

# 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

<b>Reference:</b>	CX 4676	<b>Date:</b>	16 October 2019
<b>Code sections:</b>	5.4, 5.12, 5.14(b), 13.3(a) <sup>1</sup>		
<b>Investigation:</b>	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 5.4, 5.12, 5.14(b) and 13.3(a).

Upon transition to the Code, the Subscriber identified that its information technology (IT) system did not have the functionality to enable compliance with sections 5.4, 5.12 and 5.14(b) of the Code, and therefore was also in breach of section 13.3(a).

The IT system was unable to record the date new documents were received to complete underwriting tasks. This meant that the Subscriber's underwriters were not able to determine when the information required to make an underwriting decision was received.

Consequently, for the period 1 July to 26 August 2018 the Subscriber was unable to monitor:

- if a decision whether to offer insurance was communicated to the consumer within 5 business days (pursuant to sections 5.4 & 5.12); and
- where a decline decision was made, and the consumer had requested the documents used to assess the application, whether those documents were provided to the consumer within ten business days (pursuant to section 5.14(b)).

The breaches impacted the underwriting process for the Subscriber's employer super insurance and group super Death, TPD and IP cover products.

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<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

## **Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>:**

The Life CCC assessed the matter and determined that there were breaches of section 5.4, 5.12, 15.4(b) and 13.3(a) of the Code which were significant, as assessed by the Subscriber, and which was proven in whole.

### **The Life CCC findings and conclusion:**

The Subscriber reported two breaches of section 5.4, eight breaches of section 5.12 and one breach of section 5.14(b) of the Code. As it did not have sufficient processes in place to enable compliance with the Code, the Subscriber also reported a breach of section 13.3(a).

Prior to transitioning to the Code, the Subscriber focused its reporting on the length of cycle times in the underwriting process. Cycle times were a measure of the number of days taken to complete the underwriting assessment from the receipt of the application to the decision being made and communicated to the customer. The Subscriber did not capture, or report on, the completion timeframes of individual underwriting tasks, specifically the time between receiving the last requirement and the decision being made, or the time taken to respond to consumer requests for further information about the decision.

#### **Sections 5.4 and 5.12**

The Subscriber reviewed a random sample of 145 applications received in the period 1 July 2017 to 26 August 2018. It found that in 139 (95%) of those applications, a decision was made within 5 business days.

Of the 8 breaches of section 5.4 and two breaches of section 5.12, the Subscriber reported that shortest delay over and above the five-business day requirement for providing a decision, was one business day and the longest delay, 10 business days.

#### **Section 5.14(b)**

The Subscriber initially reported that it did not have processes in place to record and track compliance with section 5.14(b) of the Code however, upon further investigation it found that its IT system did actually record this information.

Since 30 June 2017, the Subscriber recorded one breach of section 5.14(b), out of a total of 13 requests from consumers for information received in relation to underwriting decisions.

#### **Section 13.3(a)**

Section 13.3(a) of the Code requires all subscribers to have systems and processes in place to enable compliance with the Code. As detailed above, the Subscriber reported that it did not have processes in place to monitor compliance with section 5.4, and 5.12 of the Code, and therefore the Life CCC determined that the Subscriber has breached section 13.3(a) of the Code.

### **Compliance process enhancements**

The Subscriber introduced an additional manual process to allow monitoring of its compliance with sections 5.4 and 5.12 on 27 August 2018, with formal reporting and

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<sup>2</sup> 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.

monitoring commencing on 3 September 2018. The existing process required underwriters to manually add specific additional information into a system-based Register for each case. The Register was pre-populated with basic information about each case but the underwriter had to manually complete other mandatory fields, including the ultimate decision outcome. From 27 August 2018, the Subscriber added a new field to the register which required input of the date when the last requirement to complete the assessment of the application was received. This allowed management to monitor and evidence compliance with Code sections 5.4 and 5.12.

Following the implementation of the enhanced process, the Subscriber completed a manual review of all underwriting assessments completed in the period of September and October 2018. The results confirmed that 99% of underwriting decisions made for impacted policies in September and October 2018 were found to have been decided and communicated to customers within 5 business days.

Since the changes detailed above were introduced, the Subscriber has assessed 554 underwriting applications in the period of 1 November 2018 to 31 March 2019 and identified one breach of section 5.12 and no additional breaches of sections 5.4 and 5.14(b).

In view of the minimal breaches occurring since 1 November 2018, the Life CCC determined that the process enhancements taken by the Subscriber were sufficient to enable compliance with the Code.

### **Consumer impact and remediation**

The Subscriber did not consider that the impacted consumers had suffered financial detriment as a result of the delay in underwriting assessment, as in most cases involved, its decision was provided in 10 business days or less. Six of the 10 consumers impacted by the breaches of sections 5.4 and 5.12 had their applications for cover declined and therefore would be unable to make a claim even if a claimable event occurred in the period of the delay. Of the remaining 4 applications that were accepted, consumers did not report any claims that occurred in the period of the delay.

The Subscriber also did not consider that the Consumer who was impacted by the breach of section 5.14(b) had suffered financial detriment as a result of the 1 business day delay in the provision of the information used to rely on in its underwriting decision.

The Life CCC determined that there is unlikely to have been a financial detriment to consumers caused by the breaches of section 5.4, 5.12 and 5.14(b) of the Code and did not consider there to be any value in the Subscriber communicating these breaches to impacted consumers.

### **Serious or systemic non-compliance**

#### **Section 5.4 and 5.12**

The Life CCC determined, in accordance with Charter clause 7.4(b)(iv)<sup>3</sup>, that the Subscriber's breach of section 5.4 and 5.12 of the Code amounted to systemic but not serious non-compliance with the Code.

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<sup>3</sup> 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 determined that there has been no identifiable financial detriment to consumers because of the breaches of section 5.4 and 5.12 of the Code and therefore the breaches were not serious. However, given the Subscriber did not have processes in place to monitor compliance with the section 5.4 and 5.12 of the Code, the Life CCC determined that the breaches were systemic in nature.

### **Section 5.14(b)**

In view of the fact that there was only one breach of section 5.14(b) of the Code over the timeframe involved, there was no financial detriment identified and that the Subscriber had processes in place to monitor compliance, the Life CCC determined, in accordance with Charter clause 7.4(b)(iv), that the breach did not amount to serious and systemic non-compliance of the Code.

### **Section 13.3(a)**

The Life CCC determined, in accordance with Charter clause 7.4(b)(iv), that due to the lack of adequate processes and the lengthy delay in identifying and reporting the matter, the Subscriber's breach of section 13.3(a) of the Code amounted to serious and systemic non-compliance.

## **Key Learnings**

The Life CCC notes that the Subscriber took approximately 15 months (from the adoption of the Code in July 2017 to reporting the Significant Breach in September 2018) to identify that its Code compliance processes were insufficient. The Life CCC considers this delay excessive.

The Code has been operational for two years and the Life CCC expects all subscribers to now have comprehensive Code compliance processes fully embedded into their business operations.

The Life CCC also encourages subscribers to regularly review their systems and processes - including via internal or external audits - to ensure full and demonstrable compliance with all obligations of the Code and where relevant, to ensure that any remaining "transitional" measures introduced upon adoption of the Code are still fit for purpose.

## Relevant Code Sections

### **Section 5.4:**

Where the information we have received from you is all we need to make our decision on your application, we will let you know our decision within five business days.

### **Section 5.12:**

Once we have all the information we reasonably need and have completed all reasonable enquiries relating to the application we will let you know our decision about whether to accept the application and on what terms within five business days.

### **Section 5.14(b):**

If we do not offer any insurance cover, or if we offer on alternative terms, we will let you know (or your doctor, where appropriate):

b) that you have the right to the information about you that we have relied on to make our decision, and if you request we will provide this to you (or your doctor, where appropriate) within ten business days, in accordance with the Access to Information section of the Code;

### **Section 13.3(a):**

We will:

a) have appropriate systems and processes in place to enable 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.