

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:	CX4336 (second Determination)	Date:	27 June 2019
Code sections:	8.15 ¹		
Investigation:	Monitoring conducted by the Life CCC		

The alleged Code breach:

The Consumer is a member of a superannuation fund. As part of their 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), and the policy was owned by a Group Policy-owner (the Trustee).

The Consumer lodged a TPD claim in February 2016, and the Subscriber sent three decline letters to the Trustee dated 6 October 2017 (first decline letter), 13 October 2017 (second decline letter), and 22 December 2017 (third decline letter).

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

The Life CCC issued a Determination on the section 8.17 allegation on 8 April 2019 and concluded that the Subscriber had not breached section 8.17 of the Code in this Matter.

As part of the Life CCC's investigation, it also sought information from the Subscriber in relation to its compliance with section 8.15 of the Code.

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

In relation to the first and second decline letter, the Life CCC assessed the Matter and determined that the Subscriber was not in breach of section 8.15 of the Code, and that the allegation was unfounded.

In relation to the third decline letter, the Life CCC assessed the Matter and determined that the Subscriber was in breach of section 8.15 of the Code, and that the allegation was proven in whole.

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.

The Life CCC findings and conclusion:

The Subscriber in this instance sent three separate decline letters to the Trustee, and all three decline letters related to the same claim. This was because the Consumer submitted additional information for the Subscriber's consideration on two occasions, which warranted a review of the claim and the issuance of a new decline letter.

Based on the information considered, the Trustee did not communicate the first and second decline letters to the Consumer, and only communicated the decision to decline the claim to the Consumer after receiving the Subscriber's third decline letter on 22 December 2017.

First decline letter

The Subscriber provided the first decline letter to the Trustee on 6 October 2017.

In relation to the 10 business day timeframe stipulated in section 8.15, the Life CCC had previously determined that the 10 business day timeframe would start on the next business day after the Subscriber received the information. This is to avoid a scenario where a subscriber receives the information either close to the end of, or after, business hours.

As the Subscriber received the information that it required on 21 September 2017, the Subscriber had 10 business days starting on 22 September 2017 to communicate its decision to the Trustee.

The Subscriber communicated the decision to the Trustee on 6 October 2017. Given that 29 September 2017 was a public holiday³, the Life CCC determined that in relation to the first decline letter, the Subscriber was not in breach of section 8.15 of the Code as the Subscriber communicated its decision on the claim within 10 business days of receiving the information that it reasonably required to assess the claim.

Second decline letter

The Subscriber received additional information from the Trustee on 9 October 2017, three days after communicating its first decline letter. The Subscriber subsequently reviewed this information and issued its second decline letter on 13 October 2017.

The Life CCC determined that in relation to the second decline letter, the Subscriber was not in breach of section 8.15 of the Code as the Subscriber communicated its decision on the claim within 10 business days of receiving the information that it reasonably required to assess the claim.

Third decline letter

The Subscriber received additional information from the Trustee on 20 November 2017. The Subscriber subsequently reviewed this information and issued its third decline letter on 22 December 2017.

The Subscriber has noted that the information it received was substantial and amounted to over 3,000 pages. As a result, the Subscriber put forward that its 'reasonable enquiry' under section 8.15 was not complete until it had completed its review of the information that it received.

³ AFL Grand Final Friday in Melbourne.

The Life CCC did not agree with this view, and the Life CCC noted that a Subscriber reviewing information received from the Consumer does not constitute a reasonable enquiry under section 8.15 of the Code.

This was because an **enquiry is the act of asking for information**. As reviewing information does not constitute **an act of asking for information**, a subscriber's review of information received cannot be a 'reasonable enquiry' under section 8.15 of the Code.

The Life CCC determined that in relation to the third decline letter, the Subscriber was in breach of section 8.15 of the Code as the Subscriber did not communicate its decision on the claim within 10 business days of receiving the information that it reasonably required to assess the claim.

Serious or systemic non-compliance

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 8.15 of the Code amounted to serious and systemic non-compliance with the Code.

This was due to the unique circumstances of the breach, as the Subscriber received a large amount of additional information after the claim was previously declined twice. The Subscriber noted that it did not receive any cover letter or instructions explaining the reasons why the additional information was provided.

The Life CCC acknowledged the difficulties faced by the Subscriber in relation to receiving a large number of documents after the claim decision had been provided, and the Life CCC noted that the cause of the breach in this Matter was likely to be isolated and rare.

While the Subscriber breached section 8.15 in this instance, the Life CCC further noted that there was no evidence to demonstrate that the Subscriber did not have adequate processes in place to consistently enable compliance with section 8.15 of the Code.

Key learnings

As noted above, the 10 business day timeframe in section 8.15 will start on the next business day after the Subscriber received the information.

A 'reasonable enquiry' is not currently defined under the Code, with the Code only explicitly including a referral to a reinsurer as a 'reasonable enquiry'. The Life CCC has determined that a 'reasonable enquiry' can constitute an enquiry to third parties such as the Consumer's doctor or employer.

The Life CCC also noted that a 'reasonable enquiry' can also constitute an internal enquiry within the Subscriber, such as an enquiry to the Subscriber's Chief Medical Officer for their medical opinion. Whether a request for information constitutes a 'reasonable enquiry' will be assessed by the Life CCC on a case by case basis, and the onus will be on the Subscriber to demonstrate that the request for information was a 'reasonable enquiry'.

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.

Prior Determination

The Life CCC notes that the prior Determination issued by the Life CCC on 8 April 2019 refers to the Subscriber having declined the Consumer's TPD claim on 13 October 2017 and 22 December 2017.

As part of this investigation and subsequent to the Life CCC's Determination on 8 April 2019, the Subscriber informed the Life CCC that it had actually sent three decline letters (on 6 October 2017, 13 October 2017, and 22 December 2017) to the Trustee.

The Life CCC has considered this and confirms that this does not change the Life CCC's prior determination regarding the Subscriber's compliance with section 8.17 of the Code.

Relevant Code Section/s

Section 8.15:

Once we have all the information we reasonably need and have completed all reasonable enquiries⁵ to assess your claim, including your response to the evidence we are basing our decision on if we have presented this to you, we will let you know our decision on your claim within ten business days.

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 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.

⁵ Including referrals to one or more Reinsurers where necessary.