

Chairperson's report

What remedies can the Tribunal provide?

The Tribunal has developed a new brochure intended to provide complainants with information about the remedies the Tribunal can and cannot provide in resolving complaints, to assist in managing complainants' expectations of the Tribunal.

Section 37(4) of the *Superannuation (Resolution of Complaints) Act 1993* stipulates that any remedy can only place a complainant as nearly as practicable in a position such that any unfairness and unreasonableness (in operation of a superannuation provider's decision or conduct), that the Tribunal has found to exist, no longer exists.

It follows that the Tribunal cannot provide a remedy where there has been no adverse practical outcome or consequences of the superannuation provider's decision or conduct. The Tribunal cannot, for example, provide a remedy for poor service, unless it can be demonstrated that as a result of the service the complainant suffered a financial loss or other practical detriment that can be alleviated. Similarly, the Tribunal cannot award compensation for time, effort or upset caused by the poor service.

The Tribunal also cannot provide a remedy where the complaint is about the impact of the design of a fund on a complainant. For example, some superannuation funds offer insurance to members on an 'opt-out' basis which means that the fund does not require the member's authorisation to provide insurance and deduct insurance premiums from the member's account. Some

complainants are of the belief that insurance should be 'opt-in' rather than 'opt-out' and have an expectation that the Tribunal will order a refund of insurance premiums deducted.

It is worth noting that, while the Tribunal has no jurisdiction to change the design of a fund, it can deal with complaints about the adequacy of the superannuation provider's disclosure about the insurance arrangements and premiums. This may include whether the amount of cover and the premiums that would be deducted from the account and the ability to 'opt-out' of the cover were disclosed.

Finally, and arguably most importantly, the Tribunal is expressly prohibited from providing any remedy that would be contrary to law or the superannuation provider's Trust Deed or any relevant insurance policy.

The Tribunal has commenced sending the new brochure to all complainants (other than complainants who lodge complaints about death benefit distributions or claims for payment of a disability benefit) when acknowledging receipt of the complaint.

The brochure can be accessed at:

[http://www.sct.gov.au/dreamcms/app/webroot/uploads/documents/What remedies can the Tribunal provide.pdf](http://www.sct.gov.au/dreamcms/app/webroot/uploads/documents/What%20remedies%20can%20the%20Tribunal%20provide.pdf)

Statistics

Complaints received by the Tribunal during the quarter increased by 13% compared to the last quarter, and telephone inquiries increased by 6%.

848 complaints were finalised in the quarter, an increase of 17.3% compared to the previous quarter. 261 cases were conciliated in the quarter, an increase of 43.4% on last quarter's 182.

The median number of days taken for complaints resolved at review continued the downward trend, declining by 118 during the quarter



Jocelyn Furlan
Acting Chairperson

Statistical overview

Quarterly statistics – Jul to Sep 2014

Telephone inquiries

The Tribunal received 3,254 telephone calls this quarter (last quarter – 3,072), which is an increase of 6% compared with the previous quarter.

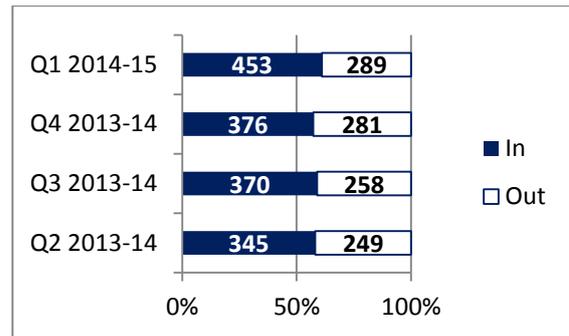
The Tribunal dealt with a wide range of inquiries, the most popular were queries about the Tribunal itself (80.5%), followed by complaint related inquiries (15.1%).

Written complaints

This quarter, the Tribunal received 742 written complaints (last quarter - 657), which is an increase of 13% compared with the previous quarter.

Jurisdiction

Of the 289 (39%) complaints closed as outside jurisdiction, 183 (63.3%) were closed pursuant to s.19 of the Complaints Act because the complainant had failed to lodge a complaint with the trustee or the 90 day time limit had not passed from the date of complaint to the trustee, last quarter (67.2%).

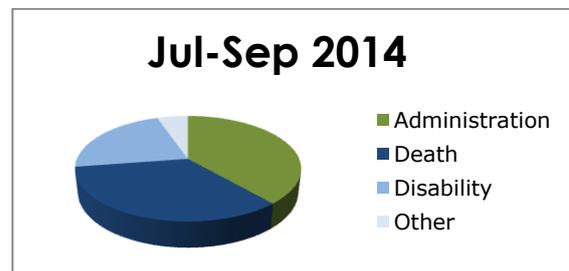


Complaints within jurisdiction

Nature of written complaints within jurisdiction

Complaints fall into four major categories – 'death', 'disability', 'administration' and the catch-all category of 'other'.

Administration complaints comprised the largest category of all written complaints received within jurisdiction – 43.7% (last quarter – 38.6%). Death benefit complaints made up the second-largest category at 27.6% (last quarter – 34%), followed by disability at 24.1% (last quarter – 22.1%). Other complaints made up 4.6% (last quarter – 5.3%).



Nature of written complaints within jurisdiction

Performance

Complaints finalised

The Tribunal finalised 848 written complaints this quarter, an increase of 17.3% compared to the previous quarter.

Of the 848 finalised complaints, 11.3% were finalised at review (last quarter 12.3%), 48.6% were finalised at the inquiry and conciliation stage (i.e., prior to a review hearing) (last quarter – 47.3%) and 40.1% were outside jurisdiction (last quarter 40.4%).

1 case was suspended in the quarter.

Conciliation conferences

The Tribunal conciliated 261 cases in the quarter, an increase of 43.4% on last quarter's 182.

Of the 216 cases concluded, settlement was achieved in 112, resulting in a settlement rate of 51.8% (last quarter – 51%). 45 cases (17.2%) were adjourned in the quarter (last quarter – 29).

Nature of conciliation cases

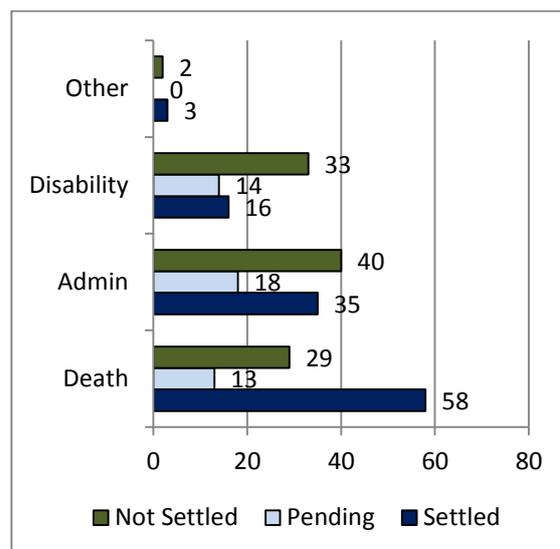
The categories of note in the quarter are as follows:

Death benefits – Of the 87 concluded cases, 58 (66.6%) were settled.

Administration – Of the 75 concluded cases, 35 (46.6%) were settled.

Disability – Of the 49 concluded cases, 16 (32.6%) were settled.

Other – Of the 5 concluded cases, 3 (60%) were settled.



Settlement by conciliation

Review determination outcomes for the quarter

The Tribunal determined 96 cases this quarter (last quarter – 89 cases).

The largest category of complaints determined at review was death benefit complaints: 54 (56.2%)

| Death | Qtr | YTD |
|-----------|-----|-----|
| Affirmed | 44 | 44 |
| Remitted | 0 | 0 |
| Varied | 1 | 1 |
| Set aside | 9 | 9 |

The second largest category was administration complaints: 28 (29.2%)

| Admin | Qtr | YTD |
|-----------|-----|-----|
| Affirmed | 22 | 22 |
| Remitted | 0 | 0 |
| Varied | 1 | 1 |
| Set aside | 5 | 5 |

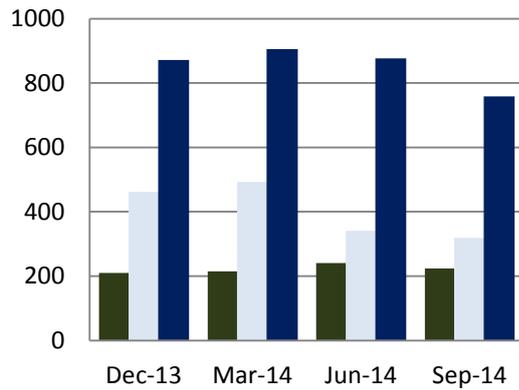
Followed by disability complaints: 14
(14.6%)

| Disability | Qtr | YTD |
|-------------------|-----|-----|
| Affirmed | 12 | 12 |
| Remitted | 0 | 0 |
| Varied | 0 | 0 |
| Set aside | 2 | 2 |

81.2% of trustee decisions were affirmed during the quarter, compared with 85.4% last quarter.

Efficiency

Median number of days from receipt of complaint to date closed.



■ Withdrawn by Tribunal
 ■ Conciliated
 ■ Determined

Recent determinations of interest

D14-15\006. Death Benefit

The Complainant lodged a complaint with the Tribunal that the decision of the Trustee to pay 20% of the benefit arising on the death of the Deceased Member to the Joined Party (the Mother) was unfair and unreasonable. The Complainant, the spouse of the Deceased Member, sought to be allocated the entire benefit. The Tribunal found that there was sufficient evidence to conclude that the Mother was financially dependent upon the Deceased Member to a limited degree and therefore the decision of the Trustee to award her 20% of the Deceased member's benefit was fair and reasonable. The Tribunal affirmed the decision of the Trustee.

The Deceased Member and the Complainant were married in 2003 and had a child of the marriage in February 2008. They separated on 20 December 2009 and an application for final orders on a property settlement was lodged with the court in February 2010. The Deceased Member died on 30 October 2010 aged 38 years.

The Deceased Member joined the Fund on 9 October 2002 although as the account was established under a default fund arrangement by his employer no application forms were completed by the Deceased Member. He died intestate and had not lodged any beneficiary nominations with the Trustee at any time prior to his death.

The Complainant challenged the decision of the Trustee on the basis that the Mother was not financially dependent upon the Deceased Member and that any payments made to her by the Deceased Member were not for personal living expenses.

It appeared that the Deceased Member operated an account with a bank overseas to which he would regularly remit small sums of money and that the Mother was authorised to operate on this account. These regular deposits occurred throughout 2007 to 2009 with several larger deposits being made in early 2009 which were apparently used to make payments on 2 plots of land in the names of the Deceased Member and the Complainant.

The submissions made on behalf of the Mother claimed that these monies were used by the Mother to meet her medical costs and general living expenses although these claims were disputed by the Complainant.

Whilst it was not actually clear whether the Mother did actually utilise these monies for living expenses, the Tribunal considered that it would not be unusual for an only son to feel some obligation to provide financial support to his widowed mother residing in another country particularly given the cultural background of the parties. The Tribunal also noted that the Deceased Member in a statutory affidavit to the court in March 2010 stated that:

I have to support my mother who is suffering from diabetes, gout and high blood pressure. She has suffered a major heart attack and had to undergo open heart surgery. She is currently on substantial medication which costs me about \$600 a month."

Notwithstanding the claims and counter claims of the parties it was the view of the Tribunal that there was an element of financial dependency by the Mother which was recognised by the Deceased Member.

It was therefore the view of the Tribunal that there was sufficient evidence to conclude that the Mother was financially dependent upon the Deceased Member to a limited degree and therefore the decision of the Trustee to award her 20% of the Deceased member's benefit was fair and reasonable because the Deceased Member was providing a small

amount of regular financial support to her.

The Complainant at the time of the Deceased Member's death was still the legal spouse and had continuity of standing as a dependant. It was clear that the marriage had broken down and had the Deceased Member not died it was evident that he would have continued with the court proceedings to finalise the dissolution of the marriage. In that event he would have been required to provide continued financial support for his child up to the age of 18 years and indeed it appears that he had made a number of child support payments prior to his death. These child support payments would have been directed to the Complainant as the mother of the minor child.

The Tribunal noted that any inclusion of the minor child as a beneficiary would have necessitated the establishment of a trust to hold the payment for the benefit of the child during its minority. Given that the Complainant is now residing overseas with the child, a Trustee located in Australia would have created some potential difficulties.

In the absence of a submission from the Trustee, the Tribunal found it was reasonable to assume that the benefit awarded to the Complainant also took into account the ongoing care and support needed to provide for the Deceased Member's minor child.

The Tribunal found that the decision of the Trustee to pay 80% of the death benefit to the Complainant and 20% to the Mother was fair and reasonable, and therefore affirmed the decision of the Trustee.

D14-15\019. Administration

The Complainant lodged a complaint with the Tribunal that the decision of the Trustee rejecting her request for payment of the full benefit as reported, in error by the Fund, in her Annual Member Statement (AMS) or to compensate her fully for her claimed

financial loss was unfair or unreasonable. The Tribunal was not satisfied that the Trustee's decision to offer an amount of \$9,920.40 by way of compromise of the Complainant's claim for compensation was fair and reasonable, and determined that a Trustee, acting fairly and reasonably, would have compromised the claim, after allowance for 30% contributory negligence, by payment of an amount of \$24,689.

The Complainant lodged a complaint with the Tribunal that the decision of the Trustee rejecting her request for payment of the full benefit as reported in her AMS or to compensate her fully for her claimed financial loss was unfair or unreasonable. The resolution sought by the Complainant was compensation of \$77,078 plus a settlement for legal costs of \$7,500.

The Complainant joined the Fund in November 1991 at which time she transferred some \$60,001 into the Fund from her previous fund. She left the Fund in 1995 and withdrew a gross amount of \$63,049.93 consisting of her member contributions and the transferred amount, leaving a \$27,888.37 preserved benefit in the Fund. The Trustee sent correct AMSs to her reported address for each of the years from 1996 to 2003, following which her mail was returned to the Fund as undeliverable. An AMS was produced for each of the years from 2004 to 2006 but not sent to her.

In 2007 the ATO advised the Complainant to contact the Fund regarding a possible 'lost super' amount. After providing the Fund with her current address, the Complainant received her 2007 AMS showing a total preserved benefit of \$262,749.75 including transfer values of \$234,785.42. In December 2010, she applied to roll out her preserved benefit to another fund. She received a rollover amount of \$77,937.67 rather than the \$256,382 she had expected.

The Trustee admitted that the amount reported in the Complainant's AMS was the result of a manual calculation error.

The error first appeared in 2005, when an erroneous member contribution (subsequently transfer value) of \$178,845.05 was included in the AMS which was not issued to her, because her address was unknown. The Trustee admitted that it provided incorrect information to the Complainant.

The Trustee submitted that it had paid the Complainant the correct preserved benefit under the terms of the Trust Deed and that any recourse she had was a claim for compensation. The Tribunal found that the Trustee's decision to reject her claim for payment of the full benefit was fair and reasonable. The issue for the Tribunal was the fairness and reasonableness of the Trustee's decision to compromise the Complainant's complaint in the amount of \$9,920.40.

The Complainant initially claimed the whole of the balance of the benefit (calculated by her as \$158,302.40) by way of compensation, on the basis she had made financial commitments based on incorrect written advice from statements received from the Trustee in the previous four years. These commitments included increasing her mortgage to \$220,000 (including \$60,000 for home renovations), which she expected to be able to cover with the expected benefit to leave her debt clear when she retired in 2015.

The Trustee offered the Complainant compensation based on its assessment of the actual financial detriment she suffered. It considered this detriment included the payment of interest on \$60,000 for a period of 2 years (\$8,172) and the cost of financial advice and implementation of the financial plan based on the incorrect information (\$6,000). The Trustee rejected any claim relating to the refinancing of previously incurred debts. Moreover, the Trustee considered it likely that a Court would find that the Complainant contributed to her loss by failing to:

- query the non-receipt of her AMSs from 2003 to 2006,

- recall that she had withdrawn the bulk of benefit in 1995 and
- question the benefit amount quoted in 2007 when she should have recalled her benefit in 2002 was in the vicinity of \$20,000.

The Trustee therefore discounted the Complainant's compensable amount by 30% and made a settlement offer of \$9,920.40.

Lawyers for the Complainant rejected this offer and proposed a settlement figure of \$77,954.58 plus legal costs, based on the net cost of renovations, 7 years' interest on the loan amount relating to the renovations as well as the cost of financial planning and implementing the plan.

The Tribunal considered the Complainant's submission that she was entitled to compensation for the cost of the renovation (net of the increase in house value) because she would not have undertaken the renovations if she had not been misled by the Trustee about the value of her Fund benefit. The Tribunal noted, however, that the cost of those renovations was less than the benefit that she was paid by the Fund and that the Complainant has the benefit of both the amenity and any future increase in the value of her house. It therefore determined that it was fair and reasonable that the Trustee did not include this cost in the offer of compromise.

In relation to the cost of servicing the additional mortgage amount relating to the renovations, the Tribunal noted that the Trustee initially proposed 2 years of interest as the compensable amount. The Complainant's lawyers claimed for 7 years of interest payments as this was the period required to repay the whole of the mortgage amount of \$220,000. In its submissions to the Tribunal, the Trustee indicated that it would consider a maximum of \$21,770 in interest costs, in addition to the undisputed \$6,000 cost of obtaining and implementing financial advice claimed by the Complainant. The Tribunal therefore considered that it would be fair and reasonable for the

Trustee to include an amount of \$21,770 for interest costs in the compromise amount.

The Complainant's lawyers also submitted a claim for legal costs of \$7,500 following a period of further negotiations between the Complainant and the Trustee. The Tribunal noted that, although there is no provision in the Act for the awarding of legal costs, the Trustee itself is not so limited and had already indicated that it would consider paying legal costs. The Tribunal considered that it would be fair and reasonable for the Trustee to compensate the Complainant for her legal costs of \$7,500.

A major point of disagreement between the Trustee and the Complainant was the Trustee's decision to adjust its proposed compensation by 30% for contributory negligence on the part of the Complainant. The Tribunal considered the respective submissions of the Trustee and the Complainant in this respect and accepted the Trustee's submission that the Complainant should have realised that her account was unlikely to be over \$250,000 in 2007 when she had withdrawn the bulk of her superannuation from the Fund in 1995.

The Tribunal noted that the Complainant was inconsistent in that she claimed on the one hand that she had no precise memory of the nature and amounts paid to her as lump sums when she changed employment in 1995 and therefore would not have known that the amount in her 2007 statement was wrong. However, she also claimed that she did query the amount with the Fund after she received the 2007 AMS but was reassured it was correct and she was therefore entitled to rely on it. There was no mention of her querying the benefit amount in the Fund's record of her 2007 contact with the Fund.

The Trustee also submitted that the Complainant or her financial advisor could have sought a benefit quote to confirm the benefit amount she was entitled to in the context of developing her financial plan, but failed to do so.

The Fund's records show that the advisor only sought confirmation of the conditions under which her benefit could be transferred to another fund.

The Tribunal therefore considered that the Trustee's decision to reduce the compensable amount by 30% in respect of contributory negligence on the part of the Complainant was fair and reasonable in the circumstances.

The Tribunal therefore considered that the decision of the Trustee to reject the Complainant's claim for full payment of her benefit or full compensation for her claimed financial loss was fair and reasonable. However, the Tribunal was not satisfied that the Trustee's decision to offer an amount of \$9,920.40 by way of compromise of the Complainant's claim for compensation was fair and reasonable and considered that a Trustee, acting fairly and reasonably, would have compromised the claim, after allowance for 30% contributory negligence, by payment of an amount of \$24,689.

D14-15\026. Death Benefit

The Complainant, the son of the Deceased Member, represented by the Mother, lodged a complaint with the Tribunal that the decision of the Trustee to pay the benefit to the Complainant to be held in trust with the Grandmother as trustee was unfair and unreasonable. The Tribunal found that the relationship between the Mother and the Grandmother was strained. Any request by the Mother to the Grandmother for funds from the trust account to support the needs of the Complainant would have the potential to cause a dispute and could well make the Trustee's decision unworkable. The Tribunal therefore determined to set aside the decision under review and substitute its own decision that the death benefit be paid to the Complainant to be held in trust with the Mother as trustee.

When the Deceased Member died the only person identified by the Trustee as a dependant of him was the Complainant. The Complainant is the son

of the Deceased Member and the Mother. The Trustee originally made a decision to pay the benefit to the Complainant to be held in trust with the Mother as trustee. However, after receiving an objection and information from the Grandmother, the Trustee subsequently changed its decision appointing her as the trustee.

There was no dispute about the decision of the Trustee to pay the benefit to the Complainant in trust. What was in dispute was the decision of the Trustee to appoint the Grandmother as the trustee.

Most of the information before the Tribunal related to the acrimony that clearly existed between the Mother and the Deceased Member at the time they were together and after separation. Of relevance was that none of the information provided by the Grandmother reflected on the capacity of the Mother to look after the Complainant and her other children. Other information in the form of statements from friends or associates reflected favourably on the Mother's care for her children.

The Tribunal did not believe that appointing the Grandmother as trustee represented a fair and reasonable solution. It was clear that the relationship between the Mother and the Grandmother was strained. Any request by the Mother to the Grandmother for funds from the trust account to support the needs of the Complainant would have the potential to cause a dispute.

The Tribunal gained the impression from the Grandmother's submissions that she wished to preserve and grow the funds and have them available for the Complainant when he turns eighteen. The Mother on the other hand had identified current needs of the Complainant that she would like to meet from the funds. The desires of the Mother to provide for the needs of her son (the Complainant) were legitimate uses of the funds. The Tribunal found that this should not be frustrated by the clear likelihood of conflict arising if the Grandmother was the trustee.

The Tribunal also noted that none of this was to reflect on the competence and integrity of the Grandmother. The fact was that tension existed between the Grandmother and the Mother. There was no evidence that the Mother would act other than in the interests of the Complainant. She has cared for him since birth.

The Tribunal therefore considered that the decision of the Trustee to appoint the Grandmother as trustee for the death benefit paid to the Complainant was not fair and reasonable in the circumstances. The Tribunal determined to set aside the decision under review and substituted its own decision that the death benefit be paid to the Complainant in trust for him and the Mother be appointed as trustee.

D14-15\027. Total and Permanent Disability

The Complainant lodged a complaint with the Tribunal that the decision of the Trustee and the Insurer to deny that he was entitled to TPD cover was unfair and unreasonable. The resolution sought by the Complainant was reinstatement of his TPD cover on the basis that there was no valid reason for his cover to be removed. The Tribunal could also find no valid reason and set aside the decisions under review and substituted its own decisions that the Trustee and the Insurer reinstate the Complainant's TPD insurance cover from 29 August 2002.

The Complainant joined the Fund in June 2000 as a participating employee. An annual statement sent to the Complainant on 1 July 2000 disclosed death and TPD cover. His statement dated 30 June 2002, after a change in employers, showed that he had no TPD cover. The Complainant stated that it was not until he received a letter from the Trustee in 2011 that he became aware that he did not have TPD cover. The resolution sought by him was reinstatement of his TPD cover from 29 August 2002 on the basis that there was no valid reason for the cover to be removed.

The Trustee was unable to explain how or why the Complainant's records were altered to show that he was working less than 20 hours per week, which resulted in his cover being ceased.

However, the Trustee submitted that it had communicated with the Complainant to ensure he was aware that there was no TPD cover, as evidenced by the letters to him dated 4 September 2002 and again on 6 February 2003.

The Complainant did not recall receiving this correspondence however the Trustee had not had any mail addressed to the Complainant returned. In addition each Annual Statement sent to the Complainant between 2002 and 2012 showed that the Complainant had death cover only. In November 2006 the Complainant was residing at a particular address and Annual Statements for 2006-2007, 2007-2008, 2008-2009, 2009-2010 were sent to that address. The Complainant agreed that he received statements from 2006 – 2007 but submitted that he did not fully understand the contents.

The first issue for the Tribunal was whether or not the Trustee should be required to reinstate the Complainant's TPD cover. It was accepted by all Parties that there was no valid reason for the Complainant's cover to be removed as there was no change in his working hours and he remained entitled to the cover. The Tribunal noted that the Trustee, therefore, should have deducted premiums to provide TPD cover. It was the error of the Trustee that led to premiums for TPD cover not being deducted.

Of significance was the information in the Member Handbook issued on 1 July 2003 which advised that:

"If you do not advise us of the hours you work you will pay premiums for Death and TPD cover..."

At no stage did the Complainant advise the Trustee that he was working at a level that would have made him ineligible for TPD cover. The Tribunal

considered that it was therefore unfair and unreasonable for the Trustee to fail to deduct the correct premiums.

The second issue for the Tribunal was the Trustee's action in 2002 to give the Complainant not only the opportunity to change his status, and the effect of providing him with statements and correspondence that showed the position of his TPD cover.

The key question was whether the failure of the Complainant to respond to the Trustee's communications could be said to have altered his status as a member insured for TPD cover. The Tribunal believed that the primary obligation was on the Trustee to deduct the premiums and that its failure to do so could be excused by the non-response of the Complainant. In the Tribunal's opinion, it was the Trustee's error that caused the problem in the first place.

Consideration was also given to the position of the Insurer. The Tribunal was of the view that if the Trustee deducted the appropriate premiums from the Complainant's account and passed these premiums to the Insurer each Party would be placed in the position it would have been in if the error had not occurred.

The Tribunal therefore determined to set aside the decisions under review and substitute its own decision that the Trustee and the Insurer reinstate the Complainant's TPD insurance cover from 29 August 2002.

D14-15\047. Death Benefit

The Complainant, mother of Child 1 (a daughter of the Deceased Member) and acting on behalf of Child 1, lodged a complaint with the Tribunal that the decision of the Trustee to pay the benefit arising on the death of the Deceased Member in equal shares to Child 1, 2 and 3 was unfair and unreasonable. The Complainant disputed the Deceased Member's paternity of both Child 2 and Child 3, and sought payment in full to be made to Child 1. The Tribunal determined to set aside the decision under review and instructed the Trustee to call for DNA testing to be carried out on Child 1, Child 2 and Child 3 and the parents of the Deceased Member. Once those results are available the Trustee is to reconsider its decision.

The claim arose by virtue of a decision made by the Trustee to divide the Deceased Member's benefit equally between 3 children alleged to be the biological children of the Deceased Member, two of whom (Child 2 and 3) are the biological children of another mother, ('the Mother') and the third of whom (Child 1) is the biological child of the Complainant.

Both the Complainant and the Mother did have a relationship with the Deceased Member at various times prior to his death. The Complainant provided DNA reports to indicate that there is a 99% likelihood that the Deceased Member is the father of Child 1. The Mother of Child 2 and 3 provided birth certificates of Child 3 indicating that the Deceased Member is the father of Child 3 and a statutory declaration confirming that the Deceased Member is the father of Child 2. The Complainant disputed the Deceased Member's paternity of both Child 2 and Child 3.

In respect of Child 3 the Complainant obtained DNA material from Child 3 and had that tested against the DNA of the potential grandparents of Child 1 and Child 3. The DNA test on Child 3 indicated that there is a 34% chance

that the Deceased Member is the biological parent of Child 1.

The position was complicated by the fact that the DNA samples for Child 1 and potential grandparents were taken by a medical practitioner, while the DNA sample of Child 3 was taken by a priest with consent of the grandmother of Child 3, but not the consent of the Mother of Child 3.

The DNA test result therefore was claimed to be invalid by the Mother of Child 3. On the other hand the Complainant claimed that the DNA test on Child 1 is indisputable and that the samples for the DNA test on Child 3 were taken totally in compliance with the requirements of the testing laboratory. In addition the Complainant maintained that if the paternity of Child 3 is in doubt despite claims by the Mother, then a statutory declaration claiming that Child 2 is the child of the Deceased Member should also be questioned.

Whilst the DNA test would clarify Child 3's biological relationship with the Deceased Member, the Tribunal noted that the Deceased Member was paying child support to the Mother of Child 3 which would make Child 3 financially dependent on the Deceased Member at the time of his death and therefore a dependant regardless of the outcome of paternity testing.

In submissions made by the Mother of Child 2 and Child 3, it was said that permission is in place for DNA tests to be carried out by a reputable Australian laboratory.

A request for proper DNA testing which would be indisputable was always available to the Trustee but the Trustee failed to request that such tests be conducted.

In the Tribunal's view it must have been clear to the Trustee that there were serious and significant issues in dispute between the parties and that the Trustee was in a position to gain assistance in its deliberations by calling for all parties to submit to DNA testing acceptable to the

Trustee before making or reviewing its decision.

The Tribunal was accordingly not satisfied, in light of the significant disputes over paternity, that the decision of the Trustee to distribute the proceeds equally between the 3 children was fair and reasonable. The Tribunal determined to set aside the decision under review and instructed the Trustee to call for DNA testing to be carried out on Child 1, Child 2 and Child 3 and the parents of the Deceased Member, by a laboratory acceptable to the Trustee. The cost of the DNA tests was to be met by the Trustee. Once those results are available the Trustee was to reconsider its decision.

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