

**RECENT FOS & SCT DECISIONS**

# Total disability claim found to be continuous claim

[Link to determination](#)**Facts**

The Complainant submitted a claim for partial disability benefits which was accepted by the Financial Service Provider (FSP). Under the Policy, the Complainant was entitled to partial disability benefits for a maximum of two years (the Maximum Benefit Period) however the Complainant only received benefit payments from the FSP from 7 June 2013 up until the date he returned to work on 13 August 2013. The Complainant maintained that, upon his return to work, he was unable to perform at full capacity due to his illness, and therefore claimed to be eligible for benefit payments for the Maximum Benefit Period.

The Complainant submitted that since he returned to work in August 2013, he was unable to work at full capacity due to his illness and as a result his earnings never approached the level they were in the 2012 financial year or before. The FSP submitted that the Complainant was not entitled to additional partial disability benefits from August 2013 as he had returned to full time employment and was able to perform the usual duties of his regular occupation.

On 4 November 2015, the Complainant submitted a further claim for total disability benefits due to the same illness stated on his previous claim. A dispute arose over whether the total disability claim was a new, recurring or continuous claim and also regarding the date up to which the Complainant should be required to pay premiums.

**Issues**

1. Did the Complainant remain partially disabled after his return to work in August 2013 and was he therefore entitled to partial disability benefits for the Maximum Benefit Period?
2. Was the total disability claim submitted by the Complainant in 2015 a new, recurring or continuous claim?

**Determination**

The Financial Ombudsmen Service (FOS) determined

that the Complainant remained partially disabled under the partial disability claim and was entitled to receive benefits for the Maximum Benefit Period of two years, i.e. up until 6 June 2015. In coming to this conclusion, the FOS held that the medical information provided supported the conclusion that the Complainant remained partially disabled as a result of the same condition or illness under the previous claim from 14 August 2013 until 3 November 2015, despite having returned to work. The FOS did not accept the FSP's submission that the plaintiff had remained in full time employment, performing regular duties from August 2013.

The FOS also held that the FSP had sufficient information from approximately 18 March 2016 to assess that the Complainant was entitled to at least ongoing partial disability benefits from 14 August 2013 to 6 June 2015. The FOS ordered the FSP to pay interest on the benefit payments pursuant to section 57 of the *Insurance Contracts Act 1984* from 18 March 2016 to the date payment was made under the determination.

Although the Complainant lodged his claim for total disability from 4 November 2013, the FOS was persuaded that this was a continuation of the same condition or illness which was the subject of the Complainant's partial disability claim. The FSP was not required, therefore, to accept the Complainant's total disability claim as either a separate or a recurring claim and was liable to pay benefits under the policy for any one illness or injury for a maximum of two years only.

As there was no practical prospect, in the FOS's opinion, of the Complainant obtaining future benefits from the policy caused by any new injury or illness due to the applicants age, health issues and business situation, it was determined that there was no value in the Complainant paying premiums after 6 June 2015. As a result, the FSP was ordered to refund all premiums paid by the Complainant from the expiry of the benefit period of the first claim, that being 6 June 2015.