

**RECENT FOS DECISIONS**

# PECs and Diagnosis

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The Applicant had an income protection policy with the FSP. He made a claim under the policy due to suffering secondary osteoarthritis of the right ankle which was denied on the basis that symptoms of the condition had first become apparent before the policy commenced.

The FSP submitted that there was evidence that the Applicant had suffered ongoing ankle pain following a fracture to the right ankle in April 2013 and pointed to a link between the fracture, an operation to repair the ankle and the subsequent claimed condition of secondary osteoarthritis of the right ankle (the sickness). The Applicant argued that while he was suffering from ankle pain, he was not aware he was suffering from secondary osteoarthritis of the ankle before the inception of the policy and therefore the claimed condition was a sickness as defined in the Policy.

**Held**

The FOS considered that while the Applicant had been suffering from ankle pain before the inception of the policy, and there was a causal link between the Applicant's previous ankle injury and the sickness, the sickness did not become apparent until after he took out the policy. While tests revealed that the Applicant developed the sickness after the surgery, it could not establish when the sickness became apparent. The FOS took into consideration that it could take up to 12 months for the Applicant to recover from his ankle surgery, and he would most likely have believed that pain he was suffering was associated with the pain following surgery.

The FOS determined that the Applicant could rely on s47 of the Act as he could not have been expected to be aware that he was suffering from the sickness as ankle pain following surgery was not conclusive evidence that the pain was caused by the sickness. As a result, the FSP could not rely on an exclusion for pre-existing conditions in the circumstances of the dispute and the FSP was ordered to assess and pay the Applicant's claim.

**Implications**

1. A causal link between a person's sickness as defined in the policy and a previous injury is not relevant to whether a person's claimed condition is a sickness as defined in the policy.
2. While it is not necessary for a person to be aware of an actual diagnosis, there must be evidence that a person's symptoms or medical testing were such that a person can be argued to be aware of the underlying condition subsequently diagnosed.