
Can the EJRA achieve its aims?

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Titles and headlines can be misleading so a more precise indication of the issue is as follows – “Can the Employer Justified Retirement Age (EJRA) policy *be shown to be* an effective and proportionate means of achieving its aims?” The University has charged the EJRA Review Working Group (RWG) with determining “the extent to which the EJRA is meeting the aims identified when the policy was established, *and thus can be justified in law*” (my italics).¹ It is important to note that in order to be objectively justified the data must show unambiguously that the EJRA is both effective and proportionate. It follows that if the data either does not show such effectiveness or cannot be analysed in such a way as to isolate the effect of the EJRA from all other factors affecting the data, then the EJRA is not justified in law as required by the Equalities Act (2010). It is instructive to consider each of the aims and how the EJRA might be shown to achieve them.

Aim. Safeguarding the high standards of the University in teaching, research and professional services

This aim is, presumably, based on the premise that staff over the age of 67 are more likely than those of lower age to under-perform and thus not maintain high standards in teaching and research. The RWG would need to produce evidence that this is the case. This will require “performance assessment” of all academics across the entire age spectrum. There is no indication that such data is, or could be, available to the Group. In any case, dismissing those under-performing academics who are aged over 67 but retaining those below this age is manifestly age-discrimination. A stronger case could be made to dismiss the younger ones since their underperformance would affect the University for longer! In order to safeguard the high standards by means of dismissal it would be necessary to dismiss *all* under-performing academics, irrespective of age. In fact, a recent international study of the research effectiveness of academics has shown that the premise underlying this aim is false. The research, published in the journal *Science*, found that the time at which

scientists produce high-impact papers is completely random and such success can be achieved at any point in their careers.² These findings completely de-bunk the accepted myth that the rate of producing major contributions to scholarship declines with age. It is reasonable to suppose that a similar conclusion would be reached in the area of humanities scholarship.

Furthermore, the data produced by the University tells against this premise. The RWG’s own data showed that in the first 3 years of its operation 91% of all applications for extension were approved.¹ This is evidence that the vast majority of those wishing to continue working met the stringent standards set by the regulations. So, surprisingly, practically all Oxford academics were good at their job! It does not follow, however, that the remaining 9% were not performing – only that they could not satisfy some of the criteria set by the university in its own business or financial interests. There is no evidence here of a stultifying array of “dead wood” in need of radical pruning. Nor is there any evidence that any dead wood is confined to the set of those aged over 67. There is, in any case, no justification for cutting off, by means of the EJRA, so many active and productive academics in the interests of dismissing a very much smaller number of unproductive staff – if such there are. On the contrary, keeping distinguished and still energetic senior academics, many of whom have helped Oxford to its current world-leading position, could be more effective in achieving this aim.

Aim. 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

Oxford University has a particularly “flat” career structure i.e. there are relatively few senior posts such as Statutory Chairs compared to the number of academic staff. The majority of these posts are filled by external candidates rather than promotions from within the existing cohort of

academics. This contributes to the international standing of the university – it attracts the best people from around the world. The opportunities for “career progression” are limited more by the structure of the Oxford system and not primarily by the rate of retirements from senior posts. Hence an EJRA will have only a marginal effect on inter-generational fairness and is not a proportionate means of achieving the aim.

Aim. Refreshing the academic, research and other professional workforce as a route to maintaining the University’s position on the international stage;

As noted above, high quality research output is not correlated with age – older academics are at least as effective in maintaining the University’s position internationally as younger ones. The majority of the world’s leading universities are in the USA where mandatory retirement was abolished more than twenty years ago. Since then they have consistently maintained their internationally leading position without having any form of EJRA. There is therefore no evidence that “refreshing” the workforce by means of an EJRA helps achieve this aim.

Aim. Facilitating succession planning by maintaining predictable retirement dates, especially in relation to the collegiate University’s joint appointment system

The University’s data on “Reasons for leaving” shows that roughly the same number leave for career and other reasons as for retirement.³ Thus, at present, about half of vacancies arise without any long-term advance warning. The system of giving notice for a fixed period seems to work satisfactorily. Academics intending to retire could surely be relied upon to give a similar degree of notice and thus facilitate succession planning. A sensible scheme for phased retirement, linked to pension uptake, could also be envisaged to provide incentives here. In relation to the University/College joint appointment system, a degree of flexibility is already built-in. It is often the case that a College losing an academic joins a queue of other Colleges awaiting a replacement tutor in a preferred discipline. Colleges also frequently welcome a delay in re-filling the post for financial reasons. Thus the joint system is well able to cope with academics having the freedom to choose when to retire as is their right under the Equality Act.

Aim. Facilitating flexibility through turnover in the academic-related workforce, especially at a time of headcount restraint, to respond to the changing business needs of the University, whether in administration, IT, the libraries, or other professional areas

Fewer Academic-Related than Academic, staff seem to want to stay on but those that do are often critical to projects and difficult to replace. The current EJRA “system” however, by dismissing them in an inflexible, even doctrinaire, exercise of the EJRA seems to treat the hurt to these individuals, and the research they support, as “collateral damage”. It is difficult to see how the total cost-effectiveness of this policy, other than purely financial considerations can be measured by any data.

Aim. Minimising the impact on staff morale by using a predictable retirement date to manage any future financial cuts or constraints by retiring staff at the EJRA

How can morale be quantified? If it can’t be quantified how can the impact of the EJRA be assessed objectively? The morale of those experiencing the stress of navigating the EJRA and being forced into involuntary retirement seems not to be a consideration.

Aim. 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

This aim comes 5th in the University’s list but it considered last here because it is, arguably, the one most amenable to quantitative analysis of the data. In particular, statistics are available from the University’s Equality and Diversity Unit (EDU) regarding gender and other “protected characteristics” as defined in the Equality Act.³ The data on gender is the most reliable since the numbers involved in the other categories are not large enough to give statistically significant conclusions. Before considering this data, however, it is worth noting that the make-up of the existing workforce is a product of several powerful historical factors in British Society; the post- 2nd world war “baby boom”, the Robbins expansion of UK universities in the 1960s, historic discrimination against women in education (many College SCRs opened to women only in the last

few decades) and the freezing of university recruitment under Margaret Thatcher in the 1980s. The demographic situation has been changing recently as a result of other societal factors and the “male baby boomer bulge” is already disappearing by natural causes.

The data for gender balance for the years since the introduction of the EJRA show that the percentage of female academics in Oxford has remained almost constant at around 41% and almost exactly equal to the average figure for all the other Russell Group universities, none of which, apart from Cambridge, operate an EJRA. Therefore there is no evidence that the EJRA helps achieve gender equality. The RWG may insist that they need more data, but here is the real point at issue – how can the data be analysed to isolate the effect of the EJRA from all the other, more powerful, factors affecting gender balance? The Chair of the RWG, Professor Tracey, was asked how the data, even if more could be gathered, could be analysed to show the effectiveness or otherwise of the EJRA regarding gender equality. She replied that they did not know how this could be done.⁴

Whilst not wishing to pre-judge the report of the RWG, its conclusions must be assessed in the light of the above issues. If the RWG does not know how to analyse the data most amenable to quantitative analysis, that relating to gender, how can it analyse the data to show the effect of the EJRA on any of the aims? The conclusion is that the EJRA cannot be shown to be an effective and proportionate means of achieving the aims and so cannot be justified in law. This conclusion is fully consistent with the only independent and objective judgment on its legality that has yet been given, that by Dame Janet Smith in the case of Professor Denis Galligan.⁵ This judgment found the EJRA to be unlawful but the University has consistently sought to conceal this judgment from Congregation on the “misconceived” notion that it was confidential.⁶ The members of the RWG will need courage to maintain their intellectual honesty in the face of any pressure to produce a politically convenient conclusion. We wish them well.

¹https://www.ox.ac.uk/sites/files/oxford/field/field_document/Presentation%20for%20open%20meetings%20-%20for%20website.pdf (page 7)

² Quantifying the evolution of individual scientific impact, R. Sinatra et al. *Science*, Vol. 354, Issue 6312, DOI: 10.1126/science.aaf5239

³http://www.admin.ox.ac.uk/media/global/wwwadminox.ac.uk/localsites/personnel/documents/factsandfigures/staffingfigures2015/Data_for_2015_booklet.pdf

⁴ Reply given by Professor Irene Tracey at Review Working Group Open Meeting, 27th October, 2016.

⁵http://www.oxfordejragroup.net/Content/local/Dame_Janet_Smith_Judgement.PDF

⁶http://www.oxfordejragroup.net/Content/local/Jeremy_Sullivan_Judgement.PDF