



The Society of Actuaries in Ireland

Briefing Statement

on

Insurance provisions in the Disability Bill 2004

Introduction

The Disability Bill published in September 2004 provides for certain restrictions on insurance underwriting. Specifically, it prohibits insurers from using the results of genetic tests in assessing applications for life and health-related insurance. The bill also provides that the Minister for Justice, Equality and Law Reform may, following consultation with relevant parties, introduce regulations restricting the use of family history information by insurers.

This briefing statement has been prepared by the Society of Actuaries in Ireland as a contribution to debate about the proposed measures.

1. Genetic testing and insurance

1.1 The underwriting process

As part of the normal underwriting process for life and health-related insurance, applicants are asked to disclose any information that could affect the insurer's assessment of the risk.¹ The proposal form usually includes specific questions about the applicant's state of health, past illness and treatment and about whether the applicant's parents or siblings have suffered or died from a list of specified illnesses. In cases where this preliminary information suggests a higher than average risk, the underwriter may ask for a report from the applicant's doctor, or that the applicant undergo a medical examination. This is more likely to occur for higher than average sums assured, which would expose the insurance company to a potentially greater level of loss.

The particular characteristics of the applicant are taken into account by the insurance underwriter in deciding on whether to accept the proposal on standard terms, to impose a premium loading (because of a perceived higher level of risk) or to decline to insure. In practice, most cases, including those where some risk factors are present, will be insured at standard rates. It is generally accepted that around 95% of proposals for life insurance are accepted at standard rates, around 4% are accepted subject to a premium loading, while only around 1% of proposals are declined.

¹ The exception to this is private medical insurance, where there is a legislative requirement for community rating and open enrolment i.e. all applicants are accepted at the same premium rate, regardless of their age, sex or state of health.

1.2 The impact of genetic test results on insurance applications

The result of a genetic test could impact on an insurance application as follows:

- the result might not alter the underwriter's assessment of the risk, based on the other available information
- the result might lead the underwriter to impose a premium loading or to decline to insure
- the result might lead the underwriter not to impose a premium loading which would otherwise have been imposed, or to accept a proposal which would otherwise have been declined (for example, where there is an adverse family history but a genetic test indicates that the applicant does not have a genetic predisposition to the relevant illness).

It is important to emphasise that there are relatively few "monogenic" conditions, where a single gene is known to bear a close relationship to a particular condition and where a genetic test will provide a clear indication one way or the other as to whether someone is likely to develop the condition. More commonly, a genetic test might indicate a greater susceptibility, but the eventual outcome will depend on a combination of factors, which may interact in complex ways. For the foreseeable future, there may be little predictive value in such genetic tests. Further on, increased levels of testing are likely to be linked to improvements in the treatment of, and prognosis for, such conditions.

1.3 Restrictions on the use of genetic tests in other European countries

A number of European countries (e.g. Austria, Belgium, Denmark, France, the Netherlands, Norway) have imposed legislation to prevent insurers from obtaining, or making use of, genetic test results in respect of insurance applicants. In other countries, such as Finland, Germany and Sweden, there are industry codes of practice under which insurers do not have access to genetic test results. In some countries (for example, the Netherlands and Sweden), the prohibition on access to genetic test results applies only to policies with cover below a specified limit.

In the UK, following a report from the House of Commons Science and Technology Select Committee and interim recommendations from the Human Genetics Commission (HGC), the Association of British Insurers negotiated a revised moratorium with the UK Government in late 2001. Until October 2006, UK insurers will continue not to require any genetic tests to be taken and will not expect to receive information about genetic test results in respect of applications for life insurance products with sums assured of less than £500,000, critical illness insurance with sums assured of less than £300,000, with corresponding annual amounts for income protection coverage.

In 1997, the Council of Europe adopted a Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.² Article 11 of the convention prohibits any form of discrimination against a person on grounds of his or her genetic heritage, while Article 12 states that genetic testing may only be carried out for purposes of health care or research.

While Article 12 would mean that applicants for insurance could not be required to take a genetic test, it has also been suggested that Article 11 may prohibit the use of genetic test results for underwriting purposes. However, in relation to other possible areas of discrimination, a distinction has been made in relation to the assessment of risk for insurance purposes, where different treatment can be justified by actuarial or statistical data (e.g. the Irish Equal Status Act 2002, the proposed EU Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services).

1.4 Current industry moratorium

The Irish Insurance Federation's current code of practice³ in relation to genetic testing, provides that applicants will not be required to take a genetic test in order to obtain insurance. Applicants for life assurance cover of up to €381,000 are not required to disclose the results of any genetic test that they have already taken (but applicants who had had a negative test result may choose to disclose this to the insurer). This code of practice is applicable until December 2005. The limit of €381,000 applies to the total amount of life cover taken out with any insurer since 1 May 2001. The moratorium applies in respect of life cover only: genetic test results must be disclosed in relation to applications for critical illness cover or disability cover.

It has been suggested that the potential impact, not only on the individual's own insurability, but on the insurability of close relatives, may be a factor in deterring an individual from taking a genetic test. Under the industry code of practice, applicants are not required to disclose the results of genetic tests that have been taken by relatives, but must disclose any family history of a genetic disease. This distinction may not be entirely clear from the standard wording to be included on insurance application forms, in accordance with the code (*"If this application is for life insurance only...you do not need to tell us the results of any genetic test you have had.... You must however tell us if you have a family history of a genetic disease or are having treatment for, or experiencing symptoms, of a genetic condition..."*).

²<http://conventions.coe.int/treaty/en/treaties/html/164.htm>

³ <http://www.iif.ie/codes.htm#gene>

1.5 Advantages and disadvantages of the Disability Bill provisions

The principal advantages of the Disability Bill provisions are as follows:

- There is public concern about the potential for the use and misuse of genetic information, particularly by insurance companies and by employers. The proposed legislative provision would allay such concerns.
- If the results of genetic tests have to be disclosed to insurers, this may deter individuals from taking genetic tests that may be beneficial to their medical care. The industry moratorium does not solve this problem, as, from the individual's point of view, there is no guarantee that it will still be in place when they need insurance. On the other hand, the proposed legislative prohibition would ensure that there is no disincentive to take a genetic test.
- Life and health-related insurance will be accessible to individuals who have taken a genetic test and have found that they are likely to develop a particular condition.

The principal disadvantages of the proposed legislative provisions are as follows:

- The proposed provision may lead to adverse selection for life and health-related insurance products. Adverse selection is a term used to describe situations where those seeking insurance cover have more information about their true level of risk than the insurer and, because the cost of insurance is therefore lower than the actual risk, they purchase more insurance than they otherwise would have done (or purchase insurance when they otherwise might not have done so at all). The result is that claim costs are greater than might be expected for the risk group, and the cost of insurance will be higher for other policyholders.
- Effectively, this amounts to a cross-subsidy between classes of insured lives, whereas private insurance is usually effected on the basis that those insured pay a premium appropriate to their level of risk (e.g. those who live in houses at risk of subsidence pay a higher premium for their house insurance). Arguably, it is not the role of private markets to administer such cross-subsidies.⁴
- Given the limited number of tests that are currently available, the overall cost of insurance is unlikely to rise significantly in the short term, but the increase could become much more significant as the scope of genetic testing increases. If standard premium rates were to rise significantly, low and medium risk individuals could abstain from purchasing insurance, and this could ultimately make some types of insurance inoperable.

⁴ The Irish private medical insurance market is a notable exception; equally notable, however, is the significant level of supporting regulation required to sustain the community rating, open enrolment model.

- Giving special treatment – in terms of access to private insurance products – to people at risk of genetic conditions is arguably unfair to others who have the same level of extra risk, but arising from a condition that is not genetic, for example raised blood pressure.
- The proposed approach would prevent an individual who has a family history of a particular genetic condition from using a negative test result to obtain access to insurance on terms that would otherwise not be available to him or her.

1.6 Possible variations on the proposed approach

Some possible variations on the proposed approach are as follows:

- As an alternative to the proposed legislative prohibition, Government could, over the course of 2005, negotiate with the insurance industry terms for a revised code of practice to apply over the longer term. In this regard, we note that the terms of the current industry moratorium are much more limited than the current UK moratorium. With a view to ensuring public confidence in the system, consideration could also be given to the introduction of some method of independent enforcement, which might require legislative backing.
- Alternatively, the legislation could provide for regulations to be made, as proposed in relation to family history information. This would arguably be more appropriate, given that there is still a great deal of uncertainty in relation to future developments in genetic testing and their impact on the insurance market. Although there is, we understand, provision in the Bill for review of the legislation at any time in the 10 year period after its enactment, regulations could be adjusted more easily in the light of future developments in this area.
- The legislation could distinguish between an insurance applicant being asked by the insurer to take a genetic test and being asked for the results of any genetic test that he or she has previously taken. A complete prohibition on the former may be considered appropriate. On the other hand, it would seem appropriate to allow insurers to access the results of genetic tests that have previously been taken by the applicant in relation to policies with high sums assured, where the risk of adverse selection is particularly high. A distinction could also be made between positive and negative test results, so that an applicant could disclose any favourable results from a genetic test when applying for insurance.

2. Family history information

In addition to the provision relating to genetic information, the Disability Bill includes a provision which would enable the Minister for Justice, Equality and Law Reform to make regulations in relation to the use of family history information for the purpose of insurance underwriting. There is provision for a consultation process in relation to the making of such regulations, and the Society would welcome the opportunity to participate in this process.

The position in relation to family history information is rather different to genetic testing. Like the results of a genetic test, information about an insurance applicant's family history may impact on the insurer's decision as to whether to accept the applicant on standard terms, to apply a premium loading, or to decline to insure. Unlike genetic testing, however, the use of family history is a well-established part of the insurance underwriting process - in keeping with the principle that the insurer and the applicant should have equal information. Family history is also relevant to a much larger number of insurance applications than is the case with genetic testing (since it is used as an indicator for potential risk for many of the more common serious conditions, such as coronary heart disease and cancers). The impact of restrictions on the use of family history information could therefore be much more significant than for genetic testing.

Whilst family history information is to some extent a proxy for genetic information, it is not uniquely genetic in nature, as other determinants, including lifestyle factors such as diet, will also have contributed to family history.

If the use of family history information is restricted, this would improve access to insurance for those with an adverse family history, but would lead to an increase in the cost of insurance for other policyholders without an adverse family history.

If insurers were prohibited from using family history information, certain insurance products – for example, critical illness insurance – might no longer be viable, given the significant scope for adverse selection on the part of applicants who are aware from their family history that they have a higher risk of developing a particular condition.

Moreover, as previously noted in relation to genetic testing, giving special treatment – in terms of access to private insurance products - to people who carry an extra risk because of an adverse family history is arguably unfair to others who have the same level of extra risk because of their personal medical history.

The insurance industry will naturally seek to protect its traditional “freedom to underwrite”, while various interest groups will naturally seek restrictions. In considering possible regulatory measures, the impact on the overall public interest – in terms of the range and cost of available life and health-related insurance products - warrants detailed assessment.

3. Implications for insurers transacting cross-border business

The scope of the draft provisions in relation to genetic testing and family history information does not seem to be restricted to insurance policies taken out by Irish residents (unless this is covered in some way by the relevant sections of the Data Protection Acts). Where insurers based in Ireland write business in other markets, there will be potential conflicts with local legislation and market practice if the scope of the legislation is not limited to policies effected by Irish residents. On the other hand, the legislation should apply to insurance policies taken out by Irish residents with insurers based outside Ireland.

4. Insurance as a social good

The proposed legislative measures in relation to genetic tests results and family history information need to be considered in the context of a broader debate about:

- access to life assurance and health-related insurance for those with higher than average risk profiles (not just those with a genetic condition or an adverse family history)
- the extent to which such insurance constitutes a “social good”, to which access needs to be ensured, and
- whether social policy objectives in relation to access to insurance can be achieved by constraining the private insurance market.

In general, societal sharing of risk is achieved through various sorts of social insurance programmes, which operate on the basis of solidarity across generations and across the whole community, whereas private insurance operates on the principle of mutuality i.e. the insurer measures the risk that an individual brings to the insurance fund and charges a premium which matches that risk as closely as possible. Constraints on the underwriting of private insurance mean that the cost will be borne by other insured individuals who have entered into their insurance contracts voluntarily, rather than society in general. Other possible solutions, such as market pooling mechanisms, could potentially be considered.

In this regard, we note the view expressed by the UK Human Genetics Commission in its 2002 report, “Inside Information: Balancing interests in the use of personal genetic data” that *“a reasoned dialogue on a long-term approach to the use of personal genetic information in life and health insurance...needs to be informed by appropriate independent research and analysis. There also needs to be, in our view, a more fundamental debate about the merits of moving towards socially inclusive insurance pooling arrangements which can provide those with an adverse genetic test result with access to affordable insurance.”*