

# Editorial

## Pensions Equality Post *Barber*

In May 1990 the European Court of Justice held in the case of *Barber v Guardian Royal Exchange Assurance Group* [1990] 2 All ER 660, that private pension schemes constitute pay within the meaning of Article 119 of the Treaty of Rome, and hence that, under the terms of that Article, employers must make equal pension provisions for their male and female employees. This decision sidestepped the Government's distinctly half-hearted implementation, by way of section 23, Schedule 5 of the Social Security Act 1989, of EEC Directive 86/378, which provides for a measure of sexual equality in occupational pension schemes. The *Barber* decision, and prospective judgments in the same area by the European Court, continue to generate much anxious speculation both among government policy makers and employers.

The economic consequences of full-

blooded pensions equalisation are dauntingly far reaching. At the beginning of December 1991, the Institute of Actuaries published an estimate that companies with pension schemes of more than 100 members that had not so far taken steps to equalise their pension provisions, could face increases in their annual wage bills of around 3 per cent. The implications of this, particularly at a time of economic recession, hardly need spelling out – and some experts think that the Institute's estimate errs on the side of caution. The CBI has talked about a total cost to industry of £50 billion. It could be more. A lot of the concern about the issue and the prospective magnitude of its impact upon British employers has to do with continuing uncertainty about the extent of the retrospectivity of the *Barber* judgment.

In the *Barber* case itself, the Court ostensibly turned its face against retrospection, and decided that the effects of its decision would run only from the date of judgment and would not extend to any prior claims (apart

from ones already actually initiated under national law). But the shadow of retrospection has not been dispelled. As the industrial editor of *The Times* recently pointed out (4 December), this "will be the rub for most companies – especially companies in older industries, which have gone in for extensive labour-shedding."

Pensions equalisation is long overdue; there are legitimate arguments on both sides about retrospection. Test cases in the European Court are probably in the offing to resolve the continuing uncertainty. But it is an uncertainty that arises substantially from the UK Government having dragged its feet, and then having found itself faced by the troublesome prospect of having a decision forced on it by a Court ruling.