

should be directed. Other matters should be left to others, such as inflation which was a matter for governments.

Closing the Colloquium, Mr Cohen said that insurers should always try to give value for money. Communication was the key. Clarity and simplicity should be the aim together with a sensible treatment of complaints in which a special mechanism for that purpose would surely help. Protection was necessary but too much had a smothering effect.

Thus ended the business sessions of the Colloquium but it is necessary to add that the delegates also enjoyed some extremely fine hospitality at receptions provided by the Reinsurance Offices Association, Her Majesty's Government and jointly by the Life Offices' Association and the Associated Scottish Life Offices. The informal and formal discussions did not perhaps solve all our consumer problems but they provided many helpful pointers to the way ahead.

SOME THOUGHTS ON THE SEX ACT

by D.J. Walker

(The Writer is the author of "SEX DISCRIMINATION," a simple guide to the complicated provisions of The Sex Discrimination Act, 1975, published by Shaw & Sons Ltd.).

Whilst I understand that Lloyds' latest "off-beat" line is a thriving business insuring wealthy Italians against kidnap risks, I believe I am right in saying that the insurance market has never been more closely involved in sex than actresses' legs (although even that modest approach to eroticism might be sufficient for some of us lesser mortals). I think the time has now arrived when the market will have to take a closer look at the all-pervading subject of the hour.

The authors of the Sex Discrimination Act have very considerably inserted some exclusions for insurance (with, it is believed, some encouragement from insurers) but this is by no means the end of the matter for the insurance market. Nor is the Act limited to such matters as employment and discriminatory training, so that it may safely be

left to the staff administrators. Much thought will have to be given to other aspects of the Act, and the very wide field that it covers.

The first essential point to be grasped is that it is not a "Women's Lib" Act, but a Sex Discrimination Act, and therefore it applies sanctions just as strongly to discrimination in favour of women as to discrimination against them. This is not readily apparent from the Act itself, which throughout takes the man as the standard, or "norm", and provides that unequal treatment of a woman on the grounds of sex is unlawful discrimination, but section 2 is a "looking-glass" section, which asserts that virtually every provision in the Act in favour of a woman applies equally in favour of a man, save for (it hastily adds) references to pregnancy and childbirth.

Even the name finally adopted for the Act does not do it justice, however, as it also prohibits discrimination against married men in favour of single men, and against married women in favour of single women. The so-called "marriage dowry" paid by some companies to single women is an obvious example, and the Act amends the Equal Pay Act to permit arrangements to pay sums on marriage contained in employment contracts existing when the Act was passed to stand.

The prohibition on discrimination against married men and women (which the Act chooses to term "on the ground of marital status") goes beyond the field of employment, despite the wording of section 3, which purports to limit it in that way. A careful reading of section 5 and the definition in section 82 (1) shows that whenever the Act refers to discrimination it includes discrimination on the grounds of "marital status". This has far-reaching implications.

Careful examination of the "small print" shows the exclusion clauses to be limited to "provision in relation to death or retirement" in connection with employment, partners and partnerships, and membership of trade unions; and the "treatment of a person" in connection with an annuity, life assurance policy, accident insurance policy, "or similar matter involving the assessment of risk" if it is by reference to actuarial or other data from a source on which it was reasonable to rely", and "was reasonable

having regard to the data and any other relevant factors". This is good, so far as it goes, but even the most euphemistic broker would hardly describe it as comprehensive cover for the entire market.

One aspect of the Act to which insurance companies will have to give careful consideration is the prohibition on "discriminatory advertisements". The very wide definitions of "advertisement" in section 82 includes television, radio and films, as well as printed advertisements, and is certainly wide enough to cover the pictorial content of the latter. The prohibition is in respect of any advertisement "which indicates, or might reasonably be understood as indicating, an intention to do any act which is or might be unlawful".

It is immaterial that the advertiser had no such intention, that, whatever his intention, he never committed an unlawful act, and even that nobody can be found who in fact understood the advertisement as indicating such an intention. Hence, some of those cosy advertisements, with graphic illustrations, exhorting the hard-pressed male executive to make some provision for the little woman before his business worries ensure him everlasting rest, will have to go, or at least be modified.

A very different, but important, field of an insurance company's operation lies in property, both for investment and as the subject of cover. The Act proscribes discrimination, both in the disposal and letting of any premises, and in the management of premises. It is in this field that discrimination in favour of the single person against the married person of the same sex assumes great importance, not least for those companies which make mortgage advances, since "loans, credit and finance" are subjects covered by section 29 of the Act. "Dispose" is defined in the widest terms, and there is a specific provision which renders it unlawful for a lessor to discriminate by withholding consent for a licence to assign.

Facilities for banking and insurance, and for grants, loans, credit and finance (which alone touch so many aspects of insurers' operations) are, in fact, only a fraction of the

vast area covered by section 29, which makes it unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public, or a section of the public, to discriminate against a person who seeks to obtain or use those goods, facilities or services. Other aspects of the field covered by this section which may impinge upon underwriting or other operations of insurers are access to and use of places resorted to by the public or section of the public (which includes clubs, *pace* Race Relations Board v. Charter; accommodation in hotels, boarding-houses, etc.; facilities for entertainment, recreation and refreshment; transport and travel; and "the services of any profession or trade, or any local or other public authority".

Little imagination is necessary to see that this has implications for professional negligence insurance, especially as there are the most comprehensive provisions for vicarious liability. These render employers liable for the acts of employees, even if they were without the employer's knowledge or approval, principals liable for their agents' acts, even if their authority is to be implied, and everyone liable as a principal if they "knowingly aid another" to discriminate unlawfully.

It is even unlawful to induce, or attempt to induce, a person to contravene the Act by "providing or offering to provide any benefit or subjecting or threatening to subject him to any detriment", directly or "if it is made in such a way that he is likely to hear of it".

Careful thought will show that, in addition, there are implications for products liability insurance, since some manufacturers accompany their products with warranties, guarantees and conditions intended to be passed on with the product to the consumer, and any of these may be worded in a discriminatory manner.

Travel and health insurance may also have to be viewed in the context of the provisions of the Act, as so much of this type of insurance is sold through travel agents who may be guilty of unlawful discrimination in marketing it. If, for example a travel agent offers a package tour for single persons only, accompanied by holiday insurance cover, it is

conceivable that the insurers may be sued for unlawful discrimination as well as the travel agent, especially in view of the provisions relating to vicarious liability, and "knowingly aiding unlawful acts", which I have already mentioned.

Incidentally, the prohibition upon discrimination in the provision of goods, facilities and services does not apply to facilities by way of banking or insurance, etc., "where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Great Britain", unless on and in relation to British ships, aircraft or hovercraft, but there will obviously be instances in products liability insurance, and in goods in transit insurance, when it will be difficult to decide whether the risks arise wholly or mainly outside these shores.

Finally, and I will not attempt to relate this to particular branches of insurance, but content myself with pointing out that it may concern the insurance contract itself, there are a variety of provisions relating to contract terms which infringe the Act, or are in furtherance of unlawful discrimination, ranging from invalidating the offending term (presumably ab initio), and rendering it unenforceable by the person in whose favour it would operate, to making the term unenforceable against the person at whom the discrimination is aimed.

BOOK REVIEWS

'The European Experience in Financing Legal Services' by Werner Pfennigstorf (Research Attorney, American Bar Foundation). Published by the American Bar Foundation, Chicago - \$3.00.

Before reading this book it would be as well to remember the reason why the research was undertaken and hence the book written. The object is to help Americans who are considering and looking for "imaginative new ways of helping citizens meet their legal needs". It does this by evaluating legal expense insurance in Europe but does so through strictly American eyes. This is not meant in any way to be derogatory but an indication of the method of