

RECENT FOS & SCT DECISIONS

Tribunal determines that Insurer and Trustee's decisions to decline claims for TPD and IP benefits were fair and reasonable

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

On 30 September 2011, the Complainant completed an online application for Death and Total and Permanent Disablement (TPD) cover, and income protection (IP). The Trustee wrote to the Complainant on 26 June 2014 to advise her that cover would be cancelled effective 1 August 2014 as her last 'on-time employer contribution' made was for the period ending 27 June 2013. The Complainant ceased work on 31 July 2014 due to ill health. Following this on 9 August 2014, the Complainant was hospitalised after suffering a seizure and was diagnosed with a subarachnoid haemorrhage secondary to a ruptured aneurysm.

The Complainant's son notified the Trustee of the Complainant's claim for TPD and IP cover on 15 August 2014 however the Trustee and Insurer denied the claims on the basis that the Complainant did not hold cover at the time of the seizure on 9 August 2014, as her cover had ceased on 31 July 2014. This was on the basis that on 31 July 2014, the Complainant's superannuation account balance was below \$10,000 and it was more than 13 months from the end of the month for which her last on-time employer contribution was made, in accordance with the policy terms and conditions.

The Complainant submitted that she had cover on the date she ceased work, that being on 31 July 2014, due to unknowingly suffering a ruptured aneurysm arguing that her cover was paid up until 14 August 2014. Alternatively, the Complainant submitted that she had cover up until at least the end of September 2014 as her last on-time employer contribution was received by the Trustee on 8 August 2013, within the prescribed 13 month lapsing period contained in the 'end of cover' provision of the policy.

The Insurer accepted that the Complainant's last day at work was 31 July 2014, however, it did not consider that the medical evidence supported a 'date of disablement' prior to 9 August 2014, or that the Complainant consulted with a medical practitioner prior to this date. Therefore, the Insurer's position was that the Complainant was ineligible to claim a benefit as she was not insured as at the 'date of disablement', according to the policy definition.

Issues

1. Was the decision of the Trustee to cancel the Complainant's life and income protection cover on 31 July 2014 fair and reasonable?
2. Was the decision of the Insurer, with the Trustee's concurrence, to decline the Complainant's claim for IP benefits fair and reasonable?
3. Was the decision of the Insurer, with the Trustee's concurrence, to decline the Complainant's claim for a TPD benefit fair and reasonable?

Determination***What date did cover cease?***

The Tribunal affirmed the decisions of the Trustee and the Insurer.

The key issue was assessing the time at which the Complainant's cover ceased.

The Tribunal held that the last 'on-time employer contribution' must be applied to the period it relates to, not the date which it was received, as specified in the policy.

With respect to the cessation of the IP cover, the Tribunal determined that the last 'on-time employer contribution' that was received on 8 August 2013 related to the period 29 March 2013 to 27 June 2017. As a result, the Tribunal was satisfied that the IP cover ceased thirteen months after the period to which the contribution relates, which was 31 July 2014.

With respect to the TPD cover, the Tribunal held that based on the wording of the policy, the Complainant's cover would end both thirteen months from the end of the month in respect of which an 'on-time employer contribution' was last received and where the balance of the Complainant's superannuation account was less than \$10,000, as at the end of that thirteen month period. The Tribunal was satisfied that the Complainant's superannuation account balance was less than \$10,000 as at 31 July 2014 and for the same reasons as set out above, the TPD cover ceased on 31 July 2014.

The Tribunal, therefore, held that the Trustee had acted fairly and reasonably in cancelling the Complainant's life and IP cover on 31 July 2014.

Decision to decline claim for IP benefits

The Tribunal was satisfied that the Trustee's and Insurer's decisions to decline the Complainant's claim for IP benefits was fair and reasonable. The Policy provided that a 'waiting period' started on the date a medical practitioner examined the Complainant and certified her to be totally and partially disabled (TTD). The Tribunal was satisfied that the Complainant could only have been certified TTD on 9 August 2014 given that she had worked until 31 July 2014 and had not consulted a doctor between 31 July 2014 and 9 August 2014. Furthermore, the Tribunal was satisfied that the 'waiting period' could not have commenced before the cover ended.

Decision to decline claim for TPD benefit

The Tribunal held that the Trustee and Insurer's decision to decline the Complainant's claim for TPD benefits was fair and reasonable. In order to be eligible for a TPD benefit, the Complainant was required to be absent from her employment for 3 months, as a 'result of injury or illness' following the 'date of disablement'. The Tribunal held that the 'date of disablement' was the later of the

date the Complainant ceased work on 31 July 2014 or the date upon which a medical practitioner examined the Complainant in relation to the illness that was the principal cause of the TPD, which was 9 August 2014. The Tribunal was satisfied that the Complainant was not eligible to obtain a TPD benefit under the Policy as her cover was not in effect on 9 August 2014.

The Tribunal also determined that the 'date of disablement' did not commence whilst the Complainant held cover and as a result, she did not satisfy clause 19.5.3 of the policy which provided that where cover has ended and the person becomes TPD, they are still entitled to a benefit provided their date of disablement precedes the date that cover ended.