



House of Lords Select Committee – Equality in Goods and Services

Introduction

The ManKind Initiative is a registered charity (No. 1089547) that monitors and promotes the interests of men within the context of equality of opportunity for all. Our charter is concerned with equal rights across a broad cultural spectrum to include the law, education, healthcare and employment.

ManKind welcomes the opportunity to engage in the debate on the proposed Directive. Our submission challenges a number of assertions made by the Commission, which are not adequately supported by factual evidence, but which predetermine a false outcome in terms of the proposals.

The proposals for equal treatment of men and women in the access to and supply of goods and services are welcome in principle, although we have concerns about some important aspects, in particular the following:

Lack of male perspective;
Assumptions about life expectancy;
Positive action;
Timing; and
Burden of proof.

We are puzzled that such proposals seem to take precedence over previous proposals (Draft Directive COM (87) 494 Final, 23rd October 1987) for equal treatment in statutory and occupational social security schemes. This was last discussed by the European Parliament in December 1991, but never resolved. Consequently, sex inequalities continue in state pension age and family benefits. This Draft Directive was accepted in principle in their tenth report (23rd May 1989) by the House of Lords Select Committee on the European Communities. Surely this should be a higher priority for the European Commission than goods and services.

The proposed Directive should be questioned because its subject matter is not a priority and because the positive action proposals are likely to result in disadvantage to men. Sex equality law should be based on comparing like with like, and not on group characteristics, eg “women are more likely to require preferential treatment in enterprise funding”, as provided by Article 5 of the proposed Directive.

Lack of Male Perspective

There is a clear lack of a male perspective. Indeed it appears that only women's groups have been consulted.

The Explanatory Memorandum to the proposed Directive makes a number of references to the "women's movement", and the Preparatory Steps taken prior to drafting the proposed Directive have involved a large number of women's rights advocates but apparently not one men's rights advocate. Given the stated objective of ensuring equal treatment between men and women, and non-discrimination on the grounds of sex, this is a remarkable omission, and could be regarded a fundamental flaw in the proposals. As a consequence, it cannot be fully or adequately informed of the male perspective.

Due to the absence of men's organisations from the Preparatory Steps, there has been no opportunity to conduct research into the specifics of the proposals, with regard to issues that men would themselves identify as significant to their lives in respect of goods and services. This is why it is necessary to consult groups like ManKind within the men's movement.

To be really valid, the consultation with men's rights groups should have taken place before the legislative process commenced, ie before the Commission drafted the proposed Directive. Thus, the current consultation on the proposed Directive is flawed because it has in effect excluded the male perspective and so undermines the basic objective of the proposed legislation, ie equal treatment. It is regrettable that such a startling inadequacy and double standard has to be drawn to the attention of the Select Committee.

Assumptions about Life Expectancy

The assertion is made that lifestyle is more important than the sex of a person. "Studies show that sex is not the main determining factor for life expectancy." The Commission refers to life expectancy and different patterns of behaviour (eg lifestyle and consumption) as factors taken into account in actuarial calculations. It also claims that other factors are said to be more relevant, such as marital status, socio-economic factors, employment and unemployment, regional area, smoking and diet. No evidence is put forward in support of this assertion and no reference is given for the so-called studies.

A difference in life expectancy between males and females has persisted over the last century in the UK. In 1901 life expectancy at birth was 45 years for males and 49 for females; a difference of 4 years. In 2002, the life expectancy at birth was 75.7 years for males and 80.4 for females, a difference of just under 5 years. In other words, the difference in life expectancy at birth is a continuing significant factor. There should be some good reason, therefore, to discount this factor before resorting to sex neutral actuarial calculations for insurance and annuities, as proposed. We are not persuaded that the Explanatory Memorandum to the proposed Directive has provided such good reason.

The Commission itself admits that even the studies they refer to cannot remove the sex difference. "Studies which have tried to remove lifestyle, social class and environmental factors from the equation have shown that the difference in

average life expectancy between men and women lies between zero and two years.” Properly conducted scientific research is needed, therefore to explain why the true difference in average life expectancy is actually substantially greater (4 to 5 years), certainly in the UK – and generally to the disadvantage of men.

The fact is that lifestyle, etc is taken fully into account in arriving at the different average life expectancies of men and women, and these expectancies form the true and rational scientific basis for the annuity rates applied by commercial companies that provide pension schemes. Sex is not a proxy for other indicators of life expectancy, it forms a baseline that lifestyle is superimposed upon to arrive at different average life expectancies for men and women.

The Commission affects not to understand this basic point. The implication that insurers use sex to differentiate because they are too lazy to properly assess risk on an individual basis is the kind of gratuitous insult that we have come to expect from those who single-mindedly argue for feminist outcomes. For actuarial reasons, insurers do pool together the healthy and the unhealthy, but within the separate risk groups of healthy men and healthy women, not as one single group.

The Commission says of equal treatment in education, taxation and the content of the media, “the debate is far from over.” This is to falsely imply that the debate over equal treatment in pensions and insurance has been settled in favour of the Commission’s proposals. Quite clearly from the content of the proposed Directive itself, it has not. Neither is there the degree of consensus implied by the Commission. Even without consulting the male perspective, it is obvious that there is no agreement amongst the various stakeholders, and opposition to the proposed Directive is both strong and well founded in both practical terms and in principle. There is a greater moral authority for the removal of continuing inequalities in state pension age and family benefits than there is for the current proposals.

We disagree with the claim made by stakeholders in the women’s movement that actuarial calculations related to life expectancy are unjustifiable sex discrimination. We think there are sound reasons for such practice. It is notable that the earlier statement in the proposed Directive: “studies show that sex is not the main determining factor for life expectancy” is later qualified to “sex is not the dominant factor in determining life expectancy.” Of course, it is possible for lifestyle not to be the dominant factor, yet still a highly significant factor for actuarial purposes, when a few extra years can add considerably to the cost of providing (and paying for) a pension.

The male perspective, if consulted, could argue that “sharing the costs of the longer life expectancy of women between the sexes” is a euphemism for imposing an unjust financial burden on men.

The Commission assumes that as providers of insurance and pensions develop more accurate means of predicting risk, and as a result of competition (with other companies), they will be able to reduce the importance of sex in their calculations and base their prices on sex neutral criteria. There is no reason why more accurate means of predicting risk should necessarily downgrade the importance

of sex. They might indeed increase the importance of sex. The Commission offers no evidence whatsoever to support another tenuous assertion.

Positive Action

Article 5 of the proposed Directive would allow “positive action” to compensate perceived disadvantages linked to sex. This would offend against the fundamental principle of equal treatment of men and women since positive action would be based on group characteristics, in other words based on the “more likely principle”, rather than comparing a like woman with a like man. In the example offered in the Explanatory Memorandum, it is suggested that women have traditionally had greater problems than men in starting businesses and thus merit preferential treatment in financial support and services in setting up their own businesses. Whilst we acknowledge that this might be a determining factor, such preferential treatment would put a comparable man who also had difficulty in raising venture capital at an unfair disadvantage.

We therefore reject the principle of positive action in applying the proposed Directive, because the effect would be in practice largely to the disadvantage of men.

Timing

The proposed Directive suggests a transitional period of up to 6 years for full implementation by member states. This compares highly favourably with the 25 years permitted by the 1995 Pensions Act in the UK for equalisation of state pension ages for men and women and of other benefits. This is a remarkable and unjust inconsistency in addressing different sex inequalities.

Burden of Proof

The proposals in Article 8 of the proposed Directive placing the onus on the respondent to prove that there has been no breach of equal treatment (rather than on the plaintiff) and for allowing rules of evidence which are more favourable to plaintiffs than respondents, is arguably in breach of human rights law, which emphasises the presumption of innocence in both civil and criminal matters.

General Comments on the Explanatory Memorandum

It is instructive to consider the wider equal treatment context within which this legislation is being promoted by the Commission. In the recent past, the Commission has been highly responsive to the agenda of women’s groups (some with radical feminist objectives), who have begun to secure advantages for women, sometimes at the expense of men’s rights. Previous Directives on equal treatment have not necessarily ensured equality for British men. For example, continuing inequalities in state pension ages and in the allocation of resources, in particular an imbalance in spending on preventative healthcare for men and women, and lack of support services for male victims of domestic violence.

The continuing inequalities against men in such areas persist in spite of the

extant Directives on equal treatment. The priority for the Commission should be surely to implement Draft Directive COM (87) 494 Final, 23rd October 1987) providing for equal treatment in statutory and occupational social security schemes.

A further criticism of the proposed Directive is that the scope of the Commission's review of access to and supply of goods and services was limited to only four countries of the European Union, ie France, Germany, UK and Portugal. There is no assurance that a less selective analysis of a larger sample of EU member states would lead to the same conclusions in respect of the proposals.

Reference is made above to the timing for the introduction of the proposed Directive. ManKind questions the undue haste with which this consultation process is being carried out. The proposed Directive was dated 14th November 2003, and the deadline for submissions to the Sub-Committee is 29th April 2004, a period of just 5½ months. In contrast, when the issue of state pension age in the UK was being debated (in the mid 1990s), an 18 month consultation period provided a better opportunity for all to engage fully in the process, and even this period was subsequently extended.

A subheading in the Explanatory Memorandum referring to "Insurance" makes no mention of "pensions". In fact, the word "pensions", in the sense of retirement annuities, hardly figures at all in the proposed Directive. This is something of an omission, given that implementation of the proposals would have the effect of males subsidising the annuities of females, if life expectancy is ignored.

Conclusions

We hope that the concerns we have drawn attention to will encourage the Sub Committee to seriously question some of the proposals made. The marginalisation in the proposals of a real and persisting difference in life expectancy between men and women could be regarded as an exercise in wishful thinking that does not reflect the reality of life as experienced by ordinary people and businesses within the member states. The primary purpose, clearly, in effect if not in intent, would be to force males to subsidise the private pensions of females (and until state pension ages are equalised, also their state pensions). This would serve to extend institutional financial discrimination against males.

In reviewing the proposed Directive, we urge that Sub-Committee 'G' should advise the House of Lords Select Committee on the European Union to resist this proposal as it stands, since it appears to reflect mainly the ideologically driven pre-occupations of minority pressure groups,

ManKind Initiative 29th April 2004

