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:	CX4360	**Date:**	1 October 2019
Code sections:	8.4, 8.7, 8.15, 8.17, 8.19[1]		
Investigation:	A consumer-reported alleged Code breach		

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 Life Insurance Company that is 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 on 19 April 2017. However, any relevant timeframes under the Code began when the Subscriber adopted the Code, on 30 June 2017. This meant that the Subscriber had an obligation to communicate its decision on the claim by 31 December 2017, unless Unexpected Circumstances applied.

As part of the Subscriber's assessment of the claim, a copy of the Consumer's WorkCover (WC) file was requested on 19 July 2017. Obtaining this file took more than six months, and the Subscriber classified the claim as falling under Unexpected Circumstances, as defined under the Code.

After the Subscriber received the WC file, it issued two Procedural Fairness (PF) letters on 23 May 2018 and 26 July 2018. As the Consumer did not submit any additional information after 26 July 2018, the Subscriber made its decision to decline the claim and communicated this to the Trustee on 11 September 2018.

The Consumer's legal representatives made a referral to the Life CCC on 16 February 2018 alleging a breach of section 8.17 of the Code on the basis that the Subscriber did not provide its decision on the claim within six months.

In addition, the Consumer's legal representatives also alleged that the Subscriber was in breach of sections 9.10 and 9.12 of the Code.

The Life CCC notes that the Consumer's legal representatives have since confirmed that the Consumer did not lodge a complaint with the Subscriber or the Trustee. As sections 9.10 and 9.12 relate to a Subscriber's obligations when responding to a complaint, and no complaint

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

was actually made, the Life CCC did not investigate the Subscriber's compliance with sections 9.10 and 9.12 as part of this matter.

We note that as part of its review of the matter, the Life CCC also raised possible breaches of sections 8.4, 8.7, 8.15 and 8.19 of the Code.

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

The Life CCC determined that the Subscriber:

- was in breach of section 8.17 of the Code and that the allegation was proven in whole,
- was not in breach of section 8.4 of the Code and that the allegation was unfounded,
- was in breach of section 8.7 of the Code and that the allegation was proven in whole,
- was in breach of section 8.15 of the Code and that the allegation was proven in whole, and
- was not in breach of section 8.19 of the Code and that the allegation was unfounded.

The Life CCC findings and conclusion:

Section 8.17

Section 8.17 of the Code requires a Subscriber to communicate its decision on lump sum claims within six months, unless Unexpected Circumstances applies.

The Consumer lodged a TPD claim on 19 April 2017. Any claim being assessed on the date the Subscriber adopted the Code had the timeframes under section 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 make a decision on the claim by 31 December 2017, unless Unexpected Circumstances applied.

As noted above, the Subscriber stated that Unexpected Circumstances applied in this matter as the claim was notified to the Subscriber more than twelve months after the date of disability in 2010 and there were reasonable delays in obtaining the Consumer's WC file, which the Subscriber first requested on 19 July 2017.

As the Consumer submitted a TPD claim in April 2017, the Life CCC agreed that the claim was notified to the Subscriber more than twelve months after the date of disability in 2010. The Life CCC further agreed that there were reasonable delays in relation to the Subscriber obtaining the Consumer's WC file, as the Subscriber only obtained the file on 16 January 2018.

As a result, the Life CCC determined that Unexpected Circumstances applied in this instance and that the Subscriber had until 30 June 2018 to provide its decision on the claim.

After receiving the Consumer's WC file, the Subscriber issued the first PF letter to the Consumer on 23 May 2018 and provided the Consumer with 30 days to provide a written response.

On 7 June 2018, the Subscriber received additional information from the Consumer's doctor. This medical report was requested by the Subscriber in March 2018, but the Subscriber had

[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.

decided to proceed on the available evidence as the doctor had not provided a response prior to the first PF letter.

On 28 June 2018, the Subscriber notified the Consumer that they were unable to make a decision on the claim as further information had been received from the Consumer's doctor. The Subscriber sent a second PF letter to the Consumer on 26 July 2018 and provided the Consumer with 14 days to provide their response.

The Subscriber subsequently communicated its decision to decline the claim to the Trustee on 11 September 2018.

The Life CCC determined that as the Subscriber did not communicate its decision on the claim within twelve months (by 30 June 2018), the Subscriber was in breach of section 8.17 of the Code.

Further, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)[3] that there was no basis to conclude that the Subscriber's breach of section 8.17 of the Code amounted to serious or systemic non-compliance with the Code.

The breach of section 8.17 in this instance can be attributed to the delays caused by the claims assessor handling the file, such as the delay in reviewing the WC file and additional medical report and the delay in issuing the second PF letter.

While the errors resulted in the Subscriber communicating its decision two and a half months outside the 12 month timeframe, the breach was likely to be isolated to this specific claims assessor, who is no longer employed by the Subscriber.

In addition, there is no evidence to indicate that the Consumer suffered actual or potential financial loss as a result of the breach.

The Life CCC notes that the claims assessor's errors are covered as part of the Life CCC's investigation into the Subscriber's compliance with section 8.7 of the Code, which is discussed further below.

Section 8.4

Section 8.4 of the Code creates two obligations for Subscribers. Firstly, to provide consumers with updates on their claim at least every twenty business days unless otherwise agreed with the consumer or the Group Policy-owner. The second obligation requires a Subscriber to respond to requests for information about the claim within ten business days.

In this matter, the Life CCC only assessed the Subscriber's compliance with the first obligation as there was no evidence to indicate that the Subscriber was not compliant with the second obligation of section 8.4 of the Code.

As part of the Subscriber's initial response to the Life CCC's investigation, the Subscriber provided a schedule of the updates provided to the Consumer. The Life CCC reviewed the schedule and noted that the Subscriber did not contact the Consumer every 20 business days from 21 November to 20 December 2017 (21 business days).

As a result, the Life CCC sought the Subscriber's response in relation to the potential non-compliance with section 8.4 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 Subscriber noted that they had, in fact, contacted the Consumer on 15 December 2017, and provided a copy of the correspondence that they had accidentally omitted the correspondence from the schedule previously provided.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.4 of the Code as there was no evidence to indicate that the Subscriber did not provide updates to the Consumer on the claim at least every 20 business days.

Section 8.7

Section 8.7 requires a Subscriber to request the information that it needs as early as possible and to avoid multiple information requests where possible. As part of the Life CCC's review of the matter, the Life CCC noted that the Subscriber did not issue the second PF letter as early as possible.

The Subscriber's sole reason for issuing the second PF letter was due to the additional medical report that it received on 7 June 2018. However, the claims assessor only reviewed the report on 27 June 2018 and only issued the second PF letter on 26 July 2018. The Subscriber has stated that the delay was due to workload pressures.

The Life CCC notes that the Subscriber has acknowledged a breach of section 8.7 of the Code in relation to its failure to draft and send the second PF letter as early as possible. As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of 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 8.7 of the Code amounted to serious or systemic non-compliance with the Code.

The breach in this instance was caused by an oversight on the part of the claims assessor who did not realise that the medical report had been received on 7 June 2018. The Life CCC notes that the claims assessor in this matter is no longer working at the Subscriber, and that there were no analogous breaches identified by the Subscriber.

Based on the information available, the Life CCC was satisfied that this was an isolated incident that was limited to the actions of this specific claims assessor. In addition, the Life CCC did not find any evidence to indicate that the Consumer suffered an actual or potential financial loss as a result of the breach of section 8.7 of the Code.

Section 8.15

Section 8.15 requires Subscribers to communicate a claim decision within ten business days of receiving all the information that a Subscriber reasonably needs to assess a claim.

In this matter, the Subscriber issued the second PF letter on 26 July 2018 and provided the Consumer with 14 days to provide their response to the second PF letter. As the Consumer did not provide any additional information, the claims assessor completed the assessment of the claim on 29 August 2018 and referred the claim for sign-off.

The Subscriber's process requires that a more experienced employee provide sign-off on a decision if the Subscriber is declining the claim. Sign-off was obtained on 11 September 2018 and the Subscriber communicated the decision to the Trustee on the same day.

[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 Subscriber initially put forward their position that the internal sign-off was a reasonable enquiry under section 8.15 of the Code. In the Life CCC's view, an internal sign-off does not constitute a reasonable enquiry under section 8.15 of the Code. While an internal sign-off can be reasonable, it is not an enquiry as no new information is requested or considered.

The Life CCC does not discourage Subscribers from implementing a sign-off process in relation to claim decisions. However, if a Subscriber wishes to include an internal sign-off as part of its decision-making process, this should be completed during the ten business day timeframe referenced in section 8.15 of the Code.

In the Life CCC's view, the Subscriber received all the information that it reasonably required and completed all reasonable enquiries on 9 August 2018, 14 days after issuing its second PF letter. Section 8.15 provides the Subscriber with ten business days to communicate its claim decision; this meant that the Subscriber would have to communicate its decision on the claim by close of business 23 August 2018.

In this instance, the Subscriber communicated its decision to decline the claim to the Trustee on 11 September 2018. As this was more than ten business days after receiving all the information that it reasonably needed and completing all reasonable enquiries, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)[5] that the Subscriber's breach of section 8.15 amounted to systemic non-compliance with the Code, but that there was no basis to conclude that the breach of section 8.15 amounted to serious non-compliance with the Code.

As the Subscriber considered the internal sign-off to be a reasonable enquiry, the Subscriber's section 8.15 process measured the ten business day timeframe in section 8.15 from when sign-off is obtained. As noted above, the Life CCC does not agree with this view.

Given that the Subscriber had been measuring the section 8.15 timeframe in a way that was inconsistent with the Life CCC's interpretation of section 8.15 of the Code, it is likely that the Subscriber's breach of section 8.15 in this instance was not isolated and occurred across multiple instances.

The Life CCC notes that the Subscriber is in the process of amending its section 8.15 process as part of the corrective action agreed with the Life CCC in relation to another matter.

In relation to serious non-compliance with the Code, the Life CCC notes that there was no evidence to indicate that the Consumer suffered any actual or potential financial loss as a result of the breach, which amounted to a delay of 13 business days.

Section 8.19

Section 8.19 creates two separate obligations for Subscribers. The first obligation is in relation to a Subscriber providing the information specified 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 a 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.

[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's investigation in this matter was limited to obligation 1 of section 8.19 of the Code.

The Subscriber sent the decline letter to the Trustee on 11 September 2018. The Life CCC reviewed the decline letter and noted that the wording in section 8.19(b) was not included in the decline letter.

The section 8.19(b) wording informs the Consumer of their right to request copies of the information and documents relied on, and that if requested, the Subscriber would provide the copies within ten business days.

The Subscriber noted that it had previously provided copies of all the documents and information that it relied on to the Consumer as part of the two PF letters and provided copies of all the documents and information that it relied on to the Trustee as part of the decline letter sent to the Trustee on 11 September 2018.

As a result, the Subscriber's view was that the wording in section 8.19(b) was not applicable as the documents and information relied on had already been provided to both the Consumer and the Trustee.

While the Subscriber had not used the specific wording in section 8.19(b) of the Code, the Life CCC determined that in this instance, the Subscriber had met its obligations under section 8.19 by previously providing all the documents and information that it relied on to the Consumer and the Trustee.

However, the Life CCC noted that best practice was to include, as standard, the wording in section 8.19(b) of the Code in its decline letters, even if in this instance, the Subscriber had provided the documents and information relied on. Including the information in section 8.19(b) would be within the spirit of the Code in relation to providing Consumers with more transparency in relation to the Consumer's rights under the Code.

Relevant Code Sections

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**.

Section 8.4:

Prior to making a decision on **your** claim, **we** will keep you informed about the progress of your claim at least every 20 **business days** unless otherwise agreed with **you** or the **Group Policy-owner**. **We** will respond to **your** requests for information about your claim within ten **business days**.

Section 8.7:

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

Section 8.15:

Once **we** have all the information **we** reasonably need and have completed all reasonable enquiries 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 8.19:

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 9.10

Where possible, **we** will respond to the superannuation fund trustee so that it can provide a final response to **your Complaint** in writing within 90 calendar days of the superannuation fund trustee receiving **your Complaint**.

a) of **our** final decision in relation to **your Complaint** and the reasons for that decision;

b) that **you** have the right to copies of the documents and information **we** relied on in assessing **your Complaint**, 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**;

c) that **you** may have the right to take **your Complaint** to the Superannuation Complaints Tribunal (**SCT**) if **you** are not satisfied with **our** decision and the timeframe within which **you** must take **your Complaint** to the **SCT**; and

d) contact details for the **SCT**.

Section 9.12:

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

a) **our** final decision in relation to **your Complaint** and the reasons for that decision;

b) that **you** have the right to copies of the documents and information we relied on in assessing **your Complaint**, 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**;

c) **your** right to take **your** Complaint to the Financial Ombudsman Service (**FOS**) if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your** Complaint to **FOS**; and

d) contact details for **FOS**.

Chapter 15, Definitions: Unexpected Circumstances means:

a) **your** claim has been notified to **us** more than 12 months after the later of the date of disability or the end of **your** waiting period, and there are reasonable delays obtaining evidence necessary for the assessment of **your** claim from the intervening period;
b) for a claim for total and permanent disability, **we** cannot reasonably satisfy ourselves on the basis of the information provided in the six months after the end of **your** waiting period that **your** condition meets the requirements of **your Life Insurance Policy**;
c) **we** have not received reports, records or information reasonably requested from an **Independent Service Provider**, **your** doctor, a government agency or other person or entity (including a **Reinsurer**);
d) the **Policy-owner** or **Group Policy-owner** has disputed or taken a protracted period to consider **our** decision;
e) **you** or **your Representative** have not responded to **our** reasonable enquiries or requests for documents or information concerning **your** claim;
f) there are difficulties in communicating with **you** in relation to the claim due to circumstances beyond **our** control;
g) there is a delay in the claims process that **you** have requested; or
h) the claim is fraudulent or **we** reasonably suspect fraud or non-disclosure that requires further investigation.

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.