Experiencing the EJRA

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By the time you are reading this article, the result of the postal vote on a Good Governance motion debated on 17 May will be known.

Irrespective of whether the motion is carried or rejected, I record here some of my own experiences over this past year with the Oxford EJRA process. Many of the issues I raise must be considered by the EJRA Working Group – either the original one or the proposed new group. A year ago, in an article "*Approaching the EJRA*" (*Oxford Magazine*, No.358, 8th week, HT 2015) I described my experiences in applying to continue post-EJRA in my present position as Chair in Inorganic Chemistry at Oxford (pre-Sept 2015 regulations).

I noted that I had appointed some 11 colleagues to Lecturerships during the decade 2004-2014 as Head of Inorganic Chemistry, through University-wide, agreed procedures and selection criteria which were fair, transparent and rigorous (i.e. they could be defended in a court of law). For my own post-EJRA application I was expecting a process which also fulfilled those criteria. I am dismayed to report that the present process has failed me – and many other colleagues – in every one of those criteria.

My summary in that Hilary Term 2015 article was as follows:

> *'I guess at the very heart of the process is whether it is right for this University to treat people differently at age 67 as compared to those, say, at age 55 and also to treat incoming, prospective faculty differently with the EJRA than incumbent post-holders. If the University treats those categories differently, then surely it cannot have an EJRA at all.'*

The University Appeal Court Ruling, September 2014

Some 21 months ago (yes, 21 months) the independent, experienced and highly respected Court of Appeal Judge Dame Janet Smith chaired our own University Appeal Court in a case brought by Professor Denis Galligan. Dame Janet ruled:

> *'(i) The EJRA as a scheme, including the age of 67, is not objectively justifiable as required by law; and*
>
> *(ii) The procedure for extension (beyond the EJRA) is so unfair that denial of extension is "an inevitably unfair dismissal".'*

Presently, no significant action has been taken to respect Dame Janet's major judgment that the University of Oxford transgressed the law of the land.

In any other sphere of activity across this University (and beyond) practices or processes brought into question – particularly by an invited, distinguished and independent authority – would have been suspended immediately, pending appropriate measures being taken to bring them into line with the law.

We are informed that: *"The decision of the Appeal Court is binding only in relation to the appeal of the individual concerned"* and *"the other observations of the Appeal Court on the EJRA policy are for the University to use in its consideration of the future of the policy."* Strikes me that Dame Janet's ruling *"The EJRA as a scheme, including the age of 67, is not objectively justifiable as required by law"* is an absolutely clear judgement for the University in both its present and any future policy. Given the amount of time and effort Dame Janet had clearly put into such a thorough judgement, one wonders how she was informed of the University's decision (well, our Administration's decision) that her ruling has no general relevance beyond the case of Professor Galligan? That would have been an interesting communication. Let me remind readers, once again, of one Dame Janet's ruling: *"I have decided this appeal on issues of principle unrelated to the particular facts of the appellant's case"*.

We have heard that any suspension of the EJRA until the outcome of the Review Panel is known would result in the University treating faculty differently depending on their application date and causing unfairness. However, as Tim Horder points out *(Oxford Magazine, No.373) "Wellington Square had already done precisely that when it changed EJRA criteria immediately following the appeal judgement, a change that introduced possibly unfair bias in favour of scientists with grants while potentially discriminating against academics in the humanities."*

As I point out below, even scientists are treated unfairly – being asked to apply for funding (and overheads) whilst also being denied the accepted models for space allocation to carry out the work.

Even greater problems for the University will arise if the Review Panel advises abandoning the EJRA. Legal claims can then point to the fact that, despite an unambiguous judgement from the University's own Appeal Court, the EJRA process continued, regardless. As noted recently by Brian Leftow *(Oxford Magazine, No. 373) "…call me cynical* (as if!), *but one might well wonder whether the Review Panel may even now be under pressure from some quarters to reach a particular conclusion."*

Changes in the EJRA Aims and Procedures post – Sept 2015

Neither in the spirit, nor the letter, of the Appeal Court rulings, the University then introduced significantly more demanding criteria for academics wishing to work beyond the EJRA. I find it incomprehensible that such fundamental changes in the regulations for applications were introduced during the period in which the entire EJRA process is under review. I am informed from an official University source that Congregation was not consulted about such substantial amendments to the EJRA Aims and Procedures.

One far-reaching change, introduced post-Sept 2015

in the regulations, is an explicit requirement that any applicant must cover his/her total salary costs. The introduction of such *"performance management"* means that post-EJRA applicants are treated differently the day after a specified age (67), as compared to that on the day before. My own experience revealed, remarkably, that neither the Division nor the department would initially support my applications for post-EJRA funding to cover my salary! This has been common practice.

I have been informed that any request for laboratory space to carry out post-EJRA research programmes in the department will not be viewed within the (accepted) space allocation model for all other faculty members. Thus once again, a post-EJRA application is treated in a fundamentally different manner the day after the EJRA, as compared to that of the day before–a demarcation process established solely by the age of the applicant.

Post-EJRA Applications from Incoming Faculty

For the four-year period from 2011 until 1st October 2015, applications for post-EJRA extensions from incoming chairs have been treated differently than those from incumbent chair holders. Thus: (i) Incoming chairs have been permitted to apply for an extended retirement date on appointment, in contrast to the prescribed deadline for incumbent chairs; (ii) Incoming chairs have not been bound by the same requirement–and with it the same degree of scrutiny–as incumbent chairs in business plans to cover salaries beyond the EJRA. Indeed, how could they be? Business plans, etc., would have to be set out for a period of many years in advance of the EJRA–assuming, say, incoming chairs are in their mid-50's or even early 60's. During that period the success rate for incoming chairs who have applied for an extended retirement date on appointment (i.e. to retain their appointed position) was 100%.

And finally–perversely–in complete contrast to incumbent chair holders, an incoming chair is therefore judged by the University not to conflict with the avowed aims of the EJRA (e.g. refreshment of the workforce, intergenerational fairness, etc.), when he or she attains age 67! This practice has apparently been terminated on the 1st October 2015, one assumes when the University realised–or was informed–of the legal consequences that incoming chairs were being treated in a fundamentally different manner than incumbent chairs during that four-year period.

I believe that my experiences illustrate the unbalanced, discriminatory and professionally-negligent operation of the EJRA process that has operated, and still operates in our University. And finally...

Why is Oxford different?

In my earlier article I posed the question "Why should Oxford see itself as different from all other Russell Group universities who do not have an EJRA*?" In terms of the 2010 Equality Act, any "objective justification" will need to highlight the reasons why this university has set itself apart from all others who are in compliance. A defence *"We are better than the rest"* would be an interesting legal stance in the courts of this land. As far as I am aware, supposed elitism cannot be advanced as an argument for operating outside the law. And for Oxford to advance its use of the EJRA as a tool for championing diversity and equality, it will require a strong factual demonstration that its progress has been more successful than all other institutions who operate without an EJRA. Perhaps the response to the inevitable and reasonable public enquiry "Why is Oxford different?" will be another of those "wicked issues", as David Palfreyman noted (*Oxford Magazine*, No.371), that "*... the new £500K p.a. V-C will sort...*"

**Of course, Cambridge can respond separately.*

In a Chinese Home

The fish-tank honoured in this house
Is lit to show the brilliant tropic fish,
But showing too the constant flow
Of bubbling water, assurance
That the flow of life and wealth enough to live
Will dwell within this home.

And through the doorway lies the quiet room
Of family remembrance,
Where anxious girls and youths may come
To think their thoughts to now dead grandfathers
And grannies, and hear in silence from them
Their thoughts to guide or comfort them.

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Richard Fountaine was educated at Trinity College Dublin and Exeter College Oxford. He is a lawyer and a lecturer in Journalism and Intellectual property as well as a historian, a novelist and a poet. His philosophical novel 'Tisala' *('perhaps the greatest whale story since Moby Dick') was published in 2015, and his* Collected Poems *are in preparation.*