

RECENT FOS & SCT DECISIONS

When You'll Pay for Delay

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

On 23 February 2012, the Complainant suffered a right frontal haemorrhagic contusion, right chronic subdural haemorrhage and left occipital skull fracture after a fall. He subsequently made a claim (the Claim) for a Total and Permanent Disablement (TPD) benefit which was received by the Trustee on 5 July 2012.

The Claim was originally declined by the Insurer as the medical evidence obtained did not suggest that the Complainant was unable to perform at least two of the Activities of Daily Living (ADLs) without physical help from someone else, as was required to satisfy the TPD definition in the Policy. After a report was supplied by the Complainant and further investigations were undertaken by the Insurer, including the Complainant attending an independent medical examination, the Insurer admitted the claim on 21 August 2013.

The Trustee, upon its assessment, required a further Treating Doctor's Report to be completed in order to meet a condition of release so the Complainant's benefit could be paid. The Trustee, after liaising with the Complainant's financial adviser 'continually since August 2013', was provided with all outstanding requirements to roll the Complainant's benefit over to a Self-Managed Superannuation Fund on 13 February 2014 and did so on 14 February 2014, just over 19 months after the Claim was received by the Trustee.

The Complainant submitted that consideration of his Claim for a TPD benefit and payment of the admitted claim were unnecessarily delayed by the Insurer and the Trustee and sought compensation in respect of these delays.

The Complainant alleged that the first period of delay

was due to the uncertainty caused by the Insurer as to the applicable definition of TPD under the relevant policy given that the Complainant was over 65 years of age. The Insurer had initially provided the Complainant and treating doctors with claim forms relating to an incorrect definition of TPD and a correct form was provided 105 days after the incorrect forms had been sent.

The Insurer declined to compensate the Complainant for these alleged unnecessary delays arguing that the assessment was not delayed as a result of providing the incorrect forms. The Complainant also argued that there was sufficient medical evidence in support of the claim prior to the date the Insurer approved the Claim on 21 August 2013, and sought compensation for alleged delay caused by the Insurer in not accepting the claim prior to this date.

With respect to the Trustee, the Complainant argued that the Trustee declined to adequately compensate the Complainant for alleged unnecessary delays in processing and paying his TPD benefit. Contrary to this, the Trustee submitted that it had already paid the plaintiff adequate compensation for the delay in the amount of \$4,180.06 in interest which had accrued on the benefit while it was held in the cash investment option of the Fund.

Issues

1. Was the Insurer's decision to decline to compensate the Complainant for the alleged unnecessary delays caused by the initial failure of the Insurer to assess the claim against the correct definition of TPD fair and reasonable?
2. Was the Trustee's decision to refuse to provide the Complainant with additional interest or compensation unfair and unreasonable?

Determination

Alleged delay caused by the initial failure of the Insurer to assess the claim against the correct definition of TPD

The Superannuation Complaints Tribunal (the Tribunal) held that the assessment of the Claim and payment of the benefit by the Insurer was unnecessarily delayed due to the Insurer providing incorrect claim forms to the Applicant. The Tribunal considered that the Insurer's decision not to pay interest in respect of the 105 day period (7 May 2013 to 21 August 2013) from the date the incorrect forms were provided to the date the correct claim forms were provided was unfair and unreasonable. The Tribunal therefore determined to set aside the decision of the Insurer under review and substitute its own decision that the Insurer pay interest on the sum insured from 7 May 2013 to 21 August 2013.

Alleged delay by the Insurer in accepting that there was sufficient medical evidence in support of the claim prior to 21 August 2013 (the date the Insurer approved the claim)

Although the Complainant submitted that the Insurer had sufficient evidence to accept the Claim from either 21 June 2012, which is the day it received a medical report from Dr JT who opined that the Complainant 'Requires constant supervision because of risk of further falls', or at the very latest 13 August 2012, based on a medical report of Dr JMCR, the Tribunal found there to be no unreasonable delay caused by the Insurer in failing to accept the Claim before 21 August 2013.

Alleged delay by the Trustee in processing and paying the Complainant's TPD benefit from the date the claim was accepted by the Trustee to the date the benefit was paid to the complainant

With respect to whether the Trustee caused unnecessary delay in processing and paying the TPD benefit from the date it approved the claim to the date the benefit was paid to the Complainant, the Tribunal affirmed the decision of the Trustee not to pay any additional interest or compensation to the Complainant, aside from the amount of interest it already paid to the plaintiff.