



Public & Regulatory Law Update

December 2008

Risk equalisation: government proposals

Background. Risk equalisation was the method adopted by the State to underpin the system of community rating which applies to the provision of private health insurance. The purpose is to equitably neutralise differences in health insurers' costs that arise due to variations in the health status of their members. Depending on the extent of the variation, risk equalisation may result in cash transfers from insurers with lower risk members to insurers with higher risk members. On 16 July 2008 the Supreme Court ruled that the Government's risk equalisation scheme for health insurance should be set aside (*BUPA Ireland Limited and BUPA Insurance Limited v The Health Insurance Authority, Minister for Health and Children, Ireland and the Attorney General and the Voluntary Health Insurance Board [2008] IESC 42*) (for more detail see the *Public and Regulatory Law Update, October 2008*).

New measures. The Government has decided that the market needs a structural support for community rating. However, it has indicated that this objective cannot be achieved for some time. As a result, on 19 November 2008 the Minister for Health and Children, Mary Harney announced measures to support the cost of health insurance for older people. It involves the following two steps which the Government has described as being an interim, three-year measure to stabilise the health insurance market:

1. Additional tax relief. There will be additional tax relief for health insurance starting for people aged 50 and over and increasing for higher age groups as follows:

- 50-59: €200
- 60-69: €500
- 70-79: €950
- 80+ €1,175

2. Community rating levy. There will be a new community rating levy on health insurance companies in relation to each person they insure as follows: €160 for each adult and €53 for each child (under 18). The levy will apply to all policies from 1 January 2009.

Comment. The implementation of these measures is subject to approval by the European Commission. A formal submission has been made to the Commission. On 28 November 2008 Quinn Healthcare and the VHI announced subscription price rises of 16% and 23% respectively on average from 2009. VHI stated that it is not passing on the cost of the new levy to consumers while Quinn Healthcare said its increases were partially due to the levy.

Public sector reform

On 26 November 2008 the Government launched the Report of the Task Force on the Public Service as part of a comprehensive package on public service reform to try and eliminate the current budget deficit of €4.7 billion by 2011. This also included the Government Statement on Transforming Public Services, the first Report of the Organisational Review Programme, and the 2008 Survey of Civil Service Customers. A new public spending review group is to report by June 2009.

The Task Force Report commits to a detailed review of agencies being completed within 12 months, which will focus on where staff costs can be saved and on the scope for redeployment. It recommends a range of initiatives which should be implemented over the next three years. The actions are focused on:

- Achieving improved performance by organisations and individuals;
- Creating flexibility in deployment of people, assets and other resources;
- Identifying the precise transformation agenda in each sector and engaging and mobilising the necessary actors; and
- Achieving greater efficiency, effectiveness and economy.



Financial Services Ombudsman: recent findings

The Financial Services Ombudsman (Ombudsman) investigates and adjudicates complaints regarding the conduct of regulated financial services providers. He can also make compensation awards up to €250,000 which are binding on both parties subject only to a High Court appeal.

On 25 November 2008 the Ombudsman published details of 21 significant findings made in the insurance area in the July/November 2008 period: 11 were upheld and the other ten rejected. Findings in the banking and other credit institutions area are due to be published in January 2009.

Some of the cases which were upheld were as follows:

- €250,000 unsuitable investment in a geared property fund to be refunded.
- Fall of €13,500 in €100,000 investment after one year merits an award of €3,000.
- Reduction from 50% to 20% in no claims bonus for minor car damage caused by a 70 year old was too harsh: reduced to 5% for one year only.
- Allegation of €35,000 investment bond fraud against a foreign broker merits payment of €25,000 by an Irish insurance company.
- PRSA charging structure and complaint handling by insurance company was highly unsatisfactory: €14,000 compensation and premiums refunded.
- Sale of €20,000 assurance policy did not meet sale guidelines: €5,000 award.
- Permanent health insurance benefit confusion resolved and €91,000 arrears paid.

Some of the cases which were not upheld were as follows:

- Provider was entitled to alter in-patient only medical insurance cover.
- Medical expenses insurance and the pre-existing condition waiting period.
- Investments:
 - ◆ Daughter's €90,000 investment was not made on behalf of 90 year old mother.
 - ◆ SSIA rollover issues.
 - ◆ Proper notification to transfer funds was not given.
 - ◆ Charges applied to investment bond were correct.
 - ◆ Encashment value of policy could not be based on phone value.
- Other private car insurance cover did not extend to commercial vehicles.

Comment. The number of complaints being made to the Ombudsman continues to increase and, as economic conditions continue to deteriorate, it would appear likely that the number of complaints will increase further. As such, it is important that providers of services, which fall within the remit of the Ombudsman, pay particular attention to decisions made by the Ombudsman in order to be better able to anticipate potential issues arising out of existing and/or previous practices and take appropriate corrective or pre-emptive action.

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