

EUROPEAN COURT OF JUSTICE RULING THAT INSURANCE BENEFITS AND PREMIUMS SHOULD BE GENDER NEUTRAL

May 2012



HM Treasury published a consultation document in December 2011 setting out the UK Government's proposed response to the European Court of Justice (ECJ) judgment where it was ruled by the ECJ that the use of gender as a risk factor by insurers should not result in individual differences in premiums and benefits for men and women.

The Government believes that nobody should be treated unfairly because of their gender, but that financial services providers should be allowed to make sensible decisions based on sound analysis of relevant risk factors.

The ECJ judgment also stated that the EU Directive (2004/113/EC) currently permitting such practices should cease to have effect from 21 December 2012.

The Financial Secretary's 30 June 2011 statement set out the Government's disappointment with the judgment. The Government expects the impacts of the judgment to be broadly negative – in large part falling on consumers rather than industry.

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The deadline for responses to the HM Treasury consultation paper was 1 March 2012.

HM Treasury will publish a summary of the results of this consultation within three months of the end of the consultation period. The intention is to legislate the ban on gender discrimination early in 2012, to come into force from 21 December 2012.

UK legal interpretation

The Government's view is that the judgment made by the ECJ means that any new contracts for insurance and related financial services entered into on or after 21 December 2012 cannot discriminate on the basis of gender.

Therefore, in such contracts, the use of gender as a risk factor should not result in individual differences in premiums and benefits for men and women. However, any contracts with gender-sensitive pricing of premiums or benefits concluded before 21 December 2012 can, in the Government's view, continue unchanged after that date.

UK legal interpretation of this ruling is that the use of gender as a risk factor should not result in individual differences in premiums and benefits for men and women



Consumer outcomes

The Government believes this ruling will lead to three main outcomes, all of which fall upon consumers:

1. It will result in cross-subsidisation of premiums between the genders. If a (generally more careful) female driver has to pay the same price for motor insurance as a male driver, then she will be subsidising the cost of his insurance.
2. Adverse selection will operate to increase the cost of insurance generally and incentivise riskier behaviour. If gender neutral pricing is introduced into life assurance, men (who have on average a lower life expectancy) will find life insurance to be good value and will be incentivised to buy it or buy more. Consequently, women will find life insurance poor value and as fewer low risk people (i.e. women) take out life assurance, the insurer's portfolio becomes increasingly risky, and the cost of insurance has to rise to compensate.
3. In the field of motor insurance, studies have indicated that gender-neutral pricing would have consequences for road safety. As premiums for (generally higher risk) male drivers fall, then they may purchase higher-powered cars or increase the riskiness of their driving.

Impact on industry

Although the impacts of the ban on use of gender as a risk factor in the pricing of individual insurance policies will primarily be felt by consumers, there will also be significant impacts on industry. These will likely manifest in two main ways:

1. The lowest-risk categories of consumer may in some cases leave the market or take a lower level of cover, which will affect revenues taken by insurers. Insurers with a largely low-risk pool (for example in motor insurance, those solely targeting females) may initially be able to minimise losses by providing a more competitive quote than those composed largely of a higher-risk pool. However this may then attract higher risk customers, which would change the overall risk pool and consequently lead to increased premiums.
2. As industry implements the change, it is likely to incur transitional costs. This will include changes to underwriting practices, marketing changes and changes to sales approaches.

Collection of data and use for purposes of assessing overall risk

The Gender Directive does not prohibit the use of sex as a decision-making factor. It simply states that this must not result in individual differences in premiums and benefits.

This allows for the fact that insurers will need to collect data on gender and use it for the purposes of assessing the overall risk presented by a particular group.

For example, if a motor insurer insures a group of people comprising 70% men and 30% women, the insurer may take the relative proportions of men and women into account for the purposes of assessing the overall risk presented by the group as a whole, and use that risk for the purposes of calculating the unisex premium applicable to men and women in that pool.

Experian Impacts / Viewpoint

Experian's initial view is that this particular consultation paper does not directly impact the current products and services that Experian provides to the insurance sector.

Experian's insurance sector clients who use credit bureau information in order to assist with their premium pricing will need to ensure that any scorecards that they use as part of the assessment process, along with their internal policy rules, do not vary depending upon the gender of the applicant.

For example, a male with identical data recorded on their credit report to that of an equivalent female, should not attain a higher (or lower) score, where that score could influence the premium quoted to the applicant for that particular type of insurance.

Experian is aware that clients may have some concerns in relation to the way that the data held is matched to a particular individual in order that all the relevant information about a person is taken into consideration.

The gender of an individual is used within the data matching process to ensure that the fullest possible amount of data is retrieved and assessed as part of the insurance premium quotation process.

The data matching process works identically whether the data subject is male or female and the gender of the individual is used purely to help ascertain to whom a particular piece of information should be attributed. Once all this data is pooled it can then be assessed using a scoring system that does not vary depending upon gender.

Consequently, whilst gender is used within the data matching process, as long as clients accurately input data, providing the data subject's full details (title, forename, surname, date of birth and address including postcode) as per their third party data requirements, the gender of the applicant will not influence the outcome.

If you have any queries please email:

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