

## Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 14 October 2022 (<https://www.colleges.cam.ac.uk/committees/cfolders.aspx?m=1769>).

### Matters for approval

There are no matters recommended to the Bursars' Committee for approval.

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

Guidance notes or other documents	Minute reference	Date of email
Charities Act 2022 (implications for Colleges)	14/10 min 3b	26 Oct 2022
2022-23 annual Fellow stipend and staff salary surveys	14/10 min 12	16 Oct 2022
Part year workers and holiday pay	14/10 min 13	3 Nov 2022

### Other matters to which attention is drawn

#### 1. Risk Management of External Events

The Sub-Committee is currently reviewing and updating this guidance in the light of recent cases across the Colleges. **Bursars are invited to provide comments on the current version (Paper 5 for the 14/11/2022 meeting – see link above) prior to the Sub-Committee's finalisation of that process at its next meeting.**

14 October 2022, minute 4

#### 2. Interactions with police and criminal investigations

The Sub-Committee has agreed to write a consolidated set of guidance for how Colleges should respond to police enquiries, which it will publish later this year.

14 October 2022, minute 8

#### 3. Part-year workers and holiday pay entitlement: advice to Colleges

The Sub-Committee received a precis of a recent legal judgement related to the correct calculation of employees and workers who work for only part of the year. It noted that legal advice (based on a single case) varied considerably. Nevertheless, it noted that Colleges should review their employment contracts and worker's agreements, with a particular note of reviewing how Fellow's duties are clarified in any formal documentation of the College.

A guidance note has been circulated to HR Managers (see above).

14 October 2022, minute 13

Dr M Russell  
1 November 2022

## Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 27 January 2023 (<https://www.colleges.cam.ac.uk/committees/Committee.aspx?c=50>).

### Matters for approval

There are no matters recommended to the Bursars' Committee for approval.

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

Guidance notes or other documents	Minute reference	Date of email
Advice on College interactions with the police	27/1 min 4	6 Feb 2023
College infrastructure adjustments for disabled students	27/1 min 5	27 Feb 2023
Summary of legal guidance on staff-student sexual harassment allegations	27/1 in 6	6 Feb 2023
College DPO report, 2023	27/1 min R1	on OIS website

### Other matters to which attention is drawn

1. Part-year workers and holiday pay entitlement: advice to Colleges

The Government is now consulting on its plans to introduce legislation to reverse the recent decisions about holiday entitlement for part-year workers.

27 January 2023, minute 2b

2. Formalising scholarship arrangements with the Cambridge Trust (also considered by the Fees and Student Finance Sub-Committee)

The Sub-Committee supported the introduction of a written arrangement about joint scholarships offered with the Cambridge Trust, a measure requested of their external auditors – and likely to be supported also by College auditors.

27 January 2023, minute 7

3. Employer-justified retirement age

The Sub-Committee agreed, in the light of recent and current employment tribunal interest in the EJRA at Oxford and Cambridge to conduct a survey to understand the landscape of where a retirement age is utilised by the Colleges. The resulting work will be compared with a similar review being undertaken by the University.

27 January 2023, minute 12

4. Report from the HR Forum – a common staff satisfaction survey?

The Sub-Committee noted that College HR Managers were currently discussing the merit or appetite for a common staff satisfaction survey to be used (voluntarily?) across Colleges. OIS is considering how and whether it can support this initiative and views from the Bursars' Committee would be welcomed.

27 January 2023, minute 14

5. Report from the Data Protection Officer

The report is commended to Bursars. They are reminded that OIS Ltd has been appointed as an (external) statutory Data Protection Officer for each College. The Chair of the Committee, and the Chair of the Sub-Committee, are considering whether after 5 years some form of effectiveness review is warranted.

27 January 2023, minute R1

6. Salary and stipend surveys

The reports were circulated to Bursars just before and just after Christmas, and there will be minor modifications made for next year. The Sub-Committee was asked whether the reports should routinely be circulated to HR Managers, but agreed that circulation within Colleges should be restricted and managed by the Bursars. **Bursars are nevertheless asked to review how the reports are used within their Colleges, and how access is managed.**

27 January 2023, minute R1

Dr M Russell  
1 November 2022

## Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 10 March 2023 (<https://www.colleges.cam.ac.uk/committees/Committee.aspx?c=50>). The meeting scheduled for 5 May 2023 was cancelled due to a lack of immediate business.

### Matters for approval

There are no matters recommended to the Bursars' Committee for approval.

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

Guidance notes or other documents	Minute reference	Date of email
Suggested clauses in accommodation licences relating to circumstances of temporary suspension or removal from a College room	10/3 min 4	5 Apr 2023
Risk Management of External Events – revised guidance	27/1 min 2c	17 May 2023

### Other matters to which attention is drawn

#### 1. Higher Education (Freedom of Speech) Bill/Act 2023

In March 2023, the Sub-Committee received an update report on how the Bill was progressing through the House of Lords. The Bill received Royal Assent in early May and will be discussed in more detail at the next meeting of the Sub-Committee. Advice on the implications for Colleges, and their student unions, will follow after that meeting.

10 March 2023, minute 3

#### 2. Senior Tutors/University Precautionary Action Task and Finish Group

The Sub-Committee was asked to consider the scope of a project of the University and the Senior Tutors' Committee to develop a common process for the consideration of "precautionary action" measures to be applied at short notice to students facing disciplinary investigations. It commissioned jointly with the University external legal advice, which a Task and Finish Group was now working through in the development of the new process.

As part of that exercise, the external legal advice highlighted that Colleges ought to ensure that they included the right to move or remove student tenants from College accommodation should the need arise. This would not obviate the usual approach of moving or removing students by consent.

It otherwise noted that there would be circumstances where it would be challenging to adopt a joint approach (e.g. where there was a specific need for separate parallel investigations, or in cases of criminal enquiries).

27 January 2023, minute 4

#### 3. Employer-justified retirement age

The Sub-Committee's survey to understand the landscape of where a retirement age is utilised by the Colleges has been closed, and the information will be retained until further work on the matter has been undertaken by the University.

27 January 2023, minute 7b

4. Report from the HR Forum – a common staff satisfaction survey

The Sub-Committee noted that College HR Managers were currently discussing the merit or appetite for a common staff satisfaction survey to be used (voluntarily?) across Colleges. OIS is considering how and whether it could support this initiative, which is likely to be through a mechanism of providing common questions for local use, with anonymised reporting (for benchmarking purposes) being available to participating Colleges.

27 January 2023, minute 9

5. Progress of the University's revision of its staff-student relationships policy

The Sub-Committee was informed of work to revise substantially the current staff-students relationships policy:

<https://www.hr.admin.cam.ac.uk/policies-procedures/personal-relationships-between-staff-and-students-policy>

It noted that there might be significant implications for College senior members (who would be bound by the University's policy if employed by them to any extent), but for Colleges more generally in reviewing and possibly aligning their own policy or guidance. It is expected that there will be a consultation (with Colleges and others) on any new policy.

27 January 2023, minute 10a

## Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 16 June 2023 (<https://www.colleges.cam.ac.uk/committees/Committee.aspx?c=50>).

### Matters for approval

There are no matters recommended to the Bursars' Committee for approval.

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

Guidance notes or other documents	Minute reference	Date of email
None		

### Other matters to which attention is drawn

1. Higher Education (Freedom of Speech) Bill/Act 2023 and the *Risk Management of External Events* document

Following the Royal Assent of the Act, members of the Committee expressed concern about the balance or tone of the document and the risk that it might inadvertently encourage Colleges to seek to cancel events rather than give freedom of speech "particular regard". A further iteration of the document will therefore be forthcoming after further work over the Long Vacation.

Otherwise, the detailed implications of the Act are dependent on guidance being produced by the Office for Students (which there are rumours may be quite some time. As outlined in Paper 2 (annex 1 of this document) of the meeting, there are a number of preparatory actions Colleges might consider:

- a) **Be aware of** the "enhanced" duty to "promote the importance of freedom of speech within the law ... in the provision of higher education". The words underlined here are emphasised to highlight that:
  - Colleges promote *the importance* of freedom of speech – it is a major weighting factor but not an over-riding one. In practice, however, this means that most events and speakers should proceed (albeit with, if necessary, appropriate security). The *Risk Management of External Events* document outlines possible mitigation in cases where disruption is anticipated.
  - "within the law" is a signal that, while freedom of speech is deemed to be very important, it is not a *carte blanche* for any event or speaker. The PREVENT duty, for example, still applies and clear calls to violent action can be refused on those grounds.
  - The last clause "in the provision of higher education" most likely makes it safe to assume that commercial activities (not related to education) are clearly out of scope of the legislation (though of course this will depend on future case law). It should be stressed, however, that other legal frameworks (e.g. race/religious discrimination and the Equality Act) would still be relevant should a College not to accept the business.

- b) **Be aware** that the law provides protection to Fellows, staff and students (but not alumni) of the College – and any invited “visiting speaker”. They all now have the right to complain directly to the College if they believe their right to freedom of speech has been compromised, but also complain to the OIA (students) or the Office for Students (anyone) – the latter process has not yet been created. There is a final recourse as well to the courts.

**Colleges might want to consider which procedures might be used to consider complaints relating to a restriction of freedom of speech – the student complaints procedure? A staff complaints procedure? How would you tackle a complaint from an invited speaker? Do you need a new single “freedom of speech complaints procedure”?**

**Colleges might want to consider who has the authority to “invite” a speaker to the College. It is likely that Colleges will not want to restrict their Fellowship unduly, but be aware that the law extends the College’s responsibility to its student unions (JCR/MCRs).**

- c) **Colleges might well want to wait for the University to lead on a new “Code of Practice” – and determine whether they want to align themselves to it.** The Office for Students has the authority to outline what a Code of Practice might include, but it is not intending to do so in the near future. The Code of Practice needs to include your “values” (which might be as straightforward as supporting freedom of speech within the law and in the provision of higher education”, but should point to the procedures the College has for the conduct of meetings on the premises or in its name, and any statements about which events they might automatically exclude (which might be none?).

Other matters will need to await further guidance from the Office for Students, including any reporting requirements (*cf* the PREVENT annual reports), including the thresholds of reporting for overseas donations (the latter a matter that Development Directors will need to be live to).

16 June 2023, minutes 2b and 3

2. Protocol for the sharing of serious misconduct decisions between Colleges

The Sub-Committee was asked to comment on an STC protocol to share the names of teaching staff that have been removed from such duties by a College following a disciplinary investigation, on the grounds that it would support the general welfare and wellbeing of all students across Cambridge. It suggested areas where the protocol might be extended to in due course.

In the context of Bursarial responsibilities, OIS have conducted a data protection impact assessment for the protocol, which is available on request.

16 June 2023, minute 4

3. Expulsion of students and the professionalism of investigations

Attention is drawn to a growing and increasingly important programme of work to support the management of risks relating to disciplinary investigations. This is likely to be a large piece of work next year.

16 June 2023, minute 5

4. Updated Data Sharing Protocol between the University, the Colleges and Cambridge in America

The Sub-Committee, on behalf of all Colleges, received an updated version of the data sharing protocol (as part of a routine renewal). The final version is expected to be ratified formally at Colleges' Committee on 8 July 2023, after which it will be circulated and posted on the OIS website.

noted that College HR Managers were currently discussing the merit or appetite for a common staff satisfaction survey to be used (voluntarily?) across Colleges. OIS is considering how and whether it could support this initiative, which is likely to be through a mechanism of providing common questions for local use, with anonymised reporting (for benchmarking purposes) being available to participating Colleges.

16 June 2023, minute 7

5. Renters (Reform) Bill

The Sub-Committee noted the introduction of new legislation, presented Parliament on 17 May 2023 which may have implications for Colleges, in particular relating to the definition of Colleges acting as managers of student accommodation and/or as private landlords. The latter category was expected to be caught within the remit of this legislation and likely to include Fellows' accommodation. It agreed to keep a watching brief on development and discuss this at a future meeting when further information is available.

16 June 2023, minute 8

6. Employer Justified Retirement Age

The Sub-Committee had conducted a survey of references to retirement ages in College offices and employments, for which a summary is provided (Annex 2).

As many Colleges linked their retirement ages to those of the University, College governing bodies will need to carefully consider their statutes if imposed retirement ages are lifted following the review. The Committee agreed this was a somewhat precarious practice and that Colleges may wish to review whether they treat their Fellows as employees or workers contractually. It agreed to consider these implications at a future meeting.

16 June 2023, minute 11b



7. Amendment to University employment contract for College employees

Some time ago, concerns were expressed to the University about the requirement of College employees (chiefly, College Teaching Officers) being required to sign employment contracts with the University, which included the following clause:

14 Additional Work for the University and Colleges

14.1 Permission to carry out additional work for the University will require the consent of your head of institution.

14.2 The rules governing the undertaking of and the remuneration for additional work for a College or Colleges are set out on the University's website. The University may impose restrictions from time to time on such work.

14.3 If you are permitted to take on another role or other roles within the University on a temporary or permanent basis in addition to this one, you will be notified whether that role or those roles come within this contract (even though there may be additional terms and conditions that apply to the additional role or roles and/or temporary or permanent variations to this contract). If they do fall within this contract, termination of that or those other roles will not affect the continuation of this contract.

The University has now agreed to remove clause 14.2 from the relevant contract, in recognition that it should not control work where the person is primarily employed by the College.

16 June 2023, minute 12

8. Reports from the Colleges' Data Protection Officer

Two reports (Annexes 3 and 4) are commended to Bursars. They are reminded that OIS Ltd has been appointed as an (external) statutory Data Protection Officer for each College. The Chair of the Committee, and the Chair of the Sub-Committee, are considering whether after 5 years some form of effectiveness review is warranted.

Key learning lessons are:

- a) The annual "accountability self-assessment" exercise is commended as a robust and auditable way of demonstrating the Colleges' commitment to good practices in personal data management. In most cases, the Colleges are felt to be robust and responsible, with some minor proposals of enhancement.
- b) The 2023 audit of College information asset registers has demonstrated good record-keeping in most cases. Again, an internal annual exercise to review its currency is recommended.

Colleges who have not participated in either or both exercises are recommended to take remedial action.

16 June 2023, minute R1 and R2

Dr M Russell  
20 June 2023