

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 5, No. 3 September-October 2016



ADAPT
www.adapt.it
UNIVERSITY PRESS

ADAPT *International School of Higher Education in Labour and Industrial Relations*

Scientific Directors

Lauren Appelbaum (USA), Greg Bamber (Australia), Stuart M. Basefsky, (United States), Daria V. Chernyaeva (Russia), Richard Croucher (United Kingdom), Maurizio del Conte (Italy), Tomas Davulis (Lithuania), Tayo Fashoyin (Nigeria), József Hajdu (Hungary), Ann Hodges (USA), Richard Hyman (United Kingdom), Maarten Keune (The Netherlands), Chris Leggett (Australia), Guglielmo Meardi, (United Kingdom), Shinya Ouchi (Japan), Massimo Pilati (Italy), Valeria Pulignano (Belgium), Michael Quinlan (Australia), Juan Raso Delgue (Uruguay), Raúl G. Saco Barrios (Peru), Alfredo Sánchez Castaneda (Mexico), Malcolm Sargeant (United Kingdom), Jean-Michel Servais (Belgium), Silvia Spattini (Italy), Michele Tiraboschi (Italy), Anil Verma (Canada), Stephen A. Woodbury (USA)

Joint Managing Editors

Malcolm Sargeant (Middlesex University, United Kingdom)
Michele Tiraboschi (University of Modena and Reggio Emilia, Italy)

Editorial Board

Lilli Casano (Italy), Francesca Fazio (Italy), Emanuele Ferragina (United Kingdom), Antonio Firinu (Italy), Valentina Franca (Slovenia), Maria Giovannone (Italy), Erica Howard (United Kingdom), Karl Koch (United Kingdom), Lefteris Kretsos (United Kingdom), Attila Kun (Hungary), Felicity Lamm (New Zealand), Cristina Lincaru (Romania), Nikita Lyutov (Russia), Merle Muda (Estonia), Boaz Munga (Kenya), John Opute (UK), Eleonora Peliza (Argentina), Daiva Petrylaite (Lithuania), Ceciel Rayer (The Netherlands), Aidan Regan (Ireland), Marian Rizov (United Kingdom), Salma Slama (Tunisia), Francesca Sperotti (Italy), Araya Mesele Welemariam (Ethiopia), Barbara Winkler (Austria), Machilu Zimba (South Africa)

Language Editor

Pietro Manzella (ADAPT Senior Research Fellow)

Book Review Editor

Chris Leggett (James Cook University, Australia)

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 5, No. 3 September-October 2016

@ 2016 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2016 ADAPT University Press**.

Age Discrimination in Financial Services: The United Kingdom Case

Helga Hejny *

Abstract. This paper asserts there can be no situation where a worker is more vulnerable or in a more precarious position than after suffering a work-related injury or contracting a work-related disease causing incapacity to work. It sets out the British system which imposes liability on employers to pay damages to employees who have suffered injury or disease because of their employer's fault. Acknowledging the faults of this system, it looks at an International Labour Organisation publication which refers to systems in other states and supplements this by further research. It then returns to the ILO paper's criteria for a good system and measures the British system against that criteria. Finally, it questions the fate of those whose incapacity is not work related. This paper considers age discrimination in financial services, focusing on the United Kingdom. It does this by examining the 'Demographic transition Model', population size and Age Dependency Ratio. Acknowledging the negative impact of age discrimination on national economic trends, it looks at the inactivity of older workers and how it has been tackled by the Equality Act 2010 and the Technical Guidance 2016. Therefore, this analysis defines older people both as vulnerable workers and vulnerable customers. Finally, it questions on the conflict in financial services between economic interests, equality and their link to population aging.

Keywords: *Demographic Change, Vulnerable Workers, Financial Services in United Kingdom, Age Discrimination*

* Anglia Ruskin University, email: helga.hejny@anglia.ac.uk.

Introduction: a 'Demographic Transition Model'

In the forthcoming next decades, demographic aging will have a significant impact in the European Union (EU). We are now living the fifth stage of the so-called “epidemiologic model” where birth rates are below the population replacement level.¹ Overall, developed countries, including the European Union, are facing the demographic and economic consequences of the population aging: lower birth and lower mortality rates are modifying the population age structure. Kalache, Barreto and Keller emphasize the implications of this trend, by simply assuming that: “we are growing old before we become rich”.² Thus, the problem is pursuing economic growth with a population aging. The effects of demographic changes in a variety of countries have been studied in 1929 by the American demographer Warren Thompson. He addressed this demographic process developing the ‘Demographic Transition Model’.³ With this Model, he identified three types of countries (A, B, and C) with three different rates of population growth. Group A describes those countries with falling rates of increase and a potential decline of the population. In this category, the countries of Western Europe and those overseas countries were included, which had been settled by immigrants of European origin. In group B the countries with a reduced mortality, reduced fertility and a higher life expectancy for older people are described. In this group, the countries of Eastern and Southern Europe were included. Finally, in group C those countries in which neither birth nor death rates were under control are described. In particular, this study revealed how in industrialized societies, characterized by economic and welfare improvements, the demographic transition is represented by a decrease in death rates, thus an increase of population aging. In other words, Thompson’s model highlights how welfare improvement is possibly inversely proportional to demographic aging. The graph below

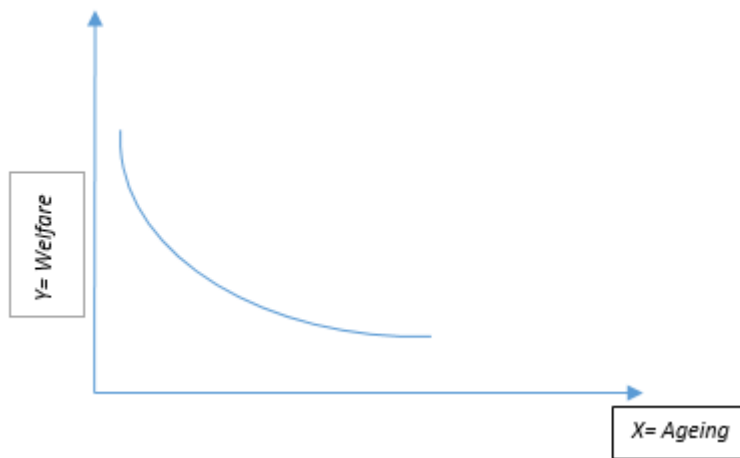
¹ Manning Feinleib, “The Epidemiologic Transition Model: Accomplishments and Challenges”, [2008] AEP Vol. 18, No. 112, pp 865–867

² Kalache Alexandre, Barreto Sandhi Maria, Keller Ingrid, ‘Global Ageing: The Demographic Revolution in All Cultures and Societies’, in Johnson Malcolm (ed.) Age and Ageing, (The Cambridge Handbook of Age and Ageing. Cambridge: Cambridge University Press, 2005) pp. 30–47.

³ Thompson Warren, 'Population', [1929] American Journal of Sociology, Vol. 34, pp. 959-975.

shows this inverse proportion applied to possible fluctuations in ageing and welfare.

Figure 1: Inverse proportion $Y = k/x$ (where k is a constant). $Y = \text{Welfare}$ is inversely proportional to $x = \text{Ageing}$



This inverse proportion trend is further supported by historical facts. A demographic transition followed the ‘baby boom’ phenomenon, a period from 1946 to 1964 characterized by a high fertility rate.⁴ Nowadays, the “baby boom” generation is moving into its 60s, and will soon approach the retirement age. Consequently, the aging of the baby boomers together with a slower population growth are determining a shift in the population age structure. Eurostat data confirms this change: birth rates and higher life expectancy are transforming Europe into a much older population structure. The figure below compares the estimated number of people over 65 in EU Member States and the UK between 2004 and 2014.

⁴ Bongaarts John, “Human population growth and the demographic transition”, [2009] *Philosophical Transactions of the Royal Society: Biological Sciences*, Vol. 364, p.2985–2990

Figure 2: Increase in the share of population aged 65 years or over between 2004 and 2014



(*) Provisional estimate.
 (*) Break in time series in various years between 2004 and 2014.

Source: Eurostat

While the population is getting older, immigration flows are mitigating this phenomenon in western countries such as the UK. Nevertheless, this gives rise to reflections which led Europe to seriously consider the aging phenomenon from a legal and economic perspective. In October 2006, the Commission presented its position on the EU demographic challenges. The first European demography report⁵ (produced under Vladimír Špidla's mandate⁶) identified five key areas for policy action, bringing the attention to older people condition. Among the others, the Commission listed: improving work opportunities for older people; increasing productivity and competitiveness by valuing the contributions of both older and younger employees.⁷

In the employment field, age discrimination has been tackled by the Directive 2000/78/EC on equal treatment in employment and occupation. For the first time at European level, this Directive explicitly prohibits age discrimination at the workplace. Nevertheless, age discrimination outside employment has not been legislatively covered yet. So far, one of the main difficulties encountered by Directive 2000/78/EC is the implementation, and thus the interpretation of Article 6.⁸ Accordingly, this article permits to justify age discrimination under

⁵ European Commission, *Europe's demographic future: Facts and figures on challenges and opportunities*, (European Communities, 2007) p. 7

⁶ Vladimír Špidla: European Commissioner for Employment, Social Affairs and Equal Opportunities from November 2004 to February 2010

⁷ European Commission (n.5), p. 7

⁸ Article 6: Justification of differences of treatment on grounds of age 1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

certain conditions. In particular, it allows both direct and indirect age discrimination when a national legitimate aim is provided and the means chosen to achieve that aim are proportionate and necessary. This justification leads to a series of interpretive problems, especially on what a legitimate aim is and under which ‘appropriate and necessary’ circumstances age can be justified. To guarantee consistency, Member States have often referred to the Court of Justice of the European Union (CJEU) for preliminary rulings.⁹ In this way, the CJEU revealed the how age justification received different interpretations on the basis of the context. The “general principle of non-discrimination” on the grounds of age, found in *Mangold*¹⁰ has been further developed by other case law,¹¹ although there are still cases that show how age justifications are applied especially for state pension age.¹²

Finally, the growing attention given from the European community to the demographic aging problem demonstrates how age discrimination is a concern for the next future. Accordingly, the European Commission worked on a draft Directive for banning age discrimination in the provision of goods and services¹³ extending the scope of the equal treatment policies. The draft Directive was supposed to supplement the existing legal framework, but it has not been adopted yet. Despite that, the Europe 2020¹⁴ strategy is addressing alternative solutions for the

⁹ See for example: *Félix Palacios de la Villa v Cortefiel Servicios SA* [2007] ECR I-8531, Case C-411/05; *Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform* (C-388/07) [2009] E.C.R. I-1569 (CJEU (3rd Chamber)); *Petersen v Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe* [2010] 2 C.M.L.R. 31, C-341/08; *Vital Pérez v Ayuntamiento de Oviedo* [2015] I.R.L.R. 158, (C-416/13)

¹⁰ Case C-144/04 *Mangold v Rüdiger Helm* (2005) ECR I-9981

¹¹ On this point see: *Kücükdeveci v Swedex GmbH & Co KG* [2010] ECR I-365

¹² Case C- 45/09, *Rosenblatt v. Oellerking Gebäudereinigungsges.mBH* [2010] ECR 1-000 p. 373-7

¹³ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC (2008) 2180} {SEC (2008) 2181}, COM/2008/0426 final - CNS 2008/0140. Available online: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008PC0426>> accessed 02.06.2016

¹⁴ Commission (EC), ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ (Communication) COM (2010) 2020 final, 3 March 2010. Available online: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>> accessed 12.01.2014

demographic ageing. This strategy (proposed by the European Commission in 2010) aims to overcome the economic crisis¹⁵ through a better promotion of growth, employment and sustainability of public finance. Therefore, Europe 2020 pursues the aim for which an economic upturn can only occur after a social progress. This is even more evident from the European Commission wording: “competitiveness and solidarity have both been taken into account in building a successful Europe for the future.”¹⁶

Population Size and Age Dependency Ratio

Following the Demographic Transition Model, the European Commission underlines that the Member States can possibly face different demographic aging problems.¹⁷ The more evident variable among countries is their population size. In this way, higher migration, fertility, and life expectancy assumptions can either contribute in determining different aging problems, but also a different set of opportunities. In this way, the population size leads to reconsider the role of the ‘age dependency ratio’ in studying age discrimination effects. Age dependency ratio is defined as the ratio of dependents (people younger than 15 and older than 64) to the working-age population (those aged 15-64). Nowadays in Europe, according to the age dependency ratio for every person aged 65 or over, there are four people of working age (15-64). It is predicted that by 2050 there will be only two people of working age for every person aged 65 and over. In this scenario, it is important to encourage an active role of older people in the economy and to the society.¹⁸ The data below compare the European Union and the United

¹⁵ Višnja Samardžija and Hrvoje Butković, *From the Lisbon Strategy to EUROPE 2020* (Institute for International Relations (IMO), 2010) 312 pp. Available online: <http://www.dubrovnik.hr/HUPG/conference_dubrovnik2013/keydocuments/From%20the%20Lisbon%20Strategy%20to%20Europe%202020.pdf> accessed 10.01.2014

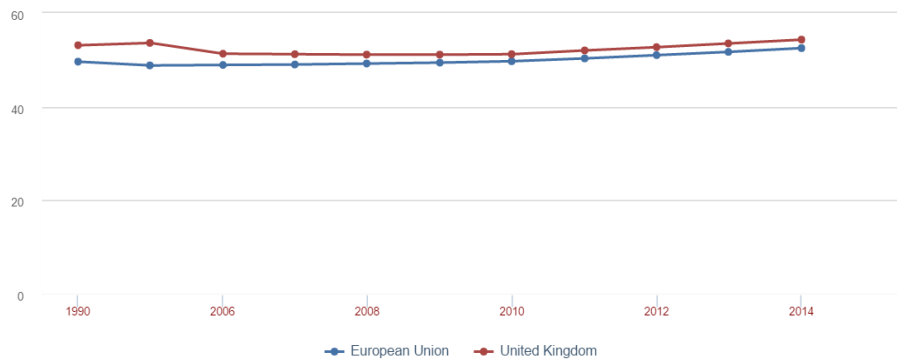
¹⁶ Commission (EC), ‘European Social Policy - A Way Forward For The Union’ (A White Paper) COM(94) 333 final, 27 July 1994. Text available online: <http://europa.eu/documentation/official-docs/white-papers/pdf/social_policy_white_paper_com_94_333_a.pdf> accessed 19.01.2014

¹⁷ Commission Of The European Communities, *Demography Report 2008: Meeting Social Needs in an Ageing Society*, (Commission Staff Working Document, 2008) SEC(2008) 2911

¹⁸ See Council Resolution of February 2007, DOC 6216/1/07.

Kingdom, showing the fluctuation of the portion of dependents per 100 working-age population.

Figure 2 Age dependency ratio (% of working-age population). The European Union – the UK



Source: World Development Indicators (periodicity annual)

While age dependency ratio of the United Kingdom is slightly higher than in the European Union, its average age of population over 65 is lower (see figure 1). Therefore, the highest dependency ratio of the UK indicates that those economically active and the national economy, in general, face a greater burden to support the welfare. The working population is in this way stressed by the fact that older people are outside the labor market, being economically dependent. Finally, while a higher dependency ratio appears alarming, the fact that the number of people over 65 are expected to increase in the next decades requires reconsidering the current age policies. Therefore, the question is whether an active role of older people might rebalance this age dependency ratio in favor of a flourishing economy.

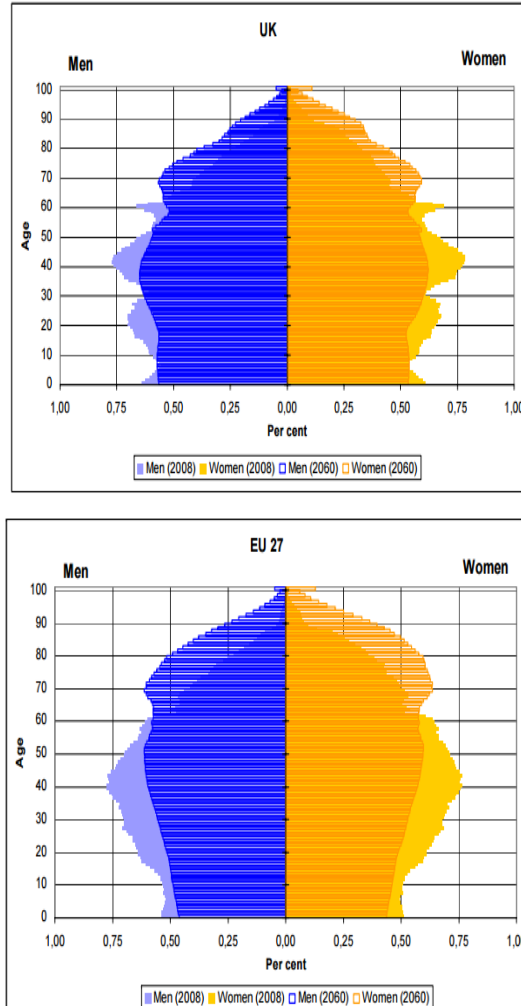
The United Kingdom Case

In the United Kingdom, 10 million people are nowadays over 65. While one-in-six of the UK population is currently aged 65 and over, by 2050 it will be one-in-four. In Europe, it is predicted that by 2060 the population over 60 will heavily shift towards the older age. The figures below project

this population structures both in EU and in the UK, underlining how the great diversity is represented by differences in political and social background. For example, while the United Kingdom has experienced a positive net migration many EU regions (Germany, the Czech Republic, Slovakia, Hungary, Slovenia and adjacent regions, as well as in the Baltic States and Sweden to the north and Greece in the south) assisted to a negative 'natural population change' (i.e. more people have died than have been born).¹⁹ Conversely to the rest of Europe, in the UK the generational gap has been temporarily mitigated by a positive rate of people moving into the country and by fewer people moving out.

¹⁹ European Commission (n.5), p.49

Figure 3



Source: Eurostat, EUROPOP2008 convergence scenario

This statistic shows the fluctuation of the percentage of people's age over the years. In particular, in 2060 the working age population will reduce in favor to a higher number of people in their 70s. Nevertheless, the statistic demonstrates how, compared to the rest of Europe, the UK will rely on a higher number of working age population and a lower number of people in their 80's. However, both in the UK and in EU the amount of population at risk of being economically inactive and possibly socially isolated is predicted to increase. Therefore, the main ground of action has

been firstly individuated in the work capability and discrimination against older workers. Accordingly, job requirements (age limits and ranges or experience requirements), job advertisements, terms of employment, pay and other benefits, opportunities for promotion, training, and transfer might be a ground for direct or indirect age discrimination. Nevertheless, as introduced before, Article 6 of the Directive 2000/78/EC permits to justify direct age discrimination at the workplace. Therefore, it should not be surprising that only 46 percent of people aged 55–64 are in work. This drops to 11 percent of 65–69-year-olds and 5 percent of those aged 70–74.²⁰ This data underline an alarming situation which worsened when we consider the weaknesses of the age dependency ratio measurements. In fact, it can be argued that despite age dependency ratio measures the demographic profile, it does not reveal how many people of working age are actually not working. This shed a light on a bigger problem: the unemployment rate. Having considered the unreliability of the ‘lump of labor fallacy’ theory,²¹ the discrimination against older workers might have a negative implication on the unemployment rate, although Article 6 is often recalled properly for justifying unemployment purposes.²² The inactivity of older workers might be determined by retirement, personal or family reasons and status of ‘discouraged worker’ (i.e. people who, while willing and able to engage in a job, are not seeking work or have ceased to seek work because they believe no suitable job is available). In this way, improving people’s ability to handle periods of financial difficulty can keep them active. Therefore, having access to work as well as financial services is a prerequisite for active workers. This is regulated in the UK by the Equality Act 2010 and recently improved by the technical guidance 2016.

²⁰ Guerzoni Benedetta, Zuleeg Fabian, “Working away at the cost of ageing: the labour market adjusted dependency ratio” [2011], EPC Issue Paper No.64, p. 15

²¹ “The lump of labour fallacy contends that older workers should leave their jobs in favour of a younger workforce.” Hejny Helga, ‘The lump of labour fallacy and youth unemployment: implications of an ageing population’, in *Tackling youth unemployment*, edited by Morley Gunderson and Francesca Fazio, (Cambridge Scholars publishing 2014)

²² On this point see: Case C-388/07 *The Incorporated Trustees of the National Council on Ageing (Age Concern England) V Secretary of State for Business, Enterprise and Regulatory Reform* [2009] IRLR 373 (ECJ) where ECJ confirmed that mandatory retirement is not unlawful;

Equality Act 2010 and the Technical Guidance 2016

In the UK age, discrimination is regulated by the Equality Act 2010, which is part of the current national strategy directed to combat the demographic aging keeping older workers active. More precisely, the Equality Act 2010 is an Act of Parliament of the United Kingdom which implements the Directive 2000/78/EC. It protects people from discrimination, harassment, and victimization in a range of situations. Age is among these protected grounds. In fact, the Equality Act bans age discrimination against employees, job seekers, and trainees. However, accessing financial services is excluded. The Act defines a financial service as banking, credit, insurance, personal pension, investment or payment nature.²³ Thus, all actions or omissions by any financial service provider relating to age thresholds or age bands are justified, victimization or harassment are however an exception.²⁴

At the time of the publication of the Act (2009), the Association of British Insurers (ABI) warned that imposing any restrictions on the use of age by insurers would only mean higher insurance costs and less choice “as insurers would have insufficient information to fully assess the risk, and less choice for consumers”.²⁵ In 2014, the Equality and Human Rights Commission²⁶ consulted on a draft of ‘Age Supplement to the Code of Practice on Services, Public Functions and Associations’.²⁷ The draft was

²³ The Equality Act 2010, Sch. 3, Part 5 para. 20A (3). Mortgages, annuities, current accounts, savings accounts, cheque cashing services, loans, bank overdrafts, credit cards, charge cards, debt advice, debt management services, money services, equity release, fraud and credit scoring used by financial services companies, spread betting services and investment advice all fall within the exception. This is not an exhaustive list. Available online: <<http://www.legislation.gov.uk/ukpga/2010/15/schedule/3>> Accessed 10.06.2016

²⁴ The Equality Act 2010, Sch. 3, Part 5 para. 20A (1)

²⁵ Association of British Insurers (ABI), “Equality Bill must focus on genuine discrimination not on insurance says the ABI” (ABI, 2009). Available online: <<https://www.abi.org.uk/News/News-releases/2009/04/Equality-Bill-must-focus-on-genuine-discrimination-not-on-insurance-says-the-ABI>> accessed 13.06.2016

²⁶ The Equality and Human Rights Commission is Great Britain’s national equality body and has been awarded an ‘A’ status as a National Human Rights Institution (NHRI) by the United Nations. Official website: <<https://www.equalityhumanrights.com/en/about-us/who-we-are>> accessed 10.06.2016

²⁷ Codes of Practice and guidance: Statutory Code of Practice; The non-statutory guidance. Two separate forms that give individuals, businesses, employers and public

submitted to the Government in June 2014 for approval and laid before Parliament to come into force as a Code of Practice. Nowadays, it has been published as this technical guidance to the Equality Act 2010 but it did not come into force yet. It represents a new clear orientation in the field of age discrimination in financial services. Nevertheless, the guidance shows more attention on controls in the assessment of risk²⁸ and on voluntary agreements in case of travel and motor insurance.²⁹

The Financial Conduct Authority (FCA)

The Financial Conduct Authority (FCA) is a non-governmental financial regulatory body in the United Kingdom introduced by the Financial Services Act 2012. It replaced the Financial Services Authority with the Financial Conduct Authority and the Prudential Regulation Authority and created the Financial Policy Committee of the Bank of England. Nowadays, the FCA regulates financial firms providing services to consumers and maintaining the integrity of the UK's financial markets.³⁰ Interestingly, the FCA entirely found by the financial services firms. Therefore, transparency is guaranteed only by the fact that every year the FCA needs to report on their progress to the Treasury and the Parliament. The FCA supervises banks to ensure they treat customers fairly in providing financial services. These include banking and savings accounts, investment products, mortgages, insurance and some pension schemes. Additionally, the FCA is also in charge of researching on consumer behavior in retail markets, aiming to make the latter more competitive so that consumers can get a fair deal when buying financial services products. On contrary, it can be argued that in this scenario 'competitiveness' and

authorities the information they need to understand the Equality Act 2010, exercise their rights and meet their obligations. Statutory Code of Practice available online: <<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>> accessed 10.06.2016

²⁸ The Equality Act 2010 Sch. 3, Part 5 para. 20A (2)

²⁹ Association of British Insurers (ABI), Is your home underinsured? A guide to buildings and contents insurance, Available online: <https://www.abi.org.uk/~/_/media/Files/Documents/Publications/Public/Migrated/Home/Is%20your%20home%20underinsured.pdf>

³⁰ Vina Gonzalo, "U.K. Scraps FSA in Biggest Bank Regulation Overhaul since 1997" [2010] Businessweek (Bloomberg).

‘equal treatment’ can be hardly combined. In fact, the job of financial service providers is properly to target the different characteristics of consumer groups. Linda Woodall, Director of Life Insurance and Financial Advice and Sponsor of Ageing Population Project Financial Conduct Authority, sustains that “regulators and firms need to adapt to make sure that financial services still fit for purpose, and are able to meet the wide range of needs of today’s older consumers”.³¹ On the other hand, financial providers defend the preconception that competitiveness and earning expectations are incompatible with the risks embedded in older customers. Accordingly, a UK Government consultation clarified that differences between customers on the ground of age can continue, although “they will need to show if challenged, that there is a good reason (“objective justification”) for that different treatment”.³²

Financial Services

Financial services are not the financial good itself but “the process of acquiring the financial good”.³³ Accordingly, this process can vary on the basis of the service conditions which are determined by financial providers, who are in turn allowed to differentiate their product on the basis of the assessment of the risk. In this context, it is not unusual that people experience discrimination because of their age. Therefore, using age bands in financial services might result in an inferior service, or having a product restricted, or not being treated in the same way of other age groups when receiving a service. Examples of age discrimination in financial services include car insurance, travel insurance, loans and mortgages. Insurance is a socially desirable financial service as “it aims to provide an affordable means of protecting against potentially large financial loss to the insured, their family (e.g. life insurance), another party (e.g. third party motor insurance) or society as a whole (e.g. medical

³¹ Financial Conduct Authority, *Ageing population and financial services*, (Discussion Paper 16/1, 2016), p. 8

³² Government Equalities Office, “Equality Act 2010: Banning age discrimination in services, public functions and associations Government response to the consultation on exceptions”, [2012], p. 2 available online: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/84987/government-consultation-response.pdf> accessed 10.06.2016

³³ Asmundson (n.11) p. 46

expenses, reducing the burden on the state)".³⁴ Nevertheless, obtaining financial services after a certain age might result more expensive as prices are calculated on the basis of the customer age.³⁵ For example, most companies will not give quotations to people aged 75 or over. Accordingly, in these fields, it is possible to assist at a "financial exclusion" because of age. While existing a broad range of definitions of exclusion, this study adopts the one for which

Financial exclusion refers to a process whereby people encounter difficulties accessing and/or using financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society to which they belong.³⁶

In the UK, when booking a train ticket on-line, the only insurance available is for people under 75 years old. Most policies only go up to 75, although a couple will run until 85, particularly if bought with home insurance. Some of the major insurance companies such as the *Co-op*, *NFU*, *Yorkshire Building Society*, *Quotemehappy* and some *Zurich* policies ban the over 75s. Renewal is always possible as motor insurers do not apply maximum age limits for their existing customers. Nevertheless, an 85-year-old will pay three or four times what a 45-year-old might be charged. On the other hand, other age-friendly insurance companies like *Saga*, *Age UK*, and *RLAS* have no upper age limit and specialize in looking after older policyholders. Age-friendly companies are extremely important especially because the UK financial services regulation encourages to set "interest rates relative to the costs of providing financial services".³⁷ This means that the cost is consequential to the risk, and the assessment risk is often based on the customers' age. The Association of British Insurers (ABI) reinterprets this evaluation considering that using age as a risk

³⁴ Groupe Consultatif Actuariel Européen Position, *Use of age & disability as rating factors in insurance. Why are they used and what would be the implications of restricting their use?* (Paper, 2011), p. 3 available online: <http://actuary.eu/documents/GC_Age_Disability_Underwriting_Paper_051211.pdf> accessed 12.06.2016

³⁵ See for example Barclays' policy: For customers up to and including age 74 an Annual Multi-Trip travel cover is available. Single Trip cover is available for customers up to and including age 79. For travellers aged 80 the bank needs to be contacted directly. Available online <<https://www.barclaystravelinsurance.co.uk>> accessed 12.06.2016

³⁶ European Commission, *Financial service provision and prevention of Financial Exclusion*, (Report, 2008) p. 9

³⁷ Cruickshank Don, 2000. *Competition in UK Banking: A Report to the Chancellor of the Exchequer*. HMSO, London.

factor could even benefit the older consumers. In this way, age bands might help to ensure that the customer pays a fair price for their risk, or they might act as a proxy for other risks such as health. Thus, this will incentivise older people to purchase an appropriate level of insurance.³⁸ In this context, a non-statutory agreement between the Government (represented by the Government Equalities Office and Her Majesty's Treasury), ABI and the British Insurance Brokers' Association (BIBA) aims to protect the interests of both consumers and insurers. Particularly, this wants to be pursued ensuring fair rights of access to information for consumers to improve transparency, insurance for consumers to improve access to the private motor or travel insurance where maximum age limits are used.³⁹

For financial providers working as intermediary redistributing the risk is not an easy practice. Indeed, most of the financial providers agree that financial services perform best in low-interest rate environments. Accordingly, this sector generates revenue from mortgages and loans, which gain value as interest rates drop. Therefore, it is unrealistic to demand a fair redistribution of the risk as financial providers simply increment their income by charging their customers more. But the interest rate is not the only obstacle. NGOs, as *Help the Aged* (Now *Age UK*), denunciate how it is considered a form of discrimination also attempting to sell inappropriate and complicated products rather than products which would suit older people's needs.⁴⁰ For example, the most competitive

³⁸ Association of British Insurers (ABI), *Age and Insurance: Helping older customers find the cover they need* (ABI, 2009). Available online: <https://www.abi.org.uk/~media/Files/Documents/Publications/Public/Migrated/Age%20and%20Insurance/Age%20and%20Insurance%20Helping%20older%20customers%20find%20the%20cover%20they%20need.pdf> accessed 14.06.2016; Oxera, *Agenda: Advancing economics in business. 'Equality' in insurance pricing: the effect of the gender ban* (Oxera, 2013) available online: <http://www.oxera.com/Oxera/media/Oxera/downloads/Agenda/Risk-based-pricing.pdf?ext=.pdf> accessed 14.06.2016

³⁹ HM Government, Association of British Insurers, BIBA, *Transparency and access in motor and travel insurance for older people. An agreement on age and insurance* (Agreement, 2012) available online: <https://www.abi.org.uk/~media/Files/Documents/Publications/Public/Migrated/Travel/Transparency%20and%20access%20in%20motor%20and%20travel%20insurance%20for%20older%20people.pdf>

⁴⁰ Help the Aged, 'The Help the Aged Response. Financial Inclusion Taskforce', [2005] Help the Aged, p.4 Available online: <http://www.ageuk.org.uk/documents/en->

insurance covers are those that are only available online and older people face more difficulties in accessing online sources. Overall, it can be sustained that the problem can be summarized in a conflict of interests: the financial providers are more attracted by low-risk customers as they pursue an economic stability. Consequently, because actuarial statistic determines that higher chronological age links to a higher risk then older people are less desirable customers. Less desirability means also more vulnerability.

Vulnerable Workers vs. Vulnerable Customers

While financial services are crucial to the functioning of the economy, they are also part of the standard life as they permit access to a range of opportunities and freedoms. Nevertheless, the cost or the age limits of the financial product puts part of the population beyond their reach. While a fair market would underpin a reciprocal trust between providers and consumers, this relationship is often driven by an economic rationale. Essentially, financial providers are more likely to follow the market trends lowering the price for who represent a lower risk. Furthermore, the competitiveness among providers is encouraged by a patchy and weak legislative framework, which gives to statistical and actuarial evaluations the power to discriminate because of age. As discussed above, in employment field older workers are better protected by a legislation able to block arbitrary approaches because of age. Therefore, while older people are protected as considered vulnerable workers, older customers are hardly considered vulnerable. In the UK the financial firms and ABI seem to recall the mechanism for which “rule of the market rules the law”.⁴¹In this way, vulnerable customers can possibly experience an underestimation of their financial capability, which consequently means an underestimation of their skills, knowledge, attitudes, and motivations to make good decisions. This is counterproductive for the economy as financial capability combined with an inclusive financial system can lead to

gb/for-professionals/money-and-

benefits/financial_inclusion_taskforce_2005_pro.pdf?dtrk=true> accessed 10.06.2016

⁴¹ Pritchard, Bill, “How the Rule of the Market Rules the Law: the political Economy of WTO Dispute Settlement as Evidenced in the US-Lamb Meat Decision,”[2005] Review of international Political Economy,12(5): 776-803

the best possible financial wellbeing.⁴² The matter has been considered in a work on consumer vulnerability, where, however, the Financial Conduct Authority (FCA) generalized the problem: “every consumer runs the risk of becoming vulnerable due to their personal circumstances, no matter what their age”.⁴³ In this way, the FCA refers to vulnerability more as a personal issue rather than a proper social exclusion, despite they seem to be two sides of the same coin.

The problem of vulnerable customers can be further read through the founded theory of the market segmentation. The business dictionary describes the market segmentation as “the process of defining and subdividing a large homogenous market into clearly identifiable segments having similar needs, wants, or demand characteristics”.⁴⁴ Under these circumstances, different age bands appear to be the consequence of a segmented market. While it is true that customers are grouped by their age, it is likewise true that financial providers rely on such stereotyped distinctions. Interestingly, the market segmentation theory seems to contradict the concept of vulnerability as a personal issue. Of course, insurance companies price their contracts on the basis of actuarial judgments, as these latter ones define the probability of the risks.⁴⁵ However, it cannot be denied that identifiable age segments are used in order to group those people who share a protected characteristic.

In January 2016, the Association of British Insurers (ABI) and the British Insurance Brokers’ Association (BIBA) launched a joint code of good practice for vulnerable customers.⁴⁶ Their aim is to help insurers and insurance brokers recognizing and helping potentially vulnerable

⁴² Money Advice Service ‘Financial Capability Strategy for the UK’ (2015) p11 <<https://www.moneyadvice.org.uk/en/corporate/the-financial-capability-of-the-uk>> accessed 01.06.2016

⁴³ Financial Conduct Authority, *A vulnerable consumer is someone who, due to their personal circumstances, is susceptible to detriment, particularly when a firm is not acting with appropriate levels of care* (Consumer Vulnerability Occasional Paper, 2015)

⁴⁴ Market segmentation, definition from theBusinessdictionary.com <www.businessdictionary.com> accessed 01.06.2016

⁴⁵ Wright Mike, Watkins Trevor, *Marketing Financial Services* (Routledge, 2010), p.147

⁴⁶ ABI and BIBA, *Code of Good Practice regarding support for potentially vulnerable motor and household customers at renewal* (2016) Available online: <https://www.abi.org.uk/~/_/media/Files/Documents/Publications/Public/2016/Vulnerable%20customers/ABI%20BIBA%20Code%20Good%20Practice%20support%20potentially%20vulnerable%20motor%20household%20customers%20renewal.pdf> accessed 01.06.2016

customers, who may need extra support when renewing motor and home insurance policies. The Code is part of the industry's ongoing work to improve consumer outcomes and to help all customers make the most of the competitive motor and home insurance markets at renewal. Furthermore, it supports the ABI's call for the FCA to regulate on improving clarity and transparency at renewal for home and motor insurance customers across all distribution channels. Unfortunately, the adhesion to this code is voluntary.

Can Age Be Relevant and Reliable Information? Assessment of Risk And Age Justification

Generally, because financial service providers use age as a “risk factor”, most of the financial products are designated for young adults and middle aged people. Concretely, it means that prices for motor and travel insurance differ depending on the age of the customer. In this way, older people, but also people under 25 pay more for the same financial services.⁴⁷ Practically, from the perspective of financial providers, the risk factor determines the frequency and the costs of the claims, and the likely risk of default in relation to a bank loan or mortgage.

Conceptually, risk relates to the probability of future events. As people get older there is an increased risk of adverse health conditions, which could affect a person's ability to work and therefore to repay a loan. In addition, actuarial statistics report that an increase of medical treatment being needed is also foreseeable, which increase the cost of travel insurance.⁴⁸ Therefore, targeting specific age groups is justified by the fact that age is considered an information about the customers: it is a filter to determine how risk is assessed. Statistical techniques translate information about the insured person and the insured event into an estimate of the likelihood (and size) of a claim. As a result, prices reflect the expected claims cost. From an economic point of view, such cost-reflective pricing

⁴⁷ Government Equalities Office, *The use of age-based practices in financial services* (Paper, 2009) Oxera, p. i

⁴⁸ Government Equalities Office, *Equality Act 2010 and age discrimination: What do I need to know? A quick start guide for financial services*, (Paper, 2012)

is what is researched by financial providers.⁴⁹ Nevertheless, a further element must be considered.

Overall, age prejudice is directed to negatively predict the older age group performances. This can be easily verified in employment field where performance and productivity are linked to age. However, to explain the age prejudice genesis in financial services, two social theories are recalled: the functional perspective and the terror management. In particular, the functional perspective sustains that the negative attitudes toward older adults are “an ego-protective function for the stereotyping individual”.⁵⁰ The fact that older customers are labeled as ‘risky’ is most commonly interpreted by statistical evidence. Pricing must be based on demonstrable evidence rather than unsubstantiated assumptions or prejudice and statistical studies apparently, satisfy this reliability requirement. Nevertheless, assessing the risk is still in the power of financial providers and cannot be fully delegated to statistics. Nevertheless, the financial service field is driven by a high degree of competitiveness and to be competitive the providers need to drop the price, which occurs only if the risk has been lowered. Therefore, the assessment of risk is weakened by the market expectations. Hence, to guarantee their income, financial providers still rely on age prejudice simply deciding to not cover people over 75 in order to avoid any risk. Finally, this aspect reopens the discussion on the limits for justifying age discrimination.

The European Court of Justice (CJEU) in *the Age Concern case* demonstrates how prohibiting age discrimination is to be applied with a certain rigor in order to protect against the vulnerability. In this case, Age Concern challenged the Employment Equality (Age) Regulations 2006 (now Equality Act 2010) because it allowed the dismissal of an employee aged 65 years or over for reasons of retirement on the basis of the justification allowed by article 6 of Directive 2000/78/EC. Consequently, the CJEU interpreted article 6 in a strict way, restricting the room for age justification. At this point the CJEU added:

Mere generalizations [...] are not enough to show that the aim of that measure is capable of justifying derogation from that principle (non-discrimination principle) and do not constitute evidence on the basis of

⁴⁹ Rees Ray, Wambach Achim, “The Microeconomics of Insurance”, [2008] Foundations and Trends in Microeconomics, v. 4, pp. 1–163

⁵⁰ Nelson Todd, “Ageism: Prejudice Against Our Feared Future Self”, [2005] Journal of Social Issues, Vol. 61, No. 2, p.213

which it could reasonably be considered that the means chosen are suitable for achieving that aim.⁵¹

Finally, article 6 opens to an interpretation of justified age discrimination which must have the prerogative of letting the rights ascertainable. The Member States are asked to determine what ‘appropriate and necessary’ means, although this determination can assume different connotations on the basis of Member States structural differences. It is, however, important that justifications fall within a social policy area and not within mere economic rationales. So far, the interpretation given in employment field is running in the opposite direction of the practice in financial services.

Conclusion

Demographic trends and labor market aspects need to be both considered when assessing the impact of population aging on the national economy. Nowadays, falling rates of increase and a potential population decline are threatening the UK economy. In particular, the aging of the baby boomers together with a slower population growth are determining a shift in the population age structure. Ensuring access to financial services is emphasized by national policies. In fact, an economic upturn is possible only if consequential to social progress. The Directive 2000/78/EC and the Europe 2020 strategy equally demonstrates that the European Union is moving in this direction. So far, age discrimination in financial services has not encountered a strong legislative resistance, not at national or European level. In the UK, this legislative gap is left to a *quasi*-legal instrument such as the ‘Technical Guidance’ and the non-Statutory agreement on financial services. Nevertheless, the UK population size and the age dependency ratio demonstrate how the problem needs to be seriously considered. Conversely, the financial providers raise the concern that possible restrictions on the use of age by insurers would determine higher insurance costs and less choice. This is explained by the fact that insurers would have insufficient information for fully assess the risk determining less choice for consumers. Nevertheless, more control on the assessment of risk is recently required by the Technical Guidance 2016. Consequently, a key factor in adjusting economies to the challenges of an

⁵¹ Ibid-Paragraph 51

aging population is to find mechanisms for managing longevity risk. Evidence suggests that individuals systematically underestimate their life expectancy. Therefore, statistical or actuarial evidence not always reflects the shades of the getting old process.

While age justification in employment field is based on a social policy rationale, accessing financial services is left to a matter of assessment of risk. In this way, the Financial Conduct Authority (FCA) underlines the need for objective justification also in financial services. Furthermore, focusing on single individuals rather than on the age group contradicts the founded theory of the market segmentation. Therefore, the thesis of FCA on vulnerability cannot be accepted. In conclusion, it has been demonstrated how financial service providers are adopting a 'product and supply' strategy instead of a 'customer driven and solution oriented' view. It means that their aim is not to improve the financial capability of their customers, but rather to enhance their competitiveness on the market. Therefore, the success of this competitive strategy can be doubted in the light of the demographic aging which instead requires a stronger legislation on age discrimination in financial services.

ADAPT International Network



ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

