



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Gender-Neutral Insurance Benefits/Premiums:
Equality Commission Briefing

21 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Ms Megan Fearon
Mrs Brenda Hale
Mr John McCallister
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Witnesses:

Mrs Evelyn Collins	Equality Commission for Northern Ireland
Mrs Roisin Mallon	Equality Commission for Northern Ireland
Mr Michael Wardlow	Equality Commission for Northern Ireland

The Chairperson: We will turn to the consultation from the Office of the First Minister and deputy First Minister (OFMDFM) on regulations to introduce gender-neutral insurance benefits and premiums. That consultation closes on 5 December, and the draft regulations will come into effect on 21 December 2012.

Mr Michael Wardlow (Equality Commission for Northern Ireland): You have the briefing paper, and I will ask my colleague Roisin to speak to it. I commend the consultation paper. It was an excellent paper, and it asked a lot of very significant questions. I hope that the engagement with members of the public and others is appropriate and it comes back. It is another good opportunity. That is my sense of it, and I speak as someone who worked as an underwriter in insurance and has professional qualifications in that. This came to me wearing another hat. I am glad that I am passing it to Roisin, who has the details.

Mrs Roisin Mallon (Equality Commission for Northern Ireland): The Committee will be aware that the European Court of Justice (ECJ) has ruled that the use of gender as a risk factor by insurance companies should not result in individual differences in premiums between men and women, and that is set out in the gender directive. We are finalising our response to the consultation, so I am giving you preliminary views at this stage. We will forward the final response in due course.

In general, we welcome the fact that the Executive are taking steps to address the effect of the European Court of Justice's decision. They are proposing to repeal article 46 of the Sex

Discrimination (Northern Ireland) Order 1976, with the effect that the exemption will not apply to contracts included after 21 December 2012.

I will highlight a few points. It is interesting because, in 2010, the European Commission commissioned a report on the use of a range of equality factors within financial services. It was clear that gender was a risk factor that was widely used across insurance, including motor insurance and term life insurance. However, it is also clear that insurance providers have successfully relied on that exemption in a number of discrimination cases where there was challenge to their practices.

Of note is the fact that there was a report on the UK, and that raised concerns about transparency within the financial services sector. Although there is a requirement on the financial services sector to produce relevant and reliable data relating to gender, that is aggregated at a very high level. The report said that that makes it difficult for individuals to challenge the practices. You need to be an expert on the law and insurance to be able to challenge those practices because they are at such a high level.

If Committee members would find it helpful, I will run through our responses to some of the individual questions. The first question is about whether the assumed impacts set out in the impact assessment and the underlying assumptions are reasonable. We note that it is concluded that consumer impacts are considered to be adverse but that quantitative calculations are based on very limited sources of data. Therefore, we urge OFMDFM to have further discussions with the industry and key stakeholders to ensure that there is robust data so that we can measure what the impact of removing the exemption would be. It would also help to inform the findings of the final equality impact assessment, which is at the back of the document.

Question 2 asks whether we agree that the scope of the draft regulations should be restricted to repealing article 46. At this stage, we are of the view that it should be restricted to repealing article 46.

Question 3 asks for our comments on the scope of the indirect discrimination. In our view, we consider that neither the ECJ judgement nor the gender directive requires changes to the definition of indirect discrimination. I must also mention that there are inconsistencies in the sex equality legislation regarding the definition of indirect discrimination. Although the judgement does not require changes, we would say that those should be looked at as part of wider reform in sex equality law.

The next question is about new contracts. The European Commission (EC) has produced guidance — you may be aware of that — on what it means by a new contract. Obviously, the exemption will relate only to new contracts after 21 December. We feel that that guidance is helpful. We consider that domestic law relating to contracts is broadly in line with the EC interpretation. Therefore, there are no changes needed on that.

I will make just a few final points about collation of data. Question 5 asked whether we agree with the collection of data or the use of sex for the purposes of assessing overall risk. Our answer is that, yes, we do agree with that. You can still collect data and use data relating to sex for the purposes of assessing overall risk, but that cannot result in differences in premiums between males and females. There is an example given in the consultation document. You can look at a pool of males and females in overall risk, but it cannot result in differences in premiums.

On work-based pension schemes, we recognise that there is a lack of clarity on what comes under the remit of the two directives. The UK Government have said that, at this stage, they cannot give further guidance and that they will have to wait on clarity from the courts in relation to that. Obviously, that is regrettable, but that is true of other areas. Sometimes, there is a need for clarity from the courts about the demarcation between the two directives.

Finally, on the section 75 impact, we note that the data regarding the effect on the different groups is scarce. Therefore, we encourage OFMDFM to liaise more closely with the industry in relation to that in order to assess the complete impact.

The Chairperson: Thank you, Roisin. This range of benefits and premiums covers all sorts of insurance.

Mrs Mallon: It is not occupational pension, for example. It would be insurance such as life insurance, but not employer schemes. It would be private and voluntary schemes.

The Chairperson: So if we are going to a gender-neutral system, we have had a gender-weighted one, or perhaps, in some people's language, a gender-biased one. Is there any evidence base for why that was, beyond a whole collection of bad jokes about women drivers?

Mr Wardlow: From a previous incarnation, I know that there was statistical evidence. When you were an underwriter in the old days, you did not key in something that came up on a computer. You actually looked at a risk category, whether that was outfitters, tobacconists or male drivers. Actuaries compiled a set of statistics that showed the likelihood of that group performing a particular thing and the risk. The life expectancy for males was less than for females. There were all sorts of things.

Male drivers, proportionately, were worse in terms of risk factors. They drove faster, and when they crashed, they tended to have a larger accident that cost more. Therefore, the insurance companies said that they would set that aside as a category and risk assess young men higher than young women. They considered it appropriate to do that. This is saying that you are no longer able to do that. You aggregate the good fortune of the many and pay out the misfortune of the few based on a unisex premium, if I can put it that way. There is no less statistical or actuarial evidence to do that. It is simply another way of doing things. The insurance people will still get the same premiums in.

The Chairperson: Or will they use it to —

Mr Wardlow: There is a question about whether, in the short term, young men will benefit and young women will lose. If you are talking about winning and losing, it is likely that premiums for young females will go up proportionately and those for young men will, relatively speaking, go down. That is the sense looking in from the outside. That is until the market stabilises. There is a cost involved in a lot of this stuff.

That is how it worked. We are not saying take away your risks or take away your pool to analyse your data and set it out. On the other hand, would you want to say that people's driving should be assessed by their race, ethnicity or anything else? Why set males and females as two categories to risk assess? Why not do something else? It is simply saying that we are moving on with the sex discrimination law. It seems to be a natural consequence. Is that fair?

Mrs Evelyn Collins (Equality Commission for Northern Ireland): I do not know whether everybody will think that it is fair, but it is absolutely in line with the European Union's principle of equal treatment between women and men. The gender directive, which provided protection for people against sex discrimination in the provision of goods and services, had an exemption in relation to this area. That was challenged in the case that is referred to in the consultation document. The European Court of Justice made the ruling that the exception should no longer stand. That is why the UK and other countries need to amend the legislation.

Mr Wardlow: We are required to do this. We do not have a choice.

Ms Fearon: This is more of a comment. I have an insurance background as well, having worked in a brokers. I suppose that it was the underwriters who were giving out about this. This is welcome. I know that one of the main annoyances, particularly for the young people who rang us for a quote, was the fact that young males were £1,500 more expensive to insure than young females. Do you see there being any sort of guidance in the future on young people's insurance, in particular?

Mrs Collins: One of the important things that we will, hopefully, come back to talk to the Committee about in the new year is protection against discrimination on the grounds of age in the provision of good, facilities and services. Insurance is certainly a discussion point in relation to that legislation. Also, there is not a European framework in respect of age and the provision of good and services, so different considerations may apply there.

As Michael said, the consultation document produced by OFMDFM covers the potential for quite significant shifts in the early days after the change to the legislation. Perhaps the market will then stabilise a bit. Certainly, as I understand it, it was the insurance companies that gave the most evidence to the equivalent GB consultation.

Mr Wardlow: One way to ensure that the age issue is in some way ameliorated is to look at the opportunity in the goods, facilities and services (GFS) legislation to include young people under the

age of 18, which GB did not do. People start driving at 17, so if we were able to extend the GFS age-related discrimination to those under 18, that might go some way towards addressing that issue.

You are absolutely right. We are not quite sure what insurance companies will do with the pool. What happens if they get this pool, set it down and say, "This is how much we pay out, and this is how many people we get in"? Supposing an insurance company predominantly gets young women because it has a name for being a good insurer for them — does its pool reduce? Nobody knows the answer to those questions. This is the gender directive. It is the natural follow-on from that. We do not have any derogation. We are required to follow it. Insurance companies will say the things they say. At the end of the day, we will pick up the premiums. I think that our role is to try to give you advice on what are some of the outliers. My colleague has highlighted some of those to you. There will be people who do not think that it is fair.

Ms Fearon: I have been talking to a few local insurance companies, and I know that a few around Newry — CRASH Services springs to mind — are working on projects for young drivers. It is welcome.

I had another point, but it has gone out of my head.

Mr Moutray: As the parent of a son who has his first driving lesson this afternoon —

Mrs Collins: I am the parent of a daughter; the opposite.

Mr Moutray: — I do not know whether this is good news for me — probably not. I want to ask you about the definition of a "new contract". It says that there is no definition of what constitutes a new contract in the gender directive. So are you any clearer? Is a renewal a new contract?

Mr Wardlow: My understanding is that, in any law, an offer, acceptance and consideration make a contract. You have the right at any renewal to break a contract. An offer by an insurance company of insurance for x is the offer of a new contract, irrespective of whether you have been with it for 30 years. My understanding is fairly clear: as of the 31st, anyone who renews on or after the 31st will be on a new contract.

Mrs Mallon: That is set out in the European Commission guidelines.

Mr Lyttle: Michael, you are in a unique position in that you have worked in both areas. Do you think that this is fair?

Mr Wardlow: Let me put it this way: I remember, when I started my insurance studies in 1972, having big books and taking tariffs off the shelf and working out the percentage. We set down so many different categories of risk and assessed them. Now, it does not matter. Now, your house is rated on the number of bedrooms you have, for goodness sake, as if it is more likely to burn down if it has five bedrooms. We have a very different way of analysing risk. We are much sharper at analysing risk. It seems to me that it is as fair as it was in the old days. We now know better the risk that we are taking on because we have a computer that says, "Here's the people we insure. Here's the risk. Here's the women. Here's the men." We aggregate it across, and people pay proportionally to the pool that we have. That is how pensions have worked in the past.

Is it fair or not? I think that people who were brought up in the old regime will say that it is not fair. Women are paying for the crashes of men. However, I think that it is a very blunt way of saying that insurance work is about aggregating the good fortunes of many and the misfortunes of the few. I am afraid, Chris, that that is the world.

Mr Lyttle: I will rephrase it slightly: is the equality limiting the evidence-based opportunities of risk analysis?

Mr Wardlow: Absolutely not. Insurance companies will still have the right to make sure that, in the pool that they have in and the payment they make out, they get their reward for the risk. I am pleased that insurance companies will do that. It will just be that, for a short time, it will be a bit of a turbulent market when people shop around. How long is it going to take insurance companies to work out what an aggregate premium is before they can evidence-base it? We are going to be in a few years of turbulence — I think that you used that word — until this settles. That is my sense.

The Chairperson: Call me cynical; the insurance companies will be OK, but the consumer will pay.

Mr Wardlow: That is why there is competition out there. That is what you will find from parents such as Stephen. I have two boys through it now, and it gets better once they hit 25.

The Chairperson: I was told 55.

Mr Wardlow: The other thing that this mentions is that the older you are, the more likely you are to be less affected by the premium turbulence than a young woman or young man. Young men up to the age of about 23 seem, in risk terms, to be proportionally more highly at risk associated with insurance.

The Chairperson: Well, we have no choice, bar leaving the European Union.

Mr Wardlow: Unless we make a unilateral declaration of independence and leave the Union — I mean the European Union. *[Laughter.]* You heard it here first.

The Chairperson: OK. Michael, Roisin and Evelyn, thank you all very much indeed.