

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:	CX4309	Date:	27 June 2019
Code sections:	8.19, 14.2 and 14.7 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer purchased an Income Protection (IP) policy from a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The Consumer subsequently lodged an IP claim, and the Subscriber declined the claim on 31 August 2017. At this time, the Consumer was being represented by a law firm (LF1).

On or around 12 October 2017, the Consumer engaged a second law firm (LF2) to act on his behalf, replacing LF1. On the same day, LF2 wrote to the Subscriber to request a complete copy of the claim file.

On 14 December 2017, LF2 made a referral to the Life CCC alleging a breach of the Code as the Subscriber had not provided it with a copy of the Consumer's claim file and Policy documentation. LF2 did not cite any specific Code sections in relation to its Code breach referral.

The Life CCC contacted the Subscriber and raised possible breaches of sections 8.19(b), 14.2 and 14.7 of the Code, in relation to this matter.

Findings in accordance with Charter clause 7.4(b)(iii)²:

The Life CCC determined that the Subscriber:

- was in breach of section 8.19(b) of the Code and that the allegation was proven in whole,
- was in breach of section 8.19(b) of the Code in a second and separate instance and that the allegation was proven in whole,
- was not in breach of section 14.2 of the Code and that the allegation was unfounded, and

¹ The Code sections are provided in full in the last section of the Determination.

² 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.

- was in breach of section 14.7 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.19: Two obligations

Section 8.19 creates two separate obligations for Subscribers. The first obligation is in relation to the Subscriber providing the information in section 8.19(a) to (c) to the Consumer when the Subscriber declines a claim. This communication must be in writing.

The second obligation is in relation to the Subscriber providing the information and documents that it relied on in making its decision to decline the claim to the Consumer within 10 business days, if requested by the Consumer.

In this instance the Life CCC determined that the Subscriber was in breach of both the first and the second obligations of section 8.19 of the Code.

Section 8.19: First obligation

The Subscriber sent a decline letter to LF1 on 31 August 2017. The Life CCC noted that the decline letter did not contain the wording required under section 8.19(b) of the Code. As a result, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code in relation to the Subscriber's decline letter.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)³ that the Subscriber's breach of section 8.19(b) of the Code in relation to the first obligation amounted to serious and systemic non-compliance with the Code.

The Subscriber has acknowledged that it did not have a compliant decline letter template prior to 29 March 2018, indicating that the Subscriber did not have an adequate arrangement to ensure compliance with section 8.19 of the Code.

The Subscriber updated its decline letter template to include the information in section 8.19(b) on 29 March 2018. Subsequent to this, the Subscriber conducted an audit of its compliance with section 8.19 and reviewed a random sample of 52 claims and found that 27 claims did not include the information required under section 8.19(b) of the Code. This was because the Subscriber's claims assessors were not using the updated template when drafting the decline letters. As a result, the Subscriber will implement additional training for its staff in relation to its compliance with section 8.19 of the Code.

Section 8.19: Second obligation

Within the Subscriber's decline letter of 31 August 2017, the Subscriber references and relies on various surveillance videos of the Consumer. LF1 requested copies of the surveillance footage on 4 September 2017. Under obligation 2 of section 8.19, the Subscriber has 10 business days to provide copies of the information requested.

As at 12 October 2017 when LF1 ceased to represent the Consumer, the Subscriber had not provided copies of the surveillance footage to LF1. As a result, the Life CCC determined that the Subscriber was in breach of section 8.19(b) of the Code.

³ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴ that there was no basis to conclude that the Subscriber's breach of section 8.19(b) of the Code in relation to the second obligation amounted to serious or systemic non-compliance with the Code.

The breach of the second obligation in section 8.19(b) was caused by a combination of factors, including the time required by a third party to redact the footage. The Subscriber has noted that this was an isolated incident and that it was not aware of any other breaches.

The Subscriber has also implemented a new system to automate its monitoring of Code obligations and to review and track delays.

Section 14.2

Section 14.2 of the Code creates an obligation for Subscribers to grant access to a Consumer's information that the Subscriber has relied on in assessing the Consumer's application for insurance cover, their claim, or their complaint. This obligation is subject to the circumstances listed in section 14.5 of the Code. Section 14.2 does not contain a timeframe for the Subscriber to provide the Consumer with access to the relevant information.

In this instance, while the Subscriber did not provide the information requested promptly, there is no evidence to suggest that the Subscriber denied or prevented the Consumer from accessing the information that the Subscriber relied on.

As a result, the Life CCC determined that the Subscriber was not in breach of section 14.2 of the Code.

Section 14.7

Section 14.7 of the Code requires the Subscriber to provide any Life Insurance Policy documentation 'promptly'. 'Promptly' is not defined under the Code. The Life CCC has adopted a 10 business day timeframe in relation to the definition of 'promptly' under section 14.7 of the Code.

In addition, the Life CCC has determined that the term 'Life Insurance Policy' documentation should at a minimum include the:

- Product Disclosure Statement (PDS),
- Policy Document, and
- Policy Schedule.

LF2 first requested the Policy documentation on 12 October 2017 and made a subsequent request for a copy of the policy terms and the Policy Schedule on 17 October 2017. The Subscriber provided a copy of the file to LF2 on 11 December 2017, via a USB stick.

Given that the Subscriber took 2 months to provide the Policy documentation requested to the Consumer, the Life CCC determined that the Subscriber was in breach of section 14.7 of the Code.

⁴ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁵ that there was no basis to conclude that the Subscriber's breach of section 14.7 of the Code amounted to serious or systemic non-compliance with the Code.

The cause of the breach of section 14.7 was due to human error by the Subscriber's employee, who overlooked LF2's initial request for the Policy documentation. The Subscriber ran exception reporting for the period of 1 July to 30 September 2018 and it did not identify any other breaches of section 14.7 of the Code.

Key Learnings

It is not sufficient for Subscribers to only have processes and procedures in place to facilitate Code compliance; a robust compliance framework also requires Subscribers to periodically review the adequacy of its compliance processes and to provide ongoing training to its staff to ensure that the processes and procedures in place are followed.

Relevant Code Sections

Section 8.19:

If **we** decline **your** claim **we** will let **you** know **in writing**:

- a) the reasons for **our** decision;
- b) that **you** have the right to copies of the documents and information **we** have relied on, and if **you** request **we** will provide **you** (or **your** doctor, where appropriate) with copies within ten **business days**, in accordance with the Access to Information section of the **Code**; and
- c) that **you** have the right to request a review if **you** disagree with **our** decision, and **we** will give **you** details of **our Complaints** process.

Section 14.2:

Subject to section 14.5, **you** can access the information about **you** that **we** have relied on in assessing **your** application for insurance cover, **your** claim or **your Complaint**.

Section 14.7:

If **you** request any of **your Life Insurance Policy** documentation from **us**, **we** will provide this to **you** promptly and in an electronic form if **you** request, subject to any process for releasing policy documentation that **we** are required to carry out by law.

Section 14.5:

In special circumstances, **we** may decline to provide access to or disclose information to **you**, such as:

- a) where information is protected from disclosure by law, including the Privacy Act 1988;
- b) where **we** reasonably determine that the information should be provided directly by **us** to **your** doctor;
- c) where the release of the information may be prejudicial to **us** in relation to a dispute about **your** insurance cover or **your** claim, or in relation to **your Complaint**; or
- d) where **we** reasonably believe that the information is commercial-in confidence.

⁵ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with 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 Determination is issued in accordance with clause 7.4 of the Life CCC's Charter in order to facilitate agreement between the Life CCC and the Subscriber on corrective measures and the relevant timeframes for their implementation.