OLDER PEOPLE'S ACCESS TO FINANCIAL SERVICES

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for
The Equality Commission for Northern Ireland

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Disclaimer

The findings and recommendations of this challenge paper are those of its authors. They do not necessarily represent the views of the Equality Commission for Northern Ireland.

The Commission will consider and prioritise the challenge paper's findings and recommendations, to align them with the Commission's statutory remit and business plan.

TERMS OF REFERENCE

Background

In November 2006, Commissioners from the Equality Commission for Northern Ireland asked its policy staff to undertake work on examining poverty and participation in public life as two key areas for work in the age field. Informed by contacts within the voluntary and community sector, the Commission wished to examine the role that age might be playing in determining older people's access to a range of financial services. It was felt that this might impact on levels of participation in wider society and may be increasing costs at the margin for people who do not have access to a complete range of more cost-effective financial services.

The areas of particular concern were access to:

- household, travel, life and vehicle insurance
- borrowing and credit
- banking products

Commissioners approved the engaging of consultants via a tender process, to undertake this work.

Outline of research project

The Commission asked the successful tenderer to conduct a review of existing information on whether age was a determining factor in older people's access to a range of financial services generally available in Northern Ireland. This work culminated in the production of a challenge paper by consultants.

Project objectives

The objective of the project was to produce a challenge paper to inform and develop the Commission's thinking, in relation to promoting equality of opportunity for people on the basis of age. The challenge paper therefore:

- reviewed the position of older people's entitlement to avail of financial services, comparing and contrasting the Northern

Irish, British and Republic of Ireland positions in terms of policy and legislation

- reviewed the statutory protections that exist for older people in this area with respect to goods, facilities and services

- reviewed the level and type of financial services provided to older people and any additional costs incurred with stated justifications

- identified options to promote equality of opportunity and prevent discrimination, which may inform the Commission's approach to the development of age-related policies, including the age strand of a possible Single Equality Bill for Northern Ireland

EXECUTIVE SUMMARY

Introduction

In legal terms, age discrimination in Northern Ireland and Britain is now the only equality law ground which does not extend to goods, facilities and services as well as employment and training. It is clear that there are many examples of discriminatory practices on the basis of older age in the UK financial services market. It can also be seen through numerous complaints to both the UK and Republic of Ireland Financial Ombudsman's offices that issues of age-related abuses regularly occur in relation to the provision of financial services to older people.

Key Northern Ireland policies on older people

A strategy on ageing in Northern Ireland was published by the Government in March 2005. There is a need for older people to have "a decent and affordable quality of later life."[1] The Northern Ireland anti-poverty strategy[2] has a chapter on older people. Its goal is stated as being "to ensure older people are valued and respected, remain independent, participate as active citizens and enjoy a good quality of life in a safe and shared community."[3]

Older People's Commissioner

The Office of the First Minister and deputy First Minister (OFMdFM) announced in December 2007 that they would establish an Older People's Commissioner, to "provide older people with a strong and confident voice." In April 2008, this was updated with the announcement of the intention to recruit an interim advocate for older people.

METHODOLOGY

The consultants initially conducted a thorough literature and web-based review of financial service providers, their regulators and

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[1] OFMdFM, *Ageing in an Inclusive Society (2005)*, Section 3, The economics of ageing
[2] OFMdFM, *Lifetime Opportunities* the Government's Anti-Poverty and Social Inclusion Strategy for Northern Ireland.
[3] Chapter 5, *Older citizens – beyond working age*

advice giving websites. They conducted a range of face-to-face and telephone interviews over a two month period, in Northern Ireland, Dublin and London. Details of the personal and printed sources consulted are outlined in Appendix 1.

LEGAL CONTEXT

Equality law regimes

Northern Ireland and Great Britain

Age is the only equality ground[4] upon which there is no current legislative protection against discrimination on the provision of goods, facilities and services in both Northern Ireland and Great Britain. The Employment Equality (Age) Regulations (Northern Ireland) 2006 only provide protection with regard to employment and training matters.

Republic of Ireland

The Republic of Ireland has had anti-discrimination protection legislation covering goods, facilities and services for nine grounds, including age, since 2000, via the Equal Status Act 2000.

European Union

The expansion of employment and training (and to some extent goods, facilities and services) discrimination law has been fuelled by European Union developments. The Race and Ethnic Origin Directive 2000 also covers goods, facilities and services, education, accommodation etc. More recently, the Equal Treatment (Goods and Services) Directive 2004 extends EU sex discrimination law into the field of goods, facilities and services. Proposals are currently being considered for what would be a Framework Goods and Services Directive, extending the coverage of EU equality law into goods, facilities and services across the grounds of religion or belief, disability, sexual orientation and age. In the European Parliament, the report on discrimination outside of

[4] Other equality grounds in Northern Ireland include: religious belief, political opinion, race, marital status, sexual orientation, gender, disability, people with dependents

employment by MEP Liz Lynne[5] was adopted on 20 May 2008. At the time of writing, the indications are that the Commission has postponed a decision on the way forward for the Directive and is to carry out further analysis.[6]

Significant controversy surrounded the provision of financial services during the progress of the Gender Goods and Services Directive 2004[7] through the EU legislative process. Article 5 (‘Actuarial factors’) of the Directive might provide a template for an actuarial factor exception in any future EU age discrimination legislation. As a consequence, Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 has been amended, in particular to provide for transparency in collection of actuarial data, under HM Treasury guidelines.

Great Britain and Northern Ireland legislative developments

Single equality legislation - Great Britain

The Government Equalities Office in Great Britain launched *The Equality Bill – Government response to the Consultation*[8] on 21 July 2008. This report included proposals for goods, facilities and services age discrimination provisions. This publication followed the *Framework for a Fairer Future – The Equality Bill* (June 2008).

Single equality legislation - Northern Ireland

There is pressure for single equality legislation to be introduced in Northern Ireland. The Equality Commission takes the view that a Single Equality Act for Northern Ireland should adopt a common template across all grounds, including age, and across the full scope of the Act, including goods, facilities and services. The Commission wishes to see a general services requirement exception to the provision of goods, facilities and services, which allows for an otherwise prohibited factor to be a ‘genuine and determining factor’ in certain circumstances. Its analysis is based on the approach that all exceptions outside the general services

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[5] http://www.europarl.europa.eu/meetdocs/2004_2009/documents/pr/699/699739/699739en.pdf
[6] The European Commission published a draft Framework Goods and Services Directive (COM(2008) 426 final), including provisions on age discrimination, on 2 July 2008.
[7] Equal Treatment in Goods and Services Directive 2004/113/EC
[8] http://www.official-documents.gov.uk/document/cm74/7454/7454.pdf

requirement must be explicitly justified.

While the Government in Great Britain has decided to introduce a Single Equality Bill, at the time of writing, no decision had been made by the Northern Ireland Executive regarding introducing corresponding goods, facilities and services legislation protection on grounds of age in Northern Ireland.

HM Treasury Working Group

At a UK level, HM Treasury has set up a working group to investigate age discrimination in financial services as part of its development of "a clearer, simpler framework of discrimination law." The group was asked to produce a final report by 31 July 2008.

Republic of Ireland developments

The Republic of Ireland has an actuarial data exception within the Equal Status Act 2000. The focus in the Republic of Ireland has been on age limits in insurance. In the early days of the Equal Status Act 2000, the Equality Authority[9] vigorously pursued a campaign against age limits in car and other forms of insurance. This culminated in the important Equality Tribunal decision in *Jim Ross* v *Royal and Sun Alliance Insurance Plc*,[10] in which Mr Ross was refused motor insurance on the basis that the insurance company did not take on new business from those policyholders over the age of 70. The Equality Tribunal concluded that the actuarial data, although honestly analysed by the insurance company, did not satisfy the actuarial data exception in the Equal Status Act 2000. The decision in the *Ross* case has had a similar impact in relation to travel insurance. In its 2007 Annual Report, the Equality Authority sets out the circumstances in which it had reached settlements with airline Aer Lingus and their underwriters, whereby they would no longer underwrite travel which contained an absolute age limit or excluded any persons on account of their age.

[9] The Equality Authority is the sister organisation in the Republic of Ireland to the Equality Commission in Northern Ireland
[10] Decision DEC-S2003-116

There could be a range of discriminatory policies and practices still at work in the Irish financial services sector. It is not apparent that the advent of the Equal Status Act 2000 has resulted in a widespread audit of financial services in the Republic of Ireland. Hence it seems to be the case that the Irish financial services industry is reacting to controversies brought to its attention by the Equality Authority or through Equality Tribunal cases.

Regulatory regimes – UK

The Financial Ombudsman Service

The Financial Ombudsman Service describes itself as an independent service for settling disputes between consumers and providers of financial services. Enforcement of discrimination law is not directly within its remit and any wider implications should be considered by the Equality and Human Rights Commission in Great Britain and the Equality Commission in Northern Ireland. Nonetheless, some discrimination grounds, for example, age or disability, may well figure in a determination as to whether a customer has been treated fairly.

The Financial Services Authority

The Financial Services Authority is an independent body that regulates the financial services industry in the UK. It does not have remit over discrimination issues and considers these to be the responsibility of the Equality and Human Rights Commission in Great Britain and the Equality Commission in Northern Ireland. As with the Financial Ombudsman Service, a discrimination ground, such as age or disability, may incidentally impinge on its work.

Regulatory regimes – Republic of Ireland

The Financial Services Ombudsman

The Financial Services Ombudsman is structured on a similar basis to the Financial Ombudsman Service in the UK. Once again, there are numerous examples of age-related complaints, frequently involving abuse of older people. The Financial Services

Ombudsman takes the view that equality issues are matters for the Equality Authority and the Equality Tribunal. Nonetheless age is a relevant factor and the Ombudsman consistently notes the regularity of age-related cases.

The Financial Regulator

The Financial Regulator's approach appears to be that issues of discrimination are a matter for the Equality Authority and the Equality Tribunal.

GENERAL ISSUES

A study of older people's interaction with particular elements of the commercial financial sector has to be set in the wider context of both: how older people manage their finances in general, and the complexity of the whole spectrum of financial institutions and operations.

The main barriers

The preparation of this paper has uncovered the following barriers older people face in accessing financial services:

- a knowledge gap and lack of familiarity with contemporary forms of managing money, especially online methods, and a dislike of using complicated phone call-centre services
- fewer older people holding a bank account or credit card/s
- a preference for long-established form of managing money, especially cash
- a concern about Post Office closures
- physical and mental health problems
- a reluctance to ask for help
- retirement

This study therefore investigated initiatives designed to help older people deal with this complexity, in terms of financial inclusion, financial capability, dealing with scams, and offering information, advice and guidance. This last factor, of particular value to older people, can however be almost equally complex, and sometimes inaccessible. It includes the provision by voluntary and community-specialised services and this can be the most effective and user-friendly channel.

SPECIFIC SECTORS

Insurance

The consultants' research backs up findings by financial commentators, namely that there are substantial barriers to obtaining travel insurance by policyholders over certain ages. There are substantial differentials between products offered by insurance providers, depending on the age of the client and even more substantial differences between providers for those clients in the same age group. Further, there also appears that the most competitive insurance cover offers are those that are only available online.

Borrowing and Credit

There is increasing evidence that issues of credit and consequent debt are a growing problem for older people. The result is that some older people, particularly women and lower socio-economic groups, are precluded from more regulated credit products and are forced to gravitate towards less regulated sources.

Banking

People who do not have a bank account are at a disadvantage in dealing with the financial sector, yet many older people much prefer to deal in cash. They may also find banks hard to access, for physical, intellectual or emotional reasons.

Banking in the UK is regulated by the Financial Services Authority, and banks, building societies and other financial institutions subscribe to a voluntary Banking Code of Practice.[11] Consumer services campaigners were disappointed that the banks did not accept a recommendation from the independent reviewer, that

[11] A new Code was published in March 2008

credit should not be refused, simply on the grounds of older age. Although banks do not overtly exclude older people from banking services in the way that many insurers do, there is nonetheless a strong feeling among older customers that credit is in fact often refused simply on the grounds of age. Some information services were also concerned that in some instances, credit was being extended to older customers, who did not have adequate means to repay the debt.

Equity release

Equity release schemes differ, but essentially most of them work by giving the owner of a residential property a loan on the value of their property. Owners receive the loan as cash from a finance company, usually on a monthly basis, but sometimes as a lump sum, and continue to live in their home. The company that loans the money will recover it either by selling the property after the owner's death or if they sell their property, for example to move into a care home.

Equity release is sometimes seen by older people, and marketed by finance companies, as an effective way of dealing with the pressures of a lack of regular income by retired people. Financial advisers and information services, however, have found that it can bring significant problems, may not in fact answer the problem, and can affect future tax and benefits.

Conclusions and recommendations

Both direct and indirect discrimination found

The consultants found numerous examples of both direct and indirect age discrimination across the scope of financial services. One notable example of direct discrimination was where age was being used as a proxy for risk, and people over a certain age were precluded from accessing financial services, solely on the basis of their age.

Examples of indirect discrimination have also been encountered. For example, where the cheapest insurance offers were only available online. More generally, some financial products and services lacked transparency in how they were sold and delivered.

Legislative protection for older people needed

It is clear that protection for older people from abuse and the discrimination in provision of financial services is therefore essential. It is an emerging theme of this report that the need to extend age discrimination legislation to goods, facilities and services, including financial services, has risen significantly up the political and legislative agenda.

The Commission should therefore maintain its pressure on the Northern Ireland Executive to have age-related discrimination protection for goods, facilities and services included in single equality legislation. The Commission should also exert its influence both at the European level, in terms of a Framework Goods and Services Directive, and at UK level, particularly in terms of the HM Treasury Working Group, to promote goods, facilities and services age discrimination legislation.

A degree of consensus has emerged between the older people's sector and the insurance industry, that any age discrimination legislation for goods, facilities and services should include an actuarial data exception. This transparency is now recognised in the amended 'insurance' defence introduced into Article 46 of the Sex Discrimination (Northern Ireland) Order 1976, in light of transposition of the Gender (Goods and Services) Directive.

Objective justification test, genuine service requirement exception and actuarial factor exception

The consultants anticipated that any direct and indirect discrimination provisions in relation to access to financial services for older people would be subject to an 'objective justification' test and also a 'genuine service requirement' exception. They also recommended that the Commission should pursue an 'actuarial factor' exception, on the lines of Article 46 of the Sex Discrimination (Northern Ireland) Order 1976, where a similar provision has coped with blatant examples of direct age discrimination in the Republic of Ireland and which they consider to be an adequate basis for a more wide-ranging approach to less blatant discrimination in Northern Ireland.[12]

Audit of discrimination in the goods, facilities and services field, including the financial services sector

As the Commission is increasingly directing its attention to issues of goods, facilities and services discrimination, the consultants felt that it provides an appropriate opportunity for the Commission to examine issues of discrimination and other abuses in financial services across the existing goods, facilities and services regimes, in anticipation of a remit over financial services for older people.

The consultants therefore recommend that the Commission should consider a further audit of issues of discrimination in provision of financial services across both the existing statutes and also in relation to older people.

Liaison with enforcement agencies to investigate protections against scams

The consultants also recommend that the Commission liaise with the Department of Enterprise, Trade and Investment's Trading Standards team and the Police Service of Northern Ireland to investigate current protections against scams for vulnerable groups, including older people, and how the protections might be increased through legislation, regulation and/or awareness raising.

[12] The GEO Equality Bill proposals include a possible 'actuarial data' exception in relation to age discrimination and financial services.

Development of relationships with relevant regulatory bodies

From a rights-based perspective, an enduring theme is that it is the most vulnerable who are most difficult to reach in order to protect. It is therefore important that the Commission should foster its existing links with the older people's sector, the advice sector and the proposed Older People's Commissioner. More generally, the Commission needs to ensure that the equality agenda is seen to apply to the provision of financial services in Northern Ireland and should foster links with UK-wide institutions such as the Financial Services Authority and the Financial Ombudsman Service, which are working to diversity agendas but not with an equality perspective. The Commission should foster an equality perspective amongst financial service providers themselves.

The extent to which the Older People's Commissioner could become involved in access to financial services would depend on whether it would have remit for private sector transactions. A second issue concerns the extent to which the Older People's Commissioner could act autonomously or only in situations in which bodies such as the Commission are not prepared to act. The best result would be agreeing a Memorandum of Understanding between the two bodies to prevent duplication of effort and to ensure harmonisation of priorities.

The Commission should work closely with the Equality and Human Rights Commission in terms of involvement in UK-wide developments such as the HM Treasury Working Group and with the Equality Authority to learn from the Republic of Ireland experience.

The consultants recommend that the Commission fosters its existing relationships with stakeholders in the voluntary and advice sectors, and with the Equality and Human Rights Commission, and develop relationships with financial regulators and financial service providers so that the equality agenda is mainstreamed in the financial services sector.

They recommend that the Commission should meet with the representatives of financial service providers such as the British Bankers Association and the Association of British insurers to discuss the issues raised in this review, including that of equity release.

In anticipation of gaining remit over age-related goods, facilities and services, the Commission may wish to consider developing further its existing relationships with the older people's sector in Northern Ireland with a view to identifying potential cases in relation to financial services. Contact could also be maintained with the advice sector.

The Commission should also consider contacting the Financial Services Authority, particularly those officials working in the Northern Ireland Consumer Council on the Financial Capability Partnership, and also those in the Financial Ombudsman Service working on financial capability and financial inclusion across the UK, so that it can play its part in a growing diversity agenda in both institutions. The Commission could also consider working with the financial services sector itself. Full engagement with the financial services sector will bring to light many multi-identity issues which will include older people, and particularly older women.[13]

Possible piloting of a money guidance service in Northern Ireland

The Government is proposing to set up a new money guidance service, based on a major investigation published in March 2008 as the Thoresen Review of Generic Financial Advice. It will be piloted over the next two years. The consultants recommend that the Commission, perhaps in partnership with the Consumer Council and other Northern Ireland-based stakeholders, contact HM Treasury to press for some element of this pilot scheme to be carried out in Northern Ireland, and for the scheme as a whole to be carefully monitored by organisations with a concern for vulnerable groups, including older people, to ensure that their particular needs are fully taken into account.

Financial capability and literacy levels of older people

The financial capability agenda is extending to include the financial capability of older people. The Government has charged the Financial Services Authority to deliver a national financial capability strategy. In Northern Ireland, a 23-member Financial Capability

[13] The GEO has announced that the EHRC will conduct an inquiry into the financial services sector (*Framework for a Fairer Future – The Equality Bill*, p 24).

Partnership lead by the Consumer Council takes the lead in this field.

The consultants recommend that the Commission makes contact with the Financial Capability Partnership to explore how far it is addressing equality issues and whether or not the Commission could support it in this regard.

One barrier to financial capability might be the low literacy levels of some older people. The consultants recommend that the Commission support an investigation of older people's literacy levels, noting that difficulties with reading and numeracy could adversely impact on older people's access to and use of many public and private services, not only those addressed in this paper.

Another barrier to financial capability and to accessing financial services (including privileged services, for example special online savings rates) may be older people's lesser use of computers and the internet. The Consultants considered that access to computer and internet facilities for older people should be encouraged within the limits of the Employment Equality (Age) Regulations (Northern Ireland) 2006.

The consultants recommend that the Commission liaise with the further education sector and encourage it to offer more targeted courses to help older people become familiar with the internet; and to explore ways of keeping fees for these courses to a minimum for all older people including those who fall outside the current concessionary fee bracket but who are nonetheless on restricted incomes.

MAIN REPORT

Introduction

This report involves an overview of the access of older people to financial services in Northern Ireland. It also considers the position in the United Kingdom as a whole and the Republic of Ireland. It may be described as a 'challenge paper', in that the consultants were seeking to raise a range of issues, both in relation to the possible extension of anti-discrimination law to cover age in the provision of goods, facilities and services, and also in relation to the wider regulation of financial services, in order to protect older people. The report also describes some more general barriers which older people face in accessing financial services, deriving from their particular circumstances. The Commission has recognised the significance of this in its analysis of the remaining *Key Inequalities* in post-conflict Northern Ireland,[14] pointing out that differential access to financial services is one of the factors leading to social exclusion for older people.

Lack of legislative protection in Northern Ireland for age-related discrimination with respect to goods, facilities and services

In legal terms, age is now the only equality law ground in Northern Ireland which does not extend to goods, facilities and services, as well as employment and training.[15] EU equality law only covers goods, facilities and services in relation to race and ethnic origin and sex, although there proposals are presently being considered for extending into other grounds, including age.

Age discrimination protection for goods, facilities and services in the Republic of Ireland

Whereas protection against discrimination on the basis of age for goods, facilities and services might only practicably be accomplished by way of single equality legislation in Northern

[14] Equality Commission for Northern Ireland, *Statement on Key Inequalities in Northern Ireland, October 2007.*
[15] Other equality grounds in Northern Ireland include: religious belief, political opinion, race, marital status, sexual orientation, gender, disability, people with dependents

Ireland,[16] the Republic of Ireland has had goods, facilities and services anti-discrimination law in relation to nine grounds, including age, since 2000.[17] In legal jurisdictions where age is protected for goods, facilities and services, it is usual to allow an exception for insurance services, based on actuarial and other statistical data. This issue was a particular bone of contention during the passage of the EU Directive on equal treatment for women and men in the provision of goods and services. So also the Equal Status Act 2000 in the Republic of Ireland has its own actuarial data exception across all grounds, including age.

Hence, in any discussion of age goods, facilities and services legislation, whether in the context of a separate Act or of single equality legislation, controversy is bound to arise in relation to access to financial services for older people.

Voluntary sector pressure for legislative protection

The older people's voluntary sector has consistently argued for the extension of age equality coverage into goods, facilities and services. In its 'myth-busting' leaflet, *Age discrimination beyond the workplace – why legislation is needed*, Help the Aged states:

> "*Help the Aged believes models of pragmatic, light-touch legislation on age discrimination, which do no harm, could be brought forward and implemented without delay*." [18]

In particular, they point to the Republic of Ireland experience as an example of a sensible exception for financial services, which allows discrimination to be challenged but does not inflict significant damage on the financial services sector. It is important to appreciate that this apparently 'light touch' stance involves the application of the same age discrimination principles to the provision of goods, facilities and services as already apply to employment and training, but with an 'actuarial data' exception, already present in other statutes such as the Sex Discrimination (Northern Ireland) Order 1976 and the Disability Discrimination Act

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[16] The Government Equalities Office (GEO) in Great Britain launched *The Equality Bill – Government response to the Consultation* on 21 July 2008. This included proposals for goods, facilities and services age discrimination provisions. This publication followed *Framework for a Fairer Future – The Equality Bill* (June 2008).
[17] Equal Status Act 2000
[18] Help the Aged, *Age discrimination beyond the workplace – why legislation is needed* (2008).

1995.

Issues of age discrimination in financial services do not figure highly amongst the issues being confronted by advisers to older people. Nevertheless, it is clear that there are many examples of discriminatory practices in the UK financial services market. It can also be seen through numerous complaints to both the UK and Republic of Ireland Financial Ombudsmen that issues of age-related abuses regularly occur in relation to the provision of financial services to older people.

Proposals for a Single Equality Act

Discrimination Law Review

As part of the Discrimination Law Review, the Government has considered a possible extension of goods, facilities and services coverage to age discrimination in Great Britain. It is significant that the Department of Communities and Local Government has proposed such an extension. It proposed that different treatment on age grounds in the supply of insurance products should be allowed provided that this treatment is both reasonable and based on actuarial or other data or information from a source upon which it is reasonable to rely.[19]

Single Equality Bill for Great Britain, including protection for age related discrimination with respect to goods, facilities and services

As a consequence of this consultation and the publication of a framework paper, the Government has recently announced that a Single Equality Bill for Great Britain will be introduced and will include protection on the grounds of age for goods, facilities and services.[20]

[19] DCLG, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, (June 2007).

[20] The Government Equalities Office in Great Britain launched *The Equality Bill – Government response to the Consultation* on 21 July 2008. This included proposals for goods, facilities and services age discrimination provisions. This publication followed *Framework for a Fairer Future – The Equality Bill* (June 2008). http://www.official-documents.gov.uk/document/cm74/7454/7454.pdf

Northern Ireland single equality legislation update

At the time of writing, the Northern Ireland Executive had not met for some time, and the Northern Ireland government had not made any pronouncements regarding a Single Equality Bill for Northern Ireland.

Definition of an ‘older person and differing needs of the ‘very old’

There is no set age which is universally accepted for when a person becomes an “older person.” The consultants have therefore followed the usage of various resources they have been in contact with in researching this paper. However, it should be noted that many statistical sources, including those used by governments, often block together everyone over 60 or 65.

This does not take into account the fact that the old and the very old may have differing experiences and needs. For most of the ‘very old’, again the bar cannot be set at a particular age, but it is clear that many more people are living well into their 90s or even 100s than ever before. This demographic trend is not likely to change in the near future. There are likely to be new or increased problems for this group in dealing with daily life, including their financial affairs.

Financial issues for older people

Some older people are very comfortably off, though far too many have low or inadequate incomes. Over 113,000 people in Northern Ireland claim Pension Credit.

The more well off may appear at first glance to be the likely subjects of this challenge paper, but even that statement needs to be nuanced somewhat. For example, there is the phenomenon of the cash poor but asset rich, who own their own residential property outright, but once retired, have a limited source of regular income. There is also the impact of financial crises such as the current worldwide credit crunch and economic downturn. There is some evidence that older people are less likely to spread their savings and investments and hence their risk. A wife may suddenly become poorer on the death of her husband, or richer on the death of a sibling. So even at this later stage in life, a person can move up and down the financial ladder, and need different access to different sources of advice and guidance.

Research on, and discussion of, older people's access to financial services are relatively recent – the discourse is almost entirely around the study of access to benefits. Eileen Evason included reference to the subject in a 2004 ARK research update on ageism.[21] In the survey, 52% of respondents agreed with the statement that older people (between 50 and retirement) were treated less favourably by the financial sector because of their age, and 64% agreed when the statement was applied to people over retirement age. The over 75s were, interestingly, less inclined to agree. There was confusion over whether it is illegal for providers of goods and services to refuse someone access to those goods or services simply because they are older. "Four out of ten respondents (42%) thought that such discrimination is currently illegal. Seven out of ten respondents (71%) were in favour of such action being outlawed."

Multi-identity issues

This paper deals with older people as a coherent group, but the authors are aware that there is work to be done in teasing out multi-identity issues in this area. For example, it is well recognised that older women are overall poorer than older men.[22] How far does their lower pension income affect their dealings with the commercial financial sector? There is an obvious overlap with issues of concern to people with disabilities. A new group for older lesbian, gay and transgender[23] people has just been established in Northern Ireland. Do they have particular difficulties in, for example, managing the joint income of partners in retirement? And do older people in the Black and Minority Ethnic groups have more than average difficulties with the language of financial services?

[21] Evason, Eileen, *Ageing well?* ARK Research Update 31 May 2004, based on the 2003 Life and Times Survey of attitudes to older people. (www.ark.ac.uk/publications/updates).
[22] It is clear from discussions with the Equality Authority in the Republic of Ireland that older women are a particularly vulnerable group in terms of financial resources and financial services.
[23] L+: www.lplus.org.uk.

Elder abuse is more often thought of in terms of physical abuse or neglect, but there is an increasing realisation that financial abuse also affects too many older people – through scams, for example, or family misbehaviour on financial matters. The EU AGE Platform, Age Concern and Help the Aged have all highlighted this.

Age Concern England's *Making the Money Last* survey[24] defined older people's concerns and aspirations:

> "Around half of people in our research groups are just aiming to have enough money to live comfortably.
>
> Attitudes to finance change in retirement as people feel they have to 'watch every penny'. Even if comfortable now, they worry about the future.
>
> Our research uncovered strong negative views towards Government on pensions, inheritance tax and long-term care.
>
> Older people are a diverse group, and their levels of financial capability depend on experience and income rather than age per se, but the process of ageing may bring specific advice needs.
>
> Many older people worry about the erosion of their savings and having to break into them for unexpected expenses."

Key Northern Ireland policies affecting older people

A strategy on ageing in Northern Ireland was published by the direct rule Government in 2005. *Ageing in an Inclusive Society*[25] included (Section 3) *The economics of ageing*. This spoke of the need for older people to have "a decent and affordable quality of later life." It focused on benefits, the state pension and pension credit, barriers to unemployment and Age Regulations. It also noted that older people were less likely to own a computer or access the internet than the rest of the population, and that:

> "ICT and the internet open up a range of communicative

[24] Age Concern England *Making the money last*, (April 2007)
[25] OFMdFM *Ageing in an Inclusive Society*, (March 2005).

> opportunities and …bring skills that can be used to access services…"

The strategy and the action plan do not directly address the issue under discussion in this paper.

The Northern Ireland anti-poverty strategy[26] has a chapter on older people – Chapter 5, *Older citizens – beyond working age*. Its goal is stated as being:

> "to ensure older people are valued and respected, remain independent, participate as active citizens and enjoy a good quality of life in a safe and shared community."

While the anti-poverty strategy stated a commitment to tackling age discrimination, so that older people could remain in the labour market if they choose to, it also noted that for others, the emphasis must be on having sufficient income to meet their needs. The rest of this section of the document focuses on access to and take up of benefits and public services. There is, however, no reference to debt, savings or investments, or access to commercial financial services.

The anti-poverty strategy also addresses financial education, but in terms of "making children financially literate." There is no reference to raising the financial literacy of adults.

Older People's Commissioner

The Office of the First Minister and deputy First Minister announced in December 2007 that they would establish an Older People's Commissioner to "provide older people with a strong and confident voice."[27] This announcement was updated in April at the launch of Age Concern Northern Ireland's Public Policy Review document. Junior Minister Gerry Kelly explained that as new legislation was required to set up the office, it had been decided to appoint an "interim advocate" in "a matter of months." Junior Minister Jeffrey Donaldson described the work of the advocate as having "a significant role to play in advising on the role of the new

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[26] OFMdFM, *Lifetime Opportunities: Government's anti-poverty and social inclusion strategy for Northern Ireland* (November 2006).
[27] OFMdFM news release 18 December 2007.

Commissioner" and that they would "co-chair, with a senior departmental official, the Advisory Panel which will report back to Ministers about issues relevant to the sector."[28] The potential role of the Older People's Commissioner is discussed below.

METHODOLOGY AND STRUCTURE OF REPORT

The consultants initially conducted a thorough literature and web-based review of financial service providers, their regulators and advice giving websites. They then conducted a range of face-to-face and telephone interviews over a two month period, in Northern Ireland, Dublin and London. Details of the personal and printed sources consulted are outlined in Appendix 1.

Some observations

It quickly became clear to the consultants that older people's access to financial services could not be separated out distinctly from the wider experience of being an older person in the 21st century. Beyond direct or indirect discrimination in financial services and practices are issues such as:

- the complexity of the financial sector and its regulation
- the attitudes of service providers and policy-makers
- poverty in older age
- the vulnerability which comes from physical and mental health problems
- the speed of technological change

Further, the treatment of older people in the financial services sector is inextricably bound up with the treatment of other vulnerable groups, many of whom have multi-identity as older people, for example older disabled people and older women.

The consultants were initially surprised that regulators did not consider that issues of age discrimination came within their remit, even in the Republic of Ireland where the Equal Status Act 2000 clearly covers discrimination in financial services for older people. The consultants nevertheless received high degrees of

[28] OFMdFM news release 4 April 2008.

cooperation from the regulatory authorities in the UK, Northern Ireland and the Republic of Ireland, with the exception of the Financial Regulator.

Republic of Ireland experience indicates that the mere enactment of equality legislation does not result in widespread auditing of financial services by providers. Although an equality body can promote aspects of the equality regime, financial services providers are more likely to pay attention to tribunal decisions and settlements. The consultants were initially surprised that they failed to get the cooperation of two Republic of Ireland-based financial service providers, but eventually concluded that, despite assurances of anonymity, these providers were unwilling to discuss the extent to which they continued to engage in discriminatory practices.

This led to a final observation that many equality issues came back to questions of access to equality bodies and tribunals, access to advice-giving bodies and access to financial regulators.

Structure of the report

Section 3 of this report sets out the legal context, both in terms of equality law regimes and regulatory regimes. In section 4, some general issues are considered, including financial inclusion, financial capability, scams, information, advice and guidance, and the main barriers. In section 5, sub-sectors of the financial services sector are considered, namely insurance, borrowing and credit and banking, with briefer discussion of equity release. Section 6 considers relationships between the Commission and other bodies and section 7 sets out conclusions and recommendations.

LEGAL CONTEXT

Equality law regimes

Northern Ireland and Great Britain

Age is the only equality ground[29] upon which there is no current legislative protection against discrimination on the provision of goods, facilities and services.[30] The Employment Equality (Age) Regulations (Northern Ireland) 2006 only provide protection with regard to employment and training matters. No corresponding goods, facilities and services legislation is presently being proposed in Northern Ireland. However, recent announcements of a Single Equality Bill in Great Britain do include protection on the grounds of age for goods, facilities and services.[31]

Objective justification test and actuarial and other statistical data considerations

It is significant that the Employment Equality (Age) Regulations (Northern Ireland) 2006 provide, uniquely in the equality law regimes examined, an objective justification test for direct, as well as indirect, discrimination.[32] Hence it can be anticipated that this provision, sourced initially in EU law,[33] will apply to any extension

[29] Other equality grounds in Northern Ireland include: religious belief, political opinion, race, marital status, sexual orientation, gender, disability, people with dependents

[30] The Sex Discrimination (Northern Ireland) Order 1976 has covered goods, facilities and services since its inception, as did the Sex Discrimination Act 1975 in Great Britain. The Disability Discrimination Act 1995 which is a UK-wide statute but subject to subsequent Northern Ireland amendments, has also covered goods, facilities and services since its inception, although some aspects, e.g. transport and access to buildings, have been phased in. The Race Relations (Northern Ireland) Order 1997, which mirrored the Race Relations Act 1976 in Great Britain, covered the full scope of goods, facilities and services. The Fair Employment and Treatment Order 1998 introduced coverage of goods, facilities and services into the regime of religious and political discrimination law. In Great Britain, the Equality Act 2006 legislated for goods, facilities and services coverage in relation to religion or belief discrimination, following on from the employment and training coverage in the Employment Equality (Religion or Belief) Regulations 2003. So also the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2003 extend the sexual orientation discrimination law regime into goods, facilities and services.

[31] The Government Equalities Office in Great Britain launched *The Equality Bill – Government response to the Consultation* on 21 July 2008. This included proposals for goods, facilities and services age discrimination provisions. This publication followed *Framework for a Fairer Future – The Equality Bill* (June 2008)

[32] Reg 3(1) contains both direct and indirect discrimination definitions with a common 'objective justification' test, "A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim."

[33] Article 6, Framework Employment Equality Directive 2000.

of age discrimination law into goods, facilities and services.

There has always been an issue of reconciling aspects of financial services with discrimination law, particularly in relation to the use of actuarial and other statistical data. For example, Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 provides:

"Nothing in Parts III to V shall render unlawful the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, 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."

European Union developments

The expansion of employment and training (and to some extent goods, facilities and services) discrimination law has been fuelled by European Union developments. Amendments to the Fair Employment and Treatment Order 1998, the Disability Discrimination Act 1995, the introduction of the sexual orientation employment regulations and the Employment Equality (Age) Regulations (Northern Ireland) 2006, involve transposition of the Framework Employment Equality Directive 2000 in the context of employment and training discrimination. However, the Race and Ethnic Origin Directive 2000 also covers goods, facilities and services, education, accommodation etc. More recently the Equal Treatment (Goods and Services) Directive 2004 extends EU sex discrimination law into the field of goods, facilities and services.

Proposed Framework Goods and Services Directive

At the time of writing,[34] proposals were being considered for what would be a Framework Goods and Services Directive, extending the coverage of the Framework Employment Equality Directive into goods, facilities and services across the grounds of religion or belief, disability, sexual orientation and age.

[34] July 2008

The European Commission adopted its legislative and work programme for 2008 on 23 October 2007. It included the proposal for a Directive implementing the principle of equal treatment outside employment. The reasons for including this proposal were:

- Although some Member States may go beyond the current Directives and provide for the same level of protection for all the grounds of discrimination, it is necessary to ensure certain coherence throughout Europe in this field. Only a European Directive can provide such a coherent framework.

- Lack of uniform protection can affect people's choices on whether to work or study in another Member State, or whether to travel there and access services.

- The consultation of European Business Test Panel shows that many businesses believes it matters if there are different levels of protection between the EU Member States against discrimination in access to goods, services and housing on grounds of age, disability, religion and sexual orientation (63%) and 26% believe that a difference in the level of protection would affect their ability to do business in another Member State.

The undertaking to work towards a directive was widely welcomed by representatives of the various equality grounds, including the age sector, who had been lobbying for just such an expansion of anti-discrimination protection.

It was made clear by European Commission officials from the start that there would be strong opposition to the proposal, from commercial interests and from many Member State governments. This was reinforced for a Northern Ireland audience by MEP Bairbre de Brun, speaking at a CAP (Changing Ageing Partnership) conference during Age Awareness Week 2007.

The AGE Platform of age-related non-government organisations has been very actively engaged in the campaign for the Directive to include all grounds, including lobbying with the European Parliament’s Intergroup on Ageing. Speaking at AGE’s General Assembly in March 2007, European Commissioner Vladimir Spidla spoke strongly in favour of the Directive. At the October 2007 conference to mark the end of the Year of Equal Opportunities, he again stressed the “great need” for a uniform level of protection outside employment and that it is “not right” that certain grounds only had cover in employment.

Much of the work in the European Parliament has been led by UK MEP Liz Lynne, and indeed in late 2007, there was a remarkable debate on the issue in which a resolution which at the start “deplored” the proposal for the (combined) Directive, by the end “welcomed” it! The report on discrimination outside of employment by MEP Liz Lynne[35] was adopted on 20 May 2008. At the time of writing, the indications are that the European Commission has postponed a decision on the way forward for the Directive and is to carry out further analysis.[36]

However, as time has gone on, the opposition led by Germany (even though Germany’s anti-discrimination legislation already covers discrimination outside employment), has clearly affected the European Commission’s understanding of what was going to be possible in this regard. It became increasingly likely that in fact the proposed Directive would cover only disability – although the Disability Intergroup of the European Parliament has reiterated “its continued support alongside the other parliamentary intergroups representing the Article 13 groups, for a horizontal anti-discrimination directive extending protection against discrimination in goods and services to all of the groups.”[37]

While no-one who has campaigned for the Directive has any problems with people with disabilities receiving goods, facilities and services protection, a single-issue Directive does mean a hierarchy of protection, makes it difficult to address multiple discrimination and goes against the coverage of the Employment Directive. At the time of writing, the European Commission had postponed a decision on the way forward for the Directive and is to carry out "further analysis"; there was some indication that the campaign for a horizontal Directive had had an impact on the European Commission’s thinking.

[35] http://www.europarl.europa.eu/meetdocs/2004_2009/documents/pr/699/699739/699739en.pdf
[36] The European Commission published a draft Framework Goods and Services Directive (COM(2008) 426 final), including provisions on age discrimination, on 2 July 2008.
[37] Letter from Richard Howarth MEP to President Barrosa, 25 April 2008.

The Gender Goods and Services Directive 2004[38]

Significant controversy surrounded the provision of financial services during the progress of the Gender Goods and Services Directive through the EU legislative process. Article 5 ('Actuarial factors') of the Directive might provide a template for an actuarial factor exception in any future EU age discrimination legislation.[39]

As a consequence, Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 has been amended, in particular to provide for transparency in collection of actuarial data, under HM Treasury guidelines.[40] Hence, actuarial and other statistical data may be utilised in a proportionate fashion in relation to financial provision to women and men so long as there is transparency in its compilation and use.

Northern Ireland and Great Britain legislative developments

Pressure to enact single equality legislation

Northern Ireland

There is pressure for single equality legislation both in Northern Ireland and in Great Britain.[41] The Equality Commission for Northern Ireland, in response to OFMdFM's Green Paper on a Single Equality Act,[42] does not explicitly address the issue of extension of age discrimination into goods, facilities and services, although the Green Paper itself addresses this issue explicitly. The Equality Commission takes the view that a Single Equality Act should adopt a 'common template' across all grounds, including age and across the full scope of the Act, including goods, facilities and services. The Equality Commission therefore makes two recommendations relevant to this report. First, it states:-

> *"7.7 The Commission is in favour of a general services requirement, with some examples explicitly set out in the*

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[38] Equal Treatment in Goods and Services Directive 2004/113/EC.
[39] See Appendix 2.
[40] *Ibid*.
[41] The Prime Minister has published a draft Queen's Speech for the 2008/2009 parliamentary session which includes an Equality Bill, 'PM publishes draft Queen's speech' (http://www.epolitix.com/EN/News/200805/a92c6172-7105-4d7c-a223-a7ed73f5b5ff.htm).
[42] Response to OFMdFM Consultation Paper, '*A Single Equality Bill for Northern Ireland*'. Belfast, Equality Commission for Northern Ireland, November 2004.

Single Equality Act and others articulated in a Code of Practice. Any autonomous exceptions should be clearly justified."

Hence, in the same way that the Equality Commission prefers a genuine occupational requirement in relation to employment and training, it also wishes to see a general exception to provision of goods, facilities and services, which allows for an otherwise prohibited factor to be a 'genuine and determining factor' in certain circumstances. It has not set its face against either general exceptions across all or some of the grounds or exceptions specific to particular grounds. However it analysis is based on the approach that all exceptions outside the general services requirement must be explicitly justified.

Without explicitly addressing any controversy over the extension of age discrimination law into the provision of goods, facilities and services, the Equality Commission has indicated that it is not in favour of any delay or phasing of any such extension. It states:-

"7.8 The Commission is generally unconvinced that there is a timing issue for the introduction of goods, facilities and services protection across all recognised grounds in the Single Equality Act."

It might be argued that this position is reinforced by the fact that, while this response was composed in 2004 in anticipation of age discrimination law in employment and training, the Employment Equality (Age) Regulations (Northern Ireland) 2006 have now 'bedded' down since their enactment in 2006 and hence that resistance to the extension of age discrimination law to goods, facilities and services should have weakened.

Single equality legislation - Great Britain

The Government Equalities Office in Great Britain launched *The Equality Bill – Government response to the Consultation* on 21 July 2008. This included proposals for goods, facilities and services age discrimination provisions. This publication followed the *Framework for a Fairer Future – The Equality Bill* (June 2008).[43]

[43] http://www.official-documents.gov.uk/document/cm74/7454/7454.pdf

Northern Ireland single equality legislation update

At the time of writing, the Northern Ireland Executive had not met for some time, and the Northern Ireland government had not made any pronouncements regarding a Single Equality Bill for Northern Ireland.

HM Treasury Working Group

At a UK level, HM Treasury set up a working group in April 2008 to investigate age discrimination in financial services as part of its development of "a clearer, simpler framework of discrimination law." Following consultation on the proposals for single equality legislation, the Government noted that extending protection to the fields of goods, facilities and services might "have a significant impact on retail financial services, given the extensive use of age criteria in their design and delivery." It therefore wanted to examine the exemptions that might be necessary in such legislation.

The Terms of Reference of the working group are to "undertake a review of the behaviours and commercial practices in the financial services industry that touch on the age of the customer" and to consider "approaches to preventing any harmful discrimination practices that may be identified."[44] The group has been asked to produce a final report by September 2008.

POTENTIAL ISSUES

Introduction

Outside of the work of Age Concern England, Help The Aged and consultation papers on single equality legislation, one of the few sources to address the issue of the extension of age discrimination legislation into the field of goods, facilities and services is the Legal Action Group's *Age Discrimination Handbook*.[45] It states:

> "Most observers in the UK agree that age (like gender but

[44] HM Treasury, unpublished.
[45] O'Dempsey D, Jolly S and Harrop A, *Age Discrimination Handbook*, London: LAG, (2006)

unlike race or sexuality) should be a legitimate criterion for pricing risk-based products in certain circumstances."[46]

They go on to discuss 'blanket bans, whereby insurance cover is cut off at a particular age and 'sudden price hikes' in insurance premiums at particular ages, irrespective of the particular circumstances of the individual. This may occur when an older person with considerable resources is refused credit or when an older driver with an exemplary claims record is subjected to high insurance premiums.

It points out that many problems arise when financial products are bundled, with for example, bank accounts, credit cards, package holidays and car hire.[47] A similar problem can be seen to arise, for example, with retailer providers which have moved into financial services.

The authors go on to discuss transparency in collection of and reliance upon actuarial data, noting the requirement of transparency in Article 5.2 of the Gender Goods and Services Directive and the then unamended section 45 of the Sex Discrimination Act (equivalent of Article 46 of the Sex Discrimination (Northern Ireland) Order 1976).

Republic of Ireland developments

A further element to the legal context concerns equality law developments in the Republic of Ireland. Irish equality law anticipated EU developments through the enactment of the Employment Equality Act 1998 which covers nine grounds, including age, in relation to employment and training. An Equal Status Bill, also covering nine grounds in relation to goods, facilities and services, was delayed for two years through constitutional challenge but was enacted as the Equal Status Act 2000. Hence, the Republic of Ireland already has had experience of age discrimination law in relation to goods, facilities and services for most of this decade. Section 5(2)(d) of the Act sets out an actuarial factor exception which applies across all the grounds:-

> *"(d) differences in the treatment of persons in relation to*

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[46] *Op cit*.
[47] *Op cit*.

annuities, pensions, insurance policies or any other matters related to the assessment of risk where the treatment—

(i) is effected by reference to—

(I) actuarial or statistical data obtained from a source on which it is reasonable to rely, or
(II) other relevant underwriting or commercial factors,

and

(ii) is reasonable having regard to the data or other relevant factors,"

The focus in the Republic of Ireland has been on age limits in insurance. In the early days of the Equal Status Act 2000, the Equality Authority vigorously pursued a campaign against age limits in car and other forms of insurance.[48] This culminated in the important Equality Tribunal decision in *Jim Ross* v *Royal and Sun Alliance Insurance Plc,*[49] Mr Ross received a motor insurance quotation from his original insurance company which he considered to be exorbitant. Having formerly been an agent for Royal and Sun Alliance Insurance plc, he approached them but, upon discovering that Mr Ross was 77, they refused to consider his request for cover. The basis for the refusal was that they did not take on new business from those over the age of 70.

The case revolved around conflicting evidence from actuaries on both sides. Royal and Sun Alliance sought to show, invoking the actuarial factor exception in section 5(2)(d) of the Equal Status Act 2000, that the age limit of 70 was justified. However, an actuary who had worked with the Motor Insurance Advisory Board was able to show that Royal and Sun Alliance's data contained inconsistencies and that there was no pattern of over-70s making more claims than other age groups. In light of these inconsistencies, the Tribunal concluded that the data, although honestly analysed by Royal and Sun Alliance, was not "a source on which it is reasonable to rely", in accordance with section 5(2)(d)(i)(I) and did not satisfy the reasonableness test in section 5(2)(d)(ii), as it did not take all relevant factors into account in

[48] O'Cinneide C in Fredman and Spencer (eds), *Age as an Equality Issue*, Oxford: Hart Publishing, 2003.
[49] Decision DEC-S2003-116

considering individual requests but simply applied an "across the board" policy of refusing quotations to persons over 70 years of age.

The Tribunal went on speculate that it might be possible to justify differential premiums depending on age if the actuarial or other statistical data was available.

In response to the *Ross* decision, the Motor Insurance Advisory Board, which had already issued a comprehensive report on motor insurance critical of age-based criteria,[50] welcomed the decision but cast doubt on any automatic acceptance of differentials in premiums.[51] Quoting section 5(2)(d), the Motor Insurance Advisory Board advised that “the next time an insurer seeks a loading for age, ask them to produce ‘the actuarial or statistical data obtained from a source on which it is reasonable to rely, or other relevant underwriting or commercial factors, and is reasonable having regard to the data or other relevant factors.’ If that is not forthcoming, advise them of your intention to complain to the Equality Authority if the loading is not removed.”

An interesting example is given by the Motor Insurance Advisory Board in relation to assessment of risk of those in different age groups. “To quote a hypothetical example, if the average claims cost for people aged 40 is €200 but the average claims cost for people aged 70 is €400, that would not justify double the premium because insurance costs are based on exposure over time so frequency must be factored into the equation - if the 40 year olds have twice the number of claims that the 70 year olds have then their average cost per year is the same.” This analysis suggests the statistical data necessary to justify premium differentials may not be easy to produce. In its Final Report, the Motor Insurance Advisory Board recommends “that the [Financial Regulator] should supply regular market wide statistics on motor premium differentials to the Equality Authority to assist in assessing insurers’ compliance with the Equal Status Act 2000 and subsequently its proposed extension.” What has transpired is a set of motor insurance statistics, 2005 Private Motor Insurance Statistics, published in 2007 and available on the Financial

[50] http://www.entemp.ie/publications/commerce/2002/miab/miab.pdf.
[51] http://www.olderinireland.ie/equality/miab.htm.

Regulator's website.[52]

Hence, in the same way that amendments to the Sex Discrimination (Northern Ireland) Order 1976 encourage transparency in collection of actuarial and statistical data, so also this proposal seeks to assist the Equality Authority in pursuing cases, particularly in relation to challenges to premium differentials. These recommendations are supported by the Equality Authority's publication, *Implementing Equality for Older People*,[53] proposals published by the Equality Authority on the basis of a report produced by a committee representing the older people's sector and the social partners.

The only other Tribunal case on motor insurance was also a refusal case. In DEC-S2006-071 *Nicholas Burke* v *Lynskey Ryan Insurance Limited Galway*,[54] Mr Burke was refused public service vehicle insurance on grounds of his age, although the report does not indicate whether this was grounds of being too old or too young. In any event, the insurance agent sought to argue that it was the underwriters who were discriminating and not the agent. However, the Tribunal, after examining the vicarious liability provisions in section 42(2) of the Equal Status Act 2000 concluded that the respondent was liable for the refusal.

The Equality Authority has not had an opportunity to challenge premium differentials, as an appropriate case has not materialised. It is pointed out that an insurance case would be a complicated case, requiring the participation of actuaries on both sides which would involve considerable expense. It may be the case that older people are more sanguine about differentials than outright refusals. Although the older people's voluntary sector has campaigned on the issue of refusals, the same effort has not been put into challenges to differentials. It is also considered relevant that there is a considerable delay in the determination of cases before the Equality Tribunal, in particular in relation to Equal Status Act 2000 cases, which might take up to five years to be decided.

Nonetheless, the *Ross* decision has had a similar impact in relation to travel insurance. In its 2007 Annual Report, the Equality

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[52] http://www.financialregulator.ie/frame_main.asp?pg=%2Fregulated%5Ffirms%2Frf%5Fintr%2Easp&nv=%2Fregulated%5Ffirms%2Frf%5Fnav%2Easp.

[53] http://www.equality.ie/index.asp?locID=107&docID=89.

[54] http://www.equalitytribunal.ie/index.asp?locID=110&docID=1393.

Authority sets out the circumstances in which it had reached settlements with both airline Aer Lingus and AIG Insurance, in relation to travel insurance offered by Aer Lingus and underwritten by AIG. These policies were restricted to persons under the age of 75. It transpired that Aer Lingus terminated its arrangements with AIG in November 2007. They reached a settlement with the Equality Authority in May 2007, whereby they would no longer underwrite travel offered in the Republic of Ireland, which contained an absolute age limit or excluded any persons on account of their age. Later in 2007, Aer Lingus, without admitting liability, accepted that its new underwriting arrangements would now offer travel insurance products to all its customers regardless of age.

There could be a range of discriminatory policies and practices still at work in the Republic of Ireland's financial services sector. Some issues which have arisen in the UK, such as restrictions on car hire, are also causes for concern in the Republic of Ireland. There is evidence that older women are subjected to onerous conditions, in terms, for example of guarantors, which are a consequence of their financial insecurity. However, as is often the case, it is the most vulnerable whom are the most difficult to reach and to protect. The Equality Authority is working with one financial service provider on accessibility of documentation. This is from a disability perspective but the outcome of this work will clearly be of benefit to older people also.

It is not apparent that the advent of the Equal Status Act 2000 has resulted in a widespread audit of financial services in the Republic of Ireland.[55] Hence, it seems to be the case that the Irish financial services industry is reacting to controversies brought to its attention by the Equality Authority or through Equality Tribunal cases. Therefore, the extension of age discrimination law to cover the provision of financial services in the Republic of Ireland certainly has not caused severe dislocation to the industry. As Colm O'Cinneide stated:

> "The complexity of legislating in relation to goods and services has also been cited: as demonstrated by the Irish and Commonwealth experience of applying age discrimination

[55] Within the timescale of this project, it was not possible to discuss the provision of financial services with two Southern-based providers who were approached to cooperate in the project.

> codes to goods and services, the complexity of this process appears to be considerably exaggerated."[56]

Nonetheless, more complicated and more intrusive testing of the actuarial factor defence has yet to be undertaken in the Republic of Ireland and it is not clear that significant changes have been made to policies and practices in light of the coming into force of the Equal Status Act 2000.

Regulatory regimes - UK

The Financial Ombudsman Service

The Financial Ombudsman Service describes itself as an independent service for settling disputes between consumers and providers of financial services.[57] It carries out statutory functions under the Financial Services and Markets Act 2000 and the Consumer Credit Act 2006, on a non-commercial, not-for-profit basis. Effectively, its remit coincides with that of the Financial Services Authority. For example, consumer credit came within the remit of the Financial Services Authority in 2007 and hence complaints on consumer credit can now come to the Financial Ombudsman Service also.

Of immediate concern is whether the Financial Ombudsman Service would investigate a complaint concerning age-related discrimination, e.g. an age limit on motor or travel insurance. The general approach of the Financial Ombudsman Service is that issues with wider implications should be referred to the Financial Services Authority or the Office of Fair Trading. There are clear protocols for dealing with these situations.[58] In any event, enforcement of discrimination law is not directly within its remit and any wider implications should be considered by the Equality and Human Rights Commission in Great Britain and the Equality

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[56] op cit.
[57] http://www.financial-ombudsman.org.uk
[58] See http://www.ombudsmanandfsa.info/process/index.html. A 'wider implications issue' is defined as follows:-

> "Factors the FSA, Office of Fair Trading and ombudsman service are likely to take into account include whether the issue is a new one and whether it affects:
> - a large number of consumers
> - a large number of businesses
> - the financial integrity of a large business
> - interpretation of FSA rules or guidance from the FSA or Office of Fair Trading or
> - a common practice by businesses."

Commission in Northern Ireland, rather than financial regulatory mechanisms. Nonetheless, some discrimination grounds, for example, age or disability, may well figure in a determination as to whether a customer has been treated fairly.

Therefore, age may be a relevant factor in determining whether a complaint should be upheld. Case studies are regularly published in the Financial Ombudsman Service's Newsletter, *Ombudsman News*.[59] A couple of examples indicate age-related issues which the Financial Ombudsman Service encounters, in both cases involving misuse of debit cards.[60]

The Financial Ombudsman Service is therefore concerned with individual acts of unfairness and lack of proper process. For example, in *Ombudsman News* Issue 64 (Sept/Oct 07), there is a range of case studies on travel insurance but none concerns issues of age limits and age differentials. These are seen as commercial decisions by the providers, not issues of fairness for the Financial Ombudsman Service to investigate.

Nonetheless, the Financial Ombudsman Service does track diversity across the complaints which it receives. It is looking for patterns where needs were not identified or ignored both in terms of products and treatment of consumers.

The Financial Ombudsman Service is therefore concerned with issues of mis-selling and the question of the consumer's age may well be a relevant factor.[61] From a discrimination law point of view, deliberately mis-selling because of the age of consumer could be direct discrimination. More general forms of mis-selling may be indirect discrimination in that older people are put at a disadvantage, but the provider will not be able to justify the method

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[59] http://www.financial-ombudsman.org.uk/publications/ombudsman-news/69/69.htm

[60] These are set out in Appendix 3.

[61] In an email dated 2 May 2008, Caroline Wells, External Liaison Manager, Financial Ombudsman Service states, "Looking at the products brought to us by consumers aged over 65, the top five products complained about over the last couple of years have been (in order):
simple premium investment bonds - complaints usually centre around the consumer feeling the investment is too risky for them
mortgage endowments - the same as above, plus there were some instances relating to council right-to-buys and consumers taking out these products that ran well past their retirement - and so raised an issue of long term affordability
income drawdown pension arrangements - complaints can be around suitability of this particular product
personal pensions - problems with payment of annuity, suitability
building insurance - anything from escape of water claims to accidental damage."

of sale.

The Financial Ombudsman Service is concerned about issues of accessibility of documentation, particularly in relation to onerous terms being identified and explained. It is also concerned with accessibility of its own services, particularly to vulnerable groups. The Financial Ombudsman Service therefore works with consumer advisers, so that the work and remit of the Financial Ombudsman Service is understood. However, its core function is to determine impartially the complaints which it receives. Wider policy issues are within the remit of the Financial Services Authority.

The Financial Services Authority

The Financial Services Authority is an independent body that regulates the financial services industry in the UK. It describes its work as follows:-

> “The Financial Services Authority's aim is to promote efficient, orderly and fair financial markets and help retail financial service consumers get a fair deal.
>
> The Financial Services Authority was set up by government. The government is responsible for the overall scope of the Financial Services Authority’s regulatory activities and for its powers.
>
> The Financial Services Authority regulates most financial services markets, exchanges and firms. It sets the standards that they must meet and can take action against firms if they fail to meet the required standards.”

The Financial Services Authority does not have remit over discrimination issues and considers these to be the responsibility of the Equality and Human Rights Commission in Great Britain and the Equality Commission in Northern Ireland. It is also not a price regulator. It considers that charging policy is largely a matter for the financial service provider.

As with the Financial Ombudsman Service, a discrimination ground, such as age or disability, may incidentally impinge on its work, in relation to its rules on *Treating Customers Fairly*.[62] Therefore, it does conduct work on protection of older consumers. For example, in 2002, it published 'The impact of an ageing population on the Financial Services Authority', largely concerned with pension provision. In 2006, it published an important report, 'Levels of Financial Capability in the UK: Results of a baseline survey'. This established that 'very capable, well-off, older couples, with many financial products' were the most financially capable but that older people 'on lower income who were less good at keeping track of money' were in the third lowest category. In December 2007, it published 'Finance in and at retirement – results of our review', largely concerned with retirement.[63] This report does address financial capability issues for older people. Relevant work of the Financial Services Authority also includes partnership work on financial capability for, amongst others, older people. These issues are discussed below, under 'Financial Capability'. It also provides a consumer advice website, Money made clear. [64]

Regulatory regimes – Republic of Ireland

The Financial Services Ombudsman

The Financial Services Ombudsman is structured on a similar

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[62] Some examples are given in an email dated 6 May 2008, from Sarah Hatcher, Consumer Sector, Financial Capability Division, FSA, "Investments such as insurance bonds have age-related charges, generally in the form of lower allocation rates. So, for example, a 50-year-old could invest at 100+% allocation rates but this might be reduced to, say, 97.5% for an over 80-year-old (in effect a 2.5% initial charge). There may even be a sliding scale so that the older the investor, the lower the allocation rate.

In other cases, surrender penalties that are generally waived at death continue to apply for insurance bonds. Again, these charges tend to be applied for applicants aged over 80.

Some life offices simply refuse to offer insurance bonds to older people.

These conditions demonstrate that the charging structure on these products is premised on a certain investment holding period, which those with lower life expectancies are unlikely to meet. The extra conditions for those aged over 80 make up for the likely shorter holding period. If we do not think these are done to exploit consumers but as a function of the charging structure, then we would not take action using Treating Customers Fairly rules."

[63] "The key findings of our review are:

• there are no new market failures, however, there has been significant activity in, and scrutiny of, this market from us and other bodies, and there are additional regulations in place to address those market failures previously identified;

• no firms gave us evidence that FSA regulation creates a barrier which inhibits the development of products and services in this market;

• access to advice is a key issue for many people, not just older consumers, and is being addressed through general initiatives; and

• there is widespread poor consumer understanding of retirement and associated products and services in this market."

[64] http://www.moneymadeclear.fsa.gov.uk/home.html

basis to the Financial Ombudsman Service in the UK. In his 2007 Annual Report,[65] the Ombudsman describes his role as follows:-

> "The Financial Services Ombudsman is a statutory officer who deals independently with complaints from consumers about their individual dealings with all Financial Service Providers that have not been resolved by the providers after they have been through the internal complaints resolution systems of the providers. The Ombudsman is therefore the arbiter of unresolved disputes and is impartial. Broader issues of consumer protection are the responsibility of the Irish Financial Regulator. All personal customers, limited companies with a turnover of €3m or less, unincorporated bodies, charities, clubs, partnerships, trusts etc. can complain to the Ombudsman."

Once again, there are numerous examples of age-related complaints, frequently involving abuse of older people. However, it is clear that the Financial Services Ombudsman is focusing on unfairness and improper processes. The Ombudsman takes the view that equality issues are matters for the Equality Authority and the Equality Tribunal. Financial services providers are entitled to make their own commercial decisions and he could not question them as being unfair even though there may be discriminatory aspects to the product or service provided. Nonetheless, age is a relevant factor and the Ombudsman consistently notes the regularity of age-related cases.

For example, in a press release of 18 October 2007, 'Eighty six year old bachelor farmer's €1.4m fortune 'underinvested', the Ombudsman gave special attention to mis-investment of an older person. [66] In his 2007 Annual Report, the Financial Services Ombudsman directly addresses the issue of mis-selling of investment products to older people. [67]

Therefore, as with the Financial Ombudsman Service, the Financial Ombudsman can uncover examples of unfair treatment against older people in access to financial services. However, he cannot investigate discrimination cases *per se*, which are seen as the responsibility of the Equality Authority. As with the Financial

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[65] http://financialombudsman.ie/about-us/Financial-Ombudsman-2007-Annual-Report-English.pdf.
[66] This case study is set out in Appendix 4.
[67] See also Appendix 4.

Ombudsman Service, complaints are normally handled within 3-4 months by the Financial Services Ombudsman. As has been seen above, Equal Status Act 2000 cases before the Equality Tribunal can take up to 5 years to be determined. If wider patterns of unfairness are uncovered, the Financial Services Ombudsman will refer them to the Financial Regulator.

The Financial Regulator

It has not been possible for the consultants to learn much of the work of the Financial Regulator. Its approach appears to be that issues of discrimination are a matter for the Equality Authority and the Equality Tribunal. The Consultants have learnt from the 2007 Annual Report of the Financial Services Ombudsman, that during 2004 and 2005 the Financial Regulator asked providers to conduct a Sales Process Review with regard to investment sales to elderly and vulnerable customers. However, the consultants were not aware of other work being undertaken by the Financial Regulator in relation to accessibility of products and services.

As seen above, the Motor Insurance Advisory Board in the Republic of Ireland took an active interest in issues of discrimination in relation to motor insurance and, in particular, the application of the Equal Status Act 2000. However, the Financial Regulator apparently does not consider that it has taken on the remit of the Motor Insurance Advisory Board. As stated above, it did produce a compilation of actuarial data, *2005 Private Motor Insurance Statistics*, published in 2007 and available on the Financial Regulator's website.[68] It also has an award-winning website on consumer advice, *It's your money*.[69]

GENERAL ISSUES

The main barriers

The following list is derived from the interviews with information services, in particular the Age Concern England and Help the Aged reports, and the documents considered in preparing the section on

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68 http://www.financialregulator.ie/frame_main.asp?pg=%2Fregulated%5Ffirms%2Frf%5Fintr%2Easp&nv=%2Fregulated%5Ffirms%2Frf%5Fnav%2Easp.

69 http://www.itsyourmoney.ie

Financial Capability. It excludes specific and direct barriers, such as age limits on travel insurance, which are dealt with in the sections on banking, credit and insurance. The main barriers include:

- A "knowledge gap" (something more than a simple financial capability issue)
- Many new forms of managing money have been devised since the baby boomers[70] first took responsibility for their own finances
- Some older people are simply unfamiliar with online accounts, or online sources of information. This unfamiliarity also applies to credit cards, and even with the processes of managing and using a bank account. Many older people were raised on cash and are still most comfortable with cash. "They have got along fine on cash up to now all their lives." This point was made by all interviewees and most surveys and reports including the Financial Inclusion Taskforce
- The Post Office is seen as a safe, reliable, ever-present resource and hence the preferred financial service provider. Even here, though, some older people who had accustomed themselves gradually to the Post Office Card Account still find the statements difficult to read and may, for example, confuse debits and credits. The Post Office Card Account is now being abolished, against the wishes of its users (85% in a 2007 Help the Aged survey), although the Government has said that its replacement will be Post Office-accessible
- The current programme of Post Office closures is a major source of anxiety
- It was suggested that there is a problem with actual literacy, not least because in the regulated financial sector much of the required explanatory material is still written in high-level and unfamiliar language
- Physical and mental health problems can make access literally impossible and/or lead to mismanagement of money. Even mild dementia may make remembering a Personal Identification Number virtually impossible. There is anecdotal evidence of older people taking out large sums of cash from the bank or Post Office, if they know it will be difficult to get back there regularly, or frequently because it is too far to walk, too expensive to take a taxi, or they do not want to, or cannot rely

[70] Those born between 1946-mid 1960s

on lifts from family or neighbours. At worst, this can lead to robberies of older people in their homes, where their patterns of managing cash are known to, or suspected by, others

- A reluctance to ask for help
- Many older people intensely dislike using complicated call centre services, especially if they find it hard to understand what the person they eventually connect with is saying
- The first year of retirement is a big issue – people do not realise how big a change it makes in their income capacity. They can over-spend, get into debt, and then face a continuing and probably growing shortfall, with no hope of increased income to deal with it. Age Concern England[71] last analysed this issue as follows:

  - Pre-retirement is a key stage for financial advice, both because people are more inclined to think about their finances, and because it is usually not too late to increase their savings
  - People need accurate information about their future income, and last-minute things they can do to improve it, and advice on whether their savings will make them better off
  - The transition to retirement can be a time of financial and emotional stress, particularly for people who retire before they can draw their main pension
  - People who are faced with investing a significant lump sum for the first time are particularly vulnerable to the consequences of bad advice
  - Buying a pension annuity is a particularly important decision and people are likely to need specialist help. In this context, it should be noted that "The workplace" is one of the Financial Capability Strategy's priorities and the training described in Delivering Change does refer to planning for retirement.

Financial inclusion

'Financial inclusion' is defined as having access to all the financial institutions and services through which economic life is transacted. Households and individuals who operate on a wholly cash basis cannot, for example, make savings through paying bills by direct

[71] Age Concern England *Making the money last* (April 2007)

debit, (whatever the rights and wrongs of direct debit payments being cheaper), and are much more likely to be involved in unstable and high-interest borrowing.

The Government established the Financial Inclusion Taskforce in 2005, within HM Treasury, to “consider solutions to the problem of financial exclusion” in the areas of banking, access to affordable credit, and access to free face-to-face money advice. While the Taskforce is UK-wide, some of its actions are devolved as “financial inclusion policy is devolved and the responsibility of OFMdFM.”[72] However, the Anti-Poverty Unit of OFMdFM works with its Great Britain counterparts, and is represented on the officials’ working group of the Taskforce. There is, by and large, “commonality on the themes.”[73] In the view of OFMdFM, the needs of vulnerable groups are a real priority for the department’s Ministers, and issues of poverty, income and access to finance are likely to be included in the work of the Older People’s Commissioner when that office is established. As in most forums working with or for older people, benefit uptake tends to be at the top of the agenda.

Unlike financial capability, which focuses on the ability of an individual to deal with financial services, financial inclusion includes the accessibility of documentation and services more generally. These issues can therefore be seen from the perspective of indirect discrimination on grounds of age (or reasonable accommodation of disabled people) in access to financial services.

Financial capability

‘Financial capability’ is defined as being able to use money, and make financial decisions, responsibly. It involves having the confidence and basic understanding to ask the right questions and challenge financial providers. It has been a goal of the Government to increase the population’s financial capability for at least a couple of decades, and there are some significant initiatives currently in hand. It should be noted that efforts to improve financial capability, although they may draw in financial service

[72] *Partnership Development Team: Working nationally to embed financial capability in the non-profit sector*, FSA n.d.
[73] Conversation with Anti-Poverty Unit 31March 2008.

providers as advisers, are targeted at the users: attempts to change business practice is seen as the province of the regulatory bodies.

The Financial Services Authority is responsible for delivering a national strategy for financial capability. It focuses on seven areas:

- schools
- young adults
- new parents
- the workplace
- online tools
- consumer communications
- money advice

Older people are noticeably missing from this list, directly excluded from the first three, and partly from “online tools” (given their lesser usage of these) and from “the workplace” (since this includes only employees, although the training sessions offered under this heading do include “long-term planning for the future” including pensions).[74]

In its paper, *Finance in and at retirement – results of our review*,[75] the Financial Services Authority explained this approach:

> “We decided not to focus on older consumers for the following reasons:
> - to maximise the impact of the cumulative effect of financial capability
> - initiatives over time, we focused on young consumers and will continue to reach them through their successive life stages
> - the Financial Capability Baseline Survey also showed that those under 40 are typically much less financially capable than those over 40, even allowing for their generally lower levels of income and experience in dealing with financial institutions. The over 60s group are generally more capable at budgeting, planning ahead and staying informed about financial matters
> - a number of agencies already address financial issues faced by those in and at retirement: the Over 50s section of the Government’s Directgov website, the Age Positive

[75] Financial Services Authority (December 2007)

campaign, Age Concern, Department of Work and Pensions' informed choice initiatives and work on Personal Pension Account

A particular area of concern was that the survey did show that people over 70 are poor at choosing products. This is unsurprising as some of the products that they purchase may be very complex. The Financial Services Authority has addressed issues associated with these products through additional regulations and targeted thematic work, as discussed in Section 5.

> "Although older consumers are not a focus specific of the National Strategy, aspects of our work do reach this audience."

The Financial Services Authority is involved in partnership development with a range of organisations in the not-for-profit sector, including Age Concern Gateshead, in a programme to identify vulnerable groups for whom financial capability may be an issue. These include cancer sufferers (with Macmillan Cancer Support),[76] offenders and ex-offenders (with the National Offender Management Service), lone parents and families (with Gingerbread) and people with learning disabilities (with Mencap). The Gateshead project involved developing and delivering a 'Money Matters' roadshow to sheltered accommodation schemes in the Gateshead area. The Financial Services Authority has brought together organisations in the older people's sector with a view towards scaling up this work on to a national level.

The Financial Services Authority's original national baseline research revealed that Northern Ireland was behind the other three countries in the UK. The Consumer Council, in partnership with the Financial Services Authority, leads the Northern Ireland Financial Capability Partnership, established in 2006. It has 23 members including advice services, statutory bodies, credit unions, bank, adult learning, youth services etc. Help the Aged is a member of the Partnership. In February 2008, the Partnership carried out a "vision setting" exercise which resulted in the vision statement - "Together create more financially capable people in Northern Ireland and be able to measure change" and set priorities

[76] Funding was also provided to Omagh Independent Advice Services in 2005 to create a self-help booklet and website for cancer sufferers in Northern Ireland (p4).

for the coming period.[77]

The Consumer Council's report "Managing money?"[78] analysed data from the Financial Services Authority's Baseline Survey of Financial Capability, carried out in 2005. It concluded that "Older people in Northern Ireland were far more likely to be better at making ends meet than working age adults whether working or not."

In the March 2008 budget, the Government undertook to publish a financial capability action plan "later in the spring."[79]

Consideration of financial capability is often linked to access to financial advice, and the Government's "Financial Capability: the Government's Long-Term Approach"[80] aimed to ensure, amongst other things, access to "high-quality generic financial advice." The Thoresen Review on generic financial advice final report was published in March 2008. (see Information, Advice and Guidance)

Literacy levels of older people

During the course of the consultants' research, the subject of overall literacy levels of older people was raised, as a potential barrier to accessing sophisticated financial services. The figure of almost 1 in 4 people in Northern Ireland (24%) being at Level 1, the lowest level, of literacy, is still often quoted. However, it refers to the 1996 International Adult Literacy Survey, which was carried out in Northern Ireland by NISRA.[81] Interviewees were unable to identify any more recent studies.

It is curious that only 16 to 65 year olds were surveyed in the 1996 International Adult Literacy Survey. It was noticeable that the oldest age band, 56 – 65 was significantly more represented at level 1 (41%) and less at the highest level, 4/5 (7%) than all the other age bands. This band already includes people who would figure in most definitions of "older", and those who fell into it in 1996 are now 12 years older. This may therefore indeed

[77] Conversation with Consumer Council (April 2008)
[78] Consumer Council *Managing Money: how does Northern Ireland add up*? (September 2007)
[79] An email from Savings and Investment Team, HM Treasury (29 April 2008)
[80] *Financial Capability: the Government's Long-Term Approach*. HM Treasury, January 2007.
[81] NISRA *Adult literacy in Northern Ireland* (1998)

demonstrate that the sheer difficulty of reading material, some of it written in quite high-level language, forms a barrier for today's older people.

Literacy and essential skills initiatives in Northern Ireland are basically geared towards increasing employability, and the consultants did not come across any programmes or projects which had tested out older people's literacy levels, or addressed problems older people might be having. The consultants suggested that this might be an appropriate topic for further research, since problems with reading would also affect older people's access to information on other important areas of their lives such as health; and since it might be possible to disentangle actual inability to read text from understanding it.

ICT use by older people

With so much financial information being made available online, there is another potential knowledge gap opening up, with fewer older people using the internet than younger age groups. A 2007 NISRA survey[82] found that 49% of people aged 50-64 accessed the Internet from home, but only 14% of people over 65. This compared with 85% for the age band with the highest use, 16-24. The Member States of the EU agreed in a Ministerial declaration in Riga, Latvia in June 2006 to produce a communication and action plan launched in 2007. The action plan is accompanied by a research programme to look at how Information and Communication Technology (ICT) could improve the life of older people at home, in the workplace and in society in general.[83]

There are some local initiatives to encourage older people to become familiar with the internet. "Everybody Online" is supported by the Department of Finance and Personnel and BT Northern Ireland, and focuses on disadvantaged groups, including older people.[84] Business in the Community led on a Silver Surfers' Day on 23 May 2008, along with 45 libraries across Northern Ireland. 250 business volunteers were present to demonstrate the use of email and the internet to an estimated 1000 older people who had

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[82] NISRA, April 2007 – unpublished survey commissioned by Delivery and Innovation Division, Department of Finance and Personnel.
[83] www.ec.europa.eu/information_society/activities/einclusion/policy/ageing
[84] www.citizensonline.org.uk/everybody_online/project/northernireland

booked an individual session.[85]

Concessionary fees for older people in further education colleges

The removal or marked reduction of concessionary college fees for older people was a subject that raised substantial controversy and media attention. It involved the application of the Employment Equality (Age) Regulations (Northern Ireland) 2006 to fees policies for further education colleges. Essentially, this legislation prevents a college from discriminating (positively or negatively) on the fees it charges its students, solely on the basis of age. The unintended consequences were that older people, who had formerly been charged a lower fee for particularly non-vocational courses, were now being charged the same charge as other students. The courses being offered often included "introduction to the internet" programmes, which further limited many older people from accessing and gaining confidence in computers and the internet.

This situation was recently clarified and any decision by colleges to offer reduced fees had to be based on an older person's very limited income, such as whether they were receiving pension credit, housing benefit, or rate relief. The Equality Commission offered its perspective[86] on the question of age-based discounts and is on the point of publishing guidance on the Regulations for training providers and further education institutions.[87] Although these concessions are clearly justifiable under the Regulations, it is still arguable that it is justified to give concessions to age groups to compensate them for obstacles to achieving certain skills or experiences in earlier life.

[85] Conversation with Business in the Community (30 April 2008).
[86] *Age Regulations, education and equality,* in Frontline (Winter 2007/2008).
[87] "The 'positive action' provisions of the Age Employment Regulations allow for age -related training but only in relation to opportunities for employment. Reg 31(1) provides, "Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with -
(a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or
(b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work,
where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work."

Scams

Many financial transactions are subject to regulation and are sometimes quite detailed and demanding. It is not therefore surprising that there will be those who will chance their arm outside the regulated system overseen by the Financial Services Authority and the Financial Ombudsman Service.

February 2008 was designated Scams Awareness Month across the UK and the Office of Fair Trading based much of its publicity on its December 2006 research on the impact of scams.[88] It should be noted that the age bands used in the research went up in ten-year bands to 55-64 and then 65+. That is, there was no further breakdown between old and the very old. However, in only one of the tables, indicating which scams were most prevalent in which age groups, there was a 75+ category. In both this and the 65+ category, "high risk investment" was the most prevalent scam.

In Northern Ireland, as part of the awareness campaign, and using the same research along with local individual examples, the Department of Enterprise, Trade and Investment's Trading Standards service issued a news release highlighting the risks of bogus lottery competitions.[89]

> One 80 year-old man "became hooked on the European Lottery Guild. He was persuaded to buy more and more tickets…over the last four years he has lost over £70,000."

Trading Standards estimate that Northern Ireland consumers lose over £100 million every year on bogus lotteries, prize draws, holiday clubs, work at home, and boiler room investment scams. The Office of Fair Trading figure for the whole of the UK is £3.5 billion. Some individual cases are referred by Trading Standards to the Police Service of Northern Ireland and may be pursued through fraud legislation. The PSNI also puts out regular consumer warnings, often when particular geographical areas seem to have been targeted.

In highlighting two older people in its news release, Trading Standards said that they were conscious that older people were

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[88] Research on impact of mass marketed scams: a summary of research into the impact of scams on UK consumers, Office of Fair Trading unpublished
[89] DETI news release, "Pensioners lose life savings in lottery scams" (13 February 2008)

more likely to be the target of scams (25% of those targeted in the research were over 65 and 24% between 55 and 64). The greatest percentage of actual victims of scams are in fact aged 35-44, though the Office of Fair Trading report suggested that "this could in part be a reflection of the greater reluctance of older people to admit to being scammed." Older people tend to lose larger sums of money and less likely to be in a position to make these losses up through employment, increased pension, or investment income.

Trading Standards, the Office of Fair Trading report, and the age-specific information services interviewed tried to come up with some of the reasons why older people – often considered to be financially cautious – might fall prey to scams. These included:

- Loneliness – with a "plausible and friendly person on the phone"
- No-one with whom to discuss the offer
- Large amounts of attractive and, again, plausible junk mail. One family took action to counter this by arranging for all their older relative's mail to go to another family member for filtering
- Dementia
- Financial anxiety and poverty leading to a hope of a quick-fix solution to their financial problems

In the Republic of Ireland, the Department of Enterprise, Trade and Employment is responsible for consumer protection. The National Consumer Agency was established in May 2007 under the Consumer Protection Act 2007. The Act is, according to the National Consumer Agency website, "designed to provide Irish consumers with one of the strongest and most modern consumer protection regimes." Amongst other things, it outlaws pyramid selling, prize draw scams and unwanted cold calling, and introduces much stronger penalties.

Information, Advice and Guidance

A significant barrier to older people using financial services effectively is simply a lack of awareness of the services, of how they operate, and of the pros and cons of using them. The European Commission has recently reported on a study on access to financial services in 14 Member States, aimed at "identifying and analysing the most effective policy measures to prevent financial exclusion of people facing poverty or social exclusion."[90] It noted:

> "There is evidence that financial exclusion is linked to people's knowledge of and exposure to financial services and that this remains statistically significant and has a large effect even when other factors such as income and work status are controlled."

There is a wide range of sources of advice and information available to people looking for information, advice and guidance on financial services. In Northern Ireland they include:

- the media, (newspapers, journals, electronic broadcasting, internet, with the latter especially containing an overwhelming amount of material
- statutory advice put out by bodies like the Financial Services Authority (through its moneymadeclear[91] website and related guidance leaflets), the Consumer Council or its sponsoring Department, the Department of Enterprise, Trade and Investment
- independent financial advisers and direct financial service providers, like banks and building societies who come under a regulatory authority
- non-government organisations like Age Concern and Help the Aged, who design their advice services specifically for older people
- other generic community and voluntary organisations like the citizens' advice bureaux, Advice Northern Ireland, the Law Centre, or specific debt advice agencies

The agencies listed above have different remits, different levels of expertise and may or may not be widely known about. It can be bewildering for older people to choose between information sources about financial services, let alone among the services themselves, and among the different service providers within each service.

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[90] European Commission *Financial services provision and prevention of financial exclusion,* prepared by Réseau Financement Alternatif, May 2008 (www.europa.eu/employment_social/spsi/financial_exclusion: summary report only, full report not available at time of writing).

[91] http://www.moneymadeclear.fsa.gov.uk/

There can also be confusion between the terms information, advice and guidance. Of the list above, only the independent financial advisers and commercial financial service providers will recommend specific products to individual clients, and this process is regulated. The media produce “best buy” tables and other commentary in money supplements. The voluntary and community agencies, in particular, stressed that they did not give detailed advice or recommendations.

A number of non-government organisations that specialise in age issues were interviewed for their views and experience of older people’s experiences of accessing financial services.[92] For all of them, providing financial advice was not a regularly requested topic. Information about benefits is the largest single topic for all the organisations, with housing also significant. One service collected statistics under the heading of Finance.[93] This category formed 3.4% of the total enquiries in 2006/07. Another estimated queries covering the topics covered in this paper at 1-2%.

One interviewee noted that it can be difficult to classify a query, as the initial enquiry may turn out to be part of a much bigger set of problems:

> “More than a third of our callers needed benefit information, but a number of these callers did not realise the questions they should have been asking. There is a common pattern, still, of people ringing too late, claiming too late, and not knowing what their rights and entitlements are.”

This in turn can lead to people making inappropriate decisions about their finances or at least considering doing so (see also section on Equity Release). It can also tempt them to follow up approaches from scammers (see section on Scams).

All the community and voluntary organisations had examples of problems faced by clients in the areas of banking, insurance and credit/debt. The information services’ experience with these issues is included in the relevant sections of this paper. The information-givers made the point that their clients did not usually come looking for independent, dispassionate advice. They had come because

[92] Three, two in Northern Ireland and one in the Republic of Ireland, and two generic services, one in Northern Ireland and one in Republic of Ireland.
[93] This information was broken down into: debt, home income plans, insurance, other, pensions, funeral plans and tax.

they were facing problems.

Thoresen Review of Generic Financial Advice

The Government is addressing the issue of what information is provided to individuals in the context of financial capability. In January 2007, it appointed Otto Thoresen, Chief Executive of Aegon UK (a group of businesses offering financial services and advice) to carry out a review of generic financial advice. The review's terms of reference were:

> "To determine a range of models for achieving greater access to generic financial advice on a national scale, taking account of future developments in financial services markets and, in particular, personal accounts."

Written responses to the report's call for evidence included submissions from Age Concern England, Help the Aged and the National Consumer Council.

The final report of the review was published on 3 March 2008.[94] It was described as a "high-level blueprint for a national money guidance service to provide the people of the UK with the knowledge, understanding and confidence to make better decisions abut money issues." The report claims that such a service "could transform people's lives as well as bringing substantial benefits to the industry and Government." There were very few specific references to age groups in the report. However, among the recommendations were a number which seem relevant and in need of further consideration from the point of view of older people, and these are noted below, with a commentary by the consultants in italics. The review coined the term "Money Guidance" in preference to the phrase "generic financial advice" used in the terms of reference.

A summary of relevant recommendations relating to older people is as follows:

[94] *Thoresen Review of Generic Financial Advice: final report*, (March 2008), available at http://www.hm-treasury.gov.uk/thoresen_review_financial_advice.htm

- A national Money Guidance service should be governed by the principles of impartiality, supportiveness, crisis prevention, universality, and should be sales-free
- The most appropriate way of delivering a money guidance service is a partnership model, with a central body to direct the strategy, set standards and deliver some services, but with much of the service actually delivered by accredited partner organisations which could include those who already do such a good job helping people with their money. *Age-specific information services are important gatekeepers into the very wide, very broad, and very complex universe of financial information. This is recognised by, amongst other things, the Financial Inclusion Taskforce, on its website financialinclusion-taskforce.org.uk,*[95] *which speaks of an "informed choice" process which "may be usefully facilitated through organizations such as: those…which individuals already trust, such as voluntary sector organisations or community groups…"*
- A UK-wide approach to Money Guidance should be delivered using a multi-channel approach – telephone, face-to-face and web-based service. *Several sources used in preparing this challenge paper referred to the particular value of the face-to-face approach for older people*
- The marketing strategy for Money Guidance should be multifaceted, to appeal to the different groups the service needs to reach. This should encompass national and regional marketing campaigns and engagement activities; trusted intermediaries; and social networks and viral marketing. *This needs to be particularly proactive and targeted if it is to be relevant, accessible and used by older people*
- To ensure that the national Money Guidance service can be up and running as soon as possible, the Government should set up a regional pathfinder service as soon as it has had the opportunity to consider this report. *It would be important that some part of this service be piloted in Northern Ireland*

In response, the Government has undertaken to establish the proposed "Money Guidance Pathfinder" with the report's suggested £12m funding over the next two years, to be delivered by the Financial Services Authority. It is designed "to provide the

[95] http://www.financialinclusion-taskforce.org.uk/principles.htm

detail needed to set out how a national Money Guidance scheme could operate" and the Government will "consider how best to go forward with a full…service following a successful pilot." This is under the assumption that the pilot will in fact be successful.

SPECIFIC SECTORS

Insurance

Evidence of discrimination in insurance services

There has been extensive evidence of direct and indirect age discrimination in insurance services, mostly brought together by Age Concern England and Help the Aged. In particular, they produced a major report,[96] in which a wide range of experiences of age discrimination in motor and travel insurance and car hire were highlighted.

It is instructive to pick out some of the quotes used in the Help The Aged report and also the earlier Age Concern England/Help The Aged report. In relation to motor insurance, they report the following:

> "When I turned 75, the premium went up considerably. I asked about it and they said it was because of my age, but I haven't had an accident and I've got a full 60% no claims." (Man, 75, London)
>
> "My husband's premium has shot up by £400. Our car was vandalised in the park and we've lost our no claims bonus because it wasn't protected. I don't know if it's because my husband is over 80, they didn't explain the reason for the increase and we didn't ask. He opened the envelope and said "oh my God!"" (Woman, 71, south)

Another takes the view that:

> "There is a higher risk of insuring older people but this risk should be reflected in the cost, as it is for young male drivers.

[96] Help the Aged *Insurance and Age: Exploring behaviour, attitudes and discrimination*, (March 2007). Available at http://www.helptheaged.org.uk/en-gb/WhatWeDo/Publications/wd_publicat_280206_2.htm

> Higher risk should not result in the loss of services."

In relation to travel insurance, they report:

> "We used to get family cover for £50, then, as soon as my husband turned 65, it went up to £130. From one day to the other he's no less fit!" (Woman, 65, south)
>
> "I can't understand why they vary so much. If one company can charge you £111, why does another want £260?" (Man, south)

One person writes:

> "I should like to know the proportion of over 70 year old travellers who make insurance claims compared to the under 70s."

In relation to car hire, they report:

> "Most car hire companies are unable to rent cars to the over 70's, certainly over 75's, even if the driver has a flawless record of 50 years or more. This is because they allege that they cannot obtain insurance cover, although this is available to the wildest young drivers in their 20's … The consequence is that 'oldies' are obliged to acquire cars for themselves."

This anecdotal evidence is backed up by statistics:

> "Just 2% of 30 to 49 year-olds felt discriminated against when trying to obtain insurance, compared with 31% of those aged 80+.
>
> 29% of the attempts made by those aged 75+ failed to obtain a quotation for insurance, compared with just 3% for those aged 30-49."
>
> "Motor/travel insurance and car hire: 19% of all quotation attempts for cover/hire made by those aged 65+ were unsuccessful, compared with 3% made by those aged 30-49
>
> Overall, those aged 75+ were nine times more likely to be refused cover than those aged 30-49

> One in five older people were unsuccessful in getting quotations."
>
> "Motor insurance: 10% of people over 75 were turned down for motor insurance on grounds of their age."
>
> "Travel insurance: Those aged 75+ are five times more likely to have had cover denied than those aged 30-49, while those aged 65-74 are almost three times more likely
>
> A fifth of travellers over 75 years were either refused travel insurance outright or had restrictions imposed on cover, compared to 4% of 30 to 49 year olds
>
> The best travel insurance deals are online; yet only 25% of those aged 65 years and over have Internet access (disadvantage on grounds of age)."

Therefore, the issues of age discrimination which have been encountered in the Republic of Ireland also occur in the UK, together with an interesting example of indirect discrimination associated with accessibility, namely that many cheaper products are only available online and so less accessible to older people.

Consultants' web-based investigation into travel insurance

The Consultants undertook a small-scale web-based investigation into travel insurance quotes.[97] First, they compared quotes from intune,[98] Help The Aged's insurance business and InsureforAll,[99] a specialist travel insurance company for the 65s and over. intune consistently offered £34.51 for a 14-day single trip and £60.75 for an annual policy across all the age ranges. InsureforAll offered single trip insurance at £18.49 and annual insurance at £63.49 for 65-69 year olds. For 70-74 year olds, the respective quotes were £25.49 and £76.49, £36.51 single trip insurance for 75-79 year olds and £37.01 for 80-84 year olds but no quotes for annual insurance for these latter two age groups.

[97] The relevant websites were accessed on 25 April 2008.
[98] http://www.helptheaged.org.uk/en-gb/OnlineShop/Insurance/Travel/TravelHealth/
[99] http://www.insureforall.com/

A second comparison made use of moneymarket.com.[100] Quotes were sought for an annual travel insurance policy on the basis of a person born on 1 July 1933. Only 29 policies were available out of 450. The cheapest was £46.74 and the most expensive £210.90. It is interesting that the five cheapest were 'Moneysupermarket exclusives', i.e. suggesting that they were restricted to online purchase. The cheapest quote outside of these five was at £57.89. On the basis of a person born on 1 July 1928, only 14 quotes were available, the cheapest being £94.95 and again £210.90 being the most expensive.

This small-scale survey backs up the Age Concern England/Help The Aged findings, namely that there are substantial barriers to obtaining, in this case, travel insurance at all over certain ages. Secondly, that there are substantial differentials within providers depending on age and even more substantial differences between providers for those in the same age group. Thirdly, that there appears to be a bias towards cheaper online quotes.

The Consultants had already seen that the actuarial data exception in the Equal Status Act 2000 in the Republic of Ireland has effectively dealt with absolute age bars in both motor and travel insurance. However, the issue of age-based differentials has yet to be tested. Nor has the issue of online quotes been addressed. Nonetheless, the Association of British Insurers, in its 2007 report has sought to make distinctions between the position in the Republic of Ireland and the UK. It is worth quoting Help The Aged's refutation of these distinctions:

"5.2.3 The ABI report states that the Irish experience isn't comparable to the UK. We would respond to their 4 points on this issue as follows:

a) Even if the UK market does offer more availability of cover to its older consumers than Ireland did, there should still be equality of access as of right, and irrespective of numbers
b) Refusals to quote under UK legislative proposals would be extremely unlikely to be lawful; perhaps only where the cost of insuring (based on actual risk) was unquantifiable. Any such refusal would have to be reasonable and based on actuarial (or similar) data upon which it is reasonable to rely

100 http://moneymarket.com/

c) Justification for different treatment under UK legislative proposals would depend on reasonableness and reference to actuarial (or similar) data. Given that the latter is how the insurance industry already assesses risk we do not think that this should be overly burdensome
d) As regards costs v benefits analysis, the DCLG Impact Assessment on proposed legislation estimates that a 0-1% fall in travel and motor insurance premiums for the over 65's would represent savings of up to £16.5 million to older consumers, as well as helping them to maintain their independence and mobility for longer. It also provides that employers may also benefit from a reduced risk of significant increases in group insurance costs resulting from employing older workers, as well as boosting sales for insurance providers and encouraging older people's participation in the consumer market. It goes on to state that the impact on the insurance sector should be "relatively small" (para 4.166). This is because differential premiums based on age would be allowed provided they were referable to actuarial data; already standard practice within the insurance industry. Any fall in premiums would be likely to be recouped by adjusting premiums across the board and would not, according to the Impact Assessment, represent an overall cost to insurance companies. We concur with these findings."

On this basis, it is difficult to deny that age discrimination legislation could be extended to cover insurance services, at least so long as an 'actuarial data' exception was included. The pre-existing exception in the Sex Discrimination (Northern Ireland) Order 1976, in relation to sex discrimination in insurance services, has been amended, through transposition of the Gender Goods and Services Directive 2004, to create greater transparency in the collection of, and reliance upon, relevant actuarial and other statistical data. If existing quotes are already based on such data, the introduction of goods, facilities and services legislation, including an actuarial data exception, should have no effect at all.

To the extent that they are not, age-based barriers to insurance would be removed, as in the Republic of Ireland. So also it would be hoped that the Equality Commission (and the older people's sector non-government organisations) would have the resources to challenge arbitrary differentials in premiums and require justifications for cheaper deals for online quotes.

Association of British Insurers' task force

The Association of British Insurers created a task force to consider age goods, facilities and services discrimination. This resulted in the completion of a report on this subject.[101] Help the Aged has recently responded to this report which appears to question the need for age goods, facilities and services discrimination law while particularly promoting an 'insurance' exception.[102]

Borrowing and Credit

Introduction

There is increasing evidence that issues of credit and consequent debt are a growing problem for older people. It is already clear that that older people in lower socio-economic categories are often lacking in financial capability. There are also serious issues about the criteria for credit which older women often cannot satisfy, due to a lack of adequate pension provision.

For example, the financial services commentator, Paul Lewis, has pointed out that more older people are finding themselves in debt.[103] For example, he states that twice as many over 55s as younger people are likely to consider insolvency, particularly Individual Voluntary Arrangements. He also states that the Consumer Credit Counselling Service has determined that the average debt of clients aged 18 to 24 was £12,790 while the average debt of over 60s was £31,867.

Help The Aged's head of policy has described older people debt as a 'ticking timebomb', in light of a report jointly produced by Help The Aged and Barclays on the rising tide of older peoples' debt.

Research by the Northern Ireland General Consumer Council indicates a disturbing lack of knowledge about pensions amongst

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[101] Association of British Insurers, *The negative impact on elderly people of not including a tailored insurance exemption in age discrimination legislation* (2007).

[102] Help the Aged, *Age and Insurance - The case for and against legislating in this area*, February 2008.

[103] http://www.saga.co.uk/money/paullewisontheweb/debtsandolderpeople.asp

older people. In the age group 50-64, more than 1 in 3 (39%) had limited or no knowledge of pension issues, with a further 24% claiming to have patchy knowledge. Although discrete figures, the statistics on those in the DE socio-economic group[104] are more disturbing. 68% knew little or nothing about pension issues. Given the Financial Services Authority analysis on the lack of financial capability of older people in categories C2, D and E, a picture emerges of the more vulnerable categories of older people turning to various forms of credit, but without the financial history to gain access to more attractive credit facilities.

The consultants established that it is typical for a financial service provider to make inquiries about the ability of a client over the age of 65 to maintain their payments. This is, at first light, direct discrimination but, particularly in the consultants' discussions with the two Financial Ombudsman services, it became apparent that a financial services provider could be guilty of mis-selling if such questions were not asked.

Hypothetically applying suggested age discrimination reforms

Hypothetically applying the suggested age discrimination reforms, so that they would apply to borrowing and credit for older people, would mean that any inquiry by a financial services provider based on a client's age would be directly discriminatory, but might be subject to the objective justification test. In the circumstances, a financial services provider could argue successfully that they were pursuing a legitimate aim in asking such a question and, given the UK State retirement age of 65, it could be considered a proportionate means to use 65 as an age in relation to which such a question should be asked.

Lack of access to financial products means that some groups gravitate towards less regulated sources

The difficulty is, however, that as there is no present protection in the UK, some older people, particularly women and lower socio-economic groups, are often precluded from more regulated credit products and are forced to gravitate towards less regulated

[104] DE includes: working class, unemployed, state pensioners.

sources.[105]

It has already been seen that the financial regulation of mis-selling is particularly conscious of the age of the customer. The paradox is that threats of mis-selling may deter more respected financial services providers from granting credit to some older people, thereby driving them into the arms of less scrupulous providers, most of whom are not covered by financial regulation legislation.

Some older people have experienced too easy access to credit

The web page of the BBC Radio 4's Moneybox programme, on the subject 'Have Your Say: Elderly debt' provided valuable examples.[106] There was frequent recrimination at credit card companies and banks dispensing loans to older people without any consideration of their ability to repay debts.[107] On the other hand, some contributions reflected an emergent 'spend it before you go' mentality which may create degrees of stress and worry amongst some older people but will also engender disappointment amongst the next generation when they discover that their assumed inheritance longer exists.

From a discrimination law perspective, a number of issues arise. First, any examples of blatant discrimination against older people should be contested. For example, some more formulistic financial services providers will not grant loans to people over a particular age irrespective of the security which they can provide. Secondly, an audit of both directly and indirectly discriminatory conditions and sales methods is necessary to identify whether they are justified. The obvious difficulty is that some of the abuses will occur in the unregulated part of the market and that civil proceedings under discrimination law are unlikely to deter the more unscrupulous operators.

[105] The consultants have not researched the extent to which credit card companies have age limits. They have noted that Virgin Money (http://uk.virginmoney.com/credit-card-v3/faq.html) indicated that age is a factor in whether a consumer will gain a credit card.
[106] http://news.bbc.co.uk/1/hi/programmes/moneybox/default.stm (accessed on 6 June 2008).
[107] These comments may need revision with banks taking stricter control of lending criteria with the global financial crisis

Banking

Reluctance of some people to use bank accounts

It was the view of the non-government organisations' information services interviewed for this paper, as well as the surveys and other reports studied, that older people are on the whole most comfortable with managing their money using cash.

The Government, through the Financial Inclusion Taskforce, has set itself the goal of halving the number of adults in UK households without a bank account.[108] Not having a bank account is likely to become increasingly problematic for many people, as more and more businesses demand, or at least give preference to, electronic, card-based, direct debit etc, transactions, and sometimes penalise a cash transaction with higher fees. The Financial Inclusion Taskforce "recognises that operating without a bank account can lead to significant costs for individuals and families."[109] Even with a bank account, there is increasing reluctance by many businesses to accept cheque payments, as witnessed by several of the larger supermarkets and other retailers in recent months.

The Financial Inclusion Taskforce's formal terms of reference in this context are to report to HM Treasury on the progress towards this goal and to monitor provision of banking services to the financially excluded, including access. Baseline data for measuring progress is via the Family Resources Survey, which found in 2002 – 2003, that 2.8 million adults in 1.8 million households (UK wide) did not have access to a bank account.

The Taskforce's Second Annual Report on Progress Towards the Shared Goal for Banking,[110] concentrated on the groups identified in "Promoting Financial Inclusion" which include low-income households, many of which are likely to include older people. It also includes some analysis by age. The report showed that:

> from 2002-03 to 2005-06 there was a general shift in concentration of unbanked households away from younger

[108] http://www.financialinclusion-taskforce.org.uk/PDFs/taskforce_evidence_to_tsc.pdf
[109] http://www.financialinclusion-taskforce.org.uk/principles.htm
[110] Financial Inclusion Taskforce. *Second Annual Report on Progress Towards the Shared Goal for Banking* (September 2007), available at http://www.financialinclusion-taskforce.org.uk/PDFs/second_annual_taskforce_banking_report_sept_2007.pdf

households (those in which the reference person was under 34) and towards older households (with a reference person above age 65). The impact of this effect was most marked at the top end (80+) of the age scale. This finding is consistent with much of the research into financial exclusion, including that conducted for the Taskforce. This research has repeatedly found that older people, particularly those who live alone, are more likely to be excluded from financial services, and that this is likely to be a result of a preference for managing in cash.

However, while the relative contribution to the population of unbanked households rose for all age groups from 65-69 upwards, these groups also displayed a small but consistent reduction in absolute levels of unbanked status of around 1-2%, suggesting that some older people are prepared to take up banking services."[111]

Increasing banking take-up

The National Consumer Council[112] report *Three steps to inclusive banking*,[113] though again not focusing specifically on older people, and based on Great Britain survey material, does highlight some of the existing barriers especially for low-income consumers. These included:

- a lack of knowledge and experience of banking
- a fear that they will not get help from staff
- a lack of standard ID (this was mentioned also by the information services; in fact the British Bankers' Association has an agreed list of alternative documents but this is apparently not always known by bank officials)
- a belief that they will not be able to open an account because their income is too low
- negative experiences of friends and family with the banking system

[111] Paragraphs 27-28
[112] On 1st October 2008 the Welsh, Scottish and National Consumer Councils merged with Postwatch and Energywatch to form Consumer Focus, the new champion for consumers' interests in England, Scotland, Wales and, for post, Northern Ireland.
[113] National Consumer Council *Three steps to inclusive banking: compliance, standardisation and innovation*, summary of NCC research into basis bank accounts (November 2006)

The National Consumer Council made the following recommendations to banks:

- A consumer-led, rather than cost-focused, approach…a simple face-to-face [the issue raised also by information services] explanation of …how the account works
- Getting an account should be "as quick and hassle-free as possible…Joining up head office policy and branch practice…"
- Visibility, flexibility and control.

Voluntary Banking Code of Practice

Banks, along with building societies and other financial institutions offering banking services, may sign up to a voluntary Code of Practice, the compliance with which is monitored by the Banking Code Standards Board, a non-statutory body. The Code is reviewed every two to three years by an independent reviewer. The 2005 Code of Practice was reviewed by Mike Young, a banking consultant, and a new Code of Practice was issued at the end of March 2008.[114] Mr Young's recommendations had included: "The guidance should be amended to ban credit rejection simply on the grounds of reaching a certain age." The banks did not accept this recommendation, and the Code and the British Bankers' Association have been criticised by, among others, Help the Aged, Age Concern and Saga.

A British Bankers' Association statement issued in response to an enquiry from the authors of this paper about the reasons for not including the anti-discrimination commitment stated:

> The decision to grant credit must always include assessment of risk i.e. the ability of the customer to pay back the money borrowed. Age is a key indicator in assessing this risk. To prohibit the use of age in credit assessment would leave the industry open to the possibility of irresponsible lending. For instance, it would not be responsible to give a 92 year old customer an unsecured 10 year loan."[115]

[114] British Bankers' Association Enterprises *The Banking Code: setting standards for banks, building societies and other banking service providers*, March 2008.
[115] Email from British Bankers' Association 22 April 2008.

It might be noted in riposte that the independent reviewer had not recommended that people of any age be granted credit without assessment, but that a refusal should not be simply on the grounds of the customer's age.

Under the Code, banks undertake to inform customers about changes in interest rates, by updating the information on the phone helplines and on websites – precisely the sources of information that older people either find frustrating and confusing, in the case of the former, and are less likely to be accessing regularly or at all, in the case of the latter.

Other recommendations made by organisations responding to the Banking Code of Practice consultation included:

- more active outreach to older customers
- a commitment to make products and services more generally accessible and usable by older people and people with disabilities
- a commitment to consulting with older and disabled customers (for example, on the location of branches)
- greater promotion of the basic bank account (designed for low-income customers and with restricted functions) and an enhancement of the functions it offers

Age Concern postulates the concept of "inclusive design", that is, "designing mainstream services to be used by as wide a range of people as possible. This would address difficulties often experienced by older people in, for example, using telephone banking services."[116]

The non-government organisations' information services interviewed added their own recommendations that:

- Branches could group together and employ a peripatetic official to make house visits when appropriate – again, recognising that face-to-face interactions in a familiar setting are the most effective
- Bank officials should be more prepared to intervene if they see an older customer making unusual or unwise changes in their banking practice

[116] Conversation with Age Concern England 10 March 2008.

Banking practices affecting older people

While there is no banking service which overtly excludes older people, there was a strong sense among information services and studies by age sector organisations that banks did seem to exclude older people in practice.

In banking as in other financial services, there seemed to be two apparently conflicting streams of service. On the one hand, information services told of apparently irresponsible lending to older customers who had not fully understood the implications and then got into real trouble with debt. On the other, people were being refused services on the grounds of their age and customers certainly felt that this was on those grounds alone. There were times when a bank seemed unaware or did not take into consideration the particular circumstances of older customers, and others when they were very inflexible.

An example of the latter was of a banking customer who has given a power of attorney to a relative, but whom the bank nevertheless insisted on seeing the accountholder in person. In this case, a bank official insisted on going outside the bank branch to a car in which the accountholder, an elderly couple were sitting. This might, however, have been explained if the bank official was concerned about the possibility of fraud and financial elder abuse.

Another example given by one of the age-specific information services was the bank's requirement for specific forms of identification (e.g. driving licence or passport), when many older people may have neither. Although there are agreed alternatives, including a birth certificate, these are apparently not always revealed by bank staff.

The individual banks which were interviewed offered one or more savings accounts for customers over a certain age, with preferential interest rates. Banks also offered insurance products, and these follow the terms and conditions of the insurers (see section on Insurance). One bank operating in Northern Ireland made the point:

> "We recognise that some customers are less financially sophisticated than others, and will sometimes require more time to assimilate and consider the information we provide to

> them, and/or require us to further explain the features of a product or service they are interested in."

This bank provided documentation in large print, Braille, and audiotape. The normal customer package document for current accounts provided by this bank is 70 pages long and the consultants estimated the font size to be 8. The bank also provided an alternative to a Chip and Pin card, by allowing customers to use a signature for transactions. It also recognised that older customers "appreciate being able to conduct their banking needs in branches" and claimed "an extensive branch network across Northern Ireland" as well as enabling current account customers [and basic account holders] to use the Post Office network to withdraw cash and check balances." It was not however possible to test how actively these measures were promoted by branch staff.

The individual banks were unwilling to reveal their customer profile by age band for reasons of commercial sensitivity.

Equity release

Although equity release is not a discrete financial sector, being offered by a range of providers, it is a subject that came up early in the consultants' study and was raised by many of the interviewees. The consultants therefore added a short overview of the equity release situation.

Equity release schemes differ, but essentially most of them work by giving the owner of a residential property a loan on the value of their property. Owners receive the loan as cash from a finance company, usually on a monthly basis, but sometimes as a lump sum, and continue to live in their home. The company that loans the money will recover it either by selling the property after the owner's death or if they sell their property, for example to move into a care home.

Equity release is sometimes seen by older people, and marketed by finance companies, as an effective way of dealing with the pressures of a lack of regular income by retired people. Financial advisers and information services, however, have found that it can bring significant problems, may not in fact answer the problem, and can affect future tax and benefits.

The idea of equity release is well known. The implications, however, are less clear to many older people. The financial advice givers that the consultants spoke to, the regulators, and the independent financial advisers, all stressed the importance of looking at other ways of meeting financial needs before going for equity release. This is because:

- the schemes are complex and there were over 40 different plans, covering variations on the basic two options of home reversion schemes and lifetime mortgages on the market[117]
- they can be expensive and inflexible if one's circumstances change
- they can affect tax status and current or future entitlement to state benefits

An independent financial adviser who was interviewed spoke of older people coming to him "broke and stuck". Age-specific information givers also spoke of people being "at their wits end" and believing that equity release was the only way of their realising some cash.

Many older people are, of course, extremely attached to their own homes and reluctant to consider selling up. It was noticeable that the advice givers and independent financial advisers were quite sceptical and wary of equity release schemes, and all spoke of advising clients on alternatives to it, such as checking for eligibility for benefits, downsizing their home, getting an overdraft or bank loan, or taking in a lodger etc.

Equity release schemes have been regulated since mortgage regulation was brought in (October 2004), but in May 2005 the Financial Services Authority announced that:

> "customers are not being properly advised on equity release…more than 70% of advisers are not gathering enough information about their customers before offering them advice on equity release."

More than 60% of the advisers subject to a Financial Services

[117] Article by Jane Baker "*Why you should avoid equity release*" 25 September 2007, according to the money website www.fool.co.uk

Authority “mystery shopper” exercise had not explained the downsides of equity release. Only the method of lifetime mortgages was tested, as only it was under Financial Services Authority regulation, so home reversion schemes were not included. The Financial Services Authority’s annual report for 2006/07 reported that further work in this area “found that problems remained” and warned firms that their advice must meet Financial Services Authority requirements. The Financial Services Authority updated its consumer factsheet “*Raising money from your home*”, and Saga (who act as brokers in this area), Help The Aged and Age Concern also have detailed information leaflets and online information.

Relationships with relevant bodies

Relationships with advice giving agencies

An enduring, rather than an emerging theme from this discussion, and also from experience in the Republic of Ireland, is that a rights-based approach to age discrimination requires proactive strategies to provide accessibility for the most vulnerable members of groups protected by equality law. For example, the experience of the Equality Authority in the Republic of Ireland is that age limits have been successfully challenged in both motor and travel insurance. However the more opaque issue of age-related differentials in insurance has yet to be litigated upon.

So also the financial capability work of the Financial Services Authority and the Financial Ombudsman Service indicates that the most vulnerable are the most difficult to reach.

In anticipation of gaining remit over age-related anti-discrimination law with respect to goods, facilities and services, the Equality Commission may wish to consider developing further its existing relationships with the older people’s sector in Northern Ireland, with a view to identifying potential cases in relation to financial services. Contact could also be maintained with the advice sector. Indeed, the success of any goods, facilities and services legislation would be encouraged by identification of potential cases under the existing Employment Equality (Age) Regulations (Northern Ireland) 2006.

Relationships with financial regulators and the financial sector

The Equality Commission should also consider developing contact with the Partnership Development team at the Financial Services Authority, particularly those working in the Northern Ireland Consumer Council on the Financial Capability Partnership, and also those in the Financial Ombudsman Service working on financial capability and financial inclusion across the UK. This will enable the Commission to play its part in a growing diversity agenda in both institutions. All the existing goods, facilities and services regimes cover financial services. There are therefore significant equality issues affecting women, disabled people and ethnic minorities. As the Financial Services Authority and Financial Ombudsman Service are UK-wide institutions, partnership would be necessary with the Equality and Human Rights Commission. However it is important that discrimination issues are given significant weight and not compartmentalised as a separate issue unconnected with the fairness of consumer transactions.

It does not appear that the Financial Services Authority and the Financial Ombudsman Service are governed by the statutory equality duties in Great Britain.[118] The Financial Services Authority and the Financial Ombudsman Service are not designated public authorities under section 75 of the Northern Ireland Act 1998. Nonetheless, they deal with various elements of ‘unfairness’ which may involve illegality on other grounds, e.g. contravention of the Unfair Contracts Terms Act 1977. It is open to argument that the two equality bodies should engage with the financial regulators in order to explore the mainstreaming of equality into their work, given that financial services are already covered by all of the equality regimes, with the exception of age. Indeed, the Financial Services Authority and the Financial Ombudsman Service have the expertise to judge the application of the actuarial data to differentials in insurance premiums and limitations on credit etc.[119]

The Commission could also consider working with the financial services sector itself. It is clearly within the Commission’s remit in relation to all the equality statutes except age. A greater emphasis on goods, facilities and services protection can be seen

[118] See for example Schedule 1A of the Race Relations Act 1976, as amended by the Race Relations Amendment Act 2000.
[119] The Government Equalities Office has announced that the EHRC will conduct an inquiry into the financial services sector (*Framework for a Fairer Future – The Equality Bill*, p 24).

developing, particularly out of disability discrimination law. Full engagement with the financial services sector will bring to light many multi-identity issues which will include older people, particularly older women.

Relationship with the proposed Older People's Commissioner

At present, no firm proposals on the remit and powers of the Older People's Commissioner have emerged. One of the consultants, Barry Fitzpatrick, has produced a paper for Age Concern Northern Ireland and Help The Aged on 'The Possible Remit and Powers of the Independent Older People's Commissioner in Northern Ireland'.[120] The focus of the paper is on the suitability of the Northern Ireland Commissioner for Children and Young People (NICCY) Model for the Older People's Commissioner and the possibility of an enhanced commissioner model, which could build on the NICCY model to ensure that the Older People's Commissioner could take a holistic, strategic approach to the rights and interests of older people.

The extent to which the Older People's Commissioner could become involved in access to financial services would depend on two factors. First, NICCY at present is largely restricted to public sector issues. All of its powers of review and investigation are directed at 'relevant authorities', who are either public bodies or some private bodies to which public functions are contracted out. If the enhanced commissioner model, considered in the Older People's Commissioner Report was adopted, the activities of the private and voluntary sectors would be included. Indeed, widespread evidence of the financial abuse of older people strengthens this case. However, if constituted on the present NICCY model, the Older People's Commissioner would have little involvement in issues of financial services for older people.

Secondly, many of NICCY's powers are 'residual' in the sense that NICCY can only act when other bodies are unable or unlikely to do so. The enhanced commissioner model involves removing these residual restrictions on the Older People's Commissioner's work, so that they can act in a strategic, holistic fashion. The argument is made that the Older People's Commissioner would enter into memoranda of understanding with other bodies, such as the

[120] March 2008

Equality Commission and the Northern Ireland Human Rights Commission, to avoid duplication of effort and encourage partnership working.

Therefore, according to the present NICCY model, even if financial services came within the remit of the Older People's Commissioner, it could only act where the Commission was unable or unlikely to do so. This, in any event, ought to require a Memorandum of Understanding between the two bodies but the enhanced commissioner model would pose no threat to the Commission as a memorandum of understanding would, in any event, be required to prevent duplication of effort and to ensure harmonisation of priorities.

CONCLUSIONS AND RECOMMENDATIONS

Legislative protection for older people

The consultants found numerous examples of direct and indirect age discrimination across the scope of financial services. Some are blatant in the sense that services, particularly insurance services, are unavailable from a particular age. There is a strict law of diminishing returns across the full scope of travel insurance providers. A slightly less blatant form of direct age discrimination concerns differentials between age groups, for example in insurance premiums. In travel insurance, premiums rise significantly with age and some insurers will only provide single-trip insurance, as opposed to an annual policy, over particular ages.

Examples of indirect discrimination have also been encountered. For example, in relation to the most competitive insurance cover offers are those that are only available online. More generally, the inaccessibility of products and services, and a lack of transparency in how they are sold and delivered. It is clear that protection for older people from abuse and discrimination in provision of financial services is essential. The older people's voluntary sector has paid particular attention to these issues in recent years. The HM Treasury Working Group is considering issues surrounding access to financial services. It is therefore clear that the extension of age discrimination legislation to goods, facilities and services, including financial services, has risen significantly up the political and legislative agenda. The absence of goods, facilities and services protection for older people is a gaping hole in the system of equality law in Northern Ireland.

The consultants first recommendation is therefore that the Commission should maintain its pressure to have age discrimination in goods, facilities and services included in single equality legislation. It should also exert its influence both at the European level, in terms of a Framework Goods and Services Directive, and at UK level, particularly in terms of the HM Treasury Working Group, to promote goods, facilities and services age discrimination legislation.[121]

[121] The GEO Equality Bill proposals (paragraph 3.33) include a possible 'actuarial data' exception in relation to age discrimination and financial services.

From a legal perspective, it is presumed that any prohibition on direct discrimination in goods, facilities and services on the grounds of age will be subject to an objective justification test, such as ‘proportionate means of achieving a legitimate aim’. So also any such legislation may involve a ‘genuine service requirement’ as proposed by the Commission for a Single Equality Act. Although the Commission is concerned at the proliferation of exceptions outside the most essential ones, it is arguable that any justification for age-related barriers and differentials will come back to actuarial and other statistical data.

Clearly, in the Republic of Ireland, the focus has been on age barriers in motor and travel insurance. The Equality Authority has successfully pursued cases in the Equality Tribunal and through settlement, on the basis that absolute barriers to financial services will rarely be justified by actuarial data. It will be recalled that the Equal Status Act 2000 provides a general exception across the Act for discrimination in the assessment of risk, if based on “*actuarial or statistical data obtained from a source on which it is reasonable to rely… and is reasonable having regard to the data or other relevant factors.*”[122]

However, although questions still remain over the legality of age-based differentials in the provision of financial services, they have yet to be tested in the Republic of Ireland, although the Equality Tribunal did offer the opinion that they might be justifiable, an approach questioned by the then Motor Insurance Advisory Board, now replaced by the Financial Regulator.

The consultants also noted that the then Motor Insurance Advisory Board sought greater transparency in the collection of actuarial and other statistical data. A second emerging theme in this research, is that a degree of consensus has emerged between the older people’s sector and the insurance industry that any age discrimination legislation should include an actuarial data exception. This transparency is now recognised in the amended ‘insurance’ defence introduced into Article 46 of the Sex Discrimination (Northern Ireland) Order 1976, in light of transposition of the Gender (Goods and Services) Directive (see Appendix 2).

The consultants anticipated that any direct and indirect

[122] Section 5(2)(d)

discrimination provisions, in relation to access to financial services for older people will be subject to an objective justification test and also a genuine service requirement exception. Nonetheless, on grounds of legal certainty, the financial services industry will certainly push for a financial services exception in light of pre-existing exceptions in many of the equality statutes and in light of the negotiation of the Gender (Goods and Services) Directive. In these circumstances, the consultants recommend that the Commission should pursue an 'actuarial factor' exception on the lines of Article 46 of the Sex Discrimination (Northern Ireland) Order 1976, where a similar provision has coped with blatant examples of direct age discrimination in the Republic of Ireland and which the consultants consider to be an adequate basis for a more wide-ranging approach to less blatant discrimination both in Northern Ireland and the Republic of Ireland.

Discrimination in the goods, facilities and services field, including the financial services sector

What emerges from this research is that there are significant issues of inequality affecting those already protected by equality statutes, as well as older people. Indeed, two settlements, reported in 2006-07[123] concern discrimination on the grounds of pregnancy in the provision of financial services. Indeed, older women and older disabled people may be particularly vulnerable to financial abuse. As the Commission is increasingly directing its attention to issues of goods, facilities and services discrimination, it is an appropriate moment for it to examine issues of discrimination and other abuses in financial services across the existing goods, facilities and services regimes, in anticipation of a remit over financial services for older people.

The consultants therefore recommend that the Commission should consider a further audit of issues of discrimination in the provision of financial services, across both the existing statutes and also in relation to older people.

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[123] Commission, *Decisions and Settlements Review 2006-2007.* (http://www.equalityni.org/archive/pdf/DecisionsandSettlements0607(FIN).pdf) Melissa Cowden -v- Halifax Insurance Ireland Ltd and Shivani Robinson -v- Abbey National PLC & CGU Underwriting Ltd involve discrimination in financial products on grounds of pregnancy/maternity.

The role of section 75 of the Northern Ireland Act 1998

Although not pursued in this report, consideration might be given to the role of section 75 of the Northern Ireland Act 1998, in relation to financial services for older people. The statutory equality duty also involves procurement by public authorities. Perhaps public authorities should audit the financial services they receive, to ensure that the products are free from discriminatory conditions and other provisions in relation to all of the section 75 grounds, including age.

Protection against scams and other abuses

The consultants also encountered other abuses against older people but likely also to be perpetrated against a range of vulnerable people who already come within the existing equality regimes.

The consultants therefore recommend that the Commission liaise with the Department of Enterprise, Trade and Investment's Trading Standards team and the Police Service of Northern Ireland, to investigate current protections against scams for vulnerable groups and how they might be increased through legislation, regulation and/or awareness raising.

Relationships with relevant bodies

Discrimination issues involve both transparent and opaque issues. From a rights-based perspective, an enduring theme is that it is the most vulnerable who are the most difficult to reach in order to protect them. It is therefore important that the Commission should foster its existing links with the older people's voluntary sector, in order that potential cases of age discrimination, either in employment or potentially in goods, facilities and services, can be identified. So also, relationships with the advice sector need to be maintained, both to encourage accessibility of advice and so that the Commission's expertise can underpin the sector. The Commission should be able to cooperate closely with the proposed Older People's Commissioner, particularly if they are given a remit over the private sector.

More generally, the Commission needs to ensure that the equality agenda is seen to apply to the provision of financial services in Northern Ireland. These links with the voluntary and advice sectors are invaluable in that regard also, as are links with UK-wide institutions such as the Financial Services Authority and the Financial Ombudsman Service, who are working to diversity agendas but not with an equality perspective. So also the Commission should foster an equality perspective amongst financial service providers themselves.

The Commission always enjoyed strong relationships with the previous equality bodies, the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. In terms of dealing with UK-wide bodies, such as the Financial Services Authority and the Financial Ombudsman Service and also in terms of involvement in UK-wide developments such as the HM Treasury Working Group, the Commission will benefit from working closely with the Equality and Human Rights Commission in Great Britain and also learn from the experiences of the Equality Authority in the Republic of Ireland.

The consultants therefore recommend that the Commission fosters its existing relationships with stakeholders in the voluntary and advice sectors and with the Equality and Human Rights Commission, and develops relationships with financial regulators and financial service providers, so that the equality agenda is mainstreamed in the financial services sector.

The Government is proposing to set up a new money guidance service, based on a major investigation published in March 2008 as the Thoresen Review of Generic Financial Advice. It will be piloted over the next two years.

The consultants recommend that the Commission, perhaps in partnership with the Consumer Council and other Northern Ireland-based stakeholders, contact the HM Treasury to press for some element of this pilot scheme to be carried out in Northern Ireland, and for the scheme as a whole to be carefully monitored to ensure that the particular needs of vulnerable groups, including older people, are fully taken into account.

In relation to financial service providers, the Commission should consider working with the sector on access to financial services for vulnerable groups already covered by the equality statutes but also considering access to the financial services for older people, at least, in the short term, in the context of proposals for legislation.

The consultants recommend that the Commission should meet with representatives of financial service providers, such as the British Bankers Association and the Association of British Insurers to discuss the issues raised in this review, including that of equity release.

Financial capability

A further emerging theme is that the 'financial capability' agenda is extending to include the financial capability of older people. Financial capability means being able to use money, and make financial decisions, responsibly and with confidence and understanding. The Government has charged the Financial Services Authority to deliver a national financial capability strategy. It does not address older people as a discrete group, although some of its initiatives may be expected to help older people among the general population. In Northern Ireland, a 23-member Financial Capability Partnership led by the Consumer Council takes the lead in this field.

The consultants recommend that the Commission makes contact with the Financial Capability Partnership to explore how far it is addressing equality issues and whether or not the Commission could support it in this regard.

Adult literacy

One barrier to financial capability might be low literacy levels. The available statistics on literacy levels in Northern Ireland are now 12 years old, and only included people up to the age of 65. They showed that many more older people were found among the lower levels than among the higher. Current literacy/essential skills initiatives in Northern Ireland are largely targeted at improving employability.

The consultants recommend that the Commission support an investigation of older people's literacy levels, noting that difficulties with reading and numeracy could make it harder for older people to access and use many public and private services, not only those addressed in this paper.

Older people's access to the internet

Another barrier to financial capability and to accessing financial services (including privileged services, e.g. special online savings rates) may be older people's lesser use of the internet. The consultants considered that access to computer and internet facilities for older people should be encouraged within the limits of the Employment Equality (Age) Regulations (Northern Ireland) 2006. This would not only help older people's access to financial services, but also contribute towards the further education sector's promotion of equality of opportunity under its responsibilities under section 75 of the Northern Ireland Act 1998.

The consultants recommend that the Commission liaise with the further education sector and encourage it to offer more targeted courses to help older people become familiar with the internet; and to explore ways of keeping fees for these courses to a minimum for all older people including those who fall outside the current concessionary fee bracket but who are nonetheless on restricted incomes.

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- Age Action: Robin Webster and Gerard Scully
- Age Concern England: Jane Vass, Jacqui Morrissey and James Bridge
- Age Concern Northern Ireland: Tom Cairns, Caryl Williamson and Elaine Campbell
- Banking: Marketing departments of two banks, Belfast and Dublin
- British Bankers Association, Paul Ross
- Castlereagh College, Gerry Whittle
- Consumer Council: Julie Megrath
- Equality Authority: Niall Crawley, Eilis Barry, Cathal Kelly
- Equality Commission for Northern Ireland: Marie Claire Kinney
- Financial Ombudsman Service: Caroline Wells
- Financial Services Authority: Martin Coppack, Partnership Development, Simon Begley and Sarah Hatcher, Consumer Sector, Financial Capability Division

- Financial Services Ombudsman (Ireland): Joe Meade, Ombudsman, Diarmuid Byrne
- Flac: Paul Joyce
- Help the Aged Northern Ireland: Sinead Campbell, Duane Farrell
- An Independent Financial Adviser, Belfast
- NIACAB: Scott Kennerly
- OFMdFM Anti-Poverty Unit: Michael Pollock
- Trading Standards, Kerry McAuley

Appendix 2 - Significant statutory provisions

Article 5 (‘Actuarial factors’) of the Gender Goods and Services Directive 2004

“1. 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 purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits.
2. Notwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums 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 actuarial factor are compiled, published and regularly updated. These Member States shall review their decision five years after 21 December 2007, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission. Member States may defer implementation of the measures necessary to comply with this paragraph until two years after 21 December 2007 at the latest. In that case the Member States concerned shall immediately inform the Commission.”

Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 now provides,
“At the end of Article 46 (insurance etc) (which becomes paragraph (1)) insert—
(2) In the case of discrimination under Article 30, 31 or 32, paragraph (1) applies only in so far as that Article relates to—
(a) an excluded matter, or
(b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into before the appropriate date.
(3) Despite paragraph (2), the treatment is not unlawful under Article 30(1) if—
(a) in the case of discrimination under a contract entered into on or after the appropriate date which relates to differences in premiums and benefits, each of the following conditions is satisfied—
(i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;

(ii) the data referred to in head (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the HM Treasury;

(iii) the differences in treatment are proportionate having regard to the data mentioned in head (i);"

Appendix 3: Financial Ombudsman Service case studies

"**68/02**[124] consumer held liable for disputed debit card transactions
Acting as executor of his late wife's estate, Mr M contacted the bank about a number of disputed cash machine withdrawals that had been made from his late wife's savings account.
The withdrawals, totalling over £6,000, had been made with the card that had been issued on the account. And the transactions had all taken place during the two-month period when Mrs M had been seriously ill in hospital, following a stroke.
Mr and Mrs M's grandson, Mr J, had subsequently been convicted for the theft of the money. Mr J no longer had the money, so it was not possible to recover it from him. And the bank refused to refund Mrs M's account as it considered she must have been '*grossly negligent in her care of the card and PIN*'.

Complaint upheld
Mr M did not dispute that his grandson had made the withdrawals. The circumstances in which Mr J had obtained the card and PIN were distressing and unusual. He had arrived at his grandparents' home shortly after Mrs M had a stroke. He had then stolen the card and PIN notification while Mr M was preoccupied with attending to his wife and waiting for the ambulance to take her to hospital.

The bank said that, under the terms and conditions of the account, Mrs M was liable for the withdrawals if she had failed to act with reasonable care. In its view, by keeping her card together with the PIN notification she had failed to act with reasonable care.
It was reasonable to conclude that Mr J had only discovered the whereabouts of the card and PIN because, over time, he had been able to search through the house while visiting his grandparents.

In all the circumstances, we did not consider Mrs M could fairly be said to have acted with gross negligence. We upheld the complaint and said that Mrs M's estate should be compensated by the bank re-working her account (including interest) as though the disputed withdrawals had never been made."

"67/05[125] bank failed to take prompt action when made aware of suspicious circumstances

[124] *Ombudsman News* Issue 68 (Mar/Apr 08).

Every Friday morning Mrs V, a pensioner in her eighties, withdrew £50 from the cash machine outside her local bank branch. On one particular Friday, she said she had just started to use the cash machine when a smartly-dressed middle-aged man had come up to her. He told her that there was a problem with the machine because it had 'eaten' his card when he had tried to withdraw some cash. He warned her that she ought to cancel her transaction in case the same thing happened to her.

Feeling flustered, Mrs V pressed the 'cancel' button. However, the man told her she had been too late and that the card had already gone. He said that if she dashed into the branch quickly enough, one of the bank staff might be able to open up the machine and get her card out.

Mrs V hurried in to the bank and after queuing up anxiously for several minutes was able to speak to a cashier. She reported exactly what had happened – and how the man had advised her to come in to the bank right away. The cashier told Mrs V that she was not to worry, and that the card would be fine – she would just have to wait a few days for it to be returned to her. Within 15 minutes of Mrs V reporting to the cashier that the machine had 'eaten' the card, someone had made two cash machine withdrawals from her account. The withdrawals – each for £250 – had been made at two different cash machines.

Complaint upheld
In the consultants' opinion, the events that Mrs V reported to the cashier should immediately have aroused suspicions that she had been targeted by a fraudster. The cashier should have recommended that Mrs V's card be 'stopped'. If he had taken prompt action, the card would have been stopped some five minutes before the fraudster made the first withdrawal.

We did not accept the bank's argument that Mrs V had been negligent in her care of the card or PIN and we upheld the complaint. We said the bank should refund Mrs V both of the disputed withdrawals, and pay her a further £250 for the worry and distress caused by its mishandling of the complaint."

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[125] *Ombudsman News Issue 67* (Feb/Mar 08).

Appendix 4 - Financial Services Ombudsman materials

Press release of 18 October 2007, 'Eighty six year old bachelor farmer's €1.4m fortune 'underinvested'

The press release states:-
"An 86 year old bachelor farmer sold his farm for €1.4m; after advice from a bank official he invested €850,000 in two six- year fixed term insurance bonds which, when he died seven months later, were worth €50,000 less than the original investment; the Ombudsman directed that the €50,000 loss be made good to his estate. Though not part of the complaint the Ombudsman noted that another €150,000 was put in a current account and €350,000 in a demand deposit account. The Ombudsman considers that all institutions should, as a matter of routine, review bank accounts of elderly people so that appropriate amounts are held in them and that the lowest or no interest rate, which applied in this particular instance, is not the norm for such investments. He has, since being appointed Ombudsman in May 2005, published eight case studies about the unsuitability of investment products sold to the elderly and other matters affecting the elderly; he is disappointed that the issues are of a recurring nature."

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"The matter of selling inappropriate investment products to elderly people continues to arise and is of concern. It is my stated position (see Annual Report 2006) that there is a particular duty of care required when selling a policy to a person of advanced years. If there were not additional safety procedures in place, the sale of particular policies to a person of advanced years may not be appropriate having regard to that person's advanced age, infirmity or other circumstance. I also appreciate that the Financial Regulator's Consumer Protection Code from July 2007 will bring a greater degree of improvement in this area.

I consider that all institutions should, as a matter of routine, review bank accounts of elderly people so that appropriate amounts are held in them and that the lowest or no interest rate, which applied in this particular instance, is not the norm for such investments. I have since being appointed Ombudsman in May 2005, published eight case studies about the unsuitability of investment products sold to the elderly and other matters affecting the elderly; I am disappointed that the issues are of a recurring nature.

I raised my general concerns on this matter with the Financial Regulator. It informed me that during 2004 and 2005 it asked Providers to conduct a Sales Process Review with regard to investment sales to the elderly and vulnerable customers. While the review identified some areas for potential improvements in Providers' sales practices no systemic issues of mis-selling to elderly customers were identified. The Regulator has encouraged firms to raise standards in this area of their sales practices and is keeping the matter under review."