Joint ACA/APL meeting

29 November 2012

Test-Achats - *update on legal status and potential implications for occupational pensions*

- **An insurance actuary's perspective:**

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- A pensions lawyer's perspective:

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Test-Achats

An insurance actuary's perspective

Dave Grimshaw, Partner, Barnett Waddingham LLP

29 November 2012

Agenda

- **Background**
- **Recent Developments**
- **Areas of Uncertainty**
- **Annuity Pricing**

22 days!

Background

- 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 for insurance but Member State opt out allowed
  - Applies to new contracts concluded after 21 Dec 2007

- UK implementation:
  - Gender allowed as a rating factor for all types of insurance
  - Published data and pricing proportionate to the data
  - Applies to insurance sold to UK residents.

Background

- **The "Test-Achats" case**
  - **Belgium adopted the Opt out for life insurance/ annuities**
  - **Action brought in June 2008 by Test-Achats that opt out clause is incompatible with the principle of equal treatment**
  - **Court referred to the European Court of Justice**

- **The ECJ judgment – 1 March 2011**
  - ***"Equality between men and women is a fundamental principle"* and thus overrides the EU directive**
  - ***"Article 5(2) of Council Directive 2004/113/EC ... is invalid with effect from 21 December 2012."***

- **Insurers must use unisex pricing for new policies from 21 Dec 2012 ... but considerable uncertainty over practicalities.**

Subsequent Developments

March 2011	ECJ judgment
June 2011	Ministerial statement
Dec 2011	HM Treasury publishes draft UK legislation and consultation
Dec 2011	European Commission publishes guidance
July 2012	HM Treasury publish response to consultation and final UK legislation

EU Commission Guidelines

- Applies to contracts concluded from 21 Dec 2012
- Guidance on meaning of new contract
- Can collect gender data
- Can use gender for internal purposes e.g. reserving
- Can use gender to calculate aggregate rates
- Reinsurance pricing can remain gender specific
- Insurers can use marketing to target specific groups and products can have gender specific features.

EU Commission Guidelines

- Underwriting processes can ask gender specific questions, use gender specific tests and apply different ratings provided based on physiological differences
- Use of apparently gender neutral risk factors which might be correlated to gender is permissible if they are risk factors in their own right
- The ruling dos not apply to other risk factors such as age and disability
- Doesn't cover employment sponsored cover. It does cover when a scheme member concludes contract with insurer
- No unjustified impact on overall price levels

Commission guidance is not binding

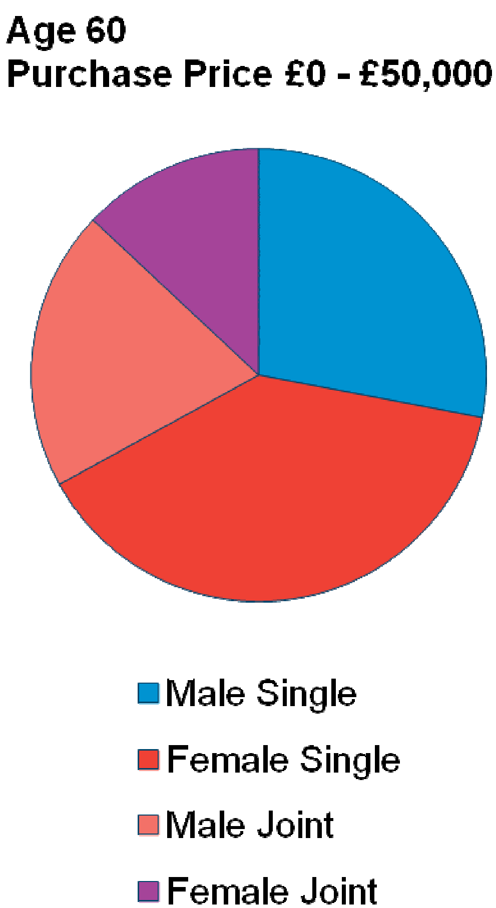
Areas of Uncertainty

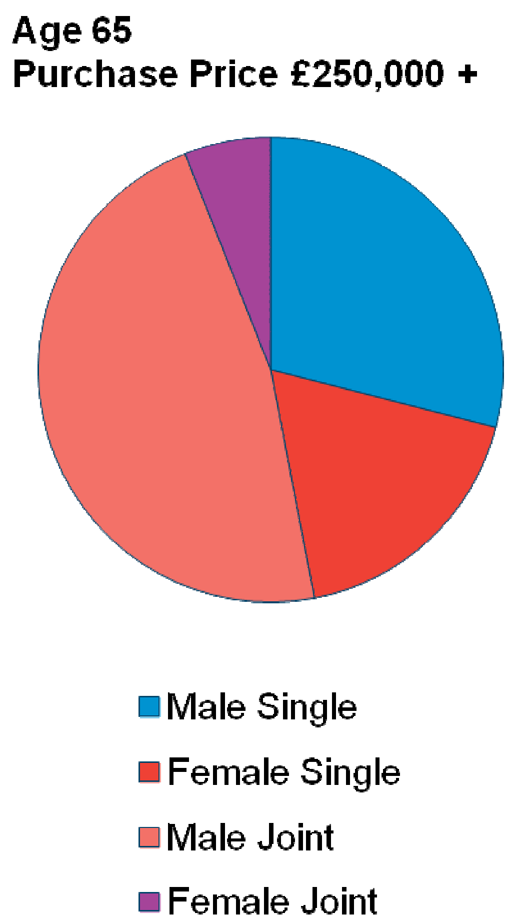
- Use of rating factors in the context of Indirect Discrimination:
  - EC guidance refers to “true risk factors”
- Position on Group insurance not 100% clear:
  - Compulsory, employer-paid, insurance is not covered
- Position on annuities far from clear:
  - Possibility that annuity purchased by a scheme can still be gender-specific
- Indirect Implications:
  - Potential for further challenge on age and disability?
  - May be used as precedent for future changes to pensions legislation?

Annuity pricing: considerations

- **Current Annuity pricing:**
  - **Current rates @ 65 for a level annuity, £100,000 fund**
  - **Male £5,500 p.a.**
  - **Female £5,300 p.a.**
  - **Expect to pay male for 21 years, female for 24 years**
- **Future Annuity pricing:**
  - **Look at current gender mix**
  - **Add margin for uncertainty**
  - **Consider future gender mix – affluent males may defer/not purchase**

Annuity pricing: gender profile





Source: All Annuity types quotation data from Assureweb for January 2011

Annuity pricing: timing

	Male	Female
Aviva	£4,837	£4,744
L&G	£4,921	£4,684
Prudential	£4,388	£4,388

- **Prudential currently uncompetitive – can re-price early**
- **Aviva and L&G both equate to £4,785 unisex rate but:**
  - **If Aviva re-price first, they will continue to write a larger proportion of female business, at a loss-making rate**
  - **If L&G re-price first, they will lose male business and write a larger proportion of female business, at a loss-making rate**

Annuity rates at age 60 for a level annuity, no guarantee, £100,000 Fund
Source: Avelo Portal Limited 23 Nov 2012

Annuity pricing: Joint Life cases

- **Current rates @ 65 for a level annuity, £100,000 Fund**
  - **Male, 2/3 to Female: £4,900 p.a.**
  - **Female, 2/3 to Male: £4,825 p.a.**

Annuity rates at age 65 for a level annuity, no guarantee, £100,000 Fund
Source: Avelo Portal Limited 23 Nov 2012

Annuity pricing: conclusions

- Annuity pricing must change by 21/12/2012:
  - Single Life – males will receive less; females more
  - Changes similar to ¼% change in interest rates
  - Joint Life – minimal impact
- Unlikely to substantively alter buying behaviour:
  - Annuities will still appear unattractive to females!
  - May influence affluent males to defer/not purchase
- Even greater incentive to seek underwritten annuities

Disclaimer

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