

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:	CX4885	Date:	4 October 2019
Code sections:	8.2, 8.4, 8.5, 8.7, 8.18, 8.19, KCP 5, KCP 6, KCP 7 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer's late father was a member of a superannuation fund. As part of his membership, he obtained life insurance with a Total and Permanent Disability (TPD) and Terminal Illness (TI) benefit. The life insurance policy 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's father made an initial claim inquiry with the Trustee on 13 July 2018. The claim was not received by the Subscriber until 12 September 2018, with the Subscriber accepting the claim under the policy's TI benefit on the same day.

The Consumer's involvement in the claim commenced on 20 September 2018, when he contacted the Trustee to request a review of the benefit amount. The benefit amount depended on when the Consumer's father was determined to be terminally ill.

Due to the circumstances of the matter, the benefit amount would increase if the Consumer's father was determined to be terminally ill prior to 1 July 2018.

The Subscriber's Chief Medical Officer (CMO) reviewed the evidence and determined that the medical evidence on file was not sufficient to confirm that the Consumer's father met the policy terms and conditions for a TI benefit at an earlier date.

The Subscriber requested additional information from the Consumer's father's oncologist in October 2018 and was in the process of assessing if the relevant event date of the terminal illness could be determined to have occurred prior to 1 July 2018.

In December 2018 the Consumer made a referral to the Life CCC alleging breaches of sections 8.2, 8.4, 8.5, 8.7, 8.19, Key Code Promise (KCP) 5, KCP6 and KCP 7 of the Code. This Code breach referral was also directed as a formal complaint from the Consumer to the Trustee. As the complaint was never passed on from the Trustee to the Subscriber, the Subscriber's obligations under Chapter 9 were not relevant to this matter.

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

As part of its review of the file, the Life CCC also investigated a possible breach of section 8.18 of the Code.

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

The Life CCC determined that:

- the Subscriber was not in breach of sections 8.2, 8.4, 8.5, 8.7 and KCP 6 of the Code and the allegations were unfounded,
- the Subscriber was in breach of section 8.18 of the Code and the allegation was proven in whole, and
- section 8.19, KCP 5 and KCP 7 of the Code were not applicable in this matter and the allegations were unfounded.

The Life CCC findings and conclusion:

Section 8.2

Section 8.2 creates an obligation for a Subscriber to consider all the features of the policy to which the Consumer's claim relates and to not discourage the Consumer from making a claim.

Based on the information reviewed, there was no evidence to indicate that the Subscriber discouraged the Consumer from making a claim or did not consider all the features of the policy.

The Life CCC notes that the Subscriber elected to assess the claim under the TI benefit instead of the TPD benefit as this would result in a shorter claims assessment timeframe. The sum insured under the TI and TPD benefits were identical.

This demonstrates that the Subscriber did consider all the features of the policy and as a result, the Life CCC determined that the Subscriber was not in breach of section 8.2 of the Code.

Section 8.4

Section 8.4 creates two obligations for Subscribers. Firstly, an obligation to keep a Consumer informed about the progress of the claim at least every 20 business days prior to making a decision on the claim, unless otherwise agreed. Secondly, to respond to requests for information about the claim within ten business days.

In this matter, the Consumer alleged that the Subscriber was in breach of both obligations.

In relation to the first obligation of section 8.4, the Subscriber received and accepted the Consumer's claim on 12 September 2018. As the claim assessment period was less than one business day, the Life CCC determined that obligation 1 of section 8.4 would not apply as the claim decision on the claim was already made.

The Life CCC notes that the obligation to provide an update at least every 20 business days only applies prior to when the claim decision is made and communicated to the Consumer or Trustee.

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.

In relation to the second obligation of section 8.4, the Consumer requested a copy of the file on 12 October 2018 and asked for additional information in relation to the Subscriber's review of the evidence provided in relation to the Consumer's father's date of event.

The Subscriber responded on 18 October 2018, which was within ten business days of the Consumer's request. The Subscriber provided a copy of the claim file and informed the Consumer that the CMO review found that there was insufficient evidence to find that the Consumer's father had a date of event prior to 1 July 2018. However, the Subscriber noted that it had requested additional information from the Consumer's father's oncologist.

As the Subscriber had responded to the Consumer's request within the timeframe provided by section 8.4, the Life CCC determined that the Subscriber was not in breach of section 8.4 of the Code.

Section 8.5

Section 8.5 requires a Subscriber to only ask for and rely on information and assessments that are relevant to the claim. The Subscriber had requested information from the Consumer's father's oncologist.

Given that the request resulted from the Consumer's request to review the date of event, the request by the Subscriber in this instance was relevant to the claim. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.5 of the Code.

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. The Consumer alleged that the Subscriber did not request the information that it needed as early as possible.

Based on the information provided, the Consumer first spoke to the Subscriber about an earlier date of event on 11 October 2018, and the Subscriber requested information from the Consumer's father's oncologist on the same day.

Given the available information, there was no basis for the Life CCC to conclude that the Subscriber did not request the information that it needed as early as possible and the Life CCC determined that the Subscriber was not in breach of section 8.7 of the Code.

Section 8.18

Section 8.18 creates an obligation for Subscribers to suggest that a Consumer seek financial advice to help manage a claim payment (financial advice wording) when the Subscriber is making a lump sum payment after accepting a claim.

In this matter, the Life CCC investigated the Subscriber's compliance with section 8.18 after receiving a copy of the claim acceptance email that was sent to the Trustee on 12 September 2018. The claim acceptance email stated that the claim was accepted but did not include the financial advice wording.

The Subscriber noted that it did not consider that section 8.18 applied for superannuation policies, and the Subscriber does not currently advise Trustees that the Consumer should be informed to seek financial advice on lump sum payments.

The Life CCC's view is that the wording of section 8.18 applies to all lump sum life insurance policies sold, regardless of distribution channel.

Section 8.18 notes that the financial advice wording should be provided to 'you'. 'You' is defined under the Code³ as either the Life Insured, the Policy-owner, or a Third Party Beneficiary.

In the Life CCC's view, this means that the Subscriber's obligations in relation to section 8.18 for superannuation policies would be to provide the financial advice wording to the Trustee (the Policy-owner) on the understanding that the Policy-owner will pass on the financial advice wording to the Life Insured.

As this did not occur in this instance, the Life CCC determined that the Subscriber was in breach of section 8.18 of the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 8.18 amounted to systemic non-compliance with the Code, but that there was no basis to conclude that the Subscriber's breach of section 8.18 amounted to serious non-compliance with the Code.

This was because the Subscriber was likely to be non-compliant with the obligations in section 8.18 of the Code in relation to all of the claim acceptance letters for policies that are owned by Group Policy-owners.

The Life CCC further noted that it did not identify any evidence indicating that the Consumer in this instance suffered actual or potential financial loss as a result of the lack of the financial advice wording. The Subscriber has since amended its template claim acceptance letters to include the financial advice wording.

Section 8.19

Section 8.19 requires a Subscriber to inform a Consumer of a claim decline in writing, and to include the information listed in section 8.19(a) to (c).

The Subscriber confirmed that the claim was never declined. As noted above, the claim was accepted by the Subscriber on 12 September 2018. As a result, the Life CCC determined that section 8.19 was not applicable in this matter.

Key Code Promise 5

KCP 5 requires a Subscriber to explain the claims process and keep a Consumer informed about the progress of the claim. The spirit and intent of KCP 5 is to help a Consumer understand the claims process and to keep a Consumer updated.

As the Subscriber accepted the claim on 12 September 2018, the same day that it received the claim, the Life CCC determined that KCP 5 was not applicable in this matter.

Key Code Promise 6

KCP 6 creates an obligation on a Subscriber to make a decision on the claim within the timeframes defined in the Code and that a Consumer can access the Subscriber's complaints process if a Subscriber does not meet the timeframes as defined in the Code.

³ See Chapter 15 of the Code, Definitions.

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.

As noted above, the Subscriber made its decision on 12 September 2018, the same day that it received the claim from the Trustee. As this was within the timeframes provided by the Code, the Life CCC determined that the Subscriber was not in breach of KCP 6.

Key Code Promise 7

KCP 7 requires a Subscriber to explain the reasons for declining a claim in writing and to inform a Consumer of the next steps if a Consumer disagrees.

As noted above, the Subscriber accepted the claim on 12 September 2018. As a result, the Life CCC determined that KCP 7 was not applicable in this instance.

Key learnings

Whilst in this matter, only one of the several allegations put forward was found to be a breach of the Code by the Subscriber, the Life CCC considers that factors leading to the Consumer's apparent belief that their breach allegation referral had substance likely included:

- the delay of two months in the Trustee passing on the original claim enquiry to the Subscriber; and
- some (understandable) confusion on the part of the Consumer as to the roles and obligations of Trustee and Subscriber, and related applicability of the Code. This misunderstanding is regularly observed by the Life CCC in consumer referrals and suggests an ongoing need for public information and education by all parties.

As Trustees are not subscribers to the Code, the Life CCC expects that Subscribers will be proactive in ensuring that any obligations that a Subscriber has under the Code are met insofar as possible by the Subscriber's processes and procedures, instead of relying on a Trustee's processes and procedures.

In addition, in order to manage related reputational and other risks, the Life CCC encourages Subscribers to ensure that their relevant service agreements with Trustees are current and comprehensive.

Section 8.18 creates an obligation to provide the financial advice wording to a Consumer when accepting a lump sum claim. In instances where the policy is owned by a superannuation fund Trustee, a Subscriber should provide the financial advice wording to the Trustee on the understanding that the Trustee will pass this on to the Consumer.

In the Life CCC's view, doing so will enable a Subscriber to satisfy its obligation under section 8.18 of the Code.

Relevant Code Sections

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

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 8.5:

We will only ask for and rely on information and assessments that are relevant to **your** claim and policy, and **we** will explain why **we** are requesting these. This can include, for example, financial, occupational and medical information. If **you** disagree with the relevance of any information, **we** will review the request, and if **you** are not satisfied with **our** review **we** will tell **you** how **you** can make a **Complaint**.

Section 8.7:

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

Section 8.18:

If **we** accept **your** claim and it includes a lump sum payment, **we** will suggest **you** seek financial advice to help manage **your** claim payment. For an income-related claim, if **we** offer to pay **you** a lump sum instead of ongoing payments in order to finalise **your** claim, **we** will suggest that **you** seek financial and legal advice before accepting **our** offer.

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
- c) **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
- d) 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.

Key Code Promise 5

When you make a claim, we will explain the claim process to you and keep you informed about our progress in making a decision on your claim.

Key Code Promise 6

We will make a decision on your claim within the timeframes defined in the Code, and if we cannot meet these timeframes you can access our complaints process.

Key Code Promise 7

If we deny your claim, we will explain the reasons in writing and let you know the next steps if you disagree with our decision.

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.