

New College, Oxford

From the Dean & Bursar to JCR/MCR officers and committee members

1. This Note will be supplied to each incoming set of JCR & MCR officers and committee members. It sets out the legal status of each Common Room and the duties & liabilities of their officers and committee members, as well as the relationship between the Common Rooms and the College - notably that relationship includes the duty imposed upon College under s22 of the 1994 Education Act to ensure the Common Rooms operate in a fair and democratic manner while also being accountable for their finances (see 9) below for more details on this s22 duty).

2. The JCR and the MCR are each unincorporated associations - akin to, say, a local cricket club or film society. They have no legal status separate from their members - they are not a 'legal person', they are not companies registered under the Companies Act, they are not a trust, they are not (like College itself) a chartered corporation. All New College students are automatically members of one Common Room or the other depending on the degree course for which they are registered. Students can, however, write to the Bursar asking not to have their annual membership subscription paid automatically from their annual tuition fee (in which case the modest amount thereby not paid over to the JCR or MCR will be payable to the individual) and then any such student becomes ineligible to enter the Common Room or to participate in any sports clubs or other societies and activities run by the JCR/MCR.

3. The student body in each Common Room elects annually the Common Room officers and committee members, who then run the Common Room but operating within the Common Room's Constitution as approved by the College Governing Body (GB - as the Warden & Fellows).

4. The JCR and MCR are each, however, also charities under the control of the Charity Commission (CC) and their officers plus committee members are therefore charity trustees obliged to ensure that any and all decisions and actions that they take in running the Common Room are always and solely 'in the best interests of the charity' (in essence to do only what helps fulfil the charity's objects - here to promote services to the benefit of the membership). Charity law applies in the form of the Charities Act 2011 (CA11) which sets out the duties and liabilities of charity trustees - notably a fiduciary duty to ensure there is no personal gain in managing the charity and no actual or perceived conflict of interest in doing so; the key liability is the risk that gross negligence or serious recklessness or deliberate improper actions in managing the charity can lead to personal financial liability whereby the trustees are required to reimburse the charity for any financial losses thereby caused. It is debatable whether

all the members themselves carry any such clear fiduciary duty as for their officers and committee members but it is arguable that they should at least take care in exercising their voting rights not to act dishonestly, capriciously, or arbitrarily. Given the two Common Rooms are charities they also need to ensure that their charitable assets are used to promote the general good of their memberships - and never provide personal benefit to only a sub-section; and they should not use their funds to make donations to other parties (even other charities) where the power to do so is not within the Constitution and where such donations do not fulfil the charitable purpose of the Common Room (the provision of various services for the benefit of the membership).

5. While the annual gross income of either Common Room remains below £100,000 they are excepted charities under CA11 and do not have the administrative burden of having to register with the CC, of having to lodge with the CC as their regulator an Annual Report, or having to provide an audited set of Accounts in the format prescribed by the CC/CA11. But they are in all other respects subject to CC regulation as it applies CA11 and hence as if a registered charity (as is College itself). There are substantial tax advantages to having charity status - mainly in that HMRC does not require the Common Rooms to submit a tax form and does not levy corporation tax on their finances.

6. College allows each Common Room to have rent-free access to specified space but retains the right of access to such spaces so as to ensure the premises meet the requirement of Health & Safety legislation as well as those of the Occupier's Liability Act. The Common Rooms are not in any way a 'department' of the College; they are not controlled by GB other than (via the Dean) it approves proposed changes to their Constitutions and has certain legal obligations in relation to ensuring the Common Rooms comply with Free Speech legislation. The Common Room operates its own independent bank account and owns any property within it as bought using its own funds; the JCR or MCR could become insolvent and its creditors have no recourse to College itself.

7. In the case of the JCR authorising the periodic Ball as managed by a Ball Committee and where the sums of money involved are considerable the risk of insolvency is greater than for the routine annual activities of the JCR and hence the Ball Committee is set up 'arms-length' from the JCR so that the debts of the Ball Committee are not those of the JCR (but the individual members of the Ball Committee need to be aware that such debts might in certain circumstances become a personal liability for them). The Ball Committee has to register the Ball for VAT - see the reference to HMRC guidance in 9) below.

8. College's insurance cover does not extend to students as adults voluntarily engaged in sporting activity within any sports club/team within the JCR and individuals participating must consider taking out appropriate personal insurance or insurance provided by the relevant national sporting body. This applies even if student X or Y is 'playing for' New College in a University-wide or inter-Colleges sports fixture. College is, however, responsible for providing the physical/premises safety of its playing fields and of the Pavilion or Boat House (but not for behaviour on the field of the players nor for the competency of refereeing - similarly College takes no responsibility or liability for the behaviour on the river of the rowers nor for coaching).

9. On charity trusteeship generally new Common Room officers and committee members should access the CC core guidance for trustees (publication CC3, ['The essential trustee: what you need to do, what you need to do'](#)). See also CC publications on charity structures at CC22a, ['Charity types'](#) and CC22b, ['How to write your governing document'](#) (the CC website also has a Model Constitution for an unincorporated association with charitable status). For the HMRC guidance re possible VAT registration being required of Student Unions and JCRs (HMRC treats latter as small-scale versions of the former) see at both its website and also at the CC website: VBNB60970 (updated 16/10/24), ['Clubs and associations - Student Unions activities and input tax recovery'](#). Chapter 9 on "Student Unions" in Farrington & Palfreyman, 'The Law of Higher Education' (OUP, third edition 2021) sets out at paras 9.07-10 the duties imposed on an HEI's GB in monitoring the HEI's SU/JCR-MCR by s22 Education Act 1994 - the Dean acts on behalf of the College GB in monitoring JCR/MCR compliance with s22 .

Bursar (Trinity Term 2025).