

Gazette Supplement



Voting on a resolution in Congregation on Good Governance of the University in Relation to the Administration of the EJRA Scheme

The following is the text of the debate in Congregation at 2pm on 17 May on a resolution entitled good governance of the University in relation to the administration of the EJRA scheme.

The Vice-Chancellor: The business before Congregation is voting on a resolution relating to good governance of the University in relation to the administration of the EJRA scheme. Would you please be seated.

The resolution which comprises the business of today's meeting was placed on the agenda of this meeting in the University *Gazette*, first published on 28 April.

The procedure for today's meeting will be as follows: I shall begin by reading the resolution.

I shall then invite Professor Peter Edwards to move the resolution and Professor Denis Galligan to second it. I shall next invite Professor Chris Wickham followed by Dr Stephen Goss to speak on behalf of Council. Professors Edwards and Wickham have been asked to speak for no more than eight minutes, and Professor Galligan and Dr Goss to speak for no more than five minutes.

It is intended that today's meeting will end at around 4.30. It may not be possible therefore to call every member who has indicated their intention to speak in advance, but I will endeavour to do so.

Please could speakers come forward and speak into the microphone, first giving their name and college or department. Speakers are asked not to speak for more than five minutes and to confine their remarks to themes relevant to the resolution. The anti-loquitur device will indicate a speaker's final minute with an amber light and then turn red at the end of that minute. At that point speakers

should conclude their remarks; otherwise I will have to ask speakers to bring their remarks to an end.

At the end of the debate, I shall give Professor Edwards a right of reply to the debate. I shall then take a division on the resolution. This will be by paper ballot, for which members of Congregation should have received voting papers as they entered the theatre.

When the vote is called, members will be invited to place their voting papers in a ballot box at one end of the voting stations at the exit to the theatre. A member may not leave the completed voting paper with another member; only a member's personal voting paper will be accepted. Any member who cannot stay until I call the vote in that case will not be able to do so.

Finally, I would like to say that the stenographer who is helping us to transcribe today's proceedings is entitled to a break during the meeting. Therefore, at about midway through the meeting, sometime between 3 and 3.30, I shall call for a five-minute break.

The following is the text of the resolution:

'Congregation resolves:

1. That the EJRA be suspended forthwith pending the publication of the findings of the EJRA Review Committee to all members of the University.
2. That the EJRA Review Committee now be afforded with at least five members representing and answerable to congregation.
3. That the afforded committee report its findings to Congregation by 1 January 2017.
4. That Council and all University committees promptly disclose to Congregation all legal advice taken regarding the EJRA.'

I would now like to call on Professor Edwards to move the resolution.

Professor Edwards: Good afternoon. I am Peter Edwards, Inorganic Chemistry and St Catherine's College.

Vice-Chancellor, Proctors, colleagues and student representatives, I could never have imagined myself speaking at the University of Oxford Congregation in the Sheldonian Theatre, never mind opening such a discussion!

It has taken a lot for me - a simple-minded experimental chemist - to speak to such an audience. I do this because of the gravity of the issue at hand - and actually the morality of the issue - how we as a university operate within the law and indeed within our own established structures of governance.

Our motion is captured in the judgment of our own University appeal court of September 2014. Now, I do not have a complete copy of the University appeal court ruling; neither, Congregation, do you - a remarkable situation. However, Dame Janet Smith has written to me to say that she has no objection at all to the full disclosure of the judgment to Congregation - and she has apparently made the same statement to the University. So after almost 20 months of gestation, we may see the advent of a full and widespread access to the findings of our own University appeal court.

In that appeal court judgment, Dame Janet Smith ruled:

1. 'The EJRA as a scheme including the age of 67 is not objectively justified as required by law', and
2. 'The procedure for extension beyond the EJRA is so unfair that denial of extension is inevitably unfair dismissal!'

Congregation: notwithstanding Dame Janet's statement that 'I have decided this appeal on issues of principle unrelated to the particular facts of the appellant's case' you will be asked by opponents of our motion to disregard this judgment and ruling from one of the country's most eminent, most distinguished High Court judges (and a savvy northerner, I should add), invited by *our* university to preside over *our* university appeal court.

We are informed that the appeal court ruling is binding only in relation to the individual's case and 'does not create any binding precedent on the University'. My colleague Professor Galligan will shortly dismantle this astonishing - and breathtaking - notion.

The natural course open to the administration would surely have been to contest this judgment at the Appeal Court of England and Wales. You might ask: why hasn't this happened? Could it be that they have been advised they would lose? Mind you, that would make some court case for the general public, the press and the judiciary - *Oxford University vs Oxford University Appeal Court!*

Dame Janet's careful legal analysis of the general aspects of the current EJRA apparently carries no weight whatsoever with the administration of the University of Oxford.

I first became aware of the EJRA some 18 months ago. Following recent exciting breakthroughs on turning CO₂ into fuel and hydrogen storage materials by young colleagues in my research team, I decided to look into the EJRA process. I found that Oxford University currently operates in a parallel universe in which the EJRA process continues completely, or almost completely, oblivious to the main withering assessment contained in Dame Janet Smith's judgment.

Now, the message may be advanced this afternoon that all 100+ signatories of our motion are '... acting in self- or private interest'. Congregation, please put that aside as a simple-minded, insulting and, of course, incorrect descriptor. Many signatories of the motion are early- and mid-career academics - they, too, are worried and concerned by the lack of transparency in the governance of this present EJRA.

One such person is Professor Ben Davis in my department, who cannot be with us today. Ben wrote:

'Dear Pete, I have been pressing about my concerns regarding retirement and how the process operates, but I'm afraid none of these have been answered.'

Colleagues, Ben Davis was elected Fellow of the Royal Society last year at age 45.

At the 3 May Congregation, in a thoughtful speech, the Registrar reminded us that the

function of University administration is to continually ask the question 'Is it fair and just?' and to exert a critical oversight function in such matters. This motion calls upon our administration to heed those words.

A final point, but I think a highly important one which I believe speaks volumes: in the response from Council and in the flysheet from opponents of the motion, reference is repeatedly made to the 'Aims of the EJRA': refreshment of the workforce, diversity, intergenerational fairness, etc - of course, all perfectly laudable and legitimate aims and objectives.

However, Council and signatories of the flysheet at no point highlight the fundamental 'balance' that is required - *by law* - in attempting to achieve those aims. In that context, Dame Janet Smith ruled: 'The legitimate aims and objectives... do not appear to me to be of such weight and importance as could properly outweigh the legitimate expectations of academic staff to work longer and to have an element of choice as to their retiring age.'

It is abundantly clear that it has required - and still requires - an eminent High Court judge to remind the University administration that this is about fairness and justice **for all**. 'Intergenerational fairness', a cornerstone of any kind of EJRA, of course must relate to fairness across **all** generations. The present EJRA is manifestly unfair and Dame Janet said so.

In summary, I remind Congregation once again that our resolution *calls for the suspension of the present EJRA, not the abolition of the EJRA*. You will find in those 100+ signatories colleagues from an enormous diversity of subjects and with widely differing opinions on the EJRA, ranging from total abolition to complete reform. **But** the issue that unites all is that the EJRA must now be suspended until the findings of the Working Party are known and debated at Congregation.

Our resolution is simply that the judgment of our own University appeal court, contained in the 50-100-page document and delivered on 1 September 2014, be respected. The present EJRA - and I stress the present EJRA - is legally and morally tainted. We, as a Congregation, expect better than that. I commend this motion to you.

The Vice-Chancellor: Thank you, Professor Edwards. I now call upon Professor Galligan, who will second the resolution.

Professor Galligan: Denis Galligan, Wolfson and the Centre for Socio-Legal Studies.

Vice-Chancellor, officers of the University, we are assembled in Congregation today to consider the good governance of the University. Congregation is a sovereign body;

Congregation must hold the administration to account for its actions.

The appeal court of the University has concluded that this scheme is deeply defective and fatally flawed. So defective and flawed this scheme is not objectively justifiable according to the Equality Act. It is both indefensible and unlawful. The scheme being so tainted legally and morally, you must decide, Congregation, whether it can continue. You must decide whether it is just to dismiss staff, knowing the basis for dismissal is morally and legally wrong.

We **are not** here to decide whether compulsory retirement is good or bad; the only issue is the immorality and illegality of the present scheme.

You must judge for yourselves. The trouble is, you don't have the judgment. You haven't even been told what's in it. I have it because it's my case. The administration has hidden it from you, put up a wall of secrecy around it, as Professor Leftow will reveal to you. In fact, many do have the judgment or an account of it. All parts of University government have it - except you, the sovereign parliament. You judge whether this is the way to run the University, whether this shows respect for the constitution of the University, for Congregation, for you as its members.

Why is the administration afraid of the judgment? Well, nobody has said. But the answer is simple: because the court has decided this EJRA is defective and flawed to such degree it is unlawful. This is a matter of principle. The court decided as a matter of *general legal principle* that this EJRA is unlawful.

You will hear the claim that it applies only to my case. This is wrong and without legal foundation. No legal source or authority is given for this claim; it is unsupported assertion by the uninformed. Let me show you why. There are two judgments. In a preliminary judgment, the court ruled it had authority under the statutes to determine the lawfulness of EJRA: having ruled it had such authority, the court considered the substantive issue, where it concluded this EJRA is 'not objectively justifiable in terms of the Equality Act'. The judge could not be clearer: 'I have decided this appeal on issues of principle.' In other words, she decided, as a matter of law, as required by Statute XI, that this issue of the legality of the EJRA was essential to the decision of the case. She decided a matter of law. Laws are general and apply to all in the jurisdiction. It follows that the legal principle determined in this case binds all within the University.

What sort of judgment is it? Is it the off-the-cuff decision of an unqualified, irresponsible judge? Far from it. The judgments speak for themselves. Extensive written submissions,

five days of oral hearing, 70 pages of close analysis. The administration threw all it had: solicitors, barristers, senior administrators – no expense spared. All arguments for the EJRA are thoroughly analysed and rejected. Indeed, the case for the EJRA was found to be extremely weak, the thinking behind it leaving ‘much to be desired’. The court ruled only on this scheme, leaving open that another, properly designed, might be justifiable.

Who was the judge? Dame Janet Smith, former judge of the national courts. As my colleague said, no previous Oxford connection; she came as a disinterested adjudicator. How has the administration responded? It has set out on a war of attrition to undermine the judgment and criticise the judge. Why not confront the decision outright? If the court was wrong, the administrator had a legal remedy. It could have sought judicial review in the High Court to have each decision quashed. Judicial review is a perfect remedy for this situation. It took no action.

The administration says it has legal advice that the scheme is still justifiable. In that case, judicial review is the remedy. And by the way, using legal advice as a reason for not implementing a court judgment shows contempt, contempt for the University’s own judicial system. The law is settled by courts in this country, not anonymous barristers.

However, THE MOST IMPORTANT FACTOR is not the law. The administration has adopted a scheme that has been shown to be so defective, it is morally corrupt to continue. To remove the moral corruption, to respect the law and the rights of its members, the University has a duty to suspend the scheme forthwith and begin afresh. I commend to you the motion.

The Vice-Chancellor: Thank you, Professor Galligan. I now call on Professor Wickham, who will speak on behalf of Council.

Professor Wickham: Thank you. I am Chris Wickham, History and All Souls.

Vice-Chancellor, colleagues, I have been asked to speak first to oppose the motion before Congregation and I am going to do it in two parts: as Head of Humanities Division and on behalf of Council, and then as myself, a history professor.

So the EJRA was introduced in 2011 as a means of supporting a number of aims, and they’ve already been quoted, but it’s worth re-quoting: *safeguarding the high standards of the University; refreshing the workforce; maintaining opportunities for career progression across the generations; promoting equality and diversity.*

The main argument behind this afternoon’s resolution, as you’ve heard, is that the

University is behaving unlawfully in continuing to apply the EJRA following a decision of the University’s internal appeal court by Dame Janet Smith. Council denies this. The reasoning behind the resolution misunderstands the nature of our appeal court, because it is an internal review body and its decisions therefore *do not have* the status of those of a court of law.

So the University followed the decision of the internal appeal court in this individual case; others will explain how it has made changes to deal with other aspects of the court’s decision. I’ll come back to that. But the most important has been a change to the working of the EJRA, which makes the procedure of obtaining a waiver to it and to go on working beyond 67 much more rigorous; that change in itself makes reliance now on the criticisms in Janet Smith’s decision risky, because she was criticising a set of procedures which no longer apply.

The resolution proposes that four specific steps should now be taken, and I will focus on the first of these as it’s one of the two most important, I think: that the EJRA be suspended pending the publication of the review. Council believes that there is no need to do this; the appeal court’s decision is indeed only binding in relation to the individual case it has considered.

But I think, on suspension of the EJRA now: to suspend it for a selected group of individuals whose retirement happens to be imminent, and to do so just because there may be a change in policy sometime next year, would amount to unfair treatment across all of us as a body of staff. It would immediately create disparity and unfairness between those who could continue to work and those who have retired over the last few years and those who may possibly be required to retire after the review. That’s one of the very negative implications of a suspension of that type – I’ll leave to others the spelling out of the rest. So Council sees the proposal in the resolution that the EJRA should be suspended as unnecessary, unfair to different groups of staff, prejudicial to a review, ill thought-out, impractical.

Now, that’s me acting as Head of Division. It’s useful, I hope, in that I have set out the main line of Council’s response to the resolution we are discussing. Now I want to speak as myself. It does not mean I am going to disagree with what I have just said; but I think it allows me to be more outspoken. It’s typical in Congregation debates for the supporters of Council to convey the impression that they’re reasoned, whereas its opponents are allowed to be impassioned. That sometimes works and sometimes doesn’t, but I want to break that tradition.

So, to start with, I think the rationale for the resolution is highly disingenuous. It’s directed at a version of the EJRA rules which has been substantially modified and it does not make clear to you that the University has already made substantial changes in response to Janet Smith’s decision. And I also think, notwithstanding what Peter Edwards says, that the proponents of the resolution are conflicted. Several of them are due to retire very soon; they are asking you to vote for a change in University rules which will benefit them first. Now, I have no doubt that they are acting entirely on principle and that the benefit to them is irrelevant. So are they all, all honourable men. But there is a *problem here*.

And there is a connected one. Not many of us here are not conflicted. Maybe we should not allow ourselves to vote on this resolution at all? Well, I’m not conflicted; I’m 66 tomorrow; and I am retiring this September. So maybe I can have a neutral view? And if so, my neutral view is that I am *outraged* by this resolution. For the reasons of conflict I’ve just mentioned; and for several other reasons as well. If you suspend EJRA now, how easy will it be to reinstate it? It would be false to claim that such a suspension could be easily reversed. The resolution amounts to an attempt to prejudice the outcome of the review. (The proposers for the resolution say their resolution is not about the advantages and disadvantages of compulsory retirement: I think that’s disingenuous as well, and I am not going to pay any attention to that distinction.) But ending an EJRA has other implications and I just want to focus briefly on two.

First of all, this university has way too many old white men: such as myself. Not everyone, of course; not even everyone who supports this resolution; but an awful lot of them. How do we manage to get this university to be more diverse? By waiting for them to retire, for the most part. Just as the EJRA rationale states: *career progression across the generations, promoting equality and diversity.* Think of your brilliant young postdocs, many of them not men, many of them ethnically diverse. Wouldn’t it be a good idea for them to get jobs? Maybe even in Oxford? Well, they won’t if this resolution passes. We will simply be stuck with the same old guys. Why would we want that? How can you look your postdocs in the eye?

Secondly, I would say: *be careful what you wish for.* In 2005, this Congregation voted firmly against performance management. And I remember thinking: well, whether or not this is a good idea, at least people are going to go at 67, so we’ve still got a way of generating staff turnover, however limited. As long as we can still do that, we can do something to promote the aims I have just been talking about, increasing diversity and

so on. We may have to wait until people retire, but at least they will do so eventually. But if you don't have retirement, how can you trust people to stand down voluntarily and create opportunities for others? Academics are notoriously useless at knowing when they really should go. And you may not think that about yourself, and if you are right, good for you, but each of you knows others who are just like that. But without an EJRA, how are you going to generate turnover? Are you going to introduce performance management for everyone? Do you want that?

So that's what you are going to be voting for if EJRA goes down. I won't be there. But I warn you very, very strongly against it. Don't pre-judge the issue today by voting for a resolution that requires a suspension of it. I urge Congregation to vote against the resolution.

The Vice-Chancellor: I now call on Dr Goss to speak on behalf of Council.

Dr Goss: Stephen Goss, Pro-Vice-Chancellor, Personnel and Equality, and fellow of Wadham.

Vice-Chancellor, Proctors and Assessor, colleagues: the preamble to the resolution asserts that the decision of our internal appeal court has been improperly handled and the governance of the University is deficient. The resolution itself proposes four steps in response.

Council does not accept the assertions of the preamble and considers that the proposals in the resolution are unnecessary. In particular, Council opposes suspension of the EJRA and legal disclosure. In response to the appeal court the University has implemented in full the request for extended employment made by the individual concerned and it has revised the EJRA procedures.

Speaking first to due process: the judge in the appeal court gave an analysis of the policy as a whole. Such an analysis can be used to inform the future development of our retirement policy, but regardless of the standing of the judge, it does not have the status of a determination in a court of law. Her analysis has been considered, and continues to be considered, with respect, with all due care in the light of developing case law, and the University has taken and continues to take appropriate legal advice.

The conclusion, taking all of this into account, is that the University is not acting improperly in continuing to operate the EJRA policy pending the review and with the procedural modifications that have been made.

There are areas of the policy that merit further attention including, for instance, whether the current age of the EJRA remains most appropriate. These and other matters have been referred to the review. Originally it had

been agreed that there would be an interim review after five years and a major review at ten years. In response to the decision, the major review was brought forward and data collection started *during* the fifth year of the policy, with the intention of reaching an outcome as early as possible in 2017. The review will be undertaken by the EJRA Working Party, whose membership includes no-one who took part originally in establishing the policy and who, for that reason, might have been seen as conflicted.

All of these actions were taken following fully informed discussion in the Personnel Committee and a sub-committee set up for the purpose. These committees, which had access to the appeal court decision and further legal advice, were composed of members of Congregation, some bringing their own legal expertise, with all divisions being represented, and the decisions were taken collectively and after full and frank discussion. The process was overseen by Council, with members directly elected by Congregation. Divisional boards were consulted; they agreed to the new procedures and Conference of Colleges was also informed by its Legal Panel. Congregation was informed of these actions and given notice a year ago of the intended new procedures and the planned review.

The review will lead to a consultation on the future of the policy, when it will be for Congregation to take a political view on the advantages and disadvantages of the EJRA.

Throughout, Council has acted properly and with all due care in responding to the decision of the internal appeal court.

Turning to the proposal for legal disclosure: as I have said, the judge's analysis of our retirement policy does not determine its legality. If proper use is to be made of her views, they need to be examined with the help of specialist legal advice and applied to the context of the latest staffing data and information from other universities. This is why her analysis, along with other legal advice, will be fully available for use by the EJRA Working Party. They have been asked to conduct a review with a widely drawn remit, and they are properly resourced to reach informed conclusions. Without such thorough attention, it would be easy to jump to unsound conclusions. Council considers that the Working Party is best placed to undertake this work, and it will be properly supported for the purpose.

Council also takes the view that, in the best interests of the University, Council must always be able to obtain privileged legal advice, on the basis that it will remain privileged for the purposes of Council's duties in administering and managing the University. The resolution, however, requires

Council to waive legal privilege by disclosing its legal advice. This would not only set aside a principle of proper governance, in this instance it would involve disclosing advice to individuals who are deeply personally conflicted through their interest in their own retirement cases, especially where those cases currently involve dispute with the University. Legal disclosure in these circumstances would be irresponsible and this is patently a highly improper request. To seek personal advantage while claiming the sovereignty of Congregation is simply an abuse of process which Congregation ought to reject out of hand. It is extraordinary that such a request should be part of a resolution purporting to arise from concerns about proper governance.

To disclose the legal advice on the EJRA will be to accede to an improper request and it would be detrimental to the governance of the University. I therefore urge you to vote against the resolution.

The Vice-Chancellor: Thank you, Dr Goss.

The debate on the resolution is now open to the house. Please could speakers come forward and speak into the microphone, first giving their name or college or department. The first speaker I have on the list is Professor Paul Ewart.

Professor Ewart: Paul Ewart, Department of Physics.

Vice-Chancellor, Proctors, Assessor and colleagues, this motion is about good governance - or the lack of it. It concerns the particular EJRA that the administration introduced and continues to operate in spite of its being ruled unlawful by the court of appeal. Consider if we in our departments ran an appointment process that was unlawful - Council and administration would rightly insist that that process be immediately suspended. This motion is based on the same principle. We cannot have governance with one law for the administration and one law for us in Congregation.

Council says this EJRA policy is legally defensible. But *every justification for THIS EJRA was rejected by the court*. Let me say that again: *every justification for THIS EJRA was rejected by the court*. So don't be fooled that presenting a defence legally means that it is a 'legal' operation, still less does it mean that it's moral. After all, a defence can even be presented on the grounds of insanity. And come to think of it, there are some signs of 'irrationality' in the Council's defence. Consider their second response.

They say - and make a big meal of this - that in response to the Appeal Court's judgment, changes were made - in particular, and only in fact, to the extension conditions, those that are required by law. Remember, the court

ruled that the original extension procedure is so difficult, so unfair, that denial of extension would be 'an inevitably unfair dismissal'. What did the administration do? They made it **more difficult and more unfair** by requiring us now to bring in all our salary and overhead costs. Now, that is difficult enough for a scientist; it's next to impossible for those in the humanities. So they have introduced an extra unfairness. Doing the opposite of what the court intends is surely not rational. But it gets worse. The new rules will actually prevent you from applying for further grants. This defiance of the court's clear intention is arguably contempt and it is certainly bad governance.

Next they say 'suspension... will create significant practical difficulties'. Now, they have had over 1½ years to manage any such difficulties, but they have done nothing. At worst, there might be a few overlaps of new appointments with a non-retiree, but none of these temporary difficulties are insurmountable. In the 1990s, some of us will remember that there was a complete freezing of all new posts. We got through that - these things can be managed. But here is the important point: **it is simply bad governance to fix practical problems by unlawful means.**

Then they say 'the policy should remain... to support the aims of the EJRA'. Now, no-one here is denying that these aims are good - but THIS EJRA has been ruled unlawful as a means of achieving them. It was ruled not proportionate to the aims. There is no balancing of the rights of the employee, and in fact other means exist to achieve these aims, other better means exist to achieve them, so THIS EJRA is not justified - it is tainted and morally bankrupt. Now of course we all welcome the increase in diversity in recent years, but things have been improving now for many years and this is nothing to do with THIS EJRA as implied in the Council's flysheet. This kind of misleading innuendo is unworthy of this university, which ought to exemplify the highest standards of intellectual honesty.

The review panel says they need extra data for five, maybe ten years of mandatory retirements to compare with other universities. So at least five years, five cohorts of productive and long-serving colleagues, are to be sacrificed in a flawed and unlawful experiment. Colleagues, we give the animals in our experiments greater ethical protection than that.

This governance has been characterised by secrecy, obstruction, lack of transparency - five weeks ago I asked for some simple facts, for example how many people have retired since 2012. The head of HR has given no answer, not even an acknowledgement. This is not transparent democratic governance.

In conclusion, this motion aims to restore good governance by suspending the EJRA that is flawed and unlawful. Not a single justification was accepted by the court; it's totally disproportionate; it is totally unbalanced with no rights for the employees respected; the extension conditions are unjust and unfair; and better means of achieving the aims exist. The revisions in 2015 made matters worse. Colleagues and friends, we can do better than this. Let's start with suspension, then we can work together to find an EJRA that's within the law, but we cannot wait while successive cohorts of our colleagues are dismissed unfairly, treated as data fodder in the interests of failed experiments. I have grown to love this place, but for the first time I have started to feel ashamed. We need to restore respect for our institution and confidence in its governance. Colleagues, I commend the motion to you.

The Vice-Chancellor: Dr Erica Charters.

Dr Charters: Erica Charters, Wolfson College, History Faculty.

Vice-Chancellor, Proctors, colleagues and student representatives, I support equality in the workforce; I support diversity at the University of Oxford. I am keen to promote intergenerational fairness; and I strongly wish to maintain opportunities for career progression.

I believe that we have a problem in our universities, in which too many younger scholars, too many recent graduates, struggle to find jobs - that is, to find permanent academic jobs, for which they are trained.

I see this among postgraduates in the humanities, when we discuss job applications and training; I see this when I discuss career plans with students who are interested in doing a DPhil; and I see this in the frustration of brilliant early-career scholars who struggle to find a post, not because they aren't talented or bright, not because they don't work hard, but simply because there are not enough university posts.

And this is precisely why I support the motion to suspend the EJRA; why I support the full disclosure of the findings of the EJRA review and legal advice taken; and why I urge Congregation to support the motion to review the current EJRA.

We are all aware of the struggles that early-career scholars face, but removing a few senior scholars a few years early is not going to solve this.

What we face is a fundamental problem. And this is because postgraduate studies have been growing immensely. Research through the OECD, UNESCO Institute for Statistics and Eurostat points out that the number of doctoral degrees awarded rose by 38% in the first ten years of the 2000s. We know

these numbers first-hand: from coordinating postgraduate training in the history faculty, I met most of the 60 new doctoral students last year who joined the hundreds of other doctoral students already studying here. They are bright, they are impressive, and they are hard working. But removing a handful of senior faculty will not provide these hundreds with university jobs.

As a study in the *Chronicle of Higher Education* shows, and as our own experience of former students demonstrates, many, if not half, of those with history PhDs go into non-academic careers. I suspect numbers are similar across the humanities if not beyond. This is not a failure; and this does not have to be a problem. But we should have the courage to admit to our students and to potential recruits that we are no longer training most of them to become permanent postholders at universities.

In other words, I agree that we have a bottleneck of younger scholars. But we will not solve this by trying to widen the neck another centimetre. Instead, I feel this approach distracts us from tackling the real cause of the bottleneck. I urge Congregation to vote for a broader, more inclusive and more innovative review of the current EJRA, one which takes into account a thorough analysis of approaches to academics careers across the UK and internationally.

A ruling from 2014 appears to state that the current EJRA is discriminatory and unlawful. As I stated at the outset, I support equality in the workforce; I support intergenerational fairness. I strongly oppose discrimination on the basis of physical characteristics, whether this be gender, race or age. I urge Congregation to vote to release the full legal details of the current EJRA so that a review committee can establish this crucial question of discrimination and justification.

If we do not look too closely, it may seem as if we are helping younger scholars by keeping the current EJRA in place. If we do not look too carefully, it may seem as if senior scholars want nothing more than to hold on to their own jobs. But, when examined in detail, the current regulation threatens to undermine the very principles of equality and fairness that all of us value.

The Vice-Chancellor: Professor Donal Bradley.

Professor Bradley: Donal Bradley, Jesus College.

Vice-Chancellor, Proctors, Assessor, members of Congregation, I speak to you as a professorial fellow of Jesus College, Professor in Engineering Science and Physics, Head of the Mathematical, Physical and Life Sciences Division and as a Council member

and trustee; I also speak to you as someone relatively newly arrived in Oxford.

I would first like to add to the comments that we have heard and read concerning the rationale for pausing or indeed abolishing the EJRA on the basis of Dame Janet's decision.

It does not seem to me to be proportionate or indeed advisable to scrap carefully considered policies, adopted after extensive University-wide consultation, on the basis of a decision that is only binding on the University in relation to that case. I have to say, if it were the case that the University were acting illegally, I would expect the proposition to say that the EJRA should be scrapped and not suspended.

One should, however, clearly try to ensure, by reviewing policies - as we are - and adjusting them - as we have and will continue to do - that they evolve in an appropriate way. Suspending the EJRA before seeing the outcome of the review would, in my view, be an overreaction.

Nobel laureate George Stigler's theory of economic regulation posits that - to inelegantly paraphrase - well-organised interest groups will use the regulatory powers of government to shake regulations in a way that is beneficial to them. Put another way, and one that I fear may be relevant to the present discussion, self-interest can all too readily be served by legitimate channels of governance should it go undeclared and unchecked.

Are those, like me, who are driven by a strong and enduring interest in academic research, really best placed to recognise that our time is up, whether it be because our projects are getting stale or outdated or simply because new priorities are emerging?

Without the agreed framework that the EJRA provides, will we all be willing to selflessly pass the baton on to our junior colleagues to ensure that new ideas and new ways of doing research inform and invigorate our departments? Or will we hang on, 'limpet-like', to the space and resources that they need?

Oxford's attractive environment means that there is a relatively low turnover of staff and without the EJRA our opportunities to refresh and renew the academy will be significantly reduced, with the resulting danger that stagnation may occur. Planning to refill statutory chairs and other posts is done over an extended period and even a temporary suspension of the EJRA will severely impact the plans of many departments.

So how do other institutions see things?

In the USA there are many practices - including the performance management

option that was specifically rejected by Congregation in favour of the EJRA.

MIT has a performance development process (combining performance management and employee development), Berkeley has a performance management process and Caltech a simple employment termination process.

At Imperial College London, my former institution, the normal expectation is to retire at the pensionable age and only have the prospect to be brought back for specific activities, on a fixed-term basis, where mutual interest - agreed by the department - exists. That this works is, I suspect, in part simply because the prospect of continuing with full duties at Imperial is far less attractive than in Oxford.

The key point here is that other institutions have alternative means to create vacancies; Oxford currently does not.

As for me, I have every intention, health permitting, of continuing to be research active until my University-defined retirement date hoves in to view, at which point I will happily embrace the different opportunities that retirement brings.

If, like me, you don't want to suspend the EJRA - even on a temporary basis - perhaps because you too recognise its current importance in helping to secure the future dynamism and renewal of our academic endeavour, then please do join me in voting against this resolution.

The Vice-Chancellor: Dr Rebecca Surender.

Dr Surender: Rebecca Surender, Pro-Vice-Chancellor and Advocate for Diversity and fellow of Green Templeton College.

Vice-Chancellor, colleagues, my concern is that, if we suspend the EJRA, we would be setting aside two of its central aims - aims that go to the heart of issues of intergenerational fairness and diversity. Reintroducing the policy following any suspension would be complex and time-consuming - for example giving fair notice to those who are affected - and will mean a delay until at least 2018 before the policy can again generate opportunities for new appointments.

The aim of intergenerational fairness is always complicated, and any debate on retirement unavoidably raises conflicts of interest for just about everybody involved. Without asking each speaker to publicly declare their age, I think all I want to do in this context is to note the obvious (what John Cleese might call the bleeding obvious) - that those at an earlier stage of their careers are likely to have a different personal perspective on this debate than those of us at a more advanced stage chronologically and professionally. Clearly, within our community, there may

be members who do not wish to retire at the retirement age; but equally there are people earlier in their careers who will want a flow of opportunities for permanent or more senior posts for which they can apply - formidable though as we all know competition is bound to be within Oxford.

However, this is not just about conflicts of interest between individuals and cohorts. What is at stake here also relates to the second of the EJRA's central aims - promoting equality and diversity. And here there is clear evidence that, amongst the early career academics who might apply for posts, there are many more women and people from minority backgrounds than amongst our established workforce as a whole, and in particular, for historical reasons, amongst the older staff groups.

Why does this matter - why should we be concerned with equality and diversity at all? There are of course several arguments; I will move through them very quickly. Some, straightforwardly normative or ethical, simply argue it's fair, it's the right thing to do; others concern organisational theory and the mountain of empirical evidence showing that all organisations benefit from a diverse set and dynamic flow of workforce, bringing fresh ideas and impetus. Our own students are putting an equally compelling case for diversity: in particular our black and minority ethnic and women students are increasingly asking us to diversify our workforce and - not unreasonably - looking to more representative role models amongst our staff.

Finally and perhaps most soberingly - a more diverse faculty is increasingly expected by the bodies that regulate and fund us. In the last round of bidding to the National Institute for Health Research, over £120 million of grant monies were secured by Oxford. In 2016, Oxford will bid for £135 million of research funding - we can only do this because we have made recent progress in appointing women to academic and research roles in medical sciences as part of the Athena SWAN equality initiative. There is little doubt that we are moving into an era where research funding will be tied to the ability to demonstrate impact and progress in appointing a more diverse workforce.

All these considerations argue that, if we are to retain our competitive position as a leading international university, we should do all we can to increase diversity amongst our staff and our students.

However, making this a reality - making progress and diversifying the workforce - is a slow and difficult process. By way of just one example, two years ago, when the internal Appeal Court hearing took place, only 27% of our associate professors and 12% of our statutory professors were women. In terms of

rates of new appointment, two years ago we had a record showing that only 29% of newly appointed associate professors were women, and for statutory professors it was worse, only 15%. Our record, though, is improving. Last year, 41% of all new associate professors were women, and, over the last two years, of the 34 new appointments made to statutory chairs, 38% were women. Here, then, is the opportunity to make a difference, provided that we can maintain a steady supply of faculty vacancies.

To conclude, we must put personal interest aside and consider the extent to which we value the aims of intergenerational fairness – and equality and diversity in principle. While it is clear we shall need to consider what is an effective and proportionate way of supporting these aims, reaching a conclusion on such matters must wait for the findings of the review.

As others have already argued – suspension is not required as a result of the decision in the appeal case. BUT to pre-judge the situation and suspend retirements now would undermine the momentum we have begun to develop, slow down our current advances in equality and diversity, and unnecessarily risk damage which would stretch over several years. Colleagues, I therefore urge you all to vote against the resolution.

The Vice-Chancellor: Thank you, Dr Surender. I now call on Professor John Pitcher.

Professor Pitcher: Vice-Chancellor, Proctors, Assessor and members of Congregation, five weeks from now, in a debate more important than the one before Congregation today, the British people will decide whether to leave the European Union or stay in. Brexit tells us that, if we don't leave now, we will be sucked into an Orwellian *1984* superstate; the stayers-in say that, if we opt out, our economy will collapse and our old enemies, the reds, will be at our throats within months. From both sides there are exaggerations, misinformation and the politics of fear and denigration. 'Which option shall we choose?' we ask. 'If only there were some disinterested, sane and experienced mind to guide us.'

In the case of the motion before Congregation today, we in the University are fortunate that we do have such a person as our guide – an external authority of immensely good distinction, probity and good common sense. This is the former High Court judge Dame Janet Smith who, in our own University appeal court, ruled that the policy and procedures of the current EJRA were fatally flawed and unlawful. In its response to the motion today, Council evidently wishes to carry on the argy-bargy about the merits and demerits of the *present* EJRA – as no doubt Brexit or the EU stayers-in will want to if they are losers.

Council maintains, with some inconsistency, that Dame Janet's ruling re Galligan wasn't binding, but that they have implemented a good deal of it anyway – or so they say. However, they have refused to listen to her conclusion that the present EJRA is *wrong in principle*, and they have ignored her systematic rejection, one by one, of the ways in which *this* EJRA is supposed to achieve its aims and objectives. Council are unwilling to listen to a disinterested voice – from a judge they chose – which tells them that the present EJRA is not fit for purpose.

This is why this motion is before Congregation today. It urges that the present EJRA be suspended straightaway, but it does not urge that there be no EJRA at all. Members of Council, some of them, appear to be confused about this. In an email last week, the Head of the Humanities Division wrote that those who have moved this motion, and I am now quoting, 'think' that the EJRA 'has been ruled to be unlawful', and (again quoting) 'should be abandoned'. We do accept it is unlawful – Dame Janet declared it to be so in her long, reasoned judgment – but we do not ask that the EJRA be simply 'abandoned'. This is not true, and it is misleading. (For the record, the Head of Humanities declined our invitation to correct his misleading mistake.)

What is needed is a suspension of the present EJRA procedure, and new ideas from scratch about the Third Age in this university – thinking with a degree of intelligence, imagination and connection with the real world that hasn't been in evidence from the administration so far. Perhaps another type of EJRA can be devised that is proper to the century we are living in – where we will live and work *much* longer and where we will *have* to work longer to pay for ourselves in advanced age. It's hard to believe Council has anything like this in mind for its proposed 2017 review – remember, the present EJRA came from this source, with the same (and dare I say it) outmoded outlook. Today, and in the long view, Council is on the wrong side of this argument. Revealingly, Council admits that suspending the present EJRA would cause them so many *administrative* headaches over the next couple of years. I am sure Congregation will see that this really is a case of rearranging the deckchairs on the Titanic.

Once again, the administration should have listened to our disinterested outsider, Dame Janet Smith, and acted on her counsel. She found unequivocally that the present EJRA process had 'internal flaws' and was 'fundamentally unacceptable', and then she added: 'I have not been shown either evidence or argument why it was reasonably necessary to select an age as low as 67 as opposed to some later age, which would clearly be less severe in its discriminatory

effect. The legitimate aims and objectives of this EJRA do not appear to me to be of such weight and importance as could properly outweigh the legitimate expectations of academic staff to work longer and to have an element of choice as to their retiring age.'

I urge Congregation to heed Dame Janet's wise words and to support this motion.

The Vice-Chancellor: Professor Timothy Endicott.

Professor Endicott: Timothy Endicott, fellow of Balliol College.

Vice-Chancellor, colleagues, I am what we used to call a CUF. There may be members of Congregation who don't even know what that means: what it means is a chronic pain in the neck. And this proposal reminds me that it is still and all a gift. It's a privilege. The University's retirement policy is our way of allocating this scarce gift. In 2011, after two rounds of consultation with us in Congregation, we as a university entrenched my privileged position a little bit further, pulling up the ladder a little, shifting my retirement age from 65 to 67, and giving me the opportunity to make a special case to continue longer.

And that's under review. What should we do? Well, we are the governors. Here I am not only in a position of privilege, but in a position of governance. We, the sovereign parliament of the University, have the opportunity to throw a bit of chaos into the review process and to put very definite political pressure on our colleagues who are serving on the EJRA Working Party and on Council to entrench my privilege further. So I have a very real prospect of gaining a personal advantage from the passage of the resolution.

I wanted to speak to defend one of the purposes of the EJRA and I have lost – some of us have lost – myself a bit already, for who could be committed in their heart to the purposes of an acronym? But I think it's the purpose of the University and of my college, one of their central defining purposes since the 13th century. It has to be one of their central purposes, our central purposes today and in the future. It is renewal. Not just continuance and replication, but change. These are human societies that subsist in time, and will suffer, if I can hold on to my post longer. Whenever my post is available, that will be good for the University and good for Balliol.

I don't mean to exaggerate the good of renewal. My college and the University would be badly off if turnover were too swift. Presume that I am useful. Then, when we raised my retirement age from 65 to 67, there were benefits for the University and for my college. There will be benefits if we keep me longer than that. The very genuine loss to the

University that is involved in putting off the release of my post for two years is impossible to define; perhaps not very great. There are good universities with no retirement age. The tendency, if we approve this resolution, will only be to slow the University's renewal and not to halt it, and slowing the turnover will bring further stability to our affairs and stability is good.

So there are arguments on either side of the retiring age of 67. I don't mind telling you what I think the University should do: keep a retirement age for the release of my post (67 is as good as any, in my view), discard the opportunity that the current policy gives me to apply to hold on to my post beyond the retiring age, and create flexible ways in which people like me - remember, we are presuming that I am useful, and then I will be useful at 68 - in fact, I plan to be better at 68 - create flexible ways in which people like me could be employed by the University after the release of our posts.

But if the effect of decisions we make today and in the future is to extend my post without creating new - a new post, let's face it, no disrespect to myself - the University and Balliol will be the worse for it.

Now that's all quite complicated. We are the governors. For those of us who stand to gain no personal advantage from this resolution, the issues are complex and involve competing goods and others I am sure that I don't even understand. I can't tell you how to balance the good of extending my employment against the good of sustaining the renewal and the changing of this university. All agree that the whole policy needs review. I would still hope that you, who have no personal advantage at stake, will vote against the proposed resolution, because a review is not best advanced through a proposal that the sovereign parliament of the University should throw a brick at the review process.

But for me, I have a personal advantage to gain by voting for a measure of governance that will tend to the entrenchment of my position of privilege. And I think that gives me an entirely sufficient reason to vote against the resolution.

The Vice-Chancellor: Professor Raymond Pierrehumbert.

Professor Pierrehumbert: Raymond Pierrehumbert, Halley Professor of Physics and professorial fellow at Jesus College.

Vice-Chancellor, colleagues, the issues surrounding an EJRA are weighty, engaging the thorny challenge of how to provide opportunities for our younger colleagues while being fair to our older colleagues, but this is not the place for the debate on the merits or otherwise of any particular EJRA.

The time for that will come later (after the advisory panel) hopefully augmented in accord with our motion, makes its report. And thus, I won't address the insulting and largely incorrect arguments concerning the merits for the present EJRA that have been advanced by some of the previous speakers. In fact, I am quite astonished to see the willingness of some of the previous speakers to impugn our motives and just assign them to self-interest, to imply that we are against diversity - none of us are against diversity - and even worse, it's astonishing to hear someone who is in charge of diversity at this university trying to make an argument by calling attention to the physical appearance of some of the people speaking in favour of the motion. That's just reprehensible.

Further, regarding the merits or the lack thereof of the present procedures, I could not possibly improve on the findings given in the ruling by Dame Janet Smith. The present motion is about governance and it's about that which I wish to speak.

Now I came to Oxford just under a year ago to take up a statutory chair in physics; I do not benefit from a one-year suspension myself. And I am already smitten with the values of this enduring institution; I have fallen in love with the place even more than I imagined when I agreed to come here. Those principles, which lay at the heart of our institution, include the statutory powers of the faculty, embodied by the Congregation, to make major decisions concerning the operation of the University. In my decades of experience in various universities in the United States, I have rarely encountered such faith in the wisdom of the faculty. The practicalities of running an institution like this of course require the delegation of many day-to-day decisions to Council, and for the most part Council has discharged their duty with sensitivity and fairness, but when Council oversteps its remit and makes an unwise decision, Congregation must step in and assert its authority. That is the case here.

The clear and cogent ruling by Dame Janet Smith should have served as a wake-up call, whether or not it's legally binding. That's just casuistry. Whether or not it's legally binding, the clear and cogent ruling by Dame Janet Smith should have served as a wake-up call to encourage Council to re-examine the current implementation of the EJRA and the procedures for its review. Instead, the Council chose to respond by circling the wagons in an attempt to make the EJRA impregnable against judicial challenge. They have made the procedures for obtaining an extension of employment beyond the EJRA yet more onerous, heaping hurdle on hurdle to the point where hardly anybody would be able to surmount the new barriers. Worse, the shame of this action was compounded by the

clumsy attempt to cover up what had been done by referring to the changes as minor edits. Here I am especially confused by the speech by Professor Wickham, who referred to these changes as major. So what are they? Are they major changes or are they minor edits, as they were described to us? You can't have it both ways. But they were described as minor edits, but this is as egregious a case of misgovernance as any I have seen in 25 years in US universities, and I have seen some pretty appalling things.

I wish to highlight one especially shocking statement in the revised guidelines for extending employment beyond the EJRA: '... the offer of distinguished scholarship is not a relevant consideration for the purposes of the extension procedure, and it is stressed that testimonials are not relevant.'

How quickly we lose our values in the face of perceived economic expedience. Oxford, a place where scholarship doesn't count! That's not the Oxford I came to. That is not an Oxford any of us should feel proud of. Council has taken a wrong turn. The review process is tainted, and many people will be done irreparable harm if they are terminated under the present, unjustifiable form of the EJRA. The motion currently under debate takes a small step towards steering the process back towards one where the serious issues of how to meet the challenges of the future with justice and opportunity for all can be given due consideration. Thank you.

The Vice-Chancellor: Mr Richard Ovenden.

Mr Ovenden: Richard Ovenden, Bodley and Balliol.

Vice-Chancellor, fellow members of Congregation: I address you, like many other speakers this afternoon, wearing multiple hats. Gloriously behatted, I speak to you as Bodley's Librarian, as a member of Personnel Committee for the last five years and as a current member of the EJRA Working Group. The final hat I wear is that of an employee, one who vividly remembers the morale-sapping experience (in another institution) of being in a junior role, looking up at a group of senior managers who were going nowhere, giving us young thrusters only a very dim and distant prospect of progression. And that was with a retirement age of 65!

But it is not on the more philosophical aspects of the University's approach to the EJRA that I wish to address you this afternoon. I wish to speak, instead, on the nature of the revised procedures that were introduced in 2015; specifically, I wish to emphasise that these changes represent the result of conscientious, thorough and proper consideration of the findings of the internal appeal court.

The decision of that court in 2014 made criticisms of the procedure as it then

stood for the consideration of applications for extension. The procedure had been designed originally with good intentions for the purpose of establishing a sound and consistent policy, while allowing for flexibility and the use of broad judgement in granting extensions, and it formed part – it should be remembered – of the second of two University-wide consultations on introducing an EJRA.

In the light of the decision of the internal appeal court, the procedure has been revised to make it as reliant as possible on matters that can be objectively assessed. Attention was also given to addressing the conditions for making exceptions to an EJRA policy where there is genuinely an exceptional set of circumstances justifying the extension of employment.

To facilitate fair treatment of applicants, the applications are now considered twice a year in a gathered field by a committee with a constant membership of eight persons representing all part of the University. As a result of the changes, the extensions procedure offers a now more rigorous one than was originally the case, but it's consistent with the developing case law in this area.

I think it appropriate at this point to make some remarks on some comments that have been made on this revised procedure.

It is worth, for instance, emphasising that, despite what some have said, the new procedure still allows for the possibility of delaying retirement in carefully defined conditions where, for instance, a time-limited extension is necessary to complete a research project, or to provide the opportunity to make suitable succession arrangements for key posts.

It has also been claimed that, under the new rules, getting funding to cover future costs is an absolute requirement for the approval of an extension and this could disadvantage applications from the humanities. These assertions are mistaken: adequate funding in respect of an extension is cast in the form of an expectation, and the current arrangements leave it open that funding might come in forms other than an external grant – for instance, from the allocation of REF income. The point here is for the University to aim for a situation where delaying one person's retirement for some compelling reason should not, in itself, prevent new recruitment. Although it is true that more funding is available in the sciences, a great deal more is typically needed to support research in the sciences than in the humanities, so there is no reason to suppose that those in science and medicine will necessarily have it easier.

As a final point, I would like to draw the attention of Congregation to the fact that,

regardless of how the extensions process is configured, it has been pointed out that the EJRA has the potential to harm recruitment and retention. That, too, will need to be considered, of course, next year – but we can note today that it is comparative remuneration packages, the duties attached to posts and matters such as Oxford house prices that are perhaps more prominent in this area of the debate.

Ultimately, whether the University wishes to maintain an EJRA will be a political decision by Congregation. The EJRA is bound to be seen as a disadvantage for those who do not want to retire, but it will ultimately be for Congregation to decide whether an EJRA is an approach that is reasonably necessary to support the Aims.

The introduction of the revised extensions procedure is a direct outcome of careful attention. The assertion that governance in respect of implementing the decision has been defective should be rejected, and it should instead be pointed out in the strongest terms that the proposals of the resolution are unnecessary and would themselves be detrimental to the University and its good governance.

I therefore urge Congregation to reject the resolution.

The Vice-Chancellor: Professor Abigail Williams.

Professor Williams: Abigail Williams, Faculty of English and St Peter's College.

Vice-Chancellor, Proctors and Assessor, members of Congregation and representatives of OUSU, I'd like to oppose the resolution in that it would lead to the suspension of the EJRA.

This debate is a complex one, and one in which, as others have identified, there isn't a lot of neutral ground: we are *all* making a decision today which will impact on our *own* career choices and outcomes.

There's been quite a lot of talk of moral taint and the corrupt nature of some of the proposals, but it's clear from the discussion of self-interest today that that's a charge that cuts both ways. If we suspend the EJRA, both career progression for staff and the intellectual culture of the University will be compromised. There will be an interruption of the most crucial decision-making for up to three years.

My contribution to this debate comes not from a senior managerial or personnel perspective, but as someone who has been a CUF in Oxford for 16 years. Other colleagues have spoken about the legal and procedural elements of the proposal. I would like to focus on the dangers of the potential suspension of the EJRA. What we decide today has

profound implications for the principles at the heart of the University, and for the reason most of us are here – the academic excellence of Oxford.

As someone who was lucky enough to get a permanent job relatively early in my career, I've seen generational change occur in my faculty and college, and it's been a positive thing. For someone like me, who loves Oxford and wants to stay here, it's essential that things evolve and that there's the prospect of changing the kind of teaching and research that we offer, and that we are able to do. As a mid-career researcher, it's really clear to me that we have a relatively flat career structure with limited possibility for movement. To suspend the EJRA will destroy what possibility there is. How do you plan your own career when you can't look ahead and know with certainty what will open up? This is a challenge for retention as well as for the encouragement of early-career researchers.

Oxford is great because it's able to draw at undergraduate, graduate and postholder level on outstanding global talent. It's a pool of excellence which is constantly refreshed by new ideas, new money and new people. Do we really want that pool to stagnate?

It won't stagnate because of what's *in it* but because of what's *not*.

Suspending the EJRA with this resolution will create a hiatus in the vital throughflow of appointments and progression. The importance of maintaining the EJRA is *not* about *pushing out* but *letting in*. But there's a causal link between the two.

It's like taking your children to the fair, St Giles' fair, to queue up for the merry-go-round, or the rollercoaster or the dodgems – whichever one of those provides the best analogy for your academic life... So you queue up, your children have their turn, and then you ask them to get off, so that (a) the other kids can have a go, and (b) as a parent you're not totally bankrupted. Your children don't always want to get off. But you are not asking them to do it because they are *unworthy* of the ride or because you *prefer the other children* in the queue.

They just need to do it so that **everyone has a go**.

The difficulty with this analogy is that of course *we are all both children and parents* in the present situation. We don't want to get off the ride, but we also know it's unfair and unreasonable to stay on. I urge you not to accept this resolution.

The Vice-Chancellor: At this point, I would like to propose we take a five-minute break for the stenographer.

Colleagues, could I ask you to resume your seats, please. I would now like to call upon Professor Brian Leftow.

Professor Leftow: Brian Leftow, Oriel, Philosophy and Theology.

Vice-Chancellor, members of Congregation, this motion is not about whether to have an EJRA. I repeat: it's not about whether to have some EJRA. The issue is whether to continue to have this particular EJRA system. If you're tempted to vote on whether to have any EJRA, remind yourself: that's not the issue. So paeans to diversity and intergenerational fairness and all the rest: fine, great, this is not about not having those things, it's not about not having any EJRA. Further, suspension is not abolition; it's not even abolition of the present system. It is just a time-limited brief pause to limit the University's legal liability, legal fees and reputational risk. The motion stops what we are now doing. It says nothing about the whether it starts again or what might take its place. What takes its place might well be a better way to run an EJRA. Here's the opposition's syllogism: we need an EJRA; this is an EJRA; so we need this. We must do something; this is something; so we must do this. Oxford should use better logic. If they say the alternative's worse – I have heard the words 'performance management' – ask yourself why you should think there is only one alternative, then remind yourself that it's irrelevant because you're not voting about whether to have an EJRA. Don't vote on an irrelevance. Vote on the motion.

But if you're going to consider an irrelevance, though, consider this: Wellington Square works for us. They are the employees, we are the employer. Our employees are hiding things from us. When Professor Galligan made his appeal, he wanted the proceedings opened to Congregation. The judge agreed. The administration refused. When the judge ruled, the administration asserted that the judgment was confidential. They even wrote to the President of UCU to demand that she keep the judgment confidential from all her members – then claimed confidentiality even for the letter itself. Claims of confidentiality require certain legal grounds, but none were given. Professor Galligan had waived confidentiality; so did the judge. This was strictly the administration being unwilling to let Congregation know what had been decided. Professor Galligan asked the administration to circulate to members of Congregation at least the main points of the decision. They refused. Professor Galligan has asked at least three times for the legal grounds of the administration's confidentiality claim. He has never even had a reply. Perhaps the reasons the judgment is confidential are themselves confidential. Maybe there is an infinite series here – the reasons for confidentiality are confidential,

the reasons the reasons for confidentiality are confidential are confidential, and so on – and the administration felt that writing all this out would waste paper.

Eventually Professor Galligan wrote a piece for the *Oxford Magazine* providing at least some of the judgment. The administration gave stiff opposition to publication but the *Magazine* printed anyway. They could have sued for breach of confidentiality if they had good grounds for the confidentiality claim; that they did not is at least suggestive. If there's a problem with the judgment, they could seek judicial review to have it overturned. They have not. Instead, they have kept us from knowing what the judge said, and our ignorance has let them act in almost all respects as if she hadn't said it. The judgment in the Galligan case remains secret. Only the administration know its contents. The question can't be ducked: what are they hiding and why are they hiding it?

It's the same with the University's legal advice about the judgment in the EJRA. Despite repeated requests, and the judge's assertion that the Congregation is entitled to see it, it remains secret. The administration says that it shows that their way of running an EJRA is lawful despite the judge's ruling that it is not. But they will let no-one assess their claim. We are supposed to just take it on faith. God may have the right to ask our faith; I don't see why Wellington Square does. Council seems to cite attorney-client privilege. But who is the client? It's us. Congregation is the sovereign in Oxford; it acts through Council. So the lawyers worked for us. Attorney-client privilege thus cannot exclude us. If Congregation is sovereign, to say that we have no right to see the advice is like saying that the Queen has no right to see legal advice her government obtains. Again, we can't duck the question: what are they hiding and why are they hiding it?

Secrecy, secrecy about the reasons for the secrecy, and ignoring the main thrust of the judge's ruling. This is not good governance. It is no way to run a university where the administration serves at the pleasure of the faculty. But it is what you get when an administration tries to defend the indefensible.

The Vice-Chancellor: Professor Paul Madden.

Professor Madden: I am Paul Madden, the Provost of The Queen's College. I currently chair the Conference of Colleges and, as such, I am a member of Council.

Vice-Chancellor, Assessor, Proctors, members of Congregation, I would like to begin by reminding you that at the time of the introduction of the EJRA by the University, the colleges agreed, after substantial independent consideration,

to implement it for their own academics and to act in concert with the University on these matters. A consideration of the issues raised by these resolutions at the college level is instructive, because they parallel the governance challenge to the wider University, but are brought into sharper focus because of the smaller size of the bodies concerned. In colleges it's very clear that the fellows are the governing authority, and as governing bodies have come to recognise their trustee responsibilities in recent times, they have evolved practices to manage the potential for conflict in decision-making between an individual member and the interests of the college as a whole.

At the microscale of the college, it can clearly be seen that managing the retirement of each individual member by the governing body of which he/she has been a part is impossible without an underlying principle that retirement at certain age is expected in all except exceptional circumstances. Without such an expectation, it would require superhuman focus to set aside personal considerations which have grown up over the years and consider only the best interests of the college ad hoc on each occasion.

But the governance issue highlighted by these considerations is a microcosm of that of the University itself. We are here celebrating the position of Congregation as the sovereign body and its role in challenging the conduct of its executive in implementing decisions taken in Congregation. This almost unique level of democracy amongst universities places the relationship between Congregation and its academic members on a similar par to that between a governing body and a college's fellow. It places a special responsibility for objectivity on the individual members of Congregation when dealing with the long-term interests of the University. Drawing parallels with the retirement processes in other universities with wholly different governance structures is inappropriate.

The executive has been managing a process which was decided upon by Congregation and the colleges for these very good reasons. It has made changes to the processes for deciding on exceptional cases in the light of experience and the passage of time. It should be allowed to carry through with this process until completion of the review period. Handling the potential conflicts which could arise from the temporary suspension of the process could be incredibly divisive and, for the reasons outlined by other speakers, I would also fear for the possibility of implementing an EJRA in the longer term were such a suspension implemented. In saying all this, as a 67-year-old, my basic precept is that refreshment of extensive purpose through continued recruitment and turnover is extremely important for an

institution. One of my predecessors ceased to be provost after 47 years, when he died in post at the age of 97. The last 20 years are not remembered as the most dynamic in the college's history. At that point, the fellows of Queen's, not normally regarded as in the vanguard of change, decided on the introduction of a retirement age and a formal process for the retirement of a provost. I wish to recommend voting against this resolution.

The Vice-Chancellor: Professor Sir John Ball.

Professor Sir John Ball: John Ball, The Queen's College and the Mathematical Institute.

Before making my planned remarks, I would like to comment on the argument by Professors Wickham and Goss and some others that the signatories of this motion should be ignored because they are acting out of self-interest. Apart from the inaccuracy of this statement, I presume that Professors Wickham and Goss therefore must be of the opinion that at the time of the suffragettes only men should have been allowed to campaign for votes for women because women had a self-interest in being able to vote.

I have been in Oxford for nearly 20 years, but it was only in the last few months that I heard about the EJRA, an ignorance shared by many colleagues, and that I learnt that Oxford had a seriously constituted appeal court.

I am a signatory of the motion, not because I have strong views about the merits of an EJRA or what the best way for Oxford to handle retirement is, because I don't have strong views. No, I am a signatory because I am shocked at how the University has handled the Denis Galligan appeal and its consequences. First it paid an unknown but clearly large amount of our money on legal fees, probably enough to educate a number of undergraduates, so as to mount an all-out attack on Professor Galligan's case. On being comprehensively defeated, it failed to challenge the judgment in the High Court – presumably knowing it would lose – and instead paid further sums in legal fees (no doubt to the same lawyers who had served the University so well during the appeal) to construct a modified scheme which is manifestly unfair and discriminatory. Just to make sure that no-one could easily challenge the modified scheme, it did everything in its power to prevent Dame Janet's judgment becoming known, including systematically rejecting Freedom of Information and other requests for it, using reasoning worthy of Kafka. If a strong message that this behaviour is unacceptable in our university is not sent to those responsible, then they will be encouraged to do similar things again and again. For this reason alone, it is vital that the motion is carried.

But there's a less unsavoury and much more positive reason for passing the motion, and that is to initiate a truly open and long overdue discussion on the right way for Oxford handle retirement. The University maintains that the EJRA was approved by Congregation, and technically they're right. The regulations appeared in the *Gazette* and were unopposed. That the regulations were not questioned, so that a proper debate didn't take place, is as much my fault as anyone else's. However, the highlight of my week is not the day when the *Gazette* lands in my mailbox, affording me the opportunity of examining the latest exciting changes to University regulations! The fact is that, for whatever reason, the consultation process did not provoke a genuine University-wide discussion on these very important matters, which affect everyone sooner or later, and on which there are different and sincerely held views.

I do not at all question the quality, integrity or professionalism of any of the members of the Working Party tasked with reviewing the EJRA. But it remains the case that this Working Party was effectively chosen by the Personnel Committee, which is largely responsible for the deeply problematic situation we find ourselves in, and three members of the Working Party are members of the Personnel Committee. In addition, the Working Party's membership is dominated by those with senior administrative jobs, thus not adequately representing the wider interests of Congregation. A notable omission is the absence of anyone from outside Oxford, who could bring valuable experience of other approaches to retirement issues. The motion's proposal, which Council has pleasingly accepted, to complement the expertise of the existing Working Party by adding at least five members answerable to Congregation, can help initiate the wider debate that is so clearly needed. I hope that, whatever the outcome of the motion, the Working Party will listen carefully to what is said today and make it a priority to involve all who work at Oxford in the wider dialogue that is essential if the difficult questions concerning handling retirement are to be accepted by all.

I urge you to vote for the motion.

The Vice-Chancellor: Professor Irene Tracey.

Professor Tracey: Irene Tracey, Associate Head of Medical Sciences Division and responsible for personnel; Head-elect of the Nuffield Department of Clinical Neurosciences. I am a member of the University Personnel Committee and I am chair of the EJRA Review Panel.

Vice-Chancellor, Proctors, officers, members of Congregation, I shall detail here what we can expect from the review, the outcome of which should not be pre-empted. Firstly,

the process will be thorough and detailed. The membership of the committee is independent of those who introduced the EJRA: that is, none of those on the review group were on Personnel Committee at the time of its inception and introduction.

There is broad representation on the group. All participants are members of Congregation and represent the four academic divisions, Academic Services and University Collections, UAS, Council, colleges, as well as an advocate for diversity. The breadth of our remit includes discussion regarding the reasons for and against maintaining an EJRA, the appropriateness of the age limit and so forth.

Regarding the evidence, we will consider the effectiveness of the EJRA in meeting the aims as set out when the EJRA was established and as clarified in 2015. That analysis is complex and the evidence is still being collated. Full information on the first five years of the policy will only be available to the Working Party in November 2016. The working group has met twice already. In its first meeting, it worked to understand the context of the policy and the legal position. In its second meeting, it focused on giving direction to the officers about future data collection, both in terms of external research concerning the approach to retirement in other higher education institutions, here and abroad, and internal data-gathering relating to the staff populations subject to the policy, age profile and diversity in particular, and to the staff who have applied or chosen not to apply through the exceptions procedure. Key stakeholder groups were identified whose opinion should be canvassed directly by the group.

Regarding the experience of managing without retirement elsewhere, this is an area of conflicting claims. It will be important to bear in mind that some universities have much larger endowments than ours and so are better placed to maintain the flow of new appointments against any tendency of people to remain longer in post. If the date for review reporting were to be the end of Hilary term 2017, it could take in a full year's experience of the effect of the revised extensions procedure. That has always been Council's intention. I refer members to the proposed resolution and note that, if earlier reporting is adopted, the review will be less informed. Already we have significantly more information on the effects of the EJRA than was available at the time of the internal appeal court hearing. For the first two years of the policy there was a transitional period as the retirement age had been raised by two years from 65 to 67. Now we should consider five years' data, including the first year of use of the new extensions procedure.

If the EJRA is to continue, revisiting the most suitable age would be appropriate. Any change to the age of the EJRA must be carefully considered, and that is part of the business of the review. Simply choosing an age already in use in some other employment context may not be justified. The review should be in a position to give this detailed consideration, and that is essential if any change is to be made that is legally defensible.

The review, then, will be informed by internal and external data and by the analysis given by the judge in the determination of the appeal and by specialist legal advice. We should await its findings. The review will need to set out its reasonings and there should and will then be a full opportunity for informed consultation across the University. The proposal in the resolution to suspend the EJRA would pre-judge the outcome of the review, and I therefore urge you to reject the resolution. Thank you.

The Vice-Chancellor: Professor Stephen Payne.

Professor Payne: Stephen Payne, fellow of Keble, Faculty of Engineering Science.

Vice-Chancellor, Proctors, members of Congregation and colleagues: in the House of Commons, there are a series of conventions governing maiden speeches. As this is my first time speaking at Congregation, I have read these conventions. According to the House of Commons library, 'a maiden speech is usually uncontroversial, [and] fairly brief': I shall be delighted to stick to the second of these, though I fear that, on this topic today, I shall struggle to stick to the first. I shall, however, try my best.

I would just like to make two points, or rather one point and one plea.

Firstly, my point. The subject of the EJRA is one that inflames academic passions in a way that I have seen few other topics that are not building-related do in the last ten years. I cannot imagine that the Keble governing body is the only one to have very lively discussion on the topic. Passionate views are held on both sides; and, like another speaker, this all reminds me somewhat of another topic being discussed more nationally and equally passionately at the moment.

Returning to the EJRA, I have found myself torn by arguments on both sides. I can see the need for a means of refreshing the academic community, after all many of our younger friends and colleagues struggle to find permanent academic position; yet I do worry about the inherent discrimination in the EJRA on the grounds of age.

However, on the exact topic at hand this afternoon, it is precisely the passionate nature of the debate and the strongly held and well-intentioned arguments on both sides

that give me pause for thought. At the risk of sitting on the fence, I do think that the review committee should be allowed to proceed with its work at a proper pace and without the substantive disruption that would be caused were this resolution to be carried.

We must get this right and we must be seen to be doing this properly.

There is a process under way and I think it should be allowed to continue to its proper conclusion, whatever that might be. I am concerned that a sudden and immediate suspension of a very important policy, when a rigorous and properly constituted process has yet to come to a final conclusion, would introduce a great deal of uncertainty for all concerned. Were this resolution to be carried, we could find ourselves in the highly undesirable position of suspending a policy only to reintroduce it a short while later.

I will therefore be voting against the resolution. I would urge colleagues, in the words of the Visitor of Oriel and Christ Church, 'to think very carefully about the future' before voting. Although, needless to say, I suspect that this particular individual, still working in her 91st year, would have very definite views on this particular topic.

Turning now to my plea, and this again ties in somewhat with the wider national debate underway at the moment, and it's to do with facts. If these are troublingly difficult to find in the context of our European debate, they appear to be equally elusive in the context of the EJRA. The most powerful argument in my opinion for any such policy is that it promotes intergenerational fairness by refreshing the academic population and thus promoting equality and diversity.

But what I think are lacking are conclusive **data** on this. For example, the flysheet circulated by members of Council offers this tempting hint that 'it is worth noting that recent recruits are more diverse than the existing workforce.' Excellent: but where are the supporting data? Data that show that the EJRA does indeed directly promote these desirable outcomes would, I think, prove an extremely powerful and persuasive argument to many colleagues. Could I thus urge the review committee please to provide as much **quantitative** evidence as possible in support of their conclusions.

The outcome that we reach has to be justified if it is to be accepted. After all, as a prominent New York billionaire (and no, I don't mean that one) is well known for saying, 'In God we trust. Everyone else bring data.' Thank you.

The Vice-Chancellor: Professor Andrew Wilson.

Professor Wilson: Andrew Wilson, fellow of All Souls, Head of the School of Archaeology.

Vice-Chancellor, Proctors and Assessor, members of Congregation and OUSU representatives, the motion, and the flysheet, make much of the notion of good governance. But good governance involves succession planning. Good governance involves fairness of opportunity and diversity in the workforce. Good governance involves rejecting conflicts of interest. Good governance does **not** involve the creation of a gerontocracy who cling on to posts and power, indefinitely.

The EJRA is necessary for a variety of reasons, including but not limited to staff retention and workforce planning purposes. The test case is Seldon, brought by a partner in a law firm who had to retire at 65 and didn't want to; there is some peculiarity to law firms there, but the basic principles would seem to apply here. In that case a retirement age was held to be a proportionate means of achieving the legitimate aims of retention and workforce planning within the meaning of the age regulations. The Seldon case has the force of case law; the University's appeal court ruling does not. And on a moral, rather than a legal, view, how is a retirement age discriminatory when it applies to *everyone* reaching that age? And we all signed up to a retirement age when we accepted our current positions.

A retirement age is necessary for planning purposes, so that we can predict when posts are going to become vacant, and recruit in advance of that - this is elementary succession planning. Consider what would happen without it: a basic actuarial model predicts progressively increasing numbers of deaths in service, and of sudden, unplanned retirements owing to ill-health, for each year beyond 67. That's a sad but inescapable fact of human existence. By contrast, a retirement age allows the institution to predict when posts will become vacant for refilling, to advertise and recruit in good time to allow a seamless transition. It would be utterly irresponsible to do otherwise. The fact is so basic and elementary that I am amazed we are having to discuss it at all.

A retirement age is also necessary for retention of younger staff, who can be assured there is a possibility for upward progression within the institution. They know that they will have to compete for posts when they do become vacant; but the prospect of possible career progression within the institution is one of the things that keeps people here. Without it, they will leave as posts become available elsewhere. And this happens at all levels - not just competition for professorial chairs, but associate professorships, college tutorial fellowships, research positions, etc. If we block these up by abolishing or suspending a retirement age, and thus slowing down turnover, we do a massive disservice to our younger staff.

This is about intergenerational fairness, giving younger colleagues a prospect of obtaining what are, at Oxford, some of the most important and influential posts in their subject - and in some cases, this may be a relatively small subject, with a very limited number of posts worldwide.

But it is also about refreshing the pool of talent and the research and teaching culture. Without a retirement age, academic sclerosis will set in - this is not because people over 67 don't do good, useful and interesting research. They do, and of course Oxford has mechanisms to allow working beyond the EJRA in a number of well-defined circumstances which involve freeing up the substantive post for refilling. But when the pool of talent is not sufficiently refreshed with the oxygen of new recruits, it becomes stagnant; one sees this all too often in US universities where there's no retiring age. In my own subject, classical and Roman archaeology, the US punches well below its weight, where departments with staff who just will not retire have slowed turnover and perpetuated old-fashioned approaches - to excavation, to archaeological analysis and to art history - which they learned in the 1970s. Exciting work is happening not there but in the UK and continental Europe. Oxford benefits from that as large numbers of students from the US apply here for graduate study in classical archeology. If we suspended the EJRA, we would lose momentum in innovation, and not simply in my own subject.

And, as I said before, good governance also involves rejecting conflict of interest. Over 61% of the 127 signatories to the motion are aged 50 or over; and at least 30% are 60 or older. Despite the specious dressing-up in language about governance, this is a self-serving motion proposed by a group the majority of whom themselves are not too far off retirement. The degree of conflict of interest here is breathtaking, akin perhaps to MPs voting on their own pay. Perhaps the only members of Congregation who should be able to vote in this debate are those on fixed-term posts.

It would be an institutional disaster for this university, and for its constituent colleges, if the EJRA were suspended. For reasons therefore of succession planning, of intergenerational fairness, but above all for reasons of good governance, I urge you to reject this motion.

The Vice-Chancellor: Mr Peter Smith.

Mr Smith: Peter Smith, senior programmer, National Perinatal Epidemiology Unit.

Vice-Chancellor, colleagues, what I was going to say - I am very tempted to reply immediately to what the last speaker has just said. I am 69; I have been in post just over

three years; I am on a fixed-term contract. Go figure.

I would like to share my experience of the current EJRA. I have been through it twice; I am about to go through it for the third time. I have been through both versions, both dialects, and it has been a very negative experience. But, ironically, I am only able to address Congregation today because of the EJRA.

Let me explain. I am not an academic. I have worked in a commercial environment as an IT specialist for most of my working life, and I joined the University as a programmer working with the National Perinatal Epidemiology Unit in June 2012 to work on a very specific, high-profile project that is government funded. Coincidentally, we launched our newest report in London this morning and were commended by the Undersecretary of State for Health about the valuable work we do and about how it influences and changes government policy.

Of course, at 69, I am able to do this. I have only been in post three years. Sorry, I feel very angry about what I have just heard.

My part of the project is to produce, maintain and further develop a secure online register of all UK stillbirths, infant deaths and maternal deaths with the aim of gathering data to help reduce this awful burden. I have a firm belief in the value of the project and of my contribution. I was caught up in the EJRA when I was in my second year. The outcome of my first review was a temporary extension while the unit was required to review the grade of the job I was doing and then recruit a replacement for me. The unit was very supportive in wanting me to continue; however, fulfilling the EJRA requirements was lengthy and stressful. I had to write a detailed job description, I had to apply for a regrade, and when my post was advertised, explain to colleagues why my job was being advertised in mid-project. 'Oh, why are you leaving?' was a constant question I was asked.

I did this, all this work, so that the EJRA could replace me. I ended up on a shortlist of one. The unit then had to get explicit agreement that they could appoint me to my own post without an interview. This was humiliating, it was demoralising, it was degrading, it was impersonal, and it was a process that was full of uncertainty. However, as a result of the EJRA-enforced regrade, I became a member of Congregation.

Now, the project and the post may continue beyond March of next year, which is when the current funding and my current contract ends, but the decision will not be known until October. I believe firmly and passionately that I can continue to do good work on this project. So I have now had to enter speculatively and for the third time into the EJRA process.

Based on the experience of a senior academic colleague, I do not expect this process to be fair or proportionate, or the impact of my leaving to be considered.

Enforcing a one-size-fits-all policy with no exceptions is paramount in the existing EJRA, and that's the new existing EJRA. The forms produced as part of the revised process are largely inappropriate for a jobbing programmer. They assume that I am an academic, a scientist, applying for example to supervise graduate students or to carry out grant-funded research. Try filling that in as a programmer; it makes no sense whatsoever. There is no flexibility in the forms, and especially for academic-related. It's interesting that I am the only member of academic-related staff who is here, yet there are a large number of us who are actually very affected by this.

I offered to work on a grade 5, which is currently not subject to the EJRA; however, I am told this would not be allowed. I am happy to be subject to performance reviews, to leave as soon as it was felt I was no longer up to the job, but apparently this is not possible because it would be discriminatory. Where, I ask, is the dignity of this top-down approach? Is it proportional and reasonable, or am I just collateral damage, subject to friendly fire? The combined intellect of Wellington Square has produced a very strangely shaped sledgehammer with bits added on as required, and imagine how the nut feels. I am saddened that a world-renowned university could not produce a significantly better and legal solution than the current EJRA. The Undersecretary of State believes in our work. It's appalling.

Anyway, finally, please remember that this motion is not to abandon some form of the EJRA, but to seek to suspend this current version of the EJRA and try and sort out what happens to people like me. Thank you.

The Vice-Chancellor: Dr Nandini Gooptu.

Dr Gooptu: Nandini Gooptu, Head of Department of International Development and fellow of St Antony's.

Vice-Chancellor, colleagues and students, it's late and I'll try to be brief, and I really only want to make one point, a point that I have perceived very accurately from the experience of running a department in the coalface.

University governance is of utmost importance to us and it is right that we have been debating this today. However, approaching the problem of EJRA, this or any, through the lens of governance alone seriously poses the danger of losing sight of what is really at stake. As university teachers, training new generations of scholars is at the heart of what we do. It is axiomatic that

generational renewal in academia is, for us all, an existential truth. Intergenerational fairness is our vocational commitment and an incontestable collective aim. The controversial question is whether EJRA is a necessary instrument to achieve that aim. This is a strategic and practical issue that has to be addressed in the specific context of Oxford's compelling resource considerations, of the kind that we face everyday.

The University sets an annual budget target in order to ensure the financial health of the institution as a whole and to pursue our strategic goals so that we can maintain Oxford's global standing. In our collective interest, each department and faculty must strive to meet the overall budget target, by reducing deficit, or balancing the books, or generating a surplus, as we do. We have negligible financial manoeuvrability in our departments and faculties. For the common good, we need to increase our income and tightly control our costs, even in a hugely surplus department. This prevents us from taking on new long-term fixed financial commitments, such as employment costs, unless we reduce some of those costs. Quite simply then, without the regular departure or retirement of permanent staff, we cannot employ any new permanent staff. For instance, in a department like mine with 20 permanent staff, without a system of retirement we would still have with us 8 senior colleagues, senior permanent staff, today, without a system of retirement, who would not have retired in the past decade, and the earliest retirement may not have come up for another five or more years. Without EJRA, there would be a very substantial, even catastrophic, drop in the rate of new permanent recruitment in my department. Per force then, we would predominantly recruit contingent, fixed-term staff, researchers or departmental lecturers, whose cost of employment is either covered by external grants, or is much lower than that of permanent staff and is non-recurrent. Those of you who know about infrastructure costs, space charges for individual employees, will also know that the cost is not just employment but a range of ancillary other costs. At the same time, in our colleges, without recruitment, there will be little scope to admit new fellows due to similar resource implications.

The upshot will be the proliferation of temporary staff, usually early-career researchers, employed on academic-related contracts on low pay, to shoulder large research and teaching burdens for a fixed period before many of them are thrown back into the job market. The continued presence of senior staff would also hinder the capacity building of such junior recruits in academic leadership and research management roles, with an adverse impact on their

future employability. Given our current compulsions, we have already started going down this route that is frankly exploitative of the younger generation, at a time when the external environment is getting even harsher. But so far this trend is nothing compared to the direction in which we will have to travel if EJRA is compromised in any way. It has also to be borne in mind that this younger generation already has much attenuated pension benefits due to recent changes. We will create a two-tiered class structure in Oxford of the US variety, with a privileged professoriate (and associate professoriate) and an exploited underclass of adjunct, temporary staff.

Of course, we immensely value the contribution of our senior-most colleagues and would like them to stay on. Indeed, many of us coming up to EJRA retirement in the next 15 years or so would dearly love to stay on ourselves. In an ideal world, we would not wish for a scenario in which we would have to choose between the old and the young, or, worse, between ourselves and the next generation, some of whom are our own students. But, given the resource issues that we confront at Oxford, there is only one conclusion I believe we can draw. We must gladly embrace EJRA, this or any other, as the only means to achieve intergenerational fairness at Oxford. We cannot afford to be overwhelmed by University governance issues, very important though they are, or turn this into a tussle between 'us', the Congregation, and them, the Council or Welly Square. I should therefore like to urge you to vote against the resolution to ensure that the EJRA process is not stalled or derailed in any way. Thank you.

The Vice-Chancellor: Dr Daniel Isaacson.

Dr Isaacson: Daniel Isaacson, Philosophy and Wolfson College.

Vice-Chancellor, Proctors, colleagues, student representatives, I want to address the issue of intergenerational fairness, which Council cites in favour of its present policy of EJRA. I do not question the need for an EJRA, and it has been stressed time and again that voting for this resolution is not a vote to abolish EJRA, but we are in the situation in which the establishment of the EJRA was the wrong one and we are facing the consequences of that now. And, in my view, it is better to suspend it and look at the situation we are in than to carry on reviewing it while it is still in operation.

The situation we are in is, in terms of intergenerational fairness, that young people starting in academic positions are of course primarily concerned to have an academic position, but there is another feature of their situation which at that stage they are not concerned with but the University, in

its responsibility to these people over their whole lives, has a responsibility for, which is that they should have an acceptable retirement; that they should find themselves with a sufficient pension in which to live out their after-university years. And the situation which we find ourselves in is that USS has already reduced benefits to the people just below us. I should say I am a post-EJRA member of Congregation; I retired two years ago at the age of 67, continued various activities in an ad hoc way, so I am not a beneficiary of this proposal, but I think it's very important for the good running of the University that it should be suspended and that we should be able to look at - the University should be able to look at - the whole idea of what the right EJRA is, and the one we've got is wrong.

The situation when it was established was that it was really the status quo. It was presented as an increase in two years, but in fact for many of us, of which I am one, 67 was always my retirement age because I was appointed at a time when the retirement age for everybody was 67. There was a vote in Congregation in sometime like 1979 in which I spoke against the reduction of the retirement age from 67 to 65 on the grounds then that this was against the trend that was already underway of later retirement ages. And the fact is, which has not been addressed in any of the discussion, the demography of the present world dictates a different EJRA. The one that was established when this was put in should have been 70, not 67; and the fact that such poor judgement was used I think is grounds for taking the position that we've got to start over and put this thing - we have to suspend it while it can be thought about.

I haven't seen Dame Janet Smith's decision, of course, but one speaker referred to the fact, or quoted her, as saying that the EJRA of 70 would have been fairer. And I think that it's very important that we think about that feature so that the young people who are starting out can expect to get a pension that they can live on, which requires the old people, who are living longer and drawing their pensions for more years, to pay into the system for longer by working longer.

And it has been pointed out that EJRA extension has a very small effect on diversity and on the opportunities for young people. There are so many ways in which people don't get appointed to positions and, in particular, senior posts in Oxford do not go to young people in Oxford. And in fact, it's a feature of Oxford that it shouldn't appoint - it's international, and it should not be appointing its own young people, as a rule: it should be appointing people who are the best in the world. So that we are not in a situation where, by having EJRA as it presently exists we have

achieved the goals that it was said to be set up for. So I strongly support the resolution that we should suspend it and reconsider the situation and establish the right EJRA.

The Vice-Chancellor: Dr Vili Lehdonvirta.

Dr Lehdonvirta: Vili Lehdonvirta, Oxford Internet Institute.

Vice-Chancellor, Proctors and Assessor, colleagues, student representatives, I am here to speak against the resolution and in particular the proposed suspension of the EJRA.

First I should note that I am just a mid-level academic. I have no connection to the Council. But I feel that the Council is acting in my interest in this matter. So when you speak unkindly of the Council's conduct, you speak unkindly not only of some nefarious bureaucrats, but also of me.

Now, Professor Edwards in proposing the suspension of the EJRA argued that it is about good governance, not at all about the substance of the matter. Now, others have commented on whether taking such drastic action in the midst of a review into the very matter constitutes good governance. I would rather take up the fact that Professor Edwards and other speakers, nevertheless, did not spare words in discussing the substance of the matter, describing EJRA amongst other things as manifestly unfair. So, let's face it, the ultimate issue is whether the University ought to have a compulsory retirement age or not.

According to the philosopher of science Thomas Kuhn, scientific paradigms only really change when the old guard who promoted them retires. We are asked to pass this resolution in order to fulfil the duty that the University owes as an employer to its most senior employees. But I am concerned about the duty that the University owes to society. Are we, as others have noted, content to slow down the cycle of scholarship by 5, 10, 20 years?

Also as noted, the great majority of the University's most senior employees are white men, whereas more recent cohorts better reflect the diversity of our society. Are we content to hold back the progress of equality by 5, 10, 20 years?

And then, finally, a slower cycle mathematically implies a lower throughput capacity – not just longer waits, not just delays, but fewer young people in total who ever get to advance on the academic ladder. Are we content to allow that?

I am not content to go down that path, and I ask you to wait with me for the results of the review, and meanwhile to vote against the resolution.

The Vice-Chancellor: Professor Teresa Morgan.

Professor Morgan: Teresa Morgan, Faculty of Classics and Oriel College, elected member of Council.

Vice-Chancellor and colleagues, the resolution we are about to vote on consists of four proposals. Two of them would cause both serious injustice and major problems of governance and finance across the University.

The resolution asks that all legal advice pertaining to the EJRA be disclosed to Congregation. The obvious virtue of confidential legal advice, in any context, is that it can explore all possible scenarios, all options and all consequences, however unlikely or unwelcome. It can think the wild and unthinkable, to help the advisee frame what is thinkable and right. And that enables any individual or institution to do its most rigorous and effective thinking. If our confidential, legally privileged advice – on the EJRA or anything else – were liable to be disclosed at any time, no lawyer could be frank with us, and our thinking would be proportionately impoverished. It is the problem of non-confidential references on a vastly bigger and more damaging scale.

Leave aside that if the University discloses confidential advice to Congregation it is inevitably disclosing it to the blogosphere and the *Daily Mail* (which doesn't usually work well for us...) – leave aside that disclosing to Congregation is also disclosing to individuals who may be in dispute with the University, which takes away from the University a right to confidential advice, which belongs to every other contractual party in the country – all that aside, do we really, for the sake of an interim suspension of a policy that is already under review, want to sacrifice one of the best tools we have for thinking about all the policies and all the practices that frame every aspect of our work as a university? It seems to me incredibly irresponsible.

We're also asked to suspend the EJRA until the findings of the review committee are published. Back in 2011, as we have heard, after two rounds of consultation with Congregation and the UCU, and in parallel with independent discussions in every college (as Professor Madden reminded us), Congregation agreed to adopt the EJRA and review it after a fixed period of time. And that is happening now, incorporating detailed legal advice on the 2014 decision of the internal appeal court.

Let us let our own review do its work. And in the meantime, the appeal court's decision in the individual case has been enacted in full, and the procedure for extensions revised in the light of it. And despite the objections of some colleagues, that more than fulfils what is required by our own internal appeal

processes, and that is good governance in action.

If we suspend the EJRA, we are not only pre-empting our own review, we are effectively abolishing the policy for now, with consequences that go far beyond the review period. For one thing (as Professor Wickham pointed out), we will be treating those who happen to be about to retire differently from those who have retired or who may have to retire in the future, and that is unfair. For another thing, appointments have already been made to posts from which colleagues are expected to be retiring, so we are liable to find ourselves with two people in some posts for an indefinite period. And that – aside from a degree of administrative comedy which I quite enjoy the thought of actually – but financially it would be catastrophic for some departments (and I say that with a lot of feeling as head of a faculty in deficit).

But beyond even that: I am afraid that, if not the underlying aim of this resolution, it is undoubtedly the effect of it to undermine the EJRA. And that, for all the reasons we have heard, I most profoundly think we should resist, and so I urge you to vote against this resolution.

The Vice-Chancellor: That concludes the list of those who had asked to speak. Professor Edwards, do you wish to reply to the debate?

Professor Edwards: Yes. Vice-Chancellor, colleagues, as one of our colleagues mentioned, for me also this is my first presentation to Congregation, and I have found it of course very stimulating.

What I am saddened about are three things. I am saddened that we have had anecdotal stories about people, in the US, let's say, falling asleep, giving bad lectures. My predecessor here, John Goodenough, gave a lecture two weeks ago at the Argonne National Laboratory aged 91, and I had an email from the head of the laboratory saying, "This is the most exciting presentation I have ever heard." So I thought we wouldn't be going along that track but clearly we have.

The other thing that I find disturbing and actually really irritating is this issue of the conflict of interest and, in particular, the idea of equality and diversity. I have been here 10 years. I have appointed 11 faculty. I have tried my hardest to work through the whole issue of equality and diversity. You know, you're talking to someone who was born in Toxteth, who went to Salford, failed chemistry at Salford, so please don't tell me about diversity. And we've worked really hard, and to hear that the only way to enact diversity is the fact that we would not look very carefully at this motion.

The other thing is that actually I am not that passionate about whether there is an EJRA

or not. It's based on my experience: my experience over the last year, as I pointed out. I had never thought about the EJRA before and I thought: I will have a look at this. Having been through 10 appointments in which there was one appointment or two appointments in which there is a possibility of a legal challenge, I was told instantly by Wellington Square that you are going to have to suppress, you are going to have to stop the way you do it until we review it.

And then of course I come to the situation with our own EJRA, and I sit in front of a panel and I say, 'Why is this operating and not being suspended when we have this injustice that's been highlighted by Dame Janet Smith?' And the response has been, 'We are not lawyers.' And so it's at that point, at the 11th hour, I thought: this cannot be right; I must put a stop to this, we must look at this differently.

If I could just go through one or two of the points. The other thing I suppose that does come out, I have not yet heard an argument - a strong argument - I think as to why the EJRA should not be suspended in the light of the serious injustice that clearly Dame Janet talks about. None of us have said that the EJRA isn't legally defensible in terms of effective intergenerational fairness, etc etc, but the ruling is, in order to justify the EJRA, the University must show its proportionate means for achieving those legitimate aims. And Dame Janet has said this quite clearly - and I am sorry to our colleagues, but it wasn't us who said this, it was Dame Janet - that it's manifestly not at the level that you would require by law.

If I could just say one or two points as well about diversity. During those 10 or 11 appointments, I worked very hard with colleagues to look at the so-called diversity and equality impact analysis of my admittedly small number of appointments - 11 for me was quite a large number for one decade. And I looked at this and I found out through colleagues at the University of York and Sheffield that their diversity equality impact analysis had the largest advancement of any university in the UK. And of course both of those institutions have no EJRA policy.

The other thing that I think it's important to try and take into account is that suspension at this stage we have heard would create significant practical difficulties. We have heard that in 2011 it was discussed by Congregation, etc, but of course there has been a huge step change, there has been a phased transition in 2014, on 1 September 2014, and I think that's why it's appropriate to take stock and think about how we would try and adapt to the judgment of Dame Janet.

Finally, I strongly believe, as Sir John Ball pointed out, I think this is a time really when the Review Panel could be expanded, it could be the EJRA Review and Advisory Panel, and to try and get away from this idea that it's 'us and them'; I am sorry that I stand here as a slightly greying academic. This is triggered - the whole process has been triggered - by my experience over this last year in thinking that this is not just and this is not fair.

So I strongly believe we must implement the judgment of our very own University appeal court and rapidly move to a complete review, both with colleagues within Oxford and outside Oxford. I simply cannot see the issue of - you know, let's not dress this up with talk of practical difficulties; of course there's significant difficulties. The EJRA, as a scheme, has been shown to be not objectively justified as required by the law of this land. I may not be a lawyer, but I know when something is clearly wrong and I would strongly urge you to accept the motion that the judgment of the University appeal court delivered on 1 September be respected. Thank you.

The Vice-Chancellor: Thank you. I now call the vote on the resolution. I ask the Proctors, the Assessor, the Pro-Proctors and the Clerks of the Proctors to move to the voting stations at each of the exits to the theatre. When they have reached their positions, I shall invite members of Congregation to cast their votes. I must remind you that only members of Congregation are entitled to vote. Having completed your voting paper, those seated on the floor in the semi-circle in the Sheldonian should leave via the south exit. Those seated in the lower galleries in the Sheldonian should leave via the east and west exits. Those seated in the upper galleries are asked to wait until they are called - and you are going to be asked to recite this when I have finished - and to leave via the east and west exits once those seated in the lower galleries have exited.

Members of Congregation should place their voting papers in the ballot boxes under the direction of the voting officers. Any members of Congregation wishing to vote who have not received a voting paper may collect them from one of the stewards immediately inside each exit.

When invited, members may return to their seats to await the announcement of the vote, which is expected to take about 20 minutes. I now ask members of Congregation wishing to vote to do so by the exit previously pointed out to them.

Result of the vote

Ladies and gentlemen, could you take your seats, please. On the resolution on good governance of the University in relation to the administration of the EJRA scheme, there voted for: 121 and against: 149.

The resolution is therefore not agreed. That concludes the business before Congregation.