Staff Salary | 4/10 min 16 | 10 Oct 2019 |

Other matters to which attention is drawn

1. Cambridge UCU anti-casualisation claim/Employment, payment and taxation of supervisors in Cambridge

A position paper on the employment and tax status of undergraduate supervisors has been completed by the Sub-Committee. A copy is available on request to OIS (Paper LA&E(19)36).
(Minute 9a, 12 July 2019)

2. Review of advice to Colleges on limited tenure contracts for College Teaching Officers

The Sub-Committee reviewed the advice issued to Colleges in 2009 and noted that it was still current. Bursars are reminded that this guidance exists and can be found on the Bursars' website.
(Minute 9c, 12 July 2019)

3. Holiday pay implications for "part-year" workers

The Sub-Committee noted a recent employment tribunal ruling about the holiday pay calculations for "part-year" (as opposed to part-time) permanent employees or workers on zero hour contracts, and that their holiday pay should be calculated on their pattern of work in the previous 12 weeks and not annually pro-rataed. It noted that this was not likely to be significant for most Colleges: Bursars should discuss this with their HR managers if they employ zero contract staff for only part of the year.

(Minute 5, 4 October 2019)

4. Activities of College Nurses and appropriate insurance cover

The Committee's attention was drawn by the General Purchasing Sub-Committee to a potential mismatch between activities undertaken by College Nurses and the current levels of insurance cover (as a result of this not being reviewed for a number of years. It agreed that the general duties of College Nurses should be articulated by the Senior Tutors' Committee so that the co-ordinating Bursar on insurance matters could then confirm whether appropriate cover could be obtained.

(Minute 9, 4 October 2019)

5. Outsourcing Tier 2 sponsorship administration

Discussions with the University's HR Division are ongoing.

(Minute 12b, 4 October 2019)

Dr M Russell
15 October 2019

Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 22 November 2019 and 17 January 2020.

Notes of guidance previously circulated to Bursars (also on the Bursars' website)

| Guidance note | Minute reference | Date of email |
|---|------------------|---------------|
| Revised Freedom of Information Act guidance on the reporting of small numbers | 22/11 min 3b | 9 Dec 2019 |
| Employing international staff: 2020 revision | 22/11 min 8 | 9 Dec 2019 |
| Annual surveys: Staff Salary | 17/1 min R1 | 23 Jan 2020 |
| Colleges' Data Protection Officer's Annual Report 2019 | 17/1 min R3 | 17 Jan 2020 |
| Annual surveys: Fellow Stipends and Benefits | 17/1 min R1 | 3 Feb 2020* |

* Provisional date at time of writing

Other matters to which attention is drawn

1. Cambridge UCU anti-casualisation claims

Keith Carne is continuing discussions with UCU representatives, carefully explaining the structure and rationale for the delivery of undergraduate supervisions: he has provided UCU with copies of the worker's agreement for Tier 4 students and summary data on the categories of staff that deliver undergraduate supervisions, noting the majority are given – for good reasons – by casual self-employed supervisors.

The Committee was also notified by the University that it was rapidly developing a framework of contracts of employment for all persons engaged with the delivery of teaching, and would minimise those engaged casually (restricting these to genuine cases of *ad hoc* and low numbers of teaching hours). **Bursars may wish to consider whether this may have implications for its own employees and workers.**

2. Outsourcing Tier 2 sponsorship

The Committee received a positive report on discussions with the University's HR Division on the provision of a service to all Colleges to assist in the management of Tier 2 and Tier 5 sponsorship as well as the provision of immigration advice and guidance to College staff and job applicants. It is anticipated that a full intercollegiate levy request will be included for 2020-21 to take advantage of this offer, which has the strong support of the HR Forum.

3. Student Loans Company: proposed data sharing agreement

Colleges have already received advice from the Office of Intercollegiate Services not to sign the proposed "joint controller" agreement: this advice has been re-inforced by the University, with the consensus that the actual arrangement is "controller-controller". The University, with support from the Colleges' Data Protection Officer, will continue to engage with the Student Loans Company on this matter. **In the meantime, the continuing advice to Bursars is not to sign the proffered agreement.**

4. Review of the implications of the Employer-Justified Retirement Age (EJRA)

The Committee was notified that the University was considering its position in the light of a recent employment tribunal decision against the University of Oxford but that its current position was unchanged.

5. College involvement with Amicus [taken as reserved business by the Committee]

Darwin College reported to the Committee on its recent migration to Amicus (the alumni contact management system operated by the University). It had concluded that Amicus was a cost-effective system for the College and that the current legal framework and paperwork was appropriate and provided sufficient cover should the College wish to extricate itself from using the data system in future. **Bursars are directed to the confidential report noted in the minutes (Paper LA&E(19)49).**

Dr M Russell
28 January 2020

Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 28 February 2020 and 24 April 2020.

Matters for approval

Proposals to outsource Tier 2 sponsorship administration (see agenda item **xx**).

Notes of guidance previously circulated to Bursars (also on the Bursars' website)

| Guidance note | Minute reference | Date of email |
|---|------------------|---------------|
| Fol-8 Property and land holdings (Feb 2020) | 28/2 min 6b | |
| Coronavirus job retention scheme | 24/4 min 9 | 27 Mar 2020 |
| Virtual meetings in College | 24/4 min 4 | 9 Apr 2020 |

Other matters to which attention is drawn

1. Cambridge UCU anti-casualisation claims

Discussions with UCU representatives are continuing, although progress has been limited due to the current situation. Keith Carne was approached by Cambridge UCU representatives following a statement from a small number of University Faculties and Departments regarding the continuation of College supervisions and therefore payments to casual supervisors. This is being resolved in consultation with officers of the Senior Tutors' Committee and the University's Student Task Force (COVID).

2. Allocation of graduate students and the deferral of student places for the 2020/21 academic year [taken as reserved business by the Committee]

The Committee considered the anticipated necessity of re-designating the distribution of postgraduate students amongst Colleges. In the light of a request for legal advice from the Director of CAO, it discussed the legal question of moving students between Colleges without their consent. **Colleges are advised that both Oxford and Cambridge have reached the same conclusion that this would be unwise.**

Colleges are anticipating a large number of requests from offer-holders to defer their places in the 2020/21 academic year. The University's COVID Gold Team agreed that only exceptional requests to defer would be considered and that the Vice-Chancellor intended to make a statement to this effect in due course, although he was mindful of the potential for reputational damage this may cause. **Colleges should be aware of the potential for indirect discrimination challenges of this approach under the Equality Act: these concerns have been conveyed to the Senior Tutors' Committee.**

3. Reporting financial forecasts to the Charity Commission [taken as reserved business by the Committee]

Bursars are advised that financial forecasts predicting a loss of 20% or greater appear to meet the criteria for the reporting of a serious event to the Charity Commission. However, at present Colleges are advised to wait until a clearer picture of their future financial landscape, and actual calculated losses due to the coronavirus pandemic, have emerged before contacting the Charity Commission. Bursars may wish to note this will be discussed by the Committee further at the next meeting. **Colleges are advised not to take any action at this early stage.**

Dr M Russell

14 May 2020

Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 5 June 2020.

Matters for approval

None

Notes of guidance previously circulated to Bursars (also on the Bursars' website)

| Guidance note | Minute reference | Date of email |
|--|------------------|---------------|
| COVID-related legal advice: link to advice from Lewis Silkin | 5/6, minute 4 | 5 June 2020 |

Other matters to which attention is drawn

1. COVID-19: College liability risks

The Sub-Committee noted it had been asked to consider whether Colleges needed specific advice on the potential liabilities arising from its responsibilities as (a) an employer, (b) a landlord and (c) curator of a public space, in the context of legislation including the Health and Safety at Work Act 1974, the Housing Act 2004 (and especially section 106) and the Occupiers Liability Act 1984. It noted a number of blogs and articles from law firms on a range of matters and one, suggested by David Parsons, was worthy of circulation to Colleges and that much information relating to the responsibilities of employers and of trustees was in circulation. The Sub-Committee agreed that at this stage there were no matters specific to College circumstances that they felt required elucidation, but this would be kept under review and individual members were invited to reflect further on the request and submit any suggestions to the Chair by email.

2. Responses to requests for comment by journalists

The Secretary noted a recent trend for Colleges to rely on the Office of Intercollegiate Services to respond to requests for information from journalists, particularly suggesting a single response on behalf of Colleges, which had resulted in a blurring of communication channels. The Committee agreed that greater use of the resources offered by the OEAC should be encouraged when dealing with press enquiries.

3. Equality and Diversity Awareness Training

The Committee received a recent survey of College delivery of racial awareness training. It noted:

- the participation rate had been low, and that further work should be undertaken to provide a more comprehensive set of responses;
- of the Colleges who had responded, a number of different external training providers were used to deliver face-to-face training on racial awareness;
- HR Managers often had little or no knowledge of whether senior members of the College (Fellows) had undertaken any related training: it was quite often outside of their responsibilities.

It also discussed the possibility of engaging a specific training provider to provide consistent training across all of the Colleges, and an offer from the University's Equality and Diversity Team to design (but – crucially – not to deliver) such a course. The Sub-Committee noted there was some lack of clarity on the respective roles of Senior Tutors and Bursars (or HR Managers) in providing and monitoring training in this area, and the consequent role of College Discrimination and Harassment Contacts.

The Sub-Committee concluded that the following points would need further consideration and articulation:

- Can funding be identified to support the development of a proposal (the original intention of the bid for this year)?
- Who would design the course, and approve its content? (It was pre-supposed this would be the University, but an assessment of the usefulness of existing courses from other providers might merit attention.)
- Would attendance on the course be funded through an intercollegiate levy or a “pay-as-you-go” by Colleges?
- How would the course be delivered in steady state? (Some possibilities included: (a) by the University’s E&D Team, with additional staff recruited through course fees; (b) provision of the course to an external provider; (c) a “train the trainers” model, using College staff to deliver the course internally)
- Who would co-ordinate the training provision and a rolling booking system?

It would welcome views on the appetite of Colleges to move towards a single provider for such training, in order to provide both a common, consistent message across the Collegiate University.

Dr M Russell
18 June 2020