

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

**Matter Number:** 5266/19  
**Applicant:** William John Byrne  
**Respondent:** Woolworths Limited  
**Date of Determination:** 7 January 2020  
**Citation:** [2020] NSWCC 10

The Commission determines:

1. The applicant has a consequential condition affecting his right knee, as a result of the injury he sustained to his left knee on 8 May 2009.

The Commission orders:

1. This matter is remitted to the Registrar for referral to an Approved Medical Specialist (AMS) as follows:

Date of injury: 8 May 2009

Body Parts: Left lower extremity (knee); right lower extremity (knee), including consequential condition

Method of Assessment: Whole Person Impairment

2. The following documents are to be forwarded to the AMS:
  - (a) Application to Resolve a Dispute with attachments;
  - (b) Reply with attachments;
  - (c) Application to Admit Late Documents with attachments filed by the applicant on 19 November 2019, and
  - (d) This Certificate of Determination and Statement of Reasons.

A brief statement is attached setting out the Commission's reasons for the determination.

John Isaksen  
**Arbitrator**

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JOHN ISAKSEN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

*A MacLeod*

Ann MacLeod  
Acting Senior Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant, William John Byrne, sustained injuries to his left and right knees on 8 May 2009 when he fell down a flight of stairs whilst in the course of his employment with the respondent, Woolworths Limited.
2. The applicant states that his right knee pain settled after a few weeks. However, the applicant continued to have aching pain in his left knee and underwent an arthroscopy, performed by Dr Dave, on 28 July 2009. The cost of that surgery and the resulting incapacity for work was met by the respondent.
3. In October 2010 the applicant entered into a Complying Agreement with the respondent whereby it was agreed that the applicant had 4% whole person impairment as a result of the injury he sustained to his left knee on 8 May 2009.
4. In May 2019 the applicant made a further claim for a lump sum payment for additional impairment of the left knee and also impairment of the right knee caused by the injury on 8 May 2009 and/or as a consequence of the injury to the left knee.
5. The respondent disputes that there has been any further impairment of the left knee, disputes any impairment of the right knee as a result of the injury on 8 May 2009, and disputes that the applicant has a consequential condition affecting his right knee as a result of the injury on 8 May 2009.

### ISSUES FOR DETERMINATION

6. The parties agree that the following issue remains in dispute:
  - (a) Whether the applicant has a consequential condition affecting his right knee which results from the injury he sustained to his left knee on 8 May 2009.

### PROCEDURE BEFORE THE COMMISSION

7. The parties attended a conference and hearing on 20 December 2019. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.
8. Ms Grotte appeared for the applicant, instructed by Mr Frisina. Mr Saul appeared for the respondent.

### EVIDENCE

#### Documentary evidence

9. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) Application to Resolve a Dispute and attached documents;
  - (b) Reply and attached documents, and
  - (c) Application to Admit Late Documents filed by the applicant on 19 November 2019.

## **Oral evidence**

10. There was no application to cross examine the applicant or to adduce oral evidence.

## **FINDINGS AND REASONS**

### **The applicant's case**

#### ***The applicant's evidence***

11. The applicant has provided statements dated 4 October 2019 and 13 November 2019.
12. The applicant states that at about 2.00 am on 8 May 2009 whilst working as a store manager with the respondent at its store in Liverpool Westfield, he fell down some fire escape stairs and suffered injuries to both knees, both elbows, his face and right hip. He states that he lost skin of both knees and both elbows as a result of the fall.
13. The applicant states that pain he was experiencing in his right hip and right knee settled after a few weeks following the injury but he continued to have left knee pain and was referred to Dr Dave, orthopaedic surgeon.
14. The applicant underwent an arthroscopy of his left knee, performed by Dr Dave, on 28 July 2009. The applicant states that he developed deep vein thrombosis following the arthroscopy and he was treated with medication for this condition for some 15 months before that condition resolved.
15. The applicant states that he returned to work with the respondent on modified duties which did not involve any heavy lifting, twisting or use of equipment such as pallet jacks. He states that most of his work involved managing people in the store. He states that he had to favour his left knee and although he did not do any lifting during a shift, he was on his feet for the entire shift. The applicant states that he had to place more of his weight onto his right side.
16. The applicant states that in early 2015 he noticed some major swelling in his right knee and was referred back to Dr Dave.
17. The applicant states:

“I had continued to favour my left knee and place more weight on my right knee at work. I would often have to take evasive action when customers were in the store in order to move out of their way and this would cause a lot of pressure on my right knee as well as the constant walking and standing. This occurred over a long period of time.

Also, after trading hours the cleaners came in they would use machines that would wash the floors and put water on the floors with detergent. It was hard to see. Sometimes I would walk over this and skate over the floor.

This would happen 2 or 3 times a week where I would skate along the floor and try and do my best to hold my balance. This would affect both of my knees trying to keep balance.”
18. The applicant states that he underwent stem cell therapy from Dr Bright on both his knees between December 2016 and April 2018. The applicant states that the condition of both his knees improved following that therapy and he experienced significant pain relief. However, he states that he still has pain in both knees and still has a limp and cannot walk properly.
19. The applicant states that he retired from his position with the respondent in December 2017.

20. In his further statement dated 13 November 2019, the applicant states that he had a few falls at work and when that happened, he would just pick himself up and carry on.

***The applicant's medical evidence***

21. There are several reports in evidence from Dr Dave between 16 July 2009 and 11 December 2009 when Dr Dave treated the applicant for the injury that he had sustained to his left knee.
22. In his first report for a consultation on 16 July 2009, Dr Dave records that the applicant walked with a marked limp of an antalgic type.
23. In a report for a consultation on 4 September 2009, some six weeks after the applicant underwent an arthroscopy of the left knee, Dr Dave records that the applicant walk unaided, which he was not able to do prior to the surgery. Dr Dave expected that there would be further improvements over time.
24. In a report for a consultation on 11 December 2009, Dr Dave records that the applicant had full range of motion in the left knee joint but that his long-term prognosis was poor as he was likely to have ongoing arthritic pain. In that report Dr Dave returns the applicant to the care of his general practitioner, Dr Abdulrahim.
25. There is a further report from Dr Dave dated 1 May 2015, which is when the applicant is referred back to Dr Dave because of the onset of pain in the applicant's right knee. The report commences with a diagnosis of "Degenerative change in the right knee and Baker's cyst." Dr Dave writes:
- "William has had quite severe pain in his right knee, lasting for 2 – 3 weeks. There was no predisposing cause for it. His knee was quite swollen and he was hardly able to stand or walk. He had an x-ray and Ultrasound at the time showing a Baker's cyst. Fortunately, the pain has settled with some Mobic and some Panadeine Forte and he has now returned back to golf and his walking ability. He still has a mild limp. He has some crepitus arising from the patellofemoral joint and some tenderness over the medial joint line. His x-ray shows minimal osteoarthritis."
26. There is a report in evidence from Dr Scougall dated 14 July 2010, which was prepared for the previous claim made by the applicant for a lump sum payment for permanent impairment of the left knee only.
27. Dr Scougall records that the applicant had some pain in his left knee at least some time during each day. He records that the applicant felt his left knee to be unstable in all weight bearing activities. He records that the applicant could walk satisfactorily but in a protected fashion. He records that the applicant walked with a limp if he had to move quickly.
28. Although the purpose of obtaining a report from Dr Scougall was for an assessment of impairment of the left knee, Dr Scougall does record that the applicant had full extension and flexion of the right knee and that it was stable in all directions.
29. The applicant was examined at the request of his solicitors by Dr Habib and a report has been prepared dated 12 April 2019.
30. Dr Habib records that over time the applicant has put extra loading on his right knee due to limping from the left knee, and this has caused the right knee to swell up and become painful.

31. On examination, Dr Habib records the applicant walked with a left antalgic gait, found some tenderness of the right knee and some restriction of movement of the right knee.
32. Dr Habib concludes: "Over time Mr Byrne developed right knee pain and swelling from overloading while limping on the left leg and overusing the right leg/knee while protecting the painful left knee."
33. Dr Habib further writes:

"As a consequence, to perhaps some twisting at the time of the said incident and overloading while protecting the injured and symptomatic left knee, Mr Byrne has developed moderately severe medial tibio femoral and patella femoral arthropathy on the right side."
34. There are clinical notes in evidence from general practitioners who have treated the applicant, being Dr Abdulrahim and doctors from Wetherill Park Medical Centre. The clinical notes from Dr Abdulrahim commence on 3 May 2010. The clinical notes from Wetherill Park Medical Centre commence on 19 January 2014. The first reference in the clinical notes to the applicant's right knee which I could locate is on 31 March 2015, with an entry of right knee pain and swelling, although the applicant had undergone an x-ray the previous day on referral from the Wetherill Park Medical Centre. That presumably led to the further referral of the applicant to Dr Dave and the report from Dr Dave dated 1 May 2015.
35. There are further references in the clinical notes from Wetherill Park Medical Centre during 2015 to right knee pain. An entry by Dr Zanetti on 18 September 2015 refers to "knee pains" and "advanced OA".
36. There are also references in the clinical notes from Wetherill Park Medical Centre to right knee pain during 2017, which is during the time that the applicant was undergoing stem cell therapy on both knees. Entries by Dr Al-Khalidy on 20 February 2017 and 21 March 2017 refer to right knee pain. An entry by Dr Al-Khalidy on 31 July 2017 refers to "Knee pain" and "Osteoarthritis of knee", although which knee is not specified in those notes.
37. An X-ray taken of the right knee on 2 November 2015 records "moderate reduction in the medial tibiofemoral articulation with mild marginal osteophytosis of the patellofemoral articulation and a moderate suprapatellar bursal effusion." An ultrasound of the same date confirms the existence of a complex Baker's cyst.
38. There are clinical notes in evidence from Dr Bright who treated the applicant's knees by way of stem cell therapy between September 2016 and April 2018. Those notes record in the first consultation on 5 September 2016: "OA knees."

### ***The applicant's submissions***

39. Ms Grotte for the applicant refers to the decision of DP Wood in *Arquero v Shannons Anti Corrosion Engineers Pty Ltd* [2019] NSWCCPD 3 (*Arquero*) as being similar both in fact to this dispute and in the application of the law that should apply in this dispute. In that case the worker sustained an injury to his right knee in December 2000 and subsequently underwent an arthroscopy in February 2001 and proximal tibial osteotomy in February 2005. However, it was not until late 2014 that the worker began to experience left knee symptoms.
40. Deputy President Wood determined that the delay in symptoms in the uninjured left knee for some 14 years after the injury to the right knee and almost 10 years after the tibial osteotomy, did not cause the worker's claim for a consequential condition affecting the left knee to fail. DP Wood referred in *Arquero* at [151] to the decision of Basten JA in *State of New South Wales v Bishop* [2014] NSWCA 354 (*Bishop*) at [20]:

“In the present case, the question of causation was purely a question of fact for the arbitrator. How other courts have dealt with questions on their own facts will not provide precedents, because they are not statements of legal principle. The statement from *Kooragang* that ‘the mere passage of time... Is not determinative’ is not a legal principle, nor does it give helpful guidance in the present case. The mere passage of time may in some circumstances be determinative; in other circumstances it may be irrelevant.”

41. Ms Grotte submits that the applicant has got on with his life since the injury on 8 May 2009 and did not seek treatment for his right knee unless it was necessary, such as in early 2015 when the applicant attended the Wetherill Park Medical Centre with severe right knee pain and was referred for x-rays and back to Dr Dave. However, a common sense view of the evidence is that the applicant has suffered symptoms in his right knee as a result of the injury to the left knee due to overuse of the right leg, and that is addressed in the opinion of Dr Habib.

## **The respondent’s case**

### ***The respondent’s medical evidence***

42. There is a report in evidence from Dr Barrett dated 20 December 2009, which was prepared at the request of the respondent in response to the permanent impairment claim made for the left knee injury only. That report is produced some seven months after the subject injury and after the applicant had undergone a left knee arthroscopy.
43. Dr Barrett records that the applicant had pain in both hips and knees when he fell down the stairs at work on 8 May 2009. The report is otherwise confined to the condition of the applicant’s left knee. Dr Barrett does record that the applicant walked with a left-sided antalgic gait. He opines that the applicant had pre-existing osteoarthritis in the left knee and that half of the applicant’s left knee condition should be attributed to constitutional factors and the other half due to the injury of 8 May 2009.
44. Dr Quain has provided a report dated 18 June 2019 at the request of the respondent’s solicitors.
45. Dr Quain takes a history of the injury sustained by the applicant on 8 May 2009, which includes the applicant sustaining scratches to both knees. There are otherwise no details recorded by Dr Quain of the subsequent development of pain or other symptoms in the right knee.
46. On examination of the right knee, Dr Quain found full extension and flexion to 110 degrees with some indications of pain.
47. Dr Quain agrees with the earlier assessment of Dr Barrett that half of the applicant’s left knee condition was age-related or constitutional and half due to the work injury.
48. Dr Quain is asked his opinion as to whether the applicant’s alleged right knee symptoms are consequential/secondary to his left knee injury and opines:

“In my opinion, the early to moderate arthritis in the left knee has not caused the change in the right. I believe the change in the right knee is again on age and constitutional factors.”

### ***The respondent’s submissions***

49. Mr Saul submits that apart from some pain experienced by the applicant immediately following his fall, which on the applicant’s own admission settled down soon after that injury, there is no medical record of any problems the applicant had with his right knee until some

seven years later in 2015 when he is referred back to Dr Dave. Even then the history recorded by Dr Dave is of an onset of right knee pain two to three weeks before the applicant's consultation with Dr Dave and with no predisposing cause for that onset of pain. Mr Saul submits that this history of events and the details recorded by Dr Dave is not indicative of a knee that has slowly deteriorated due to overuse as a consequence of the injury to the left knee.

50. Mr Saul submits that the findings of osteoarthritis in the right knee found in radiology in 2015; the records of osteoarthritis in the right knee made by general practitioners from 2015 onwards; the record of osteoarthritis made by Dr Bright in 2016 when that doctor commences stem cell therapy for the applicant; and the opinion of Dr Quain that the condition of the applicant's right knee is related to age and constitutional factors, all negate the argument made by the applicant that overuse from his injured left knee has caused a consequential condition affecting the right knee.
51. Mr Saul points out that there is no report from the applicant's treating specialist, Dr Dave, on the issue of whether the condition of the applicant's right knee is as a consequence of overuse of the left knee. Nor does Dr Dave provide any further report after May 2015 when he recorded the onset of quite severe pain within a few weeks and with no predisposing cause. Mr Saul submits that the applicant's case stands with the opinion of Dr Habib alone, which is against the findings and/or opinions of both treating doctors and independent medical experts who identify underlying degenerative pathology as being the cause of the applicant's symptoms in the right knee.
52. Mr Saul further submits that there is no logical explanation provided by any doctor or in the clinical notes as to why there has been no progression of symptoms in the right knee that would be indicative of a consequential condition affecting that part of the applicant's body.

### Determination

53. The determination of whether a pathological condition suffered by a worker is as a consequence of a work injury was considered by DP Roche in *Moon v Conmah Pty Limited* [2009] NSWCCPD 134 (*Moon*). In that matter the worker claimed whole person impairment from symptoms experienced in the left shoulder as a consequence of an accepted injury to the right shoulder. DP Roche said at [45-46]:

"It is therefore not necessary for Mr Moon to establish that he suffered an 'injury' to his left shoulder within the meaning of that term in section 4 of the 1987 Act. All he has to establish is that the symptoms and restrictions in his left shoulder have resulted from his right shoulder injury. Therefore, to the extent that the Arbitrator and Dr Huntsdale approached the matter on the basis that Mr Moon had to establish that he sustained an 'injury' to his left shoulder in the course of his employment with *Conmah* they asked the wrong question.

The test of causation in a claim for lump sum compensation is the same as it is in a claim for weekly compensation, namely, has the loss 'resulted from' the relevant work injury (see *Sidiropoulos v Able Placements Pty Limited* [1998] NSWCC 7; (1998) 16 NSWCCR 123; *Rail Services Australia v Dimovski & Anor* [2004] NSWCA 267; (2004) 1 DDCR 648)."

54. Deputy President Roche then proceeded to state that the expression "results from" should be applied using the principles set out by Kirby P in *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452; 10 NSWCCR 796 (*Kooragang*). In *Kooragang* Kirby P said at [462]:

"It has been well recognised in this jurisdiction that an injury can set in train a series of events. If the chain is unbroken and provides the relevant causative explanation of the incapacity or death from which the claim comes, it will be open to the Compensation Court to award compensation under the Act".



55. Kirby P then said at [463-4]:

“...What is required is a common sense evaluation of the causal chain. As the early cases demonstrate, the mere passage of time between a work incident and subsequent incapacity or death, is not determinative of the entitlement to compensation. In each case, the question whether the incapacity or death ‘results from’ the impugned work injury... is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions”.

56. The decision in *Arquero*, which is relied upon by the applicant, does bear a striking similarity to this dispute, not only because of the lengthy delay in the onset of symptoms in the uninjured knee in both disputes, but also in both disputes there was an absence of complaints to treating doctors and a failure to address the issue of causation of the consequential condition by the treating specialist.

57. I do agree with a submission made by Mr Saul in reply that the decision of *Arquero* is no more than a statement of legal principles applied to the facts of a particular dispute, and that each dispute must be determined on its own evidence. However, on reading *Arquero* I have had particular regard to the following that was said by DP Wood when referring to there being no opinion on causation from any treating doctors and on the opinion reached by the independent medical expert relied upon by the worker, at [156 and 157]:

“The only further medical evidence that would have assisted Mr Arquero’s case would have been an opinion on causation from a treating doctor. In the circumstances of this case, however, the factual basis upon which Dr Patrick’s opinion was reached was clearly established by the historical evidence and Mr Arquero’s own statement.

At arbitration, Shannons submitted that Mr Arquero’s evidence fell short of providing details of what he was doing that placed greater strain on the left knee. The submission ignores the evidence in Mr Arquero’s first statement that he had difficulty doing housework, walking long distances, using stairs and took longer to do the gardening. It is a common sense proposition that a person who is not immobilised, and attempts to carry out everyday activities despite his right knee difficulties, would be walking and otherwise using his lower limbs as a matter of course.”

58. In this dispute the historical evidence is that soon after the applicant sustained the injury to his left knee, he was walking with an antalgic gait. In July 2009, some two months after the injury, Dr Dave records that the applicant “walks with a marked limp of an antalgic type.” Although after the arthroscopy on 28 July 2009 Dr Dave records the applicant as walking unaided and having full range of motion of the left knee, there is no record of the applicant’s gait in the post-surgery reports from Dr Dave to the applicant’s general practitioner.

59. Dr Barrett examines the applicant in December 2009, some seven months after the injury, and after the left knee arthroscopy and records the applicant having a left-sided gait. Dr Scougall examines the applicant in July 2010, some 14 months after the injury, and does not record any observations of the applicant’s gait but does take a history from the applicant that the applicant can walk satisfactorily but in a protected fashion.

60. Then there is the applicant’s own evidence that upon his return to work after the arthroscopy on his left knee he had to favour his left knee and place more weight upon his right side. The applicant states that he continued to work with the respondent until December 2017 and that he continued to favour his left knee and place more weight upon his right knee while he continued to work for the respondent. This evidence is not challenged by the respondent, nor did the respondent seek to rely upon any evidence from co-workers of the applicant during the further eight years that the applicant worked with the respondent, who may have been able to provide their own observations of the applicant in the workplace.

61. I am satisfied that the historical evidence and the applicant's own evidence which I have referred to supports the opinion that is reached by Dr Habib that the applicant does suffer a consequential condition affecting his right knee as a result of the injury to his left knee on 8 May 2009 due to overloading and overusing the right leg because of ongoing symptoms in the left knee. In my view that fits the "common sense evaluation of the causal chain" referred to by Kirby P in *Kooragang*.
62. Mr Saul argues that the preponderance of medical evidence supports a finding that the symptoms that the applicant has experienced in his right knee are due to age and constitutional factors and those symptoms are unrelated to any additional pressure being placed upon the right leg. Ms Grotte does not dispute that the applicant has osteoarthritic changes in his right knee, nor that the Baker's cyst found in the right knee has been caused by the injury on 8 May 2009 or is a consequence of the injury to the left knee.
63. Deputy President Roche said in *Taxi Combined Services (Victoria) Pty Ltd v Schokman* [2014] NSWCCPD 18 (*Schokman*) at [53]: "It is trite law that a condition can have multiple causes (*ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]; [2009] HCA 28; 237 CLR 656)." That the applicant has osteoarthritis and a Baker's cyst in his right knee, either or both of which may be the cause of symptoms in the right knee, does not rule out a finding that overuse of the right knee as a consequence of ongoing problems with the left knee is also a cause of symptoms in the right knee.
64. I am satisfied from the historical evidence which I have already referred to and the applicant's own evidence, that overuse by the applicant of his right knee due to the ongoing effects of injury to the left knee is at least a cause of restrictions and symptoms in the right knee. That, in my view, satisfies the test set out by DP Roche in *Moon*, being whether "restrictions and symptoms" (in this case in the applicant's right knee) result from the injury to the left knee. Whether those restrictions and symptoms equate to any actual impairment of the right knee is a different issue to be determined by an Approved Medical Specialist.
65. I prefer the opinion of Dr Habib on the issue of whether the applicant has suffered a consequential condition affecting his right knee over the opinion of Dr Quain. Dr Quain does not record any details of how the applicant may have suffered symptoms in his right knee as a result of the injury to his left knee. This is notwithstanding that his report was prepared in response to the applicant's claim that he has permanent impairment of the right knee as a consequence of injury to the left knee and being provided with the report of Dr Habib.
66. In my view Dr Quain really does not properly answer the question put to him by the solicitor seeking his opinion as to whether the applicant's right knee symptoms are consequential or secondary to his left knee injury. Dr Quain merely answers that the arthritis in the left knee has not caused a change of condition in the right knee and that the change in the condition in the right knee is due to age and constitutional factors. As I have already noted, the applicant does not dispute that he has degeneration in his right knee but the issue, which is not addressed by Dr Quain, is whether the overuse of the right knee has caused symptoms in the right knee as a result of the injury to the left knee.
67. In contrast, Dr Habib records details of the applicant placing extra loading upon his right knee due to the injury to his left knee, gives consideration to the effect that this altered gait has had upon the applicant's right knee, and forms the opinion that the applicant has developed right knee pain and swelling from this overloading or overuse.
68. I note the submission made by Mr Saul that the applicant's case must be regarded as deficient when there is no opinion provided by the applicant's treating specialist, Dr Dave, on the issue of whether the applicant's right knee symptoms are a consequence of his left knee injury. I note that a similar criticism was levelled at the worker in *Arquero* but that DP Wood ultimately determined [at 154] that "the lack of that evidence is not fatal" as she was satisfied that the historical evidence and the worker's statement allowed an independent medical expert to reach an opinion that supported the worker's claim for a consequential condition.

69. The opinion of a treating specialist on the issue of causation is invariably helpful in the determination of a dispute such as this. However, as in *Arquero*, I do not consider the failure to provide such an opinion to be fatal to the applicant's claim. The applicant was returned to the care of his general practitioner by Dr Dave in December 2009. The applicant only returned to Dr Dave some five years later in 2015 when the applicant experienced a sudden onset of severe pain in his right knee which Dr Dave records as having no predisposing cause. Dr Dave only saw the applicant on one occasion in 2015 and has not examined him since.
70. This is not a situation where a worker has had regular and ongoing care from a treating specialist for several years. If that were the situation then I would be far more concerned about the failure of the applicant to provide what is likely to be the best medical evidence available on the issue of causation. Dr Dave has only provided treatment to the applicant for limited and discrete periods of time in 2009 and 2015 for an injury and the development of subsequent symptoms which now span over 10 years.
71. I consider that the question of causation has been properly addressed by another expert, namely Dr Habib, even though he has only seen the applicant on one occasion, because he has been provided with relevant treating reports and scans, has taken details of the injury and subsequent effects as a result of that injury which are consistent with the historical evidence and the applicant's own evidence, and (unlike Dr Quain) has answered the relevant question on causation.
72. I do not accept Mr Saul's argument that the lack of evidence of a gradual progression of symptoms in the right knee and the failure to report or complain of any symptoms in the right knee for many years negates a finding that the applicant has a consequential condition affecting his right knee as a result of the injury to his left knee. A medical condition varies from person to person. The question to be determined is whether the evidence supports a finding that at some time since the injury of 8 May 2009, the applicant has suffered restrictions and symptoms in his right knee that result from that initial injury to the left knee, and I am satisfied for reasons that I have already provided that this has been established by the applicant.
73. There will be a referral for assessment of whole person impairment for the injury to the left lower extremity (knee) that was sustained by the applicant in the course of his employment with the respondent on 8 May 2009.
74. There will also be a referral for assessment of whole person impairment for the injury to the right knee sustained by the applicant on that same date, noting the concession made by the applicant in his own evidence that his right knee pain settled a few weeks after that injury.
75. There will also be a referral for assessment of whole person impairment for the consequential condition affecting the applicant's right knee as a result of the injury sustained to his left knee.