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ARTICLES, PAPERS AND PUBLICATIONS OF ACTUARIAL INTEREST

THE MODERN LAW REVIEW
48, 3 (May 1985)

LEWIS, RICHARD. *Insurers' agreements not to enforce strict legal rights: bargaining with government and in the shadow of the law*. In this timely article on a topic of current interest the author traces the development of private agreements between insurers governing insurance practice contrasting this form of regulation with that of legislation. He poses the question should these types of agreement be encouraged as a method of law reform. No firm conclusions are drawn but greater insight is given to surrounding issues.

Lawyers are warned on the one hand not to be misled by the small amount of legislation into believing insurance is of little interest to government, but on the other not to exaggerate the importance of the legal doctrines of contribution and subrogation or the potential recourse to the law of tort.

Actuaries are probably more interested in knowing the reasons why the agreements not to enforce legal rights are made. One reason is to avoid uncertainty and to save expense. The author gives some examples of such agreements made between insurers alone. A more controversial reason is to forestall official criticism and discourage legislation. The author outlines 10 special arrangements made from within the first 10 years of this century to within the last 10 years as a direct result of undertakings given to government. The industry bodies through which these agreements were made include the L.O.A., the I.L.O.A., the A.O.A., the B.I.A., the M.I.B. and the Association of Lloyds Underwriters. The scope of these agreements has included profit levels, premium rates, gaps in the provision of insurance coverage and the rights of insurers to insist on arbitration.

The controversy ranges from self regulation on an informal non-legal basis, as opposed to legislative intervention to the ability to introduce reform where otherwise impossible through weak government or pressure on parliamentary time.

One conclusion I drew is that insurers should fully understand the nature and arguments of the controversy as expressed by the author if they wish to continue to lobby against proposed legislation while continuing to be held in high esteem.

48, 4 (July 1985)

SHRUBSALL, VIVIEN. *Sex discrimination: retirement and pensions*. The author challenges four areas of discriminatory practice by employers:

1. Providing different conditions of access for male and female employees to the occupational pension scheme and different benefits under the scheme.
2. Granting concessions or benefits in retirement which are not strictly pension payments to male employees only or in a more advantageous manner to male employees than female employees.
3. Operating an early retirement or voluntary redundancy scheme which is linked to the different retirement ages of men and women.
4. Requiring female employees to retire at an earlier age than that required for male employees.

These practices are described with detailed examples and discussed in turn. Examples of indirect discrimination arising from qualifying service or salary level requirements are also given.

The challenge is two-pronged, coming from general argument and from the law.

The general argument is supported by the 1976 Report of the Committee on Equal Status for Men and Women in Occupational Pension Schemes, subsequent assurances from ministers, unions representing predominantly female employment areas and, from the footnotes, the 1983 survey by the National Association of Pension Funds. It would be interesting to know how far the author could count on the support of actuaries for the following statement,

> "However, the fact that on average women live longer than men can be of little justification for discriminatory benefits being available in a particular area of employment where no actuarial evidence of longer life expectancy is available."

The challenge of the law is two-tiered and forms the main thrust of the article. The challenge of national or domestic law comes from legislation enacted over the past fifteen years:

> the Sex Discrimination Act, 1975; the Equal Pay Act, 1970 and the Social Security Pensions Act, 1975 with its regulations [Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 No. 142].

The second layer of challenge is from the EEC provisions—particularly Article 119 of the Treaty of Rome and Directives 75/117 and 76/207. Several cases are mentioned and it is particularly interesting to see how the European Law is able to be an effective challenge in discriminatory practice 2 above, where there is no breach of the national law.

The author concludes that present national and Community provisions afford little redress in almost every example considered and, for most of the cases, the position looks likely to remain the same. However, the merit of this article lies not so much in its conclusions but in the way the arguments are advanced.

NEW ZEALAND SOCIETY OF ACTUARIES (May 1982)

RASHBROOKE, G.D. Superannuation rights under the Matrimonial Property Act 1976. The Act makes provision for the contingent superannuation rights of one (or both) of the marriage partners to form part of the matrimonial property. The paper is concerned with the determination of the value of these rights. It includes a description of the development of case law and the relationship between the actuarial and legal professions. The paper also includes extracts from the relevant legislation in the form of an appendix. This paper is of considerable topical interest to UK readers following the publication of a consultation paper "Occupational Pension Rights on Divorce" by the Lord Chancellor's Department. The practical problems considered in Rashbrooke's paper provide an interesting and relevant background for considering the issues raised by the Lord Chancellor's Department.