‘Once governments start pushing the purchase of a commercial product for social policy purposes, distinctions between public policy and private commercial activity become unsustainable’

One sex doesn’t fit all

Bernard Casey and Noel Whiteside

Recently, the European Court of Justice issued a rather unusual ruling. In future, insurance companies will not be allowed to differentiate between men and women when selling their products. Now before your eyes glaze over with the tedium of it all, this has some important implications — for pensions. At the time, the ruling was greeted with some hilarity by the popular press. Lower car insurance premiums enjoyed by young female drivers will have to be raised to compensate for the high accident rates experienced by their young male equivalents. Young men’s premiums will fall. Gender equality has a price and, in this instance, it is women who pay it.

At the other end of the life cycle, however, the situation is reversed. It is common practice for the annuities market to price its products to reflect life expectancy. As women live longer than men, so the annual pension they could purchase from the same amount of pension saving was smaller. Insurance companies are now required to use ‘unisex’ rates. Possibly women will get more, probably men will get less. That is what most experts think will happen.

But why on earth is the ECJ interfering with insurance companies?

This is a good question. After all, the Court does not interfere in the sale of swimming costumes, for which women also commonly pay more than men.

The answer lies in pension reforms passed by many EU member states and elsewhere to promote the private supplementation of state pensions. Neither employers nor governments are prepared to foot the rising bill consequent on ageing populations. Tax concessions and auto-enrolment are used widely to foster compliance with the new strategy: the promotion of personal pension savings.

Traditionally, the European Union’s policies on gender equality and equal treatment have been confined to employment and social policy. State pension age is currently temporarily exempt from this policy. In the UK, public pensions were given to men at 65 but to women at 60 — although since April this has started to change.

However, occupational pensions are treated in the same way as wages, so the age of entitlement has to be the same. But if the pension is based upon a savings plan — a money purchase or defined contribution scheme — the amount of pension any amount saved will buy will normally be higher for men than for women. Only final salary or defined benefit schemes, which are vanishing faster than orang-utans from Sumatra, treat men and women the same.

Once governments start pushing the purchase of a commercial product for social policy purposes, distinctions between public policy and private commercial activity become unsustainable. After all, with the state pension confined to a residual role, savings-based pensions are increasingly central to the provision of retirement income. And to guarantee that personal pensions meet social objectives, the EU is forcing the pace on equal treatment.

Looking forward, further intervention looms. The European Convention on Fundamental Rights forbids discrimination on the grounds of age, nationality, ethnicity, disability, religion or sexual orientation as well as gender. In 2009 the Convention was transposed into law. It covers all member states bar Poland and the UK. Otherwise UK financial institutions might face other hurdles — not being allowed to refuse a mortgage to a 65 year-old on the grounds of age, for example.

I bet all this is popular with the insurance companies!

Absolutely not. Recall that gender equality is not the only issue. Under EU social policy directives, the ECJ stands as guarantor of equal treatment for posted workers (whose employers in one country send them to work in another) as well as part-time or temporary workers who stay at home.

Moreover, since 2004, it has been illegal to discriminate between men and women in the supply of goods and services in EU member states. A special, seven-year exemption was made for insurance products, but that has now expired. The ECJ ruling was the result of a Belgian consumer group seeking to learn what the 2004 Directive meant in practice.

What is Europe playing at? I thought it supported market principles?

Well yes, it does. However, the creation of a single market in goods and services — one of the main objective of the EU and sustained by its competition laws — requires the elimination of differences between markets currently operating in member states. This stimulated Europe’s intervention in social policy in the first place. A free labour market entails the free mobility of workers and their right to build up and take their state pension and social security entitlements with them when they move.

The ECJ’s interventions in the interest of promoting a single market are not always to the advantage of workers. In two muchcited judgments, the Court ruled that, on the grounds of open competition, it was legitimate for a foreign company offering a service to pay wages that undercut the minimum negotiated by local industrial agreement. Europe's trade unions are not best pleased.

Are the insurance companies taking this lying down?

Well no, they are not. The Association of British Insurers has stated that it was 'disappointed' with the ECJ ruling. Others point out that this ruling is not absolute. Translated, it requires insurers to exercise 'proportionality'. Gender cannot be *the* distinguishing factor in setting premiums or annuity rates, but it can be taken into account. Similarly, people's postcodes can, and are, taken into account when determining car insurance premiums or fixing pension pay-outs.

Insurance companies already offer better annuity rates to people whose life expectancy is lower than average on evidence that their health is poor. Smokers benefit here. Contrarily, those who agree to attend a gym in order to reduce their health insurance premiums may get worse terms when they try to cash in their pension savings.

Note how the transfer from state provision to the private sector changes notions of solidarity on which policy is based. Instead of one pension risk pool we now have many. No-one wants to be in a pool with 'high risk' people where premiums are higher. Equally, insurers will want to exclude high-risk people from cover, if they can. In addition, under private pension schemes, credits are no longer available for time spent off work when unemployed or ill, in education or (in some countries) doing military service.

Outlawing gender discrimination stimulates grumbles from insurers that they are forced into 'insurance alien' business practices. As pension saving becomes increasingly compulsory, insurers want compensation. Some would argue that, if the government (or the EU) expect commercial companies to take on new social obligations, it (i.e. the Treasury) should pay for this.

We take the point. Over recent decades, government has sought to transform commercial insurers into social policy agents. Rather than understanding the process as a privatisation of public pensions, we should interpret recent trends in terms of the colonisation of the pension industry for social purposes.

Is this necessarily a bad development?

> Since government uses the insurance industry to save itself money, should it not start paying for that?

Well yes, it is. The problem with the private provision of pension savings as central to policy lies in a failure to recognise that insurance companies and state social security systems are based on different principles and serve different objectives. The former are commercial entities with obligations to their shareholders to return a profit on their activities. They are not the same as not-for-profit agencies or charities that supposedly will deliver Cameron's Big Society financed, apparently, by fresh air alone.

The insurance industry is already grappling with a mountain of national regulation even before the EU intervenes. Slowly and inexorably the slope has become steeper. Legislation now dictates, for example, the terms and conditions of sales (disclosures on commissions), the provision of advice, the maximum fees chargeable on state subsidised products and more. The objective — to persuade larger numbers of the working public to buy a personal pension — has involved insurance companies in the management of multiple small pension savings 'pots', many liable to lapse, whose owners frequently need cajoling into sustaining their contributions. Not much profit to be made there.

This situation is the result of an insufficiently thought-through compact that governments, and not only UK governments, have pursued for over 25 years, based on an assumption that commercial acumen is a more efficient mechanism for the delivery of social policy than public service.

In the case of pensions, the results are underwhelming. Government policies have promoted private pensions, but to little avail. Well over half of the working population in the UK still has insufficient or no supplementary pension savings for their old age.

Whether, how and on whose authoritycommercial interests can be put to work to secure social objectives are interesting questions that deserve further exploration. However, we do know that to dress a wolf in sheep's clothing and persuade it to baa is not enough either to change its ways, or to persuade the public that, if they get too close, it will not bite.

Recent international financial turmoil shows that, left to its own devices, the efficiency of commercial acumen leaves something to be desired. A little more thought, and a little less spin, would secure a more stable future.

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