

*was this, the constitutional question, that decided his vote that day.*<sup>3</sup>

So one hopes the Public Affairs Directorate will keep an informed eye on the way better communications relates to the constitutional framework for decision-making in the University.

Yours sincerely

G.R. EVANS

*Oxford*

<sup>1</sup>[http://www.admin.ox.ac.uk/statutes/regulations/185-084.shtml#\\_Toc87060903](http://www.admin.ox.ac.uk/statutes/regulations/185-084.shtml#_Toc87060903)

<sup>2</sup><http://www.ox.ac.uk/gazette/2011-2012/13october2011-no4965/councilandmaincommittees/#58004>

<sup>3</sup>[http://www.ox.ac.uk/gazette/1996-7/supps/2\\_4442.htm#3Ref](http://www.ox.ac.uk/gazette/1996-7/supps/2_4442.htm#3Ref)

Sir – In 2014, Dame Janet Smith carried out the first external scrutiny of Oxford University’s EJRA policy in its own Appeal Court. In her judgement in the Appeal of Professor Denis Galligan, she highlighted her sense that the process reduces to enabling the University “... to pick out those members of staff which it wishes to retain while requiring any others to retire” (#88)

The recently published Report of the EJRA Working Group seeks to retain an “Exceptions Process” under which it argues that making very limited exceptions to the general rule of the EJRA helps to mitigate the discriminatory effect of the policy and assists in justifying it as a proportionate means of achieving its aims. In essence, because the rule does not “bite” on all 67 years olds, their view is that it is therefore less discriminatory, and so more readily justified.

That same argument was strongly rejected by Dame Janet in her 2014 ruling. The Equality Act 2010 provides older employees with the right to continue in employment beyond their contractual retirement ages. An employer may, however, in certain circumstances ‘justify’ imposing a retirement age, as Oxford has sought to

do. However, Dame Janet noted that if the scheme is not applied in the same manner to all employees, the scheme or policy is unlikely to afford automatic protection to the employer. Thus, as soon as an employer applies the policy in a different way to different people in an organisation, as in the Oxford EJRA in allowing some but not others to remain in their posts, the reason for an individual’s dismissal from his / her post ceases to be retirement at the EJRA but is a dismissal under a selection process.

In its Report, the EJRA Working Group concludes that the EJRA’s “creation of vacancies” is at the very heart of the achievement of the stated Aims; refreshment, enhancement of diversity, intergenerational fairness, etc. Unfortunately, this statement is misleading. What is happening at Oxford University is the EJRA’s “selective creation of vacancies”.

Yours sincerely

PETER EDWARDS

*Oxford*

### Further Education

Sir – On what he calls “the public value of universities”, David Willetts was half-right and half-wrong in the Lords on January 9<sup>th</sup> when he reflected: “We went through this very issue only in the past few years with FE colleges, which were defined as part of the public sector.” (*Oxford Magazine*, No. 380, 2<sup>nd</sup> Week, HT, 2017). On February 22<sup>nd</sup> the Technical and Further Education Bill begins its committee stage, a Bill which, as its main provision, will establish insolvency procedures for failing colleges, in itself an indicator of many of the problems which have beset the FE sector since incorporation began 25 years ago.

An area of particular concern must be the grey area between public sector and so-called private enterprise, whereby FE colleges, general as well as specialised, have often dangerously mingled public sector provision with private provision.

Since 2013 many colleges have been buying private training providers, have set up consultancies and have established holding companies for a move into international training provision, notably in Saudi Arabia, where for the moment a number of FE college consortia have failed to find the pot of gold which they believed would be theirs for the picking and could then be poured into their core activities in the UK. Businesses bought have been retained as subsidiary companies though a mixture of different share classes and loans. Private company staff under an FE corporation umbrella, unlike their public sector colleagues, have been offered bonus and incentive schemes and, in some cases, share options.

So when is this muddy racecourse private and when public? Lord Willetts talks of “the colleges being subject to public expenditure controls and borrowing counting as part of the PSBR.” Yet much of FE private activities, including foreign adventures, are not subject to public scrutiny. Is this what Lord Willetts favours for all education? Is this any kind of resolution?

It could be too early to write off further education as private enterprise, but insolvency is certainly on the muddled race cards for a number of colleges, where recruitment at home is in decline, just as it has been for the seven University Technical Colleges where failure to recruit has led to closure. That Lord Willetts favours a future for universities as part of profit making global chains might sound grand and for some universities this could reap rewards: for many others, it won’t, and much more than finance will fall at the first fence. FE might be a donkey as against HE’s sleek stallion, but at least something could be learned from where FE private has lost the race for FE public, with the consequence that both are put out to pasture, or worse.

Yours sincerely

BRUCE ROSS-SMITH

*Headington*

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