



Pastoral Duties of College Heads at the University of Oxford

Oxford University LGBTQ+ Society

Executive Summary

Whilst Colleges recognise the importance of avoiding real or perceived conflicts of interest, their existing policies do not go far enough to protect members of the student body, especially those most vulnerable.

The Oxford University LGBTQ+ Society strongly recommends the adoption of the following or similar policies to ensure the University's commitment to promoting equality and diversity, and to give full meaning to the University's and the Colleges' equality policies:

1. Colleges formally commit to a duty to properly consider, in the appointment process, the impact of any continuing professional obligations on the welfare of the student body, with specific regard to minority groups and equality and diversity issues. To achieve this, conflict of interest policies and appointment procedures should be modified to expressly reference student welfare and pastoral duties as a potential point of conflict between roles.
2. Colleges formally commit to a duty to properly consider, throughout the term of the College Head, the impact on the student body of any newly undertaken professional obligations, with specific consideration of minority groups and equality and diversity issues. Existing conflict of interest policies should be amended to highlight the importance of avoiding work that could conflict with pastoral commitments and the duty to protect members of the student body. Further to this, a contract clause should be introduced that requires College Heads to consult representatives of the JCR, MCR and the Equality and Diversity Officers present at the College before any external work is agreed to.
3. The introduction of these duties should be (a) endorsed by the Conference of Colleges, on an advisory basis; and (b) appropriately publicised as University policy.
4. In the interest of transparency, it should be standard practice for Conflicts of Interest policies to be readily available on each College's official website.

Background

The Oxford University LGBTQ+ Society compiled this report after recent events highlighted concerns about the pastoral duties of College Heads towards their students, specifically students from marginalised minority groups. It came to light that a College Head was, after taking office, professionally representing a foreign government in litigation in which that government sought to deny a Black lesbian couple the equal right to marriage. This resulted in many LGBTQ+ students at that College and across the University feeling hurt, vulnerable and distressed, as well as humiliated. They asked, with dismay, how someone with pastoral duties towards students could prosecute such a case, producing what many students experienced as an unwelcome and hostile environment.

Several submissions were received by the Oxford University LGBTQ+ Society which especially underlined the environment of hostility that resulted from the discussion around the actual or perceived conflict of interest between the College Head's various professional roles. Two student testimonies are shown below - they have been anonymised to protect the identity of the authors.

Account 1:

"It's unsettling to know that our head of college has placed her work as a barrister over her commitment to promote equality and diversity. This is sending a clear signal to LGBTQ+ students that their rights and dignity are placed second in her mind. [...] We know she had every opportunity to return the brief without violating her principles, and without violating the law or ethical standards, and there have been clear precedents for this. And if her professional principles do not scream that arguing this case is wrong, her personal principles certainly should."

Account 2:

"I've been so incredibly disappointed by this whole affair, not just by the President's involvement in an obviously homophobic case and the unprofessional, confrontational way she handled the situation when her involvement came to light, but by the discussions and rhetoric of students in the College to defend [the President]. The motion the student body passed [that rejected calls for the President to drop the case or resign] was the result of wrecking amendment after wrecking amendment, the course of which was largely directed by straight men. So many LGBTQ+ students were deeply distressed about this and our voices and feelings were barely

acknowledged, let alone represented in the final motion. To see our basic rights debated, as well as whether the blatant homophobia of the Cayman Islands government is indeed homophobic, was so dehumanising. I have never felt more unwelcome in my college. The whole thing has left me wishing I'd applied somewhere else.”

It is pertinent to note that many LGBTQ+ students were reluctant or unable to speak out publicly in relation to this issue. To do so would require publicly announcing their identities, and this often carries a significant risk to LGBTQ+ individuals, in particular LGBTQ+ youth and students. Silence, in this context, does not equal consent. The LGBTQ+ Society questions whether, considering this, the College Head approached this issue with the appropriate level of sensitivity and mindfulness.

The hostile environment was further experienced at a wider university level. During LGBTQ+ History Month, an online event hosted by the Oxford University LGBTQ+ Society and African and Caribbean Society exploring the College Head's involvement in the case, as well as the experiences of the Caribbean LGBTQ+ community was 'zoom-bombed'. The Equality & Diversity Unit, the IT Department, the Proctors, and the Vice-Chancellor of the University were all made aware of the attack, and it was reported to the Police who investigated the incident as a hate crime.¹

The Oxford University LGBTQ+ Society found it surprising that this situation had arisen at all, since the conflict of interest seemed clear. The College was obliged to fulfil the aims of the Equality Act 2010, which is the basis of most College and University equality policies, including the policies of the concerned College. This includes the objective of eliminating discrimination, victimisation, and harassment of protected groups, as well as advancing equality of opportunity between people from different protected groups. Expressly protected characteristics under the Equality Act 2010 include sexual orientation.

The Society finds the College policy's aim of eliminating discrimination to be incompatible with continuing to prosecute a case on behalf of a foreign government denying the equal right to marriage on the basis of sexual orientation. This has been echoed by prominent Human Rights Professor, Conor Gearty, who contends that “the equality duty [of a College] is surely

¹ More information on this incident can be found in Appendix A. The Cherwell, an Oxford Student newspaper, released a brief summary: “Oxford LGBTQ+ Society responds to homophobic and racist ‘zoom-bombing’.” <https://cherwell.org/2021/02/28/oxford-lgbtq-zoom/> [Accessed 7th August 2021]

incompatible with its President accepting a brief in a cause that can be widely seen (and not unreasonably seen) as homophobic.”²

Professor Helen Fenwick, civil liberties and human rights expert, further notes:

“From LGBTQ+ students’ point of view it is not [the] acceptance of [the] brief that is the issue, but the fact of her position as President of [a] College, in relation to LGBTQ+ students there. [A College Head] represents the public face of the College, and it is clear that some students feel marginalised and apprehensive due to [the continuation of such a] brief while acting as their President [...] Some of the concerned students might argue that her pastoral responsibilities to students suggest she cannot do both.”³

The issue with such conduct is succinctly explained by Gilbert Marcus, Senior Counsel from South Africa, who wrote in the Oxford Human Rights Hub Blog:

“[A president has a] pastoral duty to the LGBTQI students in [their] care to ensure that they [have] a safe and secure environment without discrimination. Equality policy could not be clearer on this. The college commits itself to eliminating discrimination, victimisation and harassment on grounds that include sexual orientation. The President bears ultimate responsibility for implementing this promise.”⁴

He expanded upon this topic in a recent article in the Advocate:

“Students at Magdalen include lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons. Some of these come from rabidly homophobic countries - including from [the African continent], where some 30 countries continue not only to criminalise homosexuality, but to persecute those suspected of it. For those students, the promise of equality must surely be a comforting draw, a promise of affirmation in secure conditions. Magdalen would for them be a safe haven from the taunts,

² See “The Case of Dinah Rose, Magdalen and the Bar” (25 February 2021), <https://conorgearty.co.uk/2021/02/the-case-of-dinah-rose-magdalen-and-the-bar/> [Accessed 19 July 2021]

³ H. Fenwick “Assaulting the Dignity of Gay Couples: The Struggles to Establish a Right to Equal Marriage Under Human Rights’ Instruments” (2021), *European Human Rights Law Review*, Issue 3, p229-239

⁴ G. Marcus, “Why Dinah Rose QC Had an Obligation to Give up the Homophobic Cayman Islands Brief: A Response to Lord Hendy QC” (14 March 2021), Oxford Human Rights Hub, <https://ohrh.law.ox.ac.uk/why-dinah-rose-qc-had-an-obligation-to-give-up-the-cayman-islands-brief-a-response-to-lord-hendy-qc/> [Accessed 19 July 2021]

bullying, violence and risk of worse they have had to endure. [...] As President of Magdalen, Ms. Rose had a pastoral duty to the LGBTIQ students in her care. Her employment and her fiduciary position obliged her to ensure that they had a safe and secure environment without fear of discrimination. The College's equality policy could not be clearer on this.”⁵

The Oxford University LGBTQ+ Society sent a letter to the College Head in question, outlining our position on the matter and providing recommendations on how the College could reaffirm its commitment to LGBTQ+ equality and repair the damage that had been caused.⁶ We called for changes to be made to the appointment process to ensure that the Governing Body considers whether any continuing external work could bring the College into disrepute or make certain groups of the student body feel unwelcome or uncomfortable. We noted that such a duty is a basic due diligence mechanism, both in terms of reputation management as well as welfare policy that would prevent similar situations occurring in the future. In this case, the negative impact upon students was clear and made undeniable by the College's welfare team reaching out to students to provide support. The reputational damage is also indisputable, with both the LGBTQ+ Society and the College receiving concerned messages from contributors to the College who wanted to withdraw their donations and legacies.

The College Head did not address many of our concerns and recommendations and most notably our call for reform of the appointment process was seemingly ignored. While she did reassure that she was committed to the inclusion and welfare of the LGBTQ+ community and went on to outline steps being taken by the College to improve inclusivity, we were ultimately dissatisfied. The proposed steps did not tackle the issue at heart and left marginalised students vulnerable to a reoccurrence of such an event. When we raised this issue, the College Head declined to comment further. We have since filed a freedom of information request to the College, the outcome of which is pending.

Methodology

To avoid repetition of such a situation, the Oxford University LGBTQ+ Society sought to gain insight into how Colleges handle any professional duties their Heads undertake outside their College role - including charity work, legal work, political activities, or forms of consultancy - and how conflicts between such work and their pastoral and other duties to the College and its

⁵ G. Marcus, “Ms Dinah Rose QC and the Homophobic Brief: A Test of Principle” (2021), Advocate, August 2021, p29-32

⁶ Our full recommendations can be found in Appendix B.

students are avoided or managed when they arise. This included the appointment process, the consideration of equality and diversity issues, and the interests and welfare of the College's students.

In investigating these questions, the Society's concern was not limited to LGBTQ+ students. We were also concerned about instances where extra-College activities might negatively impact other groups experiencing continuing marginalisation, including but not limited to women, BAME, Muslim, Jewish and disabled students.

The Society made the decision not to include the College Head involved in the initial situation as our previous exchanges suggested that there was an unwillingness to address these issues.

We contacted the other 44 Heads of Oxford University Colleges, Permanent Private Halls founded by Christian denominations, and Societies of the University of Oxford, enquiring as to how their College or institution manages the external activities of the Head of House during the appointment process and throughout the Head's tenure in relation to their pastoral duties.

This was done using official University email to ensure that our communications were not filtered out as spam or junk as a result of being from an unrecognised institution, increasing the likelihood of College Heads responding to our queries.

We approached the matter believing it is reasonable that the risk of negatively impacting vulnerable groups within a College necessitates basic due diligence mechanisms both at the appointment stage and throughout the tenure of the College Head.

Findings

We received a range of responses from 23 of the Colleges contacted.

A standardised reply was received from 8 Colleges, directing us towards their conflicts of interest policies. They all assured that their "appointment processes are carried out in strict accord with best practices so far as Equality and Diversity issues are concerned" and that "the interest in welfare of [their] students is always in [their mind]" with no further elaboration on these points. After examination of their policies, we found no reference to student welfare or pastoral duties as a potential conflict of interest.

While it was not uncommon for College Heads to cease the majority of their professional activities during their time in the role, this was largely not done for the protection of marginalised groups within the student body or to prevent conflict of interests between professional and pastoral duties.

All College Heads who responded disclosed that they require permission from the Governing Body prior to accepting external work to ensure there is no incompatibility between positions. Further to this, either a conflicts of interest statement or a declaration of external interests is required annually to guarantee no incompatibilities between roles arise during their tenure. This is in line with Oxford University's Conflict of Interest Policy⁷ and general guidance issued by the Charity Commission.⁸

However, it transpired that some Colleges had never thoroughly considered the risk that conflicting professional undertakings pose to their students' welfare, and the majority had no explicit rules governing this issue. Others seemed to be more alert to the reputational risks and pastoral concerns at issue, acknowledging that many students shared concerns similar to those of the LGBTQ+ Society.

One College Head emphasised that all committees are reminded of the need to specifically consider conflicts of interests and their public sector equality duty to ensure that all College decision making, including appointment processes and the approval of external interests, considers the impact of decisions on marginalised groups and people with different protected characteristics. While another noted that the Governing Body considers the nature of appointments and the implications for the College and its students very carefully, as the Head would themselves.

The LGBTQ+ Society received only one response that outlines sufficient due diligence in the appointment and tenure of a College Head and considers the welfare of students a priority throughout. We believe this College to be the only example of best practice at the University. The Head of this College detailed the rigorous selection process they subjected themselves to that actively involved all interest groups in college, including the LGBTQ+ representatives of the student body. Such a process provides students the platform to ask questions, raise any

⁷ See Oxford University's policy and procedure on conflict of interest, <https://researchsupport.admin.ox.ac.uk/governance/integrity/conflict/policy#collapse394506> [Accessed 26th July 2021]

⁸ Charity Commission for England and Wales, "Conflicts of interest: a guide for charity trustees", <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees> [Accessed 5th August 2021]

concerns and provide feedback to the Governing Body. The College Head went on to note that the contract clause they agreed to that constrains their ability to work outside of College without permission is replicated for other College Officers and necessarily entails discussion with the JCR and MCR about the work's nature before it is undertaken.

Out of express concern for students, this Head further deliberately divested themselves of all commercial obligations before assuming office: "I believed that was appropriate. It protects my students."

Conclusion

The responses the Society received lay the basis for a conclusion: whilst Colleges recognise the importance of avoiding real or perceived conflicts of interests, their existing policies do not go far enough to protect members of the student body, especially those most vulnerable.

Specifically, most of the policies referred to in the responses do not *explicitly* recognise a need to consider the impact any external interests or work may have on the student body, with an emphasis on marginalised communities. Instead, many of the responses made vague statements such as "the welfare of our students is always in our mind" or noted that they took equality and avoiding discrimination "very seriously" as reflected in their equality policy. There was, however, no concrete link between the respective equality policies and the requirement of declaring potential conflicts of interests that would properly ensure situations such as those the Society is concerned with are avoided.

The Society believes it is reasonable to expect Oxford University's Colleges to exercise proper due diligence and adopt formal measures to ensure there is no conflict, and that no conflict may arise, between the pastoral and other duties of the College Head and any continuing or freshly assumed professional duties.

Best practice, in the Society's view, is the adoption of explicit policy clauses that cement the innate link between the equality policies and the conflicts of interest policies of Colleges and the University, with particular regard to student welfare, pastoral duties, and the inclusion of marginalised communities. There should be no opportunity for misinterpretation of policies that are integral for the protection of vulnerable groups.

In the case of the situation outlined in the 'background' of this report, had the College's Governing Body interpreted their conflicts of interest policy to cover the welfare of

marginalised communities and pastoral duties towards these students, the situation would have never arisen. Evidently, they did not construe their policies in such a way, and it resulted in significant harm and an environment of hostility, not only to members of student body at the College and the wider University, but also to the College's own reputation.

After evaluating the conflicts of interest policies across the University, the LGBTQ+ Society believes that this could have happened at almost any College, Private Permanent Hall or Society at the University of Oxford. It was not a matter of if or who, but a matter of when. If policy remains ambiguous on this issue, a similar situation could easily arise again at almost any College in Oxford, causing harm and facilitating an unwelcome and hostile environment for marginalised communities. The commitment to consider the impact of all decisions on protected groups must be formalised in explicit policy.

The Society only encountered one instance of best practice across the University. The Head of this College displayed the utmost respect for the pastoral needs of students and as a result implemented the necessary safeguards to properly protect those in their care. It is highly unlikely that the situation described in the 'background' of this report would have occurred at this College.

The Society notes that many College Heads continue some professional obligations after assuming their College Head role. Not all professional obligations are incompatible with the duties of College Heads; indeed some (charitable and otherwise) enhance that role. The Society therefore does not propose that all College Heads should divest themselves of all professional duties before becoming Head of House.

Several College Heads raised the issue that each College is an independent legal entity that follows its own appointment process. Thus, we also look to the Conference of Colleges as the principal executive and policy making bodies of the University to promote the adoption of proper due diligence mechanisms to ensure the standardised implementation of them across the University's Colleges. This is a reasonable expectation considering Colleges have previously introduced and modified their policies in accordance with best practice at the University directed by the Conference of Colleges.

Recommendations

Following our findings, the Society strongly recommends adoption of the following or similar policies to ensure the University's commitment to promoting equality and diversity, and to give full meaning to the University's and the Colleges' equality policies. These include that:

1. Colleges formally commit to a duty to properly consider, in the appointment process, the impact of any continuing professional obligations on the welfare of the student body, with specific regard to minority groups and equality and diversity issues. To achieve this, conflict of interest policies and appointment procedures should be modified to expressly reference student welfare and pastoral duties as a potential point of conflict between roles.
2. Colleges formally commit to a duty to properly consider, throughout the term of the College Head, the impact on the student body of any newly undertaken professional obligations, with specific consideration of minority groups and equality and diversity issues. Existing conflict of interest policies should be amended to highlight the importance of avoiding work that could conflict with pastoral commitments and the duty to protect members of the student body. Further to this, a contract clause should be introduced that requires College Heads to consult representatives of the JCR, MCR and the Equality and Diversity Officers present at the College before any external work is agreed to.
3. The introduction of these duties should be (a) endorsed by the Conference of Colleges, on an advisory basis; and (b) appropriately publicised as University policy.
4. While some Colleges already have their Conflicts of Interest policy publicly available, many require a request to be filed for such information. In the interest of transparency, it should be standard practice for Conflicts of Interest policies to be readily available on a College's official website.

Appendix A

Our Society, in collaboration with the African and Caribbean Society, held a panel discussion with Caribbean activists and lawyers during LGBTQ+ History month to discuss the realities of being LGBTQ+ in the Caribbean following the discontent amongst students regarding the College Head's involvement in the Cayman Islands marriage case, and specific comments made by the same College Head on the matter.

This event was targeted by a group of homophobic and racist individuals who spammed homophobic slurs in the chat, drew racist slurs over one of our panellists' presentation, played racist music and wore masks in an attempt to silence and intimidate us and our panellists. Their actions directly and deeply affected the Black and LGBTQ+ student body of Oxford. Over 50 students witnessed the attack, and many reached out to our welfare representatives following the incident.

Ultimately, the discussion about how our panellists felt about the Cayman Islands case and the College Head's involvement was central to the event's purpose, and this event came under attack. This highlights how the College Head's involvement had a real and direct impact on the welfare of LGBTQ+ students at the University. By virtue of the two roles simultaneously occupied by the College Head the continuum of violence experienced by the Caribbean LGBTQ+ community was extended to the student body.

Appendix B

We believe the following are, at a minimum, necessary to show that [the College] and its President stand committed to LGBTQ+ equality. As well as acknowledging the hurt caused to many students at [the College] and across the university, in addition to the LGBTQ+ community in the Caribbean:

1. An explicit statement by the President reiterating that [they] fully stand behind LGBTQ+ rights worldwide and apologise for any implication of [their] comments and actions that may have invalidated the lived experiences by the LGBTQ+ communities in the Caribbean. It should highlight that [they] appreciate that LGBTQ+ individuals in the Caribbean, including the Cayman Islands, still suffer from a continuum of stigma and violence and that [they] did not intend for any of [their] comments to downplay this reality.
2. Changes to the College Head appointment process should be made. The Governing Body should introduce an obligation to those acting in the appointment process to consider whether any continuing professional obligations may bring the College into disrepute and/or make certain groups of the student body feel unwelcome or uncomfortable. This is an incredibly basic point of reputation management and welfare policy which would avoid similar situations impacting students occur in the future, as clearly such continuing professional obligations do have an impact on students given the [College] welfare team had to act and reach out to people, and donors have been in contact with us that found this instance to have damaged the reputation of the College.
3. We appreciate that the College consulted with some of its LGBTQ+ students in response to this issue to better understand their concerns and feelings, but this was entirely inadequate with many LGBTQ+ students at [the College] and the Oxford community still feeling that their concerns are not being fully heard. Many students are unaware of what action, if any, the College is taking following this consultation, and as such releasing the College's planned response resulting from this meeting would be beneficial.

4. The College should require all those involved in [its] administration, including the President, to have LGBTQ+ equality and awareness training. This should be mandatory and set a standard across the University. It needs to be detailed and thorough, not just a box ticking exercise.

5. The College could increase funding for the College's Gender Expression Fund introduced by the JCR in 2018. As noted by [redacted student name] at the time, the proposer of the concerned motion, the fund shows how [the College] is committed to being a safe, supportive and open environment to LGBTQ+ persons.

6. LGBTQ+ and/or BAME specific Counselling could be introduced. The University Counselling Service often does not provide identity specific counsellors who truly understand the issues of LGBTQ+ students (e.g. trans students) or particular intersectional issues (e.g. LGBTQ+ people of colour); [your College] could press for university-wide funding of these particular services and/or try offer them for its own members first, which might trigger a domino effect for other Colleges to do the same.

Consideration of these points would go part of the way to ensure that the issues raised both by the Oxford LGBTQ+ Society, the Oxford Afro-Caribbean Society, Colours Caribbean, and a number of [your College's] students do not go unaddressed - for which the first two requests are of paramount importance and significance.