

Open Forum: The Test-Achats judgment and its impact on UK life insurers

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Open Forum: the “Test-Achats” judgement and its impact on UK life insurers

17.30-18.15 Presentation

Speakers: Dave Grimshaw, Barnett Waddingham
Sheila Hall, AEGON
Lauren O’Meara, Standard Life

18.15-19.00 Discussion

19.00 Close

Agenda

- Introduction to the Working Party
- Background
 - The 2004 EU Gender Directive
 - The Test Achats case and the ECJ judgment
- What Happens Next?
 - Annuities: Lauren
 - Protection Business: Sheila
- Discussion
- Future Work.

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)

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.

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

- 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, i.e. existing as well as new business.

The Advocate General's Opinion

- 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.

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.”***

The ECJ judgment: What we know

- Must use unisex pricing for new policies from 21 Dec 2012.

The ECJ judgment: What we don't know

- Process for implementation
- 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!

What happens next?

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Annuities

- Background: why use gender pricing for annuities?
- Current Market Rates
- Long term impacts
- Short term issues.

Annuities-why use gender pricing?

Life expectancies at retirement

- Male life expectancy*: 78 years
- Female life expectancy*: 82 years
- Why?
- Behavioural differences?
- Biological differences?

* UK life expectancy

Annuities-why price differently for males and females?

Behavioural differences

- Differences in smoking patterns and lifestyles
- Women more risk averse?

Biological differences

- Longer female life expectancy: to care for young
- Male hormones can have drawbacks, female hormones can be beneficial...

Biological differences

- Oestrogen protects circulatory system...
- ...while androgens (testosterone) damages it
- Males more susceptible to diet-related cancers
- Males have weaker immune systems

Current Market Rates

- Males-v-Females Rate differential : 2% to 14%
- Example: Purchase Price £100k, Age 65

Postcode	Male Annuity*	Female Annuity*	Difference
High Mortality	£6,757	£6,331	6.3%
Low Mortality	£6,527	£6,155	5.7%

*Using average of top 3 rates in market as at 2nd March 2011

Current Market Rates

- What is current split of males to females?
- Depends on:
 - Age
 - More males retiring at 65
 - More females retiring at age 60
 - Purchase Price
 - Males in work force longer
 - Males make up higher proportion of sales by amount
 - Higher wealth individuals more likely to take Drawdown?

Long term impacts

- Attractiveness of annuities -v- other decumulation products
 - Drawdown: only real contender?
 - Exacerbated by:
 - Removal of Compulsory Annuitisation?
 - Solvency II?

2009 data	Annuity	Drawdown
Market size	£10,830m	£1,838m
Average case size	£23,445	£74,969

Long term impacts

- Shift in Business mix
 - Higher female proportion in future as a result of ban and other factors:
 - Females staying in workforce longer
 - Equal pay
- Impaired annuities
 - More attractive to males?
- Impact on savings
 - Disincentive for males to make pension contributions?

Short term issues

- Spike in sales pre and post Dec 2012
- Size of margin for uncertainty in Pricing
- FSA Illustrations
- Mortality tables e.g. GAD tables

Uncertainties?

- Bulk-buy out market
- Reinsurance contracts
- Impaired / Enhanced market
- Group personal pension contracts
 - inconsistencies across market
 - Inconsistencies within provider's own rates
- Pricing of Pensions e.g. early retirement factors, etc.

Summary

- Background: why use gender pricing for annuities?
- Current Market Rates
- Long term impacts
- Short term issues

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Protection

- Gender differentials for protection business
- How to implement for new business
- When to implement
- Potential Consequences
- Retrospection

What are the protection gender differentials?

Type of business	Differential
Mortality	Male 20%-25% higher than Female
Critical Illness	<ul style="list-style-type: none">• Male / Female very similar at younger ages• Male higher than Female from age 45
Income Protection	<ul style="list-style-type: none">• Female 50%-80% higher than Male

Individual Protection – How to switch new business terms

- Approach to unisex pricing
 - Assumed gender mix
 - Allowance for business mix risk
 - What constitutes a new contract
- Unisex underwriting
 - Revise questions
 - Revise underwriting decisions
 - Review ratings
- Reinsurance terms

Individual protection – when to switch

- Big bang or phased?
- Gradual or step change?
- Lapse risk
- Other things happening in December 2012
- How to manage quote guarantee periods?
- How to manage pipeline?
- Christmas holidays
- ...depends on the rest of the market

Individual Protection – potential consequences

- Initial market volatility
- Competition will establish new level
- Rebroking opportunity
- Change in buying patterns
- New product design
- Introduction of new rating factors
- New commission strategies
- Larger case pricing turned on its head

Individual Protection – retrospection questions

- Unisex version of each rate table since December 2007?
- Ability to increase rates to unisex rate?
- Revisit underwriting?
- Communication with advisers & customers
- Make changes now to reduce the risk?
- Capital implications

How important is gender?

Approximate scale of key rating factors for Term Assurance

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

Discussion

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

The views expressed in this presentation were those of at least one of the presenters when the slides were written last week and are not those of our employers.

The presenters are actuaries – not lawyers! – and do not accept any liability for the content of these slides.



Future Work of the Working Party

Gender

- Collect data on business mix by gender
 - Benchmarking by office
 - Interrogation of detailed data
 - Look at cost of retrospective change
- Track price movements over 2011-2013
- Review the impact of the change on the UK life market

Age

- Need to ensure we are prepared for the next battleground?

Data needs

Annuities

- **Split of business by gender across:**
 - Age bands
 - Purchase Price bands
 - Other?
- **Average annuity size by gender**
- **Drawdown business**

Term Assurance

- **Split of business by gender across:**
 - Age bands
 - Sum Assured
 - Other?