

**RECENT FOS & SCT DECISIONS**

# Working at reduced capacity and limited medical involvement leads to a decline in TPD Claims

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

On 1 July 1988, the Complainant became a member of a Fund. The Complainant worked as a senior teacher and Head of his Department. On about 1 July 2013, the Complainant made a claim for a TPD benefit under the relevant policy on the basis that he ceased full time employment due to a back injury which he suffered at his workplace in 2006. The Complainant ceased his full time employment in 2011 but continued to work as a casual teacher in a regular casual capacity, at the same workplace at the time of his claim.

The Complainant's claim was declined by both the Insurer and the Trustee on the basis that the Complainant's ongoing employment as a casual teacher precluded him from satisfying the definition of TPD under the policy. The Complainant submitted that his casual employment did not utilise his training, education or experience and that the inclusion of 'any occupation' in the TPD definition of TPD was unreasonable.

**Issue**

1. Whether the decision of the Insurer and Trustee to decline the Complainant's claim for a TPD benefit was fair and reasonable.

**Determination**

In considering the evidence before it, the Tribunal made clear that its role in reviewing the decisions of the Insurer and Trustee under section 37(2)(a) of the *Complaints Act* (the Act) was not to determine what decision it would have made on the material before the Insurer and Trustee but rather whether the decisions by the Insurer and Trustee were fair and reasonable.

The Tribunal accepted that the medical evidence and claim forms did not demonstrate that the Complainant had any difficulty engaging in work up until 2011,

noting that he had suffered the claimed injury in 2006. Further, the Complainant's condition did not require ongoing treatment, rehabilitation or physiotherapy and there was also no specialist care, ongoing therapies or formal diagnosis. The Tribunal also accepted that the Complainant's decision to cease work was not on the direction of a medical practitioner.

On review of the medical evidence, claim documents, policy documents and the parties' submissions, the Tribunal affirmed the decisions of the Insurer and the Trustee to decline the Complainant's claim for a TPD benefit under the policy.

**Implications**

This case demonstrates that a claimant will not satisfy an 'any occupation' definition of TPD where they have continued to engage in work, albeit on a casual basis, for years after ceasing full time employment due to an injury, especially where there is no clear evidence of increasing difficulties associated with that injury.