LIFE
CODE
COMPLIANCE
COMMITTEE

Notice of Determination

by the Life Code Compliance Committee (Life CCC) on alleged non-compliance with the Life Insurance Code of Practice by a subscriber

Reference:	CX 4336	**Date:**	8th April 2019
Code sections:	8.17[1]		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer is a member of a superannuation fund. As part of his membership, the Consumer obtained life insurance including a Total and Permanent Disability (TPD) benefit. The life insurance was issued by a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

The Consumer lodged a TPD claim in February 2016.

In January 2018, the Consumer's legal representatives made a referral to the Life CCC, alleging a breach of section 8.17[2] of the Code on the basis that the Subscriber had not provided its decision on the claim within six months.

Findings in accordance with Charter clause 7.4(b)(iii)[3]:

The Life CCC determined there was not a breach and that the allegation in relation to section 8.17 of the Code was unfounded.

The Life CCC findings and conclusion:

The Consumer lodged a TPD claim in February 2016.

The insurer became a Subscriber of the Life Insurance Code of Practice on 30 June 2017, at which stage it was bound by all the obligations of the Code. Any claim open on the date the Subscriber adopted the Code had the timeframes under obligation 8.17 reset to day 1 from the day it adopted the Code. Day 1 thus became 30 June 2017 and the Subscriber had to

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[1] The Code section/s are provided in full in the last section of the Determination.
[2] The Code section/s are provided in full in the last section of the Determination.
[3] The Life CCC is bound by its Charter to use the terminology 'the reported allegation was proven in whole or in part or was unfounded.' This in essence requires the Life CCC to state if it determined there was a breach or not. The Life CCC will explain its determination in plain language in the body of the Determination.

make a decision on the claim by 31 December 2017, unless Unexpected Circumstances applied.

On review of the key dates and facts of the case it was noted that the Subscriber provided its decision on the claim to the Group Policy-owner - in this case, the Trustee - on 13 October 2017. The Subscriber provided an addendum to its decision on 22 December 2017 due to the Consumer submitting additional information to the Trustee.

As a result, the Life CCC determined that the Subscriber provided the Trustee with a final decision on the claim prior to the expiry of the six-month timeframe and was not in breach of the Code.

Timeline of key events

16 February 2016	The Consumer lodged a TPD claim.
23 August 2016	The Subscriber closed the Consumer's claim as the Consumer had not provided certain information required to assess the claim.
10 January 2017	The Subscriber re-opened the claim upon receipt of the outstanding information.
30 June 2017	The Subscriber adopted the Code and the six-month timeframe to make a decision commenced (as per section 8.17 of the Code).
13 October 2017	The Subscriber declined the claim (first decision) and communicated this to the Trustee.
17 November 2017	The Consumer sent in further information for consideration.
22 December 2017	The Subscriber declined the claim (second decision) and communicated this to the Trustee. It sent this communication in a letter as an addendum to the first decline letter.
24 January 2018	The Consumer submitted a Code breach allegation

Key Learning

When investigating the referral, the dates the Trustee informed the Consumer of the decisions made by the Subscriber was not apparent to the Life CCC. The Code requires the Subscriber to make a decision within a timeframe and inform the Consumer. However, in cases where there is a Group policy, the communication arrangements can require the Subscriber to inform the Group Policy-owner - in this case the Trustee - of the decision.[4]

Under the Code, there are no obligations on Group Policy-owners or timeframes within which they must inform the Consumer of a claim decision, which can cause confusion for the Consumer. Whilst a Subscriber may have met its Code obligations, the delay in the decision being passed on to the Consumer by the Group Policy-owner (for a number of reasons), may lead to the perception that there has been no 'decision' on the claim, or delays in making a decision.

The Life CCC encourages Subscribers to work with Group Policy-owners to streamline the process of communicating claim decisions to Consumers wherever possible.

[4] Section 8.1 of the Code

Relevant Code Sections

Section 8.17:

For all claims other than income-related claims, **we** will let **you** know **our** decision no later than six months after **we** are notified of **your** claim or six months after the end of any waiting period, unless **Unexpected Circumstances** apply. Depending on **your** policy, **our** decision may be a requirement that **you** undertake a period of rehabilitation or retraining, or it may be a final decision on **your** benefits. Where **Unexpected Circumstances** apply, **our** decision will be made no later than 12 months after **we** are notified of **your** claim. **We** will let **you** know the reasons for the delay, and if **you** disagree **we** will review this. If **we** cannot make a decision within 12 months, **we** will give **you** details of **our Complaints** process.

Section 8.1:

If **your** claim is covered by a **Group Policy**, **we** may be required to provide the communications referred to below to the **Group Policy-owner** (for example, the superannuation fund trustee which owns **your Life Insurance Policy**) in accordance with section 2.13. The **Group Policy-owner** will then communicate with **you** and assist with **your** claim. When **you** make a claim, **we** and/or the **Group Policy-owner** will let **you** know who will be in contact with **you.**

The Life CCC approach to interpreting section 8.17

The Life CCC considered section 8.17 and has developed the following approach to interpreting the obligation:

Section 8.17 of the Code creates four separate obligations for subscribers:

1. Inform the consumer of the subscriber's decision no later than six months after the claim is notified, or six months after the end of any waiting period, unless Unexpected Circumstances apply.
2. Inform the consumer of the subscriber's decision no later than 12 months after the claim is notified if 'Unexpected Circumstances' apply.
3. If 'Unexpected Circumstances' apply, the subscriber has to inform the consumer of the reasons for the delay, and that the consumer can disagree with the reasons. The subscriber will conduct a review if the consumer disagrees.
4. Provide the consumer with the subscriber's complaints process if a decision cannot be made within 12 months.

These four obligations are separate from each other, and it is possible for a Code subscriber to meet some but not all of the obligations and thus be in breach of section 8.17.

The term 'decision' means to: Admit/ decline a claim ('final decision') or commence rehabilitation or retraining for claims covered by section 8.17.

The term 'notified' is interpreted by the Life CCC to be the plain language meaning of the word. Claim 'notified' refers to the initial contact made by the claimant in respect of a potential claim. This could take the form of a physical submission (letter, email, etc.) or a telephone call. The Claim Notification Date is the date on which the claim was first notified. (The Life CCC is aware that subscribers may not be using the point in time as defined above for 'notified' to measure claim duration and is considering its further position on this matter.)

The Life CCC determined that Code subscribers have to inform consumers of the existence of 'Unexpected Circumstances' within the initial timeframe provided (six months) plus one business day if they want to rely on this exception for not meeting claim assessment timeframe obligations.

Code subscribers must inform consumers of the complaints process if 'Unexpected Circumstances' applies and a decision is unable to be made within 12 months plus one business day. The subscriber should also explain why it could not make a decision within those timeframes, though this is not explicitly stated in the Code obligation.

All communication required under section 8.17 is to be completed in writing.

Section 8.1 of the Code states that communications may be required to be provided to the Group Policy-owner if a claim is covered by a Group Policy. In that case, the Code subscriber will be required to direct all communication to the Group Policy-owner.

For a subscriber to be compliant with section 8.17, the subscriber has to inform the Group Policy-owner of the 'Unexpected Circumstances', the reasons for the 'Unexpected Circumstances', that the consumer has the right to disagree with the reasons for 'Unexpected Circumstances', and that the subscriber will review the reasons if the consumer disagrees.

As Group Policy-owners are not subscribers to the Code, whether or not the Group Policy-owner passes on this information to the consumer will not affect a subscriber's compliance with section 8.17 of the Code.

The Life CCC is the independent body responsible for the administration and enforcement of the Life Insurance Code of Practice (the Code). It acts in accordance with the Life CCC Charter, which sets out the powers, duties, functions and responsibilities of the Committee, subject to any provisions in the Code. This de-identified Determination is issued in accordance with clause 7.4 of the Life CCC's Charter in order to assist all subscribers in understanding their Code obligations.