

**RECENT FOS & SCT DECISIONS**

# Manifestation and disclosure – what and when?

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

In August 2010, the Applicant took out income secure professional cover, including trauma recovery cover and business expense cover with the financial services provider (FSP). The Applicant made a claim under the Policy for both types of cover in April 2016 as a result of 'severe aortic stenosis' which required surgery.

In order to qualify for the benefits, the Applicant was required to meet the definition of 'totally disabled' under the Policy, which required the disability to be 'due to an illness or injury'. There was no dispute that aortic stenosis was not an 'injury'.

'Illness' was defined in the Policy as follows:

'an illness or disease which first manifests itself during the period of the policy unless it was fully disclosed to us and accepted by us as part of the application for cover, or an application to extend, vary or reinstate cover'.

In January 2007, which was prior to the commencement date of the Policy, the Applicant was diagnosed with a bicuspid aortic valve with mild aortic stenosis however no symptoms were present at that time.

The FSP did not assert that the Applicant breached his duty of disclosure under section 21 of the ICA; rather, while the FSP agreed that the severity of the diagnosis manifested itself once the Policy was in force, it denied both claims on the basis that the Applicant's condition did not meet the definition of 'illness' under the policy as it first manifested itself via a routine test in 2007, prior to the period of the Policy, and that this was not 'fully disclosed to' the FSP or accepted by the FSP for the purposes of the definition of 'illness'.

The Applicant's position was that the condition first manifested in late 2015 and early 2016 when he first suffered symptoms that led to him requiring surgery, and was therefore an Illness as defined. He also understood that the FSP had a copy of his file from a previous insurer which contained the diagnostic 2007 echocardiogram, so that he was not required to fully disclose it.

**Issues**

1. When did the aortic stenosis first manifest itself?
2. Was the aortic stenosis fully disclosed to the FSP or accepted by the FSP as part of the Applicant's application for cover so as to have been an Illness, even if it first manifested before commencement?
3. Was the FSP entitled to deny the trauma recovery claim and business expense claim?

**Determination**

The FOS ruled in favour of the FSP.

While the FOS accepted that the Applicant's condition had deteriorated over time resulting in a more severe diagnosis in January 2016, the FOS agreed with the FSP that the Applicant's condition first manifested itself in 2007 when it was diagnosed. As the condition first manifested itself prior to the period of the Policy, it was not an 'Illness' as defined in the Policy unless fully disclosed.

The FOS noted that the Applicant was an endocrinologist, and would have understood the diagnosis and its implications. It also considered that he would have been aware of his disclosure obligations when he applied for the policy. This should have led to the diagnosis of

bicuspid aortic valve and mild aortic stenosis and the 2007 echocardiogram being disclosed. As they were not fully disclosed, and because his condition first manifested before the policy commenced, it was not an illness as defined.

The FOS therefore determined that the FSP was not required to pay the claims.

### **Implications**

The words 'first manifests' were regarded as unambiguous, and so were given their ordinary meaning.

In this case, a condition was found to have 'first manifested itself' when it was diagnosed, even though no symptoms were present at that time.