

Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 13 July 2018 and 28 September 2018.

Matters for approval

1. Protocol for the commissioning of legal advice

The Bursars' Committee is invited to approve a protocol (largely matching historical practice) for the commissioning of legal advice on behalf of the Colleges collectively. The protocol is provided as a separate paper with the agenda.

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

Guidance note	Minute reference	Date of email
Guidance on changes of payslips to workers (from April 2009)	13/7 min 11	23 July 2018
Protecting the College against allegations of institutional discrimination and harassment	13/7 min 12	23 July 2018
Freedom of Information guidance: investments and investment policies	28/9 min 5b	11 Oct 2018
Freedom of Information guidance: disclosing committee minutes and papers	28/9 min 5b	11 Oct 2018
Employing international staff	28/9 min 8	11 Oct 2018
UUK request for equality impact assessments in relation to the USS pension proposals	28/9 min 10	8 Oct 2018

Matters to which attention is drawn

2. College transfer procedures

The Sub-Committee discussed the risks relating to the current operation of the College transfer procedure and the implications of proposed changes being made through the Senior Tutors' Committee. This consideration in part led to the development of a formal articulation of a protocol for seeking external legal advice (see above).

3. Race Equality Charter

The University is intended to seek accreditation with the Race Equality Charter, and some of its Working Group's recommendations relate to College provision of support to students. An earlier proposal for a "BME Contact" in College has been replaced with a "(student) Harassment and Bullying Adviser" in each College. The Sub-Committee noted that provision for advice on harassment and bullying was quite different for more general race equality support, and that the more recent proposals might overlook support for staff and Fellows.

4. Modern Slavery (Transparency in Supply Chains)

With the General Purchasing Sub-Committee, the Sub-Committee will keep an eye on potential legislative development that might require all Colleges to produce an anti-slavery and anti-trafficking statement (the University is already required to publish such a statement).

5. Personal data management audits of the Colleges

Following the appointment of Ms Beatrice Jamnezhad, the Office of Intercollegiate Services has been developing a “toolkit” for Colleges to use to self-assess their compliance with current data protection legislation. The toolkit is in draft form and a number of Colleges have already been approached, either to comment on it, or to trial it. Any Bursars interested in the toolkit during its development phase should contact oisdpo@hermes.cam.ac.uk for further information.

6. Employing international staff

The “brief” guide produced by Dr Reid on the points-based immigration system has been revised substantially (although the archive will retain the previous versions for reference if required). In discussing the complexities of employing international staff, the Sub-Committee has agreed to discuss whether there are any efficiencies to be gained by working more closely with the University.

9 October 2018

Protocol for the commissioning of legal advice on behalf of the Colleges

Background

1. Historically, the Office of Intercollegiate Services (OIS) has commissioned legal advice on behalf of the Colleges, under the instruction of the Legal Affairs and Employment Sub-Committee. The precedent stems from broad parameters agreed in 2004 (see Annex A), which are now articulated and expanded upon here.
2. Commissioning advice through OIS has the significant benefit of it being clear up front that the legal advice is being sought by the Colleges collectively, and permitting legal privilege to extend on that basis from the outset. It is worth stressing that, in circumstances where legal privilege will be relevant, defining the "client" from the outset is important. Legal privilege cannot extend to all members of an organisation (or groups of organisations). The definition ought to identify the individuals (or at least the primary individuals) who will be seeking and obtaining legal advice.

Legal advice authorised by the Legal Affairs and Employment Sub-Committee

3. The commissioning of external legal advice through OIS, on behalf of its College members, will only be undertaken if it is agreed by the Legal Affairs and Employment Sub-Committee that the resulting advice will be of benefit to most or all of the Colleges. In most cases, opinion on this will be sought (usually by circulation) through the Senior (or sole) Bursars of each College, who are normally the legal officers for their Colleges. It is recognised that there will be occasions when one of the principal intercollegiate committees concludes that, for its purposes, external legal advice would be beneficial. In all cases, however, formal authorisation of the commissioning will be made through the Legal Affairs and Employment Sub-Committee, to ensure that the advice and its wider context is appropriately managed and communicated: such authorisation may be sought by circulation should the urgency of business preclude its presentation at a meeting of the Sub-Committee.
4. Typically, the Legal Affairs and Employment Sub-Committee will seek advice on behalf of the Head of the Office of Intercollegiate Services and the Senior (or sole) Bursars of each of its member Colleges contributing to the cost of the advice. Where the initial enquiry originates from one or more of the intercollegiate committees, the members of the Colleges' Standing Committee (including the officers of the principal intercollegiate committees) will be cited in addition, or instead of, College Bursars.
5. In commissioning the advice, the Legal Affairs and Employment Sub-Committee will aim to ensure its maximum value by ensuring that the questions are posed clearly and precisely, and are posed to appropriate legal professionals (solicitor or barrister). Members of the Sub-Committee have greater levels of experience in guiding others in how best to seek and use such advice.
6. It is also worth noting that the Legal Affairs and Employment Sub-Committee and its members from time to time produce notes of guidance to the colleges on a range of legal, statutory and regulatory matters. Such notes do **not** constitute professional legal advice as might be obtained from a solicitor or Counsel with a current practicing certificate and appropriate professional indemnity insurance, and Colleges are reminded that, in cases of question or doubt, they should seek their own formal legal advice. The members of the Legal Affairs and Employment Sub-Committee cannot provide legal advice and do not have relevant professional indemnity insurance for that purpose. They are, however likely to have experience relevant to the question of whether legal advice should be commissioned, and if so, from whom, and of giving instructions in terms likely to ensure the advice is helpful and value for money.

The agreed procedure for seeking external legal advice on behalf of the Colleges

7. The decision on whether or not to take legal advice on behalf of all the Colleges has been delegated by the Colleges to the Legal Affairs and Employment Sub-Committee (LA&E). The Bursars' Committee sets an annual budget for legal advice (£7,500 in 2018-19). Approximate costs of legal advice are provided as Annex B.
8. Requests for the commission of external legal advice should be sent to either the Chair or Secretary of the LA&E. The following process shall be followed:
 - a) Any request for legal advice is initially considered by the Chair of LA&E, who may wish to seek further clarification on any of the following:
 - i) the nature of the legal advice sought, and the underlying causes of concern (including, if relevant, any record of prior discussions on the issue) ;¹
 - ii) why the matter is of wider interest to all (or the majority of) the Colleges;
 - iii) the urgency of the request (i.e. whether there are any particular deadlines to be working to).
 - b) The Chair of LA&E (or the Secretary at the request of the Chair) will prepare a summary of the request for the full LA&E² to consider (at a scheduled meeting or by circulation). In doing so, the Chair will provide an indication of the nature of the external legal advice to be sought and by whom (e.g. solicitor or barrister) and, if possible, a likely indication of costs. Where the matter is urgent, the Chair may consult with the Secretary of the Bursars' Committee, who between them may make a decision on behalf of LA&E, providing it is reported as soon as possible.
 - c) The decision shall include an assessment of whether the legal advice is likely to be relevant to all or the majority of Colleges, and whether the legal advice to be sought may be of interest or relevance to related third parties (most likely, the University or the Oxford Colleges).
 - d) If the decision is taken to commission legal advice **and** it is felt to be relevant to all or the majority of Colleges (but not to related third parties), the Secretary of the LA&E will:
 - i) inform all members of LA&E and all Senior (or sole) Bursars of the general nature of the advice to be sought and, where appropriate, the officers of relevant intercollegiate committees, inviting comment which may expand or limit the advice to be sought (either through prior knowledge, previous legal advice received or additional points for clarification or elucidation);

¹ Where the request for legal advice arises from a principal intercollegiate committee, copies of the relevant minutes of meetings where the underlying concerns were discussed, as well as informal commentary on those discussions, may be sought from the officers of the relevant intercollegiate committee.

² For clarity, at the outset, the matter will be determined to be either reserved or unreserved business of LA&E by the Chair. Unreserved business will be circulated to all members of the Committee, as well as the University's legal representative attendee to the Committee.

- ii) work with one or more members of LA&E to: draft appropriate instructions, consulting further (to (a) above) if necessary with the original requester to clarify the issues on which advice is to be sought and calling upon expert advice within collegiate Cambridge as appropriate; and determine whether the client needs to be defined to protect legal privilege;
 - iii) confirm the written instructions with the Chair of LA&E, who shall advise on the most suitable person to seek legal advice from;
 - iv) commission the legal advice;
 - v) on receipt of any written advice, post it in the secure area of the Bursars' website and notify all Colleges and, if appropriate, circulate it to the officers of the relevant intercollegiate committees (with instructions if necessary on restrictions of distribution).
- e) If the decision is taken to commission legal advice on behalf of the Colleges **and** it is felt to be relevant to all or the majority of Colleges (**and** it is felt to be relevant to related third parties), the Secretary of the LA&E will adhere to the procedure in 5d above, save that the Secretary will confirm relevant points of contact at the third party, and include them in the communications at points i), iii) and v) in that process.
- f) If the decision is taken to commission legal advice on behalf of the Colleges but it is **not** felt to be relevant to all or the majority of Colleges, the Secretary of the LA&E will:
- i) inform all Senior (or sole) Bursars of the general nature of the advice to be sought and inviting comment which may expand or limit the advice to be sought (either through prior knowledge, previous legal advice received or additional points for clarification or elucidation);
 - ii) indicate clearly that the legal advice will be commissioned on a strict cost-sharing basis between Colleges that confirm in writing they wish to receive the resulting advice. (The advice will not be shared with Colleges who opt out.)
 - iii) work with one or more members of LA&E to draft appropriate instructions, consulting further (to (a) above) if necessary with the original requester to clarify the issues on which advice is to be sought, and calling upon expert advice within collegiate Cambridge as appropriate and consulting with all opted-in Colleges.
 - iv) confirm the written instructions with the Chair of LA&E, who shall advise on the most suitable person to seek legal advice from.
 - v) commission the legal advice.
 - vi) on receipt of the advice, post it in the secure area of the Bursars' website and notify all opted-in Colleges (with instructions if necessary on restrictions of distribution).
- g) If the decision is taken **not** to commission legal advice on behalf of the Colleges, the Secretary of the LA&E will notify the original requester of the decision, given reasons where appropriate (e.g. not relevant to sufficient numbers of Colleges; does not represent good value for money in relation to the identified risks), noting that the decision does not preclude them from seeking buy-in from individual Colleges in order to share the costs of any legal advice they may choose to proceed with.

Retrospective claims by individual Colleges for cost-sharing of already-received legal advice

9. Historically, there has been a strong precedent for Colleges generously sharing legal advice they have obtained on a specific or general issue, where they have subsequently felt that this would be useful information to share more widely amongst colleagues. Providing the advice does not relate too closely to a specific case, such sharing of knowledge and good practice ends up benefiting all Colleges.
10. The procedure outlined above is not in any way meant to curtail or preclude that generosity, but where a College has sought legal advice and, after the event, feels that there is merit in the legal advice being shared amongst the College, it may wish retrospectively to seek to share the costs. Any such request should be sent to either the Chair or Secretary of the LA&E, where the procedures outlined in Section 6 above will be adapted as appropriate in coming to a decision.
11. Where advice is taken by one College independently, and then retrospectively considered for wider circulation, care must be taken by the College on the waiving of legal privilege that may result from that action.

Dr M Russell
20 September 2018

Annex A: Minutes of the Legal Affairs and Employment Sub-Committee, 29 July 2004

The following minute is the record that articulates the intentions of the Bursars' Committee for the commissioning of legal advice on behalf of the Colleges, and has been used to direct the current protocol.

Solicitors' charges

...

The Sub-Committee further agreed at their last meeting

- to consider whether specific items of work (such as the preparation of model residential letting agreements, or of a model staff employment contract and handbook) might be put out for tender by the Sub-Committee on behalf of the Colleges collectively, to be funded jointly by the Colleges; and
- to consider what protocol or guidelines might be proposed in the situation where a College obtains legal advice on an issue of potentially general importance to the Colleges generally, and the question arises whether other Colleges individually might contribute if they wish access to the work or whether the Bursars' Committee might collectively take over and circulate the work and pay for it.

After discussion, the Sub-Committee agreed

- (i) that they would consider from time to time whether there are specific matters of general concern to the Colleges on which legal work ought to be commissioned, Bursars being notified of each such decision and of an estimated time for completion of the work;
- (ii) any Bursar considering commissioning for his or her College legal work in relation to a matter which might be of general interest to the Colleges might raise the matter with the Sub-Committee, through the Chairman, with a view to the work being undertaken on a joint basis and at shared expense;
- (iii) any Bursar who has already obtained such work for his or her College might raise the matter with the Sub-Committee with a view to the cost being met by the Colleges collectively; and
- (iv) in such a situation where the Sub-Committee do not agree to the cost being met by the Colleges collectively, the Bursar concerned may advertise to Bursars, directly or through the Sub-Committee, the availability of the work on a cost-sharing basis.
- (v) It will of course remain the case that any Bursar might circulate, through the Sub-Committee or otherwise, on a gratuitous basis any legal work or opinion obtained by his or her College considered to be of general interest to the Colleges.

...

Annex B: Examples of costs of legal advice recently commissioned on behalf of the Colleges

Senior Counsel opinion (several meeting and written Opinion)	(Fol judicial review)	£15,000
Senior Counsel opinion (1 hr meeting and written Opinion)	(GDPR; trust funds)	£10,000
Counsel opinion (production of model policy)	(retirement)	£10,000
Counsel opinion (written Opinion)	(discrimination)	£5,000
Solicitor – production of standard contracts	(May Balls)	£5,000
Solicitor – verbal advice on casework	(student admissions)	£1,000
Solicitor – written appeal casework	(student council tax)	£300

Strictly Confidential
Confidential – to be deleted

Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 16 November 2018 and 18 January 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
Fellows Stipend Survey 2018	19/1 min 12	24 Jan 2019
Staff Salary Survey 2018	19/1 min 12	24 Jan 2019

Matters to which attention is drawn

1. Data Protection: update report

Paper LA&E(19)41 consists of a report of GDPR-related incidents reported to OIS (as the Colleges' statutory Data Protection Officer) for the period May-November 2018 (six months). Attention is drawn to the following recommendations in the report:

- most personal data incidents were a result of human error or were IT-related;
- consequently, Bursars and College Data Protection Leads should focus attention on training and awareness-raising of good data privacy practice, cyber-security and cyber-risks, and what constitutes a personal data incident and requires reporting to OIS;
- Bursars should pay due heed to the high impact of IT vulnerabilities;
- GDPR compliance should feature on College risk registers.

Bursars are also reminded of the toolkit developed to assist Colleges in GDPR compliance audits.

The paper can be downloaded from the Bursars' website.

(Minute 6, 16 November 2018)

2. Preparations for a no-deal Brexit

The Sub-Committee has noted that there are not specific legal matters to address at present, but would keep a watching brief on developments in parliament over the next few months.

(Minute 3a, 18 January 2019)

3. Development of Amicus and the implications for Colleges (migrating and non-migrating)

The Sub-Committee noted that Darwin College was migrating to Amicus and, as a consequence an institution-institution memorandum of understanding about the related services had been developed, for future use with other Colleges.

(Minute 3c, 18 January 2019)

4. College governing bodies: eligibility of Fellows to vote on College Statute changes

The Sub-Committee noted that Dr George Reid had undertaken an extensive analysis of various parliamentary acts relating to the governing bodies of Colleges. His conclusion was that all Fellows were entitled to vote on College statute changes (except in the most unlikely case of concurrently being an undergraduate student) and that previous analyses and Opinions had not taken into account the full context of all relevant historical legislation.

Colleges that act to exclude recent Fellowship appointees from such votes may wish to consult his analysis, which is available on the Bursars' website as Papers LA&E(19)01 and LA&E(19)02.

(Minute 5, 18 January 2019)

5. Employing international staff

The Sub-Committee is currently discussing with the University the possibility of it providing specific support for the sponsoring of Tier 2 staff.

(Minute 9a, 18 January 2019)

31 January 2019

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Report of the Legal Affairs and Employment Sub-Committee

Meetings were held on 1 March 2019 and 26 April 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
Matters arising from the use of an external records system for record of notes of College Nurses	26/4 min3c	1 May 2019

Other matters to which attention is drawn

1. University disciplinary procedures

The matter of the revision by the University of its disciplinary procedures continues to attract significant concern and scepticism. It is expected that, following receipt of external legal advice, the revised procedures will be put to a ballot of the Regent House later in the Easter Term. Heads of House have been provided (by OIS and the University) two alternative formulations of how Colleges may seek to review and revise College procedures in the light of these developments.

(Minute 3a, 1 March 2019; Minute 3a, 26 April 2019)

2. Review of fixed-term College Teaching Officer contracts

The Sub-Committee has agreed to consider in future whether to advise Colleges on specific clauses for employment contracts for CTOS covering the matter of their employment rights at the end of any fixed-term tenure. Bursars are invited to submit comments of current concern to Dr Russell to be incorporated into that review.

(Minute 11, 1 March 2019)

3. Data processing agreement suggested by the Student Loans Company

In common with many in the HE sector, Colleges have been unwilling to sign a data processing agreement proffered by the Student Loans Company. OIS is continuing to work with the University in engaging with the SLC to resolve the issues: this is work still in progress and Bursars are still advised to not sign the current proposed agreement.

(Minute 4, 29 April 2019)

3 May 2019

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Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 7 June 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
Contractual clauses relating to philanthropic donations	7/6 min 6	10 Jun 2019
Tenant Fees Act 2019 – actions for Colleges as landlords	7/6 min 7	17 Jun 2019

Other matters to which attention is drawn

1. Guidelines for the use of the University's name and logo by the Colleges

It appears that interest in the branding issues raised some time ago by some Colleges will be re-activated by the Office of External Affairs and Communications in the near future. If Colleges wish to raise any comments or concerns to be addressed, please let Dr Russell (OIS) know.

(Minute 5, 7 June 2019)

2. Cambridge UCU anti-casualisation claims

Dr Carne has attended meetings between the University and the UCU as a College observer and, where necessary, contributor. He noted that UCU had raised some issues not relevant to intercollegiate discussions (including the availability of rooms in College for supervisions and the impractical suggestion of a pan-Cambridge room booking system), but also concerns about a lack of clarity over contractual arrangements for supervisors and the rationale for the current structure of intercollegiate supervision rates. The latter is being considered by the Sub-Committee.

(Minute 10a, 7 June 2019)

3. Contracts of employment for Tier 4 graduate students 2019-20

The Sub-Committee has agreed to revise the current contract into a document closer resembling a worker's agreement, in order to clarify to all parties the nature of the employment. It is further considering the implications for Colleges in migrating all casual supervisors to such worker's agreements, and the development of a generic workers' agreement template for use by the Colleges (building on that currently used by the University).

(Minute 11, 7 June 2019)

4. University of Cambridge Living Wage

Discussions have been held with senior officers of the University, resulting in an agreement to articulate a Living Wage consisting of £10 per hour or its equivalent once benefits were included. It is stressed that there is no compulsion on Colleges to adopt a University of Cambridge Living Wage position.

(Minute 12, 7 June 2019)

5. Communications with the HR Division of the University

In order to improve future communications with the HR Division, it has been agreed:

- a) Glen Sharp (Trinity Hall), as Convenor of the Colleges' HR Forum will attend meetings of the University's HR Committee;
- b) reciprocally, Emma Stone, Director of Human Resources, will attend meetings of the Colleges' HR Forum;
- c) additionally, Emma Stone will be asked if she wishes to receive unreserved agenda and papers for meetings of the Legal Affairs and Employment Sub-Committee, with an invitation to request attendance at its meetings for items of common interest.

(Minute 15, 7 June 2019)

17 June 2019