

For the attention of the Commissary

June 06, 2023

Dear Commissary

Please find attached my preliminary response to Professor Anderson's Application to the Commissary of 6 May 2023.

Yours sincerely



Emma Rampton
Registry

University Offices
The Old Schools
Trinity Lane
Cambridge CB2 1TN

Tel: +44 (0)1223 332294

Email: Registry@admin.cam.ac.uk
www.cam.ac.uk

Preliminary Response to Professor Anderson's Application to the Commissary of 6 May 2023

1. Professor Anderson has submitted an application to the Commissary dated 6 May 2023 concerning his employment by the University (the **Application, Tab 1**). The Commissary has referred the Application to the University and originally requested a written response within 28 days of the date of the Commissary's referral (21 May 2023).
2. On behalf of the University, I wrote to the Commissary on 24 May 2023 requesting that he consider directing that it would be in order for the University to make an initial submission on some preliminary points. On 26 May 2023, Professor Anderson in turn wrote to the Commissary contesting that request.
3. The Commissary responded on 1 June, noting the importance of the question of jurisdiction and that in his view a decision on the papers seemed appropriate for the determination of the proposed preliminary issues were. It was acknowledged that, if the Commissary had no jurisdiction in relation to the subject matter of the Application, it would inevitably fail.
4. The Commissary requested the University to clarify:
 - whether it regarded the jurisdiction prohibition to be an absolute one;
 - alternatively, whether the University considered that the Commissary had any residual, discretionary jurisdiction to determine the matter;
 - whether, in this field of law, the University is bound by publicly enacted law relating to employment and dismissal and the decisions of the relevant Tribunal and, if it is and if the Commissary has a residual discretion on jurisdiction, whether the remedy available in the specialist Tribunal should be deployed first.
5. For reasons that will become clear, the University's position is that, in order to address the question of jurisdiction, it is first necessary to clarify the nature of the decision which was made by the University and which forms the basis for the Application.

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6. In summary:

- The University's contention is that Professor Anderson's characterisation of the Council's actions at its meeting on 20 March 2023 as "a decision to fire me" is misconceived, and that those actions did not amount to, and could not have amounted to, a decision to terminate his employment. I set out the University's position in this regard in paragraphs 7 to 13 below. If that position is upheld by the Commissary, then it is submitted that the Application does not get past the starting post (on the ground that the decision on which the Application is founded was never in fact made), without the question of jurisdiction even being engaged.
- If, however, the Commissary were to find that the Council's actions at its meeting on 20 March 2023 did constitute a decision to terminate Professor Anderson's employment, then it is the University's alternate position that the Commissary has no jurisdiction to review such a decision (not even a residual discretion to accept jurisdiction). These issues are discussed in paragraphs 14 to 01.

The nature of the decision taken at the Council Meeting on 20 March 2023

7. The Application opens with – and is fundamentally grounded on – Professor Anderson's contention that "on March 20 2023, the Council [...] decided to terminate my employment on September 30 2023".
8. It is the University's contention that the actions of the Council on 20 March 2023 did not constitute a decision to terminate Professor Anderson's employment. Moreover, they could not have constituted such a decision because such a decision would not have been within the powers of the Council.
9. The University's Employer Justified Retirement Age (**EJRA**) and its related policies have been in place for over a decade. They represent a continuation of the longstanding arrangements for the retirement of University officers which were in place prior to the abolition of the statutory Default Retirement Age in 2011.
10. The EJRA was subject to an academic-led review in 2015-16, which concluded that it should remain substantively intact. It is now the subject of a further review that is expected to conclude in Michaelmas 2023. Pending the outcome of this latest review, the EJRA remains in force within the University, one consequence of which is that Professor Anderson, who by the end of the current academic year will have attained the age of 67, will be required to retire with effect from 30 September 2023. As Professor Anderson contends, the EJRA would have needed to have been suspended in order to avoid this outcome (he describes this as "a moratorium on sackings").

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11. The specific act that Professor Anderson characterises as a decision to terminate his employment on 30 September 2023 was the Council's decision to approve the publication of a Notice in response to remarks made at the Discussion of the Regent House on 24 January 2023. This was the only decision relating to the EJRA that the Council was asked to make (or did make). An extract from the confirmed minutes of the Council meeting, together with the relevant Council Paper, setting out on its front/cover page the specific action requested of Council, and Annex A of that Paper (the draft Response), are enclosed at **Tab 2**. The Discussion remarks to which the Response was given had included a request by Professor Anderson and two other members of the Regent House to suspend the operation of the EJRA pending the outcome of the current review (**Tab 3**). The Council's response to those particular remarks reads as follows:-

The Council believes that it would be premature to do this before the review is complete and the review group has had the opportunity to consult with the wider University community.

12. It is not sustainable to characterise the Council's response to the Discussion remarks as a decision to terminate Professor Anderson's employment, however Professor Anderson would himself choose to view it. It was no more than a decision by the Council to express its belief that a suspension of the EJRA would not be appropriate prior the conclusion of the review¹.

13. In any event, the Council could not itself have decided to suspend the EJRA. A suspension of the EJRA would require the preparation and publication of a report by the Council and the General Board, a Discussion and finally the approval of a Grace of the Regent House amending the Special Ordinance in which the EJRA is set out. It could thus only have been a matter for decision of the Regent House. At most, the Council could have taken steps to initiate a process that might ultimately have led to suspension of the EJRA. It chose not to do that, but that did not amount to a decision to terminate Professor Anderson's employment.

The jurisdiction of the Commissary

14. In the view of the University, a proper analysis of the Council's actions taken on 20 March 2023 must inevitably lead to the rejection of the Application in its entirety on the ground that the alleged decision (to terminate Professor Anderson's employment), which forms the mainstay of the Application, was never in fact made.

¹ As is evident from the Paper, prior to forming its belief, Council had the benefit of legal advice: Annex B to the Paper (which is not included with this submission on the ground that it is not directly relevant and is legally privileged).

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15. However, if the Commissary takes the view that the Council's actions on 20 March 2023 did constitute a decision to terminate Professor Anderson's employment, the University makes the following further points.

16. It is clear from Statute A IX 3(c) and, in particular, Statute A IX 10 (**Tab 4**) that the Commissary does not have power when it comes to considering individual matters relating to employment.

17. Statute A IX 10 confirms that the Commissary's jurisdiction does not extend to the hearing of any appeal or to the determination of "any dispute regulated under the provisions of the Education Reform Act 1988 about a member of the academic staff of the University as defined in the Statutes, which, being a matter regulated under that Act, concerns the member's appointment or employment, or *the termination of that appointment or employment*" (emphasis added).

18. In this regard:-

- The relevant provisions of the Education Reform Act 1988 were repealed and re-enacted, with modifications, by section 46 of the Higher Education Act 2004 (**Tab 5**). It is customary to interpret references to repealed legislation as referring to re-enactments of that legislation; that Statute A IX 10(a) remains in place, particularly given the language of Statute A IX 10(b), indicates that this interpretation is understood and accepted within the University.
- Section 206 extends the earlier provisions such that the following are now excluded from the jurisdiction of a Visitor:
 - a. any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment,
 - b. any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal, or
 - c. any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within paragraph (a) or (b).

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- There are sound policy and human rights reasons for these exclusions which were discussed by Parliament at the time of the 2004 Act and recorded in Hansard (**Tab 6**). In particular, the reason for limiting the jurisdiction of a Visitor is to ensure: (a) uniformity of treatment between different institutions; and (b) that an individual is able to seek redress through a specialist court or tribunal.
- It is clear that the language of Statute A IX 10(a) is intended to mirror the language of the 1988 Act, introducing equivalent limits to the jurisdiction of the Commissary as are applied under legislation to the jurisdiction of a Visitor at other institutions.
- Although the University does not accept that the Council made a decision to terminate Professor Anderson’s employment, plainly the substance of his representation falls within some or all of the categories which are excluded under the 2004 Act.
- Professor Anderson is a member of the academic staff of the University for these purposes.
- Thus, Statute A IX 10(a) applies and has the effect of removing the dispute from the Commissary’s jurisdiction.

19. Statute A IX 3(c) further provides that the Commissary’s powers under Statute A IX do not extend to “*any decision by a University authority concerning the appointment of an individual or individuals to employment in the University, or concerning promotion in such employment*”.

20. Plainly, in the University’s submission, a decision to terminate an individual’s appointment to employment is a matter which concerns that appointment. This is consistent with Statute A IX 10. A contrary interpretation of these provisions would mean that, whenever the employment of any employee of the University ended, that individual would have the right to seek a review of such termination by the Commissary (and would properly need to be informed of that right), leading potentially to a multitude of applications. The University is not aware of such contrary interpretation having ever been applied.

Procedural matters

21. In so far as the Application asserts that the University has contravened the University’s Statutes and Ordinances, Professor Anderson accepts that he should first have sought redress from the Vice-Chancellor under Statute A IX 1 (see paragraph 41 of the Application, **Tab 1**). However, in the course of the prior engagement with the Vice-Chancellor on 14 December 2022, on which Professor

University Offices
The Old Schools
Trinity Lane
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Anderson relies in this regard, Professor Anderson could not have specified the alleged contravention of Statutes and Ordinances occasioned by the Council's decision, because the meeting of the Council on 23 March 2023 had yet not taken place.

Concluding summary

22. For these reasons, the University is clear that:

- On 20 March 2023, the Council did not make a decision to terminate Professor Anderson's employment.
- In the event that the Commissary finds that it did, then there is an absolute prohibition on the Commissary's jurisdiction to determine the matter.
- The absolute prohibition identified above arises precisely because the University is bound by publicly enacted law relating to employment and dismissal and the fact that an individual is able to seek redress in respect of such matters through a specialist court or tribunal.
- Moreover, in so far as the Application asserts that the University has contravened the University's Statutes and Ordinances, the Commissary lacks jurisdiction because Professor Anderson has failed to take the necessary preliminary step of making a representation in writing to the Vice-Chancellor under Statute A IX 1, specifying the relevant contravention of Statutes and Ordinances.

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Before the Commissary of the University of Cambridge

Professor Ross John Anderson

v

The Chancellor, Masters and Scholars of the University of Cambridge

Complaint

On March 20th 2023, the Council of the University of Cambridge decided to terminate my employment on September 30th 2023. This decision was taken contrary to the Statutes and Ordinances of the University as it was taken as ordinary business rather than reserved business contrary to Special Ordinance A. The proposed dismissal is also unfair as first, it breaches the notice provision in the University's retirement policy; and second, it is contrary to employment law as the policy is not a proportionate means of achieving legitimate aims.

Background

1. When the Equalities Act 2010 outlawed traditional mandatory retirement policies, Cambridge adopted an Employer Justified Retirement Age (EJRA) of 67; only Oxford and St Andrews followed. This resulted from an attempt to get the university to accept career-long performance management, by framing the decision as a choice between forced retirement and performance management. That would have undermined academic freedom by enabling administrators to sack academics on academic grounds, so it was rejected, and we were stuck with EJRA.
2. Forced retirement was abandoned in the USA a generation ago and in the rest of the UK following the Equalities Act 2010. The University Superannuation Scheme rules assume that academics will retire at a time of our choosing between 60 and 75; they also allow for flexible retirement whereby someone continues to work part-time and also takes part of their pension.
3. While the harm done to a professor of history by a move from the salary scheme to the pension scheme at 67 may be simply financial – they can still use the library and write books – the damage in science, technology and medicine may be much more severe, as research typically involves teamwork, which means raising money via grants or industry to pay postdocs and research students and to provide facilities.
4. When the forced retirement policy was last reviewed, in April 2016, I was a member of Council, elected to represent the professors and readers. We were assured by the responsible Pro-Vice-Chancellor that the policy would only be used to get rid of dead wood, and that productive professors could stay on so long as they could raise grant money to support this. The late Professor Hawking was given as an example. As a result I did not oppose the policy to the extent that, with the benefit of hindsight, I should have.
5. I am Professor of Security Engineering in the Department of Computer Science and Technology. For some years I have built up the Cambridge Cybercrime Centre (CCC) which collects and collates data about online offences, harm and abuse, ranging from spam and malware through phishing, fraud and online extremism. Our data are licensed to over 150 researchers at over 60 institutions worldwide. We operate an

important worldwide resource; we are to students of online crime and abuse as a space telescope is to astronomers or a particle accelerator to physicists.

6. CCC was then funded by a large (£2m) grant from EPSRC for the period 2015–20. When I sought to apply for a further grant from 2020–25 I was told I could not, as this would run past my retirement date of September 2023. I turn 67 that month, and the university's forced retirement policy, as set down in Special Ordinance C, is that officers should retire at the end of the academic year in which they reach that age. This affects some 30-odd members of staff every September, unless they take early retirement first or apply for an extension.
7. Because the application procedure is complex, and involves making a case that has to be supported by the staff member's head of department and head of school, and then approved by a central committee, our Retirement Policy stipulates at 4.2 that any officer to be subjected to forced retirement must be consulted by their head of department two years in advance to discuss options, so that they can make a case for extension if they want to.
8. Many other academics have been seriously affected by the new policy of not permitting applications for grants that run past the applicant's retirement date. It blights the work and the careers of senior research scientists from their early 60s. It has led some senior scientists to regret moving to Cambridge, and others to retire early to rebuild their careers elsewhere. It is causing substantial damage and widespread anger.
9. The retirement policy was due for its second five-year review in 2021. This was not done, and the pandemic was cited as a reason.
10. At the first "town hall meeting" of the Acting Vice-Chancellor in 2022–23, I therefore raised the issue of an EJRA review.
11. Shortly thereafter, my head of department emailed me to apologise for not giving me notice of retirement in September 2021 and claiming that this was entirely her oversight. Colleagues in two other departments and one non-school institution received similar emails from their heads of department.
12. Colleagues and I then set up a campaign website (at www.free-cambridge.org) and collected the signatures of 52 officers to demand a Discussion of forced retirement in the Regent House. The significance of this number is that 50 members can demand a vote on an issue even against the wishes of the University Council.
13. I conducted an informal poll of another 50 Cambridge professors selected at random and found that 70% favoured abolishing EJRA altogether while a further 25% favoured major change, such as raising the retiring age to 75 (as one law professor put it, 'in line with the senior judiciary').
14. We also learned of cases underway against Cambridge, and also against Oxford, at the Employment Tribunal.
15. Two initial cases were taken by Oxford staff to the Employment Tribunal, of whom one won and one lost. The claimant who won, Professor Paul Ewart, relied inter alia on a statistical analysis which shows that the grounds on which both Oxford and Cambridge had relied to justify EJRA were baseless. I append this analysis, by the late Professor Lunn of Oxford, as Appendix-A.pdf. Both Oxford and Cambridge had argued that forced retirement was necessary to create new posts for young academics, to promote intergenerational fairness, and to tackle gender imbalance. The Lunn report analysed HESA data, comparing Oxbridge with 21 Russell Group universities that did

- not have a retirement age after 2011. It showed that Oxford and Cambridge did no better than the other universities on new posts, intergenerational fairness, or gender equality generally, but both did significantly worse at gender balance among senior professors. Cambridge also did less well at hiring younger female academics.
16. Four Oxford cases had then been brought by other officers who had been sacked by reason of their age, and combined into a joint hearing to decide whether Oxford's whole EJRA scheme was unlawful.
 17. I therefore went to see the Acting Vice-Chancellor, Anthony Freeling, and the relevant Pro-Vice-Chancellor, Kamal Munir, with two campaign colleagues, Professor Sir Simon Baron-Cohen and Professor Diane Coyle, on December 14. We argued that EJRA was not only bound to be defeated when the issue came to a vote in the Regent House, and discriminatory in a way that was morally wrong and likely to be found unlawful at the ET, but that it was also bad management for the university to sack its top sales executives every September. I attach the briefing paper we left them as Appendix-B.pdf.
 18. We anticipated that the EJRA review would last more than one academic year, as delay is a standard tactic in the administration's playbook. A review usually presents its findings to Council which then calls for a Discussion in the Regent House followed by further consideration by Council and a ballot. The monthly cadence of Council meetings acts as a brake, and matters may referred to the HR committee en route to Council. There are many other tactics available to an administration that wants to drag its feet. To have started a review in October 2022 and been ready for a vote by June 2023 the Council would have had to act with dispatch, and it did not. We learned at the December meeting that Professor Munir was only starting to consider the terms of reference for the review and hoped it would report in June 2023. This would mean a Discussion in Michaelmas 2023 and a vote perhaps in Lent 2024. Thus academics due to be forcefully retired in September 2023 could not expect a vote on the review in time to give them relief.¹
 19. We therefore asked the VC for a moratorium on sackings.
 20. Council was not asked to consider this request until its meeting of March 20th 2023, more than three months later.
 21. The Discussion we had demanded had meanwhile taken place in the Regent House on January 24th, and was well attended, with the great majority of speakers favouring the abolition of EJRA and most of the rest favouring major change such as an increase in the retirement age to 75. I append a copy of the Reporter containing the record of the speeches as Appendix-C.pdf.
 22. By the time of the March Council meeting, there had been a further dramatic development. On March 8th 2023, the Employment Tribunal at Reading decided that Oxford's "*Employer Justified Retirement Age*" was not a proportionate means of achieving legitimate aims', in the case *Field-Johnson, Flyvberg, Candelas and Snidal v The Chancellor, Masters and Scholars of the University of Oxford*, a copy of which I attach as Appendix-D.pdf, and to which I shall refer below as FFCS.
 23. Oxford's EJRA had started life as a copy of Cambridge's, justifying forced retirement by using rhetoric around tackling gender discrimination, creating job opportunities

¹ We since hear that the review members have been asked to report in October; it is now conceivable that the vote might be too late for the next cohort, of academics due to be forcefully retired in September 2024.

for junior academics and managing the age structure of the workforce. These excuses were fatally undermined by the report from Professor Lunn and had also been challenged by other cases in the Employment Tribunal and by a review conducted in 2015–6 by Oxford. As a result, both universities have tweaked their excuses over time, adding ever vaguer justifications such as ‘innovation’ that are incapable of measurement or falsification.

24. The Tribunal nonetheless found in FFCS that Oxford’s efforts at justification had been entirely inadequate.
25. Cambridge’s are not materially different.
26. The Tribunal noted in FFCS that Oxford had not made any real effort to collect the data needed to justify its claims for EJRA, and Cambridge is in exactly the same position.
27. At the time of the Council meeting of March 20th the situation was therefore as follows:
 - a. The University was committed to a review of EJRA that would lead in due course to a vote of the Regent House;
 - b. It was extremely likely that the Regent House would vote for EJRA to be abolished or at least radically changed, for example by raising the retirement age to 75;
 - c. The administration was playing for time by setting up a review group and dragging its feet;
 - d. The Employment Tribunal had found that the Oxford EJRA scheme was unlawful as it was not a proportionate means of achieving a legitimate aim;
 - e. This finding made it even more likely that the outcome of the review would be the abolition of EJRA rather than merely raising the retirement age;
 - f. The delays in launching and conducting the review meant that I personally, and other university officers reaching the age of 67 during the academic year from 1 October 2022 – 30 September 2023, would be dismissed at the end of that year;
 - g. Because of the Employment Tribunal funding in FFCS, the dismissal would be discriminatory;
 - h. As well as unlawful discrimination, it would also be unfair dismissal, as we will not have received the two years’ notice required under the university’s own Retirement Policy;
 - i. The administration was no doubt hoping that none of us would risk an adverse costs order by applying for an injunction from the High Court to prevent dismissal, and if we applied to the Employment Tribunal for compensation or reinstatement afterwards, the case would take years to grind through the tribunal and the appeal tribunal. I am advised that if I wait until I am sacked in September and then file an Employment Tribunal claim, I would be lucky to get a hearing in 2025; and that even if I eventually won an order for reinstatement, the University might just pay compensation instead.
28. The matter for decision was whether to have a moratorium on sackings under EJRA so that staff due to be sacked on September 30th 2023 would not be unfairly dismissed. Council decided not to do so, and thereby to sack me. This was publicised in the Reporter on March 22, and is attached as Appendix-E.pdf.

29. The affected staff include me and, according to anonymised statistics, over 30 others, but some of them may have retired already or agreed to retire in any case.

The Meeting on 20 March

30. As a former member of Council I am familiar with the University's governance processes but have no insight into how they were applied in this case. Council members will have been supplied with a bundle of briefing papers for the meeting and each item of business will typically be introduced for discussion by the Vice-Chancellor or the relevant Pro-Vice-Chancellor.
31. Council decisions are very heavily influenced by the way in which they are framed and presented, on the supporting papers that are sent to Council members several days before the meeting, and on personal briefings given by the senior management team to key Council members.
32. I am making a Freedom of Information request for the briefing sent to Council members on this matter and for the notes of the note taker. In view of the urgency of the matter I have not delayed this application to wait for the University's reply.
33. In the days before the March meeting I contacted those Council members who were contactable, sending them the two appended papers, namely the briefing paper we gave to the Acting VC on December 14th requesting a moratorium on sackings, and the decision of the Employment Tribunal in FFCS. I was not able to contact the four external members of Council; apparently it is now policy that their contact details should be shielded from members of the University, and the internal directory suggests email addresses that bounce.
34. However, of the 24 members of Council, we contacted 20, including the three student members, and made them aware that this item of business concerned the unfair dismissal of about 30 university officers.
35. According to Special Ordinance A, matters affecting employment may not be discussed with student members present. They must rather be discussed as "reserved business" at the end of the meeting once the student members have left.
36. The Acting Vice-Chancellor (who chairs Council) and the Registry (who organises its business) disregarded Special Ordinance A entirely in this case and permitted a full meeting of Council, with student members present, to decide to sack me.

Jurisdiction

37. The Commissary's powers are set out in Statute A section IX which I attach for convenience as Appendix-E.pdf.
38. The Commissary's jurisdiction over matters of employment is restricted in that he is not permitted to review matters of hiring or promotion (3 (b) and (c)). However he is not restricted from reviewing matters relating to termination of employment.
39. The Commissary does have jurisdiction over the proper conduct of the University's decision-making machinery and he is therefore entitled to rule that a decision was taken contrary to Statute and Ordinance (s3).
40. The Commissary is also specifically empowered to overturn an illegal decision (s3).

41. The Commissary, as I understand it, may act under section 3, or under section 1. In the former case, a complainant must first seek redress from the Vice-Chancellor, which I did on December 14th.
42. The decision to fire me taken by Council on March 20th was ultra vires, because it was in clear breach of Special Ordinance A (viii) 5 to permit students to vote on an employment matter (I attach Special Ordinance A as Appendix-G.pdf for convenience).
43. They, and the Acting Vice-Chancellor, had been placed on notice that it was such by our paper of December 14th.
44. It was also illegal as it will be unfair dismissal on two grounds:
 - a. First, the University failed to give two years' notice as specified in section 4.2 of the Retirement Policy;
 - b. Second, the Employer Justified Retirement Age set out in Special Ordinance C is illegal discrimination as clarified by the Employment Tribunal in FFCS.
45. The Vice-Chancellor of the day is not usually shy about instructing the Council to decide a matter in such a way as to avoid the university breaking the law. On multiple occasions while I was a member of Council, we have been instructed to vote in a particular way, sometimes with the added spur of a legal opinion. Democratic process is no excuse for Council decisions that break the law.

Remedy

46. I therefore request, first, a decision that the University may not sack me on grounds of age on 30th September 2023 notwithstanding Special Ordinance C.
47. I have been acting throughout not just on my own account but on behalf of other officers of the University. Over my career I have served three terms as an elected member of Council, the trustee body (2003–6, 2007–10 and 2005–8) as well as on the Board of Scrutiny and other central committees. I therefore request, second, a decision that the university may not sack others in my position, namely University Officers who are due to be forced to retire in September 2023 or September 2024 by reason of age, a class to whom I will refer as 'affected Officers'.
48. Had the Vice-Chancellor acted with due dispatch in response to our request of December 14th the correct action would have been to persuade Council (which has a majority that supports him) to recommend a Grace to the Regent House to suspend the operation of Special Ordinance C for September 2023. I therefore request the Commissary to order it so suspended.
49. Alternatively I request that the Commissary order the Vice-Chancellor to offer to all affected Officers an extension of employment or reemployment on contract terms no worse than the terms under which we currently hold our offices, in terms (inter alia) of salary, pension and intellectual property rights.

Ross John Anderson FRS FREng
Cambridge, May 6 2023

Statistical Report on the Effects of Compulsory Age-determined Retirement Policy for Academic Staff

June 18, 2018

To the Employment Tribunal

Summary

This report was compiled at the request of and using data provided by Professor Paul Ewart, Worcester College, University of Oxford; it was specified from the start that the report would be objective and profess no personal opinion concerning any University policy. Professor Ewart provided instructions in the form of 5 specific questions to be addressed; these are detailed under the section entitled Instructions which precedes the Introduction and appears on the next page.

The data were obtained by Professor Ewart from the Higher Education Statistics Authority and Annex F of EJRA: Review Working Group Report published by the University of Oxford.

The report's conclusions are as follows:

- the data provide no evidence that the policy of Employer Justified Retirement Age (EJRA) practised by Oxford and Cambridge has had any effect upon the promotion of gender equality;
- the data provide no evidence that the EJRA policy has had any effect in promoting inter-generational fairness;
- the data provide no evidence that the EJRA policy has produced career opportunities for the younger generation;
- the data provide no evidence that the EJRA policy has resulted in the proportion of Academic Staff over the age of 65 being significantly different from that same proportion in the rest of the Russell Group of Universities;
- by 2017 the proportion of female academic employees, whether on permanent/open-ended or fixed-term/temporary contracts, had fallen away from an initial position of equality with the Russell Group;
- from 2012 onwards the proportion of female employees on permanent/open-ended contracts has shown a downward trend, in contrast with a steady, upward trend in the Russell Group;
- the proportion of female academic employees in Cambridge has risen for the temporary/fixed-term contract holders, but remains well below the level of the Russell Group;
- the proportion of female academic employees in Cambridge with permanent/open-ended contracts has fallen further behind the Russell Group, rising more slowly from 2006–07 and from 2015 showing a trend which is neither increasing nor decreasing.

Instructions

Instructions were given by Professor Ewart in the form of a request for answers to 5 questions, such answers to be obtained from data which he had provided. Appendix 1 contains a statement from Professor Ewart in which the data sources and the format in which they were presented for analysis are specified.

The questions were as follows.

1. Do the data provide any evidence that the EJRA policy at Oxford (and Cambridge) is an effective means of improving diversity in relation to the proportion of women in academic posts?
 - Specifically, is there any evidence that the EJRA policy has led to an improvement in gender diversity (proportion of women) in the Statutory Professor grades in Oxford?
 - Is there any evidence that the policy has led to an improvement in gender diversity (proportion of women) in Associate Professor grades in Oxford?
2. Do the data provide any evidence that the EJRA policy is an effective means of promoting inter-generational fairness in relation to creating more opportunities for young academics to obtain permanent academic posts in Oxford?
3. Do the data provide any evidence of a significant difference in the age at which academics are appointed to posts at Oxford and Cambridge compared to the other Russell Group universities?
4. Do the data provide any evidence that a lack of a compulsory retirement policy at the other Russell Group universities has resulted in a significant increase in the proportion of older academics occupying permanent posts?
5. Is there any evidence of changes in the number of fixed-term or "career development" posts relative to permanent posts and any consequent effect on gender diversity in Oxford?

Introduction

The Employer-Justified Retirement Age (EJRA) policy of the Universities of Oxford and Cambridge is a compulsory retirement policy based on age. In both Oxford and Cambridge retirement is compulsory at the end of the academic year in which the age of 67 is reached; before the beginning of the academic year 2017–18 Oxford extended this to the age of 68 but Cambridge did not. The principal objectives of the policy have been stated to be the promotion of equality and diversity, the promotion of inter-generational fairness and maintaining opportunities for career progression. Within the Russell Group of Universities, the Universities of Oxford and Cambridge are the only ones to implement an age-determined compulsory retirement policy, which began in the academic year 2011-12 and has continued since then, thereby providing data on its effects.

In compiling this report two sources of data have been used, one being data held by the Higher Education Statistics Agency (HESA) and the other being taken from Annexe F of EJRA: Review Working Group Report published by the University of Oxford. The data are described in detail in Appendix 1; broadly speaking they comprise gender-specific and age-specific employment figures recorded from the Russell Group of Universities. Although Imperial College, London is included in this group, it is highly atypical in its cross-section of academic disciplines and has been excluded from all analyses because it is clearly unsuitable as a comparator and can only risk introducing bias. There is a lack of data on racial equality and diversity amongst university employees. There are data on gender and age distribution in employment categories over time which are relevant to career progression and inter-generational fairness.

In the sections which follow summaries of what the data show are set out when;

- (i) comparing Oxford and Cambridge on the one hand with the other Russell Group universities (which have no compulsory retirement schemes) on the other;
- (ii) comparing the makeup of Oxford's employment categories from 2006–07 to 2015–16, using Oxford's own published figures; these data therefore cover the periods before and after the introduction of the EJRA in 2011–12.

In what follows the presentation of the available statistics is assisted by including explanatory graphics and brief explanations of the standard statistical techniques employed in analysing those data. For the benefit of the expert analyst, technical details of these techniques, along with validations of their applicability, are given in Appendix 2. All analyses were carried out using the statistical package R, which is a programming language and free software environment for statistical computing and graphics that is supported by the R Foundation for Statistical Computing. It is freely available and is widely regarded by academic statisticians as the best and most reliable package for serious data analysis and research. 4

Statistical analysis

Comparison of gender proportions in Oxford and Cambridge with those in the Russell Group

As previously stated Imperial College, London, being a Science and Technology university, is not comparable with any of the other universities and has been excluded. This leaves 21 other Russell Group universities; in this report the term “Russell Group” is taken to mean this group of 21. 5

Throughout the analysis great care has been taken to avoid falling foul of what is technically known as Simpson’s paradox. This is a phenomenon which can occur when proportions obtained from aggregated data are compared and it can lead to misleading conclusions. A detailed explanation with illustrative examples is provided in Appendix 4, but as far as the main body of this report is concerned it is not an issue and familiarity with it is not required for understanding the statistical results being presented. Appendix 4 also contains a brief explanation of how to interpret the statistician’s quantification of weight of evidence as expressed in terms of p -values. Although they are included in the text, a detailed understanding them is not strictly necessary because they have been quoted alongside symbols which represent the strength of the statistical evidence as follows: 6

- . Very weak evidence
- * Reasonable evidence
- ** Strong evidence
- *** Extremely strong evidence

Technical problems do not arise when gender proportions from aggregated data are compared in terms of changes in gender profile over time for Oxford, Cambridge and the Russell Group; time is expressed as the ending date of the academic year. Clearly the Proportion of Female Academics can be plotted against Year as a sequence of points on a graph, but this is not a useful display for making comparisons with Cambridge and 21 other Russell Group universities and therefore a statistical technique (known as multilevel cubic spline regression) has been used to produce smooth curves representing the way the proportions change over time. This is illustrated in Figure 1, where the points are shown for Oxford from 2007 to 2017 along with the fitted curve. 7

Proportion of Female Academic Employees

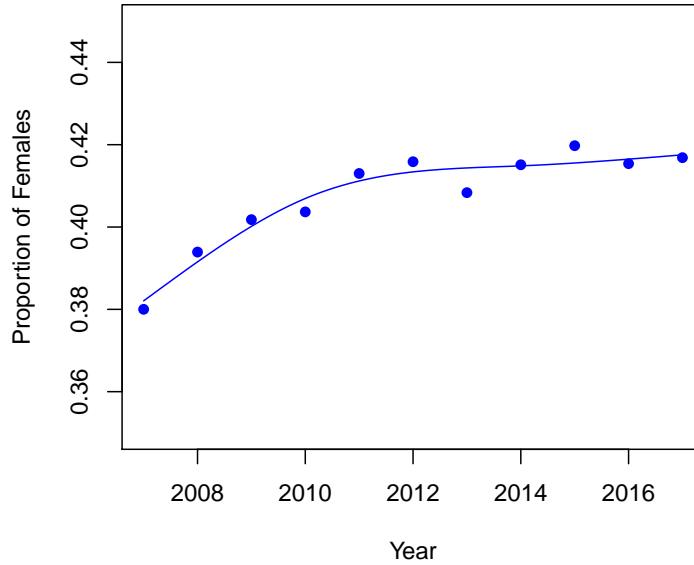


Figure 1: Proportion of Female academic employees in Oxford against Year

Precise details of the statistical methodology behind producing curves such as this, which give an accurate 8 representation of the trend over time, are given in Appendix 3, where validation of the methodology is also shown. In this way Figure 2 was produced, which compares the growth over the period 2007–17 of the total proportion of female academic employees for Oxford, Cambridge and the Russell Group.

Proportion of Female Academic Employees

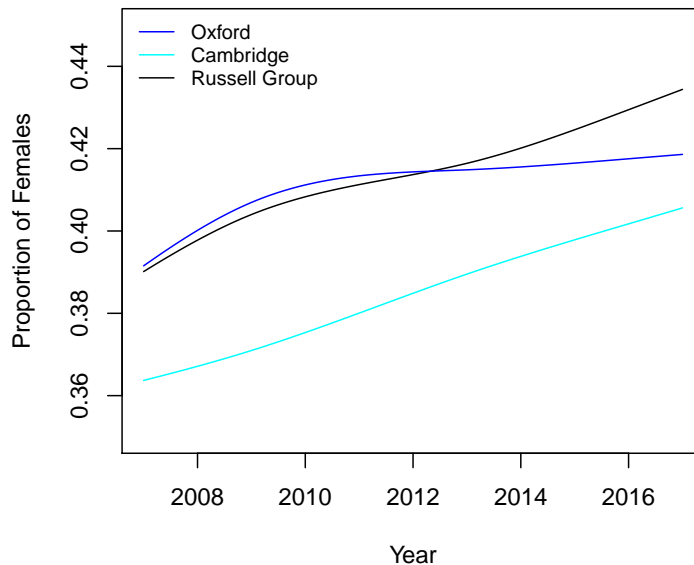


Figure 2: Proportion of Female academic employees against Year

The most noticeable features are that both Cambridge and the Russell Group are steadily increasing their 9 female proportions with Cambridge starting at a lower level and with that difference being maintained over time. Oxford, having practically the same proportion of females up to 2012 has subsequently levelled out

to a position mid-way between the two. There is no indication that employment policies adopted from 2012 onwards have produced a higher rate of gender-balance improvement in Cambridge and Oxford seems to be levelling off towards no annual change.

The drop from 2012 onwards has resulted in Oxford's proportion of female academic staff becoming significantly lower ($* p = 0.011$). Note the single $*$ quantifying the weight of evidence, which appears here for the first time. Technical details of the statistical test used are given in Appendix 2.

However, Figure 2 does not tell the whole story because not all employees are on the same kind of contract. Figure 3 shows the effect of stratifying on type of contract; the dashed lines show the proportions of females on temporary and fixed-term contracts whereas the solid lines show the proportions on permanent, open-ended contracts.

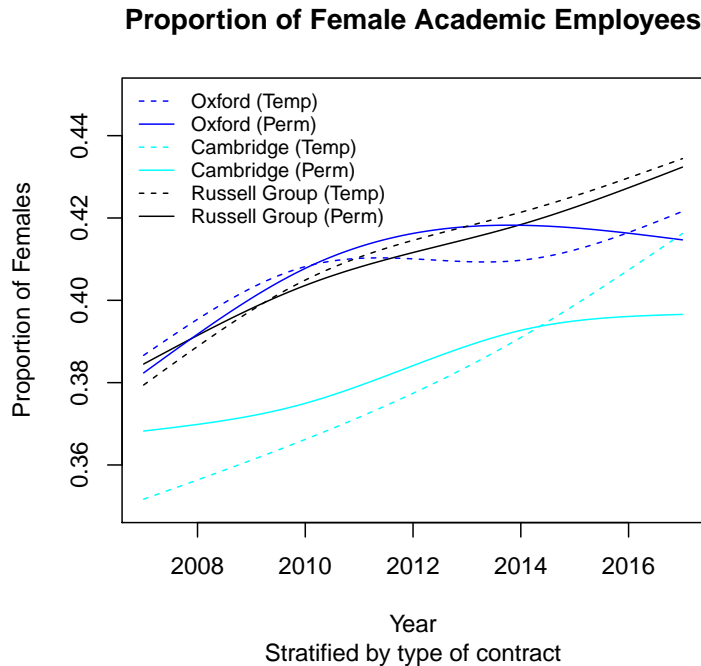


Figure 3: Proportion of Female academic employees against Year

The Russell Group has practically equal gender balance in the temporary and fixed term contracts with both types of contract maintaining a steady increase in the proportion of female staff. In 2007 there is obviously no difference in gender-balance between Oxford and the Russell Group in both temporary and permanent contracts and they remained practically the same until 2012, when the proportion of females with temporary contracts ceased to show an annual rise. By 2014 this had recovered and from then on matched the Russell Group in rate of increase but stayed at a slightly lower level. However, a very different picture emerges for the gender balance among those in Oxford with permanent contracts. From a peak in 2012–13, where it matched the Russell Group, the proportion began to decline and that overall downward trend continued. Between 2013 and 2017 the change in proportion was not large, being of the order of 0.5%, but Oxford was no longer continuing to match the performance of the Russell Group in this respect; furthermore the downward curvature seen in the graph is statistically significant ($* p = 0.0125$).

In order to look into possible reasons for Oxford's comparative decline in the proportion of female academic staff the data were re-fitted after stratification on Division. The Oxford definition of Division was used to allocate divisional structure to all of the other universities. The results are shown in Figure 4.

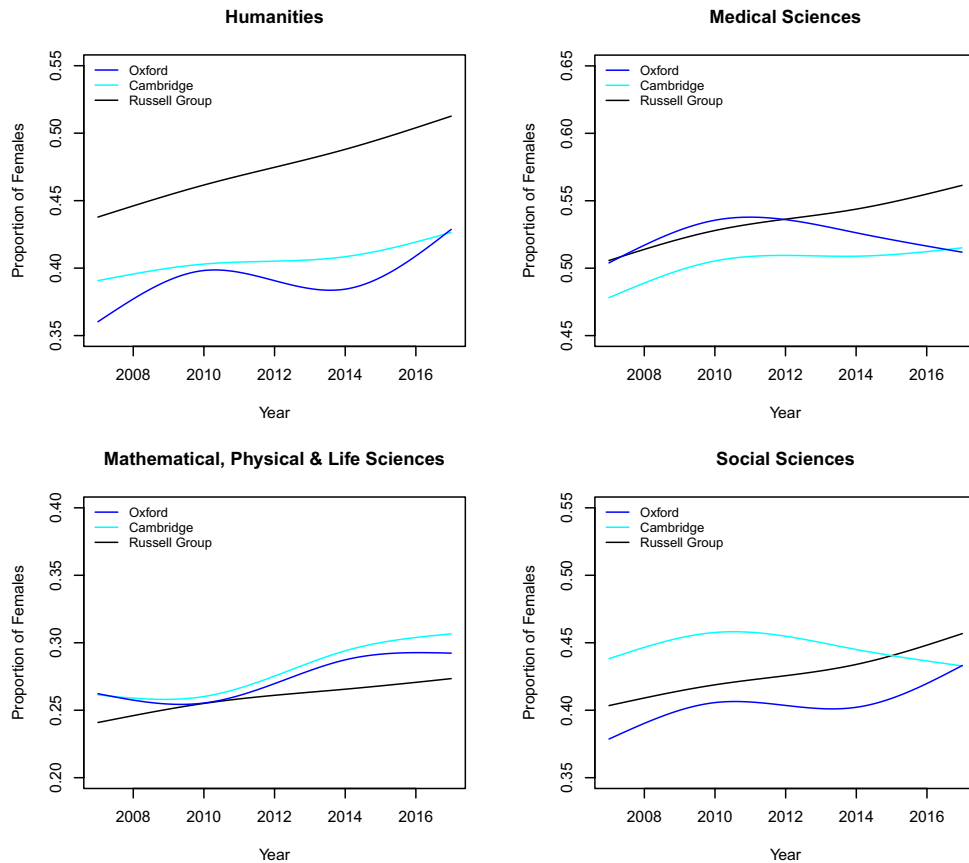


Figure 4: Proportion of Female academic employees against Year stratified by Division
 (Note different values on the vertical axes of these graphs, but note that the ranges are the same)

The Russell Group universities showed steady rises in the proportion of female academic staff across all Divisions. In the Humanities all of the universities showed the same kind of overall increase; Oxford experienced a downward wobble between 2009 and 2013 but then recovered its earlier upward trend with a rate of increase to match that of the Russell Group. Even so, both Oxford and Cambridge remained behind the Russell Group, being some way short of its achievement of 50%. 14

The most surprising profiles are in the Medical Sciences. The Russell Group continued to increase its Female staff proportion in a steady way, Cambridge showed signs of flattening off and Oxford showed a marked and steady decline which began when a corner was turned after 2010. The difference between the 2010 proportion and the 2017 proportion is not significant ($p = 0.085$) but even though weak this does constitute evidence. 15

In MPLS the proportions and their time-profiles were almost identical, though there is a slight but insignificant hint of Oxford flattening off from 2015. In the Social Sciences Oxford showed a small downward trend between 2011 and 2013 but from then the position recovered and, overall, matched the rest of the Russell Group whilst remaining slightly lower. Cambridge, however, showed a marked decline in the female proportion with no indication of impending recovery. 16

Nowhere is there any indication that gender-balance is positively affected by the introduction by Oxford and Cambridge of age-related employment policies in 2011–12. 17

Comparison of proportions of females in different staff grades for Oxford, Cambridge and the Russell Group is not possible because their designations in the different universities are not equivalent and, in any case, not available pre-2011. However, Oxford has published its own gender/staff group figures for the period 2006–15, thereby covering the pre- and post-EJRA periods, and these were used to assess the effects of EJRA in the next sub-section. 18

Comparison of gender proportions across staff grades in Oxford

Of necessity this part of the analysis is confined to Oxford because its particular staff grades do not apply in other universities; the four grades Statutory Professor, Associate Professor, RS IV, Academic and Academic-Related were considered. The staff grade RS IV is peculiar to Oxford. It is awarded without advertisement and releases academics from normal duties to concentrate on research. The data for this subsection were taken from Annexe F of EJRA: Review Working Group Report published by the University of Oxford and the staff grades are therefore not subject to HESA's interpretation of equivalent classifications. These data are given in the table below; note that in its publication Oxford labelled the academic year in terms of its starting date rather than the end date used throughout the rest of this report, and therefore the year in the left-hand column has been increased by 1 year for consistency.

| Year | Statutory Prof. | | RS IV | | Assoc. Prof. | | Acad. & Acad. Rel. | |
|------|-----------------|------|--------|------|--------------|------|--------------------|------|
| | Female | Male | Female | Male | Female | Male | Female | Male |
| 2007 | 23 | 204 | 15 | 37 | 285 | 878 | 1954 | 2313 |
| 2008 | 21 | 218 | 18 | 47 | 272 | 835 | 2270 | 2537 |
| 2009 | 25 | 222 | 22 | 68 | 287 | 843 | 2515 | 2681 |
| 2010 | 23 | 212 | 29 | 79 | 280 | 829 | 2807 | 2909 |
| 2011 | 24 | 210 | 29 | 82 | 290 | 831 | 2947 | 3034 |
| 2012 | 27 | 216 | 31 | 84 | 289 | 798 | 3030 | 3082 |
| 2013 | 29 | 222 | 35 | 102 | 285 | 786 | 3251 | 3283 |
| 2014 | 27 | 224 | 39 | 125 | 308 | 810 | 3589 | 3501 |
| 2015 | 30 | 230 | 47 | 148 | 325 | 851 | 3887 | 3833 |
| 2016 | 34 | 214 | 51 | 157 | 330 | 855 | 4167 | 4070 |

Figure 5 is a visual representation of these data and shows the time profiles for the proportion of female staff in the four Oxford grades.

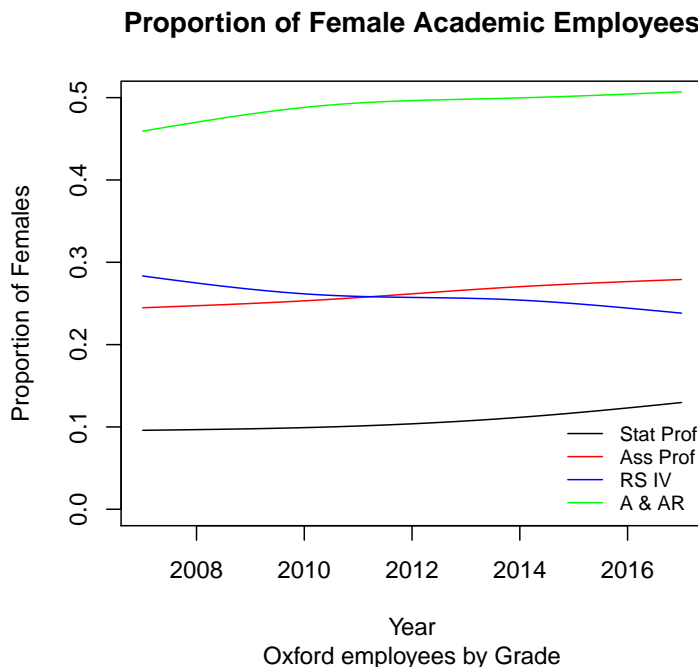


Figure 5: Proportion of Female academic employees against Year by Grade

There has been very little change. The proportion of female academic staff in Grade RS IV seems to have been declining very slowly whereas the proportions in the other three grades have shown very slow, steady increases.

Figure 5 suggests fitting separate linear relationships to the four grades for each of the two time periods

2007 to 2012 and 2012 to 2016 and testing each pair of fitted lines for different slopes; this would formally test whether there was any evidence of change following the introduction of the EJRA. However, with four simultaneous tests being conducted any assessments of the strength of evidence in the form of p -values obtained is weakened by the fact that four attempts have been made. Clearly this must be so; if a horse were to be backed at 20:1 one would be surprised if it were to win, but if 20 different horses were backed at 20:1 in 20 different races, a win for at least one of them might reasonably be expected. The same is true when interpreting simultaneous statistical tests. With tests being carried out involving 4 staff grades each of the p -values obtained needs to be multiplied by a factor of 4 for interpretation of the weight of evidence it conveys. This is technically known as a *Bonferroni* correction and is applicable here.

Statutory Professor

The estimated growth rate was a multiplicative annual compound growth of 3.8% per annum; formal testing resulted in this not being significantly different from zero ($p = 0.0670$, Bonferroni corrected to 0.2680). The change in growth-rate after 2011 was estimated to be practically zero ($p = 0.9974$) and there was no evidence of any change post 2011. 22

An assessment of the growth-rate of the proportion of females in statutory professorships in the Russell Group was obtained for the period 2013 to 2017; this was a compound 4.5% per annum. Whilst this is significantly greater than the Oxford growth-rate, too much should not be read into this as the HESA definition of the Russell Group posts may not correspond and the estimates were obtained over different time periods. 23

Associate Professor

Here there was very strong evidence of a steady growth in the Female/Male ratio ($*** p = 0.0001$, Bonferroni corrected to 0.0004), and again no evidence of any change post 2011 ($p = 0.9022$). The annual growth rate was a compound 2.1% growth per annum which remained unchanged from 2011 to 2016. 24

RS IV

There was no evidence of any annual growth in the Female/Male ratio ($p = 0.4656$) and no evidence of change post 2011 ($p = 0.3815$). 25

Academic & Academic Related

There was evidence of steady annual growth ($* p = 0.0028$, Bonferroni corrected to 0.0112) but no evidence of a change post 2011 ($p = 0.2929$). There was compound annual growth of 2.3% per annum which remained unchanged from 2006 to 2016. 26

Overall summary for the four grades

With the exception of Statutory Professor and RS IV, there was statistical evidence of annual growth in the Female/Male ratio and the annual growth rates did not change after 2011 in any grade. 27

For simultaneous inference from four separate staff grades, Bonferroni corrections should be and were applied to the p -values of the estimated annual growth-rates. Thus in the Statutory Professor grade, although the growth-rate was higher than the others and gave a compound 3.8% growth per annum, with a Bonferroni-corrected p -value of 0.27 it is not close to being statistically significant from zero; in fact, even without the correction it would not have been statistically significant. It should, however, be noted that, with comparatively low numbers of Statutory Professors, a non-significant result is hardly surprising and should not be regarded as cause for dismissing altogether the presence of growth. 28

However, the main result lies in there being no significant change detected in any of the growth rates post 2011. For Statutory Professors and Associate Professors the estimated change in rate is, in fact, zero (to four decimal places) and, although RS IV and Academic & Academic Related come out as slightly negative when taken to that many decimal places, the smallest uncorrected p -value is 0.2929 and there is no evidence for considering any change brought about by the EJRA to be anything other than zero. 29

Of all the grades considered above the fastest annual growth-rate in the Female/Male ratio was 3.8% which 30

was less than the annual growth-rate of 4.5% recorded by the Russell Group professorial grade, the Oxford equivalent of which encompasses a subset of the combined Oxford grades.

Comparison of age distributions in Oxford and Cambridge with those in the Russell Group

The data considered in this section were provided by HESA and comprised the date of appointment, age at appointment, leaving date and age at leaving of every individual academic employee in Oxford, Cambridge and the rest of the Russell Group. From these data the age of every member of academic staff was calculated for the academic years of interest. As before data from Imperial College were removed prior to analysis. Figures for the years 2012–13 and 2016–17 are analysed in the next sub-section; the total numbers of academic staff in 2012–13 were Oxford: 2384, Cambridge: 2311, Russell Group: 36570. In 2016–17 the totals were Oxford: 2821, Cambridge: 2383, Russell Group: 41550.

In this section there are several graphs illustrating age distributions of academic staff. It should be noted that these are not displayed in the form of histograms, which have fallen out of favour with many statisticians because of their susceptibility to changing shape if their vertical bars are slightly shifted sideways; this is technically known as bin-edge effect and, as a result, so-called density traces are preferred as the distributional shapes they produce are robust and reliably accurate. The density traces which follow are to be interpreted in terms of area beneath the curve. Thus in Figure 6, which follows immediately below, the area beneath the curve between say, age 40 and age 50, represents the proportion of academic staff between those ages.

Age distributions of all academic staff

Figure 6 shows the density traces of the age distributions for Oxford, Cambridge and the Russell Group.

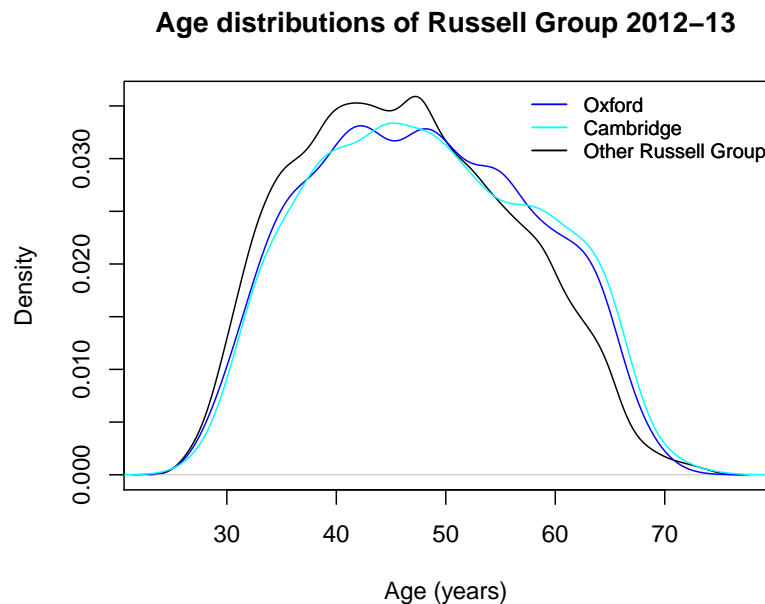


Figure 6: Empirical density traces for academic year 2012–2013

Oxford and Cambridge virtually overlap, whereas the Russell Group distribution lies a little to the left. All of the densities show some right-skew and therefore their medians were used for formal testing. The median age for both Oxford and Cambridge is 48 and for the Russell Group is younger at 46. Formal tests of equality resulted in no significant difference between Oxford and Cambridge ($p = 0.1697$) and highly significant differences of both from the Russell Group ($*** p < 0.0001$). There are no detectable differences in the extreme upper tails of the distributions.

Figure 7 shows the equivalent densities for 2016–17.

Age distributions of Russell Group 2016–17



Figure 7: Empirical density traces for academic year 2016-17

Although the shapes are a little different, there has been no change. Formal testing of the age differences again has Oxford and Cambridge staff being significantly older than those in the Russell Group (***) Oxford: $p < 0.0001$, Cambridge: $** p = 0.0018$) with no significant difference between the two of them ($p = 0.2282$).

But, in view of their EJRA policies, the main interest lies in the extreme upper-age tails which the graph in Figure 7 indicates to be indistinguishable from each other. By 2016-17 the EJRA has become established in Oxford and Cambridge and therefore the area under the extreme over-65 tail (*i.e.* the proportion of over-65s) for those universities which do not operate age-related compulsory retirement could be expected to be significantly greater than the areas for those who do. In the Russell Group the proportion is 3.52%, for Oxford it is 3.01% and for Cambridge it is 3.31%. Formal statistical tests for different proportions show that the difference between the Russell Group and Oxford is not statistically significant ($p = 0.1679$) and is not significant for Cambridge ($p = 0.4226$). This means that, for the academic year 2016-17 at least, the Russell Group's having retirement as a matter of personal choice has not resulted in an inordinately high population of academic staff over-the age of 65 and has not resulted in their being any different from Oxford and Cambridge in this respect. 35

Growth-rates in numbers of Academic Staff

The lack of difference in the proportions of over-65s between the universities cannot be attributed to their having different annual growth-rates in their total academic staff. Annual growth-rates of staff totals were calculated and that of the Russell Group formally tested against the other two for differences, resulting in a p -value of 0.86. It was therefore clear that there was no evidence to suggest that the growth-rates were different. The Russell Group and both Oxford and Cambridge have all been growing at a steady, significant, compound rate of 3.7% per annum (***) p -value < 0.0001). 36

Age at appointment

Figure 8 shows the distributions of ages at appointment of those newly appointed in the different universities during the academic years 2012–13 and 2016–17. In 2012–13 Oxford made 46 new appointments, Cambridge made 66 and the Russell group of 21 universities made 1068. In 2016–17 the figures were Oxford: 37, Cambridge: 68 and the Russell Group: 858. 37

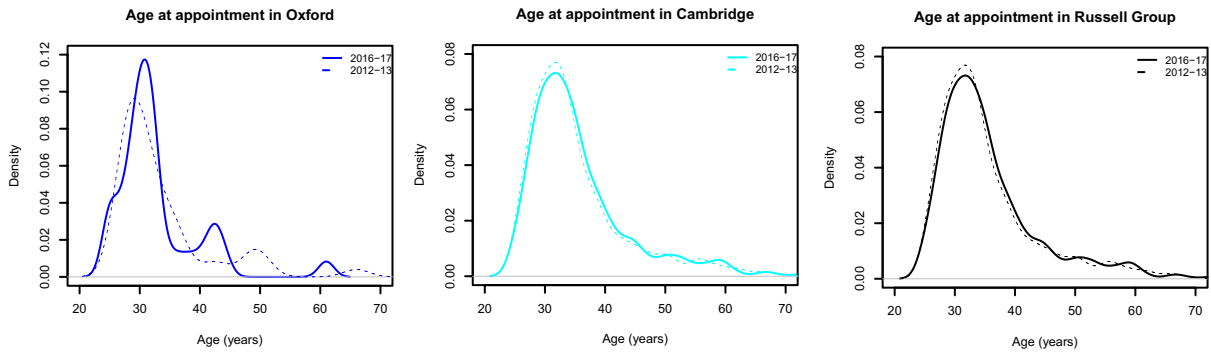


Figure 8: Age at appointment

It seems clear, at least in terms of the modal positions (*i.e.* the positions of the peaks), that there has been little or no change from 2012-13 to 2016-17 in Cambridge and the Russell Group and their distributions are almost identical; Oxford's mode has moved slightly towards older appointments to bring the mode of the distribution into line with the others. But appearances can be deceptive and formal testing of location shows a different picture. Figure 9 shows comparative boxplots of the data. 38

Boxplots of age at employment

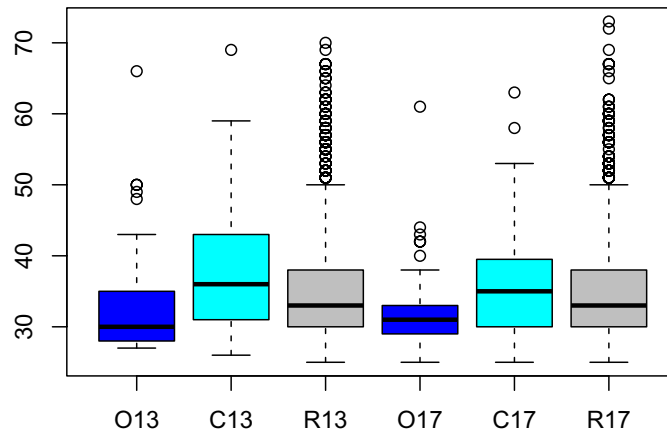


Figure 9: Comparative boxplots of employment age data

A boxplot represents the middle 50% of the data by the edges of a rectangle with the median marked inside it as a line. Whiskers (the technical term for the T-pieces growing from the ends of the box) stretch as far as the furthest data point within 1.5 box-lengths on either side and points outside this range are represented by small circles. Thus one can obtain an intuitive feel for the range and distribution of the data and visually compare different groups. 39

These boxplots show that the median age at employment in Oxford has risen and become a little less concentrated but remains below that of the others, whereas at Cambridge it has reduced very slightly towards that of the Russell Group; the boxplots confirm the stability of the Russell Group's age distribution. 40

All of the boxplots confirm the heavy right-hand skewness (*i.e.* towards the higher ages) of all of the distributions so non-parametric testing of equality of the median ages at appointment was used. In 2012-13 Oxford's median employment age was, after Bonferroni correction, significantly lower than Cambridge (** $p = 0.0012$) but not significantly lower than the Russell Group ($p = 0.0693$) whereas Cambridge was higher than the Russell Group (* $p = 0.0134$). In 2016-17 Oxford's age at employment remained lower than that of Cambridge (* $p = 0.0199$) but had moved to being significantly lower than the Russell Group (* $p = 0.0266$); there was no difference between Cambridge and the Russell Group ($p = 0.6612$). Within Oxford comparing the 2012-13 and 2016-17 ages at appointment showed no significant difference (p -value = 0.62). 41

Part of the overall question of whether the EJRA has lowered the age at employment is whether it has 42

resulted in Associate Professors being appointed at a lower age. Without data being supplied by either Oxford, Cambridge or both the question cannot be answered, but it *is* possible to use Oxford’s published data to compare the distributions of proportions across the different age groups for different years. In other words, the question “Has the distribution across age groups changed between 2007 and 2016?” can be answered.

There are two possible interesting comparisons depending on whether or not the above-age 67s are to be included as a separate group in the age profiles. The numbers of Associate Professors by age group are: 43

| <i>Age group</i> | <i>Year 2007</i> | <i>Year 2016</i> | <i>Age group</i> | <i>Year 2007</i> | <i>Year 2016</i> |
|------------------|------------------|------------------|------------------|------------------|------------------|
| Under 30 | 15 | 14 | Under 30 | 15 | 14 |
| 30 – 39 | 238 | 445 | 30 – 39 | 238 | 445 |
| 40 – 49 | 244 | 486 | 40 – 49 | 244 | 486 |
| 50 – 59 | 204 | 387 | 50 – 59 | 204 | 387 |
| 60 – 67 | 61 | 132 | 60 + | 63 | 149 |

Excluding the over 67s a chi-squared test of independence of Age Group and Year has a *p*-value of 0.2999, so there is no evidence of dependence; in other words the relative proportions recorded in 2007 have not changed by 2016. This conclusion is not changed when the over 67s are included, the *p*-value being 0.1857. Whichever data are included, there is no evidence of any change in the distribution of relative proportions across the Age groups from 2007 to 2016.

Conclusion

In terms of promoting gender equality there is no evidence that the introduction of the EJRA has had the slightest effect. Oxford has, since the introduction of the EJRA, shown a widening of the gap in gender balance with the rest of the Russell Group but Cambridge has not shown this; neither does it seem to be closing the gap. The downward trend in the Medical Sciences, which is not seen with Cambridge, is evident. 44

The Russell Group has shown a steady rise in gender equality in terms of both Temporary/Fixed-term contracts and Permanent/Open-ended contracts; the proportions of female staff for the two types of contract are practically the same and these have risen steadily, in parallel, over the period 2007 to 2017. In Oxford both of these proportions have dropped from positions of equality with the Russell Group in 2012. Following a fall between 2012 and 2014 the proportion on Temporary/Fixed-term contracts has resumed a steady annual increase in parallel with but below the level of the Russell Group. The proportion with Permanent/Open-ended contracts began to show a downward trend from 2013 and that trend has continued through to 2017. 45

Temporary/Fixed-term contracts in Cambridge had a gender balance a long way below that of Oxford and the Russell Group in 2007; this has risen steadily and by 2017 the gap has become narrower although still below the Russell Group level. With Permanent/Open-ended contracts the gap has shown no sign of closing and from 2015 the annual rise levelled off, leaving the gender balance well below both Oxford and the Russell Group. 46

In terms of promoting inter-generational fairness and career opportunities there is no evidence that the introduction of EJRA has had the slightest effect. When it comes to opportunities for the younger generation, age at employment has not decreased and both Oxford and Cambridge closely parallel the rest of the Russell Group. In Oxford the distribution of ages in the Associate Professor group in 2016-17 is very much as it was in 2006-7. 47

Oxford, Cambridge and the Russell Group have percentages in the over-65 age group which are practically the same and certainly not significantly different; thus there is no indication that the Russell Group’s lack of an age-related retirement policy has had anything other than a negligible effect on retirement from its universities. 48

Appendix 1: Description of the data (Professor Paul Ewart)

The data used to prepare this report were provided by Professor Paul Ewart in the data file HESA 55768_data.csv together with the accompanying file HESA 55768_Notes_and_Labels. The data file was provided by HESA under contract: "Quote 55768 Paul Ewart" (see attachment).

The data file contains information on each academic at Russell Group universities in the period covering academic years 2006/07 to 2016/17. Specifically the file contained the following data:

Number of academic staff at Russell Group Higher Education providers 2006/07-2016/17 by HE provider, HEP:

- Contract levels (2012/13-2016/17)
- Sex
- Age (full)
- Date appointed at current HEP (MM/YYYY)
- Date left HEP (MM/YYYY)
- Academic contracts of leavers (ZACLEAV02) (2006/07-2015/16)
- Leaving destination of leavers on academic contracts (grouped) (ZDESTGP01) (2006/07-2015/16)
- Reason for end of contract* (2012/13-2016/17)
- Cost centre (2012/13-2016/17)
- Cost centre (2006/07-2011/12)
- Academic discipline 1 (2006/07-2007/08)**
- Academic discipline 2 (2006/07-2007/08)**
- Academic discipline 1 (2008/09-2011/12)**
- Academic discipline 2 (2008/09-2011/12)**
- Current academic discipline 1 (2012/13-2016/17)**
- Current academic discipline 2 (2012/13-2016/17)**
- Current academic discipline 3 (2014/15-2016/17)**
- Nationality (UK/Other EU/Other EEA/Other Non-EU/Not known)

* Restricted only to those with an end date of contract.

** Based on subject area

The data file consists of a table comprising 20 columns and 827,734 rows. The columns indicated information on the 18 items listed above plus columns indicating the HEP and academic year. This data file was later supplemented by file "55768_variation_data" giving information on "Terms of employment" i.e. permanent/open-ended or temporary/fixed-term contracts.

An additional column of data giving the "Age at appointment" i.e. the age at which an academic was appointed to the current HEP was created as follows. The data giving "age" in a given year were used to calculate the year in which the academic was born, Birth Year. Together with the data giving the "Date appointed at current HEP" a column was created giving the "Age at appointment" at the current HEP.

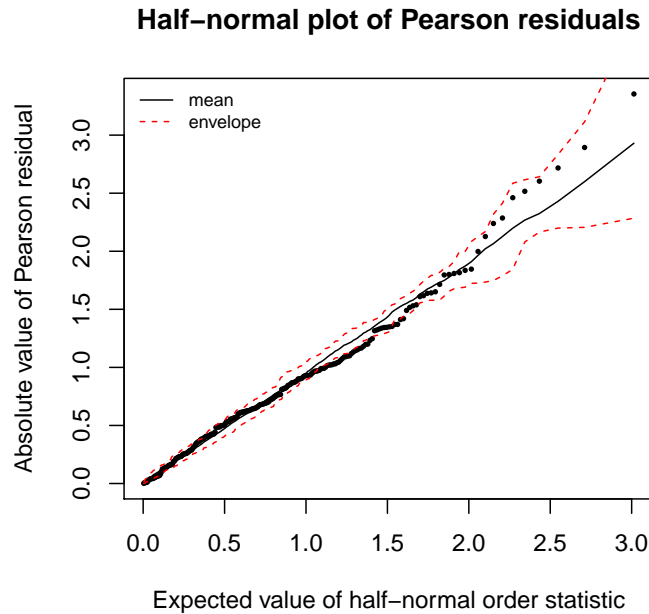
The data file therefore contained over 20 million individual items of information. In order to carry out a statistical study, sub-sets of these data relevant to specific questions were extracted using the program EXCEL as .csv files by Professor Ewart and provided for presentation.

The data presented in Figures 1 and 2 of the report used the sub-set giving the numbers of male and female academics in each HEP in each academic year separated into those in Oxford, Cambridge and the other Russell Group universities excluding Imperial College.

The data presented in Figure 3 consisted of the same data but with the additional information on terms of employment used to separate the data according to the type of contract; permanent/open ended or temporary/fixed-term. In a similar way the data displayed in figure 4 were obtained from the database by disaggregating according to academic discipline using the HESA classifications given in the "Notes and Labels file" corresponding to the 4 Oxford Divisions. Figure 5, as explained in the report, was constructed using the data supplied by the Review Working Group report annexe F. The remaining figures, 6–9 were constructed using the age information contained in the HESA data file and the "Age at appointment" values calculated as explained above.

Appendix 2: Technical details

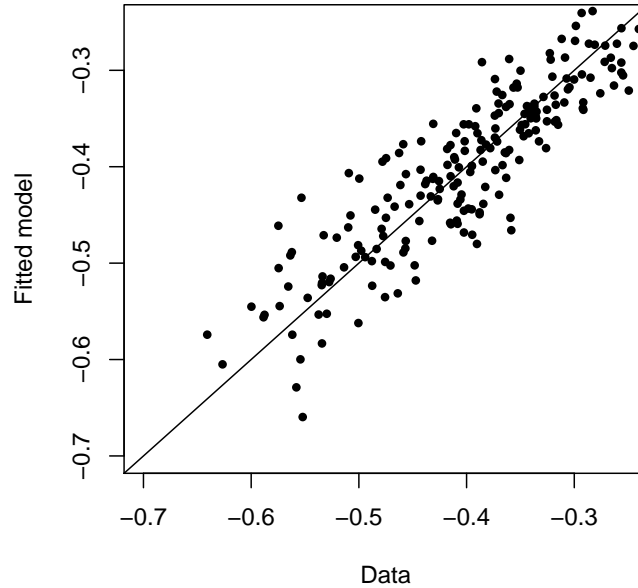
The data for all 23 universities, each of which has its own profile over time for the proportion of its female staff, are multilevel in nature and must therefore be analysed as such. Therefore, in order to cater for separate profiles within individual universities and extract the underlying common trends, multilevel Generalised Linear Models (GLMs) were fitted to the years 2007–2017 with the relationship between Female proportion and Year being fitted by a cubic spline with 3 degrees of freedom. Specifically, the R package *glmmPQL* from the *MASS* library was used to fit a binomial mixed effects model with *Academic Institution ID* as a random-effect level. Statistical models fitted in this way were used to produce Figures 1 to 4. Compliance with the modelling assumptions and the quality of fit were assessed by producing half-normal QQ-plots of the Pearson residuals with 95% envelopes, as recommended by Collett, D. (2003) *Modelling binary data*. Second edition. Chapman & Hall/CRC. The multilevel version of such a plot resulting from the model used to generate Figure 2 is shown below as an example.



As required, the residuals lie close to the solid line and within the envelope, so the model fit is good with no potential outliers. Similar plots were produced for all of the models in this section and all were equally satisfactory.

In order to give a "feel" for the quality of the fit, a further plot was also produced showing the fitted model versus the raw data. The plot, which appears below, shows clearly that the fit is very good.

log(odds): Fitted model vs Data



Again, such plots were produced as a check on all of the models used for comparing gender proportions across the Russell Group plus Oxford and Cambridge.

The hypothesis test referred to in paragraph 10 was a Fisher’s exact test of equal proportion. The result should, however, be treated with some caution because the possibility of Simpson’s paradox cannot be entirely ruled out; the quoted p -value would only be trustworthy if the relative proportions of the staff totals across the different academic disciplines were to be similar in Oxford, Cambridge and the Russell Group and data for checking this are not readily available. Having said that, given that, without Imperial College, most Russell Group universities have fairly similar ranges of subjects and faculties so the test cannot be excessively misleading.

The treatment of gender proportions across staff grades in Oxford posed different problems. With comparatively small numbers and in order to cater for lack of independence of year-by-year proportions obtained from them a log-odds growth model was fitted to the years 2006– 2015 with the response being the log of the Female/Male ratio for each category. An indicator variable (EJRA) was included as an interaction, thereby providing a switch to detect any change in growth rate from 2012. The models fitted well and satisfied all of the diagnostic tests (see below)

As before, preliminary models were fitted by using a cubic spline and, for these data, both with and without interaction with the EJRA variable. A likelihood-ratio test of the models both with and without this variable showed no significant effect ($p = 0.7657$). The graphs displayed in Figure 5 were obtained from this model.

Formal Shapiro-Wilk tests for normality of the model residuals were carried out with resulting p -values for Statutory Professor ($p = 0.3401$), Associate Professor ($p = 0.466$), RSIV ($p = 0.0999$), Academic & Academic Related ($p = 0.459$); the model residuals showed no evidence of heteroscedasticity or serial correlation and therefore there was no reason to doubt the adequacy of the fits obtained. It should be noted that, with four separate models being considered, Bonferroni corrections were applied in the discussions. The model outputs are given below.

Statutory Professor

The fitted model is shown in the table below.

| <i>Coefficient</i> | <i>Value</i> | <i>Std.Error</i> | <i>t-value</i> | <i>p-value</i> |
|--------------------|--------------|------------------|----------------|----------------|
| (Intercept) | -77.89 | 34.94 | -2.2292 | 0.0610 |
| Year | 0.038 | 0.017 | 2.1664 | 0.0670 |
| Year:EJRA | 0.000 | 0.000 | 0.0034 | 0.9974 |

There is no evidence of a steady growth in the Female/Male ratio ($p = 0.0670$, Bonferroni 0.2680), and there is no evidence to support a change in growth-rate post 2011 ($p = 0.9974$). The Year coefficient for $\log(\text{Female/Male})$ was 0.038, giving a multiplicative annual growth of $\exp(0.038) = 1.038$ or a compound 3.8% growth per annum.

Associate Professor

| <i>Coefficient</i> | <i>Value</i> | <i>Std.Error</i> | <i>t-value</i> | <i>p-value</i> |
|--------------------|--------------|------------------|----------------|----------------|
| (Intercept) | -42.67 | 5.567 | -7.6649 | 0.0001 |
| Year | 0.021 | 0.003 | 7.4708 | 0.0001 |
| Year:EJRA | 0.000 | 0.000 | 0.1274 | 0.9022 |

There is very strong evidence of a steady growth in the Female/Male ratio ($p = 0.0001$, Bonferroni 0.0004), and again no evidence of any change post 2011 ($p = 0.9022$). The annual growth rate of $\log(\text{Female/Male})$ was 0.021 giving a multiplicative annual growth of $\exp(0.021) = 1.021$ or a compound 2.1% growth per annum.

RS IV

| <i>Coefficient</i> | <i>Value</i> | <i>Std.Error</i> | <i>t-value</i> | <i>p-value</i> |
|--------------------|--------------|------------------|----------------|----------------|
| (Intercept) | 19.25 | 26.265 | 0.7330 | 0.4874 |
| Year | -0.010 | 0.013 | -0.7716 | 0.4656 |
| Year:EJRA | -0.000 | 0.000 | -0.9338 | 0.3815 |

There is no evidence of any annual growth in Female/Male ratio ($p = 0.4656$) and no evidence of change post 2011 ($p = 0.3815$).

Academic & Academic Related

| <i>Coefficient</i> | <i>Value</i> | <i>Std.Error</i> | <i>t-value</i> | <i>p-value</i> |
|--------------------|--------------|------------------|----------------|----------------|
| (Intercept) | -45.66 | 10.136 | -4.5050 | 0.0028 |
| Year | 0.023 | 0.005 | 4.4987 | 0.0028 |
| Year:EJRA | -0.000 | 0.000 | -1.1373 | 0.2929 |

There is evidence of steady annual growth ($* p = 0.0028$, Bonferroni 0.0112) but no evidence of a change post 2011 ($p = 0.2929$). There is multiplicative growth of $\exp(0.023) = 1.023$ or a compound annual growth of 2.3%.

Figures 6 to 8 were produced using kernel density estimates (Sheather, S. J. and Jones M. C. (1991) A reliable data-based bandwidth selection method for kernel density estimation. *J. Roy. Statist. Soc. B*, 683–690). Median differences in this section were tested with Mann-Whitney-Wilcoxon tests and equality of the tail proportions were tested with Fisher’s exact test.

Growth of the total number of staff over time was fitted using the *lme* function from the R library *nlme* with *Academic Institution ID* as a random effect level. The model was fitted with and without interaction terms for the factors Oxford, Cambridge and Russell Group, thereby testing for contrasts in the rate of growth parameters. A likelihood ratio test of the models with and without the interaction produced a p -value of 0.86, thereby showing no evidence of any difference in growth rates between the three categories.

Owing to heavy skewness, non-parametric tests were used to assess differences in age at appointment.

Standard chi-squared tests were used for the tables paragraph 43. With no cell in the tables having an expected value of less than 5, there was no reason to doubt p -values obtained from the asymptotic chi-squared distribution of the Pearson statistic.

Appendix 3

Simpson's paradox

There is a nice example which has the advantage of being from a genuine data set (1986 C. R. Charig; D. R. Webb; S. R. Payne; J. E. Wickham) and was influential in recommending the best technique for the surgical treatment of renal calculi (*i.e.* kidney stones).

There were two basic kinds of operation in use, these being all open surgery (*A*) and *percutaneous nephrolithotomy* (a small puncture keyhole surgery) (*B*), the latter having the advantage of quicker recovery time. The following data were gathered from a clinical trial:

| | Operation <i>A</i> | | | Operation <i>B</i> | | |
|------------|--------------------|-------|-----------|--------------------|-------|-----------|
| Stone size | Success | Total | % success | Success | Total | % success |
| Small | 81 | 87 | 93% | 234 | 270 | 87% |
| Large | 192 | 263 | 73% | 55 | 80 | 69% |
| Totals | 273 | 350 | 78% | 289 | 350 | 83% |

Now the paradox is this: taken overall (*i.e.* looking at the line marked Totals) the success rate of *A* is 78% and of *B* is 83%, so can one conclude that Operation *B* is to be preferred? Clearly that cannot be true because, for Small stones, *A* out-performs *B* by 93% to 87% and, for Large stones, *A* out-performs *B* by 73% to 69%; therefore *A* is clearly better than *B* for both stone sizes.

So what is going on here? The explanation is that surgeons were making pre-operation assessments of stone size and, when anticipating a small stone, were tending to opt for *B* and were opting for *A* when a large stone was diagnosed. This led to a large disparity in the operation totals: for Smalls there were 87 *As* and 270 *Bs*, for Larges there were 263 *As* and only 80 *Bs*; in statistical jargon the surgeons' initial diagnoses and subsequent choices of operation are known as a *confounder*. The incorrect conclusion reached by looking at totals is said to have been *confounded* by the hidden variable of diagnosis.

Another example, which is pertinent here, is that of graduate admissions to Berkeley in 1973, where there was much criticism of the disparity between male and female graduate admissions. The table below gives the figures for the 6 largest faculties.

| Gender | Accept | Reject | % Accepted |
|--------|--------|--------|------------|
| Male | 1198 | 1493 | 44.5% |
| Female | 557 | 1278 | 30.4% |

Clearly there is a bias against accepting females - or is there?

Now suppose we break it down by faculty.

| | Male | | | Female | | |
|---------|--------|--------|------------|--------|--------|------------|
| Faculty | Accept | Reject | % Accepted | Accept | Reject | % Accepted |
| A | 512 | 313 | 62% | 89 | 19 | 82% |
| B | 353 | 207 | 63% | 17 | 8 | 68% |
| C | 120 | 205 | 37% | 202 | 391 | 34% |
| D | 138 | 279 | 33% | 131 | 244 | 35% |
| E | 53 | 138 | 28% | 94 | 299 | 24% |
| F | 22 | 351 | 6% | 24 | 317 | 7% |

In only two out of the six faculties are there higher percentages of male acceptances. What is going on here? The confounder is that admission to some of the faculties is much harder; in other words places are more readily available in some faculties than in others. Suppose we look at the same data in a different way by taking the percentages of all applicants admitted, faculty by faculty, and seeing the male-female breakdowns of those who applied.

| Faculty | % Admitted | Male applicants | Female applicants |
|---------|------------|-----------------|-------------------|
| A | 64.5% | 825 | 108 |
| B | 63% | 560 | 25 |
| C | 35% | 325 | 593 |
| D | 34% | 417 | 375 |
| E | 25% | 191 | 393 |
| F | 6.5% | 373 | 341 |

Faculty A has the highest admission rate and 8 times as many males as females apply. The second highest is Faculty B with over 22 times as many male applicants as female applicants. The one faculty with more female applicants than males admits only 34%. The only correct way to analyse these data is to take the confounder into account and stratify the analysis across the different faculties. Simply looking at totals leads to the incorrect conclusion of anti-female bias when, in fact, the evidence is to the contrary.

Clearly there are pitfalls involved in looking at data of this kind and in seeking figures from any data source it is essential to guard against being given pre-processed overall percentages and pre-processed totals. Overall figures for looking at universities will not do - they must be broken down by faculty or, if that is not possible, at least by division.

The correct analysis for the Berkeley graduate admissions involves fitting a binomial generalised linear model; it turns out that there is no significant difference in the chances of admission between the genders except in the case of Faculty A, where a female is 2.86 times more likely to be admitted as a male. This is highly significant with $p = 0.0001$ and is the opposite of the conclusion reached from the aggregated figures.

Interpreting p -values

In statistical data analysis it is usual to formulate a question associated with the data in terms of a hypothesis. In particular, one has a so-called *null hypothesis* which refers to some basic premise to be adhered to unless evidence from the data causes it to be untenable. For example, in a clinical treatment data may be collected to compare two treatments (say, old v. new). The *null hypothesis* would then be no difference between treatments and evidence from the data would be looked for with a view to rejecting it and concluding that there was significant evidence of a difference. The weight of evidence is expressed in terms of a *p-value*, which is interpreted as the probability that the observed difference is due to chance rather than due to a genuine difference. Clearly a *p-value* is expressed on a scale of 0 to 1 and the smaller the *p-value* the greater the weight of evidence.

The obvious question arising is *what is the critical level for the p-value to result in rejection? Is there some generally accepted level at which null hypotheses are automatically rejected?* Alas, the literature is filled with what purports to be the definitive answer to this question, which is so misleading and ridiculous that it needs special mention.

A significance level of $p < 0.05$ is often taken to be of definitive, because it is below the “magic” level of 0.05. For example suppose that we had tested a new drug (new drug versus standard drug), which under the null hypothesis of no difference between the two drugs, gave $p = 0.04$. This says that the apparent difference between the two drugs being due to chance is less than 1 in 20. The *p-value* of 0.05 is the watershed used by the American control board (the FDA, which stands for Food and Drugs Administration) which licences new drugs from pharmaceutical companies. As a result it has been almost universally accepted right across the board in all walks of life.

However this level can be, to say the least, inappropriate and possibly even catastrophic. Suppose, for example, we were considering test data for safety critical software for a nuclear power station, N representing the number of faults detected in the first 10 years. Would we be happy with a *p-value* on trials which suggests that the probability that N is greater than zero is 0.05? We might be more comfortable if $p = 0.0001$, but even then, given the number of power stations (over 1000 in Europe alone) we would be justified in worrying. The significance level which should be used in deciding whether or not to reject a null hypothesis ought to depend entirely on the question being asked; it quite properly should depend upon the consequences of being wrong. At the very least we should qualify our rejection with something like the following.

| | | |
|-----|-------------------------|---|
| . | $0.05 < p \leq 0.06$ | “Weak evidence for rejection” |
| * | $0.03 < p \leq 0.05$ | “Reasonable evidence for rejection” |
| | $0.01 < p \leq 0.03$ | “Good evidence for rejection” |
| ** | $0.005 < p \leq 0.01$ | “Strong evidence for rejection” |
| | $0.001 < p \leq 0.005$ | “Very strong evidence for rejection” |
| *** | $0.0005 < p \leq 0.001$ | “Extremely strong evidence for rejection” |
| | $p \leq 0.0005$ | “Overwhelming evidence for rejection” |

The asterisks have been put alongside the levels referred to in the main text of the report so that the reader can judge the weight of evidence quickly without having refer to this appendix for checking the quoted p -values themselves.

Statement from the author to the Employment Tribunal

1. I understand my duties to the Tribunal and I have complied with those duties.
2. I have taken into account all relevant material facts and have identified the material on which the report is based.
3. I understand my duty to raise without delay any matter which causes me to alter the contents of this report.
4. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Since retiring from my Tutorial Fellowship in Mathematics I have given my services, free of charge, to any member of the Academic Staff or Academic Administration requiring statistical advice and/or expertise. I operate a full-time Statistical Consultancy Service within the Department of Statistics, a department which is recognised as being one of the leading statistics departments in the world and which was rated the UK's top department in the UK REF. This Service is restricted to members of Oxford University and is available to all researchers across the University, including DPhil students, and for this I require and receive no salary. My sole objective is to improve the quality of statistical analyses in research papers published by members of the University and to improve the techniques of their research groups. I wish to make it clear that I am an entirely disinterested party who has received no remuneration of any kind for the production of this report.

Daniel Lunn
Department of Statistics
University of Oxford

Brief Curriculum Vitae and statement of qualifications

Date of Birth: 18 February 1942

Qualifications: M.A. (Oxon), D.Phil. (Oxon)

Professional bodies:

Fellow of the Royal Statistical Society

Member of the American Statistical Association

Member of the International Association for Statistical Education

Appointments:

1972 Department of Statistics, Faculty of Mathematics, The Open University

1985 Worcester College, Oxford (Fellow and Tutor in Mathematics).

2009 Emeritus Fellow, Worcester College, Oxford

Research areas of publications:

Multilevel modelling

Bayesian statistics (reliability, simulation, meta-analysis)

Medical statistics, clinical trials (categorical data, repeated measures, generalised estimating equations, generalised linear models, robust methods), meta-analysis.

Directional data (estimation in circular and spherical geometries, robust methods)

Analysis of spectroscopic data (discrimination, multivariate methods of data reduction)

Reliability (reliability of safety critical and other software)

Distribution theory (smoothing, simulation)

Graphical methods and displays.

Books:

Lunn, A.D. and McNeil, D.R. (1991): *Computer-Interactive Data Analysis*, Chichester: John Wiley.

Hand, D.J., Daly, F., Lunn, A.D., McConway, K.J. and Ostrowski, E. (1994): *A Handbook of Small Data Sets*, London: Chapman and Hall.

Daly, F., Hand, D.J., Jones, M.C., Lunn, A.D. and McConway, K.J. (1995): *Elements of Statistics*, London: Addison-Wesley.

Ways forward on the EJRA issue

When the Equalities Act 2010 made traditional mandatory retirement policies illegal, Cambridge adopted an Employer Justified Retirement Age (EJRA) of 67; only Oxford and St Andrews followed. This was done in an attempt to get the university to accept career-long performance management. That failed, and we have been stuck with EJRA. But EJRA is no longer tenable; it harms the university, is morally unacceptable, and is probably unlawful.

1. No sensible business would sack about thirty of its top sales executives every year. In addition to losing the grant, contract and philanthropic income that would have been earned by professors if they stayed on, the university has been preventing professors applying for grants that would run past their retirement date (contrary to assurances given to Council when EJRA was reviewed in 2016). We also lose first-class people who move elsewhere to avoid the cliff-edge. EJRA thus imposes significant costs in revenue and staff retention.
2. Discrimination is widely viewed as morally wrong, and not just by the law. Companies increasingly require suppliers to declare that they do not discriminate on the basis of any protected characteristic, and this will in time include many of our funders.
3. EJRA failed to meet its stated goals; these were already unreasonable given Tinbergen's law, and the failure was documented in the 2018 Lunn report. Oxford and Cambridge have done no better on age structure than 21 Russell Group universities without an EJRA, and on gender equity we have done worse.
4. As the rest of the sector abandoned forced retirement years ago, there are many examples of alternative policies that have had some success at refreshing the workforce and tackling equity issues.
5. The EJRA in Cambridge (unlike Oxford) is also applied to academic-related staff (such as computer officers) which is hard to understand.
6. Professor Paul Ewart, who commissioned the Lunn Report, defeated Oxford last year in the Employment Appeal Tribunal, winning an order for reinstatement and compensation. Four other Oxford professors have since argued in a hearing at the Employment Tribunal in Reading from 28 November to 9 December this year that Oxford's EJRA scheme should be ruled unlawful.
7. To sack someone lawfully, a UK employer must sack them for a fair reason and using a fair procedure. Even if the tribunal finds that EJRA was fair in principle, the required procedure is not being followed here. Our retirement policy requires a Head of Department to give two years' notice to someone who is to be sacked under EJRA, yet we have already identified four professors due to be sacked in September and not one was called for a meeting with their Head of Department in 2021 as our policy (section 4.2) requires. Since the Campaign for Cambridge Freedoms started a petition for a Discussion, they have each individually been contacted by their Heads of Department and invited to come to a meeting or sign a form.

EJRA was treated by the previous administration as primarily a legal problem; the university's risk register said we might lose money if there were a successful challenge to it, so they considered it their duty to defend it without stopping to think whether it made any business sense at all.

The usual playbook is to set up a committee to draft a paper that will wend its way through the HR committee to the Council and eventually a Report leading to a Discussion and a vote. This can take years – and risks a protracted tussle.

A precedent to avoid is the debate over intellectual property in the early 2000s, when Alec Broers proposed that the University should own the copyrights and patent rights to all creative work by staff and students. This misguided effort continued under Alison Richard and blighted her tenure of office. It was opposed by many prominent academics: John Sulston sequenced the human genome so he could put it in the public domain, not to have it flogged off by Cambridge Enterprise, while Steven Hawking wanted his book royalties to pay for his nurses, not be swallowed up by the Chest. Regents voted half a dozen dissidents on to the Council, and after a series of votes decided that copyrights would remain with the creator, while patent royalties would be shared.

The senior management team needs to take a view on whether they continue the previous legalistic strategy and risk a protracted tussle, or opt for a more business-like approach.

A business-like approach would involve abolishing EJRA rapidly, or at least neutralising it while the Regent House makes up its mind by a moratorium on sackings plus a policy that UTOs can apply for grants that run past the current retirement age. This will unlock a substantial increase in revenues for a small cost in funding departments to continue hiring young staff during the transitional period until we reach a new equilibrium. As a back-of-the-envelope calculation, if 15 professors stay on out of the annual 30 and for an average of three years, then 45 fresh posts should be funded. 45 posts at £70k is a bit over £3m, or an extra £1m a year, while if 5 of the 15 professors each raise £1m a year each of which half is overhead, the university will get in more than double what it spends. In practice the outcomes will be even better, as it's the senior professors who pull in the really big grants.

The main point is that moving to neutralise the issue rapidly has no real downside. Continuing the legalistic approach, on the other hand, carries major risks. If the Oxford professors win at the Employment Tribunal but then Oxford goes to the Employment Appeal Tribunal (as in the Ewart case) then people could dig in their heels leading to a hotly contested vote. As time goes on, more academics will engage. Our experience canvassing for the Discussion is that 70% of academics we approached favoured abolishing EJRA altogether and a further 25% favoured major change, such as raising the retiring age to 75.

The outcome is not in doubt, merely the process whereby we get there.

We urge an accelerated and transparent policy review leading to a vote in the Regent House, and a moratorium on forced retirement meanwhile to remove both the internal incentive for delay and the risk that Cambridge professors, like our Oxford colleagues, go to the tribunal. This will also mitigate the risk of a multi-year hard-fought campaign like the IP issue. Is that how the incoming VC should be spending her first three years in office?

Diane Coyle CBE, FAcSS

Simon Baron-Cohen FBA FMedSci Kt

Ross Anderson FRS FREng

Campaign for Cambridge Freedoms, December 14 2022

CAMBRIDGE UNIVERSITY REPORTER

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UNIVERSITY OF
CAMBRIDGE

NOTICES

Calendar

- 7 February, *Tuesday*. Discussion by videoconference at 2 p.m. (see below).
 13 February, *Monday*. Lent Term divides.
 25 February, *Saturday*. Congregation of the Regent House at 10 a.m.
 26 February, *Sunday*. Preacher before the University at 11.30 a.m., The Revd Dr Nicholas Austin, SJ, Master of Campion Hall, University of Oxford (Hulsean Preacher).

| Discussions (Tuesdays at 2 p.m.) | Congregations (Saturdays at 10 a.m.) |
|----------------------------------|--------------------------------------|
| 7 February | 25 February |
| 21 February | 25 March |
| 7 March | 1 April |
| 21 March | |

Discussion on Tuesday, 7 February 2023

The Acting Vice-Chancellor invites members of the Regent House, University and College employees, registered students and others qualified under the regulations for Discussions (*Statutes and Ordinances, 2022*, p. 111) to attend a Discussion by **videoconference** on Tuesday, 7 February 2023 at 2 p.m. The following item will be discussed:

1. Report of the Council, dated 12 December 2022, on the transfer of parts of Statute concerning the Chest to Special Ordinance (*Reporter*, 6680, 2022–23, p. 214).

Those wishing to join the Discussion by videoconference should email UniversityDraftsman@admin.cam.ac.uk from their University email account, providing their CRSid (if a member of the collegiate University), by 10 a.m. on the date of the Discussion to receive joining instructions. Alternatively contributors may email their remarks to contact@proctors.cam.ac.uk, copying ReporterEditor@admin.cam.ac.uk, by no later than 10 a.m. on the day of the Discussion for reading out by the Proctors,¹ or may ask someone else who is attending to read the remarks on their behalf.

In accordance with the regulations for Discussions, the Chair of the Board of Scrutiny or any ten members of the Regent House² may request that the Council arrange for one or more of the items listed for discussion to be discussed in person (usually in the Senate-House). Requests should be made to the Registry, on paper or by email to UniversityDraftsman@admin.cam.ac.uk from addresses within the cam.ac.uk domain, by no later than 9 a.m. on the day of the Discussion. Any changes to the Discussion schedule will be confirmed in the *Reporter* at the earliest opportunity.

General information on Discussions is provided on the University Governance site at <https://www.governance.cam.ac.uk/governance/decision-making/discussions/>.

¹ Any comments sent by email should please begin with the name and title of the contributor as they wish it to be read out and include at the start a note of any College and/or Departmental affiliations held.

² <https://www.scrutiny.cam.ac.uk/> and https://www.admin.cam.ac.uk/reporter/regent_house_roll/.

International Working Policy consultation: Responses by Monday, 6 March 2023

Views are sought on a draft International Working Policy by **Monday, 6 March 2023**. It is proposed that the policy will replace the existing Global Mobility Policy¹ to provide the framework for any paid activity which will take place outside the UK (including fieldwork/research, secondments and sabbaticals). Background information, the draft policy and links to the online surveys are available on the HR Division's webpages² (Raven log-in required). The consultation is open to all employees and institutions, but is particularly relevant to those employees that have worked or carried out activities outside the UK in the past, are currently outside the UK or believe they may have a requirement to carry out activity outside the UK in the future.

¹ <https://www.hr.admin.cam.ac.uk/policies-procedures/global-mobility-policy>

² <https://www.hr.admin.cam.ac.uk/international-working-policy-consultation>

NOTICES BY THE GENERAL BOARD**Academic Career Pathways, 1 October 2023 exercises: Committee amendments**

Further to the Notice published on 7 December 2022 (*Reporter*, 6679, 2022–23, p. 182), amendments have been made to the membership of two of the Faculty Committees for the Academic Career Pathways 1 October 2023 exercises, as follows:

FACULTY COMMITTEES

1. School of the Physical Sciences

Physics and Chemistry

Professor Mete Atature has been appointed as a member of the Faculty Committee, in place of Professor Michael Payne.

2. School of Technology

Business and Management

Professor Janet Marillyn Lees has been appointed as the external member of the Faculty Committee.

OBITUARIES**Obituary Notice**

The Right Honourable RALPH THOMAS CAMPION GEORGE SHERMAN, 7th Baron CAMOYS, GCVO, DL, Honorary Fellow of St Edmund's College, sometime Lord Chamberlain of HM Household and a Permanent Lord-in-Waiting, died on 4 January 2023, aged 82 years.

GRACES**Grace submitted to the Regent House on 1 February 2023**

The Council submits the following Grace to the Regent House. This Grace, unless it is withdrawn or a ballot is requested in accordance with the regulations for Graces of the Regent House (*Statutes and Ordinances*, 2022, p. 112), will be deemed to have been approved at **4 p.m. on Friday, 10 February 2023**. Further information on requests for a ballot or the amendment of Graces is available to members of the Regent House on the Regent House Petitions site.[§]

1. That, on the recommendation of the Council and the Nominating Committee, PROFESSOR ANDREW BRIAN WATHEY, CBE, FRHistS, FSA, be appointed a member of the Council in class (e) for four years from 1 March 2023.

[§] See <https://www.governance.cam.ac.uk/governance/key-bodies/RH-Senate/Pages/RH-Petitions.aspx> for details.

ACTA**Congregation of the Regent House on 28 January 2023**

A Congregation was held at 10 a.m. All the Graces submitted to the Regent House (*Reporter*, 6684, 2022–23, p. 295) were approved.

The following degrees were conferred:

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This content has been removed as it contains personal information.

E. M. C. RAMPTON, *Registrar*

END OF THE OFFICIAL PART OF THE 'REPORTER'

REPORT OF DISCUSSION

Tuesday, 24 January 2023

A Discussion was held by videoconference. Deputy Vice-Chancellor Professor Johan van de Ven, *CTH*, was presiding, with the Registry's deputy, the Senior Proctor, the Senior Pro-Proctor and fifty other persons present.

The following item was discussed:

Topic of Concern to the University: Forced retirement

(*Reporter*, 6679, 2022–23, p. 180).

Professor R. J. ANDERSON (Department of Computer Science and Technology and Churchill College):

Deputy Vice-Chancellor, in 2010, the Equality Act outlawed discrimination on the grounds of a protected characteristic such as age, disability, race, sex, religious belief or sexual orientation, except as a proportionate means of achieving a legitimate aim. This allowed an 'Employer Justified Retirement Age' or EJRA, intended for firms like airlines which sack pilots at 60 when they lose their licenses.

Oxford and Cambridge were the only universities in England to introduce an EJRA for academic staff. Our scheme was intended by the then Registry to give us a few years' breathing space to deliberate a career-long performance management system; we rejected that, but the EJRA stuck. It was copied by Oxford, and justified at both places with claims that it would increase gender equality, promote inter-generational fairness, produce career opportunities for younger academics and improve the age structure of the workforce. Cambridge added innovation and academic freedom to the list of excuses, and pivoted to push the EJRA as the only alternative to career-long performance management. After a consultation in May 2011 and a Report in December 2011, there was a Discussion in January 2012, after which a majority of us voted for the policy.

When the EJRA was reviewed in 2016, I was an elected member of the Council. We were assured that academics who wanted to stay on – and could raise money to pay their salaries – would be able to continue as contract staff. But academics soon started finding that we were not allowed to apply for research grants or contracts that would run past our scheduled retirement date. In my case, I wanted to apply in 2018 to renew a five-year grant from EPSRC for the Cambridge Cybercrime Centre, which supports half a dozen postdocs and research students and collects data used by over 150 researchers at over fifty universities worldwide who investigate online wickedness. Despite the assurances given to the Council, I was not allowed to apply for a grant for 2020–25 as I was due to retire in 2023. We now hear that the University had obtained a legal opinion that the EJRA was dubious in law, and the fewer exceptions were allowed, the easier it might be to defend.

In Oxford, the physics professor Paul Ewart duly took a case to the Employment Tribunal, winning compensation and an order for reinstatement. His victory was based on a statistical analysis that compared Oxford and Cambridge with 21 other Russell Group universities. It concluded that the data showed no evidence of any benefit from forced retirement – and on gender equality, Oxford and Cambridge had actually done worse. That analysis is now online at <https://www.freecambridge.org>. Oxford reacted to the case by restricting forced retirement to senior Professors and raising the retiring age. What should Cambridge do?

The Equality Act 2010 prohibits discrimination based on any of nine protected characteristics. Cambridge now speaks out against discrimination based on eight of them, but still discriminates against its employees based on age. What is more, whenever the current excuses for the EJRA are debunked, new ones are substituted. This requires the University to maintain, develop and extend an ageist narrative, just as the empires of past centuries sustained racist narratives. In that sense, the EJRA is morally corrosive.

The EJRA also places Cambridge at a competitive disadvantage as we lose many of our highest income and research generators. As well as those who leave at 67, others go elsewhere in their early 60s once they cannot apply for grants, while yet others mark time, winding down before they want or need to.

So our retirement policy is not only unlawful and immoral, but commercially foolish. What sensible business would sack thirty of its top sales executives every September?

I therefore selected fifty Professors at random and contacted them. About two-thirds want the EJRA abolished, and one quarter want substantial reform, such as setting the retirement age to 75 – the same as for judges, as one law Professor put it. Only one supported the status quo. In the process I heard many tales of research groups broken up, of stars lost to competitors and of bureaucratic incompetence. Other speakers will tell their own stories.

We must not forget our academic-related colleagues. Given the difficulty of hiring good people on University salaries, it makes no sense to sack loyal, long-serving lab technicians and computer officers for the sin of being 67, when they are willing and able to continue. It would be hard to replace some of them even at double the salary. Even Oxford has stopped sacking anyone other than senior Professors for being old.

It is past time for the Council to produce a Report with a proposal to abolish the EJRA. For now, the Old Schools seem to be following their standard Fabian tactics. A working group has been set up, we are told, that will report to the HR Committee and perhaps we will have a Report some year real soon now.

However, it is unlawful to sack someone unless for a fair reason and following a fair process. The excuses advanced from time to time to support the EJRA do not amount to a fair reason, and we hope that the Employment Tribunal will find so in March in a case brought by a further four Oxford Professors. However, as Oxford's new VC was once responsible for the EJRA, she may appeal and delay a definitive court judgment for years.

Here in Cambridge, our retirement policy provides at section 4.2 that staff must be invited to a meeting with their Head of Department or Institution two years in advance of forced retirement so that the options can be discussed. Although we do have a process for delaying retirement, it has been made complicated and time is needed to prepare a case. I should have been called in for such a meeting no later than September 2021, but I was not. I have since discovered that 66-year-olds in other Departments and Non-School Institutions are in the same position, as is a former member of staff who was sacked at the start of October last year without being consulted in September 2020.

In consequence, an employment lawyer assures me that should the University sack me this September, I will have a case at the Employment Tribunal for reinstatement and compensation. It would be folly for the University to conduct a mass, unlawful sacking in the full glare of the

current press interest. The resulting conflict would also blight our incoming Vice-Chancellor's tenure of office just as the Intellectual Property policy conflict blighted that of Professor Dame Alison Richard.

I therefore ask the Council, first, for a moratorium on sackings under the EJRA until the Regent House has had time to consider and vote on the abolition or replacement of this unfortunate policy; and second, to instruct the Research Office that staff eligible to apply for research grants must be allowed to do so forthwith regardless of any retirement dates.

To those who ask what sort of retirement policy we will have after the EJRA, the simple answer is none. Vice-Chancellors of other universities with whom I've discussed this don't see the need, as they don't experience retirement as a problem.

Finally, if the working group, the HR Committee and the Council seriously entertain any reform other than the complete abolition of the EJRA, then I call on them to provide this House with full data on how the EJRA has really operated so far, including the value of research grants and contracts won by staff over 60 broken down by age; early retirements from age 60–66 by staff who were previously effective fundraisers and their subsequent destination where known; how many exceptions are given per year, together with the proportion who were men in Grade 12 and whether these were more likely to get an extension than women or people on lower salary grades, and the proportion who were academic versus academic-related or administrative officers; and finally how many Professors and other senior staff have been hired with a confidential agreement that the EJRA would not apply to them.

Professor U. C. GOSWAMI (Department of Psychology and St John's College), read by Professor Anderson:

Deputy Vice-Chancellor, I am a female Professor aged 62 years, and I'm one of those members of the Regent House who previously voted in favour of the forced retirement motion. I believed that it prevented 'job blocking', that is the prevention of the election of new University Teaching Officers (UTOs) because older and inactive UTOs didn't retire. I still believe that it is important for Departments to be able to appoint young UTOs, but based on the evidence amassed by Professor Anderson, I no longer believe that forced retirement facilitates this process.

Now that other universities do not force the retirement of active older UTOs, Cambridge is at a clear competitive disadvantage by retaining this policy. I personally currently hold substantial grant funding, with grants running for six and eight years respectively. In 2022 my lab employed twelve young contract researchers. Yet due to my age I am now unable to apply for further long-term funds without a guarantee that I will be retained as contract staff. I have learned that I can only apply once for contract status, meaning that by age 70 my time is up. Yet at a recent conference in Stanford I discovered that the other two female keynote speakers were both aged 76 (one at Stanford, one at Washington). Both were horrified to hear that I can no longer apply for long-term funding because of Cambridge policies regarding my age. Given the Equality Act 2010, it is clearly wrong that Cambridge discriminates on the basis of age.

Professor K. A. MUNIR (Pro-Vice-Chancellor for University Community and Engagement, Chair of the HR Committee, and Homerton College):

Deputy Vice-Chancellor, when the Employment Equality (Age) Regulations were first introduced in 2006, employers were able to retire employees compulsorily at or over the default retirement age of 65, provided they followed a statutory retirement notification procedure.

The default retirement age was abolished in April 2011. Since then, employers have been able to operate a compulsory retirement age provided it can be objectively justified as a proportionate means of achieving a legitimate aim. This is called an Employer Justified Retirement Age or EJRA.

The University currently operates an EJRA for University Officers only, which is at the end of the academic year (30 September) in which the officer reaches the age of 67. This is contained within the University's Retirement Policy,¹ introduced in 2012.

The University does not operate a retirement age for assistant, unestablished research, unestablished academic-related and unestablished academic members of staff.

Since its introduction, the Retirement Policy was reviewed in 2015–16. That review concluded that the EJRA should be maintained at 67 for University Officers. A further substantive review was planned in 2019–20, but this work was postponed due to the Covid pandemic.

On 20 October 2022, the Human Resources Committee agreed that this review would now take place during the 2022–23 academic year, commencing in Lent Term 2023.

The HR Committee will propose a Retirement Policy and EJRA Review Group, which will be academic-led. It will review the terms of the current Retirement Policy and the operation of the EJRA to determine whether they remain fit for purpose. The Council and the General Board expect to publish the Review Group's terms of reference and membership in the *Reporter* by the end of Lent Term 2023.

The Review Group will seek the views of the University community on the current arrangements and any proposed changes, to ensure that feedback is sought from a spectrum of age groups and will report on its findings to the Council and General Board in the first instance.

¹ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy>

Professor R. BOURKE (Faculty of History and King's College):

Deputy Vice-Chancellor, I would like to add some information to this debate based on my own experience. Before coming to Cambridge, I worked at Queen Mary University of London. There we hired three post-retirement historians, two from Cambridge. Both went on to write very major works. They represented a substantial addition to the department in which I worked – in terms of teaching, recruitment and research. One explanation for this lies in the fact that, among outstanding historians, research dividends often come late in careers. In many cases, cumulative experience counts in favour of achievement.

My department in London expanded at the early- and mid-career ends of the profession. In fact, the main expansion happened among early-career academics. Moreover, this was the pattern across London generally: for instance, King's College London and University College London expanded dramatically during the same

period, mainly recruiting early-career historians. This can be seen from their online profiles today. These departments are still well balanced in terms of age. They are not, and have not been, gerontocratic in complexion. Nobody wanted or wants that.

Our experience in London was as follows: some historians retired early, most at the usual age, and some stayed in post beyond 65/67. The latter therefore made up a fairly small minority. Those who remained made very large contributions in terms of what I would call ‘moral leadership’. They also tended to go on fractional contracts – thereby releasing funds for junior posts. In addition, they had strong records of attracting outside funding. Those who wished to work beyond, say, 67 tended to be dynamic. That, I take it, is one reason why they kept going. ‘Dead wood’ might be a worry, but it did not apply in our case. Those who contributed least were in fact mid-career colleagues who had not fulfilled their promise. The most senior (in terms of age) never dominated departmental business: because they were fractional, they got on with their own research and teaching. Given the opportunities for new appointments, combined with the contributions of senior faculty in terms of prestige, inter-generational relations were harmonious. I believe this to be marginally less the case at Cambridge, which, for whatever reason, I have found to be more hierarchical, more conservative, and more trepidatious about new hires.

The main reason for imposing a compulsory retirement age at Cambridge was to increase opportunities for younger scholars. This was a noble ambition. The reverse has been the case. But this is less striking than the situation elsewhere: the retirement cap was lifted everywhere outside Oxbridge in England, and the result has not been *rigor mortis*. On the contrary, as my London examples show, the field was opened up to new talent.

Professor M. H. KRAMER (Faculty of Law and Churchill College):

Deputy Vice-Chancellor, although I very gratefully signed the request for a Discussion that was circulated by Professor Anderson, I respectfully disagree with a couple of the statements in that request. I did not believe in 2011 or 2012 that the retention of a mandatory retirement age by Cambridge was lawful. I argued sustainedly for a contrary view in the May 2011 and February 2012 Discussions. Likewise, I did not think in 2011 or 2012 that most universities would follow the lead of Cambridge and Oxford in trying to preserve a mandatory retirement age. I correctly predicted that very few if any universities would follow that lead.

At the time of the May 2011 and February 2012 Discussions on this matter, the paramount concern which animated most of the people who spoke in support of an EJRA – and which also animated most of the members of the Regent House who subsequently voted in favour of an EJRA – was the putative absence of a system of performance management that would supposedly be crucial if an EJRA were not in place. That concern was prominently expressed in some of the fly-sheets that were circulated for the subsequent vote on the EJRA by the Regent House. I addressed that concern at some length in the 2011 and 2012 Discussions.

For example, I pointed out that in January 2011 the Department of Business, Innovation and Skills (BIS), on behalf of the government, stated in its response to consultation about the 2011 Repeal of Retirement Age Amendment that ‘[t]he Government does not believe that

the [Default Retirement Age] should be used as an alternative to fair and consistent performance management.’ On behalf of the government, BIS simultaneously published a detailed cost/benefit justification of its position against a mandatory retirement age. These official documents make clear that one of the purposes of the 2011 Amendment to the 2010 Equality Act was to disallow the use of a mandatory retirement age as an alternative to an adequate system of performance management.

I also pointed out in 2011 that the main components of an adequate system of performance management for academics of all ages are already in place and operating in Cambridge: procedures for probation, procedures for promotion, procedures for inclusion in the REF, and course-evaluation forms. Although those components might need to be tweaked slightly, they are familiar and of long standing. They obviate the need for any new system that would be heavy-handedly managerial.

Another concern invoked by the supporters of the retention of a mandatory retirement age in 2011 and 2012 was the possibility that large numbers of senior academics would stay in their positions well beyond the age of 67 if the mandatory retirement age were to be eliminated. As all or nearly all participants in this Discussion will be aware, that concern figured saliently in Oxford University’s unsuccessful effort to defend itself against litigation pursued by Professor Paul Ewart. Ewart triumphed against Oxford in large part because he adduced statistical evidence to show that the effect of the retention of a mandatory retirement age on the availability of academic positions at Oxford for younger scholars was trivial. Oxford adduced no satisfactory countervailing evidence, just as Cambridge has heretofore not.

In the 2011 and 2012 Discussions, I impugned the notion that large numbers of Cambridge academics would remain in their positions for substantial periods of time after reaching the currently mandatory retirement age. I pointed to data from the United States, where the mandatory retirement age for academics (and many others) was eliminated in the early 1990s. Across the American university sector as a whole, the percentage of academics staying in their positions past the previously mandatory retirement age of 70 has been slightly under 2%. Since those earlier Discussions, nearly all universities in this country have similarly operated without any mandatory retirement age for academics. There should be ample data pertaining to the proportion of academics at those UK universities who have remained in their positions past the previously mandatory retirement age, and there should be data pertaining to the effects on the availability of entry-level positions for younger academics. If Cambridge University’s administrators believe that their rationale for the retention of a mandatory retirement age is bolstered by those data, then they should present the relevant findings. So far, no such findings have been adduced in support of the University’s position. The data which I have seen are contrary to that position.

Though I have made quite a few other points in my contributions to the 2011 and 2012 Discussions, I will close here with two observations that pertain specifically to our current circumstances. First, at a time when the sluggishness of the national economy is due in part to the substantial decline in the number of people above the age of 55 who are in employment – a decline which was largely precipitated by the Covid pandemic but which has persisted thereafter – the University is operating quite curiously by insisting on excluding academics from employment after they have reached a certain age.

Second, there is no doubt that the retention of a mandatory retirement age has impaired the international competitiveness of Cambridge and Oxford. It has been one significant factor behind the great difficulty encountered by Oxford in filling its endowed Chairs within my main areas of philosophy (political, legal, and moral philosophy). When I unsuccessfully sought last year to encourage a couple of eminent American legal philosophers to apply for the Chair in legal philosophy that was being advertised by Oxford, each of them independently referred to the mandatory retirement age as a major reason for not applying. One of them mentioned that he would probably want to retire at the specified age but that he took exception to the prospect of being forced out if his inclinations were to change. If the administrators at Oxford and Cambridge are endeavouring to change each of those institutions from a leading global university to a regional university, then the retention of a mandatory retirement age is an apt technique for the furtherance of such a perverse aim.

Professor T. W. ROBBINS (Department of Psychology and Downing College):

Deputy Vice-Chancellor, I retired at age 67 in October 2017, vacating then the Chair of experimental psychology and Head of Department posts, but was subsequently employed at 70% FTE until 2020 as an Academic Lead for REF2021 in the School of Biology. I have been treated reasonably well by both Department and College since retirement and am financially solvent through my USS pension (rather fortunately in view of current trends). However, my criticism of the EJRA is not primarily addressed at personal financial concern so much as its possible detrimental impact on the University.

First, I think it has prevented some crowning achievements that might have resulted from the cumulation of highly successful lines of research. In my case, I regret not being allowed by the University to apply to renew my five-year Wellcome Trust Investigator Grant (£3m) as the sole Principal Investigator (PI) for the full period of five years. I was only permitted in 2021 to submit an application for the disadvantageous period of three years and only as a co-PI, which were major reasons cited by the Trust for its rejection. I still fail to see why this application was limited by this University to three years only. The previous Investigator grant, which has led to some quite highly cited work, only finally ended on 30 September 2022.

Second, the University has nevertheless benefited from my loyal and unsalaried contributions in several ways, although not to the maximal extent. Since 2021 I have formulated and applied successfully (as a 'co-Investigator') for three other grants to various organisations for funds totalling over £1m and employing three individuals (two postdocs). I have also been contributing significantly for several years to a strategically important Cambridge–Singapore major collaborative award involving the Cambridge Centre for Advanced Research and Education (CARES), devoting an average of approximately one day a week to this in the last two years. However, as a co-Investigator with no University contract, I can make no formal managerial contribution to these projects, and, in the case of CARES, not help to fulfil a mandatory residential requirement of the University for this research programme (despite travelling twice to Singapore on request to present to Review Committees). I understand that being a co-Investigator doesn't even qualify you to be an unsalaried Director of Research.

I have published about 180 articles (according to the Web of Science) since the age of 67 (about 20% of my lifetime output) and I remain in some citation lists at the top internationally in my fields of Psychology and Neuroscience. Although not wanting to blow my own trumpet, I do wish the University was better able to take credit for these reputational esteem markers. Publications based on my previously funded work are still appearing but will be a waste for future possible University REF submissions, as many of them will not include HEFCE-funded individuals. My William James Fellow award (2021) from the (prestigious) Association of Psychological Sciences presumably will also not figure as a mark of institutional esteem in the next REF.

I am frequently invited to give research lectures, apply to major funding schemes and supervise Ph.D. applicants, many of which I have to decline – and so often nominate younger faculty colleagues in my place to take advantage of these opportunities (which they may otherwise not have). I do continue to advise (and effectively supervise) some Ph.D. candidates (six graduating in the last two years) and several young postdoctoral fellows. I have marked undergraduate dissertations and research projects and helped to organise a regular graduate seminar. I consult for Cambridge Enterprise. So far as I can assess, I am not obstructing other individuals' research or opportunities by using their resources or space.

Hence, I think this contribution to University scholarship, research and mentorship would have made some case for continuing appointment beyond the age of 67, at an appropriate level. Overall, given the examples and experiences of many distinguished retired colleagues, I believe the practice of the EJRA in Cambridge to be anomalous, institutionally damaging (in both the material and reputational sense), disrespectful and discriminatory.

Professor M. S. ROBINSON (Department of Clinical Biochemistry):

Deputy Vice-Chancellor, I have more anecdotal things to say. I am 71. I officially retired at the age of 67 and I did everything I was supposed to in terms of asking to stay on. I said I would not get a salary and it was contingent on my getting a five-year Investigator award from the Wellcome Trust. Both of these were successful, so that's all very well.

But the clock is ticking. I have less than a year and a half on my Investigator award and I will not be able to apply for another grant under the current rules because only one extension is allowed. I get no salary and I've deliberately downsized my lab because I do feel that the younger people should be the ones getting the best students and expanding, but I do need the use of a lab to continue to do original research. So I'm not depriving anybody else of anything. In fact in my Institute, the Cambridge Institute for Medical Research, the junior scientists and academics really wanted me and a couple of other academics in the same sort of category to stay on because we're so useful: we've got experience; we can advise them; we read their manuscripts; we are always open for discussion. So that's one positive thing.

Another positive thing is that for the last couple of years in particular, I've been taking part in several volunteer schemes aimed at talented young A-level and university students from disadvantaged backgrounds to help them either get into a good university or possibly have a career in research. This has included having these young people spend anywhere from one to eight weeks in my lab. But

after a year and a half, I won't have a lab anymore. I won't be able to take part in this kind of volunteer project, introducing young people to hands-on research.

I was just using myself as an example and I'm hardly unique, but I think the problem is that you could be doing your best work ever, you can tick all the boxes of people who are underrepresented, you could be doing a fantastic job for the community at large, and yet you're still booted out at a particular age. Whereas it used to be possible to apply for another extension, this is no longer possible. So I'm out for good and I just feel this is wrong for all of us.

Professor S. BARON-COHEN (Department of Psychiatry and Trinity College):

Deputy Vice-Chancellor, Professor Anderson has mentioned that the EJRA has failed to meet its goals of increasing diversity and so is no longer a justified exception to the Equality Act. I want to focus on the fact that forced retirement on the grounds of age is discrimination and is no different to any other form of discrimination. As Professor Anderson mentioned, there are nine 'protected characteristics' under the Equality Act. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. All of the nine characteristics, including age, need protection from discrimination.

I spend much of my working life doing outreach, talking about neurodiversity and the need to ensure that work places and educational institutions do not discriminate against people with disabilities, including autistic people. For example, I gave the keynote speech at the United Nations in New York in 2017 on the topic of *Autism and Human Rights*, documenting how autistic people are being discriminated against in almost all parts of society. I do this human rights work because I believe we should strive to achieve a society based on equality, diversity and inclusion. So I find it indefensible, contradictory and embarrassing that although Cambridge University says it believes in equality, diversity and inclusion, it actually discriminates against people based on their age.

We have multiple performance measures, such as the REF and the appraisal system, to end people's contracts if they are not performing their job well, but it is morally wrong to end people's contracts if they are performing well in their job, purely because they have one of the nine protected characteristics.

Professor Anderson mentioned that it makes no economic sense to sack Professors who every year bring in far more income in grants than it costs to employ them – I myself have brought in £10m in the last three years – and it is crazy that we force our top Professors to move to a competitor university a few years before they hit their 67th birthday. The competitor university welcomes them because they do not discriminate on the basis of age.

Of course we would all like to see more Assistant and Associate Professorships created, but these should not be funded by sacking people on the basis of age. I brought in £4m for an endowed Professorship just last year, and this philanthropic donation was made because donors trust senior leaders with strong track records when they are considering making donations on this scale.

But I want to underline the moral case: there would rightly be an outcry if we sacked academics on the grounds of race or gender or because they are disabled or gay, and today we are finally hearing the same moral outrage about age discrimination. All forms of discrimination based on a protected characteristic are equally morally repugnant.

It took our University until 1948 to abolish gender discrimination and to allow women to be awarded degrees and to study here. It is time to abolish the EJRA as a policy based on age discrimination, to bring our University in line with modern views of human rights, as enshrined in the Equality Act.

Professor D. COYLE (Department of Politics and International Studies and Churchill College), read by Professor Baron-Cohen:

Deputy Vice-Chancellor, the EJRA policy has no obvious advantages and several disadvantages to the University. The ones I would like to emphasise are as follows:

First, it makes terrible academic and commercial sense for Cambridge to require unwilling, research-active people bringing in lots of money – which is used for hiring younger researchers – to leave when they are so productive. I am personally concerned that as I approach 67 it is going to be increasingly difficult to raise funds for growing our Institute if it's known I might be forced to leave at that deadline.

Second, only a small number of people would be likely to want to stay on for much longer; and if they are genuinely unproductive that is a management question; a forced-retirement sledgehammer is inappropriate.

Third, the policy has done nothing to improve diversity, so Cambridge should introduce a scheme that works instead. The EJRA has perhaps even let the University get away with not reflecting on genuinely effective diversity policies as early as it could have.

Dr N. J. HOLMES (Department of Pathology):

Deputy Vice-Chancellor, the question of whether the University should have a fixed retirement age is one which arouses considerable passion within our community. I have come here today to speak in favour of the retention of a default retirement age for academic staff. I expect to find myself in a minority of speakers but that does not necessarily mean that my view is held only by the same minority of members of academic staff or the Regent House, which are – self-evidently, though overlapping – different constituencies.

I think it vital, in order to discuss this emotive issue objectively, to try and look at the position in general, not as it may apply to this or that individual or indeed to ourselves. We need to understand that the issue of whether an employer can and should justify a default retirement age is predicated on what the employer can legitimately claim is required in the interests of their 'business'. It is not about what is best for the individual employee or the desires of employees generally.

I spoke at the Discussion, exactly eleven years ago today, on the Joint Report which introduced the current retirement policy including our Employer Justified Retirement Age (EJRA). Statistics then suggested that were we to not introduce an EJRA to perpetuate our long-term retirement policy we would immediately diminish the annual recruitment of academic faculty by about 40–50%. This policy did not introduce retirement at the end of the academic year in which the office-holder turned 67; this requirement was in our Ordinances when I joined the faculty in the 1980s.

I will draw on the experience of my own Department since the EJRA was established in 2012. Earlier this month my Department held a research away-day for Principal Investigators to which we had invited three external

advisors. Their feedback emphasised the vibrant, dynamic intellectual culture on show and one commented specifically on the comparatively young age distribution of our PIs. This has been the result of our ability to recruit many new academic staff in the past ten years. Twenty-one established academic staff have vacated their offices since October 2012; only five of these departures were unrelated to retirement. The proportion of retirements which would have been delayed if the EJRA had not been in place is obviously somewhat uncertain but, from my knowledge of the views of these colleagues – averaging over 20 years – I conservatively put it at about 50%. I do not suggest that these notional eight delaying-retirees would not have done good work had they stayed on, indeed a number were friends with whom I enjoyed a valuable intellectual interaction and in fact miss personally. However, I do assert that in all cases we have recruited excellent young academics to fill their vacancies and that the intellectual environment of the Department has been clearly invigorated as a result. Not only that but our new faculty are driving the Department's research in directions which will sustain our competitiveness over the next ten or even twenty years. It is this injection of new ideas and the advances which the newly-recruited faculty will achieve within their future careers at Cambridge that form the main justification for our EJRA policy.

In order to recruit the best early-career independent Principal Investigators, we must be able to offer them not only genuine independence but also a real prospect of a tenured position, subject only to the normal probationary arrangements. I believe that this need applies to all academic disciplines. It is noticeable that we are experiencing significant problems in recruitment in other areas including fixed-term research staff, but not generally for faculty positions.

Furthermore, though it may not be so in all disciplines, in biomedical research the confidence to tackle the most important research problems depends on a reasonable expectation of security. Not only does the ability to offer this security help us to recruit the most ambitious and innovative young investigators but it helps fulfil the University's mission.

However, our ability to offer tenure-track or tenured positions to new faculty depends on the turnover of academic staff and the evidence, both statistical and anecdotal, argues this recruitment will diminish by 40–50%, at least in the medium term, if we abandon our EJRA. Many contributions from other speakers have suggested that the effects of abandoning our default retirement age will be benign, based on experience of other UK HEIs; I am not convinced that the same effects will necessarily be seen here in Cambridge as there are locally specific factors; to give only one relevant example, most Cambridge faculty have much lower teaching loads than is normal elsewhere.

Having defended ardently our use of a default retirement age, let me say a few things about what I perceive as faults in its detailed operation. When I spoke at that Discussion eleven years ago, I also stressed the importance of not placing unreasonable barriers to staff wishing to carry on working after vacating their offices either in a voluntary capacity or as unestablished Investigators on external funding. These arrangements have become more and more difficult to achieve and I believe that this is one of the key grievances among some staff approaching retirement. At least part of the reason why continued working arrangements have been restricted is concerns about legal challenges to our policy and our usual risk averse legal approach. However, if we accept that the main justification

for the EJRA is to continue recruiting young academics at an adequate rate, to refresh the intellectual environment and to provide a balance of age and experience, then allowing even all those who can present a reasonable case for continuing their research to do so without holding a University Office would still achieve that goal. The exact age at which our EJRA should operate is also a detail which it seems appropriate to review periodically and although I personally think that 67 or 68 is probably the right age at present, clearly this could change, though demographic factors have shifted somewhat in the past eleven years so that a continued increase in life expectancy or state pension age is no longer certain.

Finally, if I may, I will reiterate another point I made eleven years ago. The fairness and feasibility of any EJRA is dependent on the quality of the pension scheme on offer. USS benefits have been reduced twice in the past eleven years. USS is now in surplus and Cambridge has been vocal in advocating bold long-term thinking to enable the sustainable restoration of more generous benefits. To quote from my final paragraph then 'I consider that the restoration of USS pensions to an adequate level of support is an important *quid pro quo* to accepting the EJRA'¹; I say the same today.

¹ *Reporter*, 6253, 2011–12, p. 428 at p. 437, <https://www.admin.cam.ac.uk/reporter/2011-12/weekly/6253/section7.shtml#heading2-11>

Professor M. GROSS (Department of Pure Mathematics and Mathematical Statistics and King's College):

Deputy Vice-Chancellor, I would like to share my own perspective on the EJRA, having been recruited roughly ten years ago from an American university to a Chair in Cambridge. At the time, the EJRA policy was quite new, and it is clear in retrospect that I was not given good information about its impact. In particular, as there had been no experience in my Department with the policy at that point, I was led to expect that it should be straightforward to obtain an extension. Further, I felt sure that such a clearly discriminatory policy would be quickly seen as barbaric, and would not survive until my dictated retirement age in any event.

Part of this expectation was informed by the US experience, where age discrimination issues have been long settled in law. From 1982 to 1993, universities could not set the retirement age below 70, and then, as a consequence of legislation passed in 1986, all mandatory retirement ages in universities became illegal from 1994. Given also that mandatory retirement age had disappeared at almost all UK universities, it was hard to imagine that such a policy could remain in place for long. Unfortunately, after arriving in Cambridge, I have witnessed any number of disheartening developments.

First, I was shocked by the general nature of the ageist rhetoric being used to justify the retirement age. Given the University's efforts in recent years to avoid discriminatory policies, this was especially jarring. That there were, until now, no visible arguments being presented in favour of ending the EJRA policies was especially discouraging.

Second, based on the cases I have witnessed, it is far harder to make the case for an extension of contract than I had been led to believe. While I had come to Cambridge under the assumption that there would be no difficulty in staying on until age 70 (the age I had set in my mind a long time ago as a good retirement age), it became clear this could not be counted on.

Third, there has been significant degradation of the USS pension situation. Again, when I decided to come to Cambridge, I was able to rejoin USS on the most favourable terms as I had previously been a member. From this, I was able to more or less compute precisely how much I should expect to earn if I retired at age 70. Now it is impossible to make any such predictions, creating a great deal of financial anxiety. This is quite likely to impact younger academics even more. Even the position of the UUK is that we should all be working longer to save more. But what if our employer does not allow us to do so? Given this uncertainty, having the flexibility as to when to retire becomes more important than ever.

I think it goes without saying that if I had been aware of all of these points it would not have been possible for Cambridge to recruit me. Admittedly, the pension situation was not easily predictable, but I feel let down that I was not fully apprised on the first two points.

I have also learned a great deal in finally hearing from others who rightly oppose the EJRA. The situation appears to be even worse than I had imagined. It seems effectively we become second-class employees come age 62 or 63, no longer able to apply for grants or take Ph.D. students. It is very hard for me to understand the logic of these policies, or to understand what benefit such a policy brings to the University or its members.

Professor N. J. GAY (Department of Biochemistry and Christ's College):

Deputy Vice-Chancellor, the EJRA was introduced in 2011 as a response to the abolition of the statutory retirement age. A very thorough Report¹ was produced that identified potentially lawful justifications that were now required for a mandatory retirement policy. These justifications included inter-generational fairness, to complement rights of academic freedom and autonomy, and to compensate for the lack of performance review in Cambridge. The Report was subject to extensive discussion and a ballot of the Regent House attracted a very large majority in favour.

One provision of the EJRA policy is that there should be biennial reviews and it is regrettable that successive Vice-Chancellors, Pro-Vice-Chancellors and Registraries have abdicated this responsibility. After twelve years in operation there has only been one review in 2015² which can only be described as 'light touch'. In order to stifle discussion, it was published as a Notice rather than a Report. The conclusion was to double down on the EJRA policy and indeed to make it even more restrictive.

In 2018, responding to two Employment Tribunal cases, the University sought detailed legal advice from a leading Counsel in employment law. At that time Counsel advised that the University had only a 50% chance of winning the Tribunal cases. They also emphasised that in defending the EJRA it was necessary for the University to show that the justifications were not only lawful in themselves but were proportionate and able to achieve the intended goals. In the event the University settled one of the claims and the second case was discontinued.

The only other English university that has an EJRA is Oxford, where it has generated considerable unrest. There have been a number of Employment Tribunal cases and two of these have now been considered by the Employment Appeal Tribunal (EAT).³ In upholding physicist Professor Ewart's Tribunal decision that he was unfairly dismissed, the EAT commented that the justifications for the Oxford EJRA, which are mainly the same as ours, are potentially

lawful but are found to be disproportionate to the severe discriminatory impact on the employees affected. Explaining its decision in more detail the EAT concluded *inter alia*:³

the discriminatory impact on the employees concerned was 'severe', observing that this directly discriminatory measure gave rise to 'a lasting and final impact on the basis that someone is highly unlikely to be able to return to an active research career at a university once dismissed at that age' [emphasis in the original]

and

because even those who were granted an extension suffered a detriment in having to vacate their substantive post and move to a time-limited position, which could (as the evidence demonstrated in Professor Ewart's case) impact upon their ability to obtain funding for (and thus participate in) particular research projects.

Prof Ewart was also able to present evidence that after ten years of operation the EJRA had caused an increase in vacant tenured posts of just 2.5%, a figure described by the EAT as insignificant and disproportionate to the very severe age discrimination that the policy causes. We do not know what the corresponding figures are for Cambridge because the UAS and HR keep this information strictly secret. Nevertheless, it is highly likely that the Cambridge EJRA will also be found disproportionate. The Employment Appeal Tribunal is a superior court of record having the same legal authority as the High Court. Therefore, given that the objectives of the Cambridge EJRA are almost indistinguishable from those of Oxford, it is also likely to be unlawful.

I would also like to respond to Dr Holmes' point that the EJRA caused a 40% increase in young recruitment. In actual fact Professor Ewart found that those who would have wished to stay on only wanted to stay for two or three years and therefore the system would reset very quickly and come to an equilibrium that would be the same as it was before unless new posts are created. So if there is an effect, it's temporary and time limited.

More than a year has elapsed since the EAT judgment was published and I am disappointed that the University has only now instituted a review of the policy. I hope and expect that the members of the Review Committee will be representative of the Regent House, that the review will be thorough and transparent and that it will report in timely fashion. As it is clear that on the balance of probabilities the current EJRA policy is unlawful, I also call on the Council to suspend its implementation until the outcome of the review is known.

¹ *Reporter*, 6249, 2011–12, p. 347, <https://www.admin.cam.ac.uk/reporter/2011-12/weekly/6249/section6.shtml#heading2-22>

² *Reporter*, 6435, 2016–17, p. 2, <https://www.reporter.admin.cam.ac.uk/reporter/2016-17/weekly/6435/section1.shtml>

³ https://assets.publishing.service.gov.uk/media/6151f054e90e077a3078f960/The_Chancellor_Masters_and_Scholars_of_The_University_of_Oxford_v_Professor_Paul_Ewart_EA-2020-000128-RN.pdf

Mr D. J. GOODE (Faculty of Divinity and Wolfson College): Deputy Vice-Chancellor, back in 2012 I, like many others, voted in favour of retaining our Employer Justified Retirement Age (EJRA), having been persuaded that it would do the job it was touted as being intended to do. Since then, I have seen plenty of colleagues and friends retire. Some were glad to go; others less so; and some had to be – metaphorically speaking, of course – shoved unceremoniously out of the door against their every wish.

I don't think that the EJRA has worked to the advantage either of individuals who do not want to go, or the University as a whole, and I am pleased we are now revisiting it. I hope that the Council and General Board's review of the policy results in a straightforward 'Do you support the University's continued discrimination against its members on the grounds of a protected characteristic – *Placet* or *Non placet*' ballot of the Regent House, so we can ensure that it is the EJRA, rather than yet another cohort of talented and experienced and willing colleagues, that is shown the door.

Mr R. S. HAYNES (University Information Services):

Deputy Vice-Chancellor, I am a University Senior Computer Officer based in the University's Information Services, and a long-standing UCU member.¹

With much appreciation for those who helpfully raised this Topic of Concern, it is good to mention both University and union here, because together we commit ourselves to matters of justice, along with the well-established concerns for EDI – that is equality, diversity and inclusion. More recently, other universities and institutions have been adding justice to the other key concepts of EDI to form an even more memorable acronym of JEDI. It is for matters of justice, as well as equality, diversity and inclusion that we must seriously rethink the principles as well as the impact of continuing to try to justify discrimination on any basis, including that of age.

In the article 'It's Time to Retire Retirement', a McKinsey award-winner in the *Harvard Business Review* of March 2004,² the authors Dychtwald, Erickson and Morison indicate that institutions have

largely neglected a looming threat to their competitiveness: a severe shortage of talented workers. The general population is aging and with it, the labor pool. People are living longer, healthier lives, and the birthrate is at a historical low.

We know that we have challenges with recruitment and retention, including as was alerted by Pro-Vice-Chancellor Kamal Munir last term – and of course we are not alone among UK institutions. Given that, we also know that some of our older, very experienced and productive staff have accepted their forced retirement here and taken up posts at Oxford and elsewhere where they are not so hampered by the EJRA.

The *Harvard Business Review* article is succinct in indicating that: 'It's not good business to push people out the door just because your policies say it's time.' It is even more emphatic in stating that:

The problem is pretty clear. Workers will be harder to come by. Tacit knowledge will melt steadily away from your organization. And the most dramatic shortage of workers will hit the age group associated with leadership and key customer-facing positions. The good news is that a solution is at hand: just as companies are learning to market to an aging population, so they can also learn to attract and employ older workers.

We know from the Employment Tribunal cases involving Oxford colleagues that it will be difficult to be convincing in the courts that there is any remaining justification for the EJRA. Professor Paul Ewart showed that, given the statistics, the key aim for the retirement policy had 'trivial' impact in actually recruiting younger staff. In addition, the tribunal found that:

There can hardly be a greater discriminatory effect in the employment field than being dismissed simply because you hold a particular protected characteristic.^{3, 4}

We would do well to take the moral and likely legal high road here and end this discrimination, serving our commitment to staff and our grounding in justice. It will show our willingness to review and learn, as a community itself dedicated to learning, and to constructively manage change when time and circumstances press us to do so. Given the number of exemptions we have to the EJRA, which have grown along with the intentional growth of unestablished staff posts, the prime focus for discrimination is on those appointed as University Officers. This surely would make any attempts to justify continuance of the EJRA even less tenable in the courts, or in our own community.

A failure to swiftly rescind the EJRA and adapt to the now clearer and fairer JEDI position will without doubt mean a series of expensive legal challenges, as others have had, at least one of which cannot help but to win, given those experiences elsewhere. In addition, we can expect reputational damage given apparent opposition against the public principles of justice and staff support, which would be unavoidably interpreted from that stance.

Just as Oxford has done, we plan to review the EJRA, and according to HR's retirement policy website⁵ that review was delayed by the pandemic, so is overdue. We are promised a working party during this academic year, and it will be helpful to hear more about those plans, including its scope and hopefully concentrated timetable. As a query to HR and the Council, how soon will we hear more about those plans, and echoing other contributors can we suspend the now dubious EJRA until completing that review?

¹ University and College Union, <https://www.ucu.org.uk>.

² <https://hbr.org/2004/03/its-time-to-retire-retirement>

³ <https://www.belfasttelegraph.co.uk/news/education/oxford-reinstates-ni-professor-paul-ewart-after-he-is-forced-to-retire-at-70/39626024.html>

⁴ <https://cherwell.org/2020/01/26/university-ignore-tribunal-ruling-on-discriminatory-retirement-policy>

⁵ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy>

Professor B. J. EVERITT (Department of Psychology, former Master of Downing College, and former Provost of the Gates Cambridge Trust):

Deputy Vice-Chancellor, I was 67 in 2013 when I was required to retire from my University Professorship. I was given an initial Voluntary Research Agreement (VRA) so as to be able to continue leading my research group since my five-year £3m MRC Programme Grant still had three years to run (the VRA had been approved prior to my submitting this grant proposal two or so years earlier when I was 65). This allowed four postdocs to continue in employment and two Ph.D. students to complete; the grant also supported three co-Investigators in the Department and several independently funded visiting postdoctoral researchers. I continued working in the Department at what might conservatively be estimated to be 50% of full

time without a stipend. However, the conditions of the VRA were completely incompatible with leading this research as it precluded line management of postdoctoral research staff (required by the terms of the MRC grant) and the supervision of graduate students, so my capacity as a mentor was intentionally constrained by the University.

Two years into my 'retirement', when I was 69, a new Programme Grant proposal had to be submitted if the group's research on the neuroscience and psychology of drug addiction was to continue (this was the only programme grant in this area of research in the UK). I contacted the MRC to inform them that, as my VRA was about to expire, my intention was to be a co-applicant on the application that would be led by a more 'junior' co-Investigator. In a detailed discussion with a Programme Manager at the MRC, it became clear that the MRC would be very unlikely to consider a large Programme Grant application from colleagues who had no experience in managing such a large programme or, indeed, smaller MRC project grants. So, either I had to submit the application, or my co-Investigators would each have to submit independent, smaller, three-year applications and not a much more extensive five-year, group-consolidating programme renewal.

Fortunately, I was given an extension to my VRA that covered the full five years of the new £4m MRC Programme Grant which was submitted and funded in full. This therefore supported three co-Investigators who were HEFCE-funded members of the Department and six different postdoctoral researchers over what turned out to be six years, as I received a one-year Covid extension. Hence, since my enforced retirement, I have been able to fund and conduct research, publish regularly, and employ or support the research of some eight postdoctoral researchers, enabling them to develop their careers. All this was without a University stipend, which meant that many of my research outputs (77 papers to date with several in process of being written or submitted) could not be included in the recent REF unless a co-author was a HEFCE-funded member of the Department.

Had I not been allowed a second VRA, which I understand is now against the University's policy, the last six years of successful research would not have been possible, and several postdoctoral researchers would have been denied an important early career opportunity. But in any case, the University has not been able fully to benefit from my research publications and achievements through inclusion in the REF.

On a more personal note, during the nine years since my enforced retirement, I was elected President of the Federation of European Neuroscience Societies (2016–2018), and subsequently elected President of the Society for Neuroscience (2019–2021) – the first non-US neuroscientist ever to be elected to this role in the world's largest international neuroscience society in its 50-year history. I was also awarded the Croonian Medal and Lecture in 2021, the Royal Society's premier award in the biological sciences. I mention these awards and honours not to be boastful (there are many more distinguished than I in the University), personally pleasing though it is to have this recognition, but to emphasise that the University was unable to take any pleasure or gain from them as 'esteem indicators' in the REF, as I am not HEFCE-funded and not, therefore on the University's books.

The excellence of the University is rooted in the achievements of the individuals that are members of the academic body, but it forfeits the full value of their achievements in enhancing its reputation by its forced

retirement policy. Surely there is more to be gained than lost by continuing to employ internationally renowned and active academic staff. If this employment were at a suitable part-time rate, it would not prevent recruitment of younger faculty.

The University has not benefited from enforcing retirement at the young age of 67 (something my US colleagues view with amazement), which causes the loss of high-level research and the publications arising from it, the loss of mentorship of postdoctoral and graduate student researchers, and reputational loss as it cannot bank the internationally recognised success of 'volunteer' researchers. This is not about money, as I am fortunate to have a good pension as a time-served academic, but that will not obviously be the case for those who follow. The EJRA has damaged the University and its reputation while not delivering what was suggested to be its benefits. It should be abandoned.

Professor E. F. BIAGINI (Faculty of History and Sidney Sussex College):

Deputy Vice-Chancellor, I am a historian and I would like to add to this debate from my own experience and from the perspective of the humanities. Historians sometimes explore counterfactuals, which are described as our equivalent of experiments; for a discipline like ours, *real* experiments cannot be carried out or would be very expensive if they could.

In the case of a mandatory retirement age for academics we have the perfect counterfactual – not a thought experiment, but a real-life large-scale experiment, and an expensive one. What would happen if we removed the compulsory retirement age for academics? This has been done in most other universities to the extent that Cambridge and Oxford stand out as the exception. Perhaps *we* are the experiment after all!

What we see is that in London and the United States academics carry on research, teaching and leading research groups without a compulsory retirement age. Is there any evidence of these universities suffering as a consequence? *Anecdotally*, we can all think of colleagues who, upon retiring from Cambridge, moved to London or to some university in the US, where they continued to produce major works and remained as productive as ever.

Statistically, this impression that academic output is *not* affected by age is confirmed by various studies published since 1990. In fact, a considerable proportion of academics in Britain and elsewhere start slowly in terms of publication output, before spiking late in their careers. Others publish steadily over time with ups and downs related to life cycles, for example, the need to look after young families in mid-career before peaking up when they join the group of the 60-year-old.¹ In particular, this is the case in the humanities and the social sciences for various reasons which would be too long to explore here. But as one academic commented when he was interviewed by the *THE* in 2017:

If I look at my own work, I'm much more productive now, approaching retirement, than I was when I was younger, and the work is more significant now – you can get a 'view from the bridge' as you gain experience and knowledge of the field.

With accumulation comes perspective. So quality changes as well as quantity. In the early stages of my career, I would take a narrower and more cautious approach – trying to press the right buttons. Now, I'm more focused on what is important.²

This is also my experience. I would add that I am now more interested in exploring new techniques, innovative methods and ambitious research projects, partly because I know that I can take risks, and partly because at this stage in my career I enjoy a wider perspective on my field and this provides me with a greater ability to see opportunities for collaboration across disciplinary boundaries.

One old argument in favour of mandatory retirement was that about ‘inter-generational fairness’, i.e. that mandatory retirement created more opportunities for young academics to obtain posts. This was predicated on the assumption of a primarily *national* labour market for academics – but nowadays we have a *global* one, for both junior and senior academics. Moreover, the ‘inter-generational fairness’ argument assumed that academics were primarily *individual* researchers, and their retirement was somebody else’s chance in a zero sum game. However, the situation is nowadays very different. Many of us have secured major research grants and are successfully fundraising. A colleague of mine based in London has secured two major research grants for a cumulative value of over £3m, and has now been shortlisted for a second ERC grant. This happened since she turned 60 several years ago. Meanwhile, this same colleague established a whole new privately-funded institute, which gives permanent employment to one other academic and offers three postdocs. This person is obviously exceptional, but even I – and I operate on a more modest and perhaps typical scale for the humanities – have submitted or prepared my main research grant applications since turning 60, and I have been successful enough in attracting funding that I have secured the long-term employment of one junior academic and the temporary employment of one postdoc and one digital humanities assistant.

I have argued that there are solid *academic* reasons to remove the current mandatory retirement age, but there are also *economic* reasons. If we consider the increase in national life expectancy and the crisis of the USS scheme, I would say that the case for abolishing the mandatory retirement age becomes unanswerable.

¹ For example, S. Kyvik, ‘Age and scientific productivity. Differences between fields of learning. Age and scientific productivity. Differences between fields of learning’, *Higher Education*, 19:37–55 (1990); Sharon G. Levin and Paula E. Stephan, ‘Research Productivity Over the Life Cycle: Evidence for Academic Scientists’, *The American Economic Review*, March, 1991, Vol. 81, No. 1 (March, 1991), pp. 114–132.

² Cited in R. Pells, ‘Scientists bust myth that academic productivity declines with age’, *Times Higher Education*, 20 October 2017, <https://www.timeshighereducation.com/news/scientists-bust-myth-academic-productivity-declines-age>

Professor S. M. OOSTHUIZEN (Professor Emerita of Medieval Archaeology and Wolfson College):

Deputy Vice-Chancellor, I am a Senior Fellow of the MacDonald Institute in the Department of Archaeology and an Emeritus Fellow of Wolfson College. I note that I am one of the few women participating in this debate.

The EJRA additionally discriminates against women whose academic careers are already adversely affected by their gender. My testimony, while personal, is representative of the experience of many other academic women in the University.

In the summer of 1976, when I was in my early twenties, I was planning to begin my Ph.D. in the following autumn and to complete it in 1980. Those plans were disrupted by the birth of the first of my three children in 1977, and the

last ten years later. For the next 28 years, until the youngest left home, sole weekday caring responsibilities lay with me. I do not regret that responsibility; I do regret my gender.

Unable to follow the traditional route into full-time academic employment, where time permitted I undertook part-time undergraduate teaching for the University and carefully focused independent research projects, allowing me against the odds to build up a solid publication record.

It was not until 2000, when my youngest child went to secondary school, that I was finally able to begin my Ph.D. My dissertation was submitted in 2002 under the dispensation of the General Board. In 2018 I was promoted to Professor, something that I might have expected in 1996 had my gender been different.

As it happens, personal reasons – once more gender-related – forced my early retirement at the end of 2018. Yet even had that not been the case, the EJRA would still have put an end to my career within another two years. The double whammy of gender and the EJRA would have reduced the length of my academic career to just 18 years rather than the 40 years that I might have expected had I been a man. That only one in four Professors in the University is a woman offers an indication of the potential double impacts of gender and the EJRA.

At the time that the EJRA was imposed, I was convinced by the argument for inter-generational fairness. But the experience of implementation here and in Oxford, discussions with colleagues, and reflection on the combined impacts of gender and the EJRA, together brought into an unforgiving light the principle fudged by the EJRA that there can never be any justification for discrimination. Today offers an opportunity to put that error right. I hope the University will withdraw the EJRA.

Professor J. A. CROWCROFT (Department of Computer Science and Technology, and Wolfson College):

Deputy Vice-Chancellor, the University’s exceptional policy of forced retirement has a negative impact long before the incept date.

I have just shy of three years to the end of my current contract with Cambridge University, but already, for the last two years, I have been prevented from applying for five-year grants. This rules me out from several sources of funding, including the prestigious ERC advanced grants, and also UKRI programme grants.

I have been contacted by colleagues around Europe and the UK asking if I want to lead, or be a partner in, various such projects, e.g. for recent calls for communications and AI hubs, for which I would be a natural Principal Investigator (PI), and I have had to decline. This, coupled with the fact that I cannot take on new Ph.D. students as of this year (and I have had 58 successful Ph.D. students in my career of 40 years) means that my research in Cambridge is almost completely stalled.

Far from being able to work up until the age of 67, this means that the end of my research activities with the University started when I was 62.

In the presence of such a planning blight, like many others I have sought positions elsewhere; almost anywhere else would, of course, take me on.

As well as the usual funding agencies, I have also been very happy to receive, for Cambridge University, significant unrestricted gifts from a number of sources. These will all, of course, cease when I leave. In all cases, I have always strived to involve junior colleagues in past

activities, funding up to four Ph.D. students for them, each year, and the negative impacts I have described will have a far more serious effect on them than on me.

I cannot believe that this is the right way to manage the so-called ‘twilight years’ of a research career, years I would like to stress in which by any measure, my activities abound (REF return, annual professorial report, student feedback, exam results for Tripos and Masters courses I teach).

It seems that the EJRA is being employed with very poor justice by my employer, and in a way that displays no form of self interest, enlightened or otherwise...

Professor S. D. GUEST (Department of Engineering and Trinity Hall):

Deputy Vice-Chancellor, I support the retention of a fixed retirement age for many reasons, most of which were rehearsed in some excellent contributions to the Discussion on this topic eleven years ago. Unlike the signatories to the request for this Discussion, I do not consider that anything fundamental has changed since then.

Today, I want to discuss a key consequence of removing the fixed retirement age – the ‘Performance Management’ that we have heard about earlier. Academic staff who are University Officers at Cambridge are allowed unrivalled latitude in plotting their own paths through an academic career, and this is a key element of the vibrant success of the University. We are remarkably free of the managerialism that I see in many other universities. A fixed retirement date is a necessary part of that bargain.

Consider the situation if there were no retirement age. It would, on occasion, be necessary to tell someone that it was time to go. But how will the necessary assessment of competence be made? For we cannot assess only older University Officers, as this would be discriminatory. Rather, we will have to be prepared to make regular assessments of all University Officers, and be prepared to sack those who were not performing, whether due to declining capability in old age, or for any other reason.

At present, the University of Cambridge is good at finding, nurturing and hosting outstanding academics. The University of Cambridge is not good at management. The intrusive management of all academic staff that would be necessary following the removal of the retirement age would undermine the excellence of the University.

I am perfectly in favour of allowing University Officers to continue to contribute to the University after their retirement age, but this must not be at the expense of the freedoms that we now enjoy before the retirement age.

Dr M. K. SZUBA (Department of Applied Mathematics and Theoretical Physics):

Deputy Vice-Chancellor, although I still have quite a few years to go until my own retirement, I was shocked to learn that mandatory retirement is still in effect at the University. I hadn’t seen it practised anywhere for quite a long while, and frankly speaking, it reminded me of my youth in the Eastern Bloc.

One of the reasons for me to consider this policy harmful to the University is that in the case of fields in which a lot of research and development is conducted by the private sector, such as information technology, it might steer researchers away from academia and into industry. It used to be that while private research offered better funding and higher salaries, university researchers benefited from other

perks such as greater freedom. Many of these perks – increased job security for instance – have already been lost. I feel strongly that the policy of forced retirement further deprives the work environment of the University of what should make it unique – which can and likely will make many decide that if they’re going to be treated the same way here and there (sadly, ageism is not uncommon in IT companies), they’d rather go where they can earn more money before being forced out.

For the sake of everyone among us who is nearing their retirement age and with whom I stand in solidarity, I very much hope that this harmful and (everything else aside) discriminatory policy will soon be abolished.

Professor B. J. SAHAKIAN (Department of Psychiatry and Clare Hall), read by the Senior Proctor:

Deputy Vice-Chancellor, the policy of forced retirement also discriminates against women, since many will have had one or more periods of maternity leave, but they must still retire at age 67.

In addition, due to delayed networking internationally and other factors associated with childcare, woman may have had a delayed career trajectory relative to their male colleagues, so just as they get into the height of their career, they are forced by the University to retire. Forcing women to retire at age 67 who have taken maternity leave is particularly against the recently established policies and programs trying to assist women in returning to work and reaching the highest grades in their career, i.e. breaking the glass ceiling.

Professor J. R. Spencer (Emeritus Professor of Law and Selwyn College), read by the Senior Proctor:

Deputy Vice-Chancellor, since retirement I have kept out of University politics. But on this occasion I thought I could make a useful contribution by giving the perspective of someone who retired under the existing rules.

In brief, I am still as strongly in favour of the mandatory retirement age as I was when the issue was last debated, shortly before my own retirement nine years ago. The need to avoid promotion blockage for the young seems just as strong as ever. And so too does the equal need to avoid the introduction of extra checks on how we do our jobs in the hope – probably a vain one – that the less useful oldies can be ‘managed out’.

What I can now add is a word of advice to those approaching the retirement age based on my own experience since retirement from the Law Faculty.

It is: ‘Come on in, the water’s lovely!’

The pension we receive enables us to live in comfort and security. For those who wish to remain academically active, the University lets us keep our University email accounts and our Raven passwords, and hence access to the University’s store of databases etc; and in the Law Faculty at least, we continue to enjoy the help and support of the computer office. These practical benefits are huge and make the transition to retirement easy for those who wish to continue working while their complement of neurones remains basically intact.

For those who are prepared to go on teaching, and are still competent to do so, the Colleges will be glad to let you go on supervising. And if the Faculty has an unexpected need it may ask you to examine, or to fill an unexpected gap in the lecture timetable – and if you do not wish to do this you do not have to, and can spend your time doing other things that you prefer.

For the few whose expertise is genuinely irreplaceable, and by the University genuinely still needed, exceptional arrangements can be made.

For the majority, of whom this is not true, the good of the academic community in Cambridge requires them to retire. And I see no good reason why they should not do so.

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History), read by the Senior Proctor:

Deputy Vice-Chancellor, Cambridge took the decision to enforce a maximum retirement age for University Officers in response to legislative changes under the Equality Act of 2010 which came into force from 6 April 2011. Those removed age-based compulsory retirement unless an employer could justify it 'objectively' as a 'proportionate means of achieving a legitimate aim'. Defining such 'aims' was therefore of the first importance and remains so. I want to suggest that the academic employment arrangements in the University have since changed so radically as to make the 'aims' still being relied on no longer defensible.

A Review was carried out in 2015–16. Its conclusions were published in a Notice in the *Reporter* on 21 September 2016. It did not suggest discontinuance of the EJRA and retained the aim of 'enabling effective succession planning', but a new aim was to be added, 'helping institutions to plan their staffing structures to allow maximum effectiveness across their activities'. 'Effectiveness' was not defined.

The 'Retirement Policy' (EJRA) is at present on the HR website, dated 2019 but 'updated August 2021'.¹ It sets out the four 'aims' at present being relied on. The first is to 'ensure inter-generational fairness and career progression', followed by to 'enable effective succession-planning'; thirdly, to 'promote innovation in research and knowledge creation' and finally to 'preserve academic autonomy and freedom'.

The stated 'aims' have to be 'proportionate' in order to be lawful. In *P. Ewart v. Chancellor, Masters and Scholars of the University of Oxford* (2017)² a statistical analysis was relied on as showing that there was insufficient evidence that the application of Oxford's EJRA had resulted to any considerable extent in the vacating of posts which were then filled by younger scholars or had improved 'career progression'. That would in itself leave the possibility of 'effective succession-planning' in doubt. No analysis of such effects in Cambridge has been attempted. Nor, it appears, has any connection been made between the continuation of those aims and the present academic employment scene which is now quite different from that of 2011–12.

In 2011–12 academic posts were normally University offices, with the result that 'the number of posts at a senior level' were 'in practice finite and significantly fewer than at more junior levels'. 'Succession-planning' applied therefore to posts which continued to exist when vacated and would become available to be filled by new appointees. Note does not seem to have been taken of the fact that in the case of personal Professorships and Readerships the additional funding for the higher salary is *ad hominem* so the vacancy to be filled when the holder retired or resigned would be at that 'more junior' Lecturer level, simply adding to those aspiring for more senior appointments. Only in the case of a Professorship or Readership established as an Office in its own right could there be a replacement appointment at that level.

The annual promotions round requiring the established Lecturer salary to be added to to fund a Readership or Professorship has long been funded for a number of successes agreed on for that year on the advice of the General Board and Council. But recently there has been a proliferation of unestablished academic posts, opening up far more numerous possibilities of appointment and progression and automatically invalidating the 'aims' ensuring 'inter-generational fairness and career progression', and enabling 'effective succession-planning'. Unestablished posts require funding additional to that for Offices. How is that additional expenditure being balanced against finding funding for promotion of University Officers?

Apart from University Officers, HR now lists alongside 'assistant staff', 'unestablished research', 'unestablished academic-related' and 'unestablished academic' staff.³ None of these are subject to the EJRA, leaving only University Teaching Officers forced to retire at 67. A funding argument for this enforced retirement now seems hard to sustain.

A further significant change, driven largely by the continuing need to solve the longstanding problem of the perceived unfairness of the promotions procedure, has been the invention of Academic Career Pathways.⁴ The connection was recognised by the title of a Report of the General Board on arrangements for senior academic promotions published on 10 May 2018. Transfer from an unestablished post in Teaching and Scholarship to Professorial level at Grade 11 or 12 is not possible because a Professorship has to be established by Grace. However, a shortage of these senior academic offices can be dealt with by creating some more for deserving candidates instead of forcing existing holders to retire to make space. That can be achieved by publishing a Report proposing the establishment of a 'personal' Professorship for a named individual. This solution has been accepted in a Teaching and Scholarship case.⁵

So although the first and second of the aims identified in the original proposals promised the improvement of 'inter-generational fairness and career progression', on the grounds that:

the removal of a retirement age in the case of established officers would lead to a detrimental imbalance in the spread of ages and experience across this core section of the University's workforce, and would in turn adversely impact the career prospects of those at the outset of their academic careers.⁶

This seems no longer at all clear. Nor does 'succession planning' look the same as it did in 2011–12 or 2015–16.

The fourth aim, that an EJRA would tend to 'preserve academic autonomy and freedom', depended in 2011–12 on the assertion that Officers of the University had

the benefit of unique and specific protections which preserve academic autonomy and freedom throughout the course of their careers.

That statement relied on the provisions of Education Reform Act 1988 s.202(2) and the Statute embedding the resulting procedures, now in the Schedule to Statute C. However this protection is no longer confined to University Officers. Higher Education and Research Act 2017 s. 2(8)(c) protects 'the freedom within the law of [all] academic staff at English higher education providers'. This can no longer be a ground for confining the EJRA to University Officers.

Surely things have changed so extensively that any continuation of an EJRA in Cambridge would now have to be justified afresh? Could it be?

¹ https://www.hr.admin.cam.ac.uk/files/retirement_policy_2019_final_updated_2021.pdf

² Case number 3324911/2017

³ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy/9-annual-timetable-submission-applications-extend-employment>

⁴ https://www.acp.hr.admin.cam.ac.uk/files/acp_guidance_v1.2_14_september_2022.pdf

⁵ *Reporter*, 6662, 2021–22, p. 549.

⁶ *Reporter*, 6249, 2011–12, p. 347.

Professor D. S. ABULAFIA (Emeritus Professor of Mediterranean History and Gonville and Caius College), read by the Senior Proctor:

Deputy Vice-Chancellor, I was a member of the University Council when the decision was made to retain retirement at 67. I supported the move because I could see that opportunities for younger scholars, already limited, would become even more restricted if we did not maintain a turnover. However, I share the impression that things have not worked out as intended. In the Humanities and Social Sciences, rather than permanent posts for outstanding young scholars, we see a proliferation of short-term appointments in this and other universities, which is ironic when you consider that University Assistant Lectureships, tenable for a maximum of five years, were abolished about two decades ago. Nowadays filling in for absentee academics who have secured major grants is what provides young scholars with a basic income and experience, but it is also extremely disruptive to those with families, those seeking to purchase a place to live, and those with their own research projects that might have to be laid aside while writing scores of lectures to replace an absentee. A celebrated book about learned medieval scholars by Helen Waddell was entitled *Wandering Scholars*. Well, wandering scholars are back, and it is not necessarily a good thing. We therefore need to look carefully at the success or otherwise of the EJRA in opening the door to younger scholars.

But there are also issues concerning people at the other end of their paid career. The idea that academics should undergo some sort of assessment as they pass a certain age barrier to see whether they should go sooner or later is very questionable. Some of us have already expressed serious reservations about the prodigious expansion of so-called Human Resources departments within this University, and within wider society. The danger that academics will be assessed according to criteria derived from EDI, Critical Theory and other current pieties is acute, especially in the case of those who have had the courage in the last few years to defend freedom of speech within the University. Very strict guidelines would be needed to prevent any chance of abuse.

Retirement should be a gentle slide, not a sudden fall of the guillotine. Some of us are fortunate enough to be able to maintain close links with our College. But it was odd to discover not long ago that the History Faculty website had erased the web pages of Emeritus members, even though many of them remained active members of the Faculty – often more likely than over-worked serving members actually to attend seminars. All sorts of information about what is happening in my Faculty simply does not reach retired members, even though there is a special email list

for us. If the assumption is that we are not particularly active in research, the truth is that many of us are even more research active without our teaching obligations. Of course we should give newly appointed staff the opportunity to take on Ph.D. students who might in earlier days have come to us for supervision; but sometimes people apply to Cambridge because of us, and that often means that we are the only people here in that particular field of study, with the result that they go to a rival university instead. I am reminded of the story in the Brother Grimms' Fairy Tales where a little boy asks his parents why his grandparents don't eat at the same table, but eat their food out of a trough with a wooden spoon, and whether he should make the same arrangements when his parents are older. This shames the child's parents into inviting the grandparents to eat at the table off proper plates. Yes, we too are part of the University community, which will celebrate our prizes and other successes but otherwise easily forgets we are here.

Whatever decision the Regent House makes about the EJRA, there needs to be an arrangement by which those who are retiring can gradually reduce their participation, if that is what they prefer. I also note that Oxford has a lively Pensioners' Society, open not just to academics but to all retired employees. Making people feel valued at that stage is surely an important and humane thing to do. Some people find the experience of retirement difficult; others, like myself, enjoy it greatly. A good number of retired academics are still very active in national academies and grant giving bodies, well placed to give literally valuable advice to younger scholars. By drawing them more into the life of Faculties and Departments the University will do itself a big favour.

In conclusion, I think that the EJRA is an issue that needs to be re-assessed, and we may have got it wrong. It is important that it is re-examined now.

Professor M. E. CATES (Department of Applied Mathematics and Theoretical Physics and Trinity College), read by the Senior Proctor:

Deputy Vice-Chancellor, I believe the EJRA is no longer fit for purpose. Therefore I signed the request for today's Discussion. However, care is needed in getting rid of the EJRA. Compared to other UK Institutions, the official duties of Cambridge UTOs are modest, mainly because so much teaching is done in Colleges (and UTO and CTO roles are not contractually linked for most people, unlike at Oxford). Therefore I doubt the view expressed by Professor Anderson in the *Times Higher* that 'people might work for an average of a year and a half to two years longer' although I do agree when he says 'this is what we see elsewhere'.¹

In Cambridge, a senior UTO who steps down from (or never had) College teaching duties can in principle draw a full salary for doing a couple of lecture courses a year, a certain amount of examining, and a few other bits and pieces. It may help to appear to do research, but that is not the same actually doing it, and the difference may go undetected for several years – even by the staff member in question.

The group of staff now pushing for abolishing the EJRA are mainly fighting for the right to actively continue their world-class research, properly supported by grants and infrastructure, on approach to and beyond the age of 67. Such people have a vast amount to offer to the University, and I fully support their case. However there is a second group of academics that would also benefit from abolishing the EJRA: those who are content to draw a full salary indefinitely, even as their contribution to the University's work declines to 'baseline' levels.

A way must be found to allow the first group of staff to prolong their careers without also allowing the second group to do so. Therefore, as and when the EJRA is abolished, something else will be needed to ensure that academic careers can be gracefully and legally brought to a close, not on the grounds of age, but on grounds of no longer meeting the challenges of the job. This might require a more detailed employment contract for UTOs, tied to regular and formal assessment of their contributions. Perhaps it would be legally defensible to leave a residual EJRA in place for staff refusing to switch to such a revised contract.

¹ <https://www.timeshighereducation.com/news/forced-retirement-rules-face-new-challenge-cambridge>

Professor F. STAJANO (Department of Computer Science and Technology and Trinity College), read by the Senior Proctor:

Deputy Vice-Chancellor, I believe that forced retirement of academics is beneficial to the University and should be retained. It is quite proper to ask Professors to retire after they've had their turn, so that the younger blood can have a go as well.

A senior Professor who refuses to retire and continues to supervise students and bid for grants is a tree that casts a big shadow over the neighbouring area and prevents younger trees from growing. The campaign claim that established academics should be allowed to continue because they are highly skilled at winning big grants should also be read as saying that those big grants in finite supply (in a given area, from a given funding body, etc.) will be vacuumed up by the old-timers, leaving the younger faculty with the crumbs.

There is a rather concrete element of competition for finite resources. But there is also a more subtle aspect of pecking order, even in environments without officially recognised group leaders: if the senior Professor stays around forever, the younger faculty in the same research group must always remain in their shadow. In a context where the sovereign never abdicates, the heir to the throne must remain just a prince even though he's already an old man of retiring age himself.

I believe it is more dignified for the senior Professors who have enjoyed a long and brilliant career to allow someone else to have a go. That's certainly what I plan to do when my time comes. If they don't feel the urge to close their laptop and put their feet up, they have plenty more ways to put their still sharp intellectual abilities and newly found spare time to good use, from writing books to taking up advisory or leadership posts in industry or in learned societies.

On the other hand, my Japanese side has deep Confucian respect for the wisdom of the seniors. My social and intellectual interactions with retired Fellows in College have been valuable and mutually enjoyable. In the College context, I believe Fellows deserve to retain their benefits for life, both in gratitude for service rendered and for the benefit that younger Fellows get by interacting with their illustrious predecessors, who are invariably very generous with their knowledge and experience.

In the Department, however, once we have had our turn, it is graceful to give our successors some breathing space and move out. Otherwise, the people below us in the pecking order continue to remain in our shadow. After a full education to Ph.D. level and several decades of professional life we should, in my view, be willing to pass the token with dignity.

Now, what I see as the core of the problem is: *Why* would those senior academics insist on staying on beyond that? Surely a successful and well-balanced individual has plenty more interesting and fulfilling things they'd like to do: spending time with the grandchildren, enjoying the ski slopes, cycling, sailing, running, martial arts and all the physical activities worth doing while the body still can, travelling the world, playing music, writing books (or reading the ones they accumulated), woodworking, programming (as opposed to writing grants so that other people can enjoy programming), learning another language, starting another company or even just relaxing on the beach and hitting the pause button on a hectic life. It would be sad if people were so monochromatically wedded to their current work that they lost their identity and self-worth when they stopped it. But is that what's actually happening here?

I rather suspect that the true reason why they want to stay on beyond the age at which they would be able to draw a full (?) pension is because the promises about final salary pension that we got when we signed up were, later, unilaterally broken, and *that* makes them feel they will no longer have enough money to do all of those other things if they suddenly get only a small and diminishing fraction of their current salary. As a thought experiment one could test this hypothesis by asking whether they'd be willing to stay on and supervise students and mark exams and chase grants beyond age 67 but at strictly zero pay. If the theft of a big chunk of our promised pension (which I very strongly resent as much as the next colleague) is the actual explanation, then *that's* the problem that must be fixed, but that our employer and our pension provider seem unwilling to fix. We must be allowed to have a dignified retirement, as we were originally promised when we signed up decades ago and when we weighed that benefit (and the academic freedom) against the pay hit we took compared to a real world salary.

In my view, supergluing our bottoms to our professorial Chairs beyond retiring age would be a selfish act that just moves the problem onto the weaker shoulders of our successors. Allowing the University barons to entrench in their positions for life would make Cambridge a worse environment and that's why I am opposed to it.

So I believe the Employer Justified Retirement Age for academics is indeed justified. Apoptosis is a natural and beneficial process of an organism. It is only fair to ask the older kids to get off the swing, after some reasonable time, so that the younger ones can get their turn too.

Dr D. GOOD (Department of Psychology and King's College), read by the Senior Proctor:

Deputy Vice-Chancellor, other speakers whose contributions I have seen, have provided many powerful examples of the perverse consequences which result from the EJRA policy as implemented now. Looking at those consequences, one might think we have designed a decapitation strategy which harms this University and benefits others. How generous of us.

I was involved in the discussions which lead to the policy and it was always a balanced judgement. There were arguments for and against, and in the background there was a recognition that if we implemented the policy immediately it would produce difficult financial effects. It was also recognised by many that the EJRA would be changed in the future and ultimately dropped. It has, however, changed in ways that we did not foresee.

Looking at the fly-sheets in the *Reporter* (2 May 2012) for the original vote, the one I signed gave a simple summary of the reasons for having an EJRA followed by this statement:

Retirement from office does not have to mean the end of academic life: we all know colleagues whose scholarship, teaching, research and other contributions have flourished, or even blossomed, after formal retirement. Furthermore, the proposed policy allows extended employment beyond the retirement age in an unestablished capacity when it is in the mutual interest of the University and the individual. There is also the continuing option of voluntary research agreements for active researchers. The combination of new recruitment with mechanisms for retaining exceptional researchers and scholars beyond the retirement age promotes fairness across the generations.

I signed that fly-sheet as I believed it represented the culture of the University then, and how the policy would be implemented, as was initially the case. Now it seems that our implementation progressively disables our senior academics as they approach 67. They become ever lamer ducks as they age through their mid-60s. Is it any surprise that they prefer to fly away and that senior replacements are hard to attract?

The policy is long overdue for reform and most likely removal.

Professor Sir Colin Humphreys (Selwyn College), read by the Senior Proctor:

Deputy Vice-Chancellor, I was forced to retire from Cambridge because of my age on the last day of February 2018. I then moved to Queen Mary University of London (QMUL) on 1 March 2018 as Professor of Materials Science on an open-ended contract. When I retired from Cambridge, I had four current EPSRC grants totalling about £10m, and was the Principal Investigator (PI) on two of these. It is EPSRC policy that when a PI moves, his grants should move with him and, indeed, when I moved to Cambridge my substantial EPSRC grants from my previous university transferred to Cambridge. However, the then Cambridge University Vice-Chancellor did not allow any of my research grant money to be transferred to QMUL. He did not even allow me to have funding for a postdoc transferred to QMUL. I have been told that Cambridge decided on this immoral act because to transfer any money to QMUL would have weakened its legal case for forced retirement. So, Cambridge not only stopped my research at Cambridge, it also did its best to stop me doing research at my new university, so low is Cambridge prepared to stoop to enforce its Forced Retirement policy. The EPSRC was extremely unhappy about this and it told the QMUL Principal to get together some other Vice-Chancellors and give the Cambridge VC a good kicking.

Since I was forced to retire from Cambridge, and I believe because of the above event where Cambridge deliberately acted against EPSRC policy and tried to stop me establishing my research at QMUL, Cambridge has stopped its staff from applying for research grants within five years of retirement. This has a particularly damaging effect on its science and engineering staff, and it puts a severe brake on their research at age 62, not 67. Hence many world-class science and engineering staff at Cambridge are effectively forced to retire at 62. It is an act of madness.

If Cambridge is to remain a world class university, it not only has to retain its best staff, whatever their age, it also needs to recruit the best staff internationally. Top Professors in the USA have told me that they no longer consider coming to Cambridge because of its discriminatory and ageist retirement policy. No university in the USA has such an ageist forced retirement policy. Top universities like Stanford, MIT, Yale, Harvard, California, etc., operate very successfully without an ageist retirement policy. The ageist policy of Cambridge is well known among my colleagues in the USA.

The simple question the University of Cambridge must ask itself is this: does Cambridge wish to continue to have a high international reputation as a discriminatory, ageist university?

Due to time limitations, the Deputy Vice-Chancellor ruled that the remarks received on the remaining two items listed for Discussion were not to be read out but were to be included in the formal record. Accordingly the remarks are provided below.

Annual Report of the Council for the academic year 2021–22, dated 7 December 2022

(*Reporter*, 6679, 2022–23, p. 186).

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History):

Deputy Vice-Chancellor, it is not always clear where the line is to be drawn between matters properly to be determined by the Council in its capacity of ‘principal executive and policy-making body of the University’ and matters which should be referred to the Regent House as the University’s governing body. Now there seems to be growing risk that business may be conducted by an undefined ‘senior leadership team’ without reference to either.

In this Report the Council seems confident that it knows who its members are, offering a heading on ‘Changes in the University’s Senior Leadership’. Under this heading it mentions Pro-Vice-Chancellors, Heads of Schools and two Directors, who are members of the UAS. Constitutionally speaking, Cambridge’s Directors have a role defined in a Report on the Unified Administrative Service (*Reporter*, 5842, 2000–01, p. 560), when it was proposed that these then novel unestablished appointments should become Offices, with dual ‘reporting’. ‘Operational management of the Divisions is delegated by the Registry to the Directors’, but

those principally charged with guiding development of policy, the Vice-Chancellor, the Pro-Vice-Chancellors, the Registry, the Secretary General, and the Treasurer, should, in addition to any functional relationships, receive regular briefing from Directors’.

The Offices of Secretary General and Treasurer have of course since been abolished. But no list of those ‘principally charged with guiding development of policy’ seems to have been agreed to replace this one adumbrated in 2001.

Senior Leadership seems to be unknown to the updated edition of the *Statutes and Ordinances*, recently published. Apparently knowing more than is constitutionally clear, HR runs Senior Leadership Programmes at three levels, ‘endorsed by the Vice-Chancellor’, with a ‘target audience’ at ‘head of institution’ level.¹ HR also feels able to publish a ‘Leadership Attributes Framework’.²

The Audit Committee is confident that a ‘Senior Leadership Team’ exists, giving it four mentions in its Annual Report (*Reporter*, 6682, 2022–23, p. 264). It says this ‘team’ is ‘responsible for identifying and managing risks across the University’s activities’, but if that Team was entrusted with this responsibility should not there be some published note of its membership and a record of the grant of that responsibility?

If this ‘Team’ constituted a committee or any recognised University Body it, and its membership, would appear in the list of *Members of University Bodies and Representatives of the University* in a Special issue of the *Reporter*. Then further published information about it could be expected. For example, the Council has a Business Committee,³ ‘tasked with expediting the more straightforward items of Council business’, circulating its consideration and revisions of texts to Council members and bringing them to Council meetings for approval, though where they are ‘straightforward and so do not require consideration at a meeting, the Committee is empowered to approve items by circulation’. These are sensible protections and at least they are published, but they do remove from the sight of the Regent House a certain amount of the work done under the authority of the Council. Its Agendas and Minutes are not available to be read except by members of the Council.

Surely leadership is essential in the University, it may be objected? Line management of individuals is accepted, but as a condition of the employment of individuals. The call to accord a ‘leadership’ rather than a ‘stewardship’ role to the Vice-Chancellor and others was floated during the abortive ‘governance reforms’ proposed twenty years ago. In Discussion on 8 October 2002 Stephen Cowley made a memorable speech including a warning:

If it looks like a duck, squawks like a duck, and walks like a duck, it is a duck. If the proposed amendment is passed the Vice-Chancellor will look like a Chief Executive, talk like a Chief Executive, and walk like a Chief Executive, because she or he will be a Chief Executive.⁴

The Regent House decided it wanted no such thing but in 2003 the number of Pro-Vice-Chancellors was increased to five and it was agreed that ‘the title of Senior Pro-Vice-Chancellor should be conferred on one of those appointed to the office, in recognition of that individual’s responsibility for leading and co-ordinating the work of the team of Pro-Vice-Chancellors’.⁵ At a stroke that introduced ‘leadership’ and a ‘team’ in that context, with talk of ‘seniority’ at least among the Pro-Vice-Chancellors.

Statute A IV 1 gives the Council considerable powers. It appoints the Pro-Vice-Chancellors and they report to it and it may determine their powers. Some miscellaneous functions for them are dotted about in the *Statutes and Ordinances* but their Special Regulation is sketchy.⁶ Nowhere do they seem to be constituted as that Senior Leadership Team the Audit Committee seems to know about. In a democratically governed University where the Regent House is the governing body ‘leadership’ is not a term to be bandied about. It needs far more careful definition if it is to be used at all.

May we have a Report identifying the membership, role and authority of the Senior Leadership Team with recommendations for its approval so that the Regent House may decide whether it wants one?

¹ <https://www.ppd.admin.cam.ac.uk/leadership-development/leadership-development-programmes/senior-leadership-programmes-overview>

² <https://www.ppd.admin.cam.ac.uk/leadership-development/leadership-attributes-framework>

³ <https://www.governance.cam.ac.uk/committees/business-committee/Pages/about.aspx>

⁴ *Reporter*, 5898, 2002–03, p. 86.

⁵ *Reporter*, 5921, 2002–03, p. 813.

⁶ *Statutes and Ordinances*, 2022, p. 696.

Annual Report of the General Board to the Council for the academic year 2021–22, dated 7 December 2022

(*Reporter*, 6679, 2022–23, p. 197).

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History):

Deputy Vice-Chancellor, where a body of work is undertaken slightly to one side of the University’s normal governance and with limited reporting to the Regent House, it can take a good deal of rummaging in obscure corners of websites to get the picture. That is not going to encourage the active participation of busy members of the Regent House the Chair of the Board of Scrutiny encouraged in the Discussion of its Annual Report on 8 November 2022. The ‘Recovery programme’ and its dependent projects has become a case in point. The Council reminds us in its own Report that it had from an early stage ‘delegated responsibility for oversight of the Recovery Programme to the General Board’. The General Board duly reports on how it has discharged that responsibility.

It was never clear why the need for ‘recovery’ from the University’s Covid-19 difficulties should have been presented as a general programme for ‘change’ in the University. At its meeting of 4 May 2022, the General Board had already admitted to itself (B.2) that the connection no longer held:

it was no longer be (sic) relevant to have a ‘Covid Recovery Programme’, and the University would need to give thought to how to coordinate and label its change programmes in the future. The Board noted that it would be useful to put together a more detailed timeline for the impact of the implementation of projects on Schools and Non-School Institutions.

In the Report we are discussing the General Board notes that in March 2022, ‘the University’ duly established the Change and Programme Management Board as a new sub-committee of the General Board, ‘to help us manage and co-ordinate University-wide change programmes’. The Audit Committee expresses confidence in it:

The CPM Board will provide assurance to the General Board and the University over significant change programmes which aim to improve ways of working and build a stronger, more resilient University in the future.¹

The remit and details for the CPMB were set out in a Notice of the General Board in the *Reporter* of 23 March 2022. This Notice did not include a Grace and the Board does not appear in the *Statutes and Ordinances*, so it was not established by Ordinance as Statute A VI 1 seems to require. The Board of Scrutiny mentioned this ‘somewhat unusual position of a Board’ in its Twenty-seventh Report (para. 10).² The General Board’s Notice seems to need correction.

The CPM ‘Board’ is described as the standing sub-committee of the General Board which it actually is, and as it is listed in the ‘Members of University Bodies’ *Reporter*. ‘In the pursuit of its objectives, the CPM Board may exercise the authority of the General Board, granted by the Council for the overall coordination and monitoring of the implementation of the change programmes’.³ The Council’s ‘granting’ was done at its meeting of 20 July 2020 (Minute 372) and 22 March 2022. The reference given for this second ‘delegation’ is incorrect. It should be 22 March 2021 (Minute 479). The delegation was of ‘authority to the Business Committee to approve on its behalf a further, more detailed, Notice for publication in the *Reporter* in April’.

This took the form of the Recovery Programme Overview published in the *Reporter* of 21 April 2021. This was not framed as a Report. I commented on that in a Discussion, to which the Council replied in a Notice in the *Reporter* of 2 March 2022, where it also responded to the comments made by the Board of Scrutiny in its own Report. The response explained in retrospect some respects in which what had happened might be slotted into normal governance requirements and described plans for future published explanation.

The Notice of 23 March 2021 described a CPMB ‘Office’ as ‘part of the Unified Administrative Service that supports the CPM Board’s activities’. The UAS current list of Offices does not mention this one. Its existence seems to raise questions about the junction or overlap between the ‘academic’ and the ‘administrative’. At ‘the end of 2023, the Recovery Programme will come to an end and the remaining projects will be managed by the new Change and Programme Management Office’, says a now dated website entitled *The Recovery Programme*.⁴

The CPMB’s Office now has its own website, *Change at Cambridge*, listing additional ‘programmes’.⁵ This gives details of a ‘team’, which seems to be made up of the staff of the Office, though several apparently do this work in addition to their roles in other University entities. There is an Interim Head (‘Academic Division’) appointed from summer 2022; a cluster of ‘Programme Managers’ and ‘Communications’ staff; four to provide ‘an accredited suite of Lean and Continuous Improvement training to colleagues across the collegiate University’; a few, including from HR, to ‘design and deliver positive cultural

change’ and ‘improve the employee experience’. There is a Blog and a group of ‘Change Champions’; and a Group working on ‘Cambridge Operations’, and ‘Communities of Practice’. This takes the enquirer into areas to which the reader of the *Reporter* will not find linked signposts. Nor can a website of this type necessarily constitute a part of the historical record.

This ‘Change Programme’ has ‘continued its oversight of the University’s Recovery Programme’, footnoting a link to the Programme’s own two Annual Reports.⁶ The Programme’s first Annual Report (2021) was followed by a second (2021–22).⁷ The busy member of the Regent House may easily not penetrate thus far without the sort of search which has been needed to put together these remarks.

The General Board’s Report discussed today states that ‘the University’ has:

recognised the need to improve the way it manages and coordinates the range of significant change programmes that are currently underway, including the Recovery Programme’s outstanding projects.

The Council and the General Board may have approved, but the Regent House as ‘the University’ (Statute A III 1) has not been invited to adopt such a policy. Can it be good governance for so much work to be initiated, funded and continued in the University and in its name without ensuring that members of the Regent House are content by asking them? They should not have to rummage for information, and retrospective explanations and hard-to-find and potentially impermanent website links are really not good enough.

¹ *Reporter*, 6682, 2022–23, p. 264.

² *Reporter*, 6672, 2022–23, p. 57 at p. 58.

³ *Reporter*, 6652, 2021–22, p. 327.

⁴ <https://www.cam.ac.uk/recovery-programme-report-21-22>

⁵ https://universityofcambridgecloud.sharepoint.com/sites/UoC_ChangeProgrammes/SitePages/The-Recovery-Programme.aspx

⁶ https://universityofcambridgecloud.sharepoint.com/sites/UoC_ChangeProgrammes/SitePages/The-Recovery-Programme.aspx

⁷ https://universityofcambridgecloud.sharepoint.com/sites/UoC_ChangeProgrammes/SitePages/Governance.aspx

COLLEGE NOTICES**Elections****Darwin College**

Elected into a Professorial Fellowship under Title C from 6 February 2023:

Professor Eric French, Ph.D., *Wisconsin, Madison*

Emmanuel College

Elected into a Research Fellowship for three years from 1 October 2023:

Efthimios Karayiannides, B.Com., B.A., *Johannesburg*

Eleanor Myerson, B.A., *PET*, M.St., *Oxford*,
Ph.D., *London*

Nikita Sushentsev, Ph.D., *CAI*, M.D., *Moscow*

Newnham College

Elected to a Fellowship in Category D from 1 December 2022:

Eve Lacey, M.A., *K*, M.A., *London*, MCLIP

Elected to a Fellowship in Category G from 1 January 2023:

Deborah Hodder, M.A., *K*, M.A., *London*, MCLIP

St John's College

Elected to a Fellowship under Title E from 17 April 2023:

Christopher Gray, M.A., *PEM*, P.g. Dip., *Royal College of Music*, FRCO

Elected to Fellowships under Title A from 1 October 2023:

Andrea Luppi, B.A., *Oxford*, M.Phil., *CHR*, Ph.D., *SE*

Brigid Ehrmantraut, A.B., *Princeton*, M.Phil., *PEM*

Rakesh Arul, B.Sc., B.Eng., M.Sc., *Auckland*

Jack Colley, B.A., M.St., *Oxford*

Vacancies

King's College: Trapnell Fellowship in Mathematics (College Teaching Officer); tenure: four years from 1 September 2023 or shortly thereafter; salary: £34,994 plus additional benefits; closing date: 20 March 2023; further details: <https://www.kings.cam.ac.uk/about/work-at-kings>

Magdalene College: Yip Visiting Fellowships, 2023–24; open to scholars from the USA or China; closing date: 28 February 2023; further details: <https://www.magd.cam.ac.uk/about/vacancies/academic>

Newnham College: The Phyllis and Eileen Gibbs Travelling Research Fellowship, 2023–24, in Biology, Archaeology, Social Anthropology, or Sociology (women applicants only); funding: up to £18,000, plus additional benefits; closing date: 27 March 2023; further details: <https://www.newn.cam.ac.uk/research/travelling-fellowships>

Events*Jesus College***China Forum seminar series**

Sihan Bo Chen (Head of Greater China, GSMA) and Dr Paul G. Clifford (Senior Fellow, Ash Center for Democratic Governance and Innovation, Harvard Kennedy School) will each deliver a virtual lecture on the topic of '5G in China' on Tuesday, 7 February 2023 at 12 noon; further details and booking:

<https://www.jesus.cam.ac.uk/events/5g-china>

EXTERNAL NOTICES**Oxford Notices**

Lady Margaret Hall: Head of Wellbeing; tenure: part-time (job share); salary: £45,000–£50,000 (pro-rata), plus additional benefits; closing date: 27 February 2023 at 12 noon; further details: <https://www.lmh.ox.ac.uk/head-wellbeing-22.5>

St Catherine's College: Academic Officer (Admissions); salary: £24,285–£26,396, plus additional benefits; closing date: 17 February 2023 at 12 noon; further details: <https://www.stcatz.ox.ac.uk/category/vacancies/>

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EMPLOYMENT TRIBUNALS

Claimants:

Mr N Field-Johnson (1)
Prof B Flyvbjerg (2)
Prof P Candelas (3)
Prof D Snidal (4)

v

Respondent:

The Chancellor, Masters and Scholars
of the University of Oxford

Heard at:

Reading

On: 28, 29 & 30 November,
1, 2, 5 & 6 December 2022 &
5 January 2023 (full hearings) &
4, 6, 26 & 27 January &
8 March 2023 (in chambers)

Before:

Employment Judge Anstis
Mrs A E Brown
Mr J Appleton

Appearances

For the claimants:

The first claimant in person
Mr A Sugarman (counsel) (second to fourth claimants)

For the respondent:

Mr S Jones KC (counsel)

RESERVED JUDGMENT

The respondent's "Employer Justified Retirement Age" is not a proportionate means of achieving legitimate aims.

REASONS

A. INTRODUCTION

The preliminary issue

1. Each claimant brings claims that challenge their dismissal under the respondent's so-called "Employer Justified Retirement Age" or "EJRA".

2. The first claimant was subject to the terms of the EJRA on the basis that he was a senior administrator employed by the respondent. The second to fourth claimants were subject to the terms of the EJRA on the basis that they were academics employed by the respondent. The scope of the EJRA and its application to the relevant individuals will be explored later in this decision.
3. This open preliminary hearing is to determine a preliminary issue, described in an order of 23 September 2021 as “*Whether the EJRA ... is a proportionate means of achieving a legitimate aim or aims?*”
4. The framing of the question seems to suggest that there is only one answer to the question – either it is or it is not a proportionate means of achieving a legitimate aim. However, that was not the way it was dealt with by the parties. While there has only ever been one EJRA scheme in place at any particular time, it has applied across different categories of employees. In this case the relevant categories are statutory professors, associate professors and senior administrators. Subject to the point made in closing submissions by Mr Sugarman and noted below, the hearing proceeded on the basis that there may be different answers for different categories of employees affected by the EJRA.
5. A hearing of this nature does not require a full tribunal panel, but a full panel was convened for the reasons given at para 12 of the order of 23 September 2021.
6. Any matters arising from this decision and any necessary orders for the further progress of the claims will be addressed at a closed preliminary hearing listed for 17 May 2023 (if not resolved earlier by agreement between the parties).

Previous decisions and the composition of the tribunal panel

7. The lawfulness of the EJRA (in a previous form) was the subject of consideration by a tribunal in Pitcher v University of Oxford 3323858/2016 which, in a judgment promulgated on 16 May 2019, found that the EJRA was lawful. The opposite result was reached in a decision promulgated on 20 December 2019 in the case of Ewart v University of Oxford 3324911/2017. Appeals against both decisions were dismissed by the EAT in the combined case of Pitcher & Ewart v University of Oxford [2021] IRLR 946. In the Pitcher & Ewart appeal judgment, the EAT set out a description of the relevant background and law in forms we will refer to later in this judgment.
8. The respondent made an application that none of the employment judges or non-legal members who had previously sat on the Pitcher and Ewart cases should be allocated to this hearing. That application (and a cross-application by

the first claimant) was dismissed by the Regional Employment Judge in an order dated 13 June 2022.

9. We are the same tribunal panel that decided that an earlier version of the EJRA was unlawful in the Ewart case. The particular EJRA scheme we are dealing with in these cases is different, the evidence led by the parties and submissions made by them are not the same as in the Ewart case. Amongst other things, the academic claimants in this case adopted a different position in relation to the respondent's claimed legitimate aims than that adopted by Prof Ewart. It is inevitable that during the hearing the parties and to some extent us may refer back to matters discussed during the Ewart hearing. Our decision may have to refer back to points raised in Ewart as matters of background, but we regard our decision in this case as being independent of the earlier first-instance decisions in both Pitcher and Ewart.
10. The Regional Employment Judge has responsibility for the allocation of a panel to a case, hence he made the decision on the pre-emptive application by the parties. We do not consider that that absolves us of any individual responsibility to recuse ourselves from hearing a case if we consider that necessary or appropriate. We consider a decision by a judge or tribunal member to recuse themselves is a responsibility we retain, even given the earlier decision by the Regional Employment Judge (although no doubt any such individual decision will take note of the REJ's decision). In this case no application for recusal was made, and we did not consider any circumstances arose that suggested that we should recuse ourselves from conducting this preliminary hearing.
11. In common with both the Pitcher and Ewart cases, the respondent makes no criticism of the ability, credentials or reputation of the claimants in this case as highly distinguished scholars or (in Mr Field-Johnson's case) a very able administrator. The respondent's case proceeds on the basis that there is no individual criticism of the abilities of the relevant claimants, but that the automatic operation of the EJRA in their cases is justified as being in pursuit of broader aims pursued by the respondent. We also note that the respondent expressly disavowed any position that older academics or administrators may tend, over time, to become less able. This case is not about any individual or group of individuals being less capable than any other individual or group of individuals.

The hearing

12. This hearing started on 28 November 2022 with the tribunal reading into the papers. That continued through to the end of 29 November 2022. As agreed with the parties, the respondent commenced its evidence on 30 November 2022. 30 November – 2 December was taken up with the evidence of Sarah

Thonemann, the respondent's Deputy Director of Human Resources at the relevant time. The first claimant had identified at the start of the hearing that he was unable to attend the hearing on Friday 2 December due to other commitments. He did not want the hearing to be adjourned and was willing for the hearing to continue in his absence. In order to accommodate this his cross-examination of Ms Thonemann (and the tribunal's questions to her so far as relevant to his case) were dealt with on 1 December 2022.

13. On the morning of 5 December 2022 the evidence of Dr Malgorzata (known as Gosia) Turner was dealt with, and in the afternoon we heard evidence from the fourth claimant. That continued until the morning of 6 December 2022, with the evidence of the third claimant and the first claimant following on. The second claimant had submitted a witness statement but did not attend the hearing to give evidence.
14. In discussions at the end of the day on 6 December 2022 arrangements were made for the exchange of written submissions, with oral replies to submissions to be made by CVP on 5 January 2023. The tribunal met in chambers on 4 January 2023 to read the written submissions and prepare for the oral submissions.
15. Any further oral submissions and oral replies to the written submissions were dealt with by video (CVP) on 5 January 2023 and the tribunal met in chambers on 6, 26 & 27 January 2023 to consider its decision, with a final draft being agreed during a chambers meeting on 8 March 2023.

B. THE FACTS

Background and the introduction of the EJRA

16. The background and matters leading up to the EJRA are extensively set out in the first instance decisions in Pitcher and Ewart. We now have the advantage of the EAT decision in those appeals, from which we take the following:

“Relevant background context

7. *The University is the oldest University in the English-speaking world, dating back to 1096. It is recognised as a world-class teaching and research university and has the largest volume of world leading research in the United Kingdom. The University employs some 13,000 staff, of which nearly 2,000 are academics and around 5,000 are involved in research; professional, administrative and clerical positions, as well as technical and support staff, make up the remainder of its workforce. It competes*

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internationally on the world stage to attract the most talented academic and research staff as well as the most able students; approximately 48% of academic and research staff, and 41% of students, are from countries outside the United Kingdom.

8. *Setting aside the most senior administrative or leadership staff, academic grades in the University rise from 1-10, above which are associate professors and statutory professors. At the times material for these appeals, there were around 120 statutory professors and 1,200 associate professors; these are considered the most influential and prestigious academic roles within the University (albeit there are also prestigious senior research-only positions that fall outside the description of an “academic” role for these purposes). It is common for academics employed by the University to hold what are called “joint appointments”, whereby they work partly for the University and partly for a college, the costs being divided between the two.*
9. *Within the University there are 38 colleges; all but two are financially and legally independent, and they are self-governing, operating within a federal type structure. Each college is granted a Charter, approved by the Privy Council, and is governed by a Head of House and a Governing Body which comprises of a number of Fellows, many of whom also hold University positions. The Conference of Colleges is the mechanism whereby the colleges come together to deal with matters of shared interests and common purpose.*
10. *The University’s academic departments, facilities and research centres are grouped into four divisions: humanities; mathematical, physical and life sciences (“MPLS”); medical sciences; and social sciences. Under these divisions are departments. ... Each division has a full-time head who also sits on the University’s Council, which is the principal executive and policy making body for the University. The Council has five main standing committees, including (relevant for present purposes) a Personnel Committee.*
11. *The sovereign body of the University is the Congregation which has 4,500 members including the academic staff of the University, Heads of Department and other members of Governing Bodies and Colleges, and those in senior research, computing, library and administration. The Congregation decides on proposals submitted to it by Council but will also consider any resolution*

submitted any 20 or more of its members and, where a proposal has been made by Council, any two members can call for a discussion and amendment of that proposal by Congregation.

12. *The University's official publication of record is the "Gazette", in which formal announcements and notifications are published."*
17. Pausing there, we note that in argument before us it was not in dispute that only statutory and associate professors were considered to be "academic" staff by the respondent, whereas other higher education institutions in the United Kingdom would typically take a wider view of who could be categorised as "academic". We also note that the "joint appointment" referred to by the EAT was limited (at least in that form) to associate professors. Statutory professors would typically have a college affiliation but this would not bring with it any teaching responsibilities for their college and their salary would be born entirely by the respondent. There was no suggestion that administrative staff would hold a joint appointment with a college.
18. Under the heading "The Background to the EJRA", the EAT records the following:
 16. *Prior to 2011, the University operated a contractual default retirement age ("DRA"), which was a standard feature of its employment contracts. For academic staff, this required them to retire on the 30 September immediately preceding a specific birthday (so, a retirement age of 65 would require a person to retire on the 30 September preceding their 66th birthday). Prior to 1985, the retirement age was 67, but that was then reduced to 65 (although those already in post retained the right to retire at 67).*
 17. *The University's operation of a DRA had persisted through the introduction of the Employment Equality (Age) Regulations 2006 (which allowed for the operation of a DRA of 65 or over, subject to certain conditions being met) but, in or around 2010, legislative changes were proposed that would mean the operation of a DRA would no longer be lawful; the relevant legislative changes were to come into effect from 1 October 2011.*
 18. *On 30 September 2010, the University's Personnel Committee met to consider the implications of this proposal to abolish the statutory DRA; this was of concern as it was considered that predictable retirement dates aided academic and financial planning and enabled the University to refresh the workforce and achieve greater diversity. Most employees retired at their normal*

retirement age, but the University had developed a procedure for considering extensions to employment beyond the DRA that was considered to have worked well. The Personnel Committee agreed that the existing arrangements should be maintained if at all possible.

19. *It was further noted that, while the removal of the DRA would not preclude employers from seeking to objectively justify a compulsory retirement age, an EJRA would have to be justified as a proportionate means of achieving a legitimate aim, which would need to be supported with robust evidence. The Personnel Committee agreed to ask its officers to develop proposals that might enable the University to continue to implement a normal retirement age, expressing the concern that it would otherwise have to manage a situation in which a potentially significant number of staff continued to work indefinitely, beyond the DRA. In relation to academic appointments, it was felt this would make planning extremely difficult and would mean it was only possible to dismiss older employees as part of a non-age discriminatory general process of redundancy or performance management. Acknowledging that the justification for an EJRA might not be straightforward, it determined to seek expert legal opinion on the strength of any justification and, in the case of joint appointments, to obtain the views of the colleges. It was also suggested that the University should look at other leading universities' intentions in relation to the abolition of the DRA.*
20. *A joint working group was set up by the Personnel Committee, approved by Council, and specialist legal advice was obtained before proposals were put forward for an EJRA with a retirement age of 67.*
21. *The proposals were the subject of extensive consultation, including with the Oxford University and College Union ("UCU"), and an Equality Impact Assessment ("EIA") was undertaken. The EIA noted that retirement had been an important mechanism for facilitating the turnover and diversification of University employees, particularly academic staff; it concluded that abolition of the DRA would tend to slow down departures from the older, less diverse groups and thus had the potential to set back the trend to greater diversity. An EJRA was seen as a means of redressing this, albeit the EIA acknowledged the need to keep this under review.*

22. *The results of the consultation were subsequently reported to the Personnel Committee in May 2011 and revealed broad support for the EJRA proposals. All divisions supported the maintenance of a retirement age; the majority of the colleges were also in favour of maintaining an EJRA for joint appointments; academic staff and the Oxford UCU broadly supported the proposals (albeit based on a low response (16%) to its consultation with members), and there was clear resistance to the introduction of performance management as an alternative.*
23. *Having considered the responses, the Personnel Committee concluded that a predictable normal retirement age should be maintained, together with clear provisions for those approaching that age who wanted to continue in employment. It considered alternatives, such as offering financial incentives to encourage retirement or increasing the opportunities for promotion, but concluded these were unaffordable and were unlikely to be seen as justifiable use of public funds. In this regard, the [Pitcher] ET observed:*
- “109. ... alternatives were considered but found little support. They considered the experience in the United States of America where mandatory retirement was abolished in 1987 but in order to induce academics to leave, a significant sum of money is offered as the universities are financially well endowed. ... we were told ... that one university was able to raise \$6 billion and normally their termination package includes an inducement of 1.5x the salary. The University would be unable to adopt such an approach due to funding constraints. The University’s academics also turned their backs against the introduction of performance management as the consensus was that it would be demeaning to those who are at the end of their academic careers. ...”*
24. *At the end of the summer term, the Conference of Colleges voted in favour of an EJRA for joint appointments. Meanwhile, in June and July 2011, there was further consultation, focussing on procedures for considering requests to continue in employment beyond the EJRA.*
25. *All these matters were considered by the Personnel Committee on 22 September 2011, when it determined to recommend to*

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Council the adoption of an EJRA of 67 for an initial period of 10 years for academic and academic-related staff, with an interim review after five years, and with an associated procedure for considering requests to continue working beyond the EJRA.

26. *On 10 October 2011, the Council adopted the Personnel Committee's recommendations. Notice was placed in the Gazette on 13 October 2011; although 20 members of Congregation could have asked for this matter to be discussed at that body, this did not occur.*
19. The respondent has always (at least in the modern era) had some form of compulsory retirement provision for academic and senior administrative staff – either the default retirement age (when that was permitted) or an EJRA scheme of some sort. That has been accompanied by the opportunity to apply for extensions of employment which have operated in various ways across time. We also note that the introduction of the EJRA came about on the Personnel Committee seeking to “*develop proposals that might enable the University to continue to implement a normal retirement age*”, rather than on the Personnel Committee working from particular objectives or aims and concluding that the EJRA was an appropriate way of meeting or contributing to those aims. The introduction of the EJRA in 2011 meant (for most) an increase in their retirement age from 65 to 67, so for the first couple of years there would have been very few compulsory retirements under the EJRA.
20. The EAT continues, describing the original 2011 EJRA policy:
- “27. *The aims of the EJRA adopted by Council in October 2011, were specified to be as follows:*
- “The EJRA is considered to provide a proportionate means of:*
- *safeguarding the high standards of the University in teaching, research and professional services;*
 - *promoting inter-generational fairness and maintaining opportunities for career progression for those at particular stages of a career, given the importance of having available opportunities for progression across the generations, in order, in particular, to refresh the academic, research and other professional workforce and to enable them to maintain the University's position on the international stage;*

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- *Facilitating succession planning by maintaining predictable retirement dates, especially in relation to the Collegiate University's Joint Appointment System, given the very long lead times for making academic and other senior professional appointments particularly in a university of Oxford's international standing.*
- *Promoting equality and diversity, noting that recent recruits are more diverse on the composition of the existing workforce, especially amongst the older age groups of the existing workforce and those who have recently retired.*
- *Facilitating flexibility through turnover in the academic-related workforce, especially at a time of head count restraint, to respond to the changing business needs of the University, whether in administration, IT, the libraries, or other professional areas;*
- *Minimising the impact on staff morale by using a predictable retirement date to manage the expected cuts in public funding by retiring staff at the EJRA; and*
- *In the context of the distinctive collegial processes through which the University is governed, avoiding invidious performance management and redundancy procedures to consider the termination of employment at the end of a long career, where the performance of the individual and/or the academic or other professional needs of the University have changed."*

21. Variations and refinements on these aims have continued across the various iterations of the EJRA scheme. In particular, the reference to "*invidious performance management*" was removed at an early stage. It is now no part of the respondent's case that older workers are likely to or may suffer deteriorations in their academic or administrative work. The respondent expressly disavows this, along with any suggestion that older workers may suffer any lack of original thought or creative or original ideas. As will be discussed below, the respondent does, however, refer to "new perspectives" as a concept inherent to an individual or their background that is distinct from creative or original ideas.
22. The EAT addresses the question of extensions, and continues as follows, describing the "one-year review":

- “33. *When the EJRA was introduced it was determined that there should be annual reporting of its effectiveness to Council, via the Personnel Committee. On 29 October 2012, Ms Thonemann, the University’s Deputy Director of Human Resources, undertook this evaluation but felt it was too early to identify any trends or draw any firm conclusions; in particular, as the University had raised the retirement age from 65 to 67, she felt it would take a number of years, and much more data, to properly measure any achievement of the aims.*
34. *Ms Thonemann further noted that the majority who applied for an extension of their employment were successful: in the first year, 55 staff had made formal applications to work beyond the EJRA, 52 were supported by their departments and divisions and, of those, 49 were approved. Of the 55 applicants, 49 were due to retire on or before 30 September 2014; the other six applied in advance of the EJRA as part of a recruitment negotiation. As an application for an extension had to be considered in light of the question whether the individual “if extended in employment, expected to make an exceptional contribution to the collegiate University”, Ms Thonemann concluded that many had erroneously taken this to mean that the standard of research distinction expected of an Oxford academic was sufficient to justify continued employment and the EJRA was not functioning as anticipated in freeing up vacancies. She recommended that there be clarification of the process; the burden would rest on the applicant to make a case to be treated as an exception from the normal rule of retirement at the EJRA.*
35. *Ms Thonemann’s recommendations were approved by the Personnel Committee on 28 November 2013.”*
23. Although approved (or not objected to) by Congregation, the EJRA has been subject to various legal challenges from individuals from the start, initially in the respondent’s internal court of appeal. In considering an appeal by Prof Galligan in the respondent’s court of appeal Dame Janet Smith was critical of the EJRA and of the process for obtaining extensions (in its then form). Alongside its general commitment to keep the EJRA under review, this prompted further reviews of the EJRA by the respondent. A second version of the EJRA was adopted in 2015. As the EAT says:
- “39. *The aims of the 2015 Policy replicated those previously identified (see paragraph 27 above), save that the aim of “avoiding invidious*

performance management and redundancy procedures” was removed, and what was previously the second aim was divided into two (promoting intergenerational fairness, and refreshment as a route to maintaining the University’s international position).

40. *It was further stated that the EJRA was an “appropriate and necessary means” of creating “sufficient vacancies” to meet the identified aims.”*
24. At least in part due to Dame Janet Smith’s criticism, the 2015 policy tightened the criteria for extensions of employment beyond the retirement age.
25. An interim, five-year, review was commission in 2015:
- “45. *In May 2015, a working party was authorised by Council to undertake this review. A notice in the Gazette explained that the working party would oversee the collection of data and other information on the operation and effect of the EJRA, and would have regard to internal data, to the experience of other higher education institutions operating without a DRA, both in the UK and abroad, and to the views of stakeholders (including staff and various representative bodies).*
- ...
52. *In its detailed report, published in January 2017, the working group stated that each of the aims was important to sustain high standards and the evidence led it to conclude that, in the first five years, the EJRA had contributed to opportunities for career progression, refreshment, succession planning, enhancement of diversity and inter-generational fairness. It could not reach the same conclusion regarding flexibility or the ability to maintain morale. More specifically, no matter how effective other measures might be, the University needed to create vacancies to improve diversity; although the extent to which the EJRA contributed to this varied, in many grades it was substantial. The working group recommended the EJRA be retained, adjusting the aims to better reflect those in respect of which it had most impact. It made further recommendations in terms of coverage and training, and, subject to consideration of the 10-year data, for the age of the EJRA to be raised in 2022, to 30 September before a 70th birthday, mirroring changes in longevity.”*

26. This five-year review was the subject of detailed consideration in both the Pitcher and Ewart tribunal cases, albeit with the relevant tribunals taking different views on how reliable the review’s conclusions were.
27. Further criticism of the EJRA followed in a case brought by Prof Edwards in the respondent’s court of appeal, heard by Sir Mark Waller. Subsequent changes to the respondent’s statutes have had the effect that retirement cases are no longer within the jurisdiction of its court of appeal, and any subsequent legal challenges arose in the employment tribunal. The Pitcher and Ewart cases arise at this point.
28. We note that the introduction of and any later variations to the EJRA have always been either approved by or not opposed by Congregation. That has continued up to (and including) the latest changes prompted by the ten-year review, which we understand have now been approved. We understand that some types of change to the EJRA and its procedures require the positive endorsement of Congregation, and others can be called in for debate by Congregation on the petition of a very small number of members of Congregation.

A timeline

29. Since its original introduction, the EJRA has been subject to the following broad trends: (i) a tightening of the criteria for extensions, (ii) a gradual increase in the retirement age and (iii) a substantial reduction in the groups of employees to whom it applied.
30. This table is intended to set out a brief timeline of developments with the EJRA. In this hearing the retirement age has usually been described as being a particular age – for instance, 67 – but the formal expression of this has always been retirement on the 30 September prior to an individual attaining a particular age. That coincides with the end of the academic year. Thus a retirement age of 67 actually means retirement on the 30 September prior to the individual’s 68th birthday.

| Dates: | Developments: |
|---------------|--|
| To 2011 | A default retirement age – typically 65 - with opportunities for extensions. |
| 2011 | An EJRA of 67 (with extensions). |

| | |
|------|--|
| 2014 | Galligan decision. |
| 2015 | New 2015 policy introduced. |
| 2017 | Five year review report published, 2017 policy comes into force (including the removal of grades 6 & 7 from the scope of EJRA and an increase in retirement age from 67 to 68 – this policy effectively left the scope of the EJRA matching those who were members of Congregation). |
| 2019 | Pitcher ET decision (May), Mr Field-Johnson retirement (30 September 2019), Ewart ET decision (Dec) |
| 2020 | Prof Candelas retirement (30 September 2020) |
| 2021 | Ten year review commences. |
| 2021 | All other claimants retire (30 September 2021) |
| 2022 | Ten year review report published, 2022 policy (incorporating recommendations of the ten year review) approved by (or not objected to by) Congregation. All administrative grades removed from the scope of the EJRA and retirement age increased from 68 to 69. |

31. The retirements of Professors Pitcher and Ewart took place under the 2015 policy. All of the retirements at issue in these claims took place under the 2017 policy.
32. Amongst other things, the 2022 policy removed all administrative staff from the scope of the EJRA, leaving only senior academic staff – statutory and associate professors and RSIVs (senior research-only employees) – within the scope of the EJRA.

The circumstances of the claimants

Field-Johnson

33. Mr Field-Johnson had a background in finance with various City institutions, eventually founding his own firm together with some colleagues. In March 2017 he took up a post as Head of Development for the Department of Continuing Education. This was a grade 9 administrative position and was subject to the EJRA. His retirement took effect at the end of September 2019, seemingly in the face of opposition from his managers and having sought and failed to

continue his work for the respondent under a consultancy agreement or other alternative working arrangements. Part of his case was that it was illogical to recruit someone in 2017 only then to retire them two years later.

Flyvbjerg

34. Prof Flyvbjerg did not attend the tribunal to give evidence, and so was not cross-examined on his evidence, but the basic facts of his case are not in dispute.
35. Prof Flyvbjerg was a statutory professor: the BT Professor and Chair of Major Programme Management at the Saïd Business School. He had held that position since 1 April 2009 and his employment ended by reason of the EJRA on 30 September 2021. His statement emphasised his considerable academic credentials, which are not in dispute. He was (as were the other academic claimants) a leader in his field. He made an application to extend his tenure beyond the EJRA, which was “fully” supported by his department but, as he puts it, his division was “not as supportive” of his application. The application was refused, as was a subsequent appeal.
36. Prof Flyvbjerg has moved on to work at a university in Copenhagen, although he emphasises that this was “*hugely disruptive to both family life and work*”. He says:

“The University may say that I could have continued my work as an Emeritus Professor and continued to use the University’s facilities. I completely disagree with this suggestion. It is insulting to tell someone who has value in the labour market that they are welcome to stay and work for free. I simply could not afford to lose my salary and so have been forced to find a job elsewhere.”
37. Prof Flyvbjerg talks of sacrificing a large pension at his former role in order to take up his position with the respondent. He says that he was assured on his appointment that he would be able to work as long as he wanted and thereby rebuild his pension (the respondent does not accept this). He goes on to discuss how he has been replaced, and the effect (or lack of effect) of his dismissal on the respondent’s achievement of its stated aims.
38. Prof Flyvbjerg has consistently stated his desire to work on for a long period of time. In his statement he talks of a retirement age of 75 being “a lot more reasonable” but also of his personal expectation that he would “*continue to work at least ten more years*” which would take him through to at least 80 years old.

Candelas

39. Prof Candelas was a statutory professor – the “Rouse Ball Chair of Mathematical Physics”. It is hardly necessary to distinguish different levels of prestige that come with different statutory professorships, each of which carry prestige and considerable academic honour. However, it did not seem to be in dispute that that professorship is, as Prof Candelas puts it “very prestigious”. An indication of this is that his predecessor in the post was Sir Roger Penrose, who has since received a Nobel Prize. The respondent was keen to emphasise that Prof Candelas only got the opportunity to take on this role because of the compulsory retirement of Sir Roger Penrose. Prof Candelas held this position from 1 September 1999 until his dismissal under the EJRA on 30 September 2020.
40. Prof Candelas studied for a DPhil at the respondent but, in keeping with what we have heard about the worldwide nature of academia (at least at the high level practiced by the respondent) he moved from there to the University of Texas at Austin, where he worked for more than twenty years, rising to full professor, the position he held prior to his appointment with the respondent. (We understand “full” professor to be an equivalent role in other institutions to what the respondent would term a statutory professor.)
41. Prof Candelas describes being so absorbed in his work (and also annoyed by the possibility of compulsory retirement) that he missed the deadline to apply for an extension of his contract. He says that if he had applied, he had been told that his department would have been “strongly supportive” of an extension.
42. Prof Candelas makes various points about the inadequacy of an Emeritus appointment, and goes on to make comments on the “Little’s Law” analysis and Prof Ewart’s calculations on staff turnover and the impact on the creation of academic vacancies.

Snidal

43. Prof Snidal describes himself as having been employed by the respondent as “Professor of International Relations” from 1 September 2010 until his compulsory retirement on 30 September 2021. It was agreed between the parties that he was a “Reader”, which we were told was an obsolete or legacy job title no longer used by the respondent. No new “Readers” were being appointed, although there were a handful of Readers who had been appointed to that title and retained it.
44. The consensus between the parties seemed to be that “Reader” was a distinct position that was neither a statutory nor associate professor. It was (and remains) within the scope of the EJRA. It was the claimant’s position that a Reader was akin to a statutory professor, but the respondent’s view was that it

was closer to an associate professor. It is not necessary for us to resolve that dispute in this case. He held a joint appointment with Nuffield College, where he was a Professorial Fellow. As with the other academic claimants, his academic credentials are impeccable. He did not apply for an extension under the EJRA. He says that the terms of and requirements for an extension were “not worth pursuing”. He points to the difficulties that academics may have in applying for roles after having been subject to the EJRA, saying that he has been refused positions in Florence and at the LSE based on (respectively) his likely age at the end of a fixed-term appointment and on him not being willing to commit to the long-term role that the institution was seeking. He goes on to comment on the EJRA and its impact (or lack of impact) on the respondent’s purported aims.

45. Unless Prof Snidal can be considered to be an associate professor we do not have an associate professor in these claims. Mr Field-Johnson was an administrator, Profs Flyvbjerg and Candelas were statutory professors and Prof Snidal was a Reader.

Themes

46. While each individual claimant has their own particular circumstances, some broad themes emerge across their evidence:
- Some complain of having been misled on recruitment as to the possible effect of a retirement age, or to have had expectations that the respondent would no longer apply a retirement age following the abolition of the default retirement age. Whatever the rights and wrongs of this, it is not in dispute that the respondent was entitled as a matter of contract to apply the EJRA to them. Whether the EJRA is then justified cannot depend on their expectations, nor even on the question of whether they were misled or not.
 - For the academic claimants, the worldwide nature of the academic community and job market (at least at the high end as practiced by the respondent) is clear. Each of them had worked outside the UK or (after the EJRA) applied for work outside the UK.
 - Each of the academic claimants gave evidence to the effect that an Emeritus or similar position on retirement was not comparable to their previous employment. We will discuss this in more detail later. There has been no suggestion that there was any equivalent to an Emeritus role for the administrators, nor that there was any way for them to continue their previous work in an unpaid or honorary position following their retirement.

- All are clear that they were dismissed at the peak of their careers, when they still had much to offer the respondent and (in the case of the academic claimants) the broader academic world. How much longer they wanted to continue to work for varied.
- Some of the academic claimants made observations on what their dismissal meant for the achievement of the respondent's purported legitimate aims – and in particular what it did or did not mean for career progression within the respondent and diversity in general. While noting what has been said, the fact that the EJRA did or did not achieve a legitimate aim in any particular case is not what we are considering here. We have to consider more broadly whether the EJRA is capable overall of achieving the legitimate aims and then whether it is a proportionate means of achieving those aims, not whether those aims have been achieved in any individual case.

The ten-year review

47. The respondent said the EJRA was to be introduced “initially” for ten years. In fact it had no limit or “sunset clause” bringing it to an end after ten years, but it was subject to a full review after ten years (there had, of course, been previous interim reviews). The appointment of a Review Group was announced in the Gazette on 1 July 2021 and the Review Group met for the first time on 7 July 2021 with Prof David Paterson as chair. Its terms of reference describe its “purpose” as:

“... to submit a report and recommendations on the future of the EJRA at Oxford to Council, through the Personnel Committee”

48. Its “scope” is described as follows:

“The Group has been asked to consider:

- *whether the current Aims of the EJRA Policy remain aims the University should pursue and whether others should be articulated;*
- *the extent to which the Aims are being met or will be met in future through the EJRA, whether alone or in conjunction with other measures;*
- *whether there are any alternative means by which the Aims could be met; and*

- *whether the Group's view is that the EJRA is, as at the date of the review, a proportionate and necessary means of achieving the aims, whether alone or in conjunction with other measures.*

In so doing, the Group is asked to take into account the impact of the EJRA on those at different career stages, noting that those at earlier career stages and those who are already retired are under-represented on the Review Group itself and on decision-making bodies, such as Council and Congregation.

If the Group decides to recommend the retention of an EJRA, it is asked to recommend whether there should be any changes to:

- *the age at which the EJRA is set or the circumstances in which it will apply;*
- *the groups to which the EJRA applies;*
- *the measures that are taken or could be taken in conjunction with the EJRA to achieve the aims;*
- *the existence and operation of the extensions procedure, including the parts of the procedure that apply to second and subsequent extensions.*

If the Group decides to recommend that the EJRA is discontinued entirely, it is asked to recommend:

- *the date from which the policy should cease to operate and any transitional arrangements;*
- *the alternative means by which those Aims that are considered to remain relevant and important will be achieved in future."*

49. The Review Group was not, as such, asked to assess the lawfulness of the EJRA, nor would it have had any particular standing to do so. To the extent that it did consider this, the respondent claims privilege on the advice received and matters arising from it. Nevertheless, the questions that were asked of the Review Group are very similar to those the tribunal will have to determine, and as a result the data produced for the Review Group, and the conclusions that it drew from that data, were central to all parties' arguments on the lawfulness of the EJRA.
50. No point arises as to the constitution of the Review Group, and we simply note that it comprised a range of representatives from different areas of the

respondent, including the Conference of Colleges, a trade union representative and “a recent retiree”.

51. The Review Group were assisted by Ms Thonemann and drew on legal advice from the respondent’s solicitors (as noted above, privilege is claimed in respect of that advice).
52. The Review Group conducted ten formal meetings from July 2021 to March 2022. The EJRA scheme that it was reviewing was the 2017 version under which each of the claimants had been subject to compulsory retirement. It produced its final report in May 2022.
53. We will refer in our discussion and conclusions to the data that the Review Group commissioned and drew on, and to its deliberations and conclusions on that data, but for now we will simply set out the executive summary of the Review Group’s final report:

“a) Introduction

The University’s employer-justified retirement age (EJRA) requires employees in grade 8 and above to retire on the 30 September preceding their 69th birthday, in support of the Aims of the policy, which are, in brief: intergenerational fairness through maintaining opportunities for career progression, refreshment of disciplines/fields/expertise, succession planning, and diversity.

After an extended process of investigation, consultation and analysis, the Review Group established by Council in Trinity term 2021 to conduct the 10-year review of the EJRA makes the following recommendations.

b) Recommendations

The Review Group recommends that:

1. *The EJRA is retained for those employed as Statutory Professors, Associate Professors and RSIVs (the most senior researchers), and for the Vice-Chancellor.*
2. *Those in grades 8 to 10 and ALC6 (the senior administrative grade) are removed from the scope of the EJRA, together with employed Visiting Professors, the Professor of Poetry and committee members.*

3. *The Aims are retained, with some amendments to clarify the relationship with the University's Vision, Mission and Strategic Plan 2018-24.*
 4. *Personnel Committee consider whether to recommend to Council an increase in the age of the EJRA of one year, given the benefits and drawbacks identified in this report.*
 5. *The exceptions process be adapted to better support those whose careers have been impacted by caring responsibilities or other personal circumstances, to ensure space constraints do not prevent recruitment, and that it be communicated more effectively and transparently.*
 6. *Transition arrangements for any changes to policy which are agreed are put in place, and the EJRA is reviewed again in five years' time, when more data are available and circumstances may have changed.*
 7. *There should be a more strategic approach to retirement, including discussions well in advance of the EJRA and better understanding of the flexible retirement options in USS, in order to facilitate informed decision making by individuals and better departmental succession planning, together with better and more consistent support for staff who wish to remain part of the intellectual and social life of the University in order to support a dignified and phased approach to retirement.*
 8. *Given that the EJRA contributes to vacancy creation, but cannot achieve the Aims in isolation, other approaches such as inclusive recruitment across all grades and divisions must continue to be pursued as a priority to accelerate progress.*
 9. *The Group noted that the review was hampered by inadequate diversity data, particularly in relation to ethnicity and disability, and that this needs to be addressed."*
54. We understand that the formal recommendations that resulted from that report have now been passed (or not opposed) by Congregation.
55. As we have already noted, Mr Field-Johnson relied heavily on recommendation 2 and the analysis that led to that. The entirety of his case was to the effect that the Review Group did not consider the EJRA was justified in relation to people

holding his position, and that matters were no different at the time of the Review Group's report to how they had been at the time of his dismissal.

C. THE LAW

56. As with the background to the EJRA, we have the advantage of the EAT's statement of the relevant law from the Pitcher and Ewart appeal:

"The Relevant Legal Principles

Both Professor Pitcher and Professor Ewart pursued claims of direct age discrimination and unfair dismissal. We first set out the legal principles relevant to those claims, before turning to consider the reasoning of each of the ETs.

Direct Discrimination Because of Age

- 96 *Sub-section 13(1) of the Equality Act 2010 ('EqA') defines direct discrimination, as follows:*

'(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 97 *Where the claim is one of direct age discrimination, however, sub-s 13(2) allows for a defence of justification:*

'(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.'

- 98 *These provisions implement Council Directive 2000/78/EC ('the Framework Directive'), which sets out a general framework for combating discrimination on, amongst others, the ground of age, with a view to putting into effect the principle of equal treatment in the Member States. Article 2 of the Framework Directive defines direct discrimination as occurring:*

'where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1 [which includes age]'.

Article 6 then provides for a specific defence of justification in age discrimination cases:

'1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary ...'

99 In considering whether a compulsory retirement policy has legitimate aims, in *Seldon v Clarkson Wright & Jakes (a Partnership)* [2012] UKSC 16, [2012] IRLR 590, [2012] ICR 716, the Supreme Court recognised there are two different kinds of legitimacy potentially at issue. The first – general legitimacy – is concerned with broad types of aim that might justify an otherwise discriminatory policy. The second – particular legitimacy – raises the question whether the aim is 'legitimate in the particular circumstances of the business concerned' (per Lady Hale, para [61] *Seldon*). In identifying those aims that might meet the general legitimacy requirement, at para [50](2) *Seldon*, Lady Hale suggested that the aims must be:

'social policy objectives, such as those related to employment policy, the labour market or vocational training. These are of a public interest nature, which is "distinguishable from purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness" '.

Going on to identify two broad categories of potentially legitimate aims:

'[56]. ... the first kind may be summed up as inter-generational fairness ... It can mean a variety of things, depending upon the particular circumstances of the employment concerned: for example, it can mean facilitating access to employment by young people; it can mean enabling older people to remain in the workforce; it can mean sharing limited opportunities to work in a particular profession fairly between the generations; it can mean promoting diversity and the interchange of ideas between younger and older workers.

[57] The second kind may be summed up as dignity. This has been variously put as avoiding the need to

dismiss older workers on the grounds of incapacity or underperformance, thus preserving their dignity and avoiding humiliation, and as avoiding the need for costly and divisive disputes about capacity or underperformance.'

- 100 *In order to be justified, however, an otherwise discriminatory policy must also be an 'appropriate and necessary' means of achieving the aim. This is the proportionality question, at the heart of which is a balancing exercise, described in Lady Hale's Judgment in Seldon in the following terms (see para [50](6)):*

'The gravity of the effect upon the employees discriminated against has to be weighed against the importance of the legitimate aims in assessing the necessity of the particular measure chosen'.

- 101 *Where an employer seeks to justify the operation of what would otherwise amount to discriminatory scheme or policy, it is the task of the ET to conduct a critical evaluation of the scheme in question; as Pill LJ observed, in Hardy & Hansons plc v Lax [2005] EWCA Civ 846, [2005] IRLR 726, [2005] ICR 1565, CA:*

'[32] ... The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal ... is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject the appellants' submission (apparently accepted by the EAT) that, when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances.'

- 102 *Thus, in carrying out the required balancing exercise, the ET does not have to defer to the employer's assessment; it must come to its own judgement (Homer v Chief Constable of West Yorkshire [2012] UKSC 15, [2012] IRLR 601, [2012] ICR 704, per Lady Hale at para [20]). Indeed, as the test is objective, there is no requirement that the justification must have consciously and*

contemporaneously featured in the employer's mind (Cadman v Health and Safety Executive [2004] EWCA Civ 1317, [2004] IRLR 971, [2005] ICR 1546, CA), but an otherwise discriminatory policy, which the employer cannot show to be either necessary or appropriate, cannot sensibly be thought to balance the harm.

103. *As for what is 'appropriate', in this context, this means that a policy must be capable of achieving the aim; where a measure is inappropriate to the aim in question, discrimination arising from its application will not be justified (see the examples cited by Lady Hale at para [50](5) Seldon and at para [22] Homer). The question for the ET is whether the means could achieve the legitimate aim in question or whether they are unconnected to it. The appropriateness of a measure may also be undermined by the inclusion of exceptions that are inconsistent with the aim in question; as was noted by the Court of Justice in Fuchs v Land Hessen (Joined cases C-159/10 and C-160/10), EU:C:2011:508, [2011] IRLR 1043, [2012] ICR 93:*

'85. It must be observed, in accordance with settled case law, that legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (case C-169/07 Hartlauer [2009] 3 CMLR 143, para 55, and Petersen, para 53).

86. Exceptions to the provisions of a law can, in certain cases, undermine the consistency of that law, in particular where their scope is such that they lead to a result contrary to the objective pursued by that law ...'

In Fuchs, it was held that the exception in question (the continued employment of prosecutors until the age of 68 when they were involved in an on-going criminal case) was unlikely to undermine the aim pursued (an age-balanced workforce), but could mitigate the otherwise rigid nature of the law being applied (the requirement that prosecutors retire at 65).

- 104 *As for the concept of necessity, this focuses scrutiny on whether there were other non, or less, discriminatory ways of achieving the same legitimate aim. That does not mean that other aims should have been adopted; necessity in this context means 'reasonable necessity' (see para 32 of Hardy & Hansons, supra). This principle was reiterated by the Employment Appeal Tribunal in Seldon v*

Clarkson Wright & Jakes (No 2) (2014) UKEAT/0434/13, [2014] IRLR 748, [2014] ICR 1275. In that case, it had been suggested that because a retirement age of 68 or 70 would adversely affect fewer partners than one of 65, the firm could not justify the lower age; the EAT disagreed:

'27. ... The issue for the tribunal is to determine where a balance lies: the balance between the discriminatory effect of choosing a particular age (an effect which, as the employment tribunal noted, may work both ways, both against someone in the position of the claimant but in favour at the same time of those who are associates, and thereby in the interests of other partners, whose interests lie in the success of the firm and its continued provision for them) and its success in achieving the aim held to be legitimate. That balance, like any balance, will not necessarily show that a particular point can be identified as any more or less appropriate than another particular point. This is not to accommodate the band of reasonable responses rejected in [Hardy & Hansons plc v Lax] but to pay proper and full regard to its approach to what was reasonably necessary, given the realities of setting any particular bright line date.'

- 105 *A blanket policy that takes insufficient account of different employee circumstances might fall to be treated as disproportionate (Ingeniørforeningen I Danmark (acting on behalf of Andersen) v Region Syddanmark (Case C-499/08), EU:C:2010:600, [2012] All ER (EC) 342, [2010] ECR I-9343); otherwise, however, specific application of an otherwise justified policy will not usually require further justification; as Lady Hale observed, at para [65] of Seldon:*

'... where it is justified to have a general rule, then the existence of that rule will usually justify the treatment which results from it'

- 106 *The burden of justifying an otherwise discriminatory act falls on the employer. In Air Products plc v Cockram [2018] EWCA Civ 346, [2018] IRLR 755, the Court of Appeal considered the evidential burden on the employer in the context of a Long Term Incentive Plan ('LTIP') that allowed an employee who left employment after the customary retirement age to retain any*

unvested awards under the LTIP, when these sums would otherwise be forfeited on termination of employment. The ET in that case had accepted this was direct age discrimination, but held that the discriminatory effect was objectively justified. In upholding that decision, the Court of Appeal agreed that there was a need for careful scrutiny of the evidence put forward by the employer (per Pill LJ in Hardy & Hansons, supra) but cautioned that 'the detail and weight of evidence required will depend what proposition the employer is seeking to establish.' (see per Bean LJ at para [28]).

- 107 *In Cockram, the employee argued that the ET should not have accepted the employer's 'assertion' that the aim of the provision in issue was to incentivise retention up to the age of 55 and to disincentivise it thereafter. The Court of Appeal disagreed, holding that:*

'[30] ... where the proposition is that a rule excluding retiring employees under the age of 55 from the right to take unvested options under a long term incentive plan tends to encourage them to stay with the company until the specified age, the proposition is surely so obvious that it barely requires evidence at all.'

- 108 *More particularly, Bean LJ (with whom Leggatt LJ agreed) rejected the proposition that the employer was required to adduce evidence that the customary retirement age clause in the LTIP had in fact led to a high retention rate and that, if it failed to do so, the ET ought to have inferred that there was no evidence that the provision encouraged retention, observing that:*

'[31] ... It would be impossible to do so very soon after such a provision was introduced; and even at a later date the causative effect of a provision in the LTIP about customary retirement age would be difficult to isolate: employees in their early 50s make choices about whether to remain in the same employment, move jobs or take voluntary retirement for a whole variety of reasons.'

- 109 *There is a dispute between the parties in the present appeals as to what the Court of Appeal was saying in Cockram. For the University and the College it is contended that the observations cited above are of general application to the question of justification; for Professors Pitcher and Ewart, it is argued that*

these related to the question whether the employer had demonstrated a legitimate aim, noting that Bean LJ addressed proportionality later on in his Judgment and did not make the same points relating to the sufficiency of evidence.

- 110 *It seems to us that the points made by Bean LJ at paras [30] and [31] of Cockram are capable of being understood as relating generally to the evidential burden placed on the employer when seeking to establish objective justification. In some cases, some matters will be 'so obvious' – Cockram-obvious – that they will barely require evidence. Moreover, whilst the requirement to objectively justify the discriminatory measure arises from the start of its application, evidence of impact on legitimate aims may sometimes be hard to come by soon after the implementation of a particular measure, or, more generally, it may be the case that causative effect is genuinely difficult to isolate; an ET should not require from an employer evidence which it cannot reasonably be expected to produce.*
- 111 *We do not consider, however, that these observations detract from the requirements placed upon the ET, as laid down in Hardy & Hansons: if the ET's assessment is to demonstrate the requisite critical and thorough evaluation (per Pill LJ at para [33]; Thomas LJ at para [54]), it will necessarily look for evidence rather than mere assertion (albeit that evidence may take the form of reasoned projection rather than demonstrable result) and will require a degree of cogency in the employer's case. In this regard, we note the guidance provided by the Court of Justice in Fuchs on this issue (raised by the second question referred to it):*

'77. It is clear from para 51 of Age Concern England [R (on the application of the Incorporated Trustees of the National Council on Ageing (Age Concern England)) v Secretary of State for Business, Enterprise and Regulatory Reform ((Case C-388/07), EU:C:2009:128, [2009] IRLR 373, [2009] ECR I-1569] that mere generalisations indicating that a measure is likely to contribute to employment policy, labour market or vocational training objectives are not enough to show that the aim of that measure is capable of derogating from the principle of non-discrimination on grounds of age and do not constitute evidence on the basis of which it could reasonably be considered that the means chosen are likely to achieve that aim.

78. *The Court has also pointed out, in paragraph 67 of that judgment, that Article 6(1) of Directive 2000/78 imposes on member states the burden of establishing to a high standard of proof the legitimacy of the aim relied on as a justification.'*

- 112 *The principle of proportionality requires an objective balance to be struck between the discriminatory impact of the measure in issue and the needs of the employer; the more serious the disparate adverse impact, the more cogent must be the justification (see the observations of the Court of Justice in CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia (Case C-83/14) EU:C:2015:480, [2015] IRLR 746, [2016] 1 CMLR 491, at para 123). In assessing the discriminatory effect of a measure, the ET will need to consider that question both qualitatively (the amount of damage done and/or how long lasting or final that damage is) and quantitatively (the number of people who will or are likely to suffer the discriminatory effect); see University of Manchester v Jones [1993] IRLR 218, [1993] ICR 474, CA per Ralph Gibson LJ ([1993] IRLR 218 at 227, [1993] ICR 474 at 497).*
- 113 *In carrying out the requisite balancing exercise, however, an ET may consider it relevant to take account of agreements between an employer and those who represent employees; thus, in Rosenblatt v Oellerking GmbH (Case C-45/09), EU:C:2010:601, [2011] IRLR 51, [2011] 1 CMLR 1011, when considering the proportionality of a clause providing for automatic termination when the employee became entitled to a retirement pension, it was seen as relevant that the origin of the term was based in a collective agreement (see para 47). Similarly, in a domestic context, in Loxley v BAE Systems Land Systems (Munitions & Ordnance) Ltd (2008) UKEAT/0156/08, [2008] IRLR 853, [2008] ICR 1348, at para 42 (quoted with approval in Lockwood v Department of Work and Pensions [2013] EWCA Civ 1195, [2013] IRLR 941, [2014] ICR 1257, at para [46]), Elias J recognised that an agreement made with trade unions was potentially relevant when considering proportionality (and see Seldon, in which, at para 65, Lady Hale acknowledged the role consent or agreement might play when considering the aim of intergenerational fairness)."*

D. DISCUSSION

The aims - introduction

57. The aims relied upon by the respondent are the same for each claimant. They are as follows, with the titles that follow them being taken from the respondent's closing submissions:

- “(a) Safeguarding the high standards of the University in teaching, research and professional services (the “Overarching Aim”);*
- (b) Promoting inter-generational fairness and maintaining opportunities for career progression for those at particular stages of a career, given the importance of having available opportunities for progression across the generations (the “Inter-generational Fairness Aim”);*
- (c) Refreshing the academic, research and other professional workforce as a route to maintain the University's position on the international stage (the “Refreshment Aim”);*
- (d) Facilitating succession planning by maintaining predictable retirement dates, especially in relation to the collegiate University's joint appointment system (the “Succession Planning Aim”); and*
- (e) Promoting equality and diversity, noting that recent recruits are more diverse than the composition of the existing workforce, especially amongst the older age groups of the existing workforce (the “Promoting Equality and Diversity Aim”).”*

58. Each aim was subject to refinement and clarification during evidence and argument. As we will refer to below, the aims were discussed almost entirely in the context of the academic rather than administrative staff.

The aims in detail

The Overarching Aim

59. As is suggested by its title, the “Overarching Aim” is not something that is said to be achieved of itself by the EJRA. Instead, the aims that follow either collectively or individually support the Overarching Aim. Mr Jones was clear that that did not mean that the respondent accepted that the individual aims could not be legitimate aims in their own right. They were said to be legitimate aims in their own right, but also individually or collectively to support the Overarching Aim.

The Inter-Generational Fairness Aim

60. In his written submissions Mr Jones refers to two aspects of inter-generational fairness previously identified by Baroness Hale. The first was “*sharing limited opportunities to work in a particular profession fairly between the generations*” and the second was “promoting diversity”. In this case, the second is relied on as a separate aim in its own right, so it must be the first that the respondent is referring to when it talks of inter-generational fairness.
61. Picking out what this aim actually meant occupied substantial time during the tribunal hearing. This was because (as with the “Succession Planning” aim) it was not meant in its most obvious sense: providing opportunities for junior, younger employees within the respondent’s organisation to succeed to more senior positions occupied by older employees.
62. We heard nothing about this aim other than in the context of appointment to the positions of statutory or associate professor. In those appointments the respondent is unashamedly seeking the best in the world. No advantage or preference is given to internal candidates. There is no “succession planning” in the sense of lining up junior employees to replace more senior employees on their retirement, nor is there inter-generational fairness in the sense of removing older employees to the benefit of younger employees within the respondent’s organisation. If a more junior employee of the respondent succeeded to an associate or statutory professor’s role on their predecessor’s retirement, that was simply by virtue of the coincidence that they were the best candidate that could be obtained for that role. In practice, the substantial majority of appointments to statutory and associate professor roles were made from outside the respondent, and often from outside the United Kingdom.
63. That led at one point to an understanding that the respondent’s “inter-generational fairness” intention aim was an attempt at inter-generational fairness across worldwide academia. There were obviously considerable practical problems as to whether this really was the intended aim or what contribution the respondent may be able to make to a worldwide problem, particularly in circumstances where their evidence was concentrated on the disadvantages facing early-career academics at Oxford, rather than worldwide.
64. In oral submissions Mr Jones described this by reference to the positions of statutory professor and associate professor being held on “lease” by the present occupiers of the positions. He said that whatever individual difficulties the postholders may have had, they formed part of a “golden generation” who had benefited from free tuition, other concessions and better pensions than their successors would. They had also typically succeeded to their posts on the compulsory retirement of their predecessors. In the speaking note from which

his oral submissions were derived, he says “*the point is fairness in the allocation of this past resource between present and future generations of senior Oxford employees*”. Mr Jones also said that what mattered in this context was the opportunity for others to apply for the senior roles, not the fact that an internal candidate may ultimately be appointed or have priority for appointment. There were further complications in the respondent’s reliance on senior appointments creating a chain of 3-4 appointments at more junior levels as people stepped up to replace those who had succeeded to more senior roles.

65. There was no evidence before us as to how this aim might apply or operate for administrative grades.

The Refreshment Aim

66. “Refreshment” had two aspects. The first was in giving the respondent the opportunity to expand into new areas of study (while at the same time dropping or de-emphasising other areas). For instance, to reflect global trends, the English department may wish to emphasise global literature and reduce its study of medieval literature. Experts in global literature may be appointed on the departure of experts in medieval literature. The second is in what was termed “new perspectives”. It was said that the personal characteristics and background of a person could give them particular experience and insights that others did not have and could not achieve simply by some form of abstract thinking. So, for example, a person who grew up in a former colony may have very different views on post-colonial literature than someone whose experience was limited to residence and education in the former colonising state. The same could be said in different contexts for any other protected characteristic that an individual may hold. That could be seen as an aspect of the “Promoting Equality and Diversity Aim”, with the respondent emphasising that increased diversity was likely to facilitate and encourage high standards of scholarship, as different views came to prominence. It was not simply pursuing diversity for the sake of diversity. This “new perspectives” argument was, however, not to be taken as any suggestion that older employees were not capable of original thought or new and creative approaches to their work.
67. We did not hear anything of how this aim may work for the administrative grades.

The Succession Planning Aim

68. The point with the Succession Planning Aim was not, as might sometimes be the case, mentoring or training junior employees with a view to them succeeding more senior employees. Instead, it was creating definite dates that the respondent could work to when employees would leave. This was particularly

by reference to the joint appointment system, whereby any replacement employee would have to be recruited in collaboration with a college, who may or may not have the same requirements as the respondent.

69. The joint appointment system only applied to associate professors, and we heard nothing on why having “predicable retirement dates” was important for administrative staff. There was also nothing on why the joint appointment system may be relevant to statutory professors. They did not hold joint appointments with colleges. They would typically have affiliations with colleges, but these seemed effectively to be “honorary” positions that carried no or minimal duties or remuneration. Perhaps some statutory professors would take on responsibilities within colleges, but there was no suggestion that the same kind of complexities that were said to arise for joint appointments for associate professors also applied to statutory professors.

The Promoting Equality and Diversity Aim

70. Equality and diversity was spoken of almost entirely in relation to sex or gender diversity for the statutory professors and associate professors. Reference was made to statistics on ethnicity and disability, but no other protected characteristics have been referred to on the question of promoting equality and diversity. We will approach this as the parties did – by reference to sex or gender diversity, rather than any other form of diversity. If this aim cannot be supported by reference to sex or gender diversity there is nothing in the evidence to suggest that it could be rescued by reference to diversity relating to any other particular protected characteristic.
71. There remains a substantial sex or gender imbalance in the statutory professor and associate professor roles.
72. For senior administrative staff, in its consideration of matters during 2021 the ten-year review group found “*These grades are already the more diverse with the proportion of women in them varying from 42% to 54.6% ... and steadily increasing proportions of BME staff ... and staff with disabilities*”. It is not part of the respondent’s submissions that the position was materially different on the retirement of Mr Field-Johnson in 2019 (or 2020, if that was the year of his retirement).

The Academic Freedom Aim

73. The respondent also argued that there was a “Academic Freedom Aim” – that is “preserving academic autonomy and freedom”. However, this was not as such an aim pursued by the 2017 scheme. It was (at most) a reason why some alternatives to the EJRA were not appropriate. Discussion of this touched on

the question of performance management, but we record that it was not suggested by any side that performance management was an alternative means of achieving any of the aims. To the extent that this was a concession by the claimants it followed from the respondent's position that the EJRA had nothing to do with any question of older workers having in any way declining or inadequate job performance.

The claimants' position in relation to the aims – Mr Field-Johnson

74. Mr Field-Johnson considered the position was so obvious that he did not need to address the aims in any detail. As he put it in his closing submissions:

“The University really has no case – as the data does not support EJRA for Admin Staff Grade 8-10 and the University itself has now admitted that the EJRA should not apply to the Admin Staff Grade 8-10 due to EJRA not contributing to the achievement of the Aims for these groups, and, as there is a steady flow of vacancies, and therefore had no impact on turn-over.”

75. As we have mentioned, at the hearing the aims were discussed almost entirely in relation to academic rather than administrative staff. The examples that were given by the respondent about the need for and fulfilment of the aims were in the academic rather than administrative context. In his closing submissions, Mr Jones addresses Mr Field-Johnson's situation in the following way:

“Mr Field-Johnson points out that his grade 9 cohort no longer falls within the EJRA Populations. The Review Group in 2021 concluded:

“In considering the contribution that the EJRA makes to turnover and thus to the achievement of the Aims in these groups, the Group noted that other factors ensure a steady flow of vacancies, namely comparatively high turnover (in part because of the relatively high proportion of fixed-term contracts) and grade growth. A smaller proportion of leavers in these grade groups leave by reason of retirement, and few applications for employment beyond the EJRA are made by members of these groups.”

They go on to decide that:

“... there was no evidence that the EJRA is contributing to turnover in these grades or that it is impacting the Aims.”

If it is clear that there was insufficient impact on his cohort when the matter was considered in 2021, how, Mr Field-Johnson asks rhetorically can his compulsory retirement be justified in 2020?"

76. We understand that Mr Field-Johnson retired in 2019, but nothing in the respondent's argument seems to depend on the difference between 2019 and 2020. Mr Jones goes on to answer that rhetorical question:

"The answer is that at the point of his termination, the 2017 Policy applied to him and it did so because of decisions taken by the Review Group, Council and Congregation in that year. At that point, one significant point was the view, expressed in Congregation debates about the introduction of a modified Statute XII, that senior academic-related staff ought not to be treated differently to academics. In some respects that was to their distinct advantage:

- (1) They were members of Congregation; and*
- (2) They benefitted from the very high bar set for performance and redundancy dismissals that was understood to flow from the need to protect academic freedom.*

However, for academics the "quid pro quo" was compulsory retirement and it was therefore considered that continuing to include grades 8 to 10 (which matched the boundary for Congregation membership) "would provide a fair, practical and justifiable boundary for coverage""

77. We had wondered whether this suggested a distinct legitimate aim in Mr Field-Johnson's case – something along the lines of solidarity or commonality between the academic and non-academic staff. However, Mr Jones explained that this was not the case, and that the legitimate aims relied upon in Mr Field-Johnson's case were the same as for the academic staff.

The claimants' position in relation to the aims – the academic claimants

78. The academic claimants' position on the Overarching Aim is that it is in principle capable of amounting to a legitimate aim but *"it adds little because it is wholly dependent on [the respondent] establishing other aims are legitimate and that the EJRA is a proportionate way of achieving them."*
79. As for the Inter-generational Fairness Aim, the academic claimants accept that in principle such an aim can be legitimate, but that if it is expressed in worldwide terms it must also be justified on that basis.

80. The academic claimants accept that refreshment of perspectives and of areas of research can be legitimate aims (as regards the “Refreshment Aim”).
81. The academic claimants do not accept that the Succession Planning Aim is a legitimate aim for the purposes of justifying direct age discrimination, as it is a “*purely individual reason particular to the employer’s situation*” and therefore not a legitimate social policy aim.
82. The academic claimants accept that the Promoting Equality and Diversity Aim is a legitimate aim, but go on to make points in relation to proportionality.

The aims in relation to administrative staff

83. There are, in principle, separate steps of assessing the legitimacy of the aims, whether the EJRA is capable of meeting those aims and proportionality to be dealt with in assessing justification. We will do that in the case of the academic staff, but we consider it appropriate at this stage to consider in general the aims in relation to administrative staff such as Mr Field-Johnson.
84. The Review Group reached the striking conclusion in relation to “*other academic staff, ALC6 staff and staff in grades 8-10 research and administrative and professional roles*” (including Mr Field-Johnson) that “*... there was no evidence that the EJRA is contributing to turnover in these grades or that it is impacting the Aims.*”
85. The Review Group go on to say that:

“Opportunities for refreshment and career advancement for individuals are created by turnover and grade growth. These grades are already the more diverse with the proportion of women in them varying from 42% to 54.6% ... and steadily increasing proportions of BME staff (except in the Other Academic group ...) and staff with disabilities (except in the ALC6 category ...). These grades are not subject to joint appointments or generally to unusually long notice periods, which makes succession planning easier.

The Group considered whether it was likely that changes in pensions would result in a change in behaviour by staff in these grades and an increase in the proportion seeking to remain in employment beyond the EJRA. Given that the proportion of staff in these grades that will reach the EJRA in the next five years is small, except for among the ALC6 grade where there is no history of staff seeking to work beyond the EJRA, it was decided that this was unlikely.

The Group considered whether weight should be given to the desirability of consistency between the most senior academic, research and administrative and professional grades, as it was during the 5-year review in 2017. However, this would mean that these grades were retained within the EJRA even though the ten year data now demonstrates that the policy is not having a significant impact on turnover or the achievement of the Aims. As a result, the Review Group decided that in the interests of applying its principle of being data-driven, this argument should not take priority over the conclusions that could be drawn from the data.

As a result, the Review Group recommends that all of these grade groups – ALC6s, Other Academic, grade 8 to 10 research staff, and grade 8 to 10 administrative and professional staff - are removed from the coverage of the EJRA. Given that it is not anticipated that this will result in a substantial increase in the number of staff in these grade groups choosing to stay in employment beyond the age of 68 in the next five years, no alternative measures are recommended in support of the Aims.”

86. On the face of it this is a complete repudiation by the Review Group of any idea that the EJRA was justified in relation to senior administrators.
87. The Review Group’s conclusions cannot be considered determinative as a matter of law on the issue of justification – that is a matter for the tribunal – but it is for the respondent to demonstrate justification, and it is the respondent who we would expect to produce the necessary evidence showing that the EJRA is capable of contributing to the aims and (at least for the purposes of proportionality) is contributing or can reasonably be expected to actually contribute to the achievement of the aims.
88. Mr Jones has not suggested that the Review Group was wrong in concluding that the EJRA was not impacting the aims in respect of administrative staff, nor has the respondent produced any evidence to suggest that this conclusion was wrong. It is not suggested that the Review Group’s conclusion in 2021/22 was not an accurate description of the situation that applied at the time of Mr Field-Johnson’s retirement in 2019.
89. Given that, we are at something of a loss as to how the respondent seeks to justify the EJRA in relation to senior administrative staff. We have set out above the totality of Mr Jones’s written submission on the point. His answer to the question posed by Mr Field-Johnson is that Congregation (of whom Mr Field-Johnson was part) had decided that senior academic and senior administrative staff should be treated alike. That solidarity or common cause between the

academic and administrative staff might be seen by some as admirable, but it comes nowhere near justifying age discrimination.

90. There are a whole range of problems with this as justification. First, if that solidarity was the aim there is nothing about it that amounts to a social policy aim. Second, if that solidarity was the aim it has never been pleaded as such. Third, as pointed out above, Mr Jones said that this was not the aim and that the legitimate aims were the same in every case.
91. If we are to look at the legitimate aims in relation to senior administrative staff, there is very little for us to go on. The argument before us proceeded entirely in relation to academic staff. We understand that administrative staff might have the same pension restrictions as academic staff, which is said by the respondent to have some relevance to the Inter-Generational Fairness Aim, but there was nothing to suggest that senior administrative staff were appointed from a worldwide pool, and essentially we heard nothing meaningful about what Inter-Generational Fairness might mean for administrative staff. Similarly, there was no suggestion from the respondent as to how “Refreshment” (in the sense of new perspectives) or “Succession Planning” might apply in the administrative context. Administrative staff do not typically hold joint appointments with colleges. “Promoting Equality and Diversity” may be relevant in the case of senior administrative staff, but we have not been referred to anything from the respondent to show that that was a need they had in 2019 or anything to contradict the Review Group’s conclusion that the EJRA is not impacting the Aims for the senior administrative staff.
92. Mr Field-Johnson appeared during the conduct of his claim to be somewhat surprised that the respondent had continued to oppose his claim given the conclusion of the Review Group. We share that surprise. With the Review Group having reached that conclusion there was clearly (in practical if not in strict legal terms) an onus on the respondent to show why the Review Group were wrong, but in reality the respondent has done nothing to contradict the Review Group’s decision or to show that the Aims had some relevance to the position of senior administrative staff. At best the respondent’s view seems to have been that what is good for the academic staff is good for the administrative staff, but that is no basis on which to justify age discrimination.
93. We can reach our conclusion in relation to Mr Field-Johnson at this point: for senior administrative staff such as him the EJRA was not a proportionate means of achieving a legitimate aim or aims.
94. In his submissions Mr Sugarman briefly suggested that this (and the accepted removal of around 60% of affected staff from the EJRA following the ten year review) meant that the EJRA as applied generally could not be justified. It was

“plainly too wide”. We note that argument. However, the vast majority of the argument from the parties proceeded on the basis that the question of justification of the EJRA could and should be looked at separately across the different groups of employees caught by it, and that is what we will do.

The aims in relation to academic staff

The legitimacy of the aims

95. In order to be capable of justifying direct age discrimination, the aim in question must be a *“social policy objective ..., such as those related to employment policy, the labour market or vocational training. These are of a public interest nature, which is “distinguishable from purely individual reasons particular to the employer’s situation, such as cost reduction or improving competitiveness”*”.
96. While the academic claimants make various points in relation to the different aims and their definition, the only one that they do not accept to be a potential legitimate aim is the “Succession Planning Aim”. The “Succession Planning Aim” is *“facilitating succession planning by maintaining predictable retirement dates, especially in relation to the collegiate University’s joint appointment system”*.
97. The respondent’s reliance on *“the collegiate University’s joint appointment system”* is clearly problematic. First, of the categories of employee we are dealing with, the only one it could be relevant to is the associate professors. In fact, none of the claimants in this case are associate professors, though it appears that Prof Snidal as a Reader did hold a joint appointment. Second, as Mr Sugarman points out, it is one of a number of areas where the respondent’s esoteric processes are relied upon in support of possible legitimate aims or as ruling out alternative methods of meeting the aims. The respondent has throughout its history worked in collaboration with the colleges with which it is associated. These colleges are independent bodies, yet the respondent cannot do its work without the colleges and the colleges cannot do their work without the respondent. Each depends on the other, and both benefit from their association with each other. One of the ways they work together is by means of joint appointments. The respondent typically bears the majority of the cost of an associate professor (and benefits from most of their time) but the college also funds part of the associate professor’s salary and the associate professor has a contract of employment with the college as well as the respondent. It is the respondent’s case that complexities arise from this which require predictable retirement dates. Both the respondent and a college will have to agree on a new recruit and (it is said) there may be delays and difficulties if the college and respondent disagree on the areas that individual should be specialising in.

98. The joint appointment system is time-honoured, and many will see it as an attraction or benefit of the respondent's systems. However, it seems to us to be stretching a point too far to consider the facilitation of joint appointments to be a "social policy objective" of a "public interest nature". There is nothing to suggest that joint appointments are a matter of public interest or social policy. There appears to be no movement in favour of joint appointment or promoting joint appointments at other academic institutions. As far as we are aware there are no studies showing that joint appointments are inherently desirable or promote and advance society in some way. The respondent has traditionally had this means of appointing associate professors, and has chosen to continue to use it. Few other institutions do this. Most universities in this country are not collegiate, but continue to do their work. So far as the Overarching Aim is concerned, it has not been suggested to us that the respondent's high standards in some way require this joint appointment system. That cannot be the case, since the most senior grade of professor – statutory professors – does not use joint appointments.
99. We find that the respondent cannot rely on its joint appointment system for associate professors (or Readers) as part of the legitimate aim of succession planning, since this is not a social policy objective. It also does not promote the Overarching Aim of high standards.
100. Beyond that, the academic claimants object to the Succession Planning Aim as a whole being a legitimate aim. Beyond the question of joint appointments, they say that "*facilitating succession planning by maintaining predictable retirement dates*" is (if it is an aim at all) a private aim of the respondent, rather than a social policy objective.
101. We accept, in principle, that recruitment for such senior roles will be a difficult and lengthy task, involving a worldwide search. Even once a suitable candidate has been identified there may be delays in them taking up their post, as terms are negotiated and arrangements made for a possible international move. We note that on occasions the respondent will prefer to leave statutory professor positions vacant rather than appoint someone who does not meet the expected standards. However, there remains a question as to what about "predictable retirement dates" amounts to something other than a "*purely individual reason ... particular to the employer's situation*". We know that the vast majority of British academic institutions do not consider "predictable retirement dates" to be something that they need in order to carry out their work. Perhaps there are greater difficulties in recruiting at the high level the respondent requires – but that seems to be a paradigm example of a "*purely individual reason ... particular to the employer's situation*", rather than a social policy objective of succession planning through predictable retirement dates being achieved. If there is a

social policy objective of enabling succession planning through predictable retirement dates it is surprising that the statutory default retirement age was ever abolished by Parliament.

102. The Succession Planning Aim is not a legitimate aim capable of justifying direct age discrimination as it does not fall within the category of social policy objective such as would be required to justify direct age discrimination.
103. There remains the question of whether, even if not a social policy aim in its own right, it can contribute to the Overarching Aim.
104. As we have already said, there was no evidence before us as to how joint appointments lead to or facilitated high standards, but do “predictable retirement dates” lead to or facilitate high standards? There was no evidence before us that they do, and we do not regard it as Cockram-obvious that they would. The Succession Planning Aim is not a legitimate aim either in its own right or in support of the Overarching Aim.
105. That leaves the “Inter-Generational Fairness Aim”, the “Refreshment Aim” and the “Promoting Equality and Diversity Aim” as being agreed (in some form or another) as legitimate aims in relation to academic staff, all said to be in support of the Overarching Aim.

Is the EJRA capable of meeting the aims?

106. Each of the remaining individual aims are, according to the respondent, fulfilled in the same manner - by the creation of vacancies into which other employees can be recruited. According to the respondent, that enables Inter-Generational Fairness, Refreshment and Promotes Equality and Diversity.
107. We do not think it is in dispute that the EJRA is capable of creating more vacancies than would exist without an EJRA. Exactly what that amounts to, and how many additional vacancies are created in proportionate and absolute terms remains to be discussed as a matter of proportionality, but in principle it is clear that the EJRA will create more vacancies and therefore is capable of promoting the aims of Inter-Generational Fairness, Refreshment and Promoting Equality and Diversity.
108. There remains the question of how this relates to the “Overarching Aim”. This is “*safeguarding the high standards of the University in teaching, research and professional services*”.
109. We accept in principle that both the Refreshment and Promoting Equality and Diversity Aim are capable of promoting the achievement of that aim. Although

we heard no evidence on the point, we regard it as Cockram-obvious that the academic environment is promoted by the diversity of thought and approach that both would tend to encourage, and we accept that in order to retain and promote its leading position the respondent may need to move into different areas of study.

110. We have previously expressed some difficulty in understanding what the “Inter-Generational Fairness” aim was in this case. It has typically been presented by the respondent in financial terms, as a kind of “levelling-up” effort to remedy or at least mitigate the financial disparity between the current generation of statutory and associate professors and their successors. There has been talk of the difference in house prices in Oxford and the cost of living generally that would have been faced by existing statutory or associate professors compared with their successors in the younger generation. We have also heard that pension changes have disadvantaged the younger generation, meaning their pensions are likely to be less favourable than those of the older generation. Beyond that, the argument seems to be that without an EJRA the younger generation would have to wait longer than their predecessors to enjoy the financial benefits and prestige that come with appointment to the senior positions in question.
111. What is not so clear is what the respondent says this means when it comes to “safeguarding high standards”. Macro-economic conditions may well mean that in any industry or business the next generation of senior leaders is not so financially well-off as their predecessors (although the position is not so clear and practically impossible to assess if we take a worldwide rather than domestic view of matters). However, it is not part of the respondent’s case that such financial levelling-up is necessary to attract the right candidates to the role, and if it was part of the respondent’s case we have seen no modelling of how that might work or what alternatives there might be. The respondent’s position on Inter-Generational Fairness appears largely to be that it is a virtue by itself, not that it leads to higher standards. Putting it bluntly, it has not been suggested to us that Inter-Generational Fairness promotes high standards.
112. There is also the problem, pointed out by some of the claimants, that compelling the retirement of the most senior and experienced people may well, at least in the short term, lower standards. Without suggesting that the replacements of retired professors are in any way intellectually less capable than their predecessors, a newly appointed professor at Oxford is unlikely to have the same reputation as someone who finds themselves being compulsorily retired with twenty or more years’ experience in the role. In time the successors can be expected to equal or even surpass their predecessors, but it is reasonable

to expect that in many cases there will be a short-term reduction in standards while the successor develops their own role and professional reputation.

113. For the purposes of the EJRA, the promotion of high standards that the respondent seeks comes about through:

- opportunities for the respondent to expand into new areas of study (including possibly giving up areas of study that it considers to be lower priorities),
- “refreshment” in the sense of providing opportunities for people whose different backgrounds could give them different perspectives on their areas of study, and
- “promoting equality and diversity” in the sense of ensuring the respondent has the widest possible talent pool to recruit from and that those of high ability potential from groups previously underrepresented at senior levels in the respondent are able to apply and be appointed to these senior roles.

Conclusions on the aims in relation to the academic claimants

114. We find the following as regards academic claimants and the claimed legitimate aims:

- The Inter-Generational Fairness Aim

This is a legitimate aim pursued by the respondent and the EJRA is capable of contributing to that aim. It does not support the Overarching Aim.

- The Refreshment Aim

This is a legitimate aim pursued by the respondent and the EJRA is capable of contributing towards that aim. It supports the Overarching Aim.

- The Succession Planning Aim

This is not a legitimate aim of the kind necessary to justify direct age discrimination and does not support the Overarching Aim.

- The Promoting Equality and Diversity Aim

This is a legitimate aim pursued by the respondent and the EJRA is capable of contributing towards that aim. It supports the Overarching Aim.

- The Academic Freedom Aim

This was not an aim pursued by the EJRA.

- The Overarching Aim

This is a legitimate aim pursued by the respondent. Nothing in the EJRA itself promotes this aim but as referred to above, other aims can support the Overarching Aim.

Proportionality – the academic claimants

Introduction

115. Much of the argument before us concerned the question of proportionality for the academic claimants. That is, was the EJRA an “appropriate and necessary” means of achieving the legitimate aims?

The creation of additional vacancies - introduction

116. The legitimate aims that we have found the respondent can rely on all depend on the EJRA creating vacancies. If we are wrong about the Succession Planning Aim not being a legitimate aim, this too depends on the EJRA creating vacancies. Justification of the EJRA depends on its contribution to the creation of vacancies.
117. The fact that the EJRA does create vacancies is not in dispute. The EJRA will speed up the creation of vacancies and, over time, this will result in additional vacancies being created. A simple example was given in argument: if each professor holds their role for 25 years before leaving then there will be four vacancies every 100 years. If, due to an EJRA, they hold their role for only 20 years before leaving, there will be five vacancies every 100 years. This is not a one-off bringing forward of vacancies. It is an ongoing and sustained creation of vacancies. However, if that example is anywhere near the true situation, it is clear that the number of additional vacancies created will not be large. In that example we have one additional vacancy created every hundred years, and the EJRA accounts for only 1/5th of the vacancies created. The other four arise irrespective of the EJRA.

118. We will look first at the extent to which the creation of vacancies generally contributes to the achievement of the aims, and then look at what the EJRA contributes to the creation of vacancies.

The effect of additional vacancies on achieving the aims

119. We have already found that the creation of additional vacancies will contribute to some extent towards the legitimate aims, but now have to assess how much it contributes. At this point we will look at this on the basis of how much vacancies generally contribute to the aims, rather than looking at how much the proportion of vacancies created by the EJRA contributes towards the aims. That step comes later.

119.1. The Inter-Generational Fairness Aim

Aspects of the Inter-Generational Fairness Aim are better dealt with under the Refreshment Aim and the Promoting Equality and Diversity Aim. The distinct element of the Inter-Generational Fairness Aim is “*fairness in the allocation of this past resource between present and future generations of senior Oxford employees*”.

Given this framing of the Inter-Generational Aim it is bound to be the case that the creation of vacancies contributes directly to the aim. Almost by definition those compulsorily retired are the present generation and those taking up the vacancies are the future generation. Whether this amounts to “fairness” is essentially a matter of proportionality.

119.2. The Refreshment Aim

The Refreshment Aim had two aspects – moving into new areas of study and recruiting individuals with “new perspectives”.

The respondent has offered no specific evidence on the extent to which the creation of vacancies promotes this aim. We have accepted that it must do to some extent, but there is no evidence as to how far it has actually been fulfilled through either vacancies generally or the additional vacancies created by the EJRA.

We do have the “case study” example of the English department, which gives us two vacancies that have contributed to the Refreshment Aim (see below), but there is nothing to show the extent to which this applies more generally within the respondent’s organisation. We do not know whether vacancies are used to move into new areas of study often, or hardly at all. We do not know whether those recruited to the vacant

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positions offer new perspectives often or hardly at all. Is one in every 100 vacancies used to move into new areas of study and/or new perspectives, or is it 50 in every 100 vacancies? We have no idea and the respondent has offered no evidence on the point.

Recruiting into new areas of study ought to be capable of quantitative analysis. There may be room for dispute around the margins, but on the whole the respondent ought to be able to identify when a vacancy (however arising) has been used to recruit into a different area of work or specialism. It has not done so.

We accept that “new perspectives” are more difficult to measure. It cannot be assumed that simply because someone comes from a non-traditional background they are likely to bring new perspectives, and protected characteristics held by new appointees are not to be taken as the same as “new perspectives”. However, given that this is a stated aim of the EJRA it is unfortunate for the respondent that it has taken no steps to measure anything towards the achievement of that aim. We accept as a general principle that a more diverse cohort of recruits would be likely, on the whole, to contribute new perspectives, but we have nothing more to go on than that.

Beyond a general idea that the creation of vacancies will tend to permit moves into new fields of study and the appointment of individuals with “new perspectives” we have been given no idea by the respondent of how much the creation of vacancies will promote either, and the respondent has not attempted to measure this.

119.3. The Promoting Equality and Diversity Aim

There is material that we can go on in looking at how far the creation of vacancies contributes to promoting equality and diversity.

We will look at this only on the basis of diversity of sex, since that is the only protected characteristic on which the respondent has any satisfactory statistics.

This is what the Review Group’s report said:

“The data on statutory professors demonstrates a slow improvement in gender diversity over the ten years of the EJRA from 10.4% women in 2011 to 20.2% in 2021, with a slight acceleration since 2013/14 when inclusive recruitment processes were introduced for this grade. The rate of improvement had been slower for the five years preceding the

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introduction of the EJRA ... 32.5% of those recruited as statutory professors in the last five years were women, and only 3.7% of those retiring ...

Progress in improving diversity among Associate Professors has been slower, with the proportion of women increasing from 26.6% to 31.3% in the last ten years. The Group consider this to be frustrating, but once more decided that maintained turnover was contributing to the increase. The very low turnover rate (3-4%) among this group means that changes in diversity will always be slow, but women comprise 38.9% of new joiners to that grade and only 23.5% retirees.”

Mr Sugarman points out in his closing submissions that the Review Group may be taking a too optimistic view of progress. He says that the 2020-21 Equality Report from the respondent shows women make up 19% of statutory professors, with no improvement at all over the last 4 years. He points out that even a rise from 10.4% women to 20.2% women amounts to only 1 percentage point a year over a ten year period, and that takes into account any appointment to a statutory professorship, regardless of whether the vacancy was or was not created by the EJRA (and we know that the vast majority of statutory professor vacancies arise independently of the EJRA). Similarly the rise in proportion of women who are associate professors is only 0.5 percentage points a year over ten years, despite this being a population in the region of 10x greater than that of statutory professors.

It is not surprising to find that there is a greater proportion of women amongst new appointees to statutory professor and associate professor roles than there is in those who are leaving the roles (whether through retirement or other reasons). We also note that there is no sense in which it can be said that the gender or sex diversity in these roles is satisfactory. Even within the new appointees to both roles there remains a substantial imbalance between men and women.

Given that the appointees are a more diverse (in terms of sex or gender) cohort than those who are leaving the jobs, we accept that vacancies generally contribute to achievement of this aim, although both the Review Group and Mr Sugarman are right to point out that progress is very slow.

119.4. The Overarching Aim

We accept that it is impossible to measure the extent to which the creation of vacancies contributes to the Overarching Aim. The best we

or the respondent can do is to look to the extent to which vacancies contribute to the achievement of the aims that we have found to contribute to the Overarching Aim.

The creation of additional vacancies by the EJRA - introduction

120. The extent to which the EJRA contributes to the pool of vacancies that will already exist amongst statutory and associate professors is a key measure of its proportionality. It is for the respondent to demonstrate the proportionality of the EJRA. However, the respondent has not at any point over the past ten years taken any steps to keep any contemporaneous records of the effect of the EJRA. This is surprising given the ostensible importance of the EJRA to the respondent. An obvious way of monitoring the effect of the EJRA would be through exit interviews. We were told that academics were reluctant to undertake exit interviews, but it does not appear that this was ever something that was attempted with any determination by the respondent.
121. Given the lack of any contemporaneous records, the respondent has had to fall back on surveys either of future intentions or (to some extent) past experiences. These will always be less reliable than contemporaneous records. They suffer from self-selection, a high rate of “unknowns” and possibly wishful or inaccurate thinking by those completing them.
122. We also have, in Ms Thonemann’s oral evidence, a small scale case study of what occurred in the English department.

The creation of additional vacancies – mathematical models

123. Two attempts to model the extent to which vacancies were created were prepared for the Review Group.

The creation of additional vacancies – mathematical models – the Impact Tables

124. The first was Ms Thonemann’s “Impact Tables”. When using the assumptions she considered most accurate, she concluded that “35% of SP vacancies and 17% of AP vacancies are associated with the EJRA”.
125. Mr Sugarman criticised the Impact Tables on the basis that they did not take account of vacancies that would arise in the absence of the EJRA on account of later retirements. It is self-evident and accepted by the respondent that even if there were no EJRA no-one would remain in their position indefinitely. The EJRA brings forward vacancies that would have occurred later in any event. A product of that will be more vacancies overall, as described above. For instance, a professor who would have retired in 2022 under the EJRA, but who

wants to work on, may work on until, say, 2025. At that point they will leave and a vacancy will arise. The key measure is the *net* increase in vacancies. Any model must give credit for vacancies arising on someone leaving later than the EJRA. Ms Thonemann's did not. She accepted this, and it was the respondent's position that Ms Thonemann's Impact Tables were never intended to show the net increase in vacancies. We have some doubts about that given correspondence between Ms Thonemann and Dr Turner, during which Ms Thonemann questions why there is such a difference in outcomes between her and Dr Turner's "Little's Law" model (see below). The Review Group's final report does not identify the Impact Tables and Little's Law model as being attempts to measure different things. It says "*the modelling ... provides a mixed picture*" and goes on to give the results of both the Impact Tables and the Little's Law analysis.

126. Ms Thonemann's Impact Tables do not measure the key question of the net creation of additional vacancies, and we do not consider them to be of assistance in answering that question.
127. We do, however, note that the Impact Tables are the analysis that is most favourable to the respondent in considering the creation of vacancies, and that even with those we see that for statutory professors 65% of vacancies arose independently of the EJRA and for associate professors more than 80% of vacancies arose independently of the EJRA.

The creation of additional vacancies – mathematical models – Little's Law

128. At some point the respondent had identified a paper by Larson and Gomez Diaz of the Massachusetts Institute of Technology (MIT) called "*Nonfixed Retirement Age for University Professors: Modelling Its Effects on New Faculty Hires*" as being potentially relevant to the Review Group's work. This applied "Little's Law of Queuing" to retirement of academics within MIT.
129. Dr Turner works in the respondent's Student Data Management and Analysis section as a Senior Statistical Analyst. She and a colleague were commissioned by the Review Group to conduct a similar exercise, applying Little's Law to retirement of the respondent's academics.
130. We were not referred in any detail to what Little's Law was, nor would we have been equipped to carry out any analysis of the detail of Little's Law. At points it was explained to us as being a more sophisticated version of the analysis Prof Ewart had undertaken in his case. We note that Dr Turner and her colleague were supplied with Prof Ewart's workings. (All parties offered commentary and observations on the statistics Prof Ewart had produced for his case, but those were not in evidence before us and we will say no more about them.) It is clear

that the Little's Law analysis carried out by Dr Turner and her colleague was addressing the correct question as regards net creation of vacancies, and took into account that we are talking about bringing forward vacancies that would always occur at some point.

131. There is scope for argument about the assumptions that went into the analysis, and what conclusions we draw from Dr Turner's figures, but based on what we have heard, if a mathematical model is to be used, Little's Law is appropriate. It is not suggested by the claimants that Dr Turner and her colleague made any errors in their application of Little's Law, and Dr Turner was at pains to emphasise that her role in the process was that of a technical expert. She was applying the agreed form of analysis to assumptions and data supplied by Ms Thonemann, without herself critiquing those assumptions, data or attempting to explain or analyse her conclusions.
132. There was at one point some argument about whether the study could properly be carried out given that the respondent lacked start dates before 1998 and also had no end dates for those currently in post, but that was explained by Dr Turner and it appears she has appropriately accommodated that in her study.
133. Dr Turner herself describes some of the difficulties with applying a mathematical model to the EJRA: "*it is never possible to model for hypotheticals. The best you can do is to model what the likelihood is of them behaving in a certain way, relying on how they behaved in the past. The problem with the EJRA is that there has always been a compulsory retirement age so past behaviour is not a reliable indicator of future behaviour.*" This is one of the reasons why a mathematical analysis such as this can only ever be second best to contemporaneous records such as may emerge during exit interviews.
134. Following various discussions and revisions, Dr Turner and her colleague submitted their final report. Table 4.1 of their report gives the effect of changing, or abolishing, the EJRA for associate professors. An EJRA of 72.5 was taken as equivalent to abolishing the EJRA. With no EJRA there is a decrease from 68.4 to 64.8 of the "annual recruitment rate". In other words, the EJRA contributes 3.6 vacancies a year out of 68.4. Around 5% of associate professor vacancies are attributable to the EJRA.
135. The figures for statutory professors are at table 4.8 of their report. The study concluded that the EJRA accounted for 1.7 of 20.7 annual vacancies. Around 8% of statutory professor vacancies are attributable to the EJRA.
136. The report contains sections emphasising how sensitive these figure were to different inputs, such as age on appointment, length of tenure and possible increases in faculty size.

137. The Review Group says this about the Little's Law study in its final report:

“The modelling based on Little’s Law of Queuing, conducted by the Student Data Management and Analysis Team, attempted to look ahead and estimate the likely future impact on recruitment rates as a result of any changes in the EJRA. The modelling was only possible for the Statutory Professor and Associate Professor grade groups because a steady population is required. While both of these groups experienced some grade growth, their populations were considered sufficiently stable for these purposes. The modelling provides an estimate of the effects of the impact on these grades if the EJRA were to be abolished entirely. For Statutory Professorships there would be a decrease of 1.7 posts per annum (i.e. a decrease of 8.2% of yearly recruitment. For Associate Professorships there would be a decrease of 3.6 posts per annum (i.e. a decrease of 5.3% of yearly recruitment). The higher the retirement age, the greater reduction in the recruitment rate.”

138. The respondent has never committed to a definitive statement of how much it believes the EJRA has contributed to vacancy creation, but this modelling is the closest it has come to that.

The creation of additional vacancies – mathematical models – Little’s Law - assumptions

139. Dr Turner and her colleague did not take any part in collecting the data to which they applied Little's Law. This was supplied to them by Ms Thonemann.
140. The data assumed that 55% of associate professors and statutory professors would want to work beyond the EJRA age if they could. That percentage was called the “Continuation Probability”. The respondent says it gets this figure from an online survey it carried out. The report on the survey given to the Review Group notes the following:

“242 responses were received, and 141 pieces of free text feedback were submitted. Of the respondents:

- c.20% were from each of Humanities and MPLS, with all divisions represented. Relatively few were from Medical Sciences (43, 18.1% of responses)

- 53% identified as academic, with 33% describing themselves as administrative and professional. Research staff were under-represented.

- Over 80% hold permanent contracts and over 80% work full-time.

- *The gender split was fairly equal (53%/47%).*
- *Cover a range of ages with older groups more heavily represented.*
- *77% are subject to the EJRA (ie in grade 8 or above)."*

141. The claimants criticise the survey data as being from a small number of responses and, more substantially, as being self-selecting. Completion of the survey was voluntary. While publicised in the Gazette it may not have been well known, and those who felt strongly about the EJRA (on one side or another) may have been more inclined to complete the survey than others. A small sample size is not necessarily a problem if those responding are representative of the group as a whole, but there was no attempt by the respondent to ensure that the replies were representative of any group as a whole. Tellingly, the single most popular response to the question "*when do you think that you are most likely to want to retire?*" is "*I don't know yet*" (around 30%).
142. It is difficult for us to see how this survey leads to the conclusion that 55% of academics would want to stay on if there was no EJRA. This figure first appears at "Assumption E" in support of Ms Thonemann's Impact Tables. This is the assumption that was used for the Little's Law calculations. Box 7 of the report on the survey has 42.5% of respondents indicating they would want to retire after 68. That is reflected in the report for the review group, which says "*43% of respondents would wish to retire at an age older than the current EJRA*". We were told by Ms Thonemann that the 55% figure came from the raw data and (we think) was the proportion of those within the academic group who wanted to work on beyond 68. Mr Jones points out that this 55% figure was not challenged in evidence by the claimants, but the lack of any kind of transparency in that crucial figure does not give us much confidence that the figure is reliable.
143. The claimants point to a number of earlier surveys producing figures more in the region of 25% for Continuation Probability. It is not in dispute that the lower the Continuation Probability the lower the effect of the EJRA on vacancy creation.
144. The Continuation Probability is a crucial assumption for measuring the effectiveness of the EJRA in producing vacancies. In the absence of any attempt at contemporaneous record-keeping, surveys are the best the respondent has to fall back on, but regarding any particular survey as accurate is problematic, given that people are addressing hypothetical questions and where the predominant response is "don't know".

145. Another crucial assumption is how long, on average, someone who did not retire at the EJRA would stay on for. There would, in practice, be considerable differences in how long people may wish to stay on for. Some may be as ambitious as Prof Flyvbjerg, but for others it may simply be a matter of a few months to finish off work that they would not have been able to get an EJRA extension for.
146. The Little's Law calculations took a EJRA of 72.5 as being equivalent to no EJRA at all. In her witness statement, Dr Turner says this was derived from the survey, but it is not clear how, and on questioning she said she had simply been provided with the figure by HR. None of the collected answers to the survey questions would seem obviously to lead to that conclusion. The Little's Law report says: "*The value of 72.5 is derived from summary of responses of the 101 survey respondents to the EJRA questionnaire for current University staff who felt they knew when they want to retire. Specifically it is assumed that out of those post holders who decide to stay past 68, 37% will retire at 70, and 63% will retire at 74*". This is very peculiar, not least as there is clearly in the survey a category of people who have said they wanted to retire aged 76 or over (7.6%). It is also completely unclear how 242 respondents becomes "*101 survey respondents ... who felt they knew when they want to retire*". We have referred before to the large number of "don't knows", but they do not account for 141 people, and everyone else seems to have given an age range within which they intend to retire.
147. The claimants also point out that the Little's Law analysis assumes that the numbers of statutory professors and associate professors is constant – that it does not increase or decrease.

The creation of additional vacancies – case study

148. Ms Thonemann gave us this case study in her witness statement:

"Case study: English Faculty

The English Faculty employs 71 Professors (8 SPs and 63 APs) and includes about the same number again of Tutors and Research Fellows (some fixed-term and some permanent), who may be employed by the colleges rather than the University, but who are members of the Faculty. There are a small number of more junior posts, such as faculty lecturers and fixed-term post-doctoral researchers. At any one time, there are roughly a thousand students studying within the Faculty at undergraduate level, and another three hundred at graduate level, making Oxford the largest English graduate school in the country.

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It is diverse in terms of sex (56% of APs and 38% of SPs (3 out of 8) are women), but less diverse in terms of other protected characteristics ... It is of particular concern to the Faculty that it lacks diversity in terms of race.

In the absence of the huge salaries offered to members of some faculties by US higher education institutions, which sometimes results in APs (and less often SPs) moving to the US, retirement is the main reason for turnover among academic staff in the Faculty. Turnover is low, at c. 2.2% p.a. for APs and 4.3% p.a. for SPs (a three-year average in each case).

This makes it challenging for the Faculty to refresh their offering and improve diversity. Oxford is under great pressure to improve the diversity of its student body and in order to do that, it must (among other things) diversify its curriculum and its teaching staff, the visible face of the faculty to prospective applicants and to students. Traditionally, teaching and research in the Faculty has covered the entire history of literature in English from the Anglo-Saxon period to the present day, along with language studies. Traditional strengths have included the medieval and early modern periods. These are less attractive to prospective students than in the past and there are few academic staff who research and teach in those areas that appeal to a diverse student body.

In response to this problem and in order to maximize the impact of the turnover they have, the Faculty has a ten-year plan to enable it to refresh its curriculum and Faculty by recruiting diverse staff to teach a broader curriculum. For example, the Faculty is attempting to grow its nascent strengths in world literature and film studies. It aspires to strength in post-colonial and 20th century literature. The funds available to grow the Faculty to achieve this are very limited: the ability to grow the student body to generate funds through fees is constrained ... and English students tend not to become exceptionally high earners who donate to endow posts at their alma mater. There is a smaller 'pot' of research funding available for the humanities than for the sciences nationally. As a result, this refreshment of the Faculty can only be achieved by replacing those who leave with those who work in the areas the Faculty needs to grow. This must be done in a planned way, so that papers are only offered when there are postholders available and with the right knowledge and experience to meet the teaching needs. This succession planning is only possible with a retirement policy that provides certainty about when particular posts will become vacant.

Two case studies will serve to demonstrate how this works in practice.

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Case study 1: Medieval literature to Global literature

A female Associate Professor who worked on medieval literature retired. In accordance with the ten-year plan, her post was repurposed to the modern end of the spectrum and was advertised as a specialist in global literature. After open competition, the post went to a female, BME professor from Liverpool University, who brought with her a research team comprising 3 post-docs and 2 DPhil students, all funded through an ERC grant on which she was the Principal Investigator.

As a result, the Faculty diversified its staffing, and refreshed its curriculum in a way that will make it more appealing to a diverse studentship, and five early career researchers were able to progress their careers by moving to Oxford. In addition, a vacancy was created for a professor at Liverpool; this would have been filled by someone in a mid-career post such as a lectureship; shortly afterwards one of Oxford's junior researchers was appointed to a lectureship at Liverpool.

Case study 2: Diversification, refreshment and chains of vacancies

Through their University contracts, academic staff provide lectures and seminars, examine and conduct research. All APTFs hold a joint appointment with a college, through which tutorial teaching is delivered. APNTFs and SPs also have a college association and play an active role in the academic life of their college. Most colleges who offer English as an undergraduate degree have two or more APs or SPs.

One such college had a small, mixed-gender team of academic staff, which included two white male academic postholders, who were due to retire under the EJRA in (a) 2013 and (b) 2016.

The postholder due to retire in 2013 successfully applied for an extension to his employment until 2016. His post was advertised and he was replaced by a gay man who works on African American literature. This diversified the Faculty and the curriculum, allowing the Faculty to offer courses and supervision in an area that appeals to a diverse range of students.

The new postholder had previously held a less senior academic position in the University; in this, he was replaced by a scholar who had previously held a tenure track position at a University in the United States; this position would, in turn, have been filled by another scholar, and this would, in the normal turn of events, have freed up a vacancy for

someone at the start of their career. Thus a 'chain' of vacancies is created by the retirement of one senior postholder.

The second postholder retired in 2016 and was replaced by a BME woman, of non-UK nationality, increasing the racial diversity of the Faculty. The new postholder also came from an Associate Professor post at an American university, providing another chain of vacancies."

149. This is, ostensibly, a compelling account of the EJRA being successfully used for succession planning, a move into new fields of work and promoting diversity. We will consider it in more detail later on, but note for now that in common with much of the respondent's other material it proceeds both as if compulsory retirement is the only way in which vacancies arise, and on the basis that those vacancies will never arise without compulsory retirement. In fact, as we have seen, even on the respondent's best figures (the Impact Tables) a substantial majority of vacancies for both statutory and associate professors arise otherwise than via the EJRA, and a vacancy that is created by the EJRA is a vacancy that is created earlier than it otherwise would have been, not a vacancy that would never have arisen at all. (Albeit that over time consistent earlier creation of vacancies will amount to more vacancies, as with the earlier example we gave.)
150. If the Little's Law modelling is correct, in the case study 1 example, one in every 20 associate professor vacancies in the English department can be attributed to the EJRA. The case study says nothing about the other 19 vacancies that would have arisen in that time, or why they could not be used to the same effect.
151. The best that this case study does is to give us an example of how the EJRA is capable of supporting a number of the aims contended for by the respondent. We have already addressed the EJRA in relation to the aims.

Conclusions on the creation of additional vacancies

152. The respondent has not made any attempt to measure the effect of the EJRA on actual vacancy creation across the initial ten year period of the EJRA. That is unfortunate, since contemporary records would be a far better way of assessing this than resorting to surveys and mathematical models. We remain at a loss as to why the respondent has not made any attempt to measure this, even after the challenges to the EJRA in Pitcher, Ewart and other cases.
153. The Impact Tables are not a useful measure of the creation of additional vacancies. They assume that a vacancy that is not created by the EJRA is never created at all, and that cannot be right.

154. The Little's Law modelling is the best mathematical model available. On the assumptions adopted by the respondent it shows that the EJRA provides 8% of the available vacancies for the statutory professors and 5% of the available vacancies for the associate professors.
155. The Little's Law model relies on assumptions. In the absence of contemporary records, the assumptions used by the respondent rest on weak foundations. They rely on a self-selecting survey of individuals answering hypothetical questions, to which the largest single answer on the most critical question is that those surveyed "don't know". This survey is used to create assumptions of Continuation Probability and average length of work beyond the EJRA for which we have not seen the underlying figures or calculations, and, at least on the question of average length of work beyond the EJRA, where the explanation given does not seem to make sense.
156. It has always been for the respondent to justify the EJRA and demonstrate its proportionality. The best way they have of doing this is the Little's Law model. The Impact Tables and English department case study do not assist with this. We have given serious thought to whether the problems with the survey and the assumptions behind the Little's Law model are so substantial that we should regard it as of no evidential value at all. If we did that take that course of action, it would not be a criticism of Little's Law as a mathematical model, but of the inputs that were used by the respondent. We have considered that, on balance, we should take the Little's Law model into account as the best evidence the respondent has to offer of the EJRA's effect on vacancy creation, but we do so with considerable caution.
157. Given our doubts about the data that went into the Little's Law model we conclude that the best approach is to regard this as demonstrating an increase of up to, respectively, 8% (statutory professors) and 5% (associate professors) on the creation of vacancies attributable to the EJRA. We consider the true figures to be less than that because the Continuation Probability of 55% seems too large compared to that shown in previous surveys and because the Little's Law model neglects the small but appreciable increase in associate professor (but not statutory professor) positions that there has been over time. We are not in a position to put precise figures on this, but it seems to us that the true effect of the EJRA on vacancy creation will be less than 8% and 5%.

Chains of vacancies?

158. While we have focussed on the consequences of vacancy creation at the culmination of an academic career (statutory and associate professor level) the respondent has emphasised that the creation of a vacancy at such as senior level will create a "chain" of further vacancies at more junior levels – perhaps

as many as 4 or 5, as people step up to take vacancies left by those appointed to more senior jobs.

159. It is Cockram-obvious that this chain of vacancies will be created, but it is not at all clear what this contributes to the respondent's aims. The aims relied upon by the respondent and the evidence cited by the respondent in support of the EJRA achieving those aims were all focussed on the senior level. Lack of diversity is particularly pronounced at the senior level. New perspectives or areas of study could be said to be particularly significant at a senior level, where there are greater opportunities to set the agenda for areas of research or approaches to research. We acknowledge that vacancies at a senior level will lead to a chain of vacancies, but that does not assist the respondent in justifying the EJRA when the evidence as to the need for achievement of the legitimate aims has been on achievement of those aims at that senior level, rather than at more junior levels. We have been given no evidence to suggest how creation of vacancies at more junior levels contributes to the aims put forward by the respondent, and given the respondent's recruitment practices those more junior vacancies may occur anywhere in the world. For them to be created within the respondent's organisation would be the exception rather than the rule.

The discriminatory impact – generally

160. The EJRA means that an individual is dismissed on attainment of a particular age. That is, on the face of it, about the most extreme discriminatory impact possible in the realms of employment. However, the respondent has put forward a number of reasons that it says show the discriminatory impact is not as great as it might first appear.

The discriminatory impact – extensions

161. The first is that extensions are available in suitable cases.
162. Given the possibility (identified by Dame Janet Smith) for generous extensions to undermine the ostensible aims of the EJRA, extensions under the EJRA have had a difficult history. It appears that initially they were readily granted, though without an appropriately transparent procedure. Since then they have become more restricted.
163. The first point to note about any extension is that if it is offered it is not simply an extension of the existing role. The individual in question almost always has to give up their substantive role. The extension is only granted if they are completing a project or duties (they cannot take up new work) and have covered their full costs. There is no such restriction for those in substantive roles prior

to retirement. There is an additional requirement for “exceptional circumstances”.

164. At most it seems that an extension provides some limited opportunity to complete work already underway and funded, subject to onerous approval requirements. That is at best a limited kind of convenience for completing work, and not an appropriate substitute for the substantive role the individual previously occupied

The discriminatory impact – Emeritus and other continuing roles

165. The second is that those who retire under the EJRA are able to retain Emeritus roles and carry out ad hoc teaching and supervision work for the respondent.
166. We understand that Emeritus roles are unpaid, but entitle the holder to access to library and social facilities operated by the respondent, along with office space, albeit that is likely to be shared office space as opposed to the private office they may have enjoyed well employed.
167. We also understand that teaching and supervision work is available to be taken and paid on an ad hoc – essentially casual – basis.
168. The “Emeritus” concept could perhaps only work in the field of academia. Essentially the idea is that the individual can remain at work to some extent on a voluntary, unpaid, basis. There may be some who find that attractive, and we can see how it would have benefits for both an individual and the respondent. However, we do not see it as being in any way comparable with the paid role that the individual would have given up. Most obviously, it is unpaid. Beyond that, the working conditions and privileges are less favourable than those that go with a substantive professorship, and it does not carry with it the same opportunities to apply for research grants and build a team around you that would usually be expected in substantive professorship. Emeritus status may have some appeal or be better than nothing, but it is not comparable with the substantive role that the individual will have given up. The teaching and supervision work that was available was essentially casual work, again without the opportunity to develop the team that will often be necessary to progress work and explore new areas of research. It is not a substitute for a substantive post.
169. It is also necessary to acknowledge that dismissal by the respondent does not necessarily mean the end of the individual’s career. Prof Flyvbjerg is an example of someone who has been compulsorily retired under the EJRA but has gone on to take a substantive position at another institution, albeit at some personal cost.

170. Prof Snidal was not so fortunate in his applications, and we acknowledge that older workers are likely to find it difficult (but not impossible) to get alternative positions at other institutions. The prospect of working on elsewhere may provide some comfort to some who are retired under the EJRA, but we think it is difficult for the respondent to rely on this as mitigation of the discriminatory effect of the EJRA. The whole point is that the individual loses their career with the respondent. The respondent could not then freeze them out of academia entirely, but it will in many cases be difficult to find alternative work, and that that is found may be at personal cost (as in Prof Flyvbjerg's case).

The discriminatory impact - quantitatively

171. We are to look at the discriminatory impact on both a qualitative and quantitative basis. In our analysis that follows we see 1.7 statutory professors a year and 3.4 associate professors a year being compulsorily retired under the EJRA when they would have wished to stay on. That is around five people a year.

The discriminatory impact - conclusions

172. Dismissal at a particular age has a great discriminatory impact which is not substantively mitigated by the possibilities for continuing work put forward by the respondent.
173. It might be said that having five people a year subject to that discrimination suggests that the discriminatory effect is not great. We disagree. It is certainly the case that not every statutory or associate professor will be subject to this discrimination. Some will have left earlier, and some will have willingly retired. However, there remains a number who will be subject to compulsory retirement against their will, and that number is sufficient to mean that overall the EJRA retains a significant and substantial discriminatory impact.

The consent of Congregation

174. The respondent has emphasised, and we acknowledge, its self-governing status. Those who are subject to the EJRA will all (or almost all) be members of Congregation. Every step taken by the respondent to adopt or change the EJRA has either been approved by Congregation or could have been called in for consideration if sought by a bare minimum number of members of Congregation.
175. We acknowledge that there is authority to the effect that that "consent" ought to be taken into account by us in considering proportionality, and we will do so.

Alternatives

176. A range of possible alternative ways of achieving the aims was canvassed in evidence and argument before us.
177. As regards “Refreshment”, in terms of moving into different academic areas of areas of specialism, it was suggested by the academic claimants that as with any other form of work the appropriate way of addressing this would be by way of redundancies – either on a voluntary or, if necessary, compulsory basis.
178. The evidence from the respondent was the compulsory redundancies, although possible within its statutes, were very rare and were constrained by such onerous procedures as to be highly unattractive as an option. It had, however, recently made some compulsory redundancies of RSIVs in medical research on a change in the priorities of its funders.
179. The respondent went further and said this was a question of academic freedom, and that individuals should not be constrained in their field of study by fear that it may become unfashionable or unattractive and result in their redundancy.
180. For the reasons that follow, we find that the EJRA was not necessary for refreshment of areas of study. However, if it were, we find that making redundancies is a better, non-discriminatory alternative.
181. The respondent ought not to be able to plead the difficulties of its own self-constructed procedures in order to suggest that direct age discrimination was the appropriate way of managing refreshment of its areas of study. The respondent’s reference to academic freedom in relation to this is misplaced. Principles of academic freedom are not offended by the idea that at some point the respondent’s overall goals for areas of study do not match the individual academic’s.
182. Other alternatives were floated by the Review Group, who took the opportunity to interview senior leaders at other institutions, two of whom were not named and the other was Imperial College London. On the whole, these leaders did not miss having a default retirement age at their institutions nor consider its absence a problem. At least one considered it a positive improvement. This evidence seems to have been dismissed by the Review Group with little consideration, as was a report it had itself commissioned from the Oxford Institute of Population Aging.
183. Alternatives put forward included flexible or phased retirement, financial inducements for retirement and earlier conversations about retirement intentions. These were said variously to contribute to vacancies or at least predictable retirement dates.

184. Although we consider that the Review Group was too quick to dismiss these alternatives we do accept that each of these alternatives brings with it its own problems. It appears that at least in principle some form of flexible or phased retirement was already available. Financial inducements were likely to be costly, if effective at all. Earlier conversations would no doubt be of some assistance, but it is difficult to see how they could end up binding an individual to retire if they later changed their mind.
185. The claimants also suggested a later age for the EJRA and the possibility of a more generous extension regime. However, what we are considering is the EJRA as it was at the relevant time, not some variation on that.
186. We think the respondent should have given greater consideration to these alternatives. Earlier conversations may have had some effect, but none have the obvious effect in creating vacancies that the EJRA does.

Conclusions on proportionality

187. We have said that we thought that the effect on vacancy creation of the EJRA would be less than the 8% and 5% suggested by the Little's Law study, but we will assume for these purposes in the respondent's favour that it does amount to 8% and 5%. This means that at least 9 in 10 of the vacancies across the statutory and associate professor roles will arise irrespective of the EJRA.
188. Looking at the legitimate aims:

188.1. Inter-Generational Fairness

The Inter-Generational Fairness Aim is in pursuit of "*fairness in the allocation of this past resource between present and future generations of senior Oxford employees*". As we have suggested before, we find this a somewhat difficult concept. Much emphasis was placed on the financial difficulties the younger generation of the respondent's employees may have in comparison to the older generation, but it is not clear what the respondent wants us to make of that when there is no preference given to internal candidates and the recruitment for the relevant roles takes place on a worldwide basis. It may be that junior academics in, say, Australia, are financially better off than their predecessors in Australia. We have no way of knowing this one way or the other, and the respondent has not put forward any evidence on that. As for the question of "fairness" in allocation of the roles, while we accept there are unlikely to be bright lines in establishing fairness, we have been given no indication of why an additional 8% or 5% of vacancies is necessary to establish fairness. Once the statutory exemptions for

compulsory retirement were abolished it can hardly be said that fairness requires the younger generation to have exactly the same opportunities that their predecessors had. There is nothing in the evidence we have seen that suggests that the additional vacancies created by the ERJA are necessary to establish such “fairness”.

188.2. Refreshment

As identified above, beyond the general idea that at some points the respondent may wish to move into fresh areas of study or specialism, there is nothing in the respondent’s evidence to suggest how pressing a problem this is or why the EJRA is necessary to meet it. As a minimum we know that at least 9 out of 10 vacancies at statutory professor or associate professor arise irrespective of the EJRA. There is no evidence that the respondent needs the additional vacancies that may be created by the EJRA to move into new areas of study. On the contrary, the fact that we have very limited evidence on this (only the case study) suggests that the EJRA’s contribution to this is, at best, trivial. The vast majority of vacancies at statutory and associate professor level will arise irrespective of the EJRA, and there is nothing to suggest that those vacancies are not more than enough for the respondent to move into new areas of study.

Also as discussed above, there no direct evidence to suggest that the EJRA contributes substantially to the new perspectives that the respondent says it is looking for. The best that we can say on that is that promoting equality and diversity would tend to introduce new perspectives.

188.3. Promoting Equality and Diversity

The strongest area for the respondent is in the Promoting Equality and Diversity aim. As we have seen, many of the other aims at least partially relate to this. “New perspectives” is hard to measure, but promoting equality and diversity can be taken as a generalised proxy for it.

Having said that, the respondent’s case on this is significantly weakened by any lack of reliable statistics outside diversity of sex. The Review Group itself identified this as a problem. The difficulties with the other statistics are such that we consider we can only look at promoting equality and diversity in terms of the protected characteristic of sex.

It appears to be accepted that the average number of statutory professor vacancies in a year was 20.7. The Little’s Law study relied upon by the

respondent says 1.7 of these vacancies in a year arise through the EJRA. At current rates, 32.5% of the people recruited for those vacancies will be women. This means that the EJRA accounts for around (at most) 0.5 women being appointed as associate professors each year. (A fuller calculation would also account for the possibility of a woman having vacated the role. That number appears (at least at present) to be very small so far as statutory professors are concerned.) The EJRA means that an additional woman is appointed as a statutory professor every other year.

For associate professors, on average 68.4 vacancies arise each year. Around a quarter of those leaving are women and around 40% of those appointed to the roles are women. The Little's Law study puts this at 3.6 vacancies a year attributable to the EJRA. A woman will be appointed to 1.4 of those vacancies but 0.9 of those vacancies will have been created by a woman leaving. That means the EJRA accounts for (at most) a net increase of 0.5 women a year in the position of associate professor. As with the statutory professors, the EJRA means that an additional woman is appointed every other year.

189. We are somewhat hesitant about the calculations set above. Both sides may find something to criticise about them, and rounding means that they cannot be considered to be absolutely correct, but however those calculations are done we think the point remains that the overall contribution of the EJRA to promoting equality and diversity is very limited. That follows from two points that we consider to be clear:
- (a) the proportion of vacancies that are created by or would not otherwise arise apart from the EJRA is small in both cases (8% or less and 5% or less), and
 - (b) women remain a minority of those appointed to the vacancies that do arise. In the case of statutory professors, new appointments remain overwhelmingly men and in the case of associate professors the increased appointment of women is offset to a considerable degree by women making up a substantial number of those leaving the roles.
190. There was some discussion as to whether the appropriate measure for achievement of this aim was a question of proportions or a question of absolute numbers - but measured either way the contribution of the EJRA to the aim is very small.
191. The only suggested legitimate aim that survives through to the last stage of the proportionality assessment is "Promoting Equality and Diversity", which we take

to also include the elements of the other aims that rely on a diversity of appointees, such as “new perspectives”.

192. The EJRA does contribute to the fulfilment of this aim, but to a very small degree, both in absolute and proportionate terms.
193. Given that achievement of the Overarching Aim is incapable of being measured and depends on achievement of the other aims, having assessed the effect on the Promoting Diversity and Equality Aim there is nothing to be gained by a separate assessment of the Overarching Aim and such an assessment would not be possible in any event.
194. The respondent has recognised its poor position in terms of diversity at statutory and associate professor level, and would argue that in such circumstances, with a limited range of options at hand, even a small increase in diversity is significant and meaningful: “every little helps”. However, we have to balance that against the discriminatory effect of the EJRA.
195. As we have identified, the EJRA has a highly discriminatory effect, removing people from their jobs simply because they have attained a particular age. The very small (we go so far as to say trivial) way in which the EJRA contributes to Promoting Equality and Diversity does not justify the highly discriminatory effect of the EJRA. Consent or a lack of objection from Congregation does not make something that is otherwise unlawful lawful in this case. The respondent has not shown that the EJRA is a proportionate means of achieving a legitimate aim.
196. We have not specifically addressed Prof Snidal’s position of “Reader” in this analysis, but there is no need for us to do so. A Reader is either to be treated as a statutory professor, an associate professor or somewhere in between, and on any of those analyses the EJRA has not been justified for a Reader.

E. CONCLUSION

197. The EJRA is not a proportionate means of meeting a legitimate aim in relation to any of the claimants.
198. Further case management orders will be given (if not agreed between the parties) at a closed preliminary hearing to take place at 10:00 on 17 May 2023.

Case Numbers: 3301882/2020
3304225/2020
3300563/2021
3312857/2021
3323585/2021
3323608/2021



Employment Judge Anstis

Date: 9 March 2023

Sent to the parties on: 13 March 2023

L TAYLOR-HIBBERD

For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICES

Calendar

- 22 March, *Wednesday*. Last ordinary issue of the *Reporter* in the Lent Term.
- 24 March, *Friday*. Ballot of the Regent House, voting closes at 5 p.m.
- 25 March, *Saturday*. Lent Term ends. Congregation of the Regent House at 10 a.m.
- 1 April, *Saturday*. Congregation of the Regent House at 10 a.m.
- 9 April, *Sunday*. Easter Day. Scarlet Day.
- 17 April, *Monday*. Easter Term begins.
- 19 April, *Wednesday*. First ordinary issue of the *Reporter* in the Easter Term.
- 25 April, *Tuesday*. Full Term begins. Mere's Commemoration Sermon in St Benedict's Church at 11.45 a.m. Preacher, Sr Dr Gemma Simmonds CJ, of Newnham and St Edmund's Colleges, Senior Research Fellow, The Margaret Beaufort Institute of Theology and Director, The Religious Life Institute.

Discussion on Tuesday, 2 May 2023

The Acting Vice-Chancellor invites members of the Regent House, University and College employees, registered students and others qualified under the regulations for Discussions (*Statutes and Ordinances*, p. 111) to attend a Discussion by **videoconference** on Tuesday, 2 May 2023 at 2 p.m. The following item will be discussed:

1. Report of the General Board, dated 22 March 2023, on the establishment of a Professorship (p. 480).

Those wishing to join the Discussion by videoconference should email UniversityDraftsman@admin.cam.ac.uk from their University email account, providing their CRSid (if a member of the collegiate University), by 10 a.m. on the date of the Discussion to receive joining instructions. Alternatively contributors may email their remarks to contact@proctors.cam.ac.uk, copying ReporterEditor@admin.cam.ac.uk, by no later than 10 a.m. on the day of the Discussion for reading out by the Proctors,¹ or may ask someone else who is attending to read the remarks on their behalf.

In accordance with the regulations for Discussions, the Chair of the Board of Scrutiny or any ten members of the Regent House² may request that the Council arrange for one or more of the items listed for discussion to be discussed in person (usually in the Senate-House). Requests should be made to the Registry, on paper or by email to UniversityDraftsman@admin.cam.ac.uk from addresses within the cam.ac.uk domain, by no later than 9 a.m. on the day of the Discussion. Any changes to the Discussion schedule will be confirmed in the *Reporter* at the earliest opportunity.

General information on Discussions is provided on the University Governance site at <https://www.governance.cam.ac.uk/governance/decision-making/discussions/>.

¹ Any comments sent by email should please begin with the name and title of the contributor as they wish it to be read out and include at the start a note of any College and/or Departmental affiliations held.

² <https://www.scrutiny.cam.ac.uk/> and https://www.admin.cam.ac.uk/reporter/regent_house_roll/.

Topic of concern to the University on forced retirement: Notice in response to Discussion remarks

20 March 2023

The Council has considered the remarks made at the Discussion on 24 January 2023 relating to the topic of concern on forced retirement (*Reporter*, 2022–23; 6679, p. 180; 6685, p. 304). It has consulted with the General Board in preparing this response.

The Council is grateful to the contributors to this Discussion for sharing their views on this subject, including Professor Kamal Munir, Pro-Vice-Chancellor for University Community and Engagement, who explained the history of the University's current approach to retirement and the purpose of the proposed review. The Council agrees with the signatories of the request for this topic of concern that there should be a thorough debate on whether the University's current Retirement Policy remains fit for purpose, and that the widest possible range of opinions should be heard. That is why it has already agreed to carry out a review of the Policy in 2023, which will involve University-wide consultation (see below).

Some key themes have emerged in the remarks made, which raise important points for the review group to consider as part of its review and are summarised below. The Council does not wish to respond to individual comments at this stage, as to do so could pre-empt the work of the review group. It has asked that the Discussion remarks be provided to the group, so that they can be considered alongside other views gathered during consultation.

However, there is one point to which the Council is providing a reply. In their remarks, Professors Anderson and Gay and Mr Haynes requested that the operation of the Employer Justified Retirement Age be suspended pending the outcome of this review. The Council believes that it would be premature to do this before the review is complete and the review group has had the opportunity to consult with the wider University community. The Council also agreed at its meeting on 20 February 2023 that the review should consider issues relating to diversity and the gender pay gap as part of its deliberations about whether the EJRA had enabled effective succession planning.

Background

To provide some context to this matter, it is necessary to provide a short summary of recent history concerning retirement policy nationally and at Cambridge. The government phased out default retirement ages between 6 April and 1 October 2011, after which employers could retain a default retirement age, provided this could be objectively justified as a proportionate means of achieving a legitimate aim (referred to as an Employer Justified Retirement Age or EJRA).

At the time that these legislative changes were proposed, the University operated a compulsory retirement age for all University officers (with certain specified exemptions) which was at the end of the academic year in which they reached 67. It also operated a compulsory retirement age for all other staff categories at the end of the academic year in which they reached 65.

After extensive consultation with the University community and careful analysis by an academic-led working group, set up in 2010,¹ the General Board and the Council agreed² that an EJRA was properly justified for University officers (with certain specified exemptions³) at the end of the academic year in which they reach the age of 67. This was for reasons of intergenerational fairness and career progression; innovation in research and knowledge creation; the preservation of academic freedom and autonomy (by providing a means of ending employment at a specific point without the need for career-long performance management processes); and equality and diversity. However, there should be a process to apply to continue working after that age. The General Board and the Council were not satisfied that there was a case for maintaining a compulsory retirement age for other staff categories and recommended that this should be removed.²

These recommendations were subject to extensive discussion⁴ and received support in a ballot of the Regent House,⁵ which attracted a majority in favour (1,390 in favour of the Grace, 300 against).⁶

A further academic-led review in 2015–16⁷ concluded that the EJRA for University officers should remain at 67.⁸ The aims were revised to remove that of equality and diversity and to include the aim of enabling succession planning.

Review in 2023

The Council has committed to a review of the University's approach to retirement, to commence in 2023. Consistent with the approach taken in previous years, this will be an academic-led review group, guided by available data, and involve University-wide consultation.

The Council is mindful of the strength of feeling around this matter and the importance of achieving a fair and balanced outcome. The role of the review group will be:

- (i) to review the operation of the EJRA to determine whether it has been successful in meeting its aims; and
- (ii) to review the terms of the University's current Retirement Policy to establish whether they remain fit for purpose.

As part of its work, the review group will consider in detail the rationale for the aims and the implications for different age groups of potentially removing, retaining or revising the existing EJRA.

The review group will publish the data on which it bases its findings, broken down by age, gender and ethnicity where available, together with an impact assessment of its proposals.

Summary of views from the Discussion on 24 January 2023

Arguments against the EJRA

A number of speakers were of the view that the EJRA should be removed or raised substantially.

Several speakers (Professors Anderson, Goswami, Kramer, Robbins, Baron-Cohen, Coyle, Gross, Everitt, Crowcroft, Humphreys; Dr Szuba; and Mr Haynes) raised concerns that the EJRA puts the University at a competitive and commercial disadvantage when compared with other universities in the UK and abroad that do not have an EJRA. They made the following points:

- Some speakers who wished to work beyond the EJRA described their experience of being prevented from applying for research grants if these were due to run past their scheduled retirement date, ruling them out for prestigious grants or from leading projects, thereby putting at risk the employment of their research teams and depriving the University of significant output.
- Research funders can be reluctant to entrust research projects to less experienced colleagues leading to a potential loss of grants.
- Some speakers had experienced that work of significance could not be attributed to the University for REF purposes as they were unsalaried Emeritus Professors.
- That there are difficulties in attracting and retaining 'top' scholars who may be lost to industry or other universities in the UK and abroad on account of the EJRA.

¹ *Reporter*, 6209, 2010–11, p. 395.

² *Reporter*, 6222, 2010–11, p. 723; *Reporter*, 6249, 2011–12, p. 347.

³ Excluding the Chancellor, the High Steward, the Deputy High Steward, the Commissary and any University officer who is exempted under any Statute or Special Ordinance from the provisions of Special Ordinance C (ii) 12.

⁴ *Reporter*, 6226, 2010–11, p. 866; *Reporter*, 6253, 2011–12, p. 431.

⁵ *Reporter*, 6256, 2011–12, p. 465; *Reporter*, 6264, 2011–12, p. 577.

⁶ *Reporter*, 6264, 2011–12, p. 568.

⁷ *Reporter*, 6390, 2014–15, p. 616.

⁸ *Reporter*, 6435, 2016–17, p. 2.

- Professors Bourke, Robbins, Robinson, Abulafia and Biagini highlighted the other ways in which senior academics contribute to the life of their Faculties, which are lost on retirement, namely their experience and contribution to teaching, marking, recruitment, outreach activities and the mentoring of early-career researchers and junior academics.
- The fact that some of the most significant pieces of research can be realised later in life in some fields, for instance in the Humanities and Social Sciences.

Professors Goswami, Bourke, Abulafia and Evans questioned the effectiveness of the EJRA in achieving intergenerational fairness and enabling career progression for younger scholars to tenured posts. Professor Evans pointed to the increase in unestablished appointments, which offer far more numerous opportunities for employment. Professor Evans also advocated for the establishment of personal Professorships for named individuals.

Professors Kramer, Coyle, Gay and Bourke called into question whether large numbers of academics would choose to stay beyond 67 if permitted, and were of the view that if they did, this would be for two or three years at most. Professor Bourke spoke of his experience at universities in London where academics over 67 years of age tended to move to fractional contracts, thereby releasing funds for junior posts.

Professors Gay and Gross and Dr Good and Mr Goode spoke of the discriminatory impact on individuals and the disabling effect on senior academics as they approach the retirement age. Professor Abulafia advocated for a more gradual slide into retirement and more engagement with Emeritus Professors post-retirement. Professors Gross, Anderson and Robinson pointed to the difficulties in making a case to work beyond the retirement age under the University's Retirement Policy and that only one extension is permitted.

Professors Oosthuizen and Sahakian drew attention to the disproportionate impact of the EJRA on female academics, many of whom will have had one or more periods of maternity leave and/or part-time working during their careers but must still retire at 67.

Professors Baron-Cohen and Coyle questioned whether the EJRA had increased diversity as originally intended and Professor Coyle was of the view that it may even have prevented the University from pursuing genuinely effective diversity policies.

Professor Gross spoke of the degradation of USS benefits meaning that having the choice as to when to retire has become more important than ever. Professor Biagini spoke of increases in life expectancy and Mr Haynes pointed to the UK's aging population and falling birth rates and consequent challenges for recruitment and retention. Professor Kramer referred to the decline in the number of people above the age of 55 in employment precipitated by the Covid pandemic.

Professor Kramer was of the view that a compulsory retirement age should not be an alternative to fair and consistent performance management and that the main components of an adequate system of performance management for academics are already in place at the University, should that be considered a prerequisite for abolishing the EJRA.

Professor Cates supported removing the EJRA but advised caution. Whilst world-class research-active academics should be permitted to continue to work beyond the EJRA, removing the EJRA might discourage less productive academics from vacating their positions, without some form of regular and formal assessment of their contributions.

Arguments put forward to retain the EJRA

A number of academics spoke in favour of the EJRA in the interests of the wider University community (Dr Holmes, and Professors Guest, Spencer and Stajano), giving the following reasons:

- To promote intergenerational fairness by opening up opportunities for others to blossom out of the shadow of senior colleagues.
- A concern that, were the EJRA removed, senior staff would monopolise finite research grants.
- A concern that removing the EJRA would affect the turnover of academic staff and the University's ability to recruit excellent younger academics, thereby damaging the reputation of the University.
- That the impact of a fixed retirement age is offset by the freedom from 'managerialism' enjoyed by Cambridge academics, including from regular structured career-long performance assessments.
- There is already provision under the University's Retirement Policy to continue working beyond the retirement age where appropriate. Otherwise, retired academics may continue to offer College supervisions and enjoy continued access to University resources.

Dr Holmes was of the opinion that in order to recruit the best early career independent principal investigators, the University must be able to offer a real prospect of a tenured position in all academic disciplines and he pointed to difficulties in recruiting to fixed-term research posts, but not generally to faculty positions. Dr Holmes was not convinced that removing the EJRA would have an insignificant impact on turnover as argued by other speakers, pointing to local factors such as lower teaching loads at the University, compared with elsewhere.

Whilst defending the EJRA, Dr Holmes pointed to improvements that could be made to its operation; that the University should not place unreasonable barriers in the way of staff wishing to carry on either in a voluntary capacity or as unestablished investigators on external funding; and that the age at which the EJRA should operate requires periodic review.

Dr Holmes and Professor Stajano were both of the view that restoring USS benefits to acceptable levels would be vital to accepting the continuance of an EJRA.

CHAPTER IX

REVIEW

Compliance with the Statutes and Ordinances

1. (a) If, within thirty days after the doing of any act by any person or body having power to act under the Statutes, or in the event of failure or omission to act as required by Statute, Ordinance, or Order within thirty days after the date specified for the performance of that act, it is represented in writing to the Vice-Chancellor by a member of the University that there has been a contravention of the Statutes, Ordinances, or any Order in the doing of such act, or in such failure or omission, the Vice-Chancellor shall inquire into the matter and shall declare either that there has been no such contravention, or that the said act or matter is of no effect, or, if the Vice-Chancellor is of the opinion that the contravention has not affected the result, that in his or her opinion the validity of the act or matter is not affected by the circumstances represented. Where the Vice-Chancellor finds that there has been a failure or omission to act he or she may give such directions in the matter as shall seem to him or her to be appropriate. The person making the representation shall state in writing the act or matter to which he or she refers, and with full detail of the contravention of Statute, Ordinance, or Order which he or she represents has taken place. The Vice-Chancellor shall give his or her decision promptly but in any event within three months, unless the person making the representation has agreed in writing to an extension of time.

(b) If the person making the representation is dissatisfied with the Vice-Chancellor's decision, or if he or she believes that there has been unreasonable delay, he or she may make a representation to the Commissary in the manner prescribed in this chapter. The decision of the Commissary shall be final. If there is no representation to the Commissary, the decision of the Vice-Chancellor shall be final.

(c) No act shall be invalid by reason of the fact that there has been a contravention of the Statutes, Ordinances, or Order unless there has been a representation in writing under Section 1(a) of this chapter within thirty days after the doing thereof.

(d) No act shall be invalid by reason of the fact that any person taking part in the act, and chosen in the manner prescribed or authorized by the Statutes, Ordinances, or Order to be the person or a member of the body authorized to act, was not qualified to be so chosen.

Declaration of the meaning of a Statute

2. If any doubt arises as to the true meaning of any Statute of the University, or of any Statute for the University and any one or more of the Colleges in common, the Council may apply to the Chancellor, who shall then declare in writing the meaning of the Statute in question, and such declaration shall be registered by the Registry of the University, and the meaning of the Statute as therein declared shall be deemed the true meaning thereof. The University shall defray the cost of any legal advice obtained by the Chancellor for the performance of his or her duty under this section.

Review by the Commissary

3. The Commissary shall have full power to determine all questions referred to his or her decision by a member of the University under the provisions of this chapter. The Commissary shall have the power to review, amend, or quash the decision of any University authority on the ground that the decision, or some aspect of the decision, was *ultra vires*, illegal, irrational, procedurally irregular or incorrect in fact, and to make such order (including an order to amend, quash, or refer back the decision) as seems to him or her to be justified. The Commissary's powers under the provisions of this chapter shall not extend to:

(a) any matter still subject to further review by or appeal to any University authority, or which would otherwise be capable of review by any independent adjudicator for student complaints in higher education, as established by or pursuant to Act of Parliament;

(b) the merits or substance of a decision made by:

(i) a University court or disciplinary panel;

(ii) a Board of Examiners, a Degree Committee, the General Board, a Review Committee or similar authority, in relation to the result of a University examination;

(c) any decision by a University authority concerning the appointment of an individual or individuals to employment in the University, or concerning promotion in such employment;

(d) any matter under the responsibility of the Press and Assessment Syndicate.

4. In any particular case or cases the Commissary may appoint a person to act as his or her deputy, and may delegate to such a deputy his or her powers under the provisions of this chapter in respect of the case or cases concerned.

5. The Commissary or a deputy so appointed shall have the power to strike out a case which in his or her opinion is vexatious, frivolous, or out of time.

6. In relation to any case (not being a case struck out as vexatious, frivolous, or out of time) the Commissary shall direct that the matter shall be dealt with by oral or written representations, or both. Such representations shall be made:

(a) on behalf of the University by a person or persons appointed by the Council; and

(b) by any other party or parties to the proceedings either in person or through a representative.

7. The Commissary shall make general rules of procedure which shall bind the parties in any particular case. The rules of procedure shall make provision for a time limit or time limits within which a matter shall be raised with the Commissary. In any particular case the decision of the Commissary (or a duly appointed deputy) on any procedural matters shall be final, and the provisions of Statute A IX 1 shall not apply to it.

8. The Council shall consult the Commissary before proposing any Ordinance concerning matters regulated by Sections 3–9 of this chapter. The Commissary shall have the right to publish a statement for the guidance of the University about any such proposed Ordinance.

9. The University shall defray the cost of any legal advice obtained by the Commissary for the performance of his or her duties under this chapter.

Temporary Statute

10. (a) Nothing in this chapter enables or requires the Commissary to hear any appeal or to determine any dispute regulated under the provisions of the Education Reform Act 1988 about a member of the academic staff of the University as defined in the Statutes, which, being a matter regulated under the said Act, concerns the member's appointment or employment, or the termination of that appointment or employment. The Commissary has no power to disallow or annul any Ordinance made under or having effect for the purposes of the Statutes in relation to matters regulated under the said Act.

(b) When (a) is no longer needed, this section may be repealed by Grace.

CHAPTER X

MISCELLANEOUS

Commencement and transitional provisions

1. Repeal of a Statute does not invalidate any order, election or appointment made or thing done under a Statute repealed, nor revive nor restore any Statute, order, or trust, or any power or provision repealed or abrogated by a repealed Statute.

Interpretation

2. In any Statute, Special Ordinance or Ordinance,

(a) the term 'Ordinance' means a Special Ordinance made under Statute A III 3 or an Ordinance;

[(b) the term '*in statu pupillari*' shall mean a member of the University (in which term shall be included a member of a College, or of an Approved Society, resident in the University with a view to matriculation) who has not been admitted to an office in the University (or to a post in the Press and Assessment Department specially designated under Statute J 7 or to an appointment approved by the University for the purpose of Special Ordinance A (i) (f)), or to a Fellowship or office of a College, or to a degree which qualifies the holder for membership of the Senate under Statute A I 7(c), and is of less than three and a half years' standing from admission to her or his first degree (if any);]¹

¹ The section in angular brackets will replace the section in square brackets subject to the approval by His Majesty in Council of the amendments of Statute approved by Grace 1 of 3 November 2021.

SPECIAL ORDINANCES UNDER STATUTE A

THE CHANCELLOR AND THE GOVERNMENT OF THE
UNIVERSITY

SPECIAL ORDINANCE A (i):

Membership of the Regent House (Special Ordinance under Statute A III 11)

Amended by Grace 1 of 3 November 2021

The Registry shall inscribe on the Roll of the Regent House the names of the following persons:

- [(a)(i) the Chancellor, the High Steward, the Deputy High Steward, the Commissary, and (ii) the members of the Council in class (e);
- (b) other University officers and persons treated as such under Statute J 7;]¹
- [(a)(i) the Chancellor, the Vice-Chancellor, the High Steward, the Deputy High Steward, the Commissary, the Proctors and Pro-Proctors elected by the Regent House, the Orator, the Registry, the Librarian, the Director of the Fitzwilliam Museum, the Esquire Bedells, the University Advocate, the Deputy University Advocates, and (ii) the members of the Council in class (e);
- (b) University employees in Grade 9 and above as set out in Schedule I to the Ordinance on Stipends, and persons treated as such under Statute J 7;]¹
- (c) Heads of Colleges;
- (d) Fellows of Colleges, provided that they conform to such conditions of residence as may be determined by Ordinance;²
- (e) any person who applies for membership of the Regent House and meets the following criteria: applicants must have retired or be about to retire from an office or appointment in the University which previously qualified them for membership of the Regent House and have provided to the Registry by 15 August prior to the promulgation of the Roll each year written confirmation from their Head of institution³ that they are active participants in the University's affairs;
- (f) such other persons holding appointments in the University or a College in such categories and subject to such qualifying periods of service as shall be determined from time to time by Ordinance.

SPECIAL ORDINANCE A (ii):

*Submission of Graces (Special Ordinance under Statutes A III 4 and
A IV 1(d)), Conduct of business (in the Regent House) (Special Ordinance
under Statute A VIII)*

Amended by Grace 3 of 12 January 2022

1. Reports of the Council, or of any Board, Syndicate, or other body that has the right of reporting to the University, shall be submitted to the University by being published in the *Cambridge University Reporter*. A Report of any body other than the Council shall be sent to the Registry for communication to the Council, who may refer it to the General Board and to any other body or person whom it wishes to consult. Such a Report shall be published not later than six months after the date on which it was first sent to the Registry, unless the reporting body agrees to postpone its publication until a later date. Any comments on the Report which the Council or the General Board may wish to publish to the University shall be published with the Report.

2. (a) Congregations of the Regent House, for the transaction of University business, shall be held in the Senate-House or elsewhere within the Precincts of the University, or exceptionally by any means of communication which permits all those participating simultaneously to hear one another, on such dates and at such times as may be appointed by the Chancellor, Vice-Chancellor or the Council. The manner of holding a Congregation and of transacting business at a Congregation shall be prescribed by Ordinance from time to time.

¹ The sub-paragraphs in angular brackets will replace the sub-paragraphs in square brackets with effect from the promulgation of the Roll of the Regent House in 2022.

² See Statute A III 11(b) and Regulation 2 of the Ordinance on the Roll of the Regent House (p. 110).

³ 'Head of institution' means the Head of a Department, Chair of a Board of a Faculty not organised into Departments, Director or the authorised deputy or designated nominee, as appropriate within that University institution.

(b) Meetings of the Regent House, for the discussion of Reports and other matters, shall be held in accordance with arrangements as prescribed by Ordinance from time to time.

3. Members of the Senate shall have the right to attend and to speak at Discussions of the Regent House. The University may specify by Ordinance other persons or classes of persons, in addition to members of the Regent House and the Senate, who shall be entitled to speak at such Discussions. At the Vice-Chancellor's discretion other persons not so specified may be invited to attend or to speak at any particular Discussion.

4. The Council shall ensure that any remarks made at a Discussion are considered by the appropriate University authority. After any necessary consultation the Council shall publish such response to the remarks as it sees fit.

5. Any fifty members of the Regent House may initiate a Grace for submission to the Regent House, and any twenty-five members may initiate a proposal for the amendment of a Grace already submitted to the Regent House but not yet approved.

6. In respect of Graces and amendments of Graces initiated under Section 5, the Vice-Chancellor shall have power to rule inadmissible any Grace or amendment which directly concerns a particular person, and shall have such further powers as may be specified by Ordinance.

7. (a) Subject to the exercise by the Vice-Chancellor of the powers conferred by Section 6 or by Ordinances made under that Section, the Council shall consider any Grace or amendment initiated under Section 5, and either (i) shall authorize the submission of the Grace or amendment to the Regent House or (ii) shall publish a Report giving reasons for its decision to withhold authorization and recommending the Regent House to approve that decision. If such approval is not given, the Council shall, not later than the end of the term next following, submit the Grace or amendment to the Regent House.

(b) If a Grace or amendment initiated under Section 5 involves expenditure from University funds additional to that already authorized, the Council shall refer the Grace or amendment to the Finance Committee, and to the General Board or another body as appropriate, for their advice; in submitting such Grace or amendment to the Regent House, the Council shall at the same time publish a statement indicating how it is intended to make financial provision for the proposed expenditure.

8. Any proposal to be placed before the Regent House or the Senate for approval shall be in the form of a Grace. Further detailed provision for the initiation, submission and amendment of Graces shall be made by Ordinance.

SPECIAL ORDINANCE A (iii):

Membership of the Council: detailed provisions (Special Ordinance under Statute A IV 3)

References in this Special Ordinance to classes are to the classes prescribed in Statute A IV 2.

1. (a) Members of the Council in classes (a), (b), and (c) shall be elected to serve for four years, an election of half the members in each class being held during Full Michaelmas Term in each alternate year.

(b) Members of the Council in class (d) shall be

(i) the President (Undergraduate) of the University of Cambridge Students' Union;

(ii) the President (Postgraduate) of the University of Cambridge Students' Union;

(iii) one student elected by and from among the students in the University.

Members in categories (i) and (ii) of class (d) shall serve for one year from the commencement of their term of office as President. The member in category (iii) of class (d) shall be elected in each academic year on a date and in a manner determined by or under Ordinance and shall serve for one year from 1 July next following her or his election.

(c) (i) Members of the Council in class (e) shall be appointed to serve for four years from 1 January in a year when the calendar year is odd; the appointment of half the members in this class shall take place in each alternate year.

(ii) Members in class (e) shall serve no more than two full periods of office consecutively; casual periods of office shall not count towards this limit.

2. (a) If a member of the Council in any of classes (a), (b), and (c), or any person nominated for election as a member in one of those classes, ceases to be a member of the Regent House, or suffers suspension or deprivation of her or his University office, degrees, or membership of the University,

that member's seat shall thereupon become vacant, or the nomination shall thereupon become invalid, as the case may be.

(b) If a member of the Council becomes Chancellor or Vice-Chancellor, her or his seat shall thereupon become vacant.

(c) If a member of the Council in class (a) or class (b) ceases to be the Head of a College or a Professor, Reader or Professor (Grade 11) as the case may be, that member's seat shall not thereby become vacant.

(d) If the member of the Council in category (i) of class (d) ceases to be President (Undergraduate), or if the member of the Council in category (ii) of class (d) ceases to be President (Postgraduate), of the University of Cambridge Students' Union, that member's seat shall thereupon become vacant.

(e) If the member of the Council in category (iii) of class (d), or any person nominated for election as the member in that class, ceases to be a student in the University, or suffers deprivation or suspension of her or his degree or membership of the University, or suffers rustication by a University court or disciplinary panel or by a College, that member's seat shall thereupon become vacant, or the nomination shall thereupon become invalid, as the case may be.

3. (a) If any casual vacancy occurs by death, by resignation, or otherwise, among the elected members of the Council during their period of service, or if it is known that such a vacancy will occur by reason of a member's resignation, or if any person elected dies, resigns, or is otherwise disabled from beginning service between the publication of the result of the election and the day upon which such a person is due to begin service, the vacancy shall be filled by the holding of a bye-election; provided that no bye-election shall be held to fill a vacancy that occurs less than sixty days of full term before the end of tenure of the member whose death, resignation, or disablement has created the vacancy.

(b) If at any election the total number of vacancies is not filled, the Vice-Chancellor shall arrange a further election to fill such vacancies as are unfilled.

(c) If, after the last date for sending in nominations and before the result of the election has been decided, a person nominated for election in any class dies, or is disabled from serving as a member, or if such a person's nomination becomes invalid under the provisions of Section 2(a) or 2(d) above, all nominations for that class shall be deemed to be void, and the Vice-Chancellor shall give notice thereof and shall arrange a new election.

(d) Any bye-election, further election, or new election held under subsection (a), (b), or (c) above shall take place as soon as conveniently may be; the arrangements for the election shall be determined and published by the Vice-Chancellor.

(e) If any casual vacancy occurs by death, by resignation, or otherwise, among the members in class (e), the casual vacancy shall be filled in accordance with the procedure for the appointment of members in class (e) in Statute A IV 2(e).

4. (a) The period of service of members in classes (a), (b), and (c) shall be as follows:

(i) A person elected during the Michaelmas Term (otherwise than to fill a casual vacancy) shall begin service on the first day of January next following the election.

(ii) A person elected in any term other than a Michaelmas Term or elected to fill a casual vacancy which has already occurred shall begin service on the day next following the publication of the result of the election; provided that, if at an election of either such kind the number of persons nominated in any class does not exceed the number of vacancies in that class, the person or persons nominated shall be deemed to be elected and shall begin service on the day following the last day for the receipt of nominations.

(iii) A person elected in any term other than a Michaelmas Term (otherwise than to fill a casual vacancy) shall serve, notwithstanding the provisions of Section 1(a) above, until the end of the calendar year next but two following the year in which the election takes place.

(b) Any person elected a member in class (d) at a bye-election to fill a casual vacancy which has already occurred shall begin service on the day next following the publication of the result of the bye-election, provided, that, if the number of persons nominated in a bye-election does not exceed the number of vacancies, the person or persons nominated shall be deemed to be elected and shall begin service on the day following the last day for the receipt of nominations.

5. For the purpose of this Special Ordinance the term 'student in the University' shall be defined by Ordinance.

SPECIAL ORDINANCE A (iv):

Finance Committee of the Council (Special Ordinance under Statute A IV 8)

1. The Finance Committee of the Council shall consist of:

- (a) the Vice-Chancellor, or a duly appointed deputy, who shall be Chair;
- (b) three members of the Regent House elected by representatives of the Colleges;
- (c) four persons appointed by the Council, at least two of whom shall be members of the Regent House;
- (d) one member of the General Board appointed by the General Board;
- (e) three members of the Regent House appointed by Grace of the Regent House;
- (f) not more than three persons co-opted by the Committee, provided that it shall not be obligatory for the Committee to co-opt any person or persons;

subject always to the requirement that not less than three members of the Committee (including the Vice-Chancellor) shall be members of the Council.

2. Members in classes (b)–(e) shall be appointed or elected in the Michaelmas Term, and shall serve from 1 January next following. Members in classes (b) and (e) shall serve for three years, and members in classes (c) and (d) for four years. Co-opted members shall serve until 31 December of the year in which they are co-opted, or of the year next following, as the Committee shall determine at the time of their co-optation. If a member in class (b) or class (e) ceases to be a member of the Regent House, or if the member in class (d) ceases to be a member of the General Board, such a member's seat shall thereupon become vacant.

3. For the purpose of the election of members of the Committee in class (b), each College shall appoint one representative, whose name shall be communicated to the Registry. The election shall be conducted in accordance with the Single Transferable Vote regulations; voting shall be by ballot. The arrangements for the election shall be determined by the Registry.

4. The Registry or a University officer designated from time to time by the Council shall act as Secretary of the Committee.

5. No business shall be conducted at a meeting of the Finance Committee unless five members at least are present.

SPECIAL ORDINANCE A (v):

Audit Committee of the Council (Special Ordinance under Statute A IV 10)

1. There shall be a standing committee of the Council, called the Audit Committee, which shall consist of:

- (a) a member of the Council in class (e) (as referred to in Statute A IV 2(e)) appointed by the Council to serve as Chair of the Committee,
- (b) two members of the Council appointed by the Council from among its members who are members of the Regent House, provided that neither the Vice-Chancellor, a Pro-Vice-Chancellor, nor the Head of a School shall be eligible to serve,
- (c) four persons, not being members of the Regent House or employees of the University, appointed by the Council with regard to their professional expertise and experience in comparable roles in corporate life, including at least two members with experience of finance, accounting, or auditing,
- (d) not more than three persons co-opted by the Committee, provided that it shall not be obligatory for the Committee to co-opt any person or persons. If there are co-opted members, at least one shall be a member of the Regent House who is not a member of the Council, and, if there is more than one, there shall be either one further member of the Regent House who is not a member of the Council and/or one external member, or two external members, provided that only one of the external members may be a member of the Council in class (e) (as referred to in Statute A IV 2(e)).

2. Members in classes (a), (b), and (c) shall be appointed in the Michaelmas Term to serve for four years from 1 January next following their appointment or for the same period plus the remainder of the term of the departing member if that remainder is less than one year. In the event that Council membership ceases, Audit Committee membership will expire simultaneously. No member may serve for more than two consecutive periods of appointment or eight consecutive years, whichever is the longer. Co-opted members shall serve for such period as the Committee shall determine at the time of their co-optation.

3. No person may be a member of the Audit Committee who is a member of the Finance Committee. If a member of the Audit Committee becomes a member of the Finance Committee, her or his place shall thereupon become vacant.

4. No decision of the Audit Committee shall have any binding effect unless there are at least five members, three at least of these being external members, present at a meeting of the Audit Committee. If a decision is the subject of a vote and there is an equality of votes cast, the Chair, or Acting Chair, as the case may be, shall be entitled to give a second or casting vote.

5. In the absence of the Chair of the Committee, the Audit Committee shall elect an acting Chair from the external members present.

SPECIAL ORDINANCE A (vi):

The General Board, the Schools, and the assignment of Faculties, Departments etc. (Special Ordinance under Statute A V)

1. Members of the General Board in classes (b) and (c) pursuant to Statute A V 2 shall serve for four years, half the members in each class being appointed at the same time as, or shortly after, each biennial election of members of the Council. Changes of membership shall take effect from 1 January next following. Further arrangements for the election of members in class (b) shall be made by Ordinance.

2. The members of the General Board in class (d) shall be

- (i) the sabbatical officer of the University of Cambridge Students' Union with responsibility for matters concerning undergraduate education;
- (ii) the sabbatical officer of the University of Cambridge Students' Union with responsibility for matters concerning postgraduate education.

The members in class (d) shall serve for one year from the commencement of their term of office as sabbatical officers of the Union. If the member in category (i) of class (d) or the member in category (ii) of class (d) ceases to be a sabbatical officer of the Union, that member's seat shall thereupon become vacant.

3. These Schools are established by this Special Ordinance. They comprise the following faculties (and the departments contained in them) and other institutions, which are assigned by Ordinance:

ARTS AND HUMANITIES: Faculties of Architecture and History of Art, of Asian and Middle Eastern Studies, of Classics, of Divinity, of English, of Modern and Medieval Languages and Linguistics, of Music, and of Philosophy, the Centre for Research in the Arts, Social Sciences, and Humanities, and the Language Centre.

HUMANITIES AND SOCIAL SCIENCES: Faculties of Economics, of Education, of History, of Human, Social, and Political Science, and of Law, the Departments of History and Philosophy of Science and of Land Economy.

BIOLOGICAL SCIENCES: Faculties of Biology, and of Veterinary Medicine, the Wellcome Trust/Cancer Research UK Gurdon Institute, and the Sainsbury Laboratory.

CLINICAL MEDICINE: Faculty of Clinical Medicine.

PHYSICAL SCIENCES: Faculties of Earth Sciences and Geography, of Mathematics, and of Physics and Chemistry, and the Isaac Newton Institute for Mathematical Sciences.

TECHNOLOGY: Faculties of Business and Management, of Computer Science and Technology, and of Engineering, the Department of Chemical Engineering and Biotechnology, and the University of Cambridge Institute for Sustainability Leadership.

SPECIAL ORDINANCE A (vii):

Boards and Syndicates (Special Ordinance under Statute A VI 1(a))

Amended by Grace 1 of 31 March 2021

The following Boards and Syndicates are established by this Special Ordinance. The composition and responsibilities of each are to be determined by Ordinance:

- (i) Fitzwilliam Museum Syndicate;
- (ii) Library Syndicate.

SPECIAL ORDINANCE A (viii):
University bodies; miscellaneous provisions; delegation
 (Special Ordinance under Statute A X 8)

Amended by Grace 4 of 12 January 2022

1. Whenever in any Statute or Ordinance provision is made for the election or appointment of members of any Board, Syndicate, or other body, in such case unless it is otherwise expressly provided by Statute or Ordinance as the case may be

- (a) a retiring member shall, if in all respects qualified, be able to be re-elected or reappointed;
- (b) any casual vacancy shall be filled by the election or appointment of a member to serve for the unexpired portion of the period of service of his or her predecessor; such an election or appointment shall be made in accordance with the provisions of any Statute or Ordinance prescribing arrangements for elections or appointments to the body concerned, provided that the University or the General Board, as appropriate, may make Ordinances, or regulations, respectively, permitting the filling of a casual vacancy by co-optation.

2. The University may make Ordinances in pursuance of which a member of the Council, of any Board, Syndicate, or Committee, or of the Council of a School, shall, if not a member *ex officio*, vacate his or her membership on account of failure to attend meetings.

3. The University may by Ordinance make regulations as to the number of members which shall constitute a quorum, as to the majority necessary for the decision of certain questions, and for the procedure of every University body generally, and subject thereto the body may itself make such regulations. Subject to any Ordinance and to any regulation made by the body, elections or decisions shall be made by a majority of the members present and voting, but only if there is a quorum; provided that the Chair of a meeting shall be entitled when there is an equality of votes to give a second or casting vote. Unless expressly excluded in Statute or Ordinance or in regulations made by the University body concerned, members shall be permitted to participate in a meeting by any means of communication which permits all members simultaneously to hear one another; if the participation of members by such means is permitted, those members shall be counted as present, including for the purposes of determining their entitlement to vote and whether the meeting is quorate. When there is not present at a meeting the Chair of the body, or any person otherwise entitled to preside, the members present shall appoint a chair of the meeting.

4. A University body may appoint committees for any such general or special business as in the opinion of the body may be better regulated or managed by means of a committee, and may delegate to any committee so appointed, or to any University officer, with or without restrictions or conditions, the exercise of any functions proper to the body, provided that

- (a) such delegation shall not relieve the delegating body of responsibility for the matter delegated;
- (b) members of the delegating body shall have the right of access to all papers considered by such committees or persons;
- (c) subject to any contrary provision of Statutes or Ordinances, such delegation shall not extend
 - (i) to any election or appointment to a University office,
 - (ii) to any decision of a University court or disciplinary panel established by Statute D II;
 - (iii) to any resolution concerning the award of a degree, diploma, certificate, or other qualification;
 - or
 - (iv) to any other matter specified by Ordinance; and
- (d) such delegation may be withdrawn (either generally or in respect of a specific matter) at any time.

5. No registered student nor sabbatical officer of a student union recognized by the University shall be present, whether as a member or otherwise, at a meeting of any body constituted in the University by Statute, or of any other body appointed by such a statutory body, for the discussion of, or decision on, any matter which the Chair of the meeting declares to be reserved. The following matters shall be reserved:

- (i) the employment or promotion, or any matter relating to the employment or promotion, of individuals by the University;
- (ii) the admission and academic assessment of individuals;
- (iii) such other matters as may be specified by Statute or Ordinance in respect of any particular body or class of bodies; and

(iv) any other matter at the discretion of the Chair; provided that none of the provisions of this section shall apply to meetings of the Regent House for discussion, to Congregations of the Regent House, to meetings of any court or disciplinary panel constituted by or under Statute D, or to meetings of the advisory committee proposing a list of persons for consideration by the Council prior to making a nomination for appointment by Grace to the office of Vice-Chancellor.

Service as a member of a Board, Syndicate, or other body shall be deemed not to be employment for the purpose of (i) above; nevertheless, appointments, nominations for appointment, or co-optations of persons to serve as members of Boards, Syndicates, or other bodies may be reserved under (iii) or (iv) above.

In any case of doubt, the Chair shall decide whether an item of business is reserved and the Chair's decision shall be final. No registered student nor sabbatical officer of a student union recognized by the University shall receive papers relating to any item of reserved business, except that members of any body constituted by Statute, or of any body appointed by such a statutory body, who are a registered student or sabbatical officer of a student union recognized by the University may, if the statutory body so decides, receive minutes of the decisions taken on reserved business.

6. In any Ordinance or Regulation the term 'external member' shall mean any person who at the time of appointment is not qualified to be a member of the Regent House except under Special Ordinance A (i) (a)(ii) nor is an employee of the University or any of its companies or a College.

SPECIAL ORDINANCE A (ix):

Application of bond proceeds arising from the authority granted by Grace 2 of 10 May 2018

1. By Grace 2 of 10 May 2018, the Regent House gave the Council authority to arrange external finance for income-generating projects up to a total amount of £600m. Pursuant to such authority, two bonds (the Bond) were issued in June 2018 by the University in the total sum of £600m (the Bond proceeds). One of these bonds has a fixed-rate coupon and the other a coupon that is linked to the Consumer Price Index.

2. Income-generating projects shall comprise strategic investment opportunities which are expected to generate a positive return on investment in the form of interest, dividends or capital gains (Projects).

3. Projects will be eligible to receive funds arising from the Bond proceeds if, in the opinion of the Council on the advice of its Finance Committee, they:

- (a) form part of the non-operational estate or involve departments within the University engaged in trading activities or parties connected to the University;
- (b) are income-generating including through interest, dividends or realised capital gains with a confidence in the associated cash inflows to a level that is appropriate to the risk of the investment;
- (c) are expected to meet appropriate thresholds of commerciality, delivering either:
 - (i) the same or greater returns (after transaction costs) as projects in the external market that are comparable in their risk and return profile, with a minimum return of 2.35% (being the coupon on the fixed-rate bond issued in 2018); or
 - (ii) a limited reduction to such returns that is expressly identified and justified on strategic grounds and approved as such by the Council;
- (d) have a well-defined and stress-tested business case;
- (e) have clarity of responsibilities, appropriate resourcing, and well-defined governance, monitoring, and reporting arrangements; and
- (f) are consistent with the reasonable expectation that the income generated by the portfolio of all Projects (actual or prospective), taken with the return on investment of Bond proceeds pending their investment in Projects, will:
 - (i) meet the interest and repayment liabilities of the Bond under reasonable downside scenarios; and
 - (ii) deliver a cash return (a) over and above that required to meet the interest and capital repayment requirements of the Bond under a reasonable base case scenario, and (b) consistent with the overall investment risk of the portfolio (taking into account any limited reduction in a Project's return consistent with paragraph (c)(ii) of this section).

4. In advance of investment in Projects in accordance with this Special Ordinance, Bond proceeds will be invested in a range of financial assets which, in the opinion of Finance Committee, offer in

aggregate an appropriate balance of risk and return which is consistent with realisation of those investments in accordance with the anticipated timeframes for investment in potential Projects.

5. Projects and financial assets in which the Bond proceeds are invested will be monitored under the existing processes for the review and oversight of capital and other projects, with regular reports on the use of the Bond proceeds provided to the Finance Committee.

Extract from the confirmed minutes of the Council meeting held on 20 March 2023

793. **Draft Response to the Discussion Remarks Relating to the Employer Justified Retirement Age** (Paper No. 20.03.23.C4)

The Chair of the Business Committee reported that three speakers at a recent Discussion relating to the topic of concern on forced retirement had requested that the operation of the Employer Justified Retirement Age (EJRA) be suspended, pending the outcome of the review of the University's EJRA and Retirement Policy. He noted that the Council had received a draft response to the Discussion comments via its Business Committee. The response had been referred to the full Council for consideration due to the proposed inclusion of a statement that the Council believed that it would be premature to suspend the operation of the EJRA before the Review Group had consulted with the wider University community and completed its review.

Members noted that the rationale for this statement was that suspending the EJRA would pre-empt the work of the Review Group, substantially undermine the justification for the Policy and place the University at risk of acting unfairly in respect of those employees who were nearing retirement age. It was also not within the power of the Council to suspend the EJRA: to do so the Council and the General Board would need to publish a Report, followed by a Discussion and a Grace. The timeline for this would cut across the work of the Review Group.

The Acting Vice-Chancellor noted that some members of the Council had received correspondence from a member of the Regent House which referred to the judgment of a recent employment tribunal involving the University of Oxford and suggested that there was a risk of reputational damage should the University not suspend its EJRA. Members noted that the judgments of such tribunals were only binding between the parties concerned. The correspondence also claimed that during the pandemic some staff had not been given two years' notice of forced retirement, as required by the University's Retirement Policy. The Pro-Vice-Chancellor (University Community and Engagement) agreed to investigate this claim. He also agreed to explore whether the exceptions permitted under the existing Policy could be described more clearly.

Members noted that the General Board, for its part, had endorsed the draft response at its meeting on 15 March. By a majority vote, the Council **approved** the response to the Discussion remarks for publication in the *Reporter*.

University of Cambridge

THE COUNCIL

The Employer Justified Retirement Age

Summary: At its last meeting the Council approved the membership and terms of reference for a Review Group, which will review the operation of the University's Employer Justified Retirement Age (EJRA) and its Retirement Policy. This Group is due to report to the General Board and the Council during Michaelmas Term 2023.

At a Discussion on 24 January 2023 relating to the topic of concern on forced retirement (*Reporter*, 2022-23; [6679, p.180](#); [6685, p.304](#)), three speakers requested that the operation of the EJRA be suspended pending the outcome of the aforementioned review. The Council received a draft response to the Discussion comments via its Business Committee. At the request of a Council member, the draft has been referred to the meeting for consideration (Annex A).

The proposed draft response states that the Council believes that it would be premature to suspend the operation of the EJRA before the review is complete and the Review Group has consulted with the wider University community. This is because suspending the EJRA would pre-empt the work of the Review Group. It is also not within the power of the Council to suspend the EJRA. In order to suspend the age limit applicable to University officers as set out [Section 12 of Special Ordinance C\(ii\)](#) the Council and the General Board would need to publish a Report, followed by a Discussion and a Grace. The timeline for this would also cut across the work of the Review Group.

External legal advisors have prepared advice on the implications of suspending the EJRA pending the outcome of the Review. This is provided to Council members only as Annex B: as it is legally privileged it must be treated as highly confidential.

The General Board, for its part, will be asked to endorse the draft response at its meeting on 15 March; its view will be shared with the Council on 20 March.

Action requested of the Council: the Council is asked to **approve** the response to the Discussion remarks.

Previous decisions/decisions taken by sub-committees:

| Committee | Reason why the matter was considered | Decision | Date | Papers (hyperlinks) |
|-----------|--|---------------------------------------|------------|-----------------------------------|
| Council | Draft terms of reference for the Review Group | Approved | 20.02.2023 | Paper 23.02.20 C3 |
| HRC | Asked to confirm the launch of the normal annual retirements exercise, notwithstanding the review of the Retirement Policy | Confirmed | 02.02.2023 | Minute 2402/23.d |
| HRC | Timing of the review of the Retirement Policy and EJRA | Agreed to undertake review in 2022-23 | 20.10.2022 | Minutes |

Next steps: If the response is approved by the Council it will be published at the first opportunity after the meeting.

Originating office/body: The Legal Services Division.

Annex:

Annex A: Draft response to the Discussion remarks

Annex B: Legal advice (nb. this Annex will follow later and will only be available to Trustees)

Topic of concern to the University on forced retirement: Notice in response to Discussion remarks

[20 March 2023]

The Council has considered the remarks made at the Discussion on 24 January 2023 relating to the topic of concern on forced retirement (*Reporter*, 2022–23; [6679, p. 180](#); [6685, p. 304](#)). It has consulted with the General Board in preparing this response.

The Council is grateful to the contributors to this Discussion for sharing their views on this subject, including Professor Kamal Munir (Pro-Vice-Chancellor for University Community and Engagement) who explained the history of the University's current approach to retirement and the purpose of the proposed review. The Council agrees with the signatories of the request for this topic of concern that there should be a thorough debate on whether the University's current Retirement Policy remains fit for purpose, and that the widest possible range of opinions should be heard. That is why it has already agreed to carry out a review of the Policy in 2023, which will involve University-wide consultation (see below).

Some key themes have emerged in the remarks made, which raise important points for the review group to consider as part of its review and are summarised below. The Council does not wish to respond to individual comments at this stage, as to do so could pre-empt the work of the review group. It has asked that the Discussion remarks be provided to the group, so that they can be considered alongside other views gathered during consultation.

However, there is one point to which the Council is providing a reply. In their remarks, Professors Anderson and Gay and Mr Haynes requested that the operation of the Employer Justified Retirement Age be suspended pending the outcome of this review. The Council believes that it would be premature to do this before the review is complete and the review group has had the opportunity to consult with the wider University community. The Council also agreed at its meeting on 20 February 2023 that the review should consider issues relating to diversity and the gender pay gap as part of its deliberations about whether the EJRA had enabled effective succession planning.

Background

To provide some context to this matter, it is necessary to provide a short summary of recent history concerning retirement policy nationally and at Cambridge. The government phased out default retirement ages between 6 April and 1 October 2011, after which employers could retain a default retirement age, provided this could be objectively justified as a proportionate means of achieving a legitimate aim (referred to as an Employer Justified Retirement Age or EJRA).

At the time that these legislative changes were proposed, the University operated a compulsory retirement age for all University officers (with certain specified exemptions) which was at the end of the academic year in which they reached 67. It also operated a compulsory retirement age for all other staff categories at the end of the academic year in which they reached 65.

After extensive consultation with the University community and careful analysis by an academic-led working group, set up in 2010¹, the General Board and the Council agreed² that an EJRA was properly justified for University officers (with certain specified

¹ [Reporter, 6209, 2010–11.](#)

² [Reporter, 6222, 2010–11;](#) [Reporter, 6249, 2011–12, p. 347.](#)

exemptions³) at the end of the academic year in which they reach the age of 67. This was for reasons of intergenerational fairness and career progression; innovation in research and knowledge creation; the preservation of academic freedom and autonomy (by providing a means of ending employment at a specific point without the need for career-long performance management processes); and equality and diversity. However, there should be a process to apply to continue working after that age. The General Board and the Council were not satisfied that there was a case for maintaining a compulsory retirement age for other staff categories and recommended that this should be removed.²

These recommendations were subject to extensive discussion⁴ and received support in a ballot of the Regent House⁵, which attracted a majority in favour (1,390 in favour of the Grace, 300 against)⁶.

A further academic-led review in 2015–16⁷ concluded that the EJRA for University officers should remain at 67⁸. The aims were revised to remove that of equality and diversity and to include the aim of enabling succession-planning.

Review in 2023

The Council has committed to a review of the University's approach to retirement, to commence in 2023. Consistent with the approach taken in previous years, this will be an academic-led review group, guided by available data, and involve University-wide consultation.

The Council is mindful of the strength of feeling around this matter and the importance of achieving a fair and balanced outcome. The role of the review group will be:

- i. to review the operation of the EJRA to determine whether it has been successful in meeting its [aims](#); and
- ii. to review the terms of the University's current [Retirement Policy](#) to establish whether they remain fit for purpose.

As part of its work, the review group will consider in detail the rationale for the aims and the implications for different age groups of potentially removing, retaining or revising the existing EJRA.

The review group will publish the data on which it bases its findings, broken down by age, gender and ethnicity where available, together with an impact assessment of its proposals.

³ Excluding the Chancellor, the High Steward, the Deputy High Steward, the Commissary and any University officer who is exempted under any Statute or Special Ordinance from the provisions of Special Ordinance C (ii) 12.

⁴ [Reporter, 6226, 2010–11, p. 862](#); [Reporter, 6253, 2011–12, p. 431](#).

⁵ [Reporter, 6256, 2011–12, p. 465](#); [Reporter, 6264, 2011–12, p. 577](#).

⁶ [Reporter, 6264, 2011–12, p. 568](#).

⁷ [Reporter, 6390, 2014–15, p. 616](#).

⁸ [Reporter, 6435, 2016–17, p. 2](#).

Summary of views from the Discussion on 24 January 2023

Arguments against the EJRA

A number of speakers were of the view that the EJRA should be removed or raised substantially.

Several speakers (Professors Anderson, Goswami, Kramer, Robbins, Baron-Cohen, Coyle, Gross, Everitt, Crowcroft, Humphreys; Dr Szuba; and Mr Haynes) raised concerns that the EJRA puts the University at a competitive and commercial disadvantage when compared with other universities in the UK and abroad that do not have an EJRA. They made the following points:

- Some speakers who wished to work beyond the EJRA described their experience of being prevented from applying for research grants if these were due to run past their scheduled retirement date, ruling them out for prestigious grants or from leading projects, thereby putting at risk the employment of their research teams and depriving the University of significant output.
- Research funders can be reluctant to entrust research projects to less experienced colleagues leading to a potential loss of grants.
- Some speakers had experienced that work of significance could not be attributed to the University for REF purposes as they were unsalaried Emeritus Professors.
- That there are difficulties in attracting and retaining “top” scholars who may be lost to industry or other universities in the UK and abroad on account of the EJRA.
- Professors Bourke, Robbins, Robinson and Abulafia and Dr Biagini highlighted the other ways in which senior academics contribute to the life of their faculties, which are lost on retirement, namely their experience and contribution to teaching, marking, recruitment, outreach activities and the mentoring of early career researchers and junior academics.
- The fact that some of the most significant pieces of research can be realised later in life in some fields, for instance in the Humanities and Social Sciences.

Professors Goswami, Bourke, Abulafia and Evans questioned the effectiveness of the EJRA in achieving intergenerational fairness and enabling career progression for younger scholars to tenured posts. Professor Evans pointed to the increase in unestablished appointments, which offer far more numerous opportunities for employment. Professor Evans also advocated for the establishment of personal professorships for named individuals.

Professors Kramer, Coyle, Gay and Bourke called into question whether large numbers of academics would choose to stay beyond 67 if permitted, and were of the view that if they did, this would be for two or three years at most. Professor Bourke spoke of his experience at universities in London where academics over 67 years of age tended to move to fractional contracts, thereby releasing funds for junior posts.

Professors Gay and Gross and Dr Good and Mr Goode spoke of the discriminatory impact on individuals and the disabling effect on senior academics as they approach the retirement age. Professor Abulafia advocated for a more gradual slide into retirement and more engagement with Emeritus Professors post-retirement. Professors Gross, Anderson and Robinson pointed to the difficulties in making a case to work beyond the retirement age under the University’s Retirement Policy and that only one extension is permitted.

Professors Oosthuizen and Sahakian drew attention to the disproportionate impact of the EJRA on female academics, many of whom will have had one or more periods of maternity leave and/or part-time working during their careers but must still retire at 67.

Professors Baron-Cohen and Coyle questioned whether the EJRA had increased diversity as originally intended and Professor Coyle was of the view that it may even have prevented the University from pursuing genuinely effective diversity policies.

Professor Gross spoke of the degradation of USS benefits meaning that having the choice as to when to retire has become more important than ever. Professor Biagini spoke of increases in life expectancy and Professor Haynes pointed to the UK's aging population and falling birth rates and consequent challenges for recruitment and retention. Professor Kramer referred to the decline in the number of people above the age of 55 in employment precipitated by the COVID pandemic.

Professor Kramer was of the view that a compulsory retirement age should not be an alternative to fair and consistent performance management and that the main components of an adequate system of performance management for academics are already in place at the University, should that be considered a prerequisite for abolishing the EJRA.

Professor Cates supported removing the EJRA but advised caution. Whilst world-class research-active academics should be permitted to continue to work beyond the EJRA, removing the EJRA might discourage less productive academics from vacating their positions, without some form of regular and formal assessment of their contributions.

Arguments put forward to retain the EJRA

A number of academics spoke in favour of the EJRA in the interests of the wider University community (Dr Holmes, and Professors Guest, Spencer and Stajano), giving the following reasons:

- To promote intergenerational fairness by opening up opportunities for others to blossom out of the shadow of senior colleagues.
- A concern that, were the EJRA removed, senior staff would monopolise finite research grants.
- A concern that removing the EJRA would affect the turnover of academic staff and the University's ability to recruit excellent younger academics, thereby damaging the reputation of the University.
- That the impact of a fixed retirement age is offset by the freedom from 'managerialism' enjoyed by Cambridge academics, including from regular structured career-long performance assessments.
- There is already provision under the University's Retirement Policy to continue working beyond the retirement age where appropriate. Otherwise, retired academics may continue to offer College supervisions and enjoy continued access to University resources.

Dr Holmes was of the opinion that in order to recruit the best early career independent principal investigators, the University must be able to offer a real prospect of a tenured position in all academic disciplines and he pointed to difficulties in recruiting to fixed-term research posts, but not generally to faculty positions. Dr Holmes was not convinced that removing the EJRA would have an insignificant impact on turnover as argued by other

speakers, pointing to local factors such as lower teaching loads at the University, compared with elsewhere.

Whilst defending the EJRA, Dr Holmes pointed to improvements that could be made to its operation; that the University should not place unreasonable barriers in the way of staff wishing to carry on either in a voluntary capacity or as unestablished investigators on external funding; and that the age at which the EJRA should operate requires periodic review.

Dr Holmes and Professor Stajano were both of the view that restoring USS benefits to acceptable levels would be vital to accepting the continuance of an EJRA.

REPORT OF DISCUSSION**Tuesday, 24 January 2023**

A Discussion was held by videoconference. Deputy Vice-Chancellor Professor Johan van de Ven, *CTH*, was presiding, with the Registry's deputy, the Senior Proctor, the Senior Pro-Proctor and fifty other persons present.

The following item was discussed:

Topic of Concern to the University: Forced retirement

(*Reporter*, 6679, 2022–23, p. 180).

Professor R. J. ANDERSON (Department of Computer Science and Technology and Churchill College):

Deputy Vice-Chancellor, in 2010, the Equality Act outlawed discrimination on the grounds of a protected characteristic such as age, disability, race, sex, religious belief or sexual orientation, except as a proportionate means of achieving a legitimate aim. This allowed an 'Employer Justified Retirement Age' or EJRA, intended for firms like airlines which sack pilots at 60 when they lose their licenses.

Oxford and Cambridge were the only universities in England to introduce an EJRA for academic staff. Our scheme was intended by the then Registry to give us a few years' breathing space to deliberate a career-long performance management system; we rejected that, but the EJRA stuck. It was copied by Oxford, and justified at both places with claims that it would increase gender equality, promote inter-generational fairness, produce career opportunities for younger academics and improve the age structure of the workforce. Cambridge added innovation and academic freedom to the list of excuses, and pivoted to push the EJRA as the only alternative to career-long performance management. After a consultation in May 2011 and a Report in December 2011, there was a Discussion in January 2012, after which a majority of us voted for the policy.

When the EJRA was reviewed in 2016, I was an elected member of the Council. We were assured that academics who wanted to stay on – and could raise money to pay their salaries – would be able to continue as contract staff. But academics soon started finding that we were not allowed to apply for research grants or contracts that would run past our scheduled retirement date. In my case, I wanted to apply in 2018 to renew a five-year grant from EPSRC for the Cambridge Cybercrime Centre, which supports half a dozen postdocs and research students and collects data used by over 150 researchers at over fifty universities worldwide who investigate online wickedness. Despite the assurances given to the Council, I was not allowed to apply for a grant for 2020–25 as I was due to retire in 2023. We now hear that the University had obtained a legal opinion that the EJRA was dubious in law, and the fewer exceptions were allowed, the easier it might be to defend.

In Oxford, the physics professor Paul Ewart duly took a case to the Employment Tribunal, winning compensation and an order for reinstatement. His victory was based on a statistical analysis that compared Oxford and Cambridge with 21 other Russell Group universities. It concluded that the data showed no evidence of any benefit from forced retirement – and on gender equality, Oxford and Cambridge had actually done worse. That analysis is now online at <https://www.freecambridge.org>. Oxford reacted to the case by restricting forced retirement to senior Professors and raising the retiring age. What should Cambridge do?

The Equality Act 2010 prohibits discrimination based on any of nine protected characteristics. Cambridge now speaks out against discrimination based on eight of them, but still discriminates against its employees based on age. What is more, whenever the current excuses for the EJRA are debunked, new ones are substituted. This requires the University to maintain, develop and extend an ageist narrative, just as the empires of past centuries sustained racist narratives. In that sense, the EJRA is morally corrosive.

The EJRA also places Cambridge at a competitive disadvantage as we lose many of our highest income and research generators. As well as those who leave at 67, others go elsewhere in their early 60s once they cannot apply for grants, while yet others mark time, winding down before they want or need to.

So our retirement policy is not only unlawful and immoral, but commercially foolish. What sensible business would sack thirty of its top sales executives every September?

I therefore selected fifty Professors at random and contacted them. About two-thirds want the EJRA abolished, and one quarter want substantial reform, such as setting the retirement age to 75 – the same as for judges, as one law Professor put it. Only one supported the status quo. In the process I heard many tales of research groups broken up, of stars lost to competitors and of bureaucratic incompetence. Other speakers will tell their own stories.

We must not forget our academic-related colleagues. Given the difficulty of hiring good people on University salaries, it makes no sense to sack loyal, long-serving lab technicians and computer officers for the sin of being 67, when they are willing and able to continue. It would be hard to replace some of them even at double the salary. Even Oxford has stopped sacking anyone other than senior Professors for being old.

It is past time for the Council to produce a Report with a proposal to abolish the EJRA. For now, the Old Schools seem to be following their standard Fabian tactics. A working group has been set up, we are told, that will report to the HR Committee and perhaps we will have a Report some year real soon now.

However, it is unlawful to sack someone unless for a fair reason and following a fair process. The excuses advanced from time to time to support the EJRA do not amount to a fair reason, and we hope that the Employment Tribunal will find so in March in a case brought by a further four Oxford Professors. However, as Oxford's new VC was once responsible for the EJRA, she may appeal and delay a definitive court judgment for years.

Here in Cambridge, our retirement policy provides at section 4.2 that staff must be invited to a meeting with their Head of Department or Institution two years in advance of forced retirement so that the options can be discussed. Although we do have a process for delaying retirement, it has been made complicated and time is needed to prepare a case. I should have been called in for such a meeting no later than September 2021, but I was not. I have since discovered that 66-year-olds in other Departments and Non-School Institutions are in the same position, as is a former member of staff who was sacked at the start of October last year without being consulted in September 2020.

In consequence, an employment lawyer assures me that should the University sack me this September, I will have a case at the Employment Tribunal for reinstatement and compensation. It would be folly for the University to conduct a mass, unlawful sacking in the full glare of the

current press interest. The resulting conflict would also blight our incoming Vice-Chancellor's tenure of office just as the Intellectual Property policy conflict blighted that of Professor Dame Alison Richard.

I therefore ask the Council, first, for a moratorium on sackings under the EJRA until the Regent House has had time to consider and vote on the abolition or replacement of this unfortunate policy; and second, to instruct the Research Office that staff eligible to apply for research grants must be allowed to do so forthwith regardless of any retirement dates.

To those who ask what sort of retirement policy we will have after the EJRA, the simple answer is none. Vice-Chancellors of other universities with whom I've discussed this don't see the need, as they don't experience retirement as a problem.

Finally, if the working group, the HR Committee and the Council seriously entertain any reform other than the complete abolition of the EJRA, then I call on them to provide this House with full data on how the EJRA has really operated so far, including the value of research grants and contracts won by staff over 60 broken down by age; early retirements from age 60–66 by staff who were previously effective fundraisers and their subsequent destination where known; how many exceptions are given per year, together with the proportion who were men in Grade 12 and whether these were more likely to get an extension than women or people on lower salary grades, and the proportion who were academic versus academic-related or administrative officers; and finally how many Professors and other senior staff have been hired with a confidential agreement that the EJRA would not apply to them.

Professor U. C. GOSWAMI (Department of Psychology and St John's College), read by Professor Anderson:

Deputy Vice-Chancellor, I am a female Professor aged 62 years, and I'm one of those members of the Regent House who previously voted in favour of the forced retirement motion. I believed that it prevented 'job blocking', that is the prevention of the election of new University Teaching Officers (UTOs) because older and inactive UTOs didn't retire. I still believe that it is important for Departments to be able to appoint young UTOs, but based on the evidence amassed by Professor Anderson, I no longer believe that forced retirement facilitates this process.

Now that other universities do not force the retirement of active older UTOs, Cambridge is at a clear competitive disadvantage by retaining this policy. I personally currently hold substantial grant funding, with grants running for six and eight years respectively. In 2022 my lab employed twelve young contract researchers. Yet due to my age I am now unable to apply for further long-term funds without a guarantee that I will be retained as contract staff. I have learned that I can only apply once for contract status, meaning that by age 70 my time is up. Yet at a recent conference in Stanford I discovered that the other two female keynote speakers were both aged 76 (one at Stanford, one at Washington). Both were horrified to hear that I can no longer apply for long-term funding because of Cambridge policies regarding my age. Given the Equality Act 2010, it is clearly wrong that Cambridge discriminates on the basis of age.

Professor K. A. MUNIR (Pro-Vice-Chancellor for University Community and Engagement, Chair of the HR Committee, and Homerton College):

Deputy Vice-Chancellor, when the Employment Equality (Age) Regulations were first introduced in 2006, employers were able to retire employees compulsorily at or over the default retirement age of 65, provided they followed a statutory retirement notification procedure.

The default retirement age was abolished in April 2011. Since then, employers have been able to operate a compulsory retirement age provided it can be objectively justified as a proportionate means of achieving a legitimate aim. This is called an Employer Justified Retirement Age or EJRA.

The University currently operates an EJRA for University Officers only, which is at the end of the academic year (30 September) in which the officer reaches the age of 67. This is contained within the University's Retirement Policy,¹ introduced in 2012.

The University does not operate a retirement age for assistant, unestablished research, unestablished academic-related and unestablished academic members of staff.

Since its introduction, the Retirement Policy was reviewed in 2015–16. That review concluded that the EJRA should be maintained at 67 for University Officers. A further substantive review was planned in 2019–20, but this work was postponed due to the Covid pandemic.

On 20 October 2022, the Human Resources Committee agreed that this review would now take place during the 2022–23 academic year, commencing in Lent Term 2023.

The HR Committee will propose a Retirement Policy and EJRA Review Group, which will be academic-led. It will review the terms of the current Retirement Policy and the operation of the EJRA to determine whether they remain fit for purpose. The Council and the General Board expect to publish the Review Group's terms of reference and membership in the *Reporter* by the end of Lent Term 2023.

The Review Group will seek the views of the University community on the current arrangements and any proposed changes, to ensure that feedback is sought from a spectrum of age groups and will report on its findings to the Council and General Board in the first instance.

¹ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy>

Professor R. BOURKE (Faculty of History and King's College):

Deputy Vice-Chancellor, I would like to add some information to this debate based on my own experience. Before coming to Cambridge, I worked at Queen Mary University of London. There we hired three post-retirement historians, two from Cambridge. Both went on to write very major works. They represented a substantial addition to the department in which I worked – in terms of teaching, recruitment and research. One explanation for this lies in the fact that, among outstanding historians, research dividends often come late in careers. In many cases, cumulative experience counts in favour of achievement.

My department in London expanded at the early- and mid-career ends of the profession. In fact, the main expansion happened among early-career academics. Moreover, this was the pattern across London generally: for instance, King's College London and University College London expanded dramatically during the same

period, mainly recruiting early-career historians. This can be seen from their online profiles today. These departments are still well balanced in terms of age. They are not, and have not been, gerontocratic in complexion. Nobody wanted or wants that.

Our experience in London was as follows: some historians retired early, most at the usual age, and some stayed in post beyond 65/67. The latter therefore made up a fairly small minority. Those who remained made very large contributions in terms of what I would call ‘moral leadership’. They also tended to go on fractional contracts – thereby releasing funds for junior posts. In addition, they had strong records of attracting outside funding. Those who wished to work beyond, say, 67 tended to be dynamic. That, I take it, is one reason why they kept going. ‘Dead wood’ might be a worry, but it did not apply in our case. Those who contributed least were in fact mid-career colleagues who had not fulfilled their promise. The most senior (in terms of age) never dominated departmental business: because they were fractional, they got on with their own research and teaching. Given the opportunities for new appointments, combined with the contributions of senior faculty in terms of prestige, inter-generational relations were harmonious. I believe this to be marginally less the case at Cambridge, which, for whatever reason, I have found to be more hierarchical, more conservative, and more trepidatious about new hires.

The main reason for imposing a compulsory retirement age at Cambridge was to increase opportunities for younger scholars. This was a noble ambition. The reverse has been the case. But this is less striking than the situation elsewhere: the retirement cap was lifted everywhere outside Oxbridge in England, and the result has not been *rigor mortis*. On the contrary, as my London examples show, the field was opened up to new talent.

Professor M. H. KRAMER (Faculty of Law and Churchill College):

Deputy Vice-Chancellor, although I very gratefully signed the request for a Discussion that was circulated by Professor Anderson, I respectfully disagree with a couple of the statements in that request. I did not believe in 2011 or 2012 that the retention of a mandatory retirement age by Cambridge was lawful. I argued sustainedly for a contrary view in the May 2011 and February 2012 Discussions. Likewise, I did not think in 2011 or 2012 that most universities would follow the lead of Cambridge and Oxford in trying to preserve a mandatory retirement age. I correctly predicted that very few if any universities would follow that lead.

At the time of the May 2011 and February 2012 Discussions on this matter, the paramount concern which animated most of the people who spoke in support of an EJRA – and which also animated most of the members of the Regent House who subsequently voted in favour of an EJRA – was the putative absence of a system of performance management that would supposedly be crucial if an EJRA were not in place. That concern was prominently expressed in some of the fly-sheets that were circulated for the subsequent vote on the EJRA by the Regent House. I addressed that concern at some length in the 2011 and 2012 Discussions.

For example, I pointed out that in January 2011 the Department of Business, Innovation and Skills (BIS), on behalf of the government, stated in its response to consultation about the 2011 Repeal of Retirement Age Amendment that ‘[t]he Government does not believe that

the [Default Retirement Age] should be used as an alternative to fair and consistent performance management.’ On behalf of the government, BIS simultaneously published a detailed cost/benefit justification of its position against a mandatory retirement age. These official documents make clear that one of the purposes of the 2011 Amendment to the 2010 Equality Act was to disallow the use of a mandatory retirement age as an alternative to an adequate system of performance management.

I also pointed out in 2011 that the main components of an adequate system of performance management for academics of all ages are already in place and operating in Cambridge: procedures for probation, procedures for promotion, procedures for inclusion in the REF, and course-evaluation forms. Although those components might need to be tweaked slightly, they are familiar and of long standing. They obviate the need for any new system that would be heavy-handedly managerial.

Another concern invoked by the supporters of the retention of a mandatory retirement age in 2011 and 2012 was the possibility that large numbers of senior academics would stay in their positions well beyond the age of 67 if the mandatory retirement age were to be eliminated. As all or nearly all participants in this Discussion will be aware, that concern figured saliently in Oxford University’s unsuccessful effort to defend itself against litigation pursued by Professor Paul Ewart. Ewart triumphed against Oxford in large part because he adduced statistical evidence to show that the effect of the retention of a mandatory retirement age on the availability of academic positions at Oxford for younger scholars was trivial. Oxford adduced no satisfactory countervailing evidence, just as Cambridge has heretofore not.

In the 2011 and 2012 Discussions, I impugned the notion that large numbers of Cambridge academics would remain in their positions for substantial periods of time after reaching the currently mandatory retirement age. I pointed to data from the United States, where the mandatory retirement age for academics (and many others) was eliminated in the early 1990s. Across the American university sector as a whole, the percentage of academics staying in their positions past the previously mandatory retirement age of 70 has been slightly under 2%. Since those earlier Discussions, nearly all universities in this country have similarly operated without any mandatory retirement age for academics. There should be ample data pertaining to the proportion of academics at those UK universities who have remained in their positions past the previously mandatory retirement age, and there should be data pertaining to the effects on the availability of entry-level positions for younger academics. If Cambridge University’s administrators believe that their rationale for the retention of a mandatory retirement age is bolstered by those data, then they should present the relevant findings. So far, no such findings have been adduced in support of the University’s position. The data which I have seen are contrary to that position.

Though I have made quite a few other points in my contributions to the 2011 and 2012 Discussions, I will close here with two observations that pertain specifically to our current circumstances. First, at a time when the sluggishness of the national economy is due in part to the substantial decline in the number of people above the age of 55 who are in employment – a decline which was largely precipitated by the Covid pandemic but which has persisted thereafter – the University is operating quite curiously by insisting on excluding academics from employment after they have reached a certain age.

Second, there is no doubt that the retention of a mandatory retirement age has impaired the international competitiveness of Cambridge and Oxford. It has been one significant factor behind the great difficulty encountered by Oxford in filling its endowed Chairs within my main areas of philosophy (political, legal, and moral philosophy). When I unsuccessfully sought last year to encourage a couple of eminent American legal philosophers to apply for the Chair in legal philosophy that was being advertised by Oxford, each of them independently referred to the mandatory retirement age as a major reason for not applying. One of them mentioned that he would probably want to retire at the specified age but that he took exception to the prospect of being forced out if his inclinations were to change. If the administrators at Oxford and Cambridge are endeavouring to change each of those institutions from a leading global university to a regional university, then the retention of a mandatory retirement age is an apt technique for the furtherance of such a perverse aim.

Professor T. W. ROBBINS (Department of Psychology and Downing College):

Deputy Vice-Chancellor, I retired at age 67 in October 2017, vacating then the Chair of experimental psychology and Head of Department posts, but was subsequently employed at 70% FTE until 2020 as an Academic Lead for REF2021 in the School of Biology. I have been treated reasonably well by both Department and College since retirement and am financially solvent through my USS pension (rather fortunately in view of current trends). However, my criticism of the EJRA is not primarily addressed at personal financial concern so much as its possible detrimental impact on the University.

First, I think it has prevented some crowning achievements that might have resulted from the cumulation of highly successful lines of research. In my case, I regret not being allowed by the University to apply to renew my five-year Wellcome Trust Investigator Grant (£3m) as the sole Principal Investigator (PI) for the full period of five years. I was only permitted in 2021 to submit an application for the disadvantageous period of three years and only as a co-PI, which were major reasons cited by the Trust for its rejection. I still fail to see why this application was limited by this University to three years only. The previous Investigator grant, which has led to some quite highly cited work, only finally ended on 30 September 2022.

Second, the University has nevertheless benefited from my loyal and unsalaried contributions in several ways, although not to the maximal extent. Since 2021 I have formulated and applied successfully (as a 'co-Investigator') for three other grants to various organisations for funds totalling over £1m and employing three individuals (two postdocs). I have also been contributing significantly for several years to a strategically important Cambridge–Singapore major collaborative award involving the Cambridge Centre for Advanced Research and Education (CARES), devoting an average of approximately one day a week to this in the last two years. However, as a co-Investigator with no University contract, I can make no formal managerial contribution to these projects, and, in the case of CARES, not help to fulfil a mandatory residential requirement of the University for this research programme (despite travelling twice to Singapore on request to present to Review Committees). I understand that being a co-Investigator doesn't even qualify you to be an unsalaried Director of Research.

I have published about 180 articles (according to the Web of Science) since the age of 67 (about 20% of my lifetime output) and I remain in some citation lists at the top internationally in my fields of Psychology and Neuroscience. Although not wanting to blow my own trumpet, I do wish the University was better able to take credit for these reputational esteem markers. Publications based on my previously funded work are still appearing but will be a waste for future possible University REF submissions, as many of them will not include HEFCE-funded individuals. My William James Fellow award (2021) from the (prestigious) Association of Psychological Sciences presumably will also not figure as a mark of institutional esteem in the next REF.

I am frequently invited to give research lectures, apply to major funding schemes and supervise Ph.D. applicants, many of which I have to decline – and so often nominate younger faculty colleagues in my place to take advantage of these opportunities (which they may otherwise not have). I do continue to advise (and effectively supervise) some Ph.D. candidates (six graduating in the last two years) and several young postdoctoral fellows. I have marked undergraduate dissertations and research projects and helped to organise a regular graduate seminar. I consult for Cambridge Enterprise. So far as I can assess, I am not obstructing other individuals' research or opportunities by using their resources or space.

Hence, I think this contribution to University scholarship, research and mentorship would have made some case for continuing appointment beyond the age of 67, at an appropriate level. Overall, given the examples and experiences of many distinguished retired colleagues, I believe the practice of the EJRA in Cambridge to be anomalous, institutionally damaging (in both the material and reputational sense), disrespectful and discriminatory.

Professor M. S. ROBINSON (Department of Clinical Biochemistry):

Deputy Vice-Chancellor, I have more anecdotal things to say. I am 71. I officially retired at the age of 67 and I did everything I was supposed to in terms of asking to stay on. I said I would not get a salary and it was contingent on my getting a five-year Investigator award from the Wellcome Trust. Both of these were successful, so that's all very well.

But the clock is ticking. I have less than a year and a half on my Investigator award and I will not be able to apply for another grant under the current rules because only one extension is allowed. I get no salary and I've deliberately downsized my lab because I do feel that the younger people should be the ones getting the best students and expanding, but I do need the use of a lab to continue to do original research. So I'm not depriving anybody else of anything. In fact in my Institute, the Cambridge Institute for Medical Research, the junior scientists and academics really wanted me and a couple of other academics in the same sort of category to stay on because we're so useful: we've got experience; we can advise them; we read their manuscripts; we are always open for discussion. So that's one positive thing.

Another positive thing is that for the last couple of years in particular, I've been taking part in several volunteer schemes aimed at talented young A-level and university students from disadvantaged backgrounds to help them either get into a good university or possibly have a career in research. This has included having these young people spend anywhere from one to eight weeks in my lab. But

after a year and a half, I won't have a lab anymore. I won't be able to take part in this kind of volunteer project, introducing young people to hands-on research.

I was just using myself as an example and I'm hardly unique, but I think the problem is that you could be doing your best work ever, you can tick all the boxes of people who are underrepresented, you could be doing a fantastic job for the community at large, and yet you're still booted out at a particular age. Whereas it used to be possible to apply for another extension, this is no longer possible. So I'm out for good and I just feel this is wrong for all of us.

Professor S. BARON-COHEN (Department of Psychiatry and Trinity College):

Deputy Vice-Chancellor, Professor Anderson has mentioned that the EJRA has failed to meet its goals of increasing diversity and so is no longer a justified exception to the Equality Act. I want to focus on the fact that forced retirement on the grounds of age is discrimination and is no different to any other form of discrimination. As Professor Anderson mentioned, there are nine 'protected characteristics' under the Equality Act. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. All of the nine characteristics, including age, need protection from discrimination.

I spend much of my working life doing outreach, talking about neurodiversity and the need to ensure that work places and educational institutions do not discriminate against people with disabilities, including autistic people. For example, I gave the keynote speech at the United Nations in New York in 2017 on the topic of *Autism and Human Rights*, documenting how autistic people are being discriminated against in almost all parts of society. I do this human rights work because I believe we should strive to achieve a society based on equality, diversity and inclusion. So I find it indefensible, contradictory and embarrassing that although Cambridge University says it believes in equality, diversity and inclusion, it actually discriminates against people based on their age.

We have multiple performance measures, such as the REF and the appraisal system, to end people's contracts if they are not performing their job well, but it is morally wrong to end people's contracts if they are performing well in their job, purely because they have one of the nine protected characteristics.

Professor Anderson mentioned that it makes no economic sense to sack Professors who every year bring in far more income in grants than it costs to employ them – I myself have brought in £10m in the last three years – and it is crazy that we force our top Professors to move to a competitor university a few years before they hit their 67th birthday. The competitor university welcomes them because they do not discriminate on the basis of age.

Of course we would all like to see more Assistant and Associate Professorships created, but these should not be funded by sacking people on the basis of age. I brought in £4m for an endowed Professorship just last year, and this philanthropic donation was made because donors trust senior leaders with strong track records when they are considering making donations on this scale.

But I want to underline the moral case: there would rightly be an outcry if we sacked academics on the grounds of race or gender or because they are disabled or gay, and today we are finally hearing the same moral outrage about age discrimination. All forms of discrimination based on a protected characteristic are equally morally repugnant.

It took our University until 1948 to abolish gender discrimination and to allow women to be awarded degrees and to study here. It is time to abolish the EJRA as a policy based on age discrimination, to bring our University in line with modern views of human rights, as enshrined in the Equality Act.

Professor D. COYLE (Department of Politics and International Studies and Churchill College), read by Professor Baron-Cohen:

Deputy Vice-Chancellor, the EJRA policy has no obvious advantages and several disadvantages to the University. The ones I would like to emphasise are as follows:

First, it makes terrible academic and commercial sense for Cambridge to require unwilling, research-active people bringing in lots of money – which is used for hiring younger researchers – to leave when they are so productive. I am personally concerned that as I approach 67 it is going to be increasingly difficult to raise funds for growing our Institute if it's known I might be forced to leave at that deadline.

Second, only a small number of people would be likely to want to stay on for much longer; and if they are genuinely unproductive that is a management question; a forced-retirement sledgehammer is inappropriate.

Third, the policy has done nothing to improve diversity, so Cambridge should introduce a scheme that works instead. The EJRA has perhaps even let the University get away with not reflecting on genuinely effective diversity policies as early as it could have.

Dr N. J. HOLMES (Department of Pathology):

Deputy Vice-Chancellor, the question of whether the University should have a fixed retirement age is one which arouses considerable passion within our community. I have come here today to speak in favour of the retention of a default retirement age for academic staff. I expect to find myself in a minority of speakers but that does not necessarily mean that my view is held only by the same minority of members of academic staff or the Regent House, which are – self-evidently, though overlapping – different constituencies.

I think it vital, in order to discuss this emotive issue objectively, to try and look at the position in general, not as it may apply to this or that individual or indeed to ourselves. We need to understand that the issue of whether an employer can and should justify a default retirement age is predicated on what the employer can legitimately claim is required in the interests of their 'business'. It is not about what is best for the individual employee or the desires of employees generally.

I spoke at the Discussion, exactly eleven years ago today, on the Joint Report which introduced the current retirement policy including our Employer Justified Retirement Age (EJRA). Statistics then suggested that were we to not introduce an EJRA to perpetuate our long-term retirement policy we would immediately diminish the annual recruitment of academic faculty by about 40–50%. This policy did not introduce retirement at the end of the academic year in which the office-holder turned 67; this requirement was in our Ordinances when I joined the faculty in the 1980s.

I will draw on the experience of my own Department since the EJRA was established in 2012. Earlier this month my Department held a research away-day for Principal Investigators to which we had invited three external

advisors. Their feedback emphasised the vibrant, dynamic intellectual culture on show and one commented specifically on the comparatively young age distribution of our PIs. This has been the result of our ability to recruit many new academic staff in the past ten years. Twenty-one established academic staff have vacated their offices since October 2012; only five of these departures were unrelated to retirement. The proportion of retirements which would have been delayed if the EJRA had not been in place is obviously somewhat uncertain but, from my knowledge of the views of these colleagues – averaging over 20 years – I conservatively put it at about 50%. I do not suggest that these notional eight delaying-retirees would not have done good work had they stayed on, indeed a number were friends with whom I enjoyed a valuable intellectual interaction and in fact miss personally. However, I do assert that in all cases we have recruited excellent young academics to fill their vacancies and that the intellectual environment of the Department has been clearly invigorated as a result. Not only that but our new faculty are driving the Department's research in directions which will sustain our competitiveness over the next ten or even twenty years. It is this injection of new ideas and the advances which the newly-recruited faculty will achieve within their future careers at Cambridge that form the main justification for our EJRA policy.

In order to recruit the best early-career independent Principal Investigators, we must be able to offer them not only genuine independence but also a real prospect of a tenured position, subject only to the normal probationary arrangements. I believe that this need applies to all academic disciplines. It is noticeable that we are experiencing significant problems in recruitment in other areas including fixed-term research staff, but not generally for faculty positions.

Furthermore, though it may not be so in all disciplines, in biomedical research the confidence to tackle the most important research problems depends on a reasonable expectation of security. Not only does the ability to offer this security help us to recruit the most ambitious and innovative young investigators but it helps fulfil the University's mission.

However, our ability to offer tenure-track or tenured positions to new faculty depends on the turnover of academic staff and the evidence, both statistical and anecdotal, argues this recruitment will diminish by 40–50%, at least in the medium term, if we abandon our EJRA. Many contributions from other speakers have suggested that the effects of abandoning our default retirement age will be benign, based on experience of other UK HEIs; I am not convinced that the same effects will necessarily be seen here in Cambridge as there are locally specific factors; to give only one relevant example, most Cambridge faculty have much lower teaching loads than is normal elsewhere.

Having defended ardently our use of a default retirement age, let me say a few things about what I perceive as faults in its detailed operation. When I spoke at that Discussion eleven years ago, I also stressed the importance of not placing unreasonable barriers to staff wishing to carry on working after vacating their offices either in a voluntary capacity or as unestablished Investigators on external funding. These arrangements have become more and more difficult to achieve and I believe that this is one of the key grievances among some staff approaching retirement. At least part of the reason why continued working arrangements have been restricted is concerns about legal challenges to our policy and our usual risk averse legal approach. However, if we accept that the main justification

for the EJRA is to continue recruiting young academics at an adequate rate, to refresh the intellectual environment and to provide a balance of age and experience, then allowing even all those who can present a reasonable case for continuing their research to do so without holding a University Office would still achieve that goal. The exact age at which our EJRA should operate is also a detail which it seems appropriate to review periodically and although I personally think that 67 or 68 is probably the right age at present, clearly this could change, though demographic factors have shifted somewhat in the past eleven years so that a continued increase in life expectancy or state pension age is no longer certain.

Finally, if I may, I will reiterate another point I made eleven years ago. The fairness and feasibility of any EJRA is dependent on the quality of the pension scheme on offer. USS benefits have been reduced twice in the past eleven years. USS is now in surplus and Cambridge has been vocal in advocating bold long-term thinking to enable the sustainable restoration of more generous benefits. To quote from my final paragraph then 'I consider that the restoration of USS pensions to an adequate level of support is an important *quid pro quo* to accepting the EJRA'¹; I say the same today.

¹ *Reporter*, 6253, 2011–12, p. 428 at p. 437, <https://www.admin.cam.ac.uk/reporter/2011-12/weekly/6253/section7.shtml#heading2-11>

Professor M. GROSS (Department of Pure Mathematics and Mathematical Statistics and King's College):

Deputy Vice-Chancellor, I would like to share my own perspective on the EJRA, having been recruited roughly ten years ago from an American university to a Chair in Cambridge. At the time, the EJRA policy was quite new, and it is clear in retrospect that I was not given good information about its impact. In particular, as there had been no experience in my Department with the policy at that point, I was led to expect that it should be straightforward to obtain an extension. Further, I felt sure that such a clearly discriminatory policy would be quickly seen as barbaric, and would not survive until my dictated retirement age in any event.

Part of this expectation was informed by the US experience, where age discrimination issues have been long settled in law. From 1982 to 1993, universities could not set the retirement age below 70, and then, as a consequence of legislation passed in 1986, all mandatory retirement ages in universities became illegal from 1994. Given also that mandatory retirement age had disappeared at almost all UK universities, it was hard to imagine that such a policy could remain in place for long. Unfortunately, after arriving in Cambridge, I have witnessed any number of disheartening developments.

First, I was shocked by the general nature of the ageist rhetoric being used to justify the retirement age. Given the University's efforts in recent years to avoid discriminatory policies, this was especially jarring. That there were, until now, no visible arguments being presented in favour of ending the EJRA policies was especially discouraging.

Second, based on the cases I have witnessed, it is far harder to make the case for an extension of contract than I had been led to believe. While I had come to Cambridge under the assumption that there would be no difficulty in staying on until age 70 (the age I had set in my mind a long time ago as a good retirement age), it became clear this could not be counted on.

Third, there has been significant degradation of the USS pension situation. Again, when I decided to come to Cambridge, I was able to rejoin USS on the most favourable terms as I had previously been a member. From this, I was able to more or less compute precisely how much I should expect to earn if I retired at age 70. Now it is impossible to make any such predictions, creating a great deal of financial anxiety. This is quite likely to impact younger academics even more. Even the position of the UUK is that we should all be working longer to save more. But what if our employer does not allow us to do so? Given this uncertainty, having the flexibility as to when to retire becomes more important than ever.

I think it goes without saying that if I had been aware of all of these points it would not have been possible for Cambridge to recruit me. Admittedly, the pension situation was not easily predictable, but I feel let down that I was not fully apprised on the first two points.

I have also learned a great deal in finally hearing from others who rightly oppose the EJRA. The situation appears to be even worse than I had imagined. It seems effectively we become second-class employees come age 62 or 63, no longer able to apply for grants or take Ph.D. students. It is very hard for me to understand the logic of these policies, or to understand what benefit such a policy brings to the University or its members.

Professor N. J. GAY (Department of Biochemistry and Christ's College):

Deputy Vice-Chancellor, the EJRA was introduced in 2011 as a response to the abolition of the statutory retirement age. A very thorough Report¹ was produced that identified potentially lawful justifications that were now required for a mandatory retirement policy. These justifications included inter-generational fairness, to complement rights of academic freedom and autonomy, and to compensate for the lack of performance review in Cambridge. The Report was subject to extensive discussion and a ballot of the Regent House attracted a very large majority in favour.

One provision of the EJRA policy is that there should be biennial reviews and it is regrettable that successive Vice-Chancellors, Pro-Vice-Chancellors and Registraries have abdicated this responsibility. After twelve years in operation there has only been one review in 2015² which can only be described as 'light touch'. In order to stifle discussion, it was published as a Notice rather than a Report. The conclusion was to double down on the EJRA policy and indeed to make it even more restrictive.

In 2018, responding to two Employment Tribunal cases, the University sought detailed legal advice from a leading Counsel in employment law. At that time Counsel advised that the University had only a 50% chance of winning the Tribunal cases. They also emphasised that in defending the EJRA it was necessary for the University to show that the justifications were not only lawful in themselves but were proportionate and able to achieve the intended goals. In the event the University settled one of the claims and the second case was discontinued.

The only other English university that has an EJRA is Oxford, where it has generated considerable unrest. There have been a number of Employment Tribunal cases and two of these have now been considered by the Employment Appeal Tribunal (EAT).³ In upholding physicist Professor Ewart's Tribunal decision that he was unfairly dismissed, the EAT commented that the justifications for the Oxford EJRA, which are mainly the same as ours, are potentially

lawful but are found to be disproportionate to the severe discriminatory impact on the employees affected. Explaining its decision in more detail the EAT concluded *inter alia*:³

the discriminatory impact on the employees concerned was 'severe', observing that this directly discriminatory measure gave rise to 'a lasting and final impact on the basis that someone is highly unlikely to be able to return to an active research career at a university once dismissed at that age' [emphasis in the original]

and

because even those who were granted an extension suffered a detriment in having to vacate their substantive post and move to a time-limited position, which could (as the evidence demonstrated in Professor Ewart's case) impact upon their ability to obtain funding for (and thus participate in) particular research projects.

Prof Ewart was also able to present evidence that after ten years of operation the EJRA had caused an increase in vacant tenured posts of just 2.5%, a figure described by the EAT as insignificant and disproportionate to the very severe age discrimination that the policy causes. We do not know what the corresponding figures are for Cambridge because the UAS and HR keep this information strictly secret. Nevertheless, it is highly likely that the Cambridge EJRA will also be found disproportionate. The Employment Appeal Tribunal is a superior court of record having the same legal authority as the High Court. Therefore, given that the objectives of the Cambridge EJRA are almost indistinguishable from those of Oxford, it is also likely to be unlawful.

I would also like to respond to Dr Holmes' point that the EJRA caused a 40% increase in young recruitment. In actual fact Professor Ewart found that those who would have wished to stay on only wanted to stay for two or three years and therefore the system would reset very quickly and come to an equilibrium that would be the same as it was before unless new posts are created. So if there is an effect, it's temporary and time limited.

More than a year has elapsed since the EAT judgment was published and I am disappointed that the University has only now instituted a review of the policy. I hope and expect that the members of the Review Committee will be representative of the Regent House, that the review will be thorough and transparent and that it will report in timely fashion. As it is clear that on the balance of probabilities the current EJRA policy is unlawful, I also call on the Council to suspend its implementation until the outcome of the review is known.

¹ *Reporter*, 6249, 2011–12, p. 347, <https://www.admin.cam.ac.uk/reporter/2011-12/weekly/6249/section6.shtml#heading2-22>

² *Reporter*, 6435, 2016–17, p. 2, <https://www.reporter.admin.cam.ac.uk/reporter/2016-17/weekly/6435/section1.shtml>

³ https://assets.publishing.service.gov.uk/media/6151f054e90e077a3078f960/The_Chancellor_Masters_and_Scholars_of_The_University_of_Oxford_v_Professor_Paul_Ewart_EA-2020-000128-RN.pdf

Mr D. J. GOODE (Faculty of Divinity and Wolfson College): Deputy Vice-Chancellor, back in 2012 I, like many others, voted in favour of retaining our Employer Justified Retirement Age (EJRA), having been persuaded that it would do the job it was touted as being intended to do. Since then, I have seen plenty of colleagues and friends retire. Some were glad to go; others less so; and some had to be – metaphorically speaking, of course – shoved unceremoniously out of the door against their every wish.

I don't think that the EJRA has worked to the advantage either of individuals who do not want to go, or the University as a whole, and I am pleased we are now revisiting it. I hope that the Council and General Board's review of the policy results in a straightforward 'Do you support the University's continued discrimination against its members on the grounds of a protected characteristic – *Placet* or *Non placet*' ballot of the Regent House, so we can ensure that it is the EJRA, rather than yet another cohort of talented and experienced and willing colleagues, that is shown the door.

Mr R. S. HAYNES (University Information Services):

Deputy Vice-Chancellor, I am a University Senior Computer Officer based in the University's Information Services, and a long-standing UCU member.¹

With much appreciation for those who helpfully raised this Topic of Concern, it is good to mention both University and union here, because together we commit ourselves to matters of justice, along with the well-established concerns for EDI – that is equality, diversity and inclusion. More recently, other universities and institutions have been adding justice to the other key concepts of EDI to form an even more memorable acronym of JEDI. It is for matters of justice, as well as equality, diversity and inclusion that we must seriously rethink the principles as well as the impact of continuing to try to justify discrimination on any basis, including that of age.

In the article 'It's Time to Retire Retirement', a McKinsey award-winner in the *Harvard Business Review* of March 2004,² the authors Dychtwald, Erickson and Morison indicate that institutions have

largely neglected a looming threat to their competitiveness: a severe shortage of talented workers. The general population is aging and with it, the labor pool. People are living longer, healthier lives, and the birthrate is at a historical low.

We know that we have challenges with recruitment and retention, including as was alerted by Pro-Vice-Chancellor Kamal Munir last term – and of course we are not alone among UK institutions. Given that, we also know that some of our older, very experienced and productive staff have accepted their forced retirement here and taken up posts at Oxford and elsewhere where they are not so hampered by the EJRA.

The *Harvard Business Review* article is succinct in indicating that: 'It's not good business to push people out the door just because your policies say it's time.' It is even more emphatic in stating that:

The problem is pretty clear. Workers will be harder to come by. Tacit knowledge will melt steadily away from your organization. And the most dramatic shortage of workers will hit the age group associated with leadership and key customer-facing positions. The good news is that a solution is at hand: just as companies are learning to market to an aging population, so they can also learn to attract and employ older workers.

We know from the Employment Tribunal cases involving Oxford colleagues that it will be difficult to be convincing in the courts that there is any remaining justification for the EJRA. Professor Paul Ewart showed that, given the statistics, the key aim for the retirement policy had 'trivial' impact in actually recruiting younger staff. In addition, the tribunal found that:

There can hardly be a greater discriminatory effect in the employment field than being dismissed simply because you hold a particular protected characteristic.^{3, 4}

We would do well to take the moral and likely legal high road here and end this discrimination, serving our commitment to staff and our grounding in justice. It will show our willingness to review and learn, as a community itself dedicated to learning, and to constructively manage change when time and circumstances press us to do so. Given the number of exemptions we have to the EJRA, which have grown along with the intentional growth of unestablished staff posts, the prime focus for discrimination is on those appointed as University Officers. This surely would make any attempts to justify continuance of the EJRA even less tenable in the courts, or in our own community.

A failure to swiftly rescind the EJRA and adapt to the now clearer and fairer JEDI position will without doubt mean a series of expensive legal challenges, as others have had, at least one of which cannot help but to win, given those experiences elsewhere. In addition, we can expect reputational damage given apparent opposition against the public principles of justice and staff support, which would be unavoidably interpreted from that stance.

Just as Oxford has done, we plan to review the EJRA, and according to HR's retirement policy website⁵ that review was delayed by the pandemic, so is overdue. We are promised a working party during this academic year, and it will be helpful to hear more about those plans, including its scope and hopefully concentrated timetable. As a query to HR and the Council, how soon will we hear more about those plans, and echoing other contributors can we suspend the now dubious EJRA until completing that review?

¹ University and College Union, <https://www.ucu.org.uk>.

² <https://hbr.org/2004/03/its-time-to-retire-retirement>

³ <https://www.belfasttelegraph.co.uk/news/education/oxford-reinstates-ni-professor-paul-ewart-after-he-is-forced-to-retire-at-70/39626024.html>

⁴ <https://cherwell.org/2020/01/26/university-ignore-tribunal-ruling-on-discriminatory-retirement-policy>

⁵ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy>

Professor B. J. EVERITT (Department of Psychology, former Master of Downing College, and former Provost of the Gates Cambridge Trust):

Deputy Vice-Chancellor, I was 67 in 2013 when I was required to retire from my University Professorship. I was given an initial Voluntary Research Agreement (VRA) so as to be able to continue leading my research group since my five-year £3m MRC Programme Grant still had three years to run (the VRA had been approved prior to my submitting this grant proposal two or so years earlier when I was 65). This allowed four postdocs to continue in employment and two Ph.D. students to complete; the grant also supported three co-Investigators in the Department and several independently funded visiting postdoctoral researchers. I continued working in the Department at what might conservatively be estimated to be 50% of full

time without a stipend. However, the conditions of the VRA were completely incompatible with leading this research as it precluded line management of postdoctoral research staff (required by the terms of the MRC grant) and the supervision of graduate students, so my capacity as a mentor was intentionally constrained by the University.

Two years into my ‘retirement’, when I was 69, a new Programme Grant proposal had to be submitted if the group’s research on the neuroscience and psychology of drug addiction was to continue (this was the only programme grant in this area of research in the UK). I contacted the MRC to inform them that, as my VRA was about to expire, my intention was to be a co-applicant on the application that would be led by a more ‘junior’ co-investigator. In a detailed discussion with a Programme Manager at the MRC, it became clear that the MRC would be very unlikely to consider a large Programme Grant application from colleagues who had no experience in managing such a large programme or, indeed, smaller MRC project grants. So, either I had to submit the application, or my co-investigators would each have to submit independent, smaller, three-year applications and not a much more extensive five-year, group-consolidating programme renewal.

Fortunately, I was given an extension to my VRA that covered the full five years of the new £4m MRC Programme Grant which was submitted and funded in full. This therefore supported three co-investigators who were HEFCE-funded members of the Department and six different postdoctoral researchers over what turned out to be six years, as I received a one-year Covid extension. Hence, since my enforced retirement, I have been able to fund and conduct research, publish regularly, and employ or support the research of some eight postdoctoral researchers, enabling them to develop their careers. All this was without a University stipend, which meant that many of my research outputs (77 papers to date with several in process of being written or submitted) could not be included in the recent REF unless a co-author was a HEFCE-funded member of the Department.

Had I not been allowed a second VRA, which I understand is now against the University’s policy, the last six years of successful research would not have been possible, and several postdoctoral researchers would have been denied an important early career opportunity. But in any case, the University has not been able fully to benefit from my research publications and achievements through inclusion in the REF.

On a more personal note, during the nine years since my enforced retirement, I was elected President of the Federation of European Neuroscience Societies (2016–2018), and subsequently elected President of the Society for Neuroscience (2019–2021)—the first non-US neuroscientist ever to be elected to this role in the world’s largest international neuroscience society in its 50-year history. I was also awarded the Croonian Medal and Lecture in 2021, the Royal Society’s premier award in the biological sciences. I mention these awards and honours not to be boastful (there are many more distinguished than I in the University), personally pleasing though it is to have this recognition, but to emphasise that the University was unable to take any pleasure or gain from them as ‘esteem indicators’ in the REF, as I am not HEFCE-funded and not, therefore on the University’s books.

The excellence of the University is rooted in the achievements of the individuals that are members of the academic body, but it forfeits the full value of their achievements in enhancing its reputation by its forced

retirement policy. Surely there is more to be gained than lost by continuing to employ internationally renowned and active academic staff. If this employment were at a suitable part-time rate, it would not prevent recruitment of younger faculty.

The University has not benefited from enforcing retirement at the young age of 67 (something my US colleagues view with amazement), which causes the loss of high-level research and the publications arising from it, the loss of mentorship of postdoctoral and graduate student researchers, and reputational loss as it cannot bank the internationally recognised success of ‘volunteer’ researchers. This is not about money, as I am fortunate to have a good pension as a time-served academic, but that will not obviously be the case for those who follow. The EJRA has damaged the University and its reputation while not delivering what was suggested to be its benefits. It should be abandoned.

Professor E. F. BIAGINI (Faculty of History and Sidney Sussex College):

Deputy Vice-Chancellor, I am a historian and I would like to add to this debate from my own experience and from the perspective of the humanities. Historians sometimes explore counterfactuals, which are described as our equivalent of experiments; for a discipline like ours, *real* experiments cannot be carried out or would be very expensive if they could.

In the case of a mandatory retirement age for academics we have the perfect counterfactual – not a thought experiment, but a real-life large-scale experiment, and an expensive one. What would happen if we removed the compulsory retirement age for academics? This has been done in most other universities to the extent that Cambridge and Oxford stand out as the exception. Perhaps *we* are the experiment after all!

What we see is that in London and the United States academics carry on research, teaching and leading research groups without a compulsory retirement age. Is there any evidence of these universities suffering as a consequence? *Anecdotally*, we can all think of colleagues who, upon retiring from Cambridge, moved to London or to some university in the US, where they continued to produce major works and remained as productive as ever.

Statistically, this impression that academic output is *not* affected by age is confirmed by various studies published since 1990. In fact, a considerable proportion of academics in Britain and elsewhere start slowly in terms of publication output, before spiking late in their careers. Others publish steadily over time with ups and downs related to life cycles, for example, the need to look after young families in mid-career before peaking up when they join the group of the 60-year-old.¹ In particular, this is the case in the humanities and the social sciences for various reasons which would be too long to explore here. But as one academic commented when he was interviewed by the *THE* in 2017:

If I look at my own work, I’m much more productive now, approaching retirement, than I was when I was younger, and the work is more significant now – you can get a ‘view from the bridge’ as you gain experience and knowledge of the field.

With accumulation comes perspective. So quality changes as well as quantity. In the early stages of my career, I would take a narrower and more cautious approach – trying to press the right buttons. Now, I’m more focused on what is important.²

This is also my experience. I would add that I am now more interested in exploring new techniques, innovative methods and ambitious research projects, partly because I know that I can take risks, and partly because at this stage in my career I enjoy a wider perspective on my field and this provides me with a greater ability to see opportunities for collaboration across disciplinary boundaries.

One old argument in favour of mandatory retirement was that about ‘inter-generational fairness’, i.e. that mandatory retirement created more opportunities for young academics to obtain posts. This was predicated on the assumption of a primarily *national* labour market for academics – but nowadays we have a *global* one, for both junior and senior academics. Moreover, the ‘inter-generational fairness’ argument assumed that academics were primarily *individual* researchers, and their retirement was somebody else’s chance in a zero sum game. However, the situation is nowadays very different. Many of us have secured major research grants and are successfully fundraising. A colleague of mine based in London has secured two major research grants for a cumulative value of over £3m, and has now been shortlisted for a second ERC grant. This happened since she turned 60 several years ago. Meanwhile, this same colleague established a whole new privately-funded institute, which gives permanent employment to one other academic and offers three postdocs. This person is obviously exceptional, but even I – and I operate on a more modest and perhaps typical scale for the humanities – have submitted or prepared my main research grant applications since turning 60, and I have been successful enough in attracting funding that I have secured the long-term employment of one junior academic and the temporary employment of one postdoc and one digital humanities assistant.

I have argued that there are solid *academic* reasons to remove the current mandatory retirement age, but there are also *economic* reasons. If we consider the increase in national life expectancy and the crisis of the USS scheme, I would say that the case for abolishing the mandatory retirement age becomes unanswerable.

¹ For example, S. Kyvik, ‘Age and scientific productivity. Differences between fields of learning. Age and scientific productivity. Differences between fields of learning’, *Higher Education*, 19:37–55 (1990); Sharon G. Levin and Paula E. Stephan, ‘Research Productivity Over the Life Cycle: Evidence for Academic Scientists’, *The American Economic Review*, March, 1991, Vol. 81, No. 1 (March, 1991), pp. 114–132.

² Cited in R. Pells, ‘Scientists bust myth that academic productivity declines with age’, *Times Higher Education*, 20 October 2017, <https://www.timeshighereducation.com/news/scientists-bust-myth-academic-productivity-declines-age>

Professor S. M. OOSTHUIZEN (Professor Emerita of Medieval Archaeology and Wolfson College):

Deputy Vice-Chancellor, I am a Senior Fellow of the MacDonald Institute in the Department of Archaeology and an Emeritus Fellow of Wolfson College. I note that I am one of the few women participating in this debate.

The EJRA additionally discriminates against women whose academic careers are already adversely affected by their gender. My testimony, while personal, is representative of the experience of many other academic women in the University.

In the summer of 1976, when I was in my early twenties, I was planning to begin my Ph.D. in the following autumn and to complete it in 1980. Those plans were disrupted by the birth of the first of my three children in 1977, and the

last ten years later. For the next 28 years, until the youngest left home, sole weekday caring responsibilities lay with me. I do not regret that responsibility; I do regret my gender.

Unable to follow the traditional route into full-time academic employment, where time permitted I undertook part-time undergraduate teaching for the University and carefully focused independent research projects, allowing me against the odds to build up a solid publication record.

It was not until 2000, when my youngest child went to secondary school, that I was finally able to begin my Ph.D. My dissertation was submitted in 2002 under the dispensation of the General Board. In 2018 I was promoted to Professor, something that I might have expected in 1996 had my gender been different.

As it happens, personal reasons – once more gender-related – forced my early retirement at the end of 2018. Yet even had that not been the case, the EJRA would still have put an end to my career within another two years. The double whammy of gender and the EJRA would have reduced the length of my academic career to just 18 years rather than the 40 years that I might have expected had I been a man. That only one in four Professors in the University is a woman offers an indication of the potential double impacts of gender and the EJRA.

At the time that the EJRA was imposed, I was convinced by the argument for inter-generational fairness. But the experience of implementation here and in Oxford, discussions with colleagues, and reflection on the combined impacts of gender and the EJRA, together brought into an unforgiving light the principle fudged by the EJRA that there can never be any justification for discrimination. Today offers an opportunity to put that error right. I hope the University will withdraw the EJRA.

Professor J. A. CROWCROFT (Department of Computer Science and Technology, and Wolfson College):

Deputy Vice-Chancellor, the University’s exceptional policy of forced retirement has a negative impact long before the incept date.

I have just shy of three years to the end of my current contract with Cambridge University, but already, for the last two years, I have been prevented from applying for five-year grants. This rules me out from several sources of funding, including the prestigious ERC advanced grants, and also UKRI programme grants.

I have been contacted by colleagues around Europe and the UK asking if I want to lead, or be a partner in, various such projects, e.g. for recent calls for communications and AI hubs, for which I would be a natural Principal Investigator (PI), and I have had to decline. This, coupled with the fact that I cannot take on new Ph.D. students as of this year (and I have had 58 successful Ph.D. students in my career of 40 years) means that my research in Cambridge is almost completely stalled.

Far from being able to work up until the age of 67, this means that the end of my research activities with the University started when I was 62.

In the presence of such a planning blight, like many others I have sought positions elsewhere; almost anywhere else would, of course, take me on.

As well as the usual funding agencies, I have also been very happy to receive, for Cambridge University, significant unrestricted gifts from a number of sources. These will all, of course, cease when I leave. In all cases, I have always strived to involve junior colleagues in past

activities, funding up to four Ph.D. students for them, each year, and the negative impacts I have described will have a far more serious effect on them than on me.

I cannot believe that this is the right way to manage the so-called ‘twilight years’ of a research career, years I would like to stress in which by any measure, my activities abound (REF return, annual professorial report, student feedback, exam results for Tripos and Masters courses I teach).

It seems that the EJRA is being employed with very poor justice by my employer, and in a way that displays no form of self interest, enlightened or otherwise...

Professor S. D. GUEST (Department of Engineering and Trinity Hall):

Deputy Vice-Chancellor, I support the retention of a fixed retirement age for many reasons, most of which were rehearsed in some excellent contributions to the Discussion on this topic eleven years ago. Unlike the signatories to the request for this Discussion, I do not consider that anything fundamental has changed since then.

Today, I want to discuss a key consequence of removing the fixed retirement age – the ‘Performance Management’ that we have heard about earlier. Academic staff who are University Officers at Cambridge are allowed unrivalled latitude in plotting their own paths through an academic career, and this is a key element of the vibrant success of the University. We are remarkably free of the managerialism that I see in many other universities. A fixed retirement date is a necessary part of that bargain.

Consider the situation if there were no retirement age. It would, on occasion, be necessary to tell someone that it was time to go. But how will the necessary assessment of competence be made? For we cannot assess only older University Officers, as this would be discriminatory. Rather, we will have to be prepared to make regular assessments of all University Officers, and be prepared to sack those who were not performing, whether due to declining capability in old age, or for any other reason.

At present, the University of Cambridge is good at finding, nurturing and hosting outstanding academics. The University of Cambridge is not good at management. The intrusive management of all academic staff that would be necessary following the removal of the retirement age would undermine the excellence of the University.

I am perfectly in favour of allowing University Officers to continue to contribute to the University after their retirement age, but this must not be at the expense of the freedoms that we now enjoy before the retirement age.

Dr M. K. SZUBA (Department of Applied Mathematics and Theoretical Physics):

Deputy Vice-Chancellor, although I still have quite a few years to go until my own retirement, I was shocked to learn that mandatory retirement is still in effect at the University. I hadn’t seen it practised anywhere for quite a long while, and frankly speaking, it reminded me of my youth in the Eastern Bloc.

One of the reasons for me to consider this policy harmful to the University is that in the case of fields in which a lot of research and development is conducted by the private sector, such as information technology, it might steer researchers away from academia and into industry. It used to be that while private research offered better funding and higher salaries, university researchers benefited from other

perks such as greater freedom. Many of these perks – increased job security for instance – have already been lost. I feel strongly that the policy of forced retirement further deprives the work environment of the University of what should make it unique – which can and likely will make many decide that if they’re going to be treated the same way here and there (sadly, ageism is not uncommon in IT companies), they’d rather go where they can earn more money before being forced out.

For the sake of everyone among us who is nearing their retirement age and with whom I stand in solidarity, I very much hope that this harmful and (everything else aside) discriminatory policy will soon be abolished.

Professor B. J. SAHAKIAN (Department of Psychiatry and Clare Hall), read by the Senior Proctor:

Deputy Vice-Chancellor, the policy of forced retirement also discriminates against women, since many will have had one or more periods of maternity leave, but they must still retire at age 67.

In addition, due to delayed networking internationally and other factors associated with childcare, woman may have had a delayed career trajectory relative to their male colleagues, so just as they get into the height of their career, they are forced by the University to retire. Forcing women to retire at age 67 who have taken maternity leave is particularly against the recently established policies and programs trying to assist women in returning to work and reaching the highest grades in their career, i.e. breaking the glass ceiling.

Professor J. R. Spencer (Emeritus Professor of Law and Selwyn College), read by the Senior Proctor:

Deputy Vice-Chancellor, since retirement I have kept out of University politics. But on this occasion I thought I could make a useful contribution by giving the perspective of someone who retired under the existing rules.

In brief, I am still as strongly in favour of the mandatory retirement age as I was when the issue was last debated, shortly before my own retirement nine years ago. The need to avoid promotion blockage for the young seems just as strong as ever. And so too does the equal need to avoid the introduction of extra checks on how we do our jobs in the hope – probably a vain one – that the less useful oldies can be ‘managed out’.

What I can now add is a word of advice to those approaching the retirement age based on my own experience since retirement from the Law Faculty.

It is: ‘Come on in, the water’s lovely!’

The pension we receive enables us to live in comfort and security. For those who wish to remain academically active, the University lets us keep our University email accounts and our Raven passwords, and hence access to the University’s store of databases etc; and in the Law Faculty at least, we continue to enjoy the help and support of the computer office. These practical benefits are huge and make the transition to retirement easy for those who wish to continue working while their complement of neurones remains basically intact.

For those who are prepared to go on teaching, and are still competent to do so, the Colleges will be glad to let you go on supervising. And if the Faculty has an unexpected need it may ask you to examine, or to fill an unexpected gap in the lecture timetable – and if you do not wish to do this you do not have to, and can spend your time doing other things that you prefer.

For the few whose expertise is genuinely irreplaceable, and by the University genuinely still needed, exceptional arrangements can be made.

For the majority, of whom this is not true, the good of the academic community in Cambridge requires them to retire. And I see no good reason why they should not do so.

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History), read by the Senior Proctor:

Deputy Vice-Chancellor, Cambridge took the decision to enforce a maximum retirement age for University Officers in response to legislative changes under the Equality Act of 2010 which came into force from 6 April 2011. Those removed age-based compulsory retirement unless an employer could justify it ‘objectively’ as a ‘proportionate means of achieving a legitimate aim’. Defining such ‘aims’ was therefore of the first importance and remains so. I want to suggest that the academic employment arrangements in the University have since changed so radically as to make the ‘aims’ still being relied on no longer defensible.

A Review was carried out in 2015–16. Its conclusions were published in a Notice in the *Reporter* on 21 September 2016. It did not suggest discontinuance of the EJRA and retained the aim of ‘enabling effective succession planning’, but a new aim was to be added, ‘helping institutions to plan their staffing structures to allow maximum effectiveness across their activities’. ‘Effectiveness’ was not defined.

The ‘Retirement Policy’ (EJRA) is at present on the HR website, dated 2019 but ‘updated August 2021’.¹ It sets out the four ‘aims’ at present being relied on. The first is to ‘ensure inter-generational fairness and career progression’, followed by to ‘enable effective succession-planning’; thirdly, to ‘promote innovation in research and knowledge creation’ and finally to ‘preserve academic autonomy and freedom’.

The stated ‘aims’ have to be ‘proportionate’ in order to be lawful. In *P. Ewart v. Chancellor, Masters and Scholars of the University of Oxford* (2017)² a statistical analysis was relied on as showing that there was insufficient evidence that the application of Oxford’s EJRA had resulted to any considerable extent in the vacating of posts which were then filled by younger scholars or had improved ‘career progression’. That would in itself leave the possibility of ‘effective succession-planning’ in doubt. No analysis of such effects in Cambridge has been attempted. Nor, it appears, has any connection been made between the continuation of those aims and the present academic employment scene which is now quite different from that of 2011–12.

In 2011–12 academic posts were normally University offices, with the result that ‘the number of posts at a senior level’ were ‘in practice finite and significantly fewer than at more junior levels’. ‘Succession-planning’ applied therefore to posts which continued to exist when vacated and would become available to be filled by new appointees. Note does not seem to have been taken of the fact that in the case of personal Professorships and Readerships the additional funding for the higher salary is *ad hominem* so the vacancy to be filled when the holder retired or resigned would be at that ‘more junior’ Lecturer level, simply adding to those aspiring for more senior appointments. Only in the case of a Professorship or Readership established as an Office in its own right could there be a replacement appointment at that level.

The annual promotions round requiring the established Lecturer salary to be added to to fund a Readership or Professorship has long been funded for a number of successes agreed on for that year on the advice of the General Board and Council. But recently there has been a proliferation of unestablished academic posts, opening up far more numerous possibilities of appointment and progression and automatically invalidating the ‘aims’ ensuring ‘inter-generational fairness and career progression’, and enabling ‘effective succession-planning’. Unestablished posts require funding additional to that for Offices. How is that additional expenditure being balanced against finding funding for promotion of University Officers?

Apart from University Officers, HR now lists alongside ‘assistant staff’, ‘unestablished research’, ‘unestablished academic-related’ and ‘unestablished academic’ staff.³ None of these are subject to the EJRA, leaving only University Teaching Officers forced to retire at 67. A funding argument for this enforced retirement now seems hard to sustain.

A further significant change, driven largely by the continuing need to solve the longstanding problem of the perceived unfairness of the promotions procedure, has been the invention of Academic Career Pathways.⁴ The connection was recognised by the title of a Report of the General Board on arrangements for senior academic promotions published on 10 May 2018. Transfer from an unestablished post in Teaching and Scholarship to Professorial level at Grade 11 or 12 is not possible because a Professorship has to be established by Grace. However, a shortage of these senior academic offices can be dealt with by creating some more for deserving candidates instead of forcing existing holders to retire to make space. That can be achieved by publishing a Report proposing the establishment of a ‘personal’ Professorship for a named individual. This solution has been accepted in a Teaching and Scholarship case.⁵

So although the first and second of the aims identified in the original proposals promised the improvement of ‘inter-generational fairness and career progression’, on the grounds that:

the removal of a retirement age in the case of established officers would lead to a detrimental imbalance in the spread of ages and experience across this core section of the University’s workforce, and would in turn adversely impact the career prospects of those at the outset of their academic careers.⁶

This seems no longer at all clear. Nor does ‘succession planning’ look the same as it did in 2011–12 or 2015–16.

The fourth aim, that an EJRA would tend to ‘preserve academic autonomy and freedom’, depended in 2011–12 on the assertion that Officers of the University had

the benefit of unique and specific protections which preserve academic autonomy and freedom throughout the course of their careers.

That statement relied on the provisions of Education Reform Act 1988 s.202(2) and the Statute embedding the resulting procedures, now in the Schedule to Statute C. However this protection is no longer confined to University Officers. Higher Education and Research Act 2017 s. 2(8)(c) protects ‘the freedom within the law of [all] academic staff at English higher education providers’. This can no longer be a ground for confining the EJRA to University Officers.

Surely things have changed so extensively that any continuation of an EJRA in Cambridge would now have to be justified afresh? Could it be?

¹ https://www.hr.admin.cam.ac.uk/files/retirement_policy_2019_final_updated_2021.pdf

² Case number 3324911/2017

³ <https://www.hr.admin.cam.ac.uk/policies-procedures/1-retirement-policy/9-annual-timetable-submission-applications-extend-employment>

⁴ https://www.acp.hr.admin.cam.ac.uk/files/acp_guidance_v1.2_14_september_2022.pdf

⁵ *Reporter*, 6662, 2021–22, p. 549.

⁶ *Reporter*, 6249, 2011–12, p. 347.

Professor D. S. ABULAFIA (Emeritus Professor of Mediterranean History and Gonville and Caius College), read by the Senior Proctor:

Deputy Vice-Chancellor, I was a member of the University Council when the decision was made to retain retirement at 67. I supported the move because I could see that opportunities for younger scholars, already limited, would become even more restricted if we did not maintain a turnover. However, I share the impression that things have not worked out as intended. In the Humanities and Social Sciences, rather than permanent posts for outstanding young scholars, we see a proliferation of short-term appointments in this and other universities, which is ironic when you consider that University Assistant Lectureships, tenable for a maximum of five years, were abolished about two decades ago. Nowadays filling in for absentee academics who have secured major grants is what provides young scholars with a basic income and experience, but it is also extremely disruptive to those with families, those seeking to purchase a place to live, and those with their own research projects that might have to be laid aside while writing scores of lectures to replace an absentee. A celebrated book about learned medieval scholars by Helen Waddell was entitled *Wandering Scholars*. Well, wandering scholars are back, and it is not necessarily a good thing. We therefore need to look carefully at the success or otherwise of the EJRA in opening the door to younger scholars.

But there are also issues concerning people at the other end of their paid career. The idea that academics should undergo some sort of assessment as they pass a certain age barrier to see whether they should go sooner or later is very questionable. Some of us have already expressed serious reservations about the prodigious expansion of so-called Human Resources departments within this University, and within wider society. The danger that academics will be assessed according to criteria derived from EDI, Critical Theory and other current pieties is acute, especially in the case of those who have had the courage in the last few years to defend freedom of speech within the University. Very strict guidelines would be needed to prevent any chance of abuse.

Retirement should be a gentle slide, not a sudden fall of the guillotine. Some of us are fortunate enough to be able to maintain close links with our College. But it was odd to discover not long ago that the History Faculty website had erased the web pages of Emeritus members, even though many of them remained active members of the Faculty – often more likely than over-worked serving members actually to attend seminars. All sorts of information about what is happening in my Faculty simply does not reach retired members, even though there is a special email list

for us. If the assumption is that we are not particularly active in research, the truth is that many of us are even more research active without our teaching obligations. Of course we should give newly appointed staff the opportunity to take on Ph.D. students who might in earlier days have come to us for supervision; but sometimes people apply to Cambridge because of us, and that often means that we are the only people here in that particular field of study, with the result that they go to a rival university instead. I am reminded of the story in the Brother Grimms' Fairy Tales where a little boy asks his parents why his grandparents don't eat at the same table, but eat their food out of a trough with a wooden spoon, and whether he should make the same arrangements when his parents are older. This shames the child's parents into inviting the grandparents to eat at the table off proper plates. Yes, we too are part of the University community, which will celebrate our prizes and other successes but otherwise easily forgets we are here.

Whatever decision the Regent House makes about the EJRA, there needs to be an arrangement by which those who are retiring can gradually reduce their participation, if that is what they prefer. I also note that Oxford has a lively Pensioners' Society, open not just to academics but to all retired employees. Making people feel valued at that stage is surely an important and humane thing to do. Some people find the experience of retirement difficult; others, like myself, enjoy it greatly. A good number of retired academics are still very active in national academies and grant giving bodies, well placed to give literally valuable advice to younger scholars. By drawing them more into the life of Faculties and Departments the University will do itself a big favour.

In conclusion, I think that the EJRA is an issue that needs to be re-assessed, and we may have got it wrong. It is important that it is re-examined now.

Professor M. E. CATES (Department of Applied Mathematics and Theoretical Physics and Trinity College), read by the Senior Proctor:

Deputy Vice-Chancellor, I believe the EJRA is no longer fit for purpose. Therefore I signed the request for today's Discussion. However, care is needed in getting rid of the EJRA. Compared to other UK Institutions, the official duties of Cambridge UTOs are modest, mainly because so much teaching is done in Colleges (and UTO and CTO roles are not contractually linked for most people, unlike at Oxford). Therefore I doubt the view expressed by Professor Anderson in the *Times Higher* that 'people might work for an average of a year and a half to two years longer' although I do agree when he says 'this is what we see elsewhere'.¹

In Cambridge, a senior UTO who steps down from (or never had) College teaching duties can in principle draw a full salary for doing a couple of lecture courses a year, a certain amount of examining, and a few other bits and pieces. It may help to appear to do research, but that is not the same actually doing it, and the difference may go undetected for several years – even by the staff member in question.

The group of staff now pushing for abolishing the EJRA are mainly fighting for the right to actively continue their world-class research, properly supported by grants and infrastructure, on approach to and beyond the age of 67. Such people have a vast amount to offer to the University, and I fully support their case. However there is a second group of academics that would also benefit from abolishing the EJRA: those who are content to draw a full salary indefinitely, even as their contribution to the University's work declines to 'baseline' levels.

A way must be found to allow the first group of staff to prolong their careers without also allowing the second group to do so. Therefore, as and when the EJRA is abolished, something else will be needed to ensure that academic careers can be gracefully and legally brought to a close, not on the grounds of age, but on grounds of no longer meeting the challenges of the job. This might require a more detailed employment contract for UTOs, tied to regular and formal assessment of their contributions. Perhaps it would be legally defensible to leave a residual EJRA in place for staff refusing to switch to such a revised contract.

¹ <https://www.timeshighereducation.com/news/forced-retirement-rules-face-new-challenge-cambridge>

Professor F. STAJANO (Department of Computer Science and Technology and Trinity College), read by the Senior Proctor:

Deputy Vice-Chancellor, I believe that forced retirement of academics is beneficial to the University and should be retained. It is quite proper to ask Professors to retire after they've had their turn, so that the younger blood can have a go as well.

A senior Professor who refuses to retire and continues to supervise students and bid for grants is a tree that casts a big shadow over the neighbouring area and prevents younger trees from growing. The campaign claim that established academics should be allowed to continue because they are highly skilled at winning big grants should also be read as saying that those big grants in finite supply (in a given area, from a given funding body, etc..) will be vacuumed up by the old-timers, leaving the younger faculty with the crumbs.

There is a rather concrete element of competition for finite resources. But there is also a more subtle aspect of pecking order, even in environments without officially recognised group leaders: if the senior Professor stays around forever, the younger faculty in the same research group must always remain in their shadow. In a context where the sovereign never abdicates, the heir to the throne must remain just a prince even though he's already an old man of retiring age himself.

I believe it is more dignified for the senior Professors who have enjoyed a long and brilliant career to allow someone else to have a go. That's certainly what I plan to do when my time comes. If they don't feel the urge to close their laptop and put their feet up, they have plenty more ways to put their still sharp intellectual abilities and newly found spare time to good use, from writing books to taking up advisory or leadership posts in industry or in learned societies.

On the other hand, my Japanese side has deep Confucian respect for the wisdom of the seniors. My social and intellectual interactions with retired Fellows in College have been valuable and mutually enjoyable. In the College context, I believe Fellows deserve to retain their benefits for life, both in gratitude for service rendered and for the benefit that younger Fellows get by interacting with their illustrious predecessors, who are invariably very generous with their knowledge and experience.

In the Department, however, once we have had our turn, it is graceful to give our successors some breathing space and move out. Otherwise, the people below us in the pecking order continue to remain in our shadow. After a full education to Ph.D. level and several decades of professional life we should, in my view, be willing to pass the token with dignity.

Now, what I see as the core of the problem is: *Why* would those senior academics insist on staying on beyond that? Surely a successful and well-balanced individual has plenty more interesting and fulfilling things they'd like to do: spending time with the grandchildren, enjoying the ski slopes, cycling, sailing, running, martial arts and all the physical activities worth doing while the body still can, travelling the world, playing music, writing books (or reading the ones they accumulated), woodworking, programming (as opposed to writing grants so that other people can enjoy programming), learning another language, starting another company or even just relaxing on the beach and hitting the pause button on a hectic life. It would be sad if people were so monochromatically wedded to their current work that they lost their identity and self-worth when they stopped it. But is that what's actually happening here?

I rather suspect that the true reason why they want to stay on beyond the age at which they would be able to draw a full (?) pension is because the promises about final salary pension that we got when we signed up were, later, unilaterally broken, and *that* makes them feel they will no longer have enough money to do all of those other things if they suddenly get only a small and diminishing fraction of their current salary. As a thought experiment one could test this hypothesis by asking whether they'd be willing to stay on and supervise students and mark exams and chase grants beyond age 67 but at strictly zero pay. If the theft of a big chunk of our promised pension (which I very strongly resent as much as the next colleague) is the actual explanation, then *that's* the problem that must be fixed, but that our employer and our pension provider seem unwilling to fix. We must be allowed to have a dignified retirement, as we were originally promised when we signed up decades ago and when we weighed that benefit (and the academic freedom) against the pay hit we took compared to a real world salary.

In my view, supergluing our bottoms to our professorial Chairs beyond retiring age would be a selfish act that just moves the problem onto the weaker shoulders of our successors. Allowing the University barons to entrench in their positions for life would make Cambridge a worse environment and that's why I am opposed to it.

So I believe the Employer Justified Retirement Age for academics is indeed justified. Apoptosis is a natural and beneficial process of an organism. It is only fair to ask the older kids to get off the swing, after some reasonable time, so that the younger ones can get their turn too.

Dr D. GOOD (Department of Psychology and King's College), read by the Senior Proctor:

Deputy Vice-Chancellor, other speakers whose contributions I have seen, have provided many powerful examples of the perverse consequences which result from the EJRA policy as implemented now. Looking at those consequences, one might think we have designed a decapitation strategy which harms this University and benefits others. How generous of us.

I was involved in the discussions which lead to the policy and it was always a balanced judgement. There were arguments for and against, and in the background there was a recognition that if we implemented the policy immediately it would produce difficult financial effects. It was also recognised by many that the EJRA would be changed in the future and ultimately dropped. It has, however, changed in ways that we did not foresee.

Looking at the fly-sheets in the *Reporter* (2 May 2012) for the original vote, the one I signed gave a simple summary of the reasons for having an EJRA followed by this statement:

Retirement from office does not have to mean the end of academic life: we all know colleagues whose scholarship, teaching, research and other contributions have flourished, or even blossomed, after formal retirement. Furthermore, the proposed policy allows extended employment beyond the retirement age in an unestablished capacity when it is in the mutual interest of the University and the individual. There is also the continuing option of voluntary research agreements for active researchers. The combination of new recruitment with mechanisms for retaining exceptional researchers and scholars beyond the retirement age promotes fairness across the generations.

I signed that fly-sheet as I believed it represented the culture of the University then, and how the policy would be implemented, as was initially the case. Now it seems that our implementation progressively disables our senior academics as they approach 67. They become ever lamer ducks as they age through their mid-60s. Is it any surprise that they prefer to fly away and that senior replacements are hard to attract?

The policy is long overdue for reform and most likely removal.

Professor Sir Colin Humphreys (Selwyn College), read by the Senior Proctor:

Deputy Vice-Chancellor, I was forced to retire from Cambridge because of my age on the last day of February 2018. I then moved to Queen Mary University of London (QMUL) on 1 March 2018 as Professor of Materials Science on an open-ended contract. When I retired from Cambridge, I had four current EPSRC grants totalling about £10m, and was the Principal Investigator (PI) on two of these. It is EPSRC policy that when a PI moves, his grants should move with him and, indeed, when I moved to Cambridge my substantial EPSRC grants from my previous university transferred to Cambridge. However, the then Cambridge University Vice-Chancellor did not allow any of my research grant money to be transferred to QMUL. He did not even allow me to have funding for a postdoc transferred to QMUL. I have been told that Cambridge decided on this immoral act because to transfer any money to QMUL would have weakened its legal case for forced retirement. So, Cambridge not only stopped my research at Cambridge, it also did its best to stop me doing research at my new university, so low is Cambridge prepared to stoop to enforce its Forced Retirement policy. The EPSRC was extremely unhappy about this and it told the QMUL Principal to get together some other Vice-Chancellors and give the Cambridge VC a good kicking.

Since I was forced to retire from Cambridge, and I believe because of the above event where Cambridge deliberately acted against EPSRC policy and tried to stop me establishing my research at QMUL, Cambridge has stopped its staff from applying for research grants within five years of retirement. This has a particularly damaging effect on its science and engineering staff, and it puts a severe brake on their research at age 62, not 67. Hence many world-class science and engineering staff at Cambridge are effectively forced to retire at 62. It is an act of madness.

If Cambridge is to remain a world class university, it not only has to retain its best staff, whatever their age, it also needs to recruit the best staff internationally. Top Professors in the USA have told me that they no longer consider coming to Cambridge because of its discriminatory and ageist retirement policy. No university in the USA has such an ageist forced retirement policy. Top universities like Stanford, MIT, Yale, Harvard, California, etc., operate very successfully without an ageist retirement policy. The ageist policy of Cambridge is well known among my colleagues in the USA.

The simple question the University of Cambridge must ask itself is this: does Cambridge wish to continue to have a high international reputation as a discriminatory, ageist university?

Due to time limitations, the Deputy Vice-Chancellor ruled that the remarks received on the remaining two items listed for Discussion were not to be read out but were to be included in the formal record. Accordingly the remarks are provided below.

Annual Report of the Council for the academic year 2021–22, dated 7 December 2022

(*Reporter*, 6679, 2022–23, p. 186).

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History):

Deputy Vice-Chancellor, it is not always clear where the line is to be drawn between matters properly to be determined by the Council in its capacity of ‘principal executive and policy-making body of the University’ and matters which should be referred to the Regent House as the University’s governing body. Now there seems to be growing risk that business may be conducted by an undefined ‘senior leadership team’ without reference to either.

In this Report the Council seems confident that it knows who its members are, offering a heading on ‘Changes in the University’s Senior Leadership’. Under this heading it mentions Pro-Vice-Chancellors, Heads of Schools and two Directors, who are members of the UAS. Constitutionally speaking, Cambridge’s Directors have a role defined in a Report on the Unified Administrative Service (*Reporter*, 5842, 2000–01, p. 560), when it was proposed that these then novel unestablished appointments should become Offices, with dual ‘reporting’. ‘Operational management of the Divisions is delegated by the Registry to the Directors’, but

those principally charged with guiding development of policy, the Vice-Chancellor, the Pro-Vice-Chancellors, the Registry, the Secretary General, and the Treasurer, should, in addition to any functional relationships, receive regular briefing from Directors’.

The Offices of Secretary General and Treasurer have of course since been abolished. But no list of those ‘principally charged with guiding development of policy’ seems to have been agreed to replace this one adumbrated in 2001.

Senior Leadership seems to be unknown to the updated edition of the *Statutes and Ordinances*, recently published. Apparently knowing more than is constitutionally clear, HR runs Senior Leadership Programmes at three levels, ‘endorsed by the Vice-Chancellor’, with a ‘target audience’ at ‘head of institution’ level.¹ HR also feels able to publish a ‘Leadership Attributes Framework’.²

CHAPTER IX

REVIEW

Compliance with the Statutes and Ordinances

1. (a) If, within thirty days after the doing of any act by any person or body having power to act under the Statutes, or in the event of failure or omission to act as required by Statute, Ordinance, or Order within thirty days after the date specified for the performance of that act, it is represented in writing to the Vice-Chancellor by a member of the University that there has been a contravention of the Statutes, Ordinances, or any Order in the doing of such act, or in such failure or omission, the Vice-Chancellor shall inquire into the matter and shall declare either that there has been no such contravention, or that the said act or matter is of no effect, or, if the Vice-Chancellor is of the opinion that the contravention has not affected the result, that in his or her opinion the validity of the act or matter is not affected by the circumstances represented. Where the Vice-Chancellor finds that there has been a failure or omission to act he or she may give such directions in the matter as shall seem to him or her to be appropriate. The person making the representation shall state in writing the act or matter to which he or she refers, and with full detail of the contravention of Statute, Ordinance, or Order which he or she represents has taken place. The Vice-Chancellor shall give his or her decision promptly but in any event within three months, unless the person making the representation has agreed in writing to an extension of time.

(b) If the person making the representation is dissatisfied with the Vice-Chancellor's decision, or if he or she believes that there has been unreasonable delay, he or she may make a representation to the Commissary in the manner prescribed in this chapter. The decision of the Commissary shall be final. If there is no representation to the Commissary, the decision of the Vice-Chancellor shall be final.

(c) No act shall be invalid by reason of the fact that there has been a contravention of the Statutes, Ordinances, or Order unless there has been a representation in writing under Section 1(a) of this chapter within thirty days after the doing thereof.

(d) No act shall be invalid by reason of the fact that any person taking part in the act, and chosen in the manner prescribed or authorized by the Statutes, Ordinances, or Order to be the person or a member of the body authorized to act, was not qualified to be so chosen.

Declaration of the meaning of a Statute

2. If any doubt arises as to the true meaning of any Statute of the University, or of any Statute for the University and any one or more of the Colleges in common, the Council may apply to the Chancellor, who shall then declare in writing the meaning of the Statute in question, and such declaration shall be registered by the Registry of the University, and the meaning of the Statute as therein declared shall be deemed the true meaning thereof. The University shall defray the cost of any legal advice obtained by the Chancellor for the performance of his or her duty under this section.

Review by the Commissary

3. The Commissary shall have full power to determine all questions referred to his or her decision by a member of the University under the provisions of this chapter. The Commissary shall have the power to review, amend, or quash the decision of any University authority on the ground that the decision, or some aspect of the decision, was *ultra vires*, illegal, irrational, procedurally irregular or incorrect in fact, and to make such order (including an order to amend, quash, or refer back the decision) as seems to him or her to be justified. The Commissary's powers under the provisions of this chapter shall not extend to:

- (a) any matter still subject to further review by or appeal to any University authority, or which would otherwise be capable of review by any independent adjudicator for student complaints in higher education, as established by or pursuant to Act of Parliament;
- (b) the merits or substance of a decision made by:
 - (i) a University court or disciplinary panel;
 - (ii) a Board of Examiners, a Degree Committee, the General Board, a Review Committee or similar authority, in relation to the result of a University examination;
- (c) any decision by a University authority concerning the appointment of an individual or individuals to employment in the University, or concerning promotion in such employment;
- (d) any matter under the responsibility of the Press and Assessment Syndicate.

4. In any particular case or cases the Commissary may appoint a person to act as his or her deputy, and may delegate to such a deputy his or her powers under the provisions of this chapter in respect of the case or cases concerned.

5. The Commissary or a deputy so appointed shall have the power to strike out a case which in his or her opinion is vexatious, frivolous, or out of time.

6. In relation to any case (not being a case struck out as vexatious, frivolous, or out of time) the Commissary shall direct that the matter shall be dealt with by oral or written representations, or both. Such representations shall be made:

(a) on behalf of the University by a person or persons appointed by the Council; and

(b) by any other party or parties to the proceedings either in person or through a representative.

7. The Commissary shall make general rules of procedure which shall bind the parties in any particular case. The rules of procedure shall make provision for a time limit or time limits within which a matter shall be raised with the Commissary. In any particular case the decision of the Commissary (or a duly appointed deputy) on any procedural matters shall be final, and the provisions of Statute A IX 1 shall not apply to it.

8. The Council shall consult the Commissary before proposing any Ordinance concerning matters regulated by Sections 3–9 of this chapter. The Commissary shall have the right to publish a statement for the guidance of the University about any such proposed Ordinance.

9. The University shall defray the cost of any legal advice obtained by the Commissary for the performance of his or her duties under this chapter.

Temporary Statute

10. (a) Nothing in this chapter enables or requires the Commissary to hear any appeal or to determine any dispute regulated under the provisions of the Education Reform Act 1988 about a member of the academic staff of the University as defined in the Statutes, which, being a matter regulated under the said Act, concerns the member's appointment or employment, or the termination of that appointment or employment. The Commissary has no power to disallow or annul any Ordinance made under or having effect for the purposes of the Statutes in relation to matters regulated under the said Act.

(b) When (a) is no longer needed, this section may be repealed by Grace.

CHAPTER X

MISCELLANEOUS

Commencement and transitional provisions

1. Repeal of a Statute does not invalidate any order, election or appointment made or thing done under a Statute repealed, nor revive nor restore any Statute, order, or trust, or any power or provision repealed or abrogated by a repealed Statute.

Interpretation

2. In any Statute, Special Ordinance or Ordinance,

(a) the term 'Ordinance' means a Special Ordinance made under Statute A III 3 or an Ordinance;

[(b) the term '*in statu pupillari*' shall mean a member of the University (in which term shall be included a member of a College, or of an Approved Society, resident in the University with a view to matriculation) who has not been admitted to an office in the University (or to a post in the Press and Assessment Department specially designated under Statute J 7 or to an appointment approved by the University for the purpose of Special Ordinance A (i) (f)), or to a Fellowship or office of a College, or to a degree which qualifies the holder for membership of the Senate under Statute A I 7(c), and is of less than three and a half years' standing from admission to her or his first degree (if any);]¹

¹ The section in angular brackets will replace the section in square brackets subject to the approval by His Majesty in Council of the amendments of Statute approved by Grace 1 of 3 November 2021.

UK Parliament Acts/H/HH-HN/Higher Education Act 2004 (2004 c 8)/Part 5 Miscellaneous and General (ss 46-54)/46 Exclusion of visitor's jurisdiction in relation to staff disputes

Part 5 Miscellaneous and General

Staff disputes: jurisdiction of visitor

46 Exclusion of visitor's jurisdiction in relation to staff disputes

- (1) The visitor of a qualifying institution has no jurisdiction in respect of—
- (a) any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment,
 - (b) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal, or
 - (c) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within paragraph (a) or (b).
- (2) In subsection (1) “qualifying institution” has the meaning given by section 11.
- (3) In determining whether a dispute falls within subsection (1)(b) it is to be assumed that the visitor does not have jurisdiction to determine the dispute.
- (4) [Section 206](#) of the Education Reform Act 1988 (c 40) (which is superseded by subsection (1)) shall cease to have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 52(6).

Appointment

Appointment (in relation to England): 1 January 2005: see [SI 2004/2781, art 4](#); for transitional provisions relating to complaints submitted before that date see art 5(b) thereof.

Appointment (in relation to Wales): 1 January 2005: see [SI 2004/3144, art 5, Schedule, Pt 2](#); for transitional provisions relating to complaints submitted before that date see art 6(b) thereof.

Extent

This section applies to England and Wales only: see s 53(1).

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EXCLUSION OF VISITOR'S JURISDICTION IN RELATION TO STAFF DISPUTES

HL Deb 14 June 2004 vol 662 cc612-6

(1) The visitor of a qualifying institution has no jurisdiction in respect of—

- (a) any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment,*
- (b) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal, or*
- (c) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within paragraph (a) or (b).*

(2) In subsection (1) "qualifying institution" has the meaning given by section 11.

(3) In determining whether a dispute falls within subsection (1)(b) it is to be assumed that the visitor does not have jurisdiction to determine the dispute.

(4) Section 206 of the Education Reform Act 1988 (c. 40) (which is superseded by subsection (1)) shall cease to have effect."

The noble Lord said: My Lords, in moving Amendment No. 55B I shall speak also to consequential Amendments Nos. 57A and 60. The noble Baroness, Lady Sharp, and the noble Lord, Lord Forsyth, were both concerned about the continuing jurisdiction of a visitor in relation to staff complaints. We have always accepted that the current position is not ideal and noble Lords' arguments have confirmed our view. The amendment, therefore, addresses the concerns raised about the continuing role of the visitor in staff complaints.

Section 206 of the Education Reform Act 1988 removed the visitor's jurisdiction in disputes relating to academic staff which concerned appointment or employment. There has been debate as to the extent of this exclusion and whether it covers disputes indirectly related to employment matters, such as whether an institution's internal rules have been followed in relation to a staff complaint.

The amendment seeks to address noble Lords' concerns by placing beyond doubt the extent of the removal of the exclusive jurisdiction of the visitor. It provides for the widest possible exclusion in relation to appointment and employment related matters. The exclusion also covers the internal powers and discretions that derive from the internal laws where they relate to staff complaints.

Whereas the 1988 Act relates to academic staff, we believe that all staff should be covered by the new amendment. The amendment also addresses the principled objection to the jurisdiction of the visitor: that where a visitor acts when access to the courts is limited. We believe that it is wrong to deny access to the courts and so the amendment excludes the visitor's jurisdiction from all staff disputes where there is a possible redress through any court or tribunal whether by an action for damages or judicial review in appropriate circumstance, for example, where a member of staff has a complaint about a matter that relates to their employment contract or where they have had an accident at work.

In that context, the noble Lord, Lord Forsyth, and the noble Baroness, Lady Sharp, were concerned in Committee that the existing situation raises human rights issues. Our amendment removes any such concerns as there will not be any possibility of access to the courts being denied to a member of staff because of the visitor's exclusive jurisdiction.

The amendment also puts the rights of staff in chartered and new universities on a more equal footing and addresses the inconsistencies between the exclusion of the visitor's jurisdiction over student and staff complaints. Of course, where a person who is a visitor is assigned a role in relation to student or staff complaints, he or she may continue to perform that role in a personal capacity, for example, by acting as an independent person considering an

appeal as part of the institution's internal dismissal or disciplinary or grievance procedures. This would be on a non-visitorial basis and would not, therefore, restrict access to the courts.

Once again, I thank noble Lords for raising these issues. The amendment, together with the Universities UK offer of discussions with the staff unions, to which we made reference in the first day on Report, moves us forward in addressing the anomalies in the present arrangements. I beg to move.

Baroness Sharp of Guildford My Lords, I thank the Minister for bringing forward the amendment which, as he says, follows the discussions we had on the extension of staff to the independent office of the adjudicator, and proposes different mechanisms. We welcome very much the fact that the Government have recognised that the visitor system falls foul of human rights legislation and that these proposals seek ways of ensuring compliance with that legislation.

We also welcome very much the offer of assistance made by the DfES to facilitate discussions between UUK and the AUT to set up a new appeals mechanism of one sort or another. There is slight concern on the part of the union about the position in the interregnum. Once the Bill is passed there is no procedure in place until the AUT and UUK have some sort of new scheme set up. Therefore, it is important that the UUK and AUT set about agreeing a new robust scheme as quickly as possible.

It is vital that a mechanism is also in place which ensures on behalf of Parliament and the public that the universities follow their own internal statutes—the rules by which they operate—and allows that to be remedied where an institution has failed to do so.

There are two specific issues of clarification which I ask the Minister to respond to. First, what will be the commencement date for this section of the Bill? Secondly, what are the transitional arrangements for petitions already received and being dealt with by the visitor at that commencement date?

The Lord Bishop of Portsmouth My Lords, the office of visitor dates from a time long before the kind of complex professional and personal disputes that are part of today's scene. The only body to which I am visitor is a group of nuns and clearly the regulations do not apply. But several of my episcopal colleagues are visitors to academic institutions. They will, I am sure, greet these proposals with some measure of relief and I hope they are accepted.

Lord Forsyth of Drumlean My Lords, I join in the thanks given to the Minister for bringing forward the amendment, which largely meets concerns. Also, perhaps I may thank the Minister and his officials who took quite a long time to explain to me how it would operate. I think that I now understand it and am very pleased that the Minister has brought forward the amendment.

Lord Triesman My Lords, perhaps I may respond to the questions asked. The first was what would happen in the interregnum to staff cases that are currently before the visitor—to paraphrase the question the noble Baroness, Lady Sharp, asked. We envisage that when these provisions are commenced many staff provisions already with a visitor will remain within the visitor's jurisdiction to be resolved.

However, like the noble Baroness, I also hope that a robust scheme will be agreed as soon as possible for the new arrangements. That will be very important.

Baroness Sharp of Guildford My Lords, I ask the Minister one further point. In so far as the new scheme is agreed, is it proposed to incorporate that in legislation at some point, just as the student appeal scheme has been incorporated in legislation? We recognise that this particular opportunity has been lost, but is it envisaged that perhaps it should be incorporated at some point in a legislative framework?

Lord Triesman My Lords, we want to see the outcome of the discussions between the institutions and the staff unions before committing to any future legislation. To make a commitment in advance of seeing those discussions and understanding the character of the agreement which might be struck would probably not be the best way of proceeding.

The other question which I was asked was about when the Government will commence these provisions. We think it is best to ensure consistency. For that reason it would make sense to commence these provisions at a similar time to the jurisdiction of the visitor over the student complaints system being removed under Clause 19. Obviously, I cannot give a precise date. We will of course discuss the matter with Universities UK, the Association of University Teachers and with interested parties. As soon as I am in possession of any further information I will be most happy to write to the noble Baroness and make sure that the answer is also in the Library of the House.

On Question, amendment agreed to.

Clause 43 [Orders and regulations]:

[Amendments Nos. 56 and 57 not moved.]

Schedule 7 [Repeals]:

Baroness Ashton of Upholland moved Amendment No. 57A:

Page 33, line 31, at end insert—

"Education Reform Act 1988 (c. 40) Section 206.

In section 207(1), paragraph (c) and the word "or" immediately preceding it."

On Question, amendment agreed to.

Clause 48 [Commencement]:

[Amendment No. 58 not moved.]

[Amendment No. 58A had been withdrawn from the Marshalled List.]

Baroness Ashton of Upholland moved Amendment No. 59:

Page 22, line 41, at end insert—

"section (Extension of period within which discrimination proceedings must be brought);"

On Question, amendment agreed to.

In the Title:

Baroness Ashton of Upholland Amendment No. 60:

Line 5, at end insert "to limit the jurisdiction of visitors of institutions providing higher education;"

On Question, amendment agreed to.

Title, as amended, agreed to.

House adjourned at ten o'clock.