

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