

Life Conference 2011: Workshop A2

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Differentiation or Discrimination?

21 November 2011

Agenda

- **Background (Birmingham, Nov 2010)**
- Recent Developments (Nov 2010 - Nov 2011)
- The current position (Liverpool, Nov 2011)
- Implications / Discussion
- What happens next?
- Appendix: Additional Background

Background (Birmingham, Nov 2010)

- EU Directive (2004/113/EC)
 - Aims to combat discrimination based on gender in access to, and the supply of, goods and services
 - Unisex rates required but Member State opt out allowed
 - Applies to new contracts concluded after 21 Dec 2007
- UK implementation:
 - Gender allowed as a rating factor for all types of insurance
 - Published Data with pricing proportionate to the data
 - Applies to insurance sold to UK residents.

Background (Birmingham, Nov 2010)

- The “Test-Achats” case
 - Belgium adopted the Opt out for life insurance/annuities
 - Action brought in June 2008 by Test-Achats that law is incompatible with the principle of equal treatment
 - Court referred to the European Court of Justice
- The Advocate General’s Opinion – 30 Sept 2010
 - Founding principles override the EU directive
 - Opt-out is against EU principle of equal treatment
 - 3 year transition period
 - Impacts all future insurance premiums (and benefits?) after 3 years.



Background (Birmingham, Nov 2010)

- Decision by European Court Spring 2011
 - 13-person panel
 - Final decision must be unanimous
 - 1 in 5 Advocate General Opinions overturned
- Uncertainty over:
 - What ECJ would decide
 - When it would be announced
 - When it would be effective
 - Whether retrospective.

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Recent Developments

November 2010 – November 2011

- *Nov 2010 Life Conference*
 - *Jan 2011 Formation of Working Party!*
- Feb Clarity regarding timing of ECJ judgment
- Mar ECJ judgment
 - *Mar/Apr* *Open Forums in Edinburgh and Staple Inn*
 - *May* *CILA Presentation*
 - *June* *Input into HM Treasury Impact Assessment*
- June UK Ministerial statement
- Sep Summit with VP Reding
- Nov HM Treasury publishes draft UK legislation (?)
 - *Nov* *Life Conference*

Working Party Terms of Reference

Working Party to assess the impact of a ban on the use of gender on pricing life insurance

- The aim of the working party will be to consider the impact of a ban on the use of gender, in particular:
 - on future prices and sales volumes of key UK life insurance products, and
 - on existing portfolios, including any back-dating implied by the verdict.

Working Party members

- Bill Baker (Swiss Re)
- Peter Banthorpe (RGA)
- Phill Beach (L&G)
- Sheila Hall (AEGON)
- Robin Houghton (Partnership)
- *Lauren O'Meara (Standard Life)*
- Dave Grimshaw (Barnett Waddingham)

The ECJ judgment – 1 March 2011

- Conclusion consistent with the Advocate General:
 - *“Equality between men and women is a fundamental principle”*
- But a significant focus on the lack of a time-limit for the opt-out clause:
 - *“There is a risk that EU law may permit the derogation from the equal treatment of men and women, provided for in Article 5(2) of Directive 2004/113, to persist indefinitely.”*
 - *“such a provision, which enables the Member States in question to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits, works against the achievement of the objective of equal treatment ... and is incompatible with Articles 21 and 23 of the Charter.”*
 - *“That provision must therefore be considered to be invalid upon the expiry of an appropriate transitional period.”*
 - ***“Article 5(2) of Council Directive 2004/113/EC ... is invalid with effect from 21 December 2012.”***

UK Government position

Mark Hoban statement 30 June 2011

- “...very disappointed with this result ...negative impact on consumers.”
- “The judgment goes against the grain of...common sense”
- “...nobody should be treated unfairly because of their gender, but that financial services providers should be allowed to make sensible decisions based on sound analysis of relevant risk factors.”
- “... the judgment only applies to new contracts for insurance and related financial services entered into on or after 21 December 2012.”
- “...proceed with amendments to schedule 3 of the Equality Act 2010.”
- “Beforehand, the Government propose to issue a consultation on a draft order, including a full impact assessment, in the autumn.”
- “...working with the European Commission ... to ensure a unanimous view across the EU of the implications of the judgment”
- “...early indications are that our interpretation is shared across Europe”

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The current position (Liverpool, Nov 2011)

- ECJ judgment: Must use unisex pricing for new policies from 21 Dec 2012
- Many areas of uncertainty
- HM Treasury – consultation on draft legislation (expected Nov 2011)
- EU Commission – guidance (expected Dec 2011).

The current position (Liverpool, Nov 2011): Areas of Uncertainty

- Will HMT view prevail?
- Ability to collect gender?
- Application to policies sold before 21 Dec 2007?
- Application to policies sold 21 Dec 2007 to 21 Dec 2012?
- Scope of unisex pricing for new policies:
 - By product (Group?)
 - By jurisdiction
- Will legislation restrict product design/use of proxies/target marketing?
- Does decision impact on underwriting of diseases that impact genders differently?
- ... and lots more!



The current position (Liverpool, Nov 2011): Expectation

- If HM Treasury enacts UK legislation, we expect:
 - Risk of retrospective application is low (except possibly reviewable/renewable)
 - Risk that legislation will outlaw collecting gender is low
 - Unisex pricing for new policies will be limited to individual policies
 - Unisex pricing will not be **explicitly** defined
 - Legislation will apply to policies sold to UK residents
 - Legislation will not **explicitly** restrict product design/use of proxies/target marketing
 - Legislation will not **explicitly** cover medical underwriting.

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Implications and Discussion

1. Indirect Discrimination and new rating factors
2. Market Consequences
3. Practicalities.

Implications and Discussion:

1. Indirect Discrimination and new rating factors

- Equality Act 2010: Unlawful to discriminate:
 - Directly (treat a person less favourably because of a protected characteristic) or
 - Indirectly (do something in a way that has a worse impact on people who share a particular protected characteristic)
- 9 protected characteristics:
 - age, disability, gender reassignment, marriage, pregnancy, race, religion, sex and sexual orientation

Implications and Discussion:

1. Indirect Discrimination and new rating factors

	Current premium (£)		Gender Mix		Weighted premium (£)	Gender-Neutral premium (£)
Car colour	Female	Male	Female	Male		
Red	1,000	1,500	20%	80%	1,400	1,250
Blue	1,000	1,500	80%	20%	1,100	1,250
Ratio	1	1			1.27	1

- Can data justify the use of a rating factor?
- Do we need causal justification?

Implications and Discussion:

2. Market Consequences

- Expected that UK legislation will apply to:
 - Insurance sold to UK residents
 - Individual insurance
- Is there a risk of the gender adversely impacted:
 - Buying offshore?
 - Buying via employer-arranged Flex schemes ?
 - Setting up pseudo-group arrangements?

Implications and Discussion:

3. Practicalities

- What is a unisex rate?
- Size of margin for uncertainty in pricing
- Spikes in sales by gender pre and post Dec 2012
- Lapse/re-entry
- Unisex Medical Underwriting?
- Unisex reinsurance terms ?
- Practical issues
- ...depends on the rest of the market.

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Potential areas of work for the Working Party

- Respond to consultation, including:
 - Put forward the arguments for collecting gender
 - Model the potential impact on future prices
- Paper on “Areas to consider” (an IAN?)
- Review the impact of the change on the UK life market

The next battlefield?

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (2008)

- “The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market.”
- “This proposal builds upon Directives ... 2004/113/EC”
- “Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.”

How important is gender?

Approximate scale of key rating factors for Term Assurance

Rating factor	Relative importance
Disability (underwriting loadings)	>16 x
Age (60 v 30)	10 x
Smoking status (Smoker v Non-smoker)	2 x
Gender (Male v Female)	1.3 x

The final word....

“Cette victoire se situe dans la droite ligne de la position de Test-Achats émise dès 1995 visant à interdire de faire varier les primes en fonction de facteurs que le consommateur ne maîtrise pas, comme l’âge en assurance auto, le sexe, l’état de santé...”

Test-Achats website 1 March 2011

Questions or comments?

Expressions of individual views by members of the Actuarial Profession and its staff are encouraged.

The views expressed in this presentation are those of the presenters and not necessarily those of their firms or the Working Party.

The presenters accept no liability arising from this presentation or the slides.

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Current EU Directive (2004/113/EC)

- Aims to combat discrimination based on gender in access to, and the supply of, goods and services
- Unisex rates required but Member State opt-out allowed (unless already using unisex rates)
- Applies to new insurance contracts concluded after 21 December 2007 where these are private, voluntary and separate from the employment relationship
- Pregnancy and maternity related costs cannot be reflected in premiums or benefits
- 5 year review (originally) due at end of 2010 with Member State review of opt-out to follow by 21/12/2012
- Implemented differently across Europe

Current EU Directive (2004/113/EC): Opt-out clause

- Article 5(2) allows Member States to permit differences related to sex in respect of insurance premiums and benefits:
 - Where gender is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data then proportionate differences in individual premiums or benefits are allowed
 - Data must be compiled, published and regularly updated

EU Directive: Not a “Single Market”

- All 26 countries availed of the opt-out clause:
 - 13 for all types of insurance (incl. UK)
 - Others selectively, e.g. Belgium allows for Life/annuities only
- Different requirements for what data is published and who by
- Different interpretations of relationship between pricing and data
- Different application:
 - Consumer Protection – applies to policies sold to domestic residents, e.g. UK
 - Prudential supervision – applies to domestic insurers, e.g. Belgium.

UK implementation of EU directive

- Implemented April 2008
- Gender allowed as a rating factor for all types of insurance
- Data - individual company level or pooled
- Pricing - proportionate to the data, but says that other factors affect the premium rates
- UK legislation applies to insurance sold to UK residents (whether by UK or overseas insurers) but does not apply to UK insurers selling overseas to non UK residents.

The “Test-Achats” case

- Belgium adopted the Opt-out for life insurance/annuities only
- Action brought in June 2008 by Test-Achats in the Belgian Constitutional Court that law is incompatible with the principle of equal treatment for men and women embedded in constitution
- Court decided that validity of Article 5(2) of Directive 2004/113 needed to be referred to the Court of Justice of EU.

The Advocate General's Opinion – 30 Sept 2010

- Purpose of Directive is to combat discrimination
- Gender discrimination only permissible if it can be established with certainty that differences between men and women necessitate such differences:
 - Opt-out does not focus on clear biological facts; many other factors impact risk e.g. economic, social, individual habits
 - Use of gender as a substitute criterion for other distinguishing features is unacceptable
- Gender is something person has no influence over
- Age is different to gender
- No party submitted that the introduction of unisex rates would seriously endanger private insurance systems.

Advocate General Opinion

- Opt out is against EU principle of equal treatment
- Purpose of Directive 2004/113 is to combat discrimination
- Gender discrimination only permissible if it can be established with certainty that differences between men and women necessitate such differences:
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