

## **Differentiation or Discrimination?**

**By Mark Nicholson**

The European Commission has proposed that men and women should pay insurance premiums and receive annuities at the same rates. This represents a major shift in the laws governing discrimination. By separating the concept of discrimination from rational analysis, it introduces the prospect of a 'New Collectivism' under which equality of outcome is placed above equality of opportunity within a free market.

The proposed Commission insurance directive, initiated by Anna Diamantopoulou (the EU social affairs commissioner) and backed by the UK Equal Opportunities Commission, would require insurance companies to charge men and women the same rates for insurance policies. At present, women typically pay higher premiums for private medical care as they generally receive more care during their lifetime than men. Women also tend to receive lower annuity payments than men as the current system assumes that men die earlier and should therefore get their accumulated pension savings paid back to them over a shorter period. Conversely, women can pay lower motor insurance premiums as they are statistically less likely to be involved in accidents than men.

The UK 1975 Sex Discrimination Act allows insurance products to be offered at different rates to men and women, as long as they are based on "reasonable" actuarial data. The proposed European directive would override these risk-related calculations in the name of gender equality. However the current insurance industry practice amounts to differentiation rather than discrimination as the different rates are backed by facts rather than being motivated by blind prejudice. Similar evidence based assessments lead to different premium rates being charged to people of different ages and to smokers and non-smokers being treated differently.

Defending the proposals, a member of the commission commented that 'It's not fair to assume that all women live longer than men - they don't', and that the non-recognition by the insurance industry of this fact amounted to discrimination. However the root purpose of insurance is that of smoothing out the vagaries of chance, and adjustment for each individual's life span would not only be impossible, it would be converse to the principle of the industry. Within the context of providing for unforeseen events, insurers should be able to use the fullest information available in offering the fairest price to all policyholders.

In the future, the 'fullest information available' is likely to include genetic testing for susceptibility to different diseases. It could be argued that if private health or insurance companies charged differentiated premiums based on such specific genetic information, this would be unfair to those with unfavourable genetics as they would be unable to obtain reasonably priced cover. However these people would still have equal access to state-funded care, which would not differentiate in this way.

This example serves to mark out the distinction between the commercial sector, where differentiation should be permitted, and areas of “fundamental rights” to which all citizens are entitled regardless of background or status. Basic health care has been defined as such a right for the last fifty years, along with equality of voting rights, the opportunity of free education and equal rights under the law. Outside of this state funded “fundamental rights” safety net, fact-based differentiation by the commercial sector should be permitted. Ultimately, if a company’s policies are truly discriminatory (i.e. without foundation in fact) rivals could step in and offer lower rates to disadvantaged groups. This phenomenon has already been observed with insurance companies being set up specifically to cater for groups of the population defined by age, gender and sexual orientation.

The commission directive on insurance may not yet become law. However, the thought process behind the directive is increasingly evident in many areas of public policy. High profile examples include the extension of the rights of full-time employees to part-time workers, a judgement based largely on the argument that the denial of such rights to part-time workers was discriminatory as most part-time workers are female while most full-time employees are male. Similarly, the debate surrounding the ethnic mix of those stopped and searched by the police arises from the premise that it is more important that those searched should reflect the mix of the population than that police operations are conducted efficiently and focused on more likely offenders (70% of mugging victims in London report that their attackers were black) just as relatively few women or OAPs are stopped and searched.

The policy advocated by the draft EU insurance directive, as with these other cases, is based on the belief that the people are homogenous and that any form of differentiation amounts to discrimination. This legislative trend represents the revival of the old socialist belief that ‘equality of outcome’ should take precedence over ‘equality of opportunity’, and marks the development of a ‘New Collectivism’ which looks to achieve its ends through legislative means rather than fiscal.

We are all equal under the law and should have equality of opportunity. Just as the state provides an economic safety net, it should continue to be a ‘health insurer of last resort’. Yet at the same time everyone is also different and legislators should not be blind to this fact. As policymakers begin to concede that provision of services such as education and healthcare cannot be identical across the country, we should be wary of the introduction of a ‘one size fits all’ legal categorisation, which, like nationalisation before it, does not provide a good service or a fair price for either provider or consumer.

\* \* \*

What are your views on this or other issues? Email Chris Philp at [research@bowgroup.org](mailto:research@bowgroup.org) if you would like to get involved in the group’s research programme, or if you would like to reply to this article.