



The Actuarial Profession

making financial sense of the future

Life conference and exhibition 2010

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Differentiation or Discrimination?

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Differentiation or Discrimination?

Differentiation

- any process in which a mixture of materials separates out partially or completely into its constituent parts

Discrimination

- unfair treatment of a person, racial group, minority, etc; action based on prejudice

Agenda

- Quick overview of current legislation
 - Equality Act 2010
- EU gender legislation
- The “Test-Achats” case and the Advocate General’s Opinion
- What happens next?

A quick overview of current legislation

- Historically, UK legislation on:
 - Sex Discrimination (*limited impact on insurers?*)
 - Disability Discrimination (*more careful implementation of existing practices?*)
- EU Gender Directive led to specific amends to Sex Discrimination Regulations (*continuation of existing practices?*)
- Equality Act 2010 (*limited impact on insurers?*)

A quick overview of current legislation: Equality Act 2010

- Largely consolidates existing UK legislation (Gender , Disability)
- 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
- Ability to differentiate depends on the characteristic
- Enabling legislation for guidance on Age Discrimination

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 due at end of 2010
- 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

Current EU Directive: Use of Opt-out clause

All 26 countries availed of the opt-out clause:

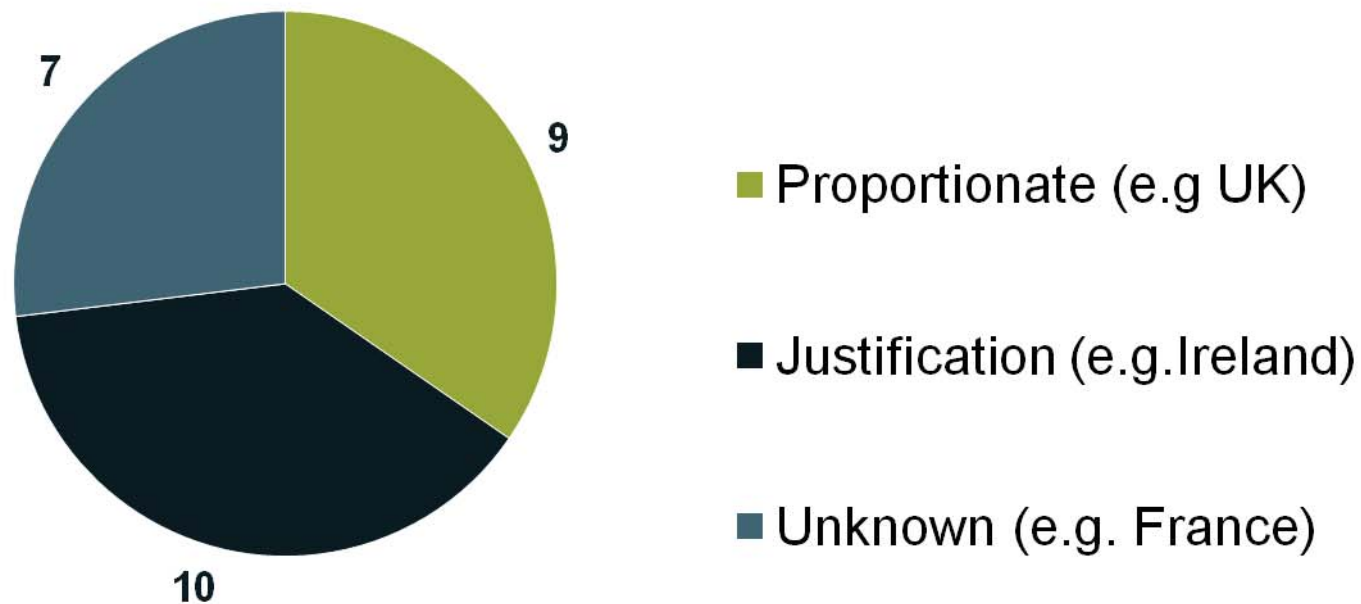
- 13 for all types of insurance (incl. UK)
- 9 countries do not allow gender to be used for motor
- 4 countries do not allow gender to be used for accident
- Several countries allow only for selected classes:
 - Belgium – Life/annuities only
 - Cyprus – Life/annuities/accident only
 - Norway – Life/annuities/disability only

Current EU Directive: Data Publication

- Prescription over published data varies considerably
- Bodies involved in publishing data also vary:

Who publishes data?	Frequency
Government Department	4
Insurance Regulator	11
National Agency	8
Actuarial Association	7
Industry Association	8
Individual companies	7
Other	1

Current EU Directive: Relation of Data to Pricing



Current EU Directive: Application of Legislation

- Consumer Protection – applies to policies sold to domestic residents, e.g. UK
- Prudential supervision – applies to domestic insurers, e.g. Belgium
- Consumer Protection and Prudential supervision – e.g.
 - Ireland – opt-out applies so Irish insurers can use gender domestically and cross-border
 - Cyprus – limited opt-out so Cypriot insurers cannot use gender in selling critical illness insurance to e.g. UK residents!

UK approach

- 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

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:
 - 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
- No party submitted that the introduction of unisex rates would seriously endanger private insurance systems

What happens next?

- Decision by European Court Spring 2011
 - 13-person panel
 - Final decision must be unanimous
 - 1 in 5 Advocate General Opinions overturned
- 3 year transition?
- Impacts all future insurance premiums i.e. inforce as well as new business?
- Implications for age discrimination?

Potential impacts of removing gender

- Gender benefiting varies by product
- Cross subsidy
- Risk margin for uncertainty
- Product restrictions to limit risk
- Target marketing to control gender mix
- Impact on consumer demand

Challenges

In-Force and New Business

- How to equalise premiums/benefits?
- Impact on underwriting
- Impact on reinsurance terms

In-Force only

- How to change in-force premiums/benefits?
- Impacts only policies sold post 21/12/2007?

New Business only

- Can we still capture gender on an application form?
- Other rating factors?

Questions or comments?

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

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