

OSTI CASE STUDY 1



Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

The case of Mr M

Mr M sustained injuries to his right leg and ankle, and left elbow after he fell off a truck whilst on duty. The incident occurred on 28 October 2010.

Mr M approached his insurer shortly after the accident, however he was not permanently and totally disabled at that stage. In May 2011, the insurer settled a claim for hospitalization, but he was still not permanently and totally disabled, and that portion of the claim was, once again, rejected.

In 2017, Mr M approached the insurer again. He was advised that because he was not permanently and totally disabled within a 24 month period, as stipulated in the policy, he did not enjoy cover and, further, that his claim had prescribed. It was after the rejection in 2017 that Mr M approached OSTI for assistance.

The insurer relied on the following policy wording to substantiate its rejection of the claim:

"Definitions

- Permanent Total Disablement means total and absolute disablement which entirely prevents the Insured from engaging in or giving attention to his/her usual occupation or any occupation for which the Insured Person is qualified or has received specialised training in and which will in all probability be lasting and continuous for the lifetime of the Insured Person. The diagnosis and determination of the Permanent Total Disablement must be made by a physician and must be continuous and permanent for at least 24 consecutive months from the onset of the disablement. Documented evidence of the incident that caused the Permanent Total Disablement is required. The degree of Permanent Total Disablement will be determined immediately after it is established or as soon as it can reasonably be assumed that there will be no further improvement or worsening of the Insured Person's condition in consequence of the Accident, but not later than 24 months from the Date of Loss.

- Permanent and Total Loss means in reference to an arm or a leg or a hand or a foot or fingers or toes – the loss by physical severance or the total and permanent loss of use of said member.*
- Sweeper Clause means in the event of a Permanent Disability not being listed under Partial Disability Insured Events in the Table of Benefits, [X] will indemnify the Insured Person up to a maximum of 50% of the Permanent Total Disablement Benefit."*

OSTI finds in favour of the insurer

The insurer's rejection of the claim was upheld by OSTI. However, Mr M requested that OSTI's decision be reconsidered on the grounds that he was able to demonstrate that he was permanently and totally disabled already in 2011. Mr M provided a report from his doctor which confirmed that Mr M was unable to follow his normal occupation and that he could only resume work on 4 April 2011. In addition, Mr M's doctor stated that Mr M will suffer pain for a long time and he might develop a deformity.

Mr M also referred to the Sweeper Clause in the policy.

The matter was reviewed by the Escalation Committee, which comprised the Ombudsman, the Deputy Ombudsman and four Senior Assistant Ombudsmen who were tasked with determining whether Mr M was permanently and totally disabled as required by the policy, whether he complied with the 24 month time limitation and, if so, whether his claim against the insurer had become prescribed.

The Committee stated that, having regard to the definition of permanent and total disablement contained in the policy wording, it was clear that the permanent and total disablement must be diagnosed within 24 months of the event giving rise to the disability.



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A medical report from Mr M's doctor dated 28 February 2011 stated that Mr M *"will have pain for a long time and might develop a deformity."* The report also stated that Mr M first became unable to carry out his occupation on 28 October 2010 (being the date of the incident), however, Mr M was able to resume his occupation on 4 April 2011.

The Committee also considered a medical report of the incident prepared for the Department of Labour dated 28 January 2017. In this report, a different doctor confirmed that Mr M had been fit for normal work since 22 May 2012.

The Committee noted that the claim form submitted to the insurer in 2017 confirmed, firstly, that Mr M was still employed at the time and, secondly, that his occupation and work description before the loss was

exactly the same as that during February 2017 with the exception of Mr M not lifting heavy objects.

Therefore, even if Mr M was able to overcome the 24 month time limitation, he had failed to bring his claim within the ambit of the policy wording by demonstrating that he was permanently and totally disabled.

Similarly, in order to enjoy cover under the Sweeper Clause, Mr M would have needed to demonstrate that he was permanently disabled which Mr M could not do.

The Committee also mentioned that, in view of the conclusions drawn above, the issue of prescription did not arise for consideration.

Mr M's complaint was dismissed.

