
The EJRA Review: Report on the Report

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THE EJRA Review Working Group has delivered its report and the Vice-Chancellor has encouraged everyone to read it since its recommendations will affect all current academic and academic-related staff. The report is helpfully structured by presenting first a summary of its findings and recommendations, so everyone can grasp the salient points by reading only the first page and a half. The remainder consists of more detailed exposition of the methods used and considerations of the aims and operation of the EJRA procedure including the exceptions process. The bulk of the report takes the form of ten annexes providing the raw data on which the report's conclusions are based. The key motivation for the exercise, as stated, was to consider "*the extent to which the EJRA is meeting the Aims identified when the policy was established, and thus can be justified in law.*"¹

The report itself makes an encouraging start by specifically declaring that the Working Group consulted and took an "*evidence-based approach*". It includes also a helpful caution regarding small numbers expressed as percentages—warning that small differences between two small numbers may look like substantial effects. Sadly, the report itself does not live up to the initial promise—its conclusions turn out not to be based on evidence and claims are made of "substantial effects (of the EJRA)" which are either non-existent or based on percentages of small numbers!

A particularly worrying feature of the Working Group's methods is that they seem to have taken no advice on how to analyse the data in order to *isolate the contribution of the EJRA to achieving the aims*. In Oxford we have one of the best Departments of Statistics in the world with experts in analysis of societal data. It is astonishing that the group seems not to have sought guidance as to whether or not their conclusions were statistically significant and robustly based on the available data. The report contains absolutely no indication of any margins of error and makes the "schoolboy error" of failing to compare data supposedly affected by the EJRA with an identifiable control group where any such effects would be absent. In the present case such control data exists for all the other Russell Group Universities none of which, with the exception of Oxford, Cambridge and St Andrew's, operate an EJRA policy. Over the past number of years Oxford's Equality and Diversity Unit (EDU) has produced annual reports in which data on such things as gender balance are presented, showing the relative performance of all these institutions. As I pointed out in a previous article, the data show that Oxford's diversity performance is almost exactly equal to the average of the other universities and shows no evidence that the EJRA has made any difference to improving diversity.² The most recent EDU report for 2015-16 now omits this comparison.³ The inconvenient truth shown by such comparative data undermines the grand claims made in the report of "substantial impact", etc. effected by our EJRA. Before examining the validity of these claims, that the EJRA makes a "substantial contri-

but ion" towards achieving the aims, we give a short assessment of the report.

Within the confines of a short magazine article it is not possible to give a line-by-line critique but the broad outlines of the report's deficiencies can be presented by reference to the relevant sections. Following the introductory summary the report is structured with respect to the aims of the EJRA. These are, briefly to:

1. Safeguard standards in teaching, research and professional services—to maintain Oxford's position as a world-leading university.
2. Promote intergenerational fairness and career progression
3. Refresh the workforce
4. Facilitate succession planning
5. Promote equality and diversity
6. Facilitate flexibility in academic-related workforce
7. Minimize impact on staff morale

The main recommendations are summarized as follows:

1. Change "Aim 1" to an "Objective" to be attained by success in achieving the other aims and drop "Aims 6 and 7" because it was too hard to find evidence that the EJRA had any effect on them.
2. Retain the EJRA in order to attain the "Objective (of maintaining standards)"
3. Change in coverage to match staff eligible for membership of Congregation
4. Change the point for the EJRA from age 67 to age 68.
5. Various changes to the exceptions process i.e. for applying for extension beyond the EJRA.

Right at the start we encounter a significant logical flaw. The original aims were free-standing and essentially independent as justifying the EJRA. Apart from aims 6 and 7 which are dropped, aims 2–5 are now seen as the means to achieving the overall objective of Aim 1, maintaining world-leading standards in teaching, research, etc. No explanation is offered, nor is any evidence provided to show that intergenerational fairness, career progression, refreshment, succession planning or diversity contribute to achieving this objective. It is a bare assertion. As Dame Janet Smith ruled in her judgment in the Galligan vs The University case, the University "... *must produce evidence and not rely on bare assertion.*"⁴ So not only does the University need to produce evidence that the EJRA is effective in meeting the Aims 2–5, it must now also give evidence that these aims make an effective contribution to achieving the objective, formerly "Aim 1". No such evidence has been provided.

The following sections of the report give feedback from various groups leading to the claims that the EJRA is making a "substantial contribution" and remarks that efforts can be made in areas where it is making the "most substantial impact", implying that it actually is making an impact. However these are just statements of opinion and opinions, even if held by a majority, are not evidence. In fact, no evidence is provided, by those canvassed, to support these opinions. Dame Janet Smith also drew attention to a similar error by noting, "*The University confused the idea of general approval with*

the balancing of interests which justification of an EJRA requires.”⁵ So we turn, in hope of finding some more robust “evidence-based” conclusions, to the Working Group’s “analysis” of the data.

The main thrust of the Report’s conclusion is that the EJRA is working through “**the creation of vacancies.**” (The bold emphasis is from the Report itself.) It then looks at changes in such things as the proportion of females in various academic grades and falls into the trap of being impressed by the percentages of small numbers—it thus forgets its own warning that a percentage change can look “substantial” when small numbers are involved! For example, vacancies due to retirement for Statutory Chairs are 50–60% of the total in this subgroup. However, if associate professors and academic research grades 8–10 are included the figure is about 25% and if all grades are included it falls to 5%. In relation to achieving the aims, the question of diversity and of female representation is the best test case since it involves the largest numbers and so has more statistical significance. The EDU report for 2015–16, in relation to improving the proportion of female academics reports that “...the rate of increase is slow, particularly amongst associate professors.”³ The figure is an improvement of 1% in the last 3 years. It is also clear from the data in Annexe F, however, that this is a continuation of a long-term trend—reflecting wider changes in society—and has nothing to do with the EJRA. The report consistently asserts that the EJRA is having an effect but provides no evidence that shows that any changes that are apparent can be attributed to the effect of the EJRA. And here is why ...

The first thing to bear in mind is that all posts will be vacated eventually; all the EJRA can do is to change the rate of creating vacancies. It is a simple matter to estimate the effect of the EJRA on this rate. Interestingly, Dame Janet Smith pointed out the deficiencies in the University’s approach in setting up the original EJRA scheme by noting, “At the time, the university made no attempt to find out what would be the likely effect on vacancies of an EJRA of any particular age.”⁶ To find out the likely effect we make the following assumptions. An academic career spans 42 years under the EJRA (from age 25 to 67), all academics stay the full span i.e. no early leavers, the distribution of academics in each age range is uniform and so a fraction, 1/42, retire each year—the vacancy creation rate. Assume further that without an EJRA everyone stays an average of 3 more years, leading to a vacancy rate of 1/45. (Experience at institutions without an EJRA shows this is a typical period that people stay beyond the notional retirement age.) The EJRA therefore produces a change of 7% in the vacancy rate. However, at least 50% of vacancies arise from reasons other than retirement. So the change is reduced to 3.5%. Now the Review Report shows that the numbers wishing to stay beyond the EJRA age of 67 is at most 50%. (About 50% eligible academics applied for extension in the past year. The report indicates that amongst recent retirees the proportion that would have stayed on was only 20%.) Taking the upper bound of 50% the change in vacancy creation rate due to the EJRA is 1.75%. It is virtually impossible to show that an effect of less than 2% could be discerned from the data that is affected by many more effective and powerful factors, with much larger random fluctuations.

The Report concludes that to achieve the aims, the process relies on a steady stream of vacancies and that “the EJRA contributes substantially to this flow.” This simple calculation shows that this conclusion is simply wrong. Unless, in the universe inhabited by the Review Working Group, a change of the order of 2% can be described as “substantial”. It shows also that the recommendation to change the EJRA age by one year, to 68, will make virtually no difference at all. The figures completely undermine the Report’s claim that the EJRA is making a “substantial contribution” to achieving the aims.

When taken all together, the benefits of this EJRA in promoting gender equality are indistinguishable from zero and at the cost of introducing a different form of discrimination—based on age. Dame Janet Smith, in her ruling, made the specific criticism that “Unless the diversity promoting benefits to be derived from introducing the EJRA are very significant it does not seem to me to be justifiable to introduce one form of discrimination in order to combat another.”⁷ (emphasis added) Since this EJRA cannot be shown objectively to be a proportionate means of achieving the aims it is therefore not justified in law.

Apart from these fatal flaws, the report nowhere addresses the lawfulness of the procedure which is a matter of supreme importance in our discussions about whether or not to retain the EJRA. The discussion of the “exceptions process” also fails to address the fact that the whole process for applying for extensions is a selection process and, according to the judgment of Dame Janet Smith, this totally invalidates the process in law because “the reason for an individual’s dismissal ceases to be retirement at the EJRA and becomes dismissal under the selection process.”⁸

The Review Working Group were set an impossible task—to find something that could not be found. Council and Congregation may thank the Review Group for their time and effort but should reject their report’s recommendations which are not evidence-based. The claim that the EJRA makes a substantial impact is shown, by simple mathematics, to be unfounded. All the EJRA can do is to make a marginal change in the rate of creating vacancies. There is no evidence that this change makes any significant contribution to achieving the aims. The EJRA therefore cannot be justified in law. It should be abandoned and its unjustified age-discrimination ended as soon as possible.

¹ <http://www.ox.ac.uk/sites/files/oxford/Report%20of%20the%20EJRA%20Review%20Group.pdf> and <http://www.ox.ac.uk/sites/files/oxford/Report%20of%20the%20EJRA%20Review%20Group%20-%20annexes.pdf>

² “Can the EJRA achieve its aims?” *Oxford Magazine*, Eighth Week, Michaelmas Term, 2016, No. 378 <https://www.ox.ac.uk/sites/files/oxford/Oxford%20Magazine%208th%20week%20Michaelmas%20term%202016%20-%20No%20378.pdf>

³ Equality Report 2015 - 2016, [http://www.admin.ox.ac.uk/media/global/wwwadminoxacuk/local/sites/equalityanddiversity/documents/psed/2017_PSED_Equality_Report_\[for_black_and_white_printing\].pdf](http://www.admin.ox.ac.uk/media/global/wwwadminoxacuk/local/sites/equalityanddiversity/documents/psed/2017_PSED_Equality_Report_[for_black_and_white_printing].pdf)

⁴ *DJS*, Dame Janet Smith in the Appeal Court case *Galligan vs The University* (2014). Paragraph 6. The full judgment may be viewed at http://www.oxfordejragroup.net/Content/local/Dame_Janet_Smith_Judgement.PDF

⁵ *DJS op.cit.* para 58

⁶ *DJS op.cit.* para 62

⁷ *DJS op.cit.* para 50 and 66

⁸ *DJS op.cit.* para 71