

**Press Statement and Summary on
Discussion Paper on Insurance Issues
under the Anti-discrimination Legislation**

Introduction

The Equal Opportunities Commission (EOC) has received a number of inquiries and complaints on insurance practices, mainly on the refusal to provide insurance coverage, charging increased premiums on the ground of sex or disability and exclusion of coverage.¹

In May 2000, the EOC commissioned a research study to assess whether the provision of insurance by employers and insurance companies in Hong Kong is in compliance with the anti-discrimination laws.

Public Consultation

The study has identified issues and insurance practices that may lead to unlawful discrimination in the Discussion Paper. The EOC invites the public and the insurance industry **to provide views on the issues raised by 20th March 2003. Responses should be directed to:**

**The Equal Opportunities Commission
Unit 2002, 20th Floor
Convention Plaza, Office Tower
1 Harbour Road, Wanchai
Hong Kong**

For the attention of the Policy Support and Research Unit

¹ As at 30 November 2002, the EOC had received 19 complaints in relation to insurance (4 under SDO, 15 under DDO) and 138 enquires in relation to insurance (36 under SDO, 95 under DDO and 7 under FSDO).

The responses from the community will help the EOC to formulate a set of Insurance Guidelines to be published for further consultation and implementation.

Industry Consultation

The Hong Kong Federation of Insurers (HKFI) has already established a specialist Task Force to assist the EOC on the formulation of the Insurance Guidelines and to deal with the issues arising from this Discussion Paper and the responses. HKFI has also established a Statement of Best Practices on Disability Discrimination which it will update from time to time.

The anti-discrimination laws recognise that insurance practice involves the classification of risks and that premiums and policies are tailored to reflect such risks. Differential treatment is permitted to be made on the basis of actuarial or statistical data upon which it is reasonable to rely. Where no such data are available, the differential treatment must be based upon medical advice or opinion. The EOC has been advised by the Actuarial Society of Hong Kong that it would be prepared to issue a Guidance Note outlining the responsibilities of actuaries under the anti-discrimination legislation.

Views Sought

Hong Kong's insurance industry is largely self-regulated. The Commissioner of Insurance does not have statutory power to intervene in commercial disputes among insurers, insurance intermediaries and consumers. Some overseas jurisdictions have Insurance Ombudsmen to resolve disputes between insurers and consumers. Hong Kong does not have an Insurance Ombudsman. The EOC asks whether the appointment of an independent Insurance Ombudsman is something that we should work towards in Hong Kong.

Views from the community and the industry are also sought specifically on the following:

1. Fair and Non-discriminatory Practices – How can insurance practices in Hong Kong be made more open and transparent , so that applicants may have more information about the insurance decision and the basis upon which it is made?

2. Definition of Terms – The EOC encourages the insurance industry to develop definitions for critical terms, such as what is meant by pre-existing conditions.
3. Availability and Affordability – The availability of products and affordability levels affect the size of the insurance pool and the market size. The EOC encourages the insurance industry to look at measures of enhancing and ensuring availability and affordability of insurance products to meet the changing needs of society.
4. Portability of Accumulated Qualifying Period – The EOC supports the introduction of legislation to retain the benefit of the qualifying period regarding pre-existing conditions from a preceding policy upon change of employment. This would avoid going through qualifying periods all over again, and employees would not be subject to pre-existing exclusions for conditions that did not exist prior to the initial insurance coverage but may have developed afterwards.

Issues of Concern

The following issues are highlighted for interest and review by the public and the Industry.

Exclusion of Pre-existing Conditions

In Hong Kong, the exclusion of pre-existing conditions is common in both group and individual medical plans. There is no common definition but the term basically covers all conditions that a person is suffering from, be it congenital or acquired and regardless if the insured person is aware of them or not, before the policy becomes effective. This seems particularly onerous on the consumer. Complexities and problems may also arise as to when a pre-existing condition might become known to an individual but is not diagnosed.

Blanket Exclusions

Blanket exclusions in respect of abuse of drugs, self-inflicted injuries and injury / disease resulting from voluntary participation in criminal acts are common for insurance policies and would be considered reasonable.

In Hong Kong, blanket exclusions in respect of mental illness, HIV / AIDS and illnesses arising out of pregnancy, are also common in medical and life insurance. It is also an industry practice for travel insurance policies to have blanket exclusions regarding pregnancy and disability.

Whilst insurers cannot be compelled to insure bad risks, it may be possible to provide insurance cover to a reduced extent or at a higher premium. Decisions regarding blanket exclusions should be reasonable taking all factors and circumstances into account.

Genetic Testing

At present, insurance companies in Hong Kong do not ask for genetic tests to be carried out. Genetic conditions or disorders in many cases involve a pre-disposition to acquire a medical condition. In some instances, there is some certainty and that the risk can be calculated. Yet, in other cases, the individual may never actually acquire the condition or the disorder, even though the gene exists. The EOC is concerned that individuals could be targets of discrimination because of a future disability or an imputed disability that is associated with a person's genes.

Discrimination on the Ground of Sex

Sex is often used as a criterion for distinction in insurance. In certain types of insurance business, the actuarial evidence is undisputed. Insurers usually charge men a higher rate in life insurance as men have shorter life expectancy and therefore a shorter time to collect premium payments.

Differential risk assessments also exist in the area of motor insurance, where young men are commonly rated at higher premiums than women of the same age. It is not the individual who is classified on his or her own merit. Instead, a broad-brush group classification is applied.

Another area where there may be gender bias against women is in the way insurance companies exclude certain types of female-specific illnesses from medical and health cover. In Hong Kong it is common to exclude treatment for anorexia from medical insurance.

Discrimination on the Ground of Pregnancy

Pregnancy is often not covered in individual or group medical plans in Hong Kong. There is no legal requirement that employers who provide medical insurance to employees must also provide cover for pregnancy. Where the coverage is extended to pregnancy, excluding any illness arising out of pregnancy may amount to unlawful discrimination in certain cases.

Similarly, in the area of travel insurance, it may amount to unlawful discrimination on the ground of pregnancy if insurers insert limitations or exclusions in respect of pregnancy or pregnancy-related conditions.

Discrimination on the Ground of Family Status

The exclusion of children of a certain age, for whom the policyholder has responsibility of care is a common one in medical policies. Such exclusion of dependent children over the age limit may be unlawful under the Family Status Discrimination Ordinance (FSDO).

Requests for Information

Although it is not unlawful in and of itself to ask for information when taking out insurance, employers, insurers and agents should ensure that only relevant questions are asked and only relevant information is requested. Very broad questions or requests for information which appear irrelevant or based on stereotypical assumptions may lead to an inference that the purpose of the question or request is to unlawfully discriminate.

Refusal of Insurance, Increased Premiums & Limited Cover

Refusal of insurance is not unlawful under the anti-discrimination legislation provided the decision to refuse falls within one of the statutory defences. It is important for insurers to note that, outright refusal to insure may contravene the anti-discrimination laws in circumstances where other more appropriate or reasonable options exist.

Insurers in Hong Kong can charge a higher premium or reduce the level of cover, depending on the circumstances but decisions of differential treatment must of itself be justifiable under the legislation.

Deferral of Approval

Delays in providing insurance cover may result in hardship or detriment to certain applicants, particularly in respect of disability, and may lead to allegations of discrimination. Where the risk cannot be quantified or calculated at the time the application is made, it would be reasonable to defer approval of the application until a later time when it is more likely that the risk can be quantified.

Equal Opportunities Commission
December 2002