

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:	CX4672	Date:	11 June 2019
Code sections:	1.5, 8.2 ¹		
Investigation:	Self-reported non-compliance by a Code subscriber		

The Code breach:

A Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) self-reported a significant breach of Code obligations 1.5 and 8.2.²

Section 1.5 of the Code sets out the principles that apply to subscribers' products and services. These are:

- (a) clarity and transparency;
- (b) fairness and respect;
- (c) honesty;
- (d) timeliness; and
- (e) communications in plain language.

Section 8.2 of the Code requires subscribers to consider all features of a life insurance policy to ensure that a consumer is claiming for all benefits to which they are entitled and to not discourage a consumer from making a claim.

Under the terms of the Subscriber's Income Protection (IP) cover, the consumer is entitled to a premium waiver benefit whereby a consumer's premium is waived or refunded for the duration that the consumer receives disability benefit payments under the relevant IP cover.

The Subscriber identified that since 2010:

- it had not been waiving or refunding premiums to certain members who were entitled to the premium waiver benefit; and
- in some instances, it had been refunding the premium directly to the relevant member of a superannuation fund who is entitled to the premium waiver benefit, rather than to the trustee of the superannuation fund.

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

² The Code sections are provided in full in the last section of the Determination.

The Subscriber identified that 292 consumers had been impacted, of which:

- 199 consumers did not receive a premium waiver/refund; and
- 93 consumers had their premiums refunded directly to them rather than to their relevant superannuation fund.

Of the 292 impacted consumers, 65 were impacted in the period since the adoption of the Code to August 2018, and all 65 had had the premium waiver applied but had not received a refund of any premiums paid while on claim until the waiver was applied. None of the impacted consumers had had premiums refunded directly to them rather than the relevant superannuation fund, after the introduction of the Code.

The cause of the breach has been attributed to a delay in the period between the date the claim was lodged by the consumer and the date the claim was approved. This resulted in up to two cycles of premiums being paid while the consumer was entitled to the waiver before it was applied. Ordinarily, the Subscriber would refund the premiums backdated to the date of the claim but on this occasion, this did not happen.

This delay was a result of uncertainty in the Subscriber's Claims Operations team about how to process refunds of premiums to consumers who held their IP policy via a superannuation fund. Refunds of premiums were therefore suspended while advice was sought on how to proceed, and impacted claims/policies were recorded by the Subscriber to ensure outstanding refunds were processed once the approach had been clarified.

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

The Life CCC assessed the matter and determined that there was a breach of section 1.5 and 8.2 of the Code which was significant, and which was proven in whole.

The Life CCC findings and conclusion:

Although the Subscriber reported the matter as a significant breach of the Corporations Act to ASIC, due to the numbers of consumers affected, the Subscriber did not consider the breaches of the Code to be significant when it self-reported to the Life CCC.

The Life CCC notes that under section 13.4 of the Code, the Subscriber may not have an obligation to report this breach to the Life CCC, as it has already reported it to the regulatory body. Thus, the Life CCC views this notification as a proactive and positive action from the Subscriber. It also notes that ASIC has acknowledged that the Subscriber is taking steps to rectify the breach and advised that ASIC does not propose to make any further inquiries about the reportable event at the present.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴ that, due to the fact that all 65 consumers that had an IP claim and were entitled to a premium waiver since 1 July 2017 were impacted resulting in a financial detriment of \$46,590.70, the Subscriber's

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.

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.

breach of section 1.5 and 8.2 of the Code amounted to serious and systemic non-compliance with the Code.

Code obligation under section 1.5

Based on a plain reading of this section, and on the basis of the information provided, the Life CCC considered that as a minimum, the Subscriber had failed to meet the timeliness, clarity and transparency requirements to be compliant with section 1.5. The Life CCC has therefore determined that the Subscriber was in breach of section 1.5 of the Code.

Code obligation under section 8.2

The Subscriber considered the matter to be a breach of section 8.2 because the delay in application of the premium waiver, and subsequent failure to refund paid premiums that were subject to the waiver, resulted in consumers not receiving the entirety of the benefit they had claimed, and were entitled to.

Under certain circumstances, a consumer is entitled to a premium waiver under the terms of the Subscriber's IP cover. As the application of this benefit is not automatic, the consumer would not necessarily be aware of it and so it would be the responsibility of the assessor working on the claim to identify if a waiver was applicable and to process this.

The Life CCC agrees with the Subscriber's interpretation of section 8.2 that in this matter, to be compliant with the Code, it needed to:

- identify those consumers eligible for a premium waiver, and
- process the refund of the premiums.

Although the Life CCC notes the Subscriber had identified those consumers eligible for a premium waiver, as a result of a breakdown in its processes, it failed to process refunds. The Life CCC has therefore determined that the Subscriber failed to fully consider all available benefits available under the terms of the policy and was in breach of section 8.2 of the Code.

As part of the remedial action the Subscriber has:

- introduced forms to be completed by consumers at the time of making a claim to allow the premium to be refunded back to the consumer's nominated fund at the time the initial benefit payment is made
- made system adjustments to ensure premium collections are ceased until such time as the consumer is no longer entitled to a waiver
- appointed staff responsible for an ongoing review of all logged matters
- established a monthly meeting to prioritise IT changes and to ensure any consumer remediation is completed, and
- agreed to carry out a review of these changes as part of its claims handling internal audit plan FY2019.

The Life CCC is satisfied that the process changes are sufficient to ensure that a waiver of premiums are applied to IP claims, and refunds of any premiums in future are paid correctly.

The Life CCC further recommended that the Subscriber conduct an audit of claims handled since the changes have been introduced, to satisfy itself of the effectiveness of its updated processes. In addition, the Life CCC also recommended that the letter sent to consumers as part of the remedial action should also include information about the Subscriber's Code

obligation under section 8.2 and state that that the Subscriber breached the Code as a result of this error but has worked with the Life CCC to remediate the cause of the breach.

The Subscriber has confirmed that all affected consumers have been fully remediated, including the payment of applicable interest.

Relevant Code Sections

Section 1.5:

The principles that apply to **our** products and services that are covered by the Code are:

- a) clarity and transparency;
- b) fairness and respect;
- c) honesty;
- d) timeliness; and
- e) communications in plain language.

Section 8.2

When you make a claim we will consider all of the features of the Life Insurance Policy to which your claim relates in order to ensure you are claiming for all available benefits under your Life Insurance Policy. We will not discourage you from making a claim.

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.