

Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 9 October 2024.

Matters for approval

There are no matters for approval.

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

Guidance notes or other documents	Minute reference	Date of email
Governance of College student unions	9/10 min 13a	14/10/24
Guidance for College clubs and societies (2021 – re-issued)	9/10 min 13a	14/10/24
Briefing – Renters' Rights Bill 2024	9/10 min 15	14/10/24
Briefing – Terrorism (Protection of Premises) Bill 2024	9/10 min 16	14/10/24

Other matters to which attention is drawn

1. HR Forum: development of a pan-College EDI training package

A working group of the HR Forum has spent nearly a year working on a tender exercise for the external procurement of face-to-face EDI training for Colleges, to supplement the use of University-provided on-line provision. It has proven challenging to scope a common requirements specification and it is now likely to proceed on a pilot basis for a smaller number of Colleges. Any College interested in participating should contact Katherine Shirley at Churchill College.

9 October 2024, minute 6

2. New legal duties relating to protecting employees from sexual harassment

The Sub-Committee discussed the new legal duty that had recently been announced by the Government to prevent sexual harassment in the workplace. If Colleges were already following the Office for Students guidance, they were unlikely to be substantially affected by these new duties: Bursars are asked to note that the following measures should be in place, or should otherwise be implemented:

- ensure that staff undertake appropriate training modules.
- undertake risk assessments.
- ensure that reasonable steps are taken to prevent staff-on-staff and staff-on-third-parties harassment.
- consider whether policies prohibiting the use of languages other than English in the workplace should be implemented (to reduce the likelihood of inappropriate behaviour not being recognised).

9 October 2024, minute 7

3. Advice to Colleges on the management of office-holders

Work is continuing on an event for Heads of House and Bursars covering the management of office holders who may concurrently be an employee or a worker for the College. Details of the brief for the event are available as Paper 4 of the meeting.

9 October 2024, minute 9

Dr M Russell
5 November 2024

Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 22 January 2025.

Matters for approval

There are no matters for approval.

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

Guidance notes or other documents	Minute reference	Date of email
Briefing – Renters' Rights Bill 2024	9/10 min 15	14/10/24
Briefing – Terrorism (Protection of Premises) Bill 2024	9/10 min 16	14/10/24

Other matters to which attention is drawn

1. Advice to Colleges on the management of office holders

The Sub-Committee has commissioned Birketts LLP, Sean Jones KC and Sarah Fraser Butlin KC to provide an interactive seminar for Heads of House and Bursars on a range of issues relating to people being concurrently office holders (Fellows) and employees and workers. The event is expected to take place in the week commencing 21 April 2025.

22 January 2025, minute 3

2. Review of model contract for College Teaching Officers

A small number of Colleges had asked whether these could be reviewed, and (separately) concerns had been expressed as a result of the Teaching Review about the Colleges' adoption or otherwise of clauses under "Remuneration" relating to supervision teaching expectations and particularly the clarity around volume or load of supervisions to be provided as part of their duties.

The Sub-Committee intends to review individual College CTO contracts to identify examples of modern best practice and re-issue these. **Bursars are requested, if they have not already, to provide copies of their current contract templates to the Office of Intercollegiate Services. Attention is also drawn to previous advice that the articulation of supervision stints in contracts should be actively reviewed in light of the aim to reduce the prevalence of singleton supervisions.**

22 January 2025, minute 7

3. Employment and tax status of College casual workers

The Sub-Committee received a draft output from a survey of the Tax Sub-Committee capturing individual College interpretations of the employment and tax status for a wide range of casual workers. It supported the view that Colleges should use the data to inform their practices. The survey output will be circulated by the Tax Sub-Committee in due course.

22 January 2025, minute 8

4. Forthcoming legislation

The Sub-Committee is keeping a watching brief on the progress of the following Bills:

- Renters' Rights Bill
- Terrorism (Protection of Premises) Bill
- Employment Rights Bill
- Higher Education (Freedom of Speech) Act – *the Government recently announced it will be progressing with the partial enactment of the Act, having suspended its implementation in July 2024.*

22 January 2025, minute 11

5. Review of the data protection services offered by the Office of Intercollegiate Services

The Sub-Committee has concluded a review of the data protection services offered by OIS, with its main report included here as an Annex. **Attention is drawn particularly to the conclusions and recommendations at the end of the report.** The full report can be found in the papers for the 22 January 2025 meeting.

Feedback from Colleges had been positive and the level of service and support offered was both appreciated and valued. The report recognised the challenge of supporting 31 independent organisations which operate in many different ways with a wide variation in personnel, from senior officers down to more junior positions. The disparity in working practices and levels of engagement often made group communication challenging.

22 January 2025, minute 13

Matthew Russell
19 February 2025

Annex: Review of Office of Intercollegiate Services - Provision of Data Protection Services

1. Background

The General Data Protection Regulation (later UK General Data Protection Regulation), along with the Data Protection Act 2018, introduced the mandatory requirement for public bodies to appoint a data protection officer (DPO). Previously the role had been optional and, in many organisations, including some colleges, focused primarily on the operational side of personal data protection. The UK GDPR elevated the role to focus on governance, advice and monitoring compliance and imposed certain mandatory requirements such that the DPO must report to the highest level of management, operate independently and have adequate resources to carry out their tasks. Further information about the requirements of a statutory DPO is in Appendix 1 which reproduces a document prepared for bursars by OIS in 2018.

It was agreed in 2018 by bursars that the colleges' statutory DPO should be supplied by OIS which has extended over the years from a part-time to a full-time role, financed at an overall cost to the colleges of approximately £2,500 each per year (at current rates). There was no compulsion to appoint OIS as the provider of a DPO but, in the event, 30 colleges chose to do so. (Currently all 31 colleges now use the OIS' service – one college having briefly appointed an external provider).

Ms. Beatrice Jamnezhad was appointed in July 2018 as a Senior Officer of the OIS (Data Protection Officer for the Cambridge Colleges), reporting to the Head of OIS. Both members of staff are involved in the provision of data protection advice and support, with Ms Jamnezhad normally leading. The DPO role description is included in Appendix 2 but particular deliverables to colleges included:

- Advice on policies
- Advice on subject access requests
- Reporting breaches
- Monitoring compliance
- Assistance in completing data protection impact assessments and receiving those as DPO from colleges
- Advice on data sharing agreements and creating data sharing agreements which would be frequently required by colleges
- Liaising with the Information Commissioner's Office where required, in particular in difficult cases and for advice
- Conducting audits or other reviews of colleges.

2. Review

It was agreed that the OIS' DPO function should be reviewed after 5 years. This report is evidence of, and summarises the outcome of, that review.

The principal areas within the scope of the review were:

1. The effectiveness of the DPO function;
2. The value for money as evidenced by college feedback and any external data available;
3. Any gaps or room for improvement within OIS as DPO as perceived by colleges and also *vice versa*, observed gaps or room for improvement in colleges in the view of the DPO. In this context, it is noted that the DPO has statutory responsibilities to inform and advise colleges and monitor their compliance with the UK GDPR. Colleges are at the same time obliged to ensure that the DPO is "involved, properly and in a timely

manner, in all issues which relate to the protection of personal data” and to support the DPO in performing their statutory tasks (Article 38, UK GDPR).

The principal findings were:

- In short, colleges are very content with the service that is provided by OIS, and it meets closely their needs. They also consider it is good value for money.
- Internally colleges manage their data protection risks in quite varied ways, depending upon size, resource and skills of personnel.
- College engagement and management of data protection risks varies in its depth and thoroughness.

The review was conducted principally through a questionnaire, interviews with OIS personnel (Head of OIS Dr Matthew Russell, DPO Ms Beatrice Jamnezhad) and evidence gained from elsewhere opportunistically. Information obtained was considered by reference to the original remit of the DPO as set out in the 2018 agreement between OIS and the colleges.

3. Review Findings

3.1 The effectiveness of the DPO function

We surveyed colleges. An anonymised version of the survey results is included in Appendix 3. 24 out of 31 colleges completed the survey, and one theological college also responded. Theological colleges are not required to have a DPO but contribute to the levy and use the services of the OIS DPO for their own data protection requirements.

Key findings of the survey were:

3.1.1 Structures within colleges

The survey asked for the type of resource used in the college for managing data protection and records as background to allow better understanding of the use of OIS’s service. Unsurprisingly there are many different types of roles in colleges identified as college data protection lead with differing responsibilities for other data protection and records management issues. In some cases, it is a senior individual. In other cases, it is split between post-holders and, in some cases, delegated either wholly or partly to more junior individuals.

3.1.2 Frequency of use of DPO

Generally use seems to be within the 4 and 10 times a year range.

3.1.3 Reasons for use

The main reasons for colleges contacting the OIS are, in order of frequency as reported by the survey:

1. Reporting data breaches
2. Advice and assistance with completing DPIA’s
3. Reviewing the outcome of audits of colleges data protection compliance
4. Advice and guidance on specific college data protection policies
5. General advice on data protection legislation and requirements
6. Advice on more serious data breaches
7. Advice on boundaries between FOI requirements and data protection obligations

3.1.4 Satisfaction levels

Colleges were of the fairly strong opinion that OIS meets the technical requirements of a DPO. There was slightly less satisfaction that the basis and expectations of the OIS service arrangement fits with the range of colleges’ appetite to accept risks.

3.1.5 Use of breach reporting software

The CASC data breach reporting software is used on a very widespread basis and colleges were generally satisfied with it, but two colleges gave it only two on a scale out of five. We understand that it is scheduled for some minor re-developments by CASC in the light of feedback received by OIS.

3.2 Value for money

The surveyed colleges were unanimous in agreeing the OIS service provides value for money. Benchmarks and comparators of other organisations were hard to come by, but a conversation with a bursar of an Oxford college revealed that Oxford colleges each arrange for DPOs in their own manner. They have no equivalent to OIS in terms of formality and depth of organisation. The bursar's college had assigned the DPO role to a college officer who was known as the 'dean and keeper of the statutes' and was a former academic and a barrister. The issue of whether such a role could be sufficiently independent was acknowledged. Some Oxford colleges use an outsourced DPO organisation (the names ClearComm and GRCI Law were mentioned), most likely at a higher cost than the Cambridge arrangement, although details were not available.

3.3 Gaps or room for improvement

3.3.1 The view from the colleges

Colleges were very much satisfied with the standard and scope of the OIS service. This is borne out by the answers to two questions in the survey (Are there any services that DPO does not provide that you would value? Do you have a further comment?) which are all strongly supportive and appreciative of the service that is provided. Responses included:

- "The DPO and head of OIS are very responsive to any requests for help and provide valuable help and guidance"
- "This service is precisely what [college] needs"
- "I am a happy customer"
- "I find the OIS service to be prompt, efficient and extremely helpful, including their regular training sessions"
- "A valued service".

It is the general view, either expressed or implied, that the understanding of the DPO of the collegiate sector is an incredibly important and beneficial factor in the OIS arrangement.

3.3.2 The view from OIS

Colleges' use of OIS for data protection purposes is within the resource at OIS and the DPO is not overwhelmed. There is currently a misperception in some Colleges that advice on data protection and advice on responding to Freedom of Information Act requests are both embedded in the "DPO function". In fact, FOI advice is provided primarily through the Head of the Office, pre-existed the current DPO arrangements, and should be seen as a discrete service. Requests for additional resource for FOI support would need to be considered outwith this review, given it is a separate function of OIS.

OIS reported that in their view and experience, the many different structures for managing data protection risks in colleges was problematic. (The DPO's 2023 annual report which looked at the colleges' data protection governance structures as they stood in 2023 is attached at the end of this report as Appendix 4 for reference). It was difficult for junior members of staff with whom OIS interacts in certain colleges to gain traction in promoting

data protection risks within their college because of their lack of authority and the impression of OIS is that they may need to navigate layers of management to reach decision makers. This can impact on the effectiveness of the DPO's services in those colleges and might leave risks unappreciated at trustee level. It remains the case, however, that colleges may take their own decisions on the resource and focus given to data risks.

For similar reasons, the network of College Data Protection Leads was not as effective as it could be. OIS would welcome a platform for senior colleagues with adequate authority to drive progress and improvements.

There are concerns that OIS has not been used for auditing as much as anticipated or as much as would be ideal. As a response to this, a self-assessment tool was developed by OIS and released to colleges and appears to be relatively widespread in its use, thus partly filling the audit gap. OIS noted that the DPO, in delivering their statutory tasks has authority to conduct audits and inspections of colleges data. This has never actually been done but remains as a *in terrorem* weapon that could be used if OIS became aware of an unacceptable risk.

OIS's commentary and reflections on the report on the provisional deliverables contemplated in setting up the DPO role were:

1. Advice on policies – This is reported both by colleges and OIS and the services are delivered.
2. Subject access requests – Both colleges and the OIS report that advice is given on these.
3. Reporting breaches – This is clearly done by many colleges. OIS shared a table showing that reported breaches were markedly higher in the last reporting year than in the previous one. This is likely to imply gradually increasing awareness. It is remarkable, however, that certain colleges have not reported breaches which suggests that the understanding and culture in colleges varies. It is unreasonable to assume that any organisation the size of a college employing staff with a normally distributed skill base would be free of breaches which require report, even if only to the DPO and not to the ICO.
4. Monitoring compliance – Plenty of colleges expressed a willingness to consult with OIS. See, however, the previous comments on the requests for an audit by OIS.
5. DPIA's – This is clearly a well-used service. Amongst the suggestions and requests from the colleges was whether DPIA's could be created for systems which are commonly used by colleges (examples might include Cascade, Uniware, certain accounting systems, CASC itself, CamCORS). OIS registered the efficiency that this could create but noted that a particular benefit of completing a DPIA *without* prompting is the thought process required to understand the system and its data management consequences.
6. Data sharing agreements – This is a less commonly used service. OIS commented that in many cases third party providers of services to colleges are now well developed in initiating data sharing agreements in their terms and conditions. Most data sharing required to be initiated by colleges was on narrow fronts and generally likely to have been implemented at the outset of the GDPR regime.
7. Liaison with the ICO – OIS reported that there is liaison with the ICO for serious data breaches which are required to be reported. There have been instances affecting a number of colleges, for example the Blackbaud ransom incident in 2021. On the other hand, the ICO has reduced its direct business support services significantly and communication is more limited than previously.
8. Audits – See the comments earlier in this paper about the disinclination of colleges to subject themselves to audit by the DPO.

4. Conclusions and recommendations

In the view of the reviewers, OIS has succeeded in its original objectives, all of which remain valid as there have been no changes in the regulatory landscape. The structure for the service appears to satisfy college needs and provides value for money. It is delivered effectively and efficiently by the personnel involved.

It is unfortunately the case, observable from DPO interactions and from the results of the survey, that college engagement and management of data protection risks varies in its depth and thoroughness. It is of course the right of any college to determine the level of its data protection risks and resource management of it accordingly. The reviewers, however, express some concern that not all colleges are managing their risks at a level that might reasonably be expected. Given the public's view of the collegiate university, a problem arising in one college could be interpreted as a problem in all colleges so we caution college bursars to ensure that they are content with the level of resource put into their data protection risk management.

We commend the very high quality and availability of the OIS service to those and all colleges and would encourage them to ensure that data protection risks are managed with engagement at senior levels and to harness the full and highly competent resource available at OIS.

Joanna Cheffins
Bursar of Wolfson College

Robert Gardiner
Senior Bursar of Gonville and Caius college

January 2025

Report of the Legal Affairs and Employment Sub-Committee

A meeting was held on 5 March 2025.

Matters for approval

There are no matters for approval.

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

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Other matters to which attention is drawn

1. Sectoral (HESA) consultation on reporting staff data

A HESA consultation on HE sector staff statistics had recently taken place. If the proposals were adopted, this would impose significant changes in the collection of data collection and, for the first time, would include “affiliate organisations”, which would most likely include the Colleges (as part of the University's return). Data collected for HESA would need to be transmitted to the University and then be used in future REF returns and for other unstated purposes.

The University submitted a response to the consultation, which highlighted the substantial administrative burden this would create for the University and the Colleges, and proposed that at worst only academic staff should be included in the return.

5 March 2025, minute 3i

2. University Equality, Diversity and Inclusion (EDI) matters

The University had retained its Silver accreditation with Athena Swan and was currently working on a submission to the Race Equality Charter (Advance HE). A recent communication from the US Department of Education was reviewed by the Student Funding and Fee Policy team, and had concluded that no response was needed. (Of course, the US Government's policies relating to both US university funding and the migration of international students is a fast-moving area.)

5 March 2025, minute 3ix

3. Forthcoming legislation

The Sub-Committee is keeping a watching brief on the progress of the following Bills:

- Renters' Rights Bill
- Terrorism (Protection of Premises) Bill
- Employment Rights Bill
- Higher Education (Freedom of Speech) Act – *the Government recently announced it will be progressing with the partial enactment of the Act, having suspended its implementation in July 2024.*

Review of the passage of the **Renters' Rights Bill** had highlighted a small number of material amendments affecting the Colleges:

- the introduction of permission to retain a fixed term tenancy if both the landlord and tenant agree).
- the right of re-possession if the property is required for housing “a person who, for the better performance of their duties of work, is required to be, or is by custom, housed by their employer” (i.e. applicable to Master’s Lodges and other staff tenancies).
- the introduction of a tenant right to request Fibre to the Premises (FTTP) (broadband), with such consent not being unreasonably refused (consistent with the rights to request keeping a pet).
- the introduction of the right for landlords to delegate the management of entries in the national database to a letting agent.
- the exemption of purpose-built student accommodation from conforming to a statutory code from licencing provisions for houses of multiple occupancy.

5 March 2025, minute 7

4. Annual report of the Data Protection Officer for the Colleges

The Sub-Committee received the Annual Report of the Data Protection Officer for the Colleges (College DPO), and a copy of the analysis of the 2024 self-assessment accountability exercise.

Analysis of the 2024 self-assessment accountability exercise showed that Colleges were largely in a robust position and the risks identified revealed a healthy level of self-awareness. The response rate was slightly lower than the previous year and Colleges were urged to engage in future evaluations.

The College DPO was in the process of arranging a series of meetings with Colleges and their Heads of Departments, which would provide a significant opportunity to demonstrate compliance and learn best practice. Bursars were asked to encourage their staff to engage in this. Some Colleges had requested a different format, and the College DPO would endeavour to accommodate these requests later in the year.

The Sub-Committee discussed the role of the UK Information Commissioner and the current prosecution rate for serious incidents relating to breaches of UK GDPR and the Data Protection Act 2018. It emphasised the need for Colleges to adhere to best practice and the reputational risk associated with the poor management of information.

5 March 2025, minute 8

5. The Equality Act 2010 and College requirements for monitoring gender pay gaps

The Sub-Committee received for received for information a paper prepared by the Secretary to codify the argument that Colleges are not public sector bodies for the purposes of the Equality Act 2010 (and therefore exempt from the anticipatory duties of public sector bodies): this is available on request (Paper 4 of this meeting).

The Sub-Committee discussed Government proposals for mandatory reporting of gender and ethnicity pay gaps and agreed to review how many Colleges were likely to be affected by these proposals. **Bursars are otherwise forewarned that the likelihood of the need to collect and report on ethnicity and disability data for its staff and Fellows, for pay gaps and other purposes is increasing.**

5 March 2025, minute 10

Matthew Russell
30 May 2025