

# Gazette Supplement



## Legislative Proposal: Statute XIV: Employment of Academic and Support Staff by the University

### Congregation

2 May

The following is the text of the debate in Congregation at 2pm on 2 May on the legislative proposal concerning Statute XIV. For further information, see Supplement (1) to *Gazette* No 5166, 27 April 2017.

**The Vice-Chancellor:** The business before Congregation today is the legislative proposal on Statute XIV, which relates to the Employer Justified Retirement Age, better known as EJRA. Could you please take a seat.

The legislative proposal was placed on the agenda of this meeting, first published in the 23 March issue of the *Gazette*. A notice of opposition and two notices of amendment have been received. These were published in the supplement of 27 April. Copies are available from stewards on the door.

Before I outline the procedures for this meeting I would like to just say a few words, and that is really to acknowledge just how difficult this issue of an EJRA is for a self-governing body like ours. Almost everybody here is affected by the outcome of our decisions on the EJRA. In effect, almost everyone here has a conflict of interest. It's a complex issue and one in which reasonable people may differ. As trustees of this great university we have a responsibility to consider not just our own personal interest but that of the University as a whole, both now and for future generations, while recognising that there are no easy answers to this issue.

Now, the procedure for today's meeting will be as follows.

The legislative proposal will be moved and seconded on behalf of Council, following which the notice of opposition will be moved and seconded.

The proposed amendments will then be considered in turn as described in the *Gazette* supplement.

Both amendments will be put to the vote simultaneously following all of the speeches on the amendments, using voting papers 1 and 2. After that, the order of business will be determined by the outcome of those votes.

If only one of the amendments is approved, it is intended that consideration of the amended legislative proposal will be adjourned to the next scheduled meeting on 16 May.

If both amendments are approved, Congregation will be asked to determine by division which of the two amendments will amend the legislative proposal, following which the meeting will be adjourned as just described.

In the event that both of the amendments are rejected, I will invite further speeches on the legislative proposal itself. Following this a vote by paper ballot will take place to approve or reject the legislative proposal using voting paper 3.

As you will have just heard, voting at the meeting today may take place by paper ballot and by division.

Members of Congregation should have received a set of three voting papers as you entered the theatre. Any members who have not will have an opportunity to collect them at the exits.

When a vote by ballot is called, members will be invited to tear off and place the relevant voting paper or papers in a ballot box at one of the voting stations at the exits to the theatre. A member may not leave a completed voting paper with another member: only a member's own, personal voting paper will be accepted for each vote. Any member who cannot stay until I call a vote will not be able to participate in that vote.

If there is a vote by division, which will take place if both amendments are carried, further

instructions will be provided immediately beforehand. As before, any member who cannot stay until I call the vote will not be able to participate in that vote.

Whether a vote takes place by ballot paper or division, the Proctors will be responsible for counting the votes and the results will be announced as soon as possible after the vote has been taken.

Speakers - when called, please could you come forward and speak into the microphone, first giving your name and college or department. The anti-loquitor device will indicate your final minute with an amber light and then turn red at the end of the minute. You are asked to confine your remarks to themes relevant to the debate. (And a condition for every speaker is that they repeat what I have just said prior to their speech.) It's a complicated process this afternoon, and we will try to ensure that you know precisely what it is you are voting on. First, I would like to call on the movers and seconders of the legislative proposal.

So I call on The Revd Canon Dr Judith Maltby to move the legislative proposal on behalf of Council.

### Legislative Proposal and Notice of Opposition

**Dr Maltby:** I am Dr Judith Maltby, Reader in Church History, Fellow, Chaplain and Dean of Welfare at Corpus Christi College and Chair of the Personnel Committee.

Vice-Chancellor, colleagues, only a year ago we met to consider the EJRA, in response to motions seeking the policy's suspension while it was under review. You, Congregation, then decided you wanted to keep it while the Review Group did its work.

Today we meet to consider changes to University legislation to give effect to the

Group's recommendations. Two proposed amendments will be considered first. If they are not carried then we will debate the Group's recommendations.

We will meet again in two weeks' time to hold a discussion on the merits of the EJRA and to consider a resolution to abolish it, so no-one can say we aren't giving this issue plenty of airtime!

But most of us would want things to be decided one way or another by the end of this term.

Others will talk about the proposals; I will set the scene.

The modern University has always had a retirement age, with a procedure for individuals to apply for extended employment. Since 1985, the normal retirement age had been 65. In 2010, before the abolition of the default retirement age, extensive consultation was undertaken with divisions, Conference, the UCU and all staff. The weight of opinion was that the University should maintain a retirement age – which is, I should note, a totally separate issue from the pension age – in order to ensure continued turnover and refreshment, intergenerational fairness and improved diversity.

As a result, Council approved an EJRA on 30 September before the 68th birthday for all staff in grade 6 and above. The amendments to regulation were published in the *Gazette*, and no-one objected or proposed an amendment.

The policy included a procedure for staff to apply for extended employment. A Panel considered applications against set criteria, designed to minimise the impact of any extension on the Aims. Several dozen staff, mostly academic or senior research staff, applied each year and most were successful, and those who were not had the right of appeal.

Several appeals have been considered by the University's internal Appeal Court. Some have been upheld and some have garnered significant attention.

In one appeal, Dame Janet Smith criticised the policy and the extensions procedure. Although the judgment has not been published, since it is confidential to those involved, extracts from it have been in the *Oxford Magazine* and I will not repeat them here.

Now, the Personnel Committee took Dame Janet's concerns very seriously and, as a result, a series of amendments were made to the policy and procedure, including

- a clarification and re-ordering of the Aims,
- amendments to the criteria to clarify expectations around vacating posts and funding,

- the introduction of a standing Committee to consider applications every six months in a gathered field, and lastly
- a standard application form to help individuals drive the process.

These changes were published in the *Gazette*, and it was the committee's belief that they addressed Dame Janet's concerns. And I would add, as someone who has acted as chair under both procedures, I believe these changes to be welcome improvements.

Now, some will say the University uses retirement as an alternative to performance management, allowing those deemed to be of sufficient calibre to remain and enforcing retirement on a few; but this is not the case. But those whose applications are declined can feel deeply hurt. But we cannot allow that to drive our decisions on policy, but we should, and can, do more to support colleagues as they approach retirement.

The law explicitly allows for an EJRA where it is a proportionate means of achieving legitimate Aims. We believe that this is what we have – a proportionate policy with defined Aims to protect our standing as a world-class university, to achieve fairness for young and old and to improve diversity. We think the proposed revisions to the EJRA improve it and enable us better to meet our aims.

I commend the proposals to you. Thank you.

**The Vice-Chancellor:** Thank you very much. I now call on Professor Irene Tracey to second the legislative proposal.

**Professor Irene Tracey:** Good afternoon. I'm Professor Irene Tracey, Head of the Nuffield Department of Clinical Neurosciences, and Fellow of Pembroke College. Chair of the EJRA Review Group.

Vice-Chancellor and colleagues, I want to talk to you about how the Group operated and what conclusions it reached. When we debate the recommendations, others from the Group will address each proposal in more detail.

It is important for me to stress at the outset that the Review Group was entirely independent. It included members of Congregation from each of the academic divisions, from UAS, from GLAM and from the Conference of Colleges. We had two lawyers, and also received advice from Legal Services.

We did NOT receive guidance as to what conclusions we should reach from Council or from anyone else. The group consisted entirely of members of Congregation, like you, who teach, research and administrate at Oxford, who understand what it is we are trying to achieve in maintaining this great university and the challenges and joys of working here.

The Group was clear from the beginning that it would be consultative and data-driven where possible.

**Regarding consultation:** we invited all staff, via the *Gazette* and a series of emails, to send in written feedback and to tell us their views at a series of open meetings. We wrote to retired staff, consulted the UCU – who also conducted their own survey of members – and visited staff networks.

Every piece of feedback received has been considered by the Group and it has influenced our thinking substantially as we developed our conclusions.

Council asked for further consultation led by the Vice-Chancellor and another open session was held. Over 100 people attended and expressed a wide range of views on how the University could best balance the needs of those at the earlier and later stages of their careers.

**Regarding data:** the collection was not without its frustrations – we are limited by our HR systems and we found other institutions are not anxious to share their data with us. But we did gather data on change in retirement ages, the number of vacancies that are created by retirement, the changing diversity profile of our staff and so on.

We looked at what other institutions here and abroad are doing, including those in the USA, who have no retirement age, but were mindful that our job was to work out what was necessary here, at Oxford. Our conclusion was clear – the EJRA makes a difference.

We are mindful that attributing causality with just a few years' worth of data under the new procedures will be near impossible. However, the reality is that the EJRA is one of the main vehicles within this University that generates vacancies in tenured positions. That is fact.

Attributing in the short period of operation how those vacancies facilitate other processes to support our Aims (such as improved gender balance) so a significant effect is seen will be challenging, as I have stated many times. However, at this short stage of EJRA operation we must be mindful, as is well known in science, that absence of evidence is not evidence of absence. For us, the very significant percentage of tenured posts generated through EJRA was highly persuasive data.

Therefore, I hope you have read the report in full and will draw your own conclusions. I want to thank the members of the committee and the staff who serviced it for their hard work, care and diligence.

**Finally, the recommendations.**

- Having concluded that the EJRA is contributing to the achievement of the Aims, we recommend that we keep it.

- We recommend keeping those Aims that are still important and where we can see that the EJRA is having the most effect.
- We recommend that it apply only to those in grade 8 and above - broadly those eligible for Congregation and where we see it making a difference.
- In balancing the needs of all generations, something we took extremely seriously, we recommend an increase by one year to 68.
- Finally, recognising the vital importance of ensuring that all staff are treated with respect, we recommend a number of improvements to the procedures for applying for extended employment.

Together these recommendations give us a positive way forward that balances the needs of the institution and individuals of all ages. I commend them to you.

**The Vice-Chancellor:** Thank you, Professor Tracey.

We now move on to the moving and seconding of the opposition to the legislative proposal and I'd like to call on Professor Peter Edwards on behalf of Professor Sir John Ball to move the opposition.

**Professor Edwards:** Vice-Chancellor, colleagues, thank you.

As you mentioned, the EJRA has been - and continues to be - deeply divisive for Oxford. Almost one calendar year ago, in Congregation, I was categorised as being from a group of 'old white men', effectively suppressing the promotion of equality and diversity, by Professor Wickham of Old Souls, that college of course noted for its efforts in those areas for nearly six centuries. Professor Bradley, Head of MPLS, and Dr Surender, Advocate for Diversity, link myself and others sharing my views as a conflicted group promoting self-interest and 'hanging on limpet-like to space and resources'. To call us 'old white men' was, of course, ageist, racist and sexist, so perhaps they may want to revisit these words now from the point of view of the equality agenda of the University.

Now, I would like to know what I am being asked to agree to today, and it is true that I can find that out if I go straight to the words 'Legislative Proposal'. But there are many many other words, in the *Gazette* of 23 March and in the supplement to the *Gazette* of last Thursday, and in the circular *Notice to Members of Congregation* which also came round on Thursday. If I read only that *Notice*, the one with the attractive photograph of the Sheldonian at the top, I see the words:

*'Congregation will be asked to vote on Council's proposal to accept in full the 11 recommendations of the Group which has reviewed the EJRA.'*

That's somewhat misleading, surely intentional, of the Public Affairs Directorate, or whoever wrote this. It would be extremely unfortunate if it was subsequently to be claimed that Congregation had indeed formally approved all that - **and only that** - at a meeting where the actual voting was to set a dangerous precedent diminishing the legislative control of Congregation over the procedures for dismissal of academic staff. For make no mistake. It is accepted by the University that the EJRA leads to dismissals of employees who would otherwise be entitled, by law, to continue in their posts.

Moreover Congregation is, in fact, being asked to approve a change which continues to make the Aims of the EJRA unlawful in any case. I remind Congregation also that the **only** University Appeal Court judgment so far completed concluded that the Oxford EJRA, particularly the exemption process, is unlawful. Changes have been made since 2015 to partly meet that objection. The proposed new change will make things worse, not better. In order for an aim to be legitimate so as to justify direct age discrimination, it must be in pursuit of legitimate social policy aims, and not merely in the interests of the University as an employer: the University's proposed new *overarching Aim*, governing all the others, is:

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

**However laudable, that is not a legitimate policy aim.**

In fact, Congregation has simply been asked to approve a Legislative Proposal containing two clauses. It is to those I must now formally declare my opposition. On the first, Congregation has Amendments before it this afternoon which will be proposed and seconded by other speakers in a few minutes.

So I will propose opposition to the Legislative Proposal now simply by pointing out my concern about the *second* clause, seeking to create a brand new clause for Statute XIV. This asks Congregation to abdicate its legislative powers by permitting Council to create and amend in future the EJRA policy and procedures - including the conditions for exemptions - *'on the recommendation of the Personnel Committee'*. This is akin to a Henry VIII clause giving power to legislate by proclamation.

'Policies and procedures' you notice. These will not be Regulations, over which approval Congregation exercises its constitutional powers as the University's sovereign legislative body. This is highly dangerous. This Henry VIII clause removes to Wellington Square the future design of the EJRA policy and operation, should the EJRA survive the discussion, the

debate and voting to come at the next meeting of Congregation, now scheduled for 16 May. I urge you to reject this proposal. Thank you.

**The Vice-Chancellor:** Thank you, Professor Edwards. I'd like to call on Professor Paul Ewart on behalf of Professor Peter Edwards, to second it.

**Professor Ewart:** Paul Ewart, Department of Physics. Vice-Chancellor, Registrar, Proctors and colleagues. Now, you might be already thinking 'Here's another old white man!' But don't be fooled, my hair has been this colour for 30 years. I had an old head on young shoulders. Anyway, don't be fooled either into thinking that this legislative proposal is based on evidence. It is not. The Review Working Group's remit was to determine **the extent** to which the EJRA is meeting its aims and therefore can be **justified in law**. The University's Appeal Court, under Dame Janet Smith, found it to be unlawful. And her judgment is available on the EJRA group's website and should be required reading by everyone in Congregation.

Now, measuring **the extent** requires proper statistical analysis of the data. And we have here in Oxford a world-leading Department of Statistics. They provide a consulting service to members of the University. Why were they not consulted? Well, I have consulted them, and the consulting service in Dr Dan Lunn states that: *'There is no evidence to support the report's conclusions.'* For example, in relation to statutory professors, the report claims the EJRA is making *'a substantial contribution to improvements in gender diversity...'* Now, formal statistical analysis of the data between 2006 and 2015 shows that there was no significant change over those years. For the statisticians amongst us, it had a p-value of 0.98. The Fisher Exact Test on the data for 2006 and 2015 has a p-value of 0.26. And he concludes: *'There is no statistical evidence whatsoever that the EJRA policy has affected the proportion of females holding statutory chairs.'*

Now, you don't actually need sophisticated statistics to understand this. Simple arithmetic will give you a reasonable estimate of what the EJRA could possibly do. Taking an academic career from 30 to 67 - that's 37 years - means an average of 1/37th will retire each year. Extending this, for example, to 40 changes it to 1/40th. So the difference is 8%. But over half leave before retirement - so we get 4%. And when we get there, only half of those wish to stay on - so we're reduced to 2% as the effect of the EJRA. Now, extending it more than three years doesn't change things very much. And as they say in the USA, 'Do the math.' The claim that the EJRA has a substantial effect is what's called over there an 'alternative fact'. In other words, a falsehood.



Now, note also that this also undermines the claim that the EJRA is essential for intergenerational fairness by creating vacancies. It is not. Vacancies come anyway. Posts are left vacant to save money or for other reasons. So let's not have any hypocrisy about providing opportunities for younger people.

This legislative proposal is based on a fatally flawed report. It is not evidence-based. It ignores the detrimental effect of an EJRA on attracting and retaining world-leading academics. It brings a cost in legal challenges and the loss of experience and effective fundraising staff. It brings cost with no significant benefit. It carries the moral stain of age discrimination. And it smuggles in potentially dangerous powers to committees to act without Congregational scrutiny. The EJRA is unlawful, unnecessary and ineffective - I urge you to reject it.

**The Vice-Chancellor:** Thank you, Professor Ewart. I'd now like to call on Professor Sir John Ball to move the amendment.

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#### **Amendment 1: to raise the age of retirement to 30th September immediately preceding the employee's 71st birthday**

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**Professor Ball:** John Ball, Mathematical Institute, and The Queen's College.

Vice-Chancellor, members of Congregation, in two weeks' time Congregation will have the opportunity, which I hope it will avail itself of, to bring the EJRA in Oxford to an end. But this amendment is predicated on the continuing existence of the EJRA, and addresses the age at which it takes effect, currently 67, and which is proposed in Council's legislative proposal to increase to 68. The Working Party's report suggested a further possible increase of one year to 69 in 2022. However, this suggestion does not form part of the legislative proposal and, as has already been remarked and despite the misleading circular sent by the administration, the proposal does NOT ask Congregation to endorse the recommendations of the report. This amendment proposes that the EJRA should be increased to 70.

I'm one of those who struck a deal with the University to stay to 70 before the introduction of the EJRA, so the amendment will have no effect whatever on my situation. But you may be curious as to how such a deal was made, so let me tell you, expecting that it will surprise you just as much as it surprised me at the time.

In July 2008, when I was aged 60, I wrote on a written appraisal form that as I would have to retire at 65 I was exploring options to leave Oxford, estimating that it would be perhaps more difficult for me to do so when I reached 65. I was amazed to receive an almost instant

email response from an administrator in MPLS asking for how long I would like to stay. After a few hours' thought I replied 'till 70', to receive an almost an instant reply that she would, with my approval, initiate the necessary paperwork. Apparently if I said '71', this would not have been accepted.

Of course I've been very grateful for this arrangement, while feeling uncomfortable that whereas I have benefited from it, others have had to endure stressful legal turmoil to try to obtain the same.

This story shows that, at least in 2008, the University was relaxed about extending employment to 70. It also addresses one of the reasons why I oppose the EJRA, that it makes no sense for Oxford to make itself uncompetitive in attracting and retaining senior faculty by having a mandatory retirement age when all but two other universities in the UK have abolished it. The proposed amendment would somewhat mitigate this problem.

But a key reason for increasing the EJRA to 70 is that the present and proposed EJRA's are out of touch with health and life expectancy. Since 1980 life expectancy in the UK at age 65 has increased by 4 years for women and 6 years for men. On average women aged 65 in 2016 could expect to live until 86 and men until 84. Life expectancy at age 65 is currently increasing by about 1 year every 5½ years for women and 1 year every 4 years for men. We know that in the future everyone is going to have to work longer to earn a decent pension.

Minutes of the Working Party obtained under Freedom of Information requests show that some of its members favoured an EJRA of 70. Indeed the minutes state (and there are related comments in the Report):

*'Those members of the Group who support moving the EJRA to 70 suggested that this might have a positive impact on women, who tend to progress in their careers at a later age. In addition, some members considered that a later age would help to mitigate the difficulties faced by some coming from outside to senior positions later in their career in attaining a mortgage for a house in Oxford. It was suggested moving the age to 70 could produce a more consensual approach on this issue amongst the University's academic staff at large.'*

To summarise, increasing the EJRA to 70 is a conservative response to the demographic data on health and longevity, and would partly reduce the negative effects of the EJRA on retention and recruitment.

Finally, can I urge anyone who feels that each of the two amendments on raising the EJRA age are improvements on the Legislative Proposal to vote YES to **both** amendments, expressing their preference at the second stage. Otherwise

there is a danger that neither amendment will pass.

I commend the amendment to you.

**The Vice-Chancellor:** Thank you, Professor Ball. Professor Paul Ewart, to second.

**Professor Ewart:** Vice-Chancellor and colleagues - I am sorry, it's me again. Professor Sir John Ball, in proposing this amendment, has made clear that he has benefited from the option of staying until the age 70, by agreement with the University, whilst feeling uncomfortable that others have had to endure the stressful legal turmoil in seeking the same privilege. I speak as one enduring such stressful legal turmoil having been denied a request to work until 70 and being granted an extension of only two years instead of three. I have been denied a further extension in order to complete my research to ensure that the full benefit is achieved of my recent work, and to help the research of some younger colleagues. And my name was removed from two successful grants awarded that would have contributed to my salary costs during the proposed extension.

Now, this of course is not the place to discuss my personal situation, and I mention it only to declare my interest and because my experience, shared by others, illustrates the arbitrary and damaging manner in which the EJRA has been implemented.

As Sir John has said, the next meeting of Congregation is set to discuss the EJRA and to debate its abolition. And this amendment is an attempt to mitigate the worst aspects of the proposed resolution arising from the arbitrary imposition of an EJRA age of 68 in place of 67. And it's also based on the experience of other institutions and indications in the Review Working Group's own report, that most people wishing to extend their employment do so for only two or three years. And a simple extension to 70, therefore, would significantly reduce the stressful turmoil experienced by a growing number of colleagues, not to mention the saving and legal costs involved in a University Appeal Court and external employment tribunals.

This amendment will have an insignificant effect on the creation of vacancies that the Review Working Group ascribes to the EJRA. As I explained earlier, extending employment from 67 to 70 would make a difference of less than about 2%, and thus increasing the age to 70 will have essentially no effect on the aims such as diversity or intergenerational fairness.

And these figures are a matter of simple arithmetic as I've outlined. They undermine completely the assertions of the review group that the EJRA is making a 'substantial impact'. This 'alternative fact' is highly misleading. And so also is the implication that without an EJRA the stream of vacancies will dry up. And I urge

you, as members of one of the best universities in the world, not to be seduced by this kind of Trump-like rhetoric.

A simple extension of the EJRA to 70 is long overdue, given the life expectancy of 84–86 for those of us now aged 65. It has the obvious advantages of enabling world-leading researchers and experienced researchers to continue to serve the University we love. The EJRA still embodies age discrimination but, if you insist on having one, this amendment would make a sensible step towards a more rational and humane retirement policy and I commend it to you.

**The Vice-Chancellor:** Thank you, Professor Ewart. I now call on Professor Helen McShane to oppose the amendment on behalf of Council.

**Professor McShane:** Good afternoon. I'm Professor Helen McShane, Nuffield Department of Medicine and Harris Manchester College.

Vice-Chancellor, colleagues. The suggestion that we move the EJRA to 70 may appear superficially reasonable. 70, as we all know, is not that old nowadays. Judges retire at 70. Why shouldn't academics retire at 70 too?

One good reason is the impact of the transition. We are not starting with a blank slate. In 2011, when the EJRA was introduced, the retirement age for most staff moved from 65 to 67. As a result, there was a hiatus in retirements. Over the last three years, a delicate equilibrium has been reached, resulting in progress towards meeting the Aims of career progression and diversity.

We recognise that moving the EJRA to 68, as we propose, will temporarily upset that equilibrium. Turnover will slow substantially for a year; then it will be a little slower going forward as people stay in post a year longer. We think that is a price worth paying to try and achieve a balance between the needs of the different generations.

BUT, if we move the EJRA to 70, progress in the Aims of the EJRA will slow significantly for the next three years. People will still retire, of course, but not at the rate they do now. There will be a substantial impact on turnover and on the Aims.

Those who propose this amendment argue that it would only result in a 2% reduction in the creation of vacancies over time. These are complex datasets and it's difficult to model and predict future behaviours on the basis of them, but it's my view that the impact would be far greater than that. Half the vacancies in key senior grades result from retirement. As a result of the EJRA even more vacancies arise in academic posts, because if the postholder is successful in their application to work beyond

the EJRA, in most cases they move out of their post and into a fixed-term research post.

The opposite would happen if we did not have an EJRA, as there is evidence, outlined in the Review Group's report, from a survey of retired staff, which suggests that 25% of those who do retire at or around the EJRA would not have done so if we didn't have an EJRA.

If we ignore these issues and the likely effects of moving the EJRA to 70, we are giving a message to early career researchers and scholars, to women and those from ethnic minorities, and to students and potential students. We are saying that it's OK to stop making progress for three years, that we can live with a dramatic slowdown in the rate of turnover. And that we do not value intergenerational fairness, career progression, or addressing the lack in diversity. I don't think that's what we want to do. It's incredibly important that we find ways to benefit from the intellectual and other contributions of more senior faculty members, but we mustn't do this by sacrificing the interests of those whom the EJRA is intended to protect – the next generation of scholars.

Finally, we must be clear that the impact of a move to 70 would not only be felt for three years. Using the statutory professor grade as an example, chairs are, on average, 52 when they are appointed; they have 15 years in post before retirement. If we extend the EJRA to 70, most will want to stay in post until then – after all, most of them apply for extensions now, although the EJRA limits the effects of these extensions by asking them to step out of their chairs. Without an EJRA they would be able to *stay in their chairs* for an extra three years, extending the average time in post from 15 to 18 years – 20% longer. We believe this will result in a 16% reduction in turnover at this key senior grade in the long term.

I ask you not to vote for this amendment.

**The Vice-Chancellor:** Thank you, Professor McShane. I'd now like to call on Dr Kate Blackmon to second the opposition.

**Dr Blackmon:** Dr Kate Blackmon, Merton College and Saïd Business School. Vice-Chancellor, colleagues: I second the opposition to this amendment which proposes to raise the retirement age from 67 to 70, rather than to 68 as proposed by the working group.

I speak as a member of the EJRA Review Group, having been nominated on behalf of Congregation as an elected member of Council representing in particular the Social Sciences and Humanities Divisions. I was also a member of the Personnel Committee as Senior Proctor when it addressed the issues that were raised in the decision of the University's internal Appeal Court in 2014.

I want to highlight three specific and important reasons that the retirement age should not, at this point, be raised to 70:

- **First, raising the retirement age as we have heard would not achieve the EJRA's aims.** 70 would have a significant impact on turnover, and thus on refreshment, diversity and career progression for the first three years of the transition. More importantly, it would have a huge impact due to the average longer time that the academic staff would spend in post in future. We estimate that statutory professors would stay in post almost 20% longer on average; there would also be a permanent reduction in turnover in associate professor posts. This would act against the refreshing of posts and of areas within disciplines, and substantially decrease opportunities to diversify the professoriate in areas such as gender and ethnicity, since most of the increased diversity comes from hiring.
- **Secondly, the 'ratchet effect' applies to the retirement age. Once at 70, the retirement age must remain there or stay even higher for ever; if 70 is too late an age, we can't go backwards ever to 68.** If we take a more cautious approach, we can revisit the question of the most appropriate age at the 10-year review stage.
- **Finally, raising the age to 70 would not address the issue of those who want a second extension to the EJRA or to work after the age of 70, which is where much of the contention and disagreement currently arises.** The experience in the United States, where the mandatory retirement age was raised from 65 to 70 in 1982, and then abolished in 1994, illustrates that for most of us who want to continue working, the magic date for retirement will always be somewhere in the future; it is not fixed but a moving horizon. The Committee on Mandatory Retirement in Higher Education at the National Research Council in the US predicted before the changes that at most colleges and universities, few tenured professors would continue working past age 70, **but** the number of academics working until then actually tripled (from 10% to 30%). Those research-oriented universities most similar to Oxford experienced even more extreme increases. At Harvard the percentage of tenured faculty members over 70 shot up from 0% in 1992 to 9.1% in 2001. At some US universities, one in three academics is now aged 60 and over, and academics over the age of 68 are expected to outnumber those in their 30s by the year 2020. Some are even over the age of 100. And as much as we value our older colleagues, to weaken our retirement age would inevitably change the nature of our university.

In conclusion, I strongly believe that raising the age of retirement to 68, together with the other adjustments to the EJRA's scope and coverage and the process of improvements to focus it more on the individual faced with retirement, is entirely appropriate, and I urge Congregation not to accept this amendment raising the age to 70.

**The Vice-Chancellor:** Thank you, Dr Blackmon. The only other member of Congregation who has indicated a desire to speak this afternoon on this amendment is Professor Jeremias Prassl, so I would like to invite him to speak against the amendment.

**Professor Prassl:** Jeremias Prassl, Fellow of Magdalen College, Associate Professor in the Faculty of Law and a representative of the Conference of Colleges on the EJRA Review Group.

Vice-Chancellor, Proctors, members of Congregation, 68 is not a random number. 68 was not a number we plucked out of thin air during our deliberations. 68, the proposed new EJRA age, is not a compromise. It's a result of our conscious data-driven choices on the panel.

As Professor Tracey has already highlighted, we as a Review Group spent long hours poring over the University's employment data. Our remit was wide, and so we considered the ramifications of all sorts of different possible alternatives, trying to carefully weigh up the advantages and disadvantages of different ages.

And in so doing, we had to take a wide number of factors into account, driven by the sheer size, the complexity and also the heterogeneity of our university: everything from junior academics in the Medical Sciences, statutory professors in the Humanities and senior colleagues in GLAM. Throughout, the one concern we consistently had was to find an age which could take into account the needs of all the generations.

At the same time as looking at all these University data, we were also acutely aware of the fact the world around us, in Oxford and the world, is in flux: first appointment ages and the prices of houses in Oxford are up, pensions are down, and despite all the High Table living we enjoy, we seem to be leading longer and healthier lives. All of these factors seem to be pointing towards an increase in the retirement age. At the same time, however, we have to remain conscious of the EJRA's aims, including diversity, intergenerational fairness and the need to ensure career progression for junior academics.

And so, keeping all of this in mind, after much discussion of all the relevant graphs and tables, we came to the view that a dynamic retirement age was the best way of reconciling these

competing incentives and considerations. Official longevity statistics which were consulted provided us with the most objective means of determining the best rate at which the EJRA should be raised, and that was the basis for our recommendation of a slow and steady increase in the EJRA threshold. That is the basis on which we recommended an increase of one year to 68 after the EJRA's first five years.

None of this is to say that in the abstract 69 or 70 or 71 or any age might be a good threshold for retirement. But we're not operating in the abstract here today: one of the reasons why our work took so much time was precisely the fact that 68, the age we propose, is just one of several pieces in a complex puzzle.

We've come together in Congregation here to discuss the Review Group's proposals. If these amendments succeed at this stage, we will be deprived of a meaningful debate of the EJRA as a whole: its aims, its procedures, the exceptions and, yes, its age.

So, in conclusion, this is why I ask you to support neither of the amendments before us this afternoon. In the context of the competing considerations I've outlined, any number other than 68 would be arbitrary, and may well make the scheme as a whole unworkable. Thank you.

**The Vice-Chancellor:** Thank you. Professor Sir John Ball, do you wish to reply?

**Professor Ball:** I'll just make a couple of comments, and first that there is no statistical evidence that the EJRA contributes to diversity. And secondly there's no evidence that abolition of the mandatory retirement age in other UK universities has created problems.

In summary, the amendment is a conservative response to changes in life expectancy, will have a negligible effect on the creation of vacancies, partially mitigates the lack of competitiveness in attracting and retaining faculty that is inherent in the EJRA when all but three UK universities have abolished mandatory retirement, and will reduce the stressful legal turmoil for those involved in the EJRA process.

Finally, let me repeat that, if you believe that each of the two amendments on raising the EJRA age are improvements on the legislative proposal, then you should vote yes to both amendments, expressing your preference at the second stage. Thank you.

**The Vice-Chancellor:** Thank you. We will now hear the speeches on Amendment 2. I'd like to call on Professor Ray Pierrehumbert to move the amendment.

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**Amendment 2: to raise the age of retirement to 30th September immediately preceding the employee's 70th birthday and to further raise this to 30th September immediately preceding the employee's 71st birthday from the fifth year onwards**

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**Professor Pierrehumbert:** Thank you very much, Vice-Chancellor. I am Ray Pierrehumbert, Halley Professor of Physics and Professorial Fellow at Jesus College.

My amendment proposes two modest changes to the recommendations of the EJRA panel which were endorsed by Council and partly embodied in the legislation before you. Whereas Council proposes an immediate EJRA increase to 68, I propose 69. As does the EJRA recommendation, I propose an additional year of increase in the fifth year. But whereas Council or the EJRA panel make the additional increase contingent on transient life expectancy over the next 5 years, my amendment makes it definite.

Given random events, 5 years is far too short a period upon which to draw any conclusions about trends. For example, an NHS flu jab error by itself led to a drop in life expectancy in the report released in 2016. In any event, the life expectancy increase realised today more than justifies an increase to 70 already. The net effect of my amendment is an increase of EJRA by three years rather than two, but with more certainty added to the process.

The debate over the EJRA should not be framed as an intergenerational conflict. The core values of academia are under attack by a distressing range of external forces. We are all in the same boat, and if it is not to sink we need to start bailing together. So smile: this is not an adversarial process, this is a cooperative process and I view myself as part of that. But scapegoating senior faculty for the scarcity of academic positions available for the next generation is not going to solve the problem. Indeed, I view the mentoring of young academics and the assistance I can provide in helping them win permanent positions as the most important part of my mission, and I am far from alone in this vision.

My ERC Advanced Grant and other funds will ultimately employ and mentor 6 postdocs and 4 postgraduates, perhaps another 15 if the Leverhulme Proposal I am leading succeeds. I also wrote the case that opened a new APTF position in my department. None of this activity would exist if the University had not granted me an extension of retirement age to 70 as part of their offer to me, as I would not have moved here otherwise. This concession itself indicates that the University does not believe that creativity and the ability to provide renewal of ideas terminates as one approaches the magic age of 67 or even 68.



I am humbled by the distinction of the Oxford faculty and I don't think I'm particularly special. I only want the University to give others the same consideration that they gave me and that they gave at least two other senior faculty members who went on to receive ERC Advanced Grants in the past two years.

I find a lot of fault with the analysis given in the report of the EJRA review panel. However, I do credit it with having recognised the importance of life expectancy increase as a factor in determining a fair point at which to set the EJRA. Having stipulated that, the report shows an unjustifiably recent baseline from which to assess the increase. At this juncture I will point out there were some errors in the data resource that I used in the life expectancy figures in the printed explanatory note; I use the correct figures in this speech and they still support my amendment.

For the purposes of my argument, it suffices to go back to 1980 and I'll point out that 67 was the conventional retirement age except for an anomalous period when it had been temporarily reduced to 65 in the face of increasing life expectancy. According to government statistics, from 1980 to 2014 life expectancy at age 65 for men increased by very nearly six years. Given that women still outlive men by several years there is no justification in factoring in the somewhat smaller increase enjoyed by women over this period. The EJRA is inherently discriminatory against women.

Assume that one must work one additional year to fund one additional year of retirement. Given the recent reductions in value of pensions and the poor projected performance of investments, this is an exceedingly optimistic assumption. But even this leads us to an equitable increase of the EJRA by three years: that is to 70.

The recent changes in the criteria for granting extensions of an appointment beyond the EJRA make the EJRA a much more inflexible boundary, particularly the provision that one cover 100% of salary which has made it essentially impossible for our Humanities colleagues to even think of applying for an extension. Thus it is all the more important now to set the EJRA at a fair and defensible age.

Finally, I will reiterate that, given there are two similar amendments being voted on simultaneously, there is a risk of both failing due to a split vote between them. However, the Proctors have wisely offered the chance to further express preferences between the two amendments in the event both should pass. Therefore, in the first round of voting members who could support either one of the amendments should vote for both of them in the first round. There is no need to choose between them in the first round. Thank you very much.

**The Vice-Chancellor:** Thank you. I'd now like to call Professor Brian Leftow to second on behalf of Professor Peter Read.

**Professor Leftow:** Brian Leftow, Philosophy, Theology, Oriel. Though it's not part of the current legislation, Council recommends that in 5 years, given a certain condition, the EJRA move to 69. So Council grants the following principle: 69 is fine. 69 year olds do not as such belong on the scrap heap. 69 is the new 67. The University and the Aims of the EJRA, in other words, will be well enough served if 69 year olds can keep their posts.

The principle, to repeat, is granted. So why wait 5 years to implement it? Council replies: because the national life expectancy is currently not large enough. You cannot work till 69 now because the average Brit is likely to die too soon thereafter. That sounds like a stunning non-sequitur. Why should how long you work depend on how likely other people are to die within a certain period?

I can see two answers to this. You might say: 'Well, the average is all we have to go on and we're delaying because we expect that only in 5 years will you have a longer retirement to take care of.' Well, as others have noted, since the retirement age was at 67, lifespan at 67 has gone up much more - at least 5 years. 67 year olds already have a longer retirement to provide for.

The other answer one might give is: 'Well, it's not about you. It's about clearing you out to make room for the young. The five-year delay is to do more of that.' This singles out one cohort of the young for preferential treatment. The young of 5 years get 67 and 68 year olds cleared out for them. The rest don't. Why are 5 years' worth of young special? The only positions that treat all 'the young' equally are either not going to 69 at all, or going there at once. But Council already concedes that on a condition it is best to go to 69.

Now, here's another thought one might have: with a five-year wait between a one-year jump and then another one-year jump, there are two one-year hiccups when there's a small decrease in the number of available posts. If the age goes to 69 at once, there is a two-year hiccup. A two-year hiccup unfairly burdens one cohort of the young. Well, equally, the two one-year hiccups unfairly burden one cohort of the old, the five years of those who lose the option to work till 69. Why is burdening the old cohort better than burdening the young cohort? Well, there's an answer to that: for every tutorial fellow made to retire, one person moves up to a permanent post in Oxford and another person is appointed to the job thus vacated. So more people benefit if the old are burdened. However, amount of burden to each individual matters also. The harm done in burdening the young has a remedy: it's fixed after two years,

when the old retire and the pace of retirements goes back to what it had been. The harm done when someone is forced to retire has no remedy. Further, permanent loss of livelihood is a harm very much greater than temporary delay in promotion or initial employment. The amount of harm done per individual more than counterbalances the numbers of old and young involved.

Council also proposes to raise the retirement age another year in 5 more years. I say: keep that. Keep the delay, too, to avoid three straight years' hiccups. But there's no good reason to make the further rise conditional on anything, given that longevity has increased so much since 67 was first deemed a long-enough career to prepare for retirement. So the takeaway, American sense, is this: 69 is fine. Now's the best time. But due to longevity, take it to 70.

**The Vice-Chancellor:** Thank you very much. I would now like to call on Professor Lionel Tarassenko to oppose the amendment on behalf of Council.

**Professor Tarassenko:** I'm Professor Lionel Tarassenko, Head of the Department of Engineering Science, Fellow of St John's College, and member of the EJRA Review Group.

Vice-Chancellor and colleagues: Professor Pierrehumbert proposes that we take the principle of extending the age of the EJRA and stretch it further, to 69 in the first instance and to 70 in five years' time. I wish to oppose this proposal for two reasons.

Firstly, when considering the issue of what age the EJRA should be at, the Group was mindful that it needed to balance the needs of those approaching the end of their career with those nearer the beginning. Those nearer retirement tend to be most acutely aware of the need to build their pensions, and they often want to keep working, teaching, finishing projects or pursuing new ideas. In most cases, their continuing involvement will benefit students, colleagues and the University.

Equally, those who are earlier in their careers need to support themselves in Oxford and to begin the process of building a pension pot. They need the prospect of career advancement, to grow their earnings, gain experience and to access the sorts of facilities and benefits that many of us have taken for granted for decades.

How do we balance these competing needs? The Review Group looked at the data on longevity, helpfully set out on the website of the Office of National Statistics. This does show a steady trend over the last few decades - life expectancy at age 65, as we've already heard, is increasing at approximately at a rate of two years per decade. Therefore, the Group decided that, to protect the balance as it stands,

allowing longer for older staff to stay in work, but maintaining turnover in support of the Aims, the EJRA should reflect closely this trend in longevity and, after five years of operation, where we are now, it should rise by one year, from 67 to 68.

Secondly, and please try and stay with me on this argument, the Review Group was mindful that this was an *interim* review and we were determined that our recommendations and eventually those of the 10-year Review Group should be informed, as much as possible – and we've heard about some of the limitations, but one should try as hard as possible – to be informed by data analysis. So, if we increase the EJRA by 2 years now, the 10-year review will have 5 years of data with the EJRA at 67, 2 years when it's effectively suspended and 3 years of data with the EJRA at 69. This will undoubtedly, I'm sure even my mathematical colleagues will agree, complicate the statistical analysis of the 10-year data. An increment of 1 year only now, in line with the life expectancy data, will only have minimal impact on the 10-year data analysis: you'll have 5 years of data with the EJRA at 67, 1 year only with no EJRA, and 4 years of data with the EJRA at 68, a minimal disturbance as far as data analysis is concerned.

Finally, the amendment also seeks a commitment now to an extension by a further year in 2021/22, when the 10-year review is due to take place. The Review Group, as Professor Prassl's already indicated, thought long and hard about mandating the 10-year Review Group to increase the EJRA by a further year, to further reflect the trend in longevity data. *If* turnover levels and limits on space continue to mean that we cannot generate vacancies in other ways, and *if* (as stated in Recommendation 7) the 10-year data confirm the, and I absolutely agree, *not yet* statistically significant trends (but we will have 10 years' worth of data in 2021/22 and therefore a greater hope for statistical significance – I hope you stayed with me) – so if the 10-year data confirm those trends that we're beginning to observe without statistical significance, rightly, in the interim review, then it will make sense for the 10-year review group to reach this conclusion, but based on analysis of data and evidence. But we cannot know *now* if an extension by a further year will be the right answer *then* in 2021/22.

What we can do is make the right decision for now. And the Review Group's best evidence-based recommendation, as we could see it with the emerging trends to raise the EJRA by one year now, is the best way to balance the needs of all of us.

I ask you therefore to oppose the amendment.

**The Vice-Chancellor:** Thank you very much, Professor Tarassenko. I'd like to invite Professor Irene Tracey to second the opposition.

**Professor Tracey:** Vice-Chancellor, colleagues: the Review Group found the issue of what age the EJRA should be set at the most difficult to agree upon. At the start of our work, there was a broad range of views among the Group. And after spending many hours over several meetings reviewing and discussing the data alongside the consultation feedback, we agreed to propose an increase of one year, to 68.

The reasons for adopting this approach were as follows – limiting the change to one year will protect the Aims, limit the impact on diversity and career progression, and ensure the 10-year Review Group has meaningful data on which to assess the merits of the policy.

Importantly, moving the EJRA to 68 will also relieve its impact on staff who want to carry on working beyond the current age limit. That is something the Review Group very much wanted to do. We were acutely aware of the contribution – in research, in teaching, in citizenship – made by older staff, and so combined with the recommended increase of one year we also want to strengthen and improve the awareness by staff of the many different ways that contributions can still be made beyond 68.

When continuing research means finishing or running a particular project, lab or institute, some people will need to stay in employment. The exceptions process is designed to make that possible, in ways that minimise the impact on the Aims of the policy. We improved that procedure in 2013 to address Dame Janet's concerns and Richard Ovenden will speak later about what more we can do to ensure that it treats people sensitively and with respect.

But not everyone needs to stay in employment, and retirement should not mean a sudden cessation of involvement. Most academic staff retain faculty and Congregation membership; are active in their colleges. Others continue with research using University libraries and other facilities, or, in the sciences, through an Honorary Research Agreement. There are consultancy and volunteering options, casual teaching and the chance to act as mentors, and as a co-supervisor.

But we heard clearly in the open forum sessions that many of these options were unknown, therefore we need clearer and more transparent guidance to help people understand them, and training for managers to help them have retirement conversations in a supportive and empathetic manner. The Review Group asked the Personnel Committee to make sure that this is done and they have assured us that they will.

There are, then, a number of ways to make sure that the institution benefits from the experience and knowledge of older staff, and to support their continued involvement with the University. The system isn't perfect. Money and space can be limiting factors. But we think that this is the right balance to achieve our Aims and meet, as best we can, the needs of **all** our staff.

The explanatory note also focused on pensions benefits, particularly for women, as a rationale for increasing the EJRA further. Pensions benefits are a complex and changing area, but the claim that women need longer in work to build up retirement benefits because they will live longer in retirement is based on a misunderstanding of the pension scheme.

Most of the benefits accrued by those retiring now and in the near future have been accrued on the basis of salary and length of service – the pension earned will be paid for the rest of the pensioner's life no matter how long that is.

Some argue that the EJRA has a greater impact on women because they need to work longer to make up for years spent out of the workplace as mothers. In fact, the data shows that women choose to retire at a younger age on average, and that they apply for extended employment less often than their male counterparts.

Of course there are women who would like to stay in employment and the exceptions process allows for that option. Clearly many more women in younger generations will benefit from a continuing EJRA as turnover gives them the opportunity to compete for posts and establish themselves in academic and research careers.

I urge you to reject this amendment.

**The Vice-Chancellor:** Thank you very much. The only member of Congregation who has indicated a desire to speak on this amendment is Professor Simon Benjamin, who's going to speak against the amendment.

**Simon Benjamin:** Simon Benjamin, Materials Department.

Vice-Chancellor, Proctors, colleagues: I'd like to speak on behalf of a group that, by definition, can't be here with us today; namely young researchers who hope for, but have not yet attained, a permanent post in academia.

Now, I am 45 and therefore somewhere in the middle of an academic career. I enjoy it tremendously; the teaching, the research, the sense of being a valuable part of something important. Assuming that I am fortunate enough to reach retirement age in good health, I imagine I would WANT to continue for these reasons – to say nothing of the fact that a pension is a considerable step down from a salary which, I understand, averages around £110,000 a year for a retirement-age statutory professor!



But although I would wish to stay on, I hope that I would choose not to. And because I'm no saint (I am as selfish as the next person, I suppose) I hope that in fact sensible rules will be in place to mandate that I do the right thing!

Why do I call it the right thing? When an older academic chooses to stay in post whether it's for a year or two years, or however long, that time is denied to younger researchers. Academia in general, and Oxford in particular, has far fewer posts than people wanting posts - indeed DESERVING posts - individuals with the talent, the passion and the commitment that would make them fantastic Oxford academics. Ultimately, when enough older academics stay on, even for just another year, then we lose entire research careers - all the uniqueness, the fresh perspectives, the energy, the vision that those people would contribute over the course of a career is lost. And notice that I haven't mentioned percentages here - we've heard 2%, we've heard 25% - it doesn't matter, it's a point of principle.

Now, I've seen this happen. One of the most talented individuals I've worked with in my 20+ years - a gifted teacher and an extraordinary researcher who would be an asset to any university, including Oxford - found themselves hitting that wall, the situation where it was time to transition to a permanent job but no such jobs were available. He now works for a bank, helping it to make marginally more profitable automatic trades than the next bank. He makes a lot more money, but he's a lot less satisfied. It would have been much better for him, better for academia, better (dare I say it) for society, if he had been given the chance he so longed for, and for which he was so well suited.

Of course, such things happen anyway. Not all careers succeed. But when we allow people to stay in post beyond a reasonable age at which they can be asked to step aside, then inevitably we deprive more young researchers of their opportunities.

To reiterate - I do sympathise with individuals wishing to stay on, whether for an extra year or indefinitely. I appreciate that this can feel like the right choice for them - but it's a choice which comes at a cost to others.

We're gathered here to vote. But the younger researchers who can be negatively affected have no vote. We are a privileged group, voting to see whether we should be given a little bit more privilege. Well, just for those of us who want it. Typically, that kind of situation does not go well for the unrepresented group! But I hope that we can do better than that and we can make the right choice. I ask you all to reject these amendments.

**The Vice-Chancellor:** Thank you. Professor Pierrehumbert, do you wish to reply?

**Professor Pierrehumbert:** Yes, thank you very much. Since the arguments in opposition to both amendments are rather similar, most of what I have to say actually applies to both amendments.

There's been a lot of talk about data-driven decision, but we just heard someone say 2%, 25%, *it doesn't matter*. How is that data-driven? It's saying that we're not being data-driven, we're being driven by gut emotions. If it's 2%, the EJRA is not a proportionate response to the stated goals of the EJRA and there are much - I say that when there has been no improvement in the number of women in RSIV that has been detectable and no measurable improvement in minority hiring at essentially any level according to our human resources data - I say that we have much bigger problems than a change in 2% in the number of vacancies available.

If you want some other data, the EJRA report is full of simple dismissals of inconvenient arguments. We heard the statement by Professor Tracey that women seem not to want to work as long. The EJRA report states that perhaps one reason is that women are disproportionately represented in the lower ranks - a scandal in itself - and perhaps have been discouraged from applying for extensions because they don't see that they have a reasonable chance of succeeding. This argument is stated but it's then simply dismissed. And I think this is a complete insult not just to data analysis, it's an insult to women.

I also want to talk about Professor Tarassenko's claim that setting the EJRA at just one-year addition is driven by the necessity to collect data. Well, I would say: if you take a professional statistician's view, the use of statistics in the EJRA review report is so incredibly sloppy I wouldn't even give it a good 2ii if I were grading it. And what assurance do we have that this harm done to senior faculty by not increasing the EJRA to 70 will be worth whatever additional sloppy statistics are thrown at this problem in five years' time?

Finally, I want to point out two things that Professor Tarassenko completely ignored. First, the question of what baseline you pick in order to assess the amount of the increase in the life expectancy - and the panel chose a very arbitrary and completely inappropriate recent baseline. And finally, again, I reiterate this is not a matter of us versus them, it's not a matter of old versus young. The senior faculty play a very big role in providing opportunities for young people, indeed in creating an environment where there's enough funding to produce new vacancies for the young. So again, we have to row together in order to make this boat move forward. Thank you.

**The Vice-Chancellor:** Thank you. I would now like to put each of these two amendments to Congregation to paper ballot.

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## Voting on Amendments 1 and 2

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I ask the Proctors, the Assessor, the Pro-Proctors and the clerks to the Proctors to move to the voting stations at each of the exits of the theatre. When they reach their positions, I shall invite members of Congregation to cast their votes. I must remind you that only members of Congregation are entitled to vote. Members should tear off and complete the relevant voting papers before leaving their seats (these are voting papers 1 and 2 - members should retain voting paper 3 at this point). Having done so, those seated on the floor and semi-circle in the Sheldonian should leave via the South exit - I trust they know which that is. Those seated in the lower galleries in the Sheldonian should leave via the East and West exits. Those seated in the upper galleries are asked to wait until they are called and to leave via the East and West exits once those exits of the lower galleries have exited.

Members of Congregation should place their voting papers in the ballot boxes under the direction of the voting officers.

Any members of Congregation wishing to vote who have not received voting papers may collect them from one of the stewards immediately inside each exit. As explained earlier, only each member's own voting papers will be accepted at the voting stations as required by the regulations.

After voting, members are invited to return to their seats or indeed enjoy the sunshine to await the announcement of the results which generally takes about 20 minutes.

If everyone is ready, in that case I now ask members of Congregation wishing to vote to do so by the assigned exit.

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## Result of voting on Amendments 1 and 2

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**The Vice-Chancellor:** I'd like to thank the Proctors for their voting and to let you know that those voting for Amendment number 1, that is those voting in favour, there were 56 members of Congregation voted in favour of Amendment 1; 97 members of Congregation voted against Amendment 1.

Amendment 1 is accordingly rejected.

On Amendment 2, 57 members of Congregation voted for Amendment 2, and 97 members of Congregation voted against.

Amendment 2 is accordingly rejected.

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## Legislative Proposal

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That means we will now move on to the debate on the legislative proposal itself. The original legislative proposal was published in the *Gazette* on 23 March and reproduced in the *Gazette* supplement of 27 April. This puts

forward amendments to Statute XIV in support of the recommendations of the EJRA working group. I would now like to call upon members to speak before inviting replies to the debate.

First of all I would like to call on Professor Jeremias Prassl to speak for the legislative proposal.

**Professor Prassl:** Jeremias Prassl, Magdalen and Faculty of Law.

Vice-Chancellor, colleagues. The EJRA is *prima facie* discriminatory. It treats colleagues of all disciplines and walks of life differently because of a protected characteristic: their age. I strongly, as an employment lawyer, believe in our duty to fight all forms of illegal discrimination in the workplace, be that our university, our colleges or elsewhere. So how on earth can I stand in front of you today and ask you to vote in favour of the group's recommendations?

Because age is different. English and European law impose in the absolute prohibition on discrimination on grounds including sex, race and sexual orientation – and rightly so, given centuries of historical abuse and injustice.

Yet age is treated differently by the law, presumably because whether we are women or men, gay or straight, black or white – we all hope to grow old. The law realises this crucial distinction by providing that direct discrimination can be justified – but only for age, and age alone. What you need is clear aims and proportionate measures.

This, then, was the task which actually faced us as a working party: to ask *why* a retirement age is imposed on us; and to challenge the University to demonstrate that the EJRA was in fact capable of meeting those aims. And it was not a task we took lightly: if there is a snippet of data about employment in this University out there, I am fairly confident that we saw it – and spent a lot of time debating it.

As members of Congregation will see in the detailed materials before you, this did lead to some significant changes in the EJRA's aims: we had to be confident that the policy's aims continued to be important and relevant, and that our proposals would contribute to, and be necessary for, the achievement of those aims.

Let me very briefly illustrate this to you with examples supporting two particularly important aims of our retirement policy: to increase diversity, and to ensure intergenerational fairness.

As regards DIVERSITY first, women currently only make up about 15% of our statutory professor grades. In 2013 the recruitment process for stat profs was significantly overhauled. Since then, new recruits to that grade now are about 35% women. Now, I am not a statistician, but since up to 70% of the

vacancies in this grade in any year are created by retirement, the impact of any hiatus or any ongoing reduction in the rate of turnover would be enormous.

Members of Congregation, this is not the time or the place for a detailed tutorial on the finer points of discrimination law – but in concluding, the essence can be very quickly summarised: if there is a justified reason for age discrimination, and the policies implementing it are proportionate, a compulsory retirement age will be perfectly legal. After a long process, we as a Review Group are convinced that the policy before you today is just such a proportionate pursuit of legitimate aims. I urge you to support it. Thank you.

**The Vice-Chancellor:** Thank you. Professor Lionel Tarassenko.

**Professor Tarassenko:** Professor Lionel Tarassenko, currently Head of the Department of Engineering Science, Fellow of St John's College, and member of the EJRA Review Group.

I have been an academic in this University for the past 29 years and, like everyone else here today, I am perfectly capable of making up my own mind.

When a resolution seeking the suspension of the EJRA was defeated in this chamber a year ago, Council sought to wait to provide reassurance to those whose concerns about the policy and the review had led them to lay the proposal before you in the first place. I was one of the three elected members of Council drafted on to the Review Group as a result.

The Group was at that time early in its work and I joined an open-minded group of colleagues led by a highly dedicated chair, Professor Irene Tracey. Every member of the Review Group was determined to be driven by as objective an assessment of the data as we could make, not by any preconceptions, popular beliefs or other outside influence. We have never been guided as to what to think or what to conclude, by Council or by anyone else.

Professor Prassl has outlined why the Review Group concluded that the EJRA is a justifiable policy for the University to maintain. You've been addressed *at length* about why we considered that it should be set at 68.

It remains for me to comment on why we are also proposing to reduce the coverage of the EJRA from the 10,000 or so staff employed at grade 6 and above to the 5,000 or so at grade 8 and above.

This recommendation too is based on the data. If we are to justify applying the EJRA to a group, it must demonstrably make a difference to the behaviours and outcomes of that group in the context of the Aims of the Policy. There are a large number of staff in grades 6 and 7 but

fewer of them remain in our employment to the retirement age than in other staff groups. Whereas, among statutory professors, over half the vacancies arise as a result of retirement, among grade 6 or 7 staff, the figure is less than 5%. The conclusion we drew was that the proportionate approach would be to remove from the coverage of the EJRA a large group of staff for whom the EJRA is having much less of an impact.

This proposal will also have the effect of protecting consistency of terms and conditions among the body of staff who are eligible for membership of Congregation.

The Review Group decided not to tie coverage to membership of this body *per se*, recognising that this might give rise to some difficult decisions for those whose membership is not automatic.

But the place we have chosen to draw the line, between grade 7 and grade 8, is as clean and unambiguous as it is possible to be in this complex University, and we think it is a proportionate, justifiable and desirable solution for the whole University. Thank you.

**The Vice-Chancellor:** Thank you. Mr Richard Ovenden.

**Richard Ovenden:** Richard Ovenden, Bodley's Librarian, Balliol College, member of the EJRA Review Group.

Vice-Chancellor, Proctors, fellow members of Congregation. Professor Tracey has outlined the efforts that the Review Group took to find out the experiences of those who have been subject to the EJRA, those who have operated it, those who may, one day – perhaps far into the future – feel its effects.

Our process was thorough. We held open meetings to hear what people had to say face to face, we read comments submitted by email, and we canvassed retired staff for their views in writing. The UCU conducted a survey of their members and 197 respondents showed that there has been surprisingly little change in attitudes to the EJRA since its introduction. The majority of their members still favour the policy and an EJRA of 67 or below, applying to academic and related staff.

There was one area, however, in which it was very clear that EJRA is having a negative impact. We heard again and again that the procedure to apply for extensions is seen as hostile, confrontational and lacking the flexibility to accommodate different kinds of roles. Many retired staff told us that no-one discussed their options with them or helped them plan their retirement. The current process makes people feel undervalued and that the University is not affording them the dignity at the end of their career that they deserve. We were dismayed to hear these accounts.

We all know that this is not what the University intends. The institution is united in wanting to recognise the contribution made by our staff, at all levels and in all roles. There is no suggestion that those who are near, at or above the retirement age are performing less well; everyone recognises the huge contribution that those in their late careers have made and will continue to make, in both teaching and in research. The retirement process should not feel cold or hostile or undignified; people shouldn't feel that their value to the institution is being weighed up or that they are being performance managed under another name.

It was equally clear that the ways in which individuals can continue their activities after retirement are not clearly communicated or consistently applied. There is provision for ongoing faculty or departmental membership, continued teaching and supervisory activities, research under an honorary research agreement, consultancy work, volunteering... the list goes on. But these options are only useful if people know that they are there.

The Review Group has asked the Personnel Committee to ensure that it reviews and amends the procedure for extensions and the supporting documentation, to ensure that it is supportive and constructive in content and in tone. It is asked that managers be provided with training on how to manage the retirement process sensitively. And it has asked for a new set of guidance on the options for individuals after retirement.

It would be difficult to always ensure that the measures that are put in place work equally well across such a diverse academic community as we have in this university, with its myriad of use-cases. Above all, it would be very hard to ensure that a process that might result in a group of peers refusing a request from a scholar or other member of staff to stay in employment does not feel unfriendly or unwelcome.

But we owe it to our colleagues and to ourselves to ensure that Oxford's retirement processes are the best they can be, and in this instance, 'best' means clear, inclusive, supportive and dignified.

I ask you to support today's resolution.

**The Vice-Chancellor:** Thank you. Dr William Allan.

**Dr Allan:** I'm Bill Allan. I'm a Tutorial Fellow in Classics at University College.

Vice-Chancellor, Proctors and Assessor, colleagues. The legislative proposal is to be welcomed. I find it sad that a small group can't see beyond their own interests. It's particularly ironic that most of those who oppose the EJRA seem to come from the gilded generation of the over-60s. These are people who enjoyed

free higher education, including maintenance grants, who then got jobs at the time of a boom in higher education, sometimes before even finishing their doctorates. They were then able to buy houses in Oxford on an academic salary - a feat that most young academics now can only dream of, even with college allowances and joint equity schemes. And now their careers are coming to an end, they enjoy the prospect of a generous final-salary pension scheme, a boon which has been taken away from younger generations. Retirement in these circumstances is hardly a dreadful prospect, especially in a University where retired academics continue to enjoy many benefits such as emeritus fellowships, and can continue their contributions to intellectual life, and in many cases, their research. This is perhaps the most privileged generation ever in British academia. How entitled does it seem to cling to their posts, when so many talented young scholars are struggling to get their first stable job? Are trying to make ends meet by cobbling together part-time contracts? How can you look your young post-docs and doctoral students in the eye, when by clinging to your post you are denying them an opportunity that could be a lifeline? Not one of the arguments against the EJRA can stand up to the absolute need for intergenerational fairness in academia.

And, though an increasingly elderly white man myself, I hope you'll forgive me if I speak briefly about diversity. Creating new opportunities is the only way that we can move towards a professoriate where women and black and minority ethnic scholars are adequately represented. Currently, as was mentioned before, only 15 - one fifth - 15% of statutory professors here are women. The statistics for BME scholars are even more disgraceful. But in younger generations the statistics are significantly better. Diversity is not just some holier-than-thou PC concept to berate white men with. It's essential for the intellectual life of any university worth the name. And it's particularly important for Oxford, since talented young people are put off coming here by the perception that we are the home of the conservative elderly white male.

Finally, let's remember, as Professor Benjamin said earlier, that Congregation itself comprises those who have made it. We've got the permanent job. We have less need of the EJRA. So let's remember that we've got a duty to decide the best policy for all, not just our members. The graduate students and the post-docs who so badly need sustained turnover to have a hope of an academic career don't get to vote. So let's vote in their interests and for the good of the University as a whole.

Thank you.

**The Vice-Chancellor:** Thank you. Professor Peter Edwards.

**Professor Edwards:** Vice-Chancellor, colleagues, thank you.

Yes, I guess I'm one of these gilded clinging people over 60. I think I'm probably one of the few people in the audience that enjoyed free school meals until I was 15. But let's put that on one side for the moment.

Colleagues have talked passionately about the need for an EJRA to promote intergenerational fairness, refreshment of the workforce, opportunities for young people - and of course that's to me, someone who has appointed 11 outstanding young people in the Faculty of Inorganic Chemistry over the last decade. But Oxford University does not apply the general rule of retirement to everyone. Some people are allowed to stay on. This was the critical legal point in the only judgment so far by a learned judge, Dame Janet Smith, in a general ruling - not a specific ruling.

And she pointed out rejection of an application under such a procedure could never amount to a potentially fair reason for dismissal. People who are being dismissed are not in pursuance of an EJRA, amazing though that is, of course - ie a compulsory retirement age - but rather, the reason for the dismissal is that, having reached the age of 67 - decided by the University - and having applied to stay on, he or she has been refused. This is the crux of the matter and relates to the fairness and issues of principle and the continued unlawful status of the EJRA. As Dame Janet pointed out, this is picking and choosing - I think in the legal term it's having your halfpenny and bun.

But seeking a continual declaration that the EJRA is lawful, Congregation is acting as a judge in its own cause. Indeed, a supposedly independent chair has taken a side in the debate that we've just had this afternoon. Parenthetically, to show any aims are legitimate, the University must produce hard evidence, reliable evidence and not rely on bare assertion. My colleague, Professor Ewart, has relayed the withering assessment of Dr Lunn: there is no evidence of a change in the absence of a proper statistical analysis. The report is useless, he points out. For such a politically charged statistic, the net effect of the EJRA in my mind, from what I've heard, is surprisingly dodgy. Dan Lunn is a world authority on statistics, probability and reliability theory - one of the world leaders in reliability theory. So let me just remind you of Dame Janet's concerns: the procedure is not lawful. She pointed out - in an email to me - she does not understand, if the University did not like her ruling, why there has not been a judicial review of her ruling. She will also be amazed and staggered that changes that have been brought in since her review, in which



people now have to bring in their own salary – I cannot for one minute think that she would believe that that was an appropriate response to her review.

So, colleagues, I would urge you to think very, very carefully about the lawfulness and the fairness of this process. Even though no-one can have any objection to the whole idea of promotion of intergenerational fairness, refreshment, etc, it's about the law. Thank you.

**The Vice-Chancellor:** Thank you, Professor Edwards. Now that concludes the list of colleagues who indicated in advance that they would like to speak so I propose to call on The Revd Canon Dr Judith Maltby to reply to the debate on behalf of Council.

**Dr Maltby:** Thank you. Vice-Chancellor, colleagues, it's now my role to bring this debate to a close. I'm sure everyone will be happy about that, so I will speak only briefly.

As I commented in my opening remarks, many people have very strong feelings on this subject and I am glad that, for the most part, that has not interfered with the constructive and respectful nature of this debate.

There are just a few comments I would like to respond to. One of the concerns raised by those who opposed these proposals is that they would have the effect of giving further powers to Council by giving them the right to create procedures sitting below the statutes and regulations which provide the bare bones of the EJRA. It is true that the legislation states that Council should approve the procedure for extensions. This is something it has always done under the default retirement age before 2011 and the EJRA for the last 6 years. It is the normal structure of University legislation for the headlines to be enshrined in the legislation but for policies and procedures to be 'owned' by those committees appointed for the purpose of making decisions in their areas of expertise.

Now, much of what we've heard today focuses on the quality and quantity of the Review Group's data and the analysis of it. Jeremias and Lionel among others have given you a taste of the data we have, focusing on that which is relevant to the age at which the EJRA is set. In week 4, when we'll all be back here, we will debate whether to keep the EJRA at all. I would ask you in the time in between to read the Review Group's report and consider the data provided in the annexes to it and to draw your own conclusions before we re-gather in two weeks' time for that important debate.

It has been argued that the ill feeling caused by the EJRA policy is more dangerous than not having a retirement policy at all. Richard Ovenden and I have both spoken about the need to support staff approaching retirement better and to improve the exceptions process. It is inevitable that any process under which

individuals are required to retire will cause ill feeling. But ditto for any alternative processes the University might seek to introduce in the absence of an EJRA. These are difficult and emotive issues but, having ensured that our processes are as humane and sensitive as possible, we must consider the policy that leads to the greater good.

A word on diversity. It is true that in some areas our diversity statistics are similar to those of other Russell Group universities. The EJRA's not a magic wand. But it has been one of the policies we have been refining and promoting for years to help us to achieve this level of change. Improving diversity at Oxford is difficult, perhaps more difficult than in other universities, which have a greater voluntary turnover. We don't know what our stats would be if we hadn't had the EJRA for the last 5 years – I think they would be worse than they are. But this debate is not about other universities, but about doing what is best for Oxford.

We, Congregation, are responsible for making decisions for the good of this University. We are here because we have jobs in the most senior grades, but we make decisions that have an impact on all employees of the University at all grades. It's our duty to consider their needs as well as our own.

It is also our duty to think about the greater good of the institution. That, I think, is one of the strengths of the Working Group's report. As chair of the Personnel Committee, I have observed their work and I would like to thank them for taking on this arduous and, frankly, thankless task alongside their normal workload, and also to congratulate them on the thorough, objective and balanced approach they have taken. Their focus has always been on ensuring that we treat people in the University in the right way and promoting the good of the University. They've looked at the data but also listened to the views of those who've operated and been subject to its policies and procedures, and I think they've done an admirable job. The recommendations are proportionate and balanced and I hope you will vote for them.

**The Vice-Chancellor:** Thank you, Dr Maltby. And thank you to everyone who has participated in this debate this afternoon.

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### Voting on Legislative Proposal

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I would now like to ask the Proctors, the Assessor, the Pro-Proctors and the clerks to the Proctors to move to the voting stations at each of the exits of the theatre. When they reach their positions I shall invite members of Congregation to cast their votes. I must remind you only members of Congregation are entitled to vote. Please use voting paper number 3, ideally completed while still in your seats. And

then those seated on the floor in the semi-circle should leave by the South exit. Those seated in the lower gallery should leave via the East and West exits.

Again, the procedure is the same as earlier; anyone who has not received a ballot paper can acquire one. I think the Proctors are ready, so I now ask members of Congregation wishing to vote to do so.

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### Result of voting on Legislative Proposal

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And the result of the vote on the legislative proposal: there voted for the legislative proposal concerning Statute XIV:104. There voted against the legislative proposal: 19. The legislative proposal is accordingly approved.

That adjourns the business of Congregation this afternoon. We are adjourned. Thank you.