

# Gazette Supplement



## (1) Topic for discussion: 'The future of the EJRA at Oxford'

## (2) Resolution: 'That the EJRA in the University of Oxford should be abolished'

### Congregation

16 May

**The Vice-Chancellor:** Good afternoon. There are two items of business before Congregation today, both of which relate to the Employer Justified Retirement Age or EJRA. First, a topic for discussion, and second, a resolution. Would you please be seated.

Both the topic for discussion and the resolution were placed on the agenda of this meeting first published in the 27 April issue of the *Gazette*. I would also mention that, on 2 May, Congregation considered a legislative proposal concerning Statute XIV. This put forward changes to the statute in support of the recommendations of the EJRA Working Group. A notice of opposition and two notices of amendment to that legislative proposal were received. At the meeting on 2 May, both of the amendments to the legislative proposal were rejected, following which the legislative proposal itself was carried. Following a request from members of Congregation, the vote on the first amendment has been submitted to a postal ballot and this is now in progress.

The procedures for today's meeting will be as follows. We will begin with the topic of discussion on the future of the EJRA at Oxford. This will comprise a series of speeches and is expected to last until around 2.50. There will then be a series of speeches on the resolution, following which a vote will be taken.

Members of Congregation should have received a voting paper for the vote on the resolution as they entered the theatre. Any members who have not will have an opportunity to collect them at the exits. When the vote is called, you will be invited to place your voting paper in a ballot box at one of the

voting stations at the exits of the theatre. A member may not leave a completed voting paper with another member; only a member's own voting paper will be accepted for each vote. Any member who cannot stay until I call the vote will not be able to vote. The Proctors will be responsible for counting the vote and the result will be announced as soon as possible after the vote has taken place.

Speakers - when called, could please you come forward and speak into the microphone, giving your name and college or department. The anti-loquitor device will indicate your final minute with an amber light, and then turn red at the end of the minute. You are asked to confine your remarks to themes relevant to the discussion.

So, the topic for discussion is 'The future of the EJRA at Oxford' and I call upon Professor Irene Tracey.

### Topic for discussion: The future of the EJRA at Oxford

**Professor Tracey:** Professor Irene Tracey, Nuffield Department of Clinical Neurosciences and Pembroke College.

Vice-Chancellor and colleagues, when we met two weeks ago to consider the recommendations of the Review Group, I spoke as Chair of that group. Dr Maltby set out the history of retirement at Oxford. Since many of you were here and the transcript of the debate is online, I shall not repeat that history now. However, I would like to speak briefly about two key points in the history of the EJRA.

First, its introduction. It has been said that no debate was held in Congregation about the EJRA in 2011. That is correct. There could have been, but there wasn't, because, after

two rounds of consultation with all staff, after a survey by the UCU, in which two-thirds of respondents supported an EJRA, after all divisional boards wrote in favour, after adjustments and improvements based on the feedback - after all that - when the proposals were published in the *Gazette*, no-one objected. No-one proposed an amendment or triggered a debate. No-one. This was good democratic process. The proposals were amended to reflect the majority view, laid before Congregation in the normal way and, with no objections received, passed.

Secondly, the internal appeal court judgment by Dame Janet Smith in 2014. If you read the *Oxford Magazine*, you will know that this judgment, in an individual case, is in my view quite correctly, considered to be confidential by the University. However, quotes from it have been published in the *Oxford Magazine* and, inevitably, they focus on Dame Janet's criticisms about the extensions procedure and her comments on the overall policy. I shall explain how those concerns have been addressed.

Her judgment was in 2014, when the EJRA had only been in operation for three years with limited data. She recognised this and asked only that the five-year Review Group take her comments into account. No more. That we did. We considered them with the benefit of expert advice and in the context of more data. Two weeks ago, you approved our recommendations. However, her comments on the extensions procedure could not wait until the five-year review, and the Personnel Committee acted quickly to revise the procedure in light of her concerns and other relevant considerations. For example, in direct response to her concerns, the application process was changed, so that the department

and division are no longer asked whether or not they support an individual's application, but only to provide objective comment on certain aspects of it.

To avoid any appearance that the EJRA panel makes judgements about performance, the criteria were reworked, removing any reference to the applicant's personal prestige. It now focuses on the purpose of the extension and how the impact on the aims can be mitigated. This is reflected in the expectation that individuals move out of their substantive posts and raise their own funding, so that their posts can be refilled. Consequently, the number of vacancies created as a result of the policy has increased. The aims were reordered and clarified to address issues that arose in Dame Janet's decision. The panel was disbanded and a new standing committee was established to consider applications in six-monthly gathered fields. The option for those appointed to senior positions to make prospective applications was removed. This is the improved procedure now in operation.

The procedure criticised by Dame Janet has not been in use since September 2015. It will be further improved this year with revised documentation, better support for applicants and the introduction of training for heads of departments. Congregation has now endorsed the EJRA three times: on its introduction, when it refused a resolution for suspension in 2016, and two weeks ago, when it approved the Review Group's recommendations.

Today, you will be asked to decide whether to keep the revised EJRA, applying to grade 8 and above, set at 68 with an improved extensions procedure. This is the policy you voted for two weeks ago and I hope you will vote for it again today. Thank you.

**The Vice-Chancellor:** Thank you, Professor Tracey. I call on Professor Paul Ewart.

**Professor Ewart:** Paul Ewart, Department of Physics. Vice-Chancellor, Proctors and colleagues. I deal with experimental physics. And when scientists describe and design an experiment they first estimate the size of the thing they want to measure. In 2014 Dame Janet Smith asked the University if it had estimated the effect an EJRA at a given age could have on the creation of vacancies. They hadn't done it then, and they still haven't done it. So let's do it now.

The calculation is quite simple - it's an estimate, remember, but we use realistic figures and data from the Review Working Group's reports. The academic career **with** the EJRA, say from 30 to 67 is 37 years. **Without** the EJRA, the average extension beyond retirement is about three years, so from 30 to 70; in other words 40 years. And if we assume that everyone stays until retirement then, on

average, 1/37 or 1/40 respectively will retire each year. So the difference between 1/37th and 1/40th is 8%. But over half leave before retirement and so the difference is reduced to 4%. And of those who get to retirement age, only about half stay on - so we are down to 2%.

What does 2% look like? Here is a strip 100cm long to represent the number of vacancies each year with no EJRA. Here is another one to represent with an EJRA - and it is 2% longer. So you can see that the EJRA has next to no effect on the stream of vacancies. It is tiny.

Council has relied on the report of the Review Group to justify its policy. And the report, claiming to be 'evidence-based', asserts that the EJRA makes a '**substantial** contribution' to improving the proportion of women in statutory and associate professor grades. However, a proper statistical analysis by the University's Statistical Consultancy, shows there is not a shred of evidence to support this claim. There is no evidence of any impact or any improvements. You may find the report on the EJRA Group website: [www.oxfordejragroup.net](http://www.oxfordejragroup.net). Please read it. Now, I find this uncomfortable and painful and there's no really nice way to say this, and I am really sorry to say it because the Review Group consists of decent men and women whom I respect and like, but the consultancy concludes, and I quote '**...the report...displays a lack of statistical understanding and competence which has no place in any published report produced by a University.**'

Professor Tracey and Council have effectively admitted the lack of evidence when she said in Congregation debate of 2 May, '**Absence of evidence is not evidence of absence**'. So quietly dropping the diversity claim, they fell back on the emotionally charged intergenerational fairness argument. But they don't seem to realise that this 2% figure demolishes this argument too. Just look at these two strips representing the vacancies. Young people can apply for all of these vacancies. The 2% makes hardly any difference at all.

And further, the notion that someone must lose their job to create a vacancy for a younger person makes the same error as the infamous 'lump of labour fallacy' that's been de-bunked many times over. Vacancies are sometimes left vacant, to save money, or filled by older, experienced academics already in permanent posts elsewhere. The EJRA cannot be shown to help intergenerational fairness, so this is a plea to recognise arguments that are emotionally appealing but simplistic and without rational foundation.

Please recognise these objective realities that the EJRA contributes almost nothing to improving diversity or intergenerational

fairness. It is totally disproportionate and should be abolished.

**The Vice-Chancellor:** Thank you, Professor Ewart. I call on Dr Kate Blackmon.

**Dr Blackmon:** Kate Blackmon, Merton College and Saïd Business School.

Vice-Chancellor, colleagues, it is my belief that without a retirement age, the University will get greyer faster than those who propose to abolish the EJRA have acknowledged. Because longer time in post will significantly decrease turnover, this will seriously affect our ability to refresh posts and will impede intergenerational fairness and more diverse faculty. No *Blue Peter* props though.

Experience in the US contradicts the predictions made there, with the abolition of retirement age in 1993, that only a few academics would continue working past 65. A study in 2016 reported that the share of academics staying in post past 65 doubled between 2000 and 2010. Other research found that 60% of faculty wanted to keep working past 70, and 15% past 80. Many US academics now stay through their 80s, 90s, and the Chronicle of Higher Education even interviewed an 105-year-old academic.

Experiences in Canada, who removed their retirement age in 2000, echoed this, and the same would undoubtedly happen here. Currently, more than half the academic staff in Oxford who reach the retirement age apply to stay in employment. Half of those apply for a further extension, generally taking them past 70. In the Review Group's survey of retired staff, we learned that a further 20% would have stayed in employment had we not had an EJRA policy. So, how do you ask universities to manage without a mandatory retirement age? They offer expensive retirement packages to academics, as the Review Group reported in its annex A. Oberlin, for example, recently offered a year's salary, totalling \$3 million for 85 retirements. Princeton's standing age-related scheme is even more generous and costly. Buy-outs would undoubtedly be unaffordable for Oxford, however. We have neither a US-style tenure system to maintain turnover, nor the cash and the space to keep creating posts. Nor do we have performance management, unlike most other UK universities. Without the means to sustain turnover, which is currently about half of that of similar universities such as Imperial, current workforce trends will accelerate.

The average age of British academics has already increased from less than 40 in 1975 to 44½ by 1992. And according to HESA, there are already more academics over 50 than under 50. This will exacerbate existing intergenerational and other types of inequality. Younger academics are already predominantly forced

to survive on part-time or fixed-term contracts, or to leave academia altogether. They also have student fees to pay off, no prospect of a final salary pension, and little chance of buying a house, unlike previous generations. In 1975 a lecturer's salary would have paid for a house in 27 months, a reader's salary in 21 months, and in 1992 a professor's salary in 16 months. In terms of gender equity, it has been previous generation's retirements that have freed up posts for women in the current generation. For example, after 450 years of male-only regius professorships, two out of the most recent eight appointments have gone to women. Progress indeed.

In summary, I urge Congregation to do the sensible thing and retain the EJRA, if not for the last of the baby boomers, then for the rest of us and for our successors. To quote the scientific journal *Nature*, 'nobody can argue that emeritus professors were somehow caught unaware that they would have to retire someday.'

**The Vice-Chancellor:** Thank you, Professor Blackmon. Professor Sir John Ball.

**Professor Sir John Ball:** John Ball, The Queen's College.

Vice-Chancellor, colleagues, I want to say a few words about retirement from the point of view of someone who is contemplating it, either with or without options to continue working.

Isn't retirement a great idea?! No more boring University committees, no more carefully setting, checking and marking exam questions, no entering data into Symplectic for the REF whenever you write a paper, no more checking when you travel to a conference that it doesn't clash with a University commitment...

So what on earth would stop one wanting to retire? Well, first of all, there are deeply satisfying aspects to working in a university that anyone might reasonably miss, such as being able to influence and witness the intellectual development of young people. You may worry about losing being part of a supportive community. Then you might have financial issues, children still at school or university, sick relatives needing expensive medical treatment, or perhaps you are in the position of one of my distinguished colleagues who came to Oxford relatively recently from a country with little pension provision, and who thus needs to work longer to achieve a decent pension.

But leaving money aside, and viewing matters from the research perspective, can't one continue to do research effectively in retirement? Of course, the answer to this is dependent on circumstances, but there seems to be a lack of understanding of some of the issues from those involved with the EJRA. For example, Professor Tracey, Chair of the EJRA

Review Group, suggested in Congregation two weeks ago that there are plenty of ways retirees can continue research, and that the real problem is that they don't know what these are! In particular, she mentioned co-supervision of research students - co-supervision, I suppose, so the real supervision can be done by someone who is not brain-dead! How demeaning to those with deep experience of research.

In many, particularly scientific, areas, it is very difficult to continue effective research without the involvement of collaborators, in particular research students and postdocs, or necessary equipment, which can most directly be provided through research grants. As an emeritus, one does not have the right to accept Research Council grants. Note that it is not the Research Councils who prevent this. Unlike Oxford, they do not discriminate on the grounds of age. In fact, the situation is worse - Oxford will take your name off a research grant that you have won if it extends past your EJRA. So no such options, then for emeriti, or even pre-emeriti, to help provide young people with research studentships and postdoc positions - the first and essential steps in an academic career.

In a sane, and respectful, retirement system there would be an ongoing discussion over a period of years, followed by negotiation over pay and pension, duties and facilities, which would enable those wishing to continue front-line research to do so in a mutually beneficial environment and, if appropriate, for them to be entered in the REF, thereby perhaps helping to provide even more jobs for young people.

Later I will argue that it is very much in Oxford's interest to abolish the EJRA. Abolition will afford an excellent opportunity for a radical rethink of how the University treats, and gets the most from, those approaching retirement.

**The Vice-Chancellor:** Thank you, Professor Ball. I call on Professor Andrew Wilson.

**Professor Wilson:** Andrew Wilson, Fellow of All Souls, Faculty of Classics, School of Archaeology.

Vice-Chancellor, colleagues, every committee of this university requires its members to declare any conflict of interest in respect of an item on the agenda, and not to vote on a subject from which they gain a direct interest, financial or otherwise. Does Congregation feel it is not bound by these rules? We all have a conflict of interest here; but some have a greater conflict than others. I will start by declaring mine: I am 49. If the college dinners and port don't do for me before the retiring age of (now) 68 I shall have held my chair for 32 years. From this vantage point, that seems quite long enough, and no doubt my colleagues will think so when (or even long before) the

time arrives. I hope that I will continue to think so too, despite the obvious financial arguments against retirement - because if I don't, it will make it extremely hard to do an important part of the role expected of a statutory professor: academic leadership and the mentoring of graduate students and postdocs. How can I face them if I vote to keep my chair indefinitely, denying someone else a chance for maybe another five or ten years or more? How can I exert any kind of academic leadership if I don't support the cause of the next generation, and instead of fighting for academic turnover and the creation of vacancies, I declare that the only way you will take this chair from me is to pry it from my cold, dead hands?

I note that the first three signatories to the resolution to abolish the EJRA are already working beyond it, and many of the rest are fast approaching the retiring age. But more important even than the age profile of the list of 27 signatories is the fact that it consists overwhelmingly of those who have already attained the most senior posts in their subjects. I count at least 17 full professors, including a number of statutory professors; and many of the rest have college tutorial fellowships. In other words, these are largely people who have got to the top of the academic ladder and now want to pull it up after themselves. The degree of conflict of interest here is astonishing, and unacknowledged: people voting for a proposition that would personally yield them six-figure sums of charity money.

By contrast, the many postdocs and others on fixed-term contracts, who are not members of Congregation, have no voice in this debate. But they are important to this university; and if we are to retain them, we need to give them some hope that jobs will open up for them in future. Those in favour of abolishing the EJRA do not seem to take the interests of that group seriously; or they simply avoid thinking about it very hard. For sheer inanity, it is hard to beat something that was said in the debate in week 2: that we do not have to be concerned about retirement as a means of creating vacancies to allow career progression for younger academics because - and I quote verbatim - 'vacancies come anyway - posts are left vacant to save money or for other reasons.' That speaker did not understand the blindingly obvious fact that if posts are left vacant to save money, that is not a vacancy that is filled by a younger academic. In the case of the most senior posts, held as the crowning achievement and culmination of a career, real, refillable, vacancies come up chiefly as a result of retirement. In 2014-15, retirement accounted for 79.2% of statutory professorships vacated. Moreover, when a professorship is refilled by a mid-career academic whose post in turn becomes vacant, two opportunities for career progression are created. I have watched my

own graduate students endure years of stress and uncertainty as they go from one postdoc and short-term teaching contract to another before they eventually got an established post. Some have had to leave the field. But for the proponents of this resolution, those early career academics who are denied a chance to get on the ladder of established posts are reduced to mere statistics, acceptable casualties in the struggle to prolong the privilege of those who already have it all.

There has been talk of the need to handle retirement with dignity. So we should. But the most undignified spectacle I have witnessed in 20 years of employment here is the self-serving attempt by a privileged group to hang on to the most senior posts in their subjects, and to vote for a resolution from which they gain direct financial benefit. In the interests of intergenerational fairness, we must keep the EJRA.

**The Vice-Chancellor:** Thank you, Professor Wilson, I now call on Professor David Steinsaltz.

**Professor Steinsaltz:** David Steinsaltz, Worcester College and Department of Statistics, or perhaps I should say Department of Near Statistics, as reference to the previous speaker.

To impose a mandatory retirement age upon academic employees is wrong. It is practically wrong and it is ethically wrong. It contravenes the spirit – and quite likely the letter – of the landmark Equality Act of 2010, affirming as it did the autonomy of individuals to shape their own lives, regardless of stereotypes associated to superficial characteristics. The proposal feeds on and further nourishes invidious stereotypes of the old and the young. Such a scheme is not worthy of this institution.

I am a statistician, and my research concerns itself, in part, with analysis of ageing and the life-course. The fundamental principle I have learned is: variation. There is no standard career, no standard path to ageing. Not all late-60s academics have been in post for four decades, have used up their limited stock of inspiration or are winding down their life's work. Some have barely begun, after another career or time spent raising children. Some are eager to be relieved of duties, others eager to mentor younger colleagues. Some will pursue their late scholarship with pen and paper in a quiet corner. Others need million-pound grants and world-class facilities. To tie retirement to a fixed calendar age rather than life stage, career progression and individual ambition is to scorn this variation.

An academic career is rewarding, and it is demanding. Universities would not function with time-serving, clock-punching employees. But you cannot expect a full-life commitment,

and then insist that that commitment wind down on a fixed schedule.

The lack of posts for young scholars is a grave problem today, as it was already when I finished my doctorate 20 years ago. But while Oxford can maintain its own tutorial system, and its own dining system, Oxford cannot maintain its own academic job market. Whether there are 5% more or less openings – or some say 10% – in Oxford in the next decade will not define the career chances of a generation of young scholars seeking posts across Britain and across the world. This is not going to change the push towards casualisation of the academic workforce, short-term contracts, the weakening of tenure and academic freedom.

It is not the senior academics who have disappointed us with dwindling creativity. It is those who have been hired for their supposed vision and expertise in organisational management and finance and law who have failed. We need fresh thinking about how to apply the available time, space and money that flow through our institutions, in an ethical and inclusive way, to support the aspirations of young and old scholars alike. What we have been offered are lazy modifications of the old regime, and a zero-sum struggle of group against group, recapitulating old inequities and creating new ones.

The work we have is too large to force idleness on those who would like to contribute.

The real limitation is not work, but resources. We need to stop the ratchet that accumulates ever more power and resources in the hands of senior colleagues on the basis of long service. We need to recycle the resource from those who need less – or are less capable – to those who need more, while still respecting individuals' autonomy in shaping the time course of their scholarship.

Let us have an honest discussion about salary structure and grant income, about mentoring and power relations in departments, and about how we decide whether someone is actually doing the job he or she agreed to do – recognising that the occasional offenders are not concentrated in any one demographic group.

Anti-discrimination law strips away from us the facile solution of fixed retirement age. We are not permitted to remedy one injustice by creating another injustice. We should seize the opportunity to address the hard questions boldly, and with sincerity.

**The Vice-Chancellor:** I call on Professor Julie Curtis.

**Professor Curtis:** Julie Curtis, Faculty of Medieval and Modern Languages and Wolfson College.

Vice-Chancellor and colleagues. I am one of those for whom retirement is coming into view, and I feel strongly that the EJRA is a good policy for Oxford. I've not forgotten something that was mentioned a few years back, namely the information that Harvard was already then employing more people over 70 than they were under 40. This does not sound like a model we should seek to emulate.

We are fortunate to teach very gifted students in this university. We encourage the most academically talented undergraduates to proceed to postgraduate study, we support young scholars while they write their DPhils, and we celebrate with those who succeed in getting a postdoc award. In a field like mine, that's a relatively small group of individuals, whom I know personally, whom I meet in person at conferences. Unlike those of us who received full financial support during our studies, they nowadays have had to accumulate tens of thousands of pounds of debt to achieve this academic success. As they repay this debt over decades, how will they ever hope to buy the houses or flats owned by our generation? At what point are young women going to feel confident enough to take a career break to have children?

And how should we now tell these postdocs – to their faces – that they will be obliged to wait indefinitely for a vacancy, because we won't quit our jobs until we choose to, until we feel like it? This likely frustration of young academics' hopes of a job opening will have hugely damaging effects in the long run, not just on recruitment to academic posts, but also – eventually – on recruitment to postgraduate study: why would anybody embark on such a career path, if the prospects of an eventual job are allowed to become more and more unattainable?

And, as it happens, Oxford is particularly well positioned to do something positive about meeting the aspirations of those who feel they still have much to offer beyond their late 60s. The complexity of our structures (collegiate as well as faculty and University) can work to our advantage here. There are many, many roles for our emeriti to fulfil, and they already do that, unburdened by administrative and examining chores of full-time employment. Continued access to libraries makes it possible for research to continue to flourish, especially in the Humanities and Social Sciences; perhaps short-term research contracts could be envisaged for some individuals; there are many teaching roles – contributing lectures, maybe even covering for sabbatical leave – where an experienced individual has much to offer; postgraduate students will welcome you as an adviser; there is a plethora of administrative positions on college and University committees; there are other roles to fill, senior tutors, deans of degrees, or, indeed... the editor

of the *Oxford Magazine*... And all of this can be done in a context where the recently retired can continue to hold a University card and enjoy ongoing access to seminars and lectures, college facilities and social life. There can be few professions where so many individuals already retain an active engagement with their working environment, long after formal retirement.

Of course this would come with a loss of salary. But there are opportunities for modest additional remuneration on top of a very reasonable pension, and this has proved attractive to many colleagues. Most of us have had the privilege of an unusually secure and lengthy life of continuous employment, together with a decent salary and good working conditions: these benefits should be shared equitably with the next generation. Oxford can and should celebrate our emeriti and the wonderful resource that they represent, while nurturing and rewarding youthful talent as well.

**The Vice-Chancellor:** I call on Professor Ben Davis.

**Professor Davis:** Ben Davis, Pembroke College and Chemistry.

I should say a few words in the discussion 'from the perspective of a mid-career member of Congregation'. I think many of my generation have been left frankly bewildered and bemused by what has transpired over the past few years. I am 46. I have spent my life at Oxford as a student and as an academic. I love the place and it continues for me to hold great future potential. But I ask myself why we are hamstrung by this process, when many leading universities are not.

Two aspects trouble me in particular:

The first regards the extension (or not) to an EJRA. This appears to lack any form of proper peer review when, after all, peer review is the cornerstone of academic life. This cornerstone is not present, perhaps, in the most important decision in the careers of some of our leading academics.

Secondly, we hear the argument made that the EJRA removes some form of a blockage to the start of career. Those of us who have started in the last 15 years will know that the true obstacles lie in other places, in lack of start-up funding, lack of housing, lack of proper salary. And so this creates a false opposition in EJRA that sets 'the old' against 'the young'.

In the past weeks we have heard calls, attacks, on the so-called 'gilded generation'. Of course, these comments are beneath us all. But we should acknowledge these comments are probably born out of fear. This lack of respect shown by some in the University only creates more fear for all of us looking to the future. In

my case, 20 years is not so long and it leaves me and perhaps many of my generation with the question: 'Should we move, should we move now whilst we still have the chance to escape this cloud?' Thank you.

**The Vice-Chancellor:** Thank you. I call on Dr Chrystalina Antoniadou.

**Dr Chrystalina Antoniadou:** Chrystalina Antoniadou, Nuffield Department of Clinical Neurosciences and Brasenose College.

Vice-Chancellor, colleagues, today I wish to speak on behalf of the early career researchers who cannot be here to make their own case because they are not eligible to be members of the Congregation. They are a large group, about 5,000 grade 6 and grade 7s, and many of them will never achieve the seniority to join this group. Some of them would not wish to and some will not be equipped to move into senior academic or research roles. But many of them want to progress their careers and would make a wonderful contribution to this university and to the knowledge of our world, if they were able to do so.

The EJRA exists to ensure that they have an equal chance to enjoy the privileges that we do. If we move the EJRA to 70, we will see a significant slowing of turnover in the most senior academic posts for three years and an overall reduction in the order of 16% to 20%. If we abolish it, the reduction in turnover is likely to be even greater. This will have an impact on diversity. There are roughly even proportions of men and women in grade 6 and 7, but only 15% of statutory professors are women. New recruits to chairs are about 37.5% women, but with turnover at about 6%, the increase in gender diversity in the grade is slow, at about 1% per year.

But what progress we are making is only possible because the EJRA is maintaining turnover. Without it, progress will slow substantially. This is perhaps particularly important in the STEM subjects, where there are lower proportions of women and where it has proved particularly hard to attract a diverse applicant pool from undergraduate to senior academic levels. Departments have done a great deal over the last few years, particularly in the context of Athena SWAN, to address the problem of gender diversity, but few other measures will be effective without turnover to enable us to improve the number of women.

Academic posts provide leadership and role models, and they influence the culture of a department and provide a visible face to those considering joining us. It is by diversifying these posts that we effect real and lasting change.

Just as importantly, we must be fair to younger generations, who have not benefited from maintenance grants but instead they must

repay student fees, who will never enjoy a final salary, and probably won't be able to afford a house in Oxford due to the extremely expensive housing market we have. We must give them, too, a chance to build their careers and their pension pots, to fulfil their potential, to do the research that they are good at, to have their turn in the sun. This is not just about the University being fair to those coming up through the ranks; it will pay dividends to the University by ensuring that it retains the best young talent, many of whom choose to leave in order to further their career prospects.

In conclusion, I would like to thank you for giving me the opportunity, at my junior level, to participate in this very important discussion.

**The Vice-Chancellor:** Thank you. I call on Professor Endre Süli.

**Professor Süli:** Vice-Chancellor, members of Congregation, Endre Süli, Mathematical Institute.

I would like to make some observations about EJRA and diversity. As a scientist, one is trained not to accept statements at face value. Mathematicians insist on rigorous proofs, and statisticians must acquire unbiased and representative data sets before making deductions and judgements. When the EJRA was introduced some years ago, no reliable or even unreliable statistical evidence was available to motivate the discussions. I was therefore swayed by the argument that the EJRA was helpful to us to safeguard the highest standards of the University in teaching and research, to promote intergenerational fairness, equality and diversity.

Since the introduction of the EJRA, however, no convincing factual evidence has emerged to prove that the scheme was contributing to these objectives. What we have heard instead in Congregation of 2 May, in the discussion about the EJRA Review Group's report, is that, I quote from the *Gazette*, 'There no evidence to support the report's conclusions'. For example, in relation to statutory professors, the report claims that EJRA is making a substantial contribution to improvements in gender diversity – again, I quote – 'whereas from statistical analysis of the data between 2006 and 2015 shows that there was no significant change over those years'. Again, I quote: 'There is no statistical evidence whatsoever that EJRA policy has affected the proportion of females holding statutory chairs'. So I must admit that I am not at all surprised that the EJRA policy has had no quantifiable impact on diversity.

As you can tell, my mother tongue is not English; I am Hungarian. And I can assure you that I am not an isolated exotic specimen of ethnic minority in the Mathematical Institute. Walking down the corridors of the building, I pass offices of my academic colleagues who

were born in Switzerland, Denmark, France, Germany, Russia, Austria, Poland, China, Vietnam, the United States, Romania, Ireland, Sweden, Belgium, the Czech Republic, and there is also an occasional office occupied by a native British colleague. Many of my colleagues are in the early stages of their career, many of them are female, and most of them were appointed before the EJRA came into being. So what is this, then, if it is not diversity? It is, in my view, diversity that was happily achieved without a complex, lengthy bureaucratic burden of the Employer Justified Retirement Age. As the writer and broadcaster Clare Balding put it, age is just a number, not a prison sentence that shackles you to the sofa. So unless a convincing piece of factual evidence emerges in this debate today to prove that the EJRA is meeting its objectives, I shall certainly vote for its abolition. Thank you.

**The Vice-Chancellor:** Thank you. That concludes this afternoon's topic for discussion. I'd like to suggest we take a five-minute break, stretch your legs - I know these chairs aren't very comfortable - and we will reconvene in five minutes to consider the resolution.

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**Resolution: 'That the EJRA in the University of Oxford should be abolished'**

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**The Vice-Chancellor:** The procedure for this part of the meeting will be as follows: I shall begin by reading the resolution. I shall then invite Professor Sir John Ball to move the resolution and Professor Paul Ewart to second it. I shall next invite The Revd Canon Dr Judith Maltby, followed by Professor Karen O'Brien, to speak in opposition to the resolution on behalf of Council. There will then be further speeches in support of, and in opposition to, the resolution. At the end of the debate, I shall invite Professor Sir John Ball and The Revd Canon Dr Judith Maltby to reply, following which I will call the vote.

So the text of the resolution we are considering is 'That the EJRA in the University of Oxford should be abolished.' I would like to call on Professor Sir John Ball to move the resolution.

**Professor Sir John Ball:** John Ball, Mathematical Institute.

Vice-Chancellor, colleagues, here are three pragmatic reasons why Oxford should abolish the EJRA.

First, the rest of the university sector in the UK has spoken. Following the 2010 Equality Act, it abolished mandatory retirement, as did the Civil Service. Only Oxford, Cambridge and St Andrews think they know best and have attempted to justify an EJRA in a self-inflicted time-warp mentality. The situation in the UK university sector will never revert to one with

mandatory retirement ages, and eventually, either by the will of Congregation or by legal action, it is highly probable that Oxford's EJRA will end. Oxford is an amazing university and I treasure having been a member of it for 20 years. But occasionally I have noticed that little trace of institutional arrogance! Here it is all too evident in the thinking that academics will still come to Oxford when conditions of employment are better elsewhere. They won't and they aren't. If you are a big star in your 40s or 50s, wanted by Oxford and some other university, or at Oxford and wondering whether to stay, you will think about your future retirement and pension provision and decide accordingly. Does Oxford want to be in second or third place for such stars? How can this be '*safeguarding the high standards of the University in teaching, research and professional services*', the overriding aim of the EJRA?

Second, it is evident that the University's legal position as regards the EJRA is of dubious validity, and that this is recognised in Wellington Square. Why else would they have tried (but failed) to prevent Dame Janet Smith's judgment being made available to members of Congregation, even after getting confirmation from her that she would be happy if this happened? Why else did they decline to take up Dame Janet's suggestion that they could seek judicial review of her judgment? Perhaps The Revd Dr Maltby, Chair of the Personnel Committee, and the proposer of the University's motion two weeks ago, can let us know if she has read Dame Janet's judgment, and if so what she thinks of its reasoning. The administration knows that their case is weak, in particular because they have not won any appeal in the Oxford Appeal Court. They are betting on no-one having the financial resources and resolve to take matters to the High Court. But eventually this will happen, and if the University loses, and there must be a substantial probability that it will, then all those forced to retire under the EJRA since the beginning will have a case for unfair dismissal, with consequent serious reputational and financial damage to Oxford. And for every appeal there are expensive lawyers hired, using money that could be spent on young academics.

This brings me to the third pragmatic reason for abolition: that the procedures for extending employment after the EJRA are so disrespectful and nasty, and so damaging to relations between members of the University. I've seen how these procedures eat away at those who are only fighting for their rights and the rights of those to come, who have to finance their legal representation and who, after dedicating much of their life to this university, are forced into unpleasant confrontations with their colleagues, and how

the stress affects their health. I decided some time ago never to go through such an ordeal.

But what about jobs for young people? Two weeks ago we heard from Dr Simon Benjamin of a tragic case of one of his colleagues, an extraordinary researcher and gifted teacher. Unable to get a permanent academic job in Oxford, he left to take a highly paid but unsatisfying position in banking. Of course I don't know the details of this case, but in the science and engineering sectors such an extraordinary person will generally not have difficulty in finding a permanent job in a UK university or abroad. Perhaps he felt that only Oxford was good enough for him. There is anyway no reason to suppose that this man's ghastly fate had anything to do with the EJRA.

The University plays much on our natural emotional desire to help the young find academic jobs, something that consumes much of the time of senior academics. But there's no evidence that the EJRA increases the number of such jobs - indeed, it may decrease it. Most senior jobs are replaced by those who are not so young. If the aim is to create more permanent posts for the young, why not look instead at the balance between such posts and the many low-paid temporary teaching jobs around the University?

This is the best opportunity Congregation will have, perhaps for years, to help the University out of the mess it has created for itself. Let's take it, and abolish the EJRA.

I move the motion.

**The Vice-Chancellor:** I call upon Professor Paul Ewart to second the resolution.

**Professor Ewart:** Vice-Chancellor, Proctors and colleagues, in the discussion just now I drew attention to two objective facts of great importance to this debate. Firstly, Council has based its case on the Review Group report that the University's Statistical Consultancy has found to be both incompetent and misleading - it provides no statistical evidence whatsoever that the EJRA has any effect on diversity. And secondly, there is what I call the '2% argument'. Now, we can argue about the 2%, based on a three-year extension. Change that to three, the 2% becomes 3%. Stretch it a bit - it's still a few percent. It makes almost no difference. It does not help younger people - but it definitely hurts older people. It is simply unjustified age discrimination, and I remind you that the University's Appeal Court, under Dame Janet Smith, found the procedure to be unfair. Council maintains that it has revised the procedure since her judgment, but the revisions make it more unfair.

Let me remind you too that the burden of proof is on the employer to justify its procedure. Having legitimate aims is not enough - evidence must be produced that the process

helps achieve them in a proportionate way. The University has failed to produce any evidence. And instead it puts the burden of proof on you, the employee, to prove you are indispensable or be dismissed. Distinguished scholarship will not save you. Neither are you allowed to offer peer review in support of your case. The procedure demands you bring in all your salary and associated costs, but will prevent you from doing so - for example, in my own case, removing me from successful grants and obstructing me from applying for others. As Dame Janet pointed out, this is a selection procedure not an EJRA, rejection of your application for extension, and I quote, '**could never amount to a potentially fair reason for dismissal**'.

Now, let me turn from negatives to positives. What are the benefits of abolishing the EJRA?

Having experienced, skilled and established world-leaders as teachers for our undergraduates and graduates is invaluable. A young American associate professor here at Oxford wrote to me saying how much he valued his over-70-year-old professors at one of the top US universities. He said studying Gödel's incompleteness theorems with someone who had actually talked to Gödel about them - now, that was something the EJRA would have prevented.

Then he expressed his fears for his generation, writing, and I quote: '**generational fairness demands to let us work longer to accrue a decent pension**.' We should be very clear about this: the EJRA threatens your pension, especially if you come from another country or came later to your post or have taken time out for childcare. It's simply unfair to limit the next generation's pension by limiting their working lives by an EJRA.

Older academics have research momentum. Their grants create postdoc positions - the first steps on the path to an academic career. They provide mentoring and intellectual stimulation for all generations. It makes no sense to stop an active world-leading academic in his or her tracks, consigning them to an anachronistic emeritus position where they are denied the facility to apply for grants and denied the status and dignity of employment.

You have the right, enshrined in law, to have an element of choice as to when to retire. The EJRA denies you that right. Colleagues, the rights we fight for today are the rights you will enjoy tomorrow.

I urge you to vote for abolition.

**The Vice-Chancellor:** I call on The Revd Canon Dr Judith Maltby to move the opposition to the resolution on behalf of Council.

**Dr Maltby:** I am Dr Judith Maltby, Reader in Church History, fellow, Chaplain and Dean of Welfare at Corpus, and chair of the Personnel Committee.

Vice-Chancellor, colleagues. We met only two weeks ago to consider in Congregation the legislative proposals, endorsed by Council, that underpin the recommendations of the EJRA Review Group.

And we heard a fortnight ago from the Chair of the Review Group, Professor Tracey, about the independent, consultative and data-driven approach they had taken. Professor Prassl explained the legal background and the reasons why the group took the view that the EJRA should be retained. Many speakers explained why it was proposed to move the age from 67 to 68, better to balance the needs of the generations and to reflect changes in longevity. Professor Tarassenko addressed the proposal to reduce the coverage of the EJRA to align with those grades at which there is most evidence that it is having an effect.

Then Mr Ovenden outlined the alternatives for those who wished to stay involved in the work of the University after reaching the retirement age: such as honorary researchers agreements, casual teaching contracts, ongoing faculty and college associations, mentoring, and consultancy or voluntary work. Several members of the Review Group and the Council confirmed the University's commitment to ensuring that all of the processes and paperwork used by those nearing the retirement age are transparent, supportive and, most of all, respectful.

It was abundantly clear in the last debate that there are strong feelings on both sides of the issue and today too. I hope this afternoon as we debate and express our views we will be respectful of each other as colleagues, and mindful of our shared common commitment to Oxford as a university in which teaching and research are conducted to the highest standard, as we strive to find the right outcome for the University and its staff.

Two weeks ago, the two amendments seeking to move the EJRA to 69 and to 70 were defeated. The proposals to make the legislative change to underpin the Review Group's recommendations was approved by a convincing vote of 104 to 19.

Now, there is a postal ballot underway at the moment, further testing the view of Congregation as a whole and the proposed amendment to move the EJRA to 70. We don't know the outcome of that vote until next week.

Nevertheless, our job today is to consider whether the EJRA, as approved by Congregation in this theatre two weeks ago, and which will come into effect on 1 October of this year, is a policy we wish to retain.

And that policy from 1 October will be as follows: to operate an employer-justified retirement age of 68, applying to all staff in grades 8 and above - that is, roughly, those eligible for membership of Congregation - with a procedure to allow for those who wish to stay in work to apply to do so. This policy will be supported by revised paperwork, clear guidance on the alternatives to employment and training for line managers on how to implement the policy.

The Review Group considered whether the Aims identified when the policy was established were still relevant. It concluded that those relating to flexibility in the academic-related workforce and avoiding the need for redundancy should be removed, as there was less evidence that the EJRA was contributing to them. But those Aims that remain relate to supporting career progression, intergenerational fairness, succession planning and promoting diversity. The group took the view, endorsed by Council, that these Aims are necessary to allow us to retain our position as a world-class university, and that the EJRA is a vital tool in achieving them.

I commend the policy to you and ask you to reject the resolution. Thank you.

**The Vice-Chancellor:** I call on Professor Karen O'Brien to second the opposition to the resolution on behalf of Council.

**Professor O'Brien:** Karen O'Brien, Head of the Humanities Division and fellow of University College.

Vice-Chancellor, colleagues, as a member of Council, I consider the independent report of the EJRA Review Group with care. The group's recommendations were based upon wide consultation and an appropriate use of extensive data. Those data are not perfect and do not yet allow for sophisticated statistical analysis, but clear trends are emerging. I am convinced that the EJRA is an effective tool for the creation of vacancies. The group's recommendations were balanced and proportionate and I was glad that Congregation endorsed them two weeks ago.

One question we should ask ourselves is whether the aims of the EJRA could be achieved by any other means. Dr Blackmon noted that universities in the United States used retirement incentives to achieve turnover. This approach is both high cost and high risk. Other universities in the UK that don't have an EJRA make use of redundancy and performance management policies, and we would see that as equally undesirable. Yet it nevertheless seems improbable that we could simply accept the reduced turnover and ageing workforce that would result from the abolition of the EJRA.

In my role as head of division, I have seen at first hand the importance of the EJRA in refreshment and succession planning. It enables us to respond to a changing academic landscape, such as the new emphases on global history or world religions. Without the EJRA, we could not have recruited new faculty to meet these emerging demands. Professor Surender will speak about the importance of the EJRA in improving diversity and the message this policy enshrines about the value we place on staff from previously under-represented groups.

In keeping the EJRA, we will be demonstrating our commitment to ensuring that younger generations of scholars enjoy one vitally important benefit open to previous generations, namely the prospect of employment and promotion in one of the world's great universities. Those who seek to abolish the EJRA themselves benefited from a retirement age which generated the very vacancies that they filled. Without such a prospect, how are we to encourage and support the next generation of scholars and scientists who, by definition, have no voice in this debate? It is by making a firm commitment to parity among and across the generations by the maintenance of a reasonable and flexible retirement policy that we will continue to build a thriving and diverse community and maintain our leading position on the world stage.

I urge you to vote in opposition to the resolution.

**The Vice-Chancellor:** I call on Professor Lionel Tarassenko.

**Professor Tarassenko:** Lionel Tarassenko, Head of the Department of Engineering Science, fellow of St John's College.

Vice-Chancellor and colleagues, two weeks ago, Congregation approved the recommendations of the EJRA Review Working Group, of which I was a member. However, criticisms were made during the debate of the group's use of data. I would like briefly to address this. The Review Group only had limited staff data to analyse, since the EJRA was introduced in 2011, and thus retirement at 67 only came into effect in 2013. So we had data from 2013, 2014 and 2015. This was never going to be enough for us to reach conclusions with statistical significance. We did not need our colleagues from the Department of Statistics to tell us that we need several years' more data before that is possible. Remember that this was an interim review. None of the trends we saw, however, were negative, and in some cases they were positive. For example, the moderate increase in the percentage of female statutory professors. With statutory professorships, over half the vacancies arise because of retirements.

The working group was also criticised for not using a control group to assess the effects of the EJRA. Had there been a control group, we would have used one. There is no other research-intensive university without performance management and without an EJRA with which we could compare ourselves. It is simply not true to say, as the supporters of the abolition of the EJRA state in their flyer, that other UK universities do not dismiss academics on performance grounds as an alternative to an EJRA. Just to give one example - that is all I've got time for - Imperial College, for example, has a capability procedure which culminates in, and I quote from their website, 'dismissal with appropriate notice on grounds of the lack of capability'. And it is certainly the case that the capability procedure has been used to retire senior academic staff at Imperial College.

If we decided to abolish the EJRA, we would have to review our options for creating opportunities to appoint younger academics. If we introduced a capability procedure in Oxford similar to that of Imperial College, for example, it would of course have to be applied to everyone. In a collegiate university such as ours, where most academics have both a departmental post and a college appointment, this would be both complicated and time consuming. It would also fundamentally change the role of the head of department, and here I speak, to finish, as the head of one of the biggest departments in the University. In my opinion, no academic in his or her right mind will want to become the head of a department such as mine because of the amount of time they would have to devote to the performance management of colleagues. The University would have to start to appoint full-time deans and other senior administrators to run large departments. I am sure that most of you present here are grateful that your head of department is a scholar, researcher and teacher, and therefore able to understand both the joys and the pressures that you know in your daily life.

Colleagues, the abolition of the EJRA would have unintended and negative consequences, starting with the introduction of some form of performance management for academic staff. Contrast that with the EJRA policies, informed by the desire to promote intergenerational fairness, and it is clear that operating an EJRA linked to the rising trend in life expectancy is by far the better alternative.

I urge you to oppose the motion. Thank you.

**The Vice-Chancellor:** I call upon Ms Marina Lambrakis.

**Ms Lambrakis:** Vice-Chancellor, Proctors, members of Congregation. My name is Marina Lambrakis, and I have the privilege of being Vice-President (Graduates) at Oxford

University Student Union. I am also a late-stage DPhil student at St John's College. I am here today to represent my fellow graduate students and my constituents, and to put to you the rather dismal view from the entrance to the pipeline.

I want to begin with a personal story. When I was putting together my DPhil application, almost five years ago now, one of my referees insisted on meeting before they would give me a reference. At that meeting, the tutor (who at the time was one of the youngest college fellows I knew) explained that they could not, in all good conscience, let me embark on an academic path without giving me an honest appraisal of the landscape ahead. I was told in no uncertain terms that being an ECR means job uncertainty, fixed-term and part-time posts, and an uphill struggle to get by. This is a wider problem, true; but also an Oxford one.

As I have progressed through my DPhil, I can only confirm what that tutor told me. I have seen too many of my peers fall victim to the harsh realities of academia at our end of the career ladder. I have seen too many brilliant young researchers and teachers leave Oxford and resort to other careers in order to make a living. This is a losing game, for us and for the University. My generation leave our undergraduate degrees with tens of thousands of pounds worth of debt, and extortionate interest rates on that debt. We've seen masters' loans introduced, and doctoral loans are on the horizon. All the while, funding is being slashed more and more. Oxford is a training ground for the brightest and best academic minds - our results show that clearly. But we are losing those minds, because we cannot offer them permanent posts, jobs on which they can live in a city as expensive as ours.

The proposers of this resolution talk about the element of choice for academics close to retirement age; but by the same token, they remove the element of choice from my generation of academics. They talk about reducing the teaching load on early career academics; but in fact, they deprive my generation of the opportunities we so desperately need to get ahead. They talk about age discrimination; but this cuts both ways. Members of Congregation, it is my generation who are systematically being discriminated against.

I could speak to you about OUSU's guiding principle that access does not stop at the admissions process, and our long-standing work on course diversity, both in terms of curriculum and pedagogy, which aspires to an Oxford education accessible to all. I could tell you how the stated aims of the EJRA in terms of facilitating staff diversity feed into this: the rejuvenation of our course stock, bringing in fresh and innovative perspectives, to

ensure the continued excellence of an Oxford education. I could tell of students who cannot find tutors or supervisors for the subjects they want to pursue, students who do not see themselves reflected in our curricula or in the staff who teach them, who are turned away from Oxford as a result. I could even speak of the OUSU Teaching Awards last Thursday, where this year over 50% of academic winners were within a handful of years of having completed their doctorates.

Members of Congregation: as this University's sovereign body, you have a duty to think to its continued academic prosperity. We are all conflicted on this thorny issue. But I commend to you the spirit of collegiality and the common purpose that unites us as members of the University of Oxford: 'to lead the world in research and education'. I urge you to consider your students and your postdocs, to remember those who I am privileged to represent here today, and to vote against this resolution. Thank you.

**The Vice-Chancellor:** Thank you, Ms Lambrakis. I call on Professor Bent Flyvbjerg.

**Professor Flyvbjerg:** Vice-Chancellor, colleagues: Bent Flyvbjerg, St Anne's College; Professor at Saïd Business School.

I am from Denmark. I came to Oxford from Copenhagen eight years ago, and I don't know if you know this, but Danes are the happiest people in the world. All the global happiness surveys have proved that over and over. We are real happy people. Sometimes, you know, after I came to Oxford, it has been difficult to keep the happiness, so I figure maybe we should stay at home to stay happy. Brexit, I mean, what is that? You know, I really have to grab my head and wonder. And the EJRA, what is that? As a Scandinavian, I have to hold my head and wonder what is going on. It is not what you see when you live in Scandinavia. If you look deeper into the happiness surveys, you will find that one of the main reasons for all that happiness that is swishing around in Scandinavia is absence of discrimination.

If the statisticians go in and really take the surveys apart, that is one of the main reasons they find.

So for somebody like me, you know, coming from where I come from, to say to somebody: 'You're black, you cannot work in this university,' is discrimination against race and it's unlawful.

To say to somebody, 'You're a woman, you cannot work in this university,' is discrimination against gender and it's unlawful.

To say to somebody, 'You're gay, you cannot work in this university,' is discrimination against sexual orientation and is also unlawful.

And to say to somebody, 'You're 68, you cannot work in this university,' is discrimination against age and it's unlawful too.

For a Dane, there is no difference between these different types of discrimination. It's just the way it is. It's unethical and it's unlawful. So both if you look into your conscience as a Scandinavian, the majority of people will say this is wrong. If you look to the law, you would say, 'I am not allowed to do this, even if I wanted to,' because it would go against the law.

So for me to now work in a university that endorses age discrimination is deeply shameful. It really is. Yes, it is. You can shake your head as much as you want, it still is, you know. For me it is. And that's the hard part of this. So I am ashamed of this, but also I know as a Scandinavian, as a Dane, it is only a matter of time. This is just a preliminary thing, like the previous speaker said, or one of the previous speakers said, this is going to go away, you know. If you look at history, if you look to Scandinavia, that is what happened. It's going to go away sooner or later.

So the real question here really is, Vice-Chancellor, Registrar, I even see my division head here, and colleagues: do you want to be the last bigots who are endorsing discrimination of age at Oxford University?

Or do you want to be the people who reform the system and get away with this? It is your choice. You choose how you go down in history.

I know as a Scandinavian, of course, what I would choose, and I invite you all to be a bit Scandinavian on this point and vote accordingly. You will be much more happy for it. Thank you!

**The Vice-Chancellor:** Thank you, Professor Flyvbjerg. I call on Mr Boyd Rodger.

**Mr Rodger:** Boyd Rodger, Bodleian Libraries, Equal Opportunity Officer with University and College Union. By the way, I am not Scandinavian, I am Scottish.

Vice-Chancellor, Proctors, student representatives and colleagues, my reason for speaking in this passionate debate about EJRA is to provide a voice for those who are not here. I will argue why I think the University should retain the EJRA policy.

I see two fundamental themes running throughout the arguments which I summarise as:

1. Can the University implement an EJRA policy?
2. Should the University implement an EJRA policy?

Beginning with the 'Can' theme, it goes to the heart of the abolition proposal, as we heard

from the previous speaker. EJRA, argue the supporters of the motion, is simply direct age discrimination, since age is a protected characteristic in the Equality Act 2010.

This is a limited view of the law. I research cases heard before the Employment Appeal Tribunals, and I found that the Employment Justified Retirement Age can be lawfully justified. Tribunals recognise the concept of intergenerational fairness as a legitimate aim.

The current leading case on EJRA is *Seldon v Clarkson Wright & Jakes [2014]* where the judge commented on the ruling about which specific age should be set as the designated retirement age. The judge accepted that evidence may not always be so strong and compelling. I quote the judge:

**'...because of the inevitable spectrum of speculation around the effect of altering the age from one figure to the other'**

I feel there is a relevance here. It is argued by those against EJRA that a higher level of statistical analysis is required to prove the impact of the EJRA, but it is not necessarily the same level required by employment law judges.

My view so far is the University can have an EJRA policy.

The second theme was 'Should the University implement an EJRA policy?'

I draw on a lesson I learnt 23 years ago, when I was seconded to HR in Thames Valley Police. I was a serving police officer at the time and was tasked with implementing the equal opportunities strategy. I learnt that successful equality strategy was interconnected with the making of career opportunities available inside an organisation, matched with the recruitment and retention of women and ethnic minority officers. It worked, and it was recognised by Her Majesty's Inspectorate of Constabulary as best practice in the country!

Recruiting and retaining talent in this University is vital to maintaining the leading position we have. To do so requires a similar connection with career opportunities, supported by the EJRA policy. Having met early career academics at drop-in sessions, I know the anger of their frustration at the lack of career progression - I stand here and speak for them!

In conclusion, I argue the University can and should have an EJRA policy. It is pointless for the University to work so hard as it does in the recruitment of a diverse range of talent if it cannot develop and retain that talent. EJRA is not widely popular in Congregation, but it is necessary for those who do not have a voice here. I encourage you to vote against the motion. Thank you.

**The Vice-Chancellor:** I call upon Dr Rebecca Surender.

**Dr Surender:** Rebecca Surender, Social Policy and Intervention, fellow of Green Templeton College and Pro-Vice-Chancellor and Advocate for Equality and Diversity.

Vice-Chancellor, colleagues, we all know and understand the importance of diversity; of being and being seen to be representative of society; of attracting the best, regardless of gender, race or any other minority characteristic; of bringing fresh ideas and multiple perspectives to bear on problems; of promoting equity and our reputation. Not only is it good organisational practice, it is also the case that a more diverse workforce is increasingly required by the bodies that regulate and fund us.

While important for the whole organisation, diversity is perhaps particularly important among those role models and decision-makers most visible to staff, students and the outside world, that have most influence over our culture and values and that drive the academic agenda; that is our senior research and academic staff. Diversity amongst these groups in Oxford, however, is depressingly low. The most recent equality report shows us that in 2016 only 15% of our statutory professors were women, 28% of associate professors were women and only 7% of our academic staff declared themselves to be black or minority ethnic. Although the staff we recruit are notably more diverse than existing staff, turnover is low.

This is a wonderful place to live and work, and Oxford is one of the most prestigious and well-equipped places to carry out research. The calibre and contribution of colleagues on both sides of this debate and at all points of the generational continuum is outstanding. For completely rational reasons, comparatively few of us choose to leave early. This what makes the EJRA such a vital tool in creating vacancies and enabling us to achieve our agreed and approved aims. Those who oppose the EJRA have argued that abolishing it will make little difference to turnover in the long run. However, many of the assumptions on which their calculations are based are wrong.

Let me present you with just one fact-based alternative. Statutory professors are appointed at age 52 on average. They have 15 years to work before the current retirement age of 67. As Dr Blackmon's research shows, it is likely that without a retirement age, many will stay well into their 70s, and in fact the large proportion who apply for the extended employment under our current procedure supports this. If we take even a very conservative average age for their retirement in the absence of an EJRA, let's say 70, they will have 20% more years in employment. This translates to a

16% reduction in vacancies and that will substantially set back the rate at which we can advance the aims we have set ourselves.

The EJRA is of course not the only tool we have, and we are undertaking a number of initiatives to improve the diversity of this organisation. Recent changes to the recruitment processes for statutory professors have resulted in 38% of appointees in the last three years being women. Several projects supported by the Vice-Chancellor's Fund for Diversity and championed in Athena SWAN applications aim to improve the recruitment, retention and progression of underrepresented groups of staff. But for these initiatives to be effective we must create vacancies, vacancies which, due to limitations due to finance, space and our particular collegiate structure, we can't otherwise create.

Without turnover, we cannot make significant progress. The figures are stark. Less than 1/3 of associate professors and less than 1/5 of statutory professors are women. Only 3.5% of statutory professors and 6.5% of associate professors have declared themselves to be black and minority ethnic. Only 3% of those subject to the EJRA have declared a disability. Of 95 heads of department, just 27% are women and 1% are BME. If we are to retain our competitive position as a leading international university, we cannot allow this to continue.

Please vote to keep the EJRA.

**The Vice-Chancellor:** I call on Dr Paul Azzopardi.

**Dr Azzopardi:** Vice-Chancellor, colleagues, I support the aims of the EJRA, so why am I speaking in support of abolishing it?

It is because I have just read a copy of Dame Janet Smith's ruling in the Oxford University Appeal Court.

Until now, I had assumed that the debate was about aims and values, and so I was very happy to support it. But that, I discovered, is not the case: it is about the law; and I was so shocked by what I read that I felt it would be right to draw attention to it today.

Dame Janet's reasoning and conclusions are crystal clear.

First, she concluded that there is no evidence that the EJRA does anything to further its stated aims: there is no objective justification in law for an employer-imposed retirement age.

Secondly, she concluded that the process of deciding who should be retired and who should not necessarily amounts to unfair dismissal.

Each point stands alone, which means that either is sufficient to render the EJRA unlawful, and Dame Janet ruled that the EJRA was

unlawful, not in relation to University statutes but in relation to the law of the land.

Since then, Council has redefined the EJRA, provided a small amount of statistically insignificant data to justify it in relation to the restated aims, and finessed the selection process. Is this sufficient to address the issue? It seems not.

I find this situation deeply troubling for the following reasons.

First, I fail to understand why Council is bent on ignoring the ruling in the Court of Appeal. It will not wash to argue that it is being applied specifically to one individual, or to argue that a ruling in the University's Court of Appeal is dissociated from the law of the land. That approach will lead sooner or later to the University facing a class action on behalf of a raft of former employees, who were tricked into waiving their rights or were unfairly dismissed.

Secondly, I fail to understand why Congregation is being enticed to vote for something that is unlawful. No vote in Congregation can change the lawfulness of the policy.

Thirdly, I fail to understand why an unlawful scheme remains in place while Council continues to tinker with it. It means that anyone reaching the former retiring age at present is being treated doubly unfairly, being subject to an unfair reselection process and then having to appeal to defend their rights.

Regardless of the aims, therefore, the EJRA as currently specified and currently enforced is unlawful and unfair.

It is crucially important today not to conflate the aims of the EJRA with its lawfulness, as has happened in previous debates in Congregation. We may all support the aims to the hilt, but it has no bearing on its lawfulness. I did not understand this at all until I had read Dame Janet's ruling in full.

So I do wonder how many of us here have actually read it?

As a psychologist, I am intrigued to see how emotional and highly charged this debate has been in all its iterations, and still is. I am not surprised. Psychologists understand that when a person holds two contradictory beliefs or values, it causes internal conflict or psychological stress known as 'cognitive dissonance', and the overriding need to reduce cognitive dissonance is significant to cause people to change their beliefs or their behaviour.

I have no doubt that the majority of us are in a state of severe cognitive dissonance today. We believe in the aims of the EJRA, especially intergenerational fairness and diversity, and we believe in the rule of law, and these two beliefs

appear to be in direct conflict: to vote for one belief means we must suppress the other.

It helps me, as it may help others, to remind myself that the University is not above the law and it cannot change the law. But it does have many alternative or more effective options open to it for improving intergenerational fairness and diversity. So it should be perfectly possible to achieve those aims without breaking the law. *Voting to abolish the EJRA does not mean voting against its aims.*

I support the aims of the EJRA, but I feel I must vote to abolish it because, as it stands, and regardless of its worthy aims, it is unjustified, it is unfair and it is unlawful.

I urge you to support the motion.

**The Vice-Chancellor:** I call on Professor Jeremias Prassl.

**Professor Prassl:** Jeremias Prassl, Magdalen College, Faculty of Law, and a representative of the Conference of Colleges on the EJRA Review Group.

Vice-Chancellor, Proctors, colleagues, representatives of OUSU, when I spoke here two weeks ago, my message was very clear: any retirement age is *prima facie* discriminatory. It takes colleagues of all disciplines and walks of life and treats them differently because of a legally protected characteristic: their age. As an employment law expert, I strongly believe in our institutional duty to fight all forms of illegal discrimination in the workplace, whether that is the University, the colleges or elsewhere. And not just because I am a big fan of the Danish social model, and have in fact worked for your council of ministers.

So how on earth, then, can I stand here before you and urge you to vote against Sir John's resolution? Well, because the review group's proposals, accepted overwhelmingly at our last meeting of Congregation, are not in fact discriminatory. They offer a proportionate response to important aims, from fostering diversity in the workplace to ensuring intergenerational fairness.

As a working party, we spent months asking ourselves whether, and if so why, a retirement age should be imposed on us in the University. We challenged staff and management to demonstrate that the EJRA was in fact capable of meeting the suggested aims. It was not a task we took lightly, as Professors Tracey, Tarassenko and others have already explained. And yes, we did spend a lot of time thinking about the law.

Congregation has already heard very much about Dame Janet Smith's decision in the University Appeal Court, but we have to be crystal clear: the EJRA policy, on which you are asked to vote today, has come a long way since the provisions she spoke on in 2014. Both

an interim working party and now the EJRA Review Group went to great lengths to examine and counteract her ladyship's concerns.

The detailed materials before us at the last meeting were clear evidence of these significant changes. We had to be confident that the policy's aims continued to be important and relevant and that our proposals would contribute to, and be absolutely necessary for, the achievement of these aims.

Members of Congregation, representatives of OUSU, this is once more not the place for an employment law tutorial, but the essence can very quickly be summarised. In European, in English, and yes, even in Danish law, age is different from other protected characteristics, whether that is sex, sexual orientation, race or others. It's different because if there is a justified reason for age discrimination, and age discrimination alone, and the policies implementing it are proportionate, then any compulsory retirement policy will be perfectly legal.

After long process, we as a review group are now convinced that the proposals which Congregation approved so overwhelmingly two weeks ago is just such a proportionate pursuit of crucial policy goals. Under the law of the land, whether we have Brexit or not, the EJRA does not constitute unlawful age discrimination.

I urge you to vote against today's resolution. Thank you.

**The Vice-Chancellor:** I call on Professor Gideon Henderson.

**Professor Henderson:** Gideon Henderson, Earth Science Department and University College.

Vice-Chancellor, colleagues. In the nearly five years that I've been Head of the Earth Science Department, nine faculty members have reached the EJRA. This has given me direct experience of the importance of a retirement age in allowing strategic planning for the future of a department. Without one, we could not have planned appointments to build and then maintain our breadth and strength.

A good example is in the lead-up to the last REF. We knew who was due to retire and so we were able to make six pre-appointments to faculty posts. This helped us to top our REF table for the first time, with an increased headcount making a very clear difference both to the reputation of the department and its finances.

But much more important than a REF table, recent hiring of new faculty, made possible by the presence of an EJRA, has enabled regeneration and redirection of our research. We have been able to bring in fantastic scientists, with new ideas and expertise in

areas of science that we were not previously exploring, but where significant discovery is imminent. These scientists are using novel analytical techniques and bigger data sets to bring completely new insights into subjects as diverse as evolution and the interior structure of our planet. The energy and vision of these new faculty is wonderful to see, it is regenerative, and it's fundamental to maintaining the vibrancy of a department and our long-term research leadership.

These same scientists are, of course, also our new tutorial fellows, and are inspiring the next generation with fresh thinking, and new approaches to teaching. Without an EJRA, this critical academic refreshment would be slow, and the department would inevitably be less dynamic and less future-looking.

So that's a view at the level of a department, but what of the individuals that reach retirement? Since before the EJRA was even mentioned, my department has welcomed the continued involvement of retired faculty. Our emeritus faculty have been held in high regard and very much seen as members of the department. Many have continued to spend significant time in the department to publish, supervise students and to offer their advice and wisdom to others, as well as of course pursuing their own research. They have not received a salary, and do not have the responsibilities that come with that, but they remain an important component of the department.

So, from my experience as a head of department, the EJRA appears absolutely critical for strategic planning and to maintain the vibrancy of our research. It must be balanced by a system that does not require an abrupt end to the involvement of retiring individuals in University life. But that is the case now, as previous speakers have alluded to, and can continue to be so.

And finally, frankly, it's been extremely challenging to be head of department while the EJRA has been such an active point of discussion. It would have been still more challenging if we had no retirement age at all.

**The Vice-Chancellor:** Thank you to all our speakers. Revd Canon Dr Judith Maltby, do you wish to reply?

**Dr Maltby:** Judith Maltby, Corpus Christi College and Personnel Committee, a brief reply.

Vice-Chancellor, colleagues. You've heard a lot from me over the last couple of weeks. As a legislative body of our University, we have considered a legislative proposal, two amendments and a resolution, as well as holding earlier this afternoon a discussion. We are about to vote for the third time in two weeks on matters related to the EJRA.

Now, democracy takes time and we have rightly taken the time necessary to ensure that we reach the best conclusion we can on an issue which is complex and understandably emotive.

I believe that a continuing EJRA, exercised with respect and sensitivity, is the best outcome for this university, helping us to achieve our purpose as a university in a way that balances the needs of those across the generations. The Review Group considered the evidence and reached the same conclusion. Council, with its broad perspective of the needs of the University, endorsed the recommendations to keep and adjust the EJRA.

So I hope you too will vote to keep it today, and that we can now move forward and focus on implementing the Review Group's proposals, and developing the new guidance, training and support that we need to operate the policy in a manner that mitigates the impact on those affected by it and achieves its aims.

And I would just now like to finish by thanking again the Review Group for their tireless work and for all of you who have taken the time to read the report, consider the proposals laid before you, and attend these meetings to hear your colleagues' views and to vote.

And so please make that of course a vote *for* the EJRA. Thank you.

**The Vice-Chancellor:** Professor Sir John Ball, do you wish to reply?

**Professor Sir John Ball:** Thank you, Vice-Chancellor.

First, a few comments on what we have heard.

I note that six of today's speakers opposing the motion are from the EJRA Review Group. Other committees might have felt that after their work was done they should take a back seat.

I also note that Dr Maltby did not reply to my request that she let us know if she has read Dame Janet Smith's judgment.

Professor Tracey said that Dame Janet Smith only asked that her comments were taken into account in the five-year review. This is a distortion: what Dame Janet Smith actually wrote was *'I hope that my analysis of the University's EJRA's policy will be of assistance when it decides on its future retirement policy.'*

Allow me to remind you of some of the features of the EJRA:

There is no evidence that it increases the number of academic job openings for young people, nor that it improves diversity. It takes little or no account of increased health and longevity, reduces Oxford's competitiveness, threatens future pension provision, and has been judged unlawful by one of most respected judicial figures in the land, a judgment that

the University does everything in its power to conceal, despite another Oxford Appeal Court judge having ruled that the University's position that it is confidential is 'misconceived'. It wastes large amounts of University money in legal fees, and threatens the University, both reputationally and financially.

If you want to extend your employment beyond the EJRA then academic scholarship doesn't count (so what does, you may well ask?), you will have to find your own salary and associated costs from research grants, and you're put in the position of having to say why you should not be dismissed, whereas the default legal position is that it is you that can choose when you wish to retire.

Don't be deceived by emotional and non-evidence-based arguments that some kind of catastrophe will occur if mandatory retirement is abolished. It hasn't happened elsewhere and there is no reason why it should happen here. Oxford is more than capable of finding a better and more respectful way to handling approaching retirement.

I urge you to vote in favour of the motion to abolish the EJRA, and to help the University begin to take a new path that will benefit all its members, irrespective of age.

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### Voting on Resolution

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**The Vice-Chancellor:** Thank you. I will shortly call a vote on the resolution. But I'd now like to ask the Proctors, the Pro-Proctors and the Clerks to the Proctors to move to the voting stations at each of the exits of the theatre. When they reach their positions, I shall invite members of Congregation to cast their votes. Again, I must remind you that only members of Congregation are entitled to vote.

Having completed your voting paper, those seated on the floor and semi-circle should leave via the South exit. Those seated in the lower galleries should leave via the East and West exits. Members of Congregation should place their voting papers in the ballot boxes under the direction of the voting officers. And the other procedures I am sure at this stage you must be familiar with. After voting, you'll be invited to return to your seats or enjoy the outside while we await the votes.

I would now like to ask members of Congregation wishing to vote to do so by the exit previously pointed out. I would like to invite those in the upper galleries to wait until those downstairs have voted, if you would.

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### Results of voting on Resolution

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Members of Congregation, there voted for the resolution: 64. There voted against the resolution: 143. The resolution is accordingly rejected. That concludes the business before Congregation this afternoon.