



平 等 機 會 委 員 會

EQUAL OPPORTUNITIES COMMISSION

香港灣仔港灣道一號會展廣場辦公大樓20樓2002室

Unit 2002, 20/F., Office Tower, Convention Plaza,
1 Harbour Road, Wan Chai, Hong Kong

網址 Website: <http://www.eoc.org.hk>

CB(1) 633/02-03

本函檔號 OUR REF. : EOC/RES/11/01

來函檔號 YOUR REF. :

電 話 TEL NO. : 2106 2154

圖文傳真 FAXLINE : 2877 7600

Miss Lolita SHEK
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

23 December 2002

Dear Miss Shek,

**Discussion Paper on Insurance Issues
Under the Anti-Discrimination Legislation**

In addition to the Discrimination Paper on Insurance issues (the Paper) and the press statement cum summary of the Paper, our Commission would also like to provide case summaries of ten insurance-related complaints for Council Members' reference. The summaries can help illustrate the nature of complaints and issues involved. I would be grateful if you can assist in the distribution.

Yours sincerely,

(LI Siu Kwai)

for Chairperson

Equal Opportunities Commission

Encl.

Some Insurance Cases under the DDO – Brief Summaries

Case 1 – Company group insurance

C was a very fat woman and gained employment with a company (A), which had a group insurance plan for its employees. On knowing that C was very fat, the insurance company (R) refused to include her in A's group insurance plan.

After we had taken in the complaint, C withdrew her complaint because R had decided to include her again, on good will basis as asserted by R.

EOC Post Script: Group insurance plans on the basis of pooling and averaging of risks should take into account different kinds of people. Refusal should only be based on Sections 52, DDO and 26(2), DDO.

Case 2 – Family medical insurance

C purchased with R, the insurance company, a medical plan for himself and his family (his wife and 2 children). In the first year of the coverage C was hospitalized for dilated cardiomyopathy and apnoea syndromes. His medical expenses were reimbursed under the plan. When he wanted to renew the plan for the second year, R would only accept his family but not C himself. C lodged a complaint.

R produced data from Govt on death rates relating to the 2 diseases and relevant guidance from the re-insurer.

Conciliation was attempted. R maintained its position but offered to accept C under a new policy if he could provide medical reference to show he has recovered. C decided not to pursue the matter further.

EOC Post Script: Seeking medical opinion would be appropriate. Issues arise as to whether a previously cured disease that does not recur can be considered as high risk.

Case 3 – Medical insurance

C started a medical insurance policy with R, the insurance company, in 1996. In 1999 C found the premium was increased by 25%. He enquired with R and was allegedly told that the increase was due to his diagnosis of breast cancer in 1997 and to his old age. C continued with the policy. In 2001 again the premium increased by 31%. He believed the higher premium was charged because of his breast cancer and lodged a complaint.

Investigation showed that the annual premium adjustments were made based on factors unrelated to his breast cancer, such as changes in the operational costs and C's age. Case was discontinued.

EOC Post Script: Although in this case premium increase was unrelated to the disability, premium increases are permitted where justifiable under Sections 52 DDO and 26(2) DDO.

Case 4 – Travel insurance

C has visual impairment. He wanted to go for a trip to Japan with his family and attempted to purchase a travel insurance with R, the bank offering the insurance policy. On knowing that C had VI, R refused to cover him, despite C's claim that he was a frequent traveler and that his family members could take care of him. C lodged a complaint.

R claimed that C was prone to injuries but could not produce any data to support the claim.

Case was conciliated with R promising to issue an internal instruction to all its branch offices that any person with a disability enquiring for insurance coverage should be referred to the head office, which would assess each case on individual merits, rather than refusing to offer upfront. R also promised to offer the same term of insurance coverage to C as if he did not have VI, should he want to purchase travel insurance the next time.

EOC Post Script: Travel insurance policies often contain blanket exclusions relating to disabilities. Exclusions should be based on Sections 52 DDO and 26(2) DDO.

Case 5 – Accident insurance

C was a policeman with the right leg amputated from knee below and used an artificial leg. R, an insurance company, offered a personal protection insurance plan for policemen called Police Safety Protector. C applied to take out the plan but was refused on the ground of his “health status”. C claimed that other insurance companies had accepted his applications for similar plans, that he had never had any accidents as a result of his disability and that he had passed the Police annual physical test. C lodged a complaint.

R claimed that the rejection decision was based on industry practice but was unable to produce any data to support the claim.

Early conciliation attempt was successful. R agreed to accept C’s application.

EOC Post Script: Whether a disability should be regarded as high risk warranting rejection depends on whether Sections 52 DDO and 26(2) DDO can be relied upon. Often “industry practice” is used for rejection without clarification as to the statutory defence relied upon.

Case 6 – Car insurance

C has a physical disability. He applied to take out a motor insurance cover with R, but found R’s marketing leaflet stated in the General Conditions that no cover would be provided to disabled persons. C called R’s enquiry line and allegedly was given the same answer. He took out motor insurance cover with another insurance company and lodged a complaint with EOC.

R denied that it would reject applications based on the applicant’s disability. R explained that risk of a motor cover was underwritten according to the configuration and accessories of the car under cover. R admitted the leaflet to be confusing and immediately changed the wording of the leaflet. R also produced evidence to show that it had provided similar cover for another person with a physical disability before.

C accepted the explanation and withdrew the complaint.

EOC Post Script: Individual applications should be considered on their own merit. EOC recommends that trade literature and responses to enquiries should not be based on blanket exclusions or outright refusal.

Case 7 – Life insurance

A mother, the Aggrieved Person (AP), and her daughter (S), had a congenital hearing impairment in one ear. When S was one year's old, AP applied to an insurance company (R) for life insurance for S but was refused. R informed AP that it had refused her insurance application based on S's medical assessment, which indicated possible surgery when S reached 8 years old and possible deterioration of her disability in future. R invited AP to re-apply for a re-assessment when S reached four, as more information about her medical condition might emerge then. AP claimed R's refusal was discrimination against her as an associate of a PWD because it was on the ground of S's disability.

R claimed that it was unable to accept AP's application at this stage due to uncertainties surrounding S's possible need for surgery and deterioration of her disability. In similar cases, R would wait until the infant reached walking / talking stage, to make another assessment based on his/her medical condition then and any available actuarial/other data.

Case proceeded to conciliation but was unsuccessful. The parties could not agree on the settlement terms. AP's terms included a financial payment but R categorically refused to accept it as part of the terms.

EOC Post Script: It may not amount to unlawful discrimination to defer the risk acceptance to a later time when it is more likely that the risk can be quantified. However, outright refusal may amount to unlawful discrimination. We recommend that insurers explore options before a rejection is made.

Some Insurance Cases under the SDO – Brief Summaries

Case 1 – Marital Status

C was a customer service supervisor of Company A (R1). She had got pregnant four months before she got married. When she tried to claim medical expenses for her pregnancy, she was rejected by Company A's insurance agent (R2). C considered that she was discriminated against on the ground of her marital status.

R1 admitted that it provided C with a medical plan in which no maternity benefits were covered for female staff members who were unmarried.

Conciliation was attempted. R1 and R2 settled the complaints with C by giving her monetary compensation.

EOC Post script: The need for maternity protection is not confined to those married. Marital status is a ground of discrimination under SDO.

Case 2 – Sex Discrimination

C was a woman who had procured an insurance policy plan from Insurance Company A (R). She wrote to R to enquire whether cancer unique to females, such as cervix and breast cancer, was covered under the policy plan.

R replied that C had to contribute an additional monthly premium in order to have the policy plan cover her request such as cervix and breast cancer. C believed that she was discriminated against because of her gender.

R explained that the policy plan would offer protection to policy-holders if they had cancer that fell within the definition of "major illness". "Major illness" included all malignant cancers, but excluded non-invasive skin cancers and cancers that affected only the tissues and had not yet spread to the organs, such as cervix cancer, bladder cancer, breast cancer and prostate cancer. The exclusions were not gender specific, accordingly the EOC discontinued its investigation as there was no substance to the complaint.

EOC Post script: Clear communication and explanation of contractual terms are encouraged to reduce misunderstanding.

Case 3 – Sex Discrimination

C alleged Bank C (R) had turned down his application for a Domestic Helper Insurance Plan because his domestic helper was a male.

R explained that the reason for declining C's application was due to the job nature of C's domestic helper, i.e. to perform extra duties beyond household work, such as gardening. R also expressed willingness to attempt early conciliation with C for settling the complaint.

Knowing that R was willing to attempt early conciliation, C considered he had achieved the purpose of arousing R's attention to the anti-discrimination ordinances.

EOC Post script: Differential treatment should not be based on assumptions that jobs are necessarily gender specific. Job in the same group may also vary in scope and additional risks, if any, can be covered by additional premium.

Equal Opportunities Commission
December 2002