

Background information re Annuity Scheme

年金計劃有關背景資料

附件一：

與男女不同待遇訴訟個案的法院案件——判案書摘要

案件一：本港中學男女分組派位

EOC v. Director of Education
(HCAL1555/2000, 22 June 2001)

80. It is true, of course, that the Director is obliged, in the creation and management of educational policies, to look to the greatest benefit for the largest number of students. But, as the Commission has noted, that does not have to be incompatible with a recognition and protection of the fundamental rights of each individual. It is apparent to me that the Director has looked essentially at what I will call ‘**group fairness**’ and, in so doing, has **turned a blind eye to the rights of individual boys and girls** not to have their school careers (perhaps profoundly) disadvantaged simply on the basis of their sex.

83. **Article 25** of the **Basic Law** holds that ‘all Hong Kong residents shall be equal before the law’. ‘**All Hong Kong residents**’, in my view, **equates to each and every resident**; in short, to each individual. Article 25 of the Basic Law appears in Chapter 111. In respect of the rights guaranteed in that chapter, Li CJ has said, in his judgment in *Ng Ka Ling & Others v. Director of Immigration* (1999) 2 HKCFAR 4 (at 28/29) :

“... What is set out in Chapter III are the constitutional guarantees for the freedoms that lie at the heart of Hong Kong’s separate system. The courts should give a *generous interpretation* to the provisions in Chapter III that contain these constitutional guarantees in order to give to Hong Kong residents the full measure of fundamental rights and freedoms so constitutionally guaranteed.” [*my emphasis*]

In the same judgment, Li CJ spoke of the Basic Law — as evidenced by Article 25 — enshrining ‘the principle of equality, the antithesis of any discrimination’.

84. Article 25 of the Basic Law is reflected in **Article 22** of the **Bill of rights**, the Bill effectively bringing the provisions of the ICCPR into our domestic law :

“ **All persons are equal before the law** and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

85. These guarantees of equality — the antithesis of discrimination — call for a generous and purposive interpretation by our courts. This is to ensure that each person, adult or child, will enjoy the full measure of those guarantees. As Lord Wilberforce said in *Minister of Home Affairs & Another v. Collins MacDonald Fisher* [1980] AC 319 (PC), constitutional guarantees of human rights call for :

“... a generous interpretation avoiding what has been called ‘the austerity of tabulated legalism,’ suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.”

86. It is not disputed that the right to equal treatment free of sex discrimination is in our society a fundamental right; as Lord Lester expressed it, a right of high constitutional importance. As an individual right, it must follow, in my view, that **it is a right which cannot be undermined or negated by broad assumptions or generalisations**. What may be true of a group may not be true of a significant number of individuals within that group. The principle is illustrated in the case of *Skyrail Oceanic Limited v. Coleman* [1981] ICR 864, the headnote of which reads :

“The **dismissal** of a **woman** based on an **assumption** that **men were more likely than women to be the primary supporters of their spouses** and children could amount to discrimination under the Act of 1975; and that, while a **‘breadwinner’** could be of either sex, in the circumstances of the present case the respondent’s assumption had been that husbands were breadwinners and women were not and that assumption had been based on sex and had amounted to unlawful discrimination against the appellant within section 1(1)(a)”

In the course of his judgment, Lawton LJ noted that courts, both in the United Kingdom and in the United States, had adjudged that general assumptions based on gender (‘stereotyped assumptions’, as they are called in the United States) amount to discrimination.

87. Similarly, in *Horsey v. Dyfed County Council* [1982] ICR 755, Browne-Wilkinson J, in the Employment Appeal Tribunal, said :

“... Under both sections 1 and 3 of the Act unlawful discrimination consists in treating someone less favourably ‘on the ground of’ sex Do these words cover only cases where the sex of the complainant in isolation is the reason for the decision, or do they extend to cover cases where the alleged discriminator acts on the basis of generalised assumptions as to the characteristics of women? In our view it is now established by authority that those words do not only cover cases where the sole factor influencing the decision of the alleged discriminator is the sex of the complainant. The words ‘on the ground of’ also cover cases where the reason for the discrimination was a **generalised assumption that people of a particular sex** possess or lack certain characteristics, e.g. ‘I like women but I will not employ them because they are unreliable’ Most discrimination flows from generalised assumptions of this kind and not from a simple prejudice dependent solely on the sex of the complainant. *The purpose of the legislation is to secure equal opportunity for individuals regardless of their sex. This result would not be achieved if it were sufficient to escape liability to show that the reason for the discriminatory treatment was simply an assumption that women possessed or lacked particular characteristics The decision of the **Court of Appeal in *Skyrail Oceanic Ltd. v. Coleman* establishes that generalised assumptions of this kind constitute discrimination.**” [my emphasis]*

88. The Convention on the Elimination of All Forms of Discrimination Against Women

(‘CEDAW’) was extended to Hong Kong in 1996. Article 10 of the Convention makes it plain that stereotyped concepts of both men and women are in themselves, if not discriminatory, at least the wellspring from which discrimination flows. Appropriate measures should therefore be taken to bring about their elimination. In this regard, **Article 10** reads :

- “
- States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:
- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.
 - (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
 - (c) *The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education* by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching method.” [my emphasis]

89. Article 2 of CEDAW obliges all states parties *inter alia* :

- “(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.”
- (e) The obligation in the Convention to adopt appropriate domestic legislative measures to protect women from discrimination has been met by the coming into force of the Ordinance. To that extent I am satisfied that the words of the Ordinance are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligations contained in CEDAW rather than being inconsistent with them. In this regard, see *Garland v. British Rail Engineering Ltd* [1983] 2 AC 751 (HL), the speech of Lord Diplock (at 771) :

“My Lords, even if the obligation to observe the provisions of article 119 were an obligation assumed by the United Kingdom under an ordinary international treaty or convention and there were no question of the treaty obligation being directly applicable as part of the law to be applied by the courts in this country without need for any further enactment, it is a principle of construction of United Kingdom statutes, now too well established to call for citation of authority, that the words of a statute passed after the Treaty has been signed and dealing with the subject matter of the international obligation of the United Kingdom, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation, and not to be inconsistent with it.”

90. The obligation in the Convention to adopt appropriate domestic legislative measures to protect women from discrimination has been met by the coming into force of the Ordinance. To that extent I am satisfied that the words of the Ordinance are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligations contained in CEDAW rather than being inconsistent with them. In this regard, see *Garland v. British Rail Engineering Ltd* [1983] 2 AC 751 (HL), the speech of Lord Diplock (at 771) :

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91. That being the case, I am satisfied that the force of section 5(1)(a) of the **Ordinance is not to be deflected by broad assumptions, even if statistically well-founded, that categorise women according to stereotypes.**
92. Even if such broad assumptions have some general or statistical validity, they still derogate from the rights of the individual. The principle, I believe, was clearly stated in *City of Los Angeles, Department of Water and Power v. Manhart* (1978) 98 SC 1370 in which the Supreme Court of the United States held that it was discriminatory for the city water and power department to **charge women** working in the department a **higher pension premium than men because the statistics showed that women generally live longer than men** and therefore generally draw on their pensions longer. **While that may be true, there was nothing to show that the individual women in the department would live longer than their individual male counterparts.**

FOK CHUN WA v. Hospital Authority

(FACV 10/2011, 2 April 2012)

76. To summarise, unless the solution or alternative in question is manifestly to beyond the spectrum of reasonableness (or **manifestly without reasonable foundation**) the court will not interfere.
77. It is, however, important to put what has just been discussed into proper perspective. The proposition that the courts will allow more leeway when socio-economic policies are involved, does not lead to the consequence that they will not be vigilant when it is appropriate to do so or that the authorities have some sort of carte blanche. Afterall, the courts have the ultimate responsibility of determining whether acts are constitutional or lawful. It would be appropriate for the **courts to intervene** (indeed they would be duty bound to do so) where, even in the area of **socio-economic** or other **government policies**, there has been any **disregard** for **core-values**. This requires a little elaboration. Where, for example, the reason for **unequal treatment strikes at the heart of core-values** relating to personal or human characteristics (such as race, colour, **gender**, sexual orientation, religion, politics, or social origin), the courts would **extremely rarely** (if at all) **find this acceptable**. These characteristics involve the respect and dignity that society accords to a human being. They are fundamental societal values. On the other hand, where other characteristics or status which do not relate to such notions or values are involved, and here I would include residence status, the courts will hesitate much more before interfering; in other words, more leeway is given to the Executive, Legislature or other authorities. I have found useful in this context the analysis contained in the speech of Lord Hoffmann in *Carson* at 182E-183B (paras 15–16). As Lord Hoffmann observed, there can of course be borderline cases but generally there ought to be little difficulty in differentiating between a core value and a mere question of general, social or economic policy: at 183C (para 17). In the present case, using residence status as the dividing line in relation to health benefits clearly falls within the latter. This status has less to do with personal characteristics (in the sense used above) than with social and economic considerations.
78. Where **core values** relating to personal characteristics are involved, the **court** will naturally **subject** the relevant legislation or **decision** to a **particularly severe scrutiny**. Lord Pannick QC (for the respondents) used the term “inherently invidious” to describe any decision which offended these core values. While I would, for myself, not have used this expression, it nevertheless conveys the necessary sentiment.

附件二：

《性別歧視條例》(第 480 章) Sex Discrimination Ordinance, Cap. 480 與年金

計劃的關係

第 5 條：「對女性的性別歧視」

(1) 任何人如 —— (a) 基於一名女性的性別而給予她差於他給予或會給予男性的待遇；…
即屬在就本條例任何條文而言是有關的情況下，歧視該女性。

Section 5: Sex discrimination against women

(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Ordinance if— (a) on the ground of her sex he treats her less favourably than he treats or would treat a man; …

第 51 條：「保險等」

就任何種類的保險業務或涉及風險評估的相類事項而言，如對某人的待遇 ——

(a) 是藉參照可合理依據的來源所得的精算數據或其他數據而給予的；及

(b) 以該等數據及任何其他有關因素而言乃屬合理，

則第 3、4 或 5 部並不將該做法定為違法。

Section 51: Insurance, etc.

Nothing in Part 3, 4 or 5 shall render unlawful the treatment of a person in relation to any class of **insurance business**, or **similar matter involving the assessment of risk**, where the treatment—

(a) was effected by reference to actuarial or other data from a source on which it was reasonable to rely; and

(b) was reasonable having regard to the data and any other relevant factors.

- 就上述第 51 條是否適用於年金計劃，我們需要考慮「年金計劃是否業務 (business)?」此點：
- 本會認為答案為「不是」。因為：
 1. 年金計劃是政府的安老和退休保障政策;¹
 2. 負責年金計劃的香港年金有限公司的唯一股東為香港按揭證券有限公司，而香港按揭證券有限公司的所有股份均由香港財政司司長以外匯基金管理人身份實益擁有。²
 3. 香港按揭證券有限公司由香港特區政府通過外匯基金全資擁有。香港財政司司長出任本公司主席，香港金融管理局（金管局）總裁擔任公司副主席。執行董事和總裁的職位則由金管局成員出任。
 4. 香港年金有限公司是承保人，代理銀行只是授權中介人銀行，有關此計劃的合約條款的任何爭議，應由受保人與香港年金有限公司直接解決。³

附件三：年金計劃是政府的安老和退休保障政策之有關証明

¹ 行政長官 2017 年施政報告施政綱領，頁 163: 第六章 - 關愛共融 改善民生--退休保障及勞工--退休保障

「香港按揭證券有限公司計劃於 2018 年年中推出終身年金計劃，為長者提供多一項理財選擇，將一筆過現金轉化成有生之年每月都可以收取的固定收入，以助長者安享晚年。」（財經事務及庫務局）

<https://www.policyaddress.gov.hk/2017/chi/pdf/Agenda.pdf>

² 香港年金有限公司網頁: https://www.hkmca.hk/chi/our_business/hkmc_annuity_plan.html 及香港年金計劃產品計劃小冊子，頁 13「聲明」段 5:

https://www.hkmca.hk/files/hkmcap_small_banner/1/HKMC_Annuity_Plan_Product_Brochure_Chi_Final.pdf

³ 香港年金計劃產品計劃小冊子，頁 13「聲明」段 3, 4:

https://www.hkmca.hk/files/hkmcap_small_banner/1/HKMC_Annuity_Plan_Product_Brochure_Chi_Final.pdf

香港年金有限公司

企業管治常規 香港年金有限公司（「香港年金公司」）根據審慎商業原則運作，並致力確保高水平的企業管治，務求提升整體問責性、透明度及長遠的持續營運能力。香港年金公司的企業管治常規載於董事局所通過的企業管治守則內。企業管治守則以公平、透明、問責及向所有持份者負責的原則為前提，並已向股東、董事及員工派發。

股東 香港年金公司的唯一股東為香港按揭證券有限公司（其所有股份均由香港財政司司長以外匯基金管理人身份實益擁有）。

董事局 對於香港年金公司的董事及管理人員為香港年金公司履行職務時可能引起的法律訴訟及其他索償，已備有保險安排。 https://www.hkmca.hk/chi/about_us/corporate_governance.html

產品目的 此計劃由香港年金公司承保，在你繳付整付保費後，向你（作為年金領取人）提供穩定的保證每月年金金額。透過將你的一筆過現金轉化成穩定及終身的現金流，你可以更好地計劃退休生活。

https://www.hkmca.hk/chi/our_business/hkmc_annuity_plan.html

年齡: 65. 性別: **女**. 整付保費: HK\$1,000,000. **保證每月年金金額: HK\$5,300**. 回本年份* (保單年度終結): **11**

保證期:** 199 個月 (即 16 年又 7 個月)

保單年度終結 / 年齡	累積保證每月年金金額	退保價值 / 一筆過身故賠償	累積保證每月年金金額 + (退保價值 / 一筆過身故賠償)
	保證 (a)	保證 (b)	保證總額 (c) = (a) + (b)
1 / 66	63,600	642,888	706,488
5 / 70	318,000	530,064	848,064
10 / 75	636,000	345,196	981,196
11 / 76	699,600	301,108	1,000,708

https://www.hkmca.hk/hkmcaphp/php/calculator_web-result_tc.php

年齡: 65. 性別: **男**. 整付保費: HK\$1,000,000. **保證每月年金金額: HK\$5,800**. 回本年份* (保單年度終結): **10**

保證期:** 182 個月 (即 15 年又 2 個月)

保單年度終結 / 年齡	累積保證每月年金金額	退保價值 / 一筆過身故賠償	累積保證每月年金金額 + (退保價值 / 一筆過身故賠償)
	保證 (a)	保證 (b)	保證總額 (c) = (a) + (b)
1 / 66	69,600	663,148	732,748
5 / 70	348,000	528,754	876,754
10 / 75	696,000	308,544	1,004,544

* 此說明只顯示金額至累積保證每月年金金額及退保價值 / 一筆過身故賠償總額剛多於已繳保費總額的保單年度終結。有關回本年份後的金額詳情，請聯絡香港年金公司 (客戶服務熱線: 2512 5000)。

** 從保費起繳日開始，直至根據保單條款所支付的累積保證每月年金金額達到已繳保費的 105% 為止。

解釋說明

1. 以上內容只概括說明了香港年金計劃的主要利益，請聯絡你的香港年金公司授權中介人或香港年金有限公司，以獲取更多資料。
2. 身故賠償的支付選項（一筆過或定期支付）必須由指定受益人選擇。如果選擇「每月身故賠償」之選項，指定受益人將獲發由香港年金有限公司收到身故索償申請時起計餘下的保證期內應付的保證每月年金金額。若在香港年金公司收到身故索償申請日期後的 30 天內，所有指定受益人未能一致同意任何身故賠償的支付選項，「一筆過身故賠償」之選項將適用於處理身故賠償。
3. 此說明摘要假設你已在保單發出前支付所有香港年金計劃須付的整付保費，並且假設在所有保單年度內沒有退保。如保單作部分退保，其後的保證每月年金金額、保證現金價值、身故賠償（如適用）及保單所派發和將會派發的利益總額將會減少。
4. 累積保證每月年金金額是你將會從保費起繳日後的下一個月份開始，每月獲發的保證每月年金總額。如果保單因退保或受保人身故而被終止，香港年金有限公司將停止支付保單的保證每月年金金額。然而，若因任何原因，不論在保證期結束前或保證期結束後，如有任何被暫停派發的保證每月年金金額於收到身故索償申請時仍未派發，該部分或全數被暫停派發的保證每月年金金額將以一筆過形式支付予指定受益人。如有身故賠償，香港年金有限公司會按指定受益人所選擇的選項來支付。在保證期後，保單將沒有退保價值或身故賠償。
5. 由於需要將金額調整為整數，在香港年金計劃下應付的實際金額可能與上述說明中所示數字略有不同。

https://www.hkmca.hk/hkmcaphp/php/calculator_web-result_tc.php

行政長官 2017 年施政報告施政綱領

第六章 - 關愛共融 改善民生--退休保障及勞工--退休保障

香港按揭證券有限公司計劃於 2018 年年中推出終身年金計劃，為長者提供多一項理財選擇，將一筆過現金轉化成有生之年每月都可以收取的固定收入，以助長者安享晚年。（財經事務及庫務局）(頁 163)

<https://www.policyaddress.gov.hk/2017/chi/pdf/Agenda.pdf>

二零一八至一九財政年度政府財政預算案

財政司司長陳茂波動議二讀《二零一八年撥款條例草案》的演辭二零一八年二月二十八日星期三
年金計劃

91. 香港按揭證券有限公司將於今年年中推出終身年金計劃，購買者只需要一次過投入一筆資金，就可以換取每月穩定收入。有見社會對計劃反應正面，香港按揭證券有限公司會積極研究加大認購規模。92. 市場上現時已有延期年金產品，以供款形式購買，金額及年期都較有彈性。為鼓勵延期年金市場發展，讓市民在準備退休生活的財務安排時，有更多選項，我會委託保監局推出指引，讓市場上所有符合該指引的延期年金產品的供款享有扣稅優惠。

93. 由於這些退休金融產品的供款性質和強積金自願供款性質相似，上述扣稅安排會適用於強積金的自願供款。已獲扣稅的強積金自願供款會撥入強制供款戶口，強制供款的提取限制亦會適用，以達到長期儲蓄作退休保障之目的。

香港按揭證券有限公司（「本公司」）的使命是促進：銀行業界穩定，市民置業安居，本地債券市場發展，退休規劃選擇發展。

企業管治常規 本公司根據審慎商業原則運作，並致力確保高水平的企業管治，務求提升整體問責性、透明度及長遠的持續營運能力。本公司所採納的企業管治常規，載於董事局所通過的「企業管治守則」（「守則」）內。守則以公平、透明、問責及向所有持份者負責的原則為前提。守則已向股東、董事及員工派發。

股東 本公司的所有股份均由香港財政司司長以外匯基金管理人身份實益擁有。

陳茂波先生 大紫荊勳賢 GBS MH JP 主席兼執行董事 財政司司長

http://www.hkmc.com.hk/chi/about/corporate_governance.html

Q 公司與香港特別行政區政府（香港特區政府）關係如何？

A 本公司是由香港特區政府通過外匯基金全資擁有。香港財政司司長出任本公司主席，香港金融管理局（金管局）總裁擔任公司副主席。執行董事和總裁的職位則由金管局成員出任。

外匯基金透過金管局向本公司提供 300 億港元循環信貸安排作為備用流動資金，該信貸額度於二零零八年十二月由原本的 100 億港元增加至現時的 300 億港元，顯示香港特區政府肯定本公司的重要性，並對本公司給予進一步支持。另外，本公司在有需要時可向外匯基金要求增加股本。

http://www.hkmc.com.hk/chi/investor_relations/faq.html

香港按揭證券有限公司 維琪百科，自由的百科全書

香港按揭證券有限公司（英語：The Hong Kong Mortgage Corporation Limited），是根據《公司條例》註冊成立的公共有限公司，由香港特別行政區政府通過外匯基金全資擁有，成立於 1997 年 3 月。其目的為了發展香港的第二按揭市場。

<https://zh.wikipedia.org/wiki/%E9%A6%99%E6%B8%AF%E6%8C%89%E6%8F%AD%E8%AD%89%E5%88%B8%E6%9C%89%E9%99%90%E5%85%AC%E5%8F%B8>

附件四：新婦女協進會 聲明：政府擬推出年金計劃有性別歧視之嫌

政府於昨天公佈終身年金計劃詳情，為本地長者提供一個供款年金計劃；然而，我們關注到，計劃詳情有性別歧視之嫌；當行政長官多次表示要積極推行性別主流化以促進性別平等之時，由財政司司長兼任主席的按揭證券有限公司卻推出有性別歧視之嫌的計劃，完全與推動性別平等方向背道而馳，令人憂慮政府所講的性別平等只是流於亮麗的口號。

根據政府新聞網資料，「根據計劃，以 4% 內部回報率為例，男性在 65 歲投保，每 100 萬元保費，預料每月可獲約 5,800 元固定年金，年金率約 7%。女性方面，由於預期壽命較長，同於 65 歲投保，年金率為 5.4% 至 6.4%。」

《消除對婦女一切形式歧視公約》（《婦女公約》）第 13 條訂明，「締約各國應採取一切適當措施以消除在經濟和社會生活的其他方面對婦女的歧視，保證她們在男女平等的基礎上有相同的權利」，這自然包括女性的退休生活保障政策，若政府公然推出一個男女有別的年金計劃，帶頭違反公約，又如何能為社會帶頭示範，保障不同性別人士的人權？

需知道壽命長短並非只關乎性別，亦包括家族遺傳、生活習慣（如是否吸煙）等等的因素，若只以性別因素而致令某一性別人士得到不平等的對待，明顯屬性別歧視。

本會希望財政司司長盡快就上述可能構成性別歧視的年金回報率作出解釋，亦促請平等機會委員會就有關計劃有否構成性別歧視進行主動調查。

另外，年金計劃需要長者先行供款，亦即需要有一定積蓄的長者參與；對一些本身沒有月薪收入、難以受強積金保障的家庭照顧者（多為女性），退休後亦難有積蓄，計劃難以為他們帶來保障；我們促請政府與其將資源用於研發一些可能構成性別更不平等的退休保障，不如盡快落實全民退休保障。

新婦女協進會

2017 年 4 月 11 日

副本呈：財政司、平等機會委員會、婦女事務委員會、香港按揭證券有限公司董事局

附件五：新婦女協進會去信婦委會主席要求約見

致

婦女事務委員會主席

陳婉嫻女士

陳主席：

有關年金購買者男女不同待遇

本會一向致力倡議性別平等，日前得悉政府推出之年金計劃。細閱年金計劃後，發現計劃有性別歧視之嫌，特此來信，希望與約見主席，表達我們的關注。

香港按揭証券有限公司推出的終身年金計劃，如其新聞稿所言，「是一個保險產品」，65 歲的男性及女性若投資 100 萬元，每月分別可領取 5800 元及 5300 元。據我們所知，這種單單以性別而向供款者發放不同回報的做法，已分別於美國及歐盟的法院判決中被裁定為性別歧視。

有人可能會說這是因為女性壽命平均較男性為長，是以每月的年金回報額較低是合理的。但據美國的判決，已明確表示即使統計數據上顯示女性較男性為長壽，仍然不能引伸至案中退休供款計劃的女性供款者必然較男性供款者為長壽。(City of Los Angeles, Department of Water and Power v Manhart, (1978) 98 SC 1370)。

此外，歐盟亦根據一宗於 2011 年 3 月 1 日作出判決的案件 (Association belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres, Case C-236/09)，於 2012 年 12 月 20 日發出新聞稿，提醒所有於歐盟境內營業的保險公司，不可以單憑投保人士的性別而作出差別收費，並指投保公司應就投保人士的情況作出更仔細的劃分，例如以汽車責任保為例，保險公司應視投保者是否一個小心謹慎的駕駛者而決定保費高低，而不應單單憑其性別而收取不同費用。

本會希望能於八月內約見主席，並提議會面時間和地點，詳細安排可與本會執行秘書楊小姐聯絡。
電話：27200891 [電郵：aaf@aaf.org.hk](mailto:aaf@aaf.org.hk)

馬穎兒

主席

附件六：歐盟就境內保險產品應避免向顧客作出性別歧視之新聞稿

EUROPEAN COMMISSION - PRESS RELEASE

European Commission gives guidance to Europe's insurance industry to ensure non-discrimination between women and men in insurance premiums

Brussels, 22 December 2011 – The European Commission has today adopted guidelines to help the insurance industry implement unisex pricing, after the Court of Justice of the European Union ruled that different premiums for men and women constitute sex discrimination. In its ruling on the Test-Achats case on 1 March 2011, the Court of Justice gave insurers until 21 December 2012 to treat individual male and female customers equally in terms of insurance premiums and benefits (MEMO/11/123). Vice-President Viviane Reding, the EU's Justice Commissioner, met with leading EU insurers in September 2011 to discuss how the industry should adapt to the Court's ruling (MEMO/11/624).

Following consultations with national governments, insurers and consumers, the new Commission guidelines respond to the need for practical guidance on the implications of the ruling. They aim to benefit both consumers and insurance companies.

"When the Court of Justice issued its decision in the Test-Achats case on 1 March this year, I promised that the Commission would help insurers and consumers adapt to the ruling," said EU Justice Commissioner Viviane Reding, the Commission's Vice-President. "By adopting these guidelines a full year ahead of the deadline to comply with the court's ruling, we have lived up to our commitment. It is now up to the insurance industry to ensure that there is a smooth transition to fully equal treatment of men and women in insurance. The Commission will remain vigilant in how the industry implements the court's ruling. I expect that insurers that move to a unisex tariff first will have a competitive advantage on the European market."

EU Commissioner for the Internal Market and Services, Michel Barnier said: "There have been some concerns among insurers as to the impact and consequences of this important judgment, in particular at this time when insurers as all other financial market participants face important challenges. I believe that these guidelines will be helpful for the industry and assist them in adapting their contracts and premiums to be able to ensure timely and full compliance with the judgment. This will be beneficial for both the industry and policyholders."

The guidelines adopted today cover a series of issues which emerged from in-depth consultations with Member States and stakeholders. For example, they clarify that the ruling applies only to new contracts, in particular to contracts concluded as from 21 December 2012. They also give specific examples of what is considered a "new contract" to ensure a comprehensive application of the unisex rule at EU level from the same date.

In addition, the guidelines provide examples of gender-related insurance practices which are compatible with the principle of unisex premiums and benefits, and therefore will not change because of the Test-Achats ruling. These practices are very diverse, ranging from the calculation of technical provisions to reinsurance pricing, medical underwriting or targeted marketing.

Background

The implications of the judgment were discussed on 20 June with Member States and stakeholders at the Forum on Gender and Insurance set up by the Commission in 2009. European Justice Commissioner Viviane Reding also met leaders of European insurance companies on 21 September.

The Test-Achats ruling does not mean that women will always pay the same car insurance premiums as men.

At the moment, a careful young male driver pays more for auto insurance just because he is a man. Under the ruling, insurers can no longer use gender as a determining risk factor to justify differences in individuals' premiums. But the premiums paid by careful drivers – male and female – will continue to decrease based on their individual driving behaviour. The ruling does not affect the use of other legitimate risk-rating factors and price will continue to reflect risk.

Gender is a determining risk-rating factor for at least three main product categories: motor insurance, life insurance/annuities and private health insurance. In all three categories, it is likely that a transition towards unisex pricing will have consequences on premiums and/or benefits at the individual level for men and women. Depending on the product concerned, premiums might increase or decrease for certain categories of consumers.

The insurance industry is competitive and innovative. It should be in a position to make these adjustments and offer attractive unisex products to consumers without unjustified impact on the overall price level. Price reductions resulting from unisex pricing should be passed on to consumers with the same level of fairness as price increases.

The Test-Achats case (C-236/09), which was referred by the Belgian Constitutional Court, concerned gender discrimination in insurance pricing. On 1 March 2011, the Court of Justice of the European Union declared invalid as from 21 December 2012 an exemption in EU equal treatment legislation which allows Member States to maintain differentiation between men and women in individuals' premiums and benefits.

Council Directive 2004/113/EC on equal treatment between men and women in regards to the access to and supply of goods and services (adopted unanimously by the EU Council of Ministers) prohibits direct and indirect gender discrimination outside of the labour market.

Article 5(1) of the Directive says that "Member States shall ensure that in all new contracts concluded after 21 December 2007 at the latest, the use of sex as a factor in the calculation of premiums and benefits for the purpose of insurance and related financial services shall not result in differences in individuals' premiums and benefits."

Before the ruling, Article 5(2) of the Directive gave Member States a right to derogate from the unisex rule with regard to insurance contracts: "Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premium and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of sex as a determining factor are compiled, published and regularly updated."

All Member States made use of this derogation for some or all insurance contracts. Belgian law includes a derogation for life insurance in its national legislation. A dispute about the legality of Belgium's derogation led to the Court of Justice's Test-Achats ruling.

The Court found the exemption to the unisex rule in Article 5(2) incompatible with the purpose of the Directive as laid down in Article 5(1) and, therefore, with the EU's Charter of Fundamental Rights. The Court ruled:

"Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services is invalid with effect from 21 December 2012."

For more information

Justice Directorate General Newsroom:

http://ec.europa.eu/justice/news/intro/news_intro_en.htm

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

<http://ec.europa.eu/reding>

EU rules on gender-neutral pricing in insurance industry enter into force

Brussels, 20 December 2012

Brussels, 20 December 2012 – Under new rules which enter force tomorrow, insurers in Europe will have to charge the same prices to women and men for the same insurance products without distinction on the grounds of sex. This means that insurance prices could rise or fall in the short term for certain categories of customers while they are likely to balance out over time. The change comes after the Court of Justice of the European Union ruled that different premiums for men and women purely on the grounds of sex were incompatible with

the principle of unisex pricing included in EU gender equality legislation, and with the EU Charter of Fundamental Rights.

“Gender equality is a fundamental right in the European Union and the Court of Justice made clear that this also applies to insurance pricing,” said Vice-President Reding, the EU’s Justice Commissioner. “The insurance sector has had over a year to prepare the switch over to unisex pricing and the European Commission has helped the industry to adapt during this period. The Commission will monitor how the industry will implements these new rules in practice.”

In its ruling on 1 March 2011 in the Test-Achats case (C-236/09), the Court of Justice of the EU gave insurers until 21 December 2012 to change their pricing policies in order to treat individual male and female customers equally in terms of insurance premiums and benefits (MEMO/11/123).

Following the Court's judgement, Vice-President Viviane Reding, the EU's Justice Commissioner, met with leading EU insurers in September 2011 to discuss how the Commission can help the industry to adapt to the Court's ruling (MEMO/11/624). As a result on, 22 December 2011, the Commission gave the industry concrete guidance on implementing the ruling (IP/11/1581). <http://ec.europa.eu/justice/gender-equality>

European Commission MEMO Brussels, 20 December 2012

Factsheet: EU rules on gender-neutral pricing in insurance

What will change on 21 December?

From 21 December 2012, insurance companies in the European Union will have to charge the same price to men and women for the same insurance products, without distinction on the grounds of sex. The change will apply to all new contracts for insurance products, including car insurance, life insurance and annuities.

This ‘unisex’ or gender-neutral pricing means men and women with the same characteristics (e.g. age, state of health depending on the product) should pay the same price for the same product. Pricing will have to be based on other risk factors than sex, such as driving behaviour in the case of car insurance. This means people will no longer have to pay more, or less, simply because of their gender.

The change will apply to contracts concluded from 21 December, but some insurers offer customers the possibility of concluding contracts before this date for policies which start later – up to 90 days in some cases.

Why is this happening now?

Gender equality is a fundamental right in the EU. The European Court of Justice ruled on 1 March 2011 that differences in insurance pricing based purely on a person’s sex are discriminatory (MEMO/11/123). The EU’s Court of Justice ruled that different insurance premiums for women and men constitute discrimination on the grounds of sex and are thus not compatible with the EU's Charter of Fundamental Rights. Member States are not allowed to derogate from this important principle in their national legislation.

The Court gave the insurance sector a transitional period of 21 months to adapt their pricing structures to the new rules, with a final deadline of 21 December 2012. One year ago, on 21 December 2011, the European Commission issued guidelines to help the sector adapt to the new rules (IP/11/1581).

How will this affect prices for customers?

The change will have an impact on individual premiums for certain insurance products. In the past, men and women sometimes paid a different price for different types of insurance because of their sex. Those customers who previously paid less (such as young women for car insurance) will likely see rises in their insurance premiums. But by the same measure, those who paid more (such as men for term-life insurance), are likely to pay less in future.

Overall, the changes should balance out over time, but the actual impact of the changes is hard to predict. This is because several other factors come into play when insurers calculate their prices, including the percentage of men and women in the insurer's portfolio, the transition cost and risk margin to adapt to a new system and the level of competition in a specific market. For example, there are signs that prices in some markets and sectors, for example car insurance in the UK, have been falling overall in the run-up to the changes, due in part to increased competition.

Example 1: John and Mary are both 18 years old and drive the same type of car. John currently pays 1200 euros a year for car insurance and Mary 900. Under the new rules, John and Mary will pay the same premium, which should therefore increase for Mary and decrease for John.

Example 2: Mark and Karen are both 40 years old, do not smoke and have no health problems. Mark currently pays 10 000 euros a year for private insurance to complement his future pension (annuities) and Karen 12 000. If they were to sign up to a new contract in 2013, it is likely that Karen will have to pay less for the same level of benefit while Mark's premium will increase.

Example 3: Sarah and Ben are both 30 years old, do not smoke and have no health problems. Currently they pay respectively 105 and 150 euros a year for term life insurance. If they were to sign a new contract in 2013, they would pay a unisex premium which is likely to be higher for Mary and lower for Ben.

How can customers avoid heavy increases in their insurance premiums?

Under the new rules, insurers will determine individual premiums on the basis of relevant factors unrelated to sex (e.g. driving behaviour for car insurance). This means that when premiums are mainly based on other risk-rating factors than sex, it is likely that they won't be affected by the new rules. A safe driver will generally pay less than an unsafe one, whatever their sex.

Example 4: Sandra currently pays 500 euros a year for her car insurance. She is a safe driver and has been driving for 20 years. If she were to sign a new contract in 2013, it is very likely that her premium would not be affected by the new rules. For this reason too, men and women might end up not always paying the same price for the same insurance product, because of different individual characteristics unrelated to sex.

Example 5: Under the new rules, Philip and Jane, who have just obtained their driving licences, both pay 1000 euros a year for car insurance. However, if over time Jane appears to be a safer driver than Philip, her insurance premium will decrease more quickly than his based on her individual driving behaviour.

Nevertheless, there are steps consumers can take to limit the impact of any possible price rises. Some insurers offer the possibility of concluding contracts under pre-gender neutral pricing (i.e. before 21 December 2012) for policies which only start later. Others offer car insurance policies which monitor driving via a 'black box' device and reward safe driving with discounts on premiums.

Finally, many countries have price comparison websites, which offer consumers the possibility to directly compare different companies' policies and find the best deal for their own case.

Last update: 19-02-2018 [http://europa.eu/rapid/press-release MEMO-12-1012_en.htm](http://europa.eu/rapid/press-release_MEMO-12-1012_en.htm)