

## This presentation

“Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”

*Article 21(1), Charter of Fundamental Rights of the European Union*

1. What are the implications if we cannot use age and disability to price and assess insurance risks?
2. What is the likelihood of age and disability rating factors being banned?

## An Irish perspective



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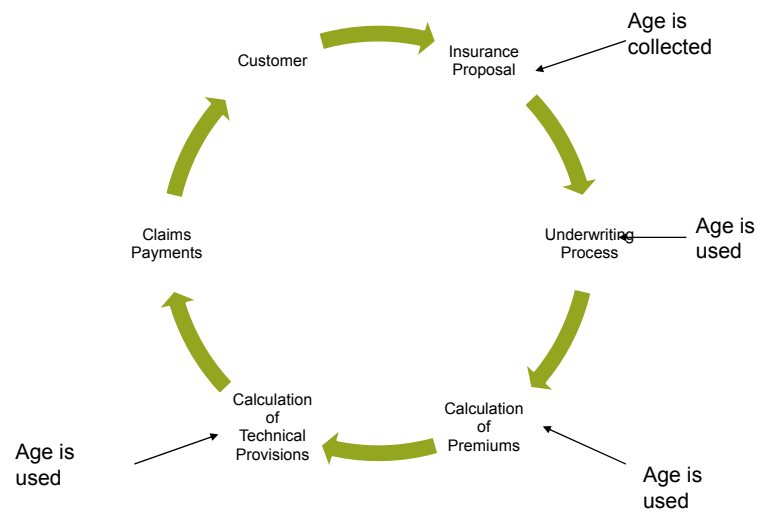
## Implications for insurance industry

- Term and mortgage protection
- Critical illness
- Income protection
- Annuities
- Private medical insurance

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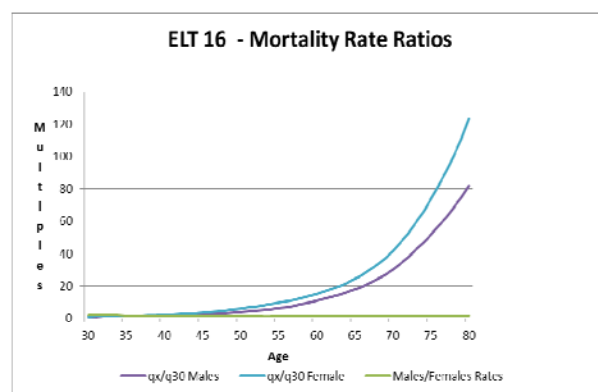
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## Use of age at present



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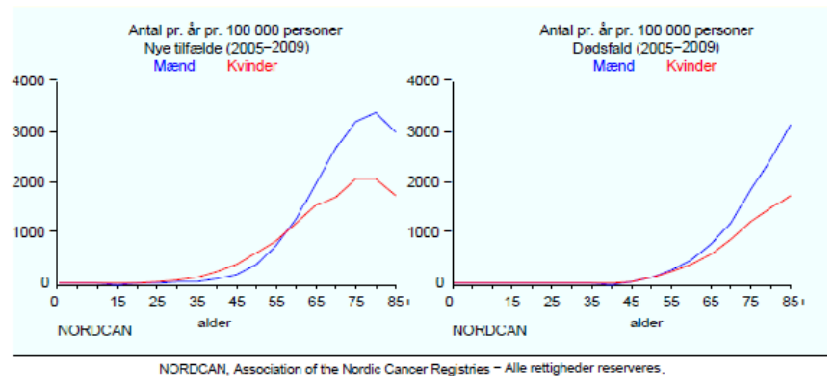
## Age v Gender – life insurance



- Ratio of male:female  $q_x$  typically 1.5x to 2x
- Ratio of  $q_x:q_{30}$  can be up to 120

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## Age v Gender – critical illness



\* Population incidence and death rates for cancer excluding skin cancer by age and gender in Denmark from 2005 to 2009 (males are blue line, females are red line)

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## But community rating works in some markets...

- PMI markets in many countries are community rated, e.g.



- Mortgage Protection Assurance markets in some countries operate on a community rated basis, e.g.



- Group life cover market in UK and Ireland – quasi community rating?

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## Conditions necessary for CR to work?

- Compulsory or quasi-compulsory market

And / Or

- Controls on the level of cover

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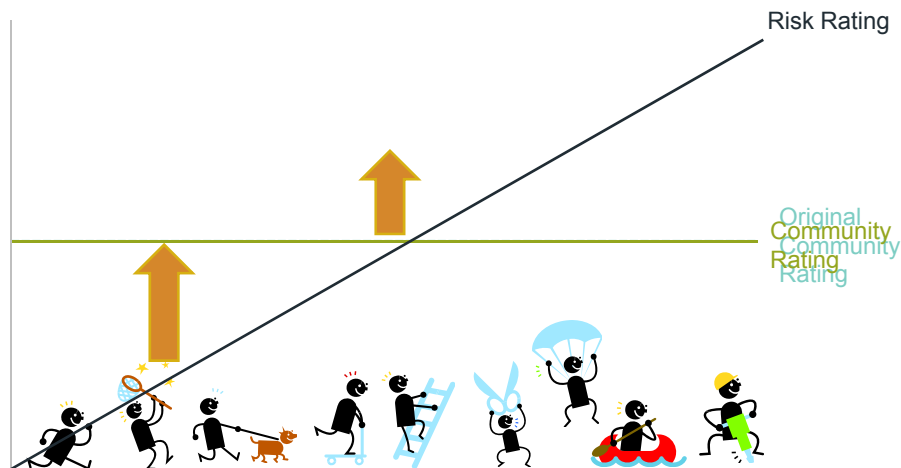
## Selecting against the insurer

- Private voluntary markets with no restrictions on levels of cover can lead to unsustainable levels of risk for insurers
- Without risk rating, adverse selection becomes a huge challenge
  - High risks choose high levels of benefit
  - Premium expensive for low risks
  - Low risks choose to exit the market
  - Average (CR) premium increases
  - More low risk people exit
  - Potential death spiral

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## Death spiral effect



## Market perspective v insurer perspective

### Individual insurer perspective

Risk profile relative to peers is critical

Threat to viability of insurer

Possible to address through a Risk Equalisation System

### Market perspective

Risk profile of market as a whole is critical

Threat to sustainability of market

Cannot be addressed by a Risk Equalisation System

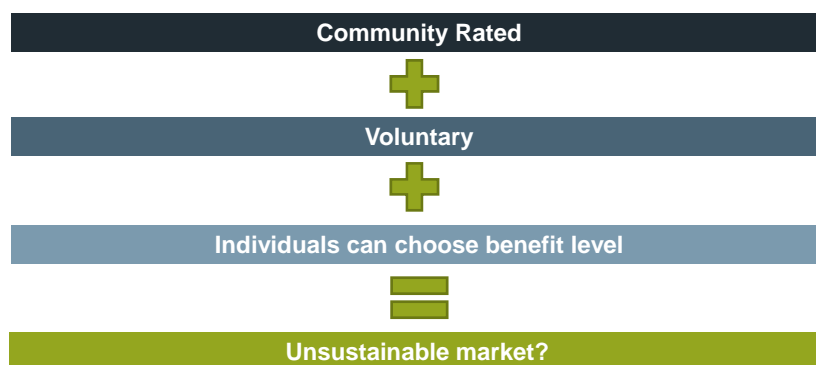
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## Irish PMI market – a counter example?



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## Irish PMI market (contd)

- Choice of product benefit levels, but not unlimited benefit
  - Indemnity Benefit
  - Public health system
- Other protections in place
  - Waiting periods for new entrants and those increasing cover levels
  - Limitations in respect of existing conditions

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## Irish PMI market – the future

- Sustainability of market will continue to be a challenge
  - Economic environment seeing some younger people exit the market
  - Significant increases in claims costs and hence premium levels in recent years
  - Danger of a tipping point – despite protections in place
- Australian solution – Lifetime Health Cover
  - Incentivise people to join the market at younger ages

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## Lessons for other markets?

- Devil is in the detail
  - MPA can work as community rated in some markets
  - Annuities: what if a 30 yr olds can buy an annuity at the same price as a 70 yr old?
  - More generally, life, crit and income protection markets may struggle to survive in current form
- RE can address imbalances between insurers, but would be complex to design for so many different product types
- RE will not protect a market that has taken on too much risk.

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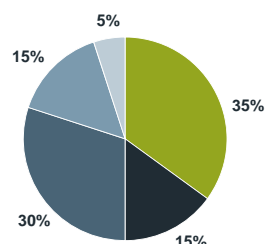
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## Alternative careers for underwriters?

### Underwriter skillset

- Like to pass judgement
- Morbid anecdotes in pub
- Unhealthy fascination with the human body.

Current careers of former underwriters



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## An EU perspective



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## Could other rating factors be banned?

### Guidelines from the European Commission

*“The ruling does not affect the use of legitimate risk-rating factors (other than gender)”*

*“(...) the principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way...”*

*“Where the legislator provides that, under certain conditions, a specific practice is not discriminatory, it does not create a derogation...”*

- Age and disability discrimination in services is currently outside the scope of current EU law
  - Unlikely a Tests Achats-type challenge would succeed?

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## Equal Treatment Directive

On 2 July 2008 European Commission adopted a proposal for a Council Directive:-

### Article 2(7)

*“Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.”*

### Recital 15

*“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.”*

## The Polish presidency draft (1)

### Article 2(7)

**FA2**  
In the provision of financial services,

- proportionate differences in treatment on the grounds of age do not constitute discrimination for the purposes of this Directive, if age is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable statistical data;
- proportionate differences in treatment on the grounds of disability do not constitute discrimination for the purposes of this Directive, if the health condition underlying the disability is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable statistical data or, where such data are not available or sufficient, on relevant and reliable medical knowledge.

*Providers of financial services who decide to apply proportionate differences of treatment on the grounds of age or disability shall provide information on the reasons justifying those differences of treatment.*

FA2

undone high-light

Forsyth Alex, 27/04/2012

## The Polish presidency draft (2)

### Recital 15

*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 service providers are able to show by relevant actuarial principles and statistical data or medical knowledge, that such factors are determining factors for the assessment of risk. Differences of treatment on grounds of age and disability should be proportionate. [Age limits and age bands in financial services can be proportionate differences of treatment on grounds of age if they are set in a reasonable manner.] Consumers and relevant judicial and complaints bodies should have the right to be informed about the reasons justifying differential treatment, [in advance or upon request,] and the information provided should be [useful and understandable to a general public].*

## Revisions since ECJ ruling

- Polish <sup>FA4</sup> and Danish presidencies have suggested revisions seeking to address problems arising in Gender Directive:-
  - Avoid derogation
  - Increase legal certainty  
(But age and disability are split)
  - Clarify that differentiation is not discrimination

**Generally speaking, the draft revisions were supported by many delegations but more work is still required**

## Slide 24

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**FA4** Are you suggesting Polish have suggested further revisions on previous 2 slides?  
Forsyth Alex, 27/04/2012

## Industry reaction

- Industry Europe:-
  - Actively lobbying the presidencies
  - Ban *“would ultimately lead to the end of the insurance business model as it currently exists”*
  - Propose:-
    - Replace Article 2(7) with new Article 3 specific to insurance
    - Remove split of age and disability
    - No limitation or hierarchy for sources of risk assessment
  - Commissioned a study by Oxera into the use of age and disability
- EURODIS:-
  - Unaware of Directive
  - Declination by insurance companies not seen as a big problem

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## Where from here?

- 6 month rotating presidency (next up Cyprus, then Ireland)
- Some delegations maintain general reservations
  - Legal certainty
  - Division of competences, Principle of subsidiarity
- Requires unanimous agreement of Council; and consent of European Parliament
- Commission has made it clear it will not withdraw the Directive

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## Conclusions

- Community pricing can work for some products but applying more generally would have adverse effects on the market...  
... which would be detrimental to insurers  
...and ultimately consumers.
- There is wide support for Equal Treatment Directive, at least in principle, but some strong reservations in its implementation.
- Nevertheless, the European Commission appears resolute.
- Should we be worried?
- That's likely to depend on the legal certainty of the wording.

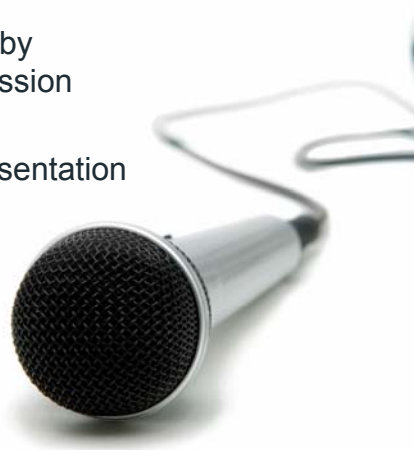
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## Questions or comments?

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

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