

**RECENT FOS & SCT DECISIONS**

# Insurer's decision not to proceed with assessment of claim deemed fair and reasonable

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

On 5 March 2012, the Complainant applied for Death, TPD and IP cover. The application included the Complainant's Duty of Disclosure under the *Insurance Contracts Act 1984* (the ICA) and details about when the Insurer could avoid the contract for non-disclosure. The Complainant was asked whether he had ever had, or been told he had, or ever sought advice or treatment from a doctor, counsellor or other health professional for stress, anxiety, depression, post-traumatic stress disorder or any other mental health disorder. The Complainant answered 'Yes' to this question, disclosed a history of Anxiety and Asthma and was subsequently granted Death, TPD and IP cover.

On 5 November 2015, the Complainant was involved in an incident which triggered several medical conditions and on 23 February 2016 he was diagnosed with, amongst other conditions, Adjustment disorder, depression, anxiety and Asperger's syndrome. The Complainant ceased work on 15 April 2016 and lodged a claim for TPD and IP benefits on 14 February 2017. The Medical Reports obtained during the claim's process indicated that some of these conditions had been present for a long period even if they had only been formally diagnosed in early 2016.

As a result, the Insurer believed that the Complainant had failed to make full and complete disclosures on his application and requested that the plaintiff complete an authority so that it could obtain further evidence and make a decision regarding the claim. The Complainant withdrew his consent for the collection of any further information arguing that he had already disclosed everything he knew, was under no obligation to allow the

Insurer to intrude further into his privacy and submitted that he had no duty to disclose what the Insurer should have known, ought to have researched or should have obtained evidence about before accepting his application. The Complainant sought payment of the TPD and IP benefits with interest.

The Trustee's position was that the Complainant had not received a decision from the Insurer and therefore was not in a position to form an opinion regarding the claim.

**Issues**

1. Was the decision of the Insurer to maintain that it was unable to determine the Complainant's entitlement to a TPD and/or IP benefit until it had received the Complainant's authority to obtain further medical information fair and reasonable?
2. Was the decision of the Trustee to affirm the Insurer's decision fair and reasonable?

**Determination**

The Tribunal held that the decision of the Insurer not to proceed with the assessment of the Complainant's claims until the Complainant provided the Insurer with his authority to obtain further medical evidence was fair and reasonable. The Tribunal was also satisfied that the Trustee could not make a decision on the claims until it received notification that the Insurer had made a decision following receipt of further evidence.

The Tribunal was of the opinion that the Insurer had the right to request further information it considered relevant to its liability under Policy and in order to determine the

Complainant's entitlement to both TPD and IP benefits where it was of the opinion that it did not have sufficient evidence to make a decision. In coming to this decision, the Tribunal acknowledged that the Policy stated that a benefit would be paid 'when we have proof satisfactory to us that all events entitling the trustee to payment of the benefit have happened' and that the Insurer 'may ask for further proof or information to be satisfied that the trustee is entitled to the benefit.' The Tribunal held that this extended to information required by the Insurer to allow it to determine whether a condition was pre-existing at the time of application (whether disclosed or not) as well as information related to assessment of the Complainant's claims under the TPD and IP definitions. Finally, the Tribunal held that the Complainant had an obligation under the Policy to provide the relevant requested information to the Insurer.