

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:	CX4393	Date:	25 November 2019
Code sections:	8.4, 8.7, 8.15, 8.17 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 in or around November 2016 with the Trustee. The Consumer was also a member with a second superannuation fund (the second trustee) which offered a life insurance policy that was issued by the same Subscriber. The Consumer lodged a TPD claim under both the policies.

This meant that the Consumer had two concurrent TPD claims with different trustees but the same insurer. However, the Code breach allegation in this instance only related to the Subscriber's handling of the Consumer's TPD claim in relation to the Trustee, and the Life CCC did not consider the Subscriber's obligations in relation to the Consumer's claim with the second trustee.

The Subscriber received most of the required medical information by July 2017 and obtained the requested financial information by August 2017. The Subscriber subsequently reviewed the claim in September 2017 and requested that the Consumer attend an Independent Medical Examination (IME) on 12 December 2017.

The Consumer was unable to attend the scheduled IME. As a result, the IME was rescheduled to 20 December 2017. The Subscriber subsequently received the IME report on 5 February 2018 and arranged a case conference between the teams handling the claims with the Trustee and the second trustee.

The case conference was unable to be held due to delays in the assessment of the Consumer's claim in relation to the policy owned by the second trustee.

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

As the case conference could not be held, the Subscriber accepted the claim on 10 March 2018. However, the Subscriber only notified the Trustee of the decision to accept the claim on 26 March 2018, and the Trustee informed the Consumer of the claim acceptance on 3 May 2018.

The Consumer's legal representatives made a referral to the Life CCC in March 2018 and alleged that the Subscriber was in breach of section 8.17 of the Code on the basis that the Subscriber had not provided its decision within six months.

As part of its review of the file, the Life CCC also raised possible breaches of sections 8.4, 8.7 and 8.15 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 section 8.17 of the Code and that the allegation was unfounded,
- in breach of section 8.4 of the Code and that the allegation was proven in whole,
- in breach of section 8.7 of the Code and that the allegation was proven in whole, and
- in breach of section 8.15 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.17

Section 8.17 of the Code requires a subscriber to communicate its decision on the claim within six months, unless Unexpected Circumstances applies. In this matter, the Consumer lodged a TPD claim in November 2016.

The insurer became a subscriber of the Code on 30 June 2017, and any claim open 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.

Based on the information available, the Life CCC was satisfied that definition (a) of Unexpected Circumstances applied as:

- the claim was notified to the Subscriber in November 2016, more than 12 months after the date of disability in 2011,
- as at 31 December 2017 the Subscriber had not received the IME report, which amounted to reasonable delays in obtaining evidence necessary for the assessment of the Consumer's claim from the intervening period, and
- the Subscriber notified the Trustee of the Unexpected Circumstances prior to 1 January 2018.

As Unexpected Circumstances applied, the Subscriber had until 30 June 2018 to provide its decision to the Trustee.

Based on the information available, the Subscriber communicated its decision on the Consumer's TPD claim to the Trustee on 26 March 2018. As a result, the Life CCC determined

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.

that the Subscriber was not in breach of section 8.17 of the Code and that the allegation was unfounded.

Section 8.4

Section 8.4 creates two separate obligations for subscribers. The first obligation is in relation to providing regular progress updates on the claim at least every 20 business days, while the second obligation is in relation to responding to requests for information about the claim within ten business days.

As there was no indication that the Subscriber was non-compliant with the second obligation of section 8.4, the Life CCC's investigation in this matter was limited to the Subscriber's compliance with the first obligation of section 8.4 of the Code.

The Subscriber provided the Life CCC with a schedule detailing the communications that it sent and received from the Trustee in relation to the claim, and the Life CCC identified that the Subscriber did not provide an update to the Trustee between 30 August 2017 and 3 October 2017.

The Subscriber noted that it had offices in multiple states in Australia and as a result, its system recorded state public holidays in states where the Subscriber maintained offices as non-business days within its system.

The Life CCC determined that this approach was reasonable. However, even after considering the state holidays, the Subscriber still exceeded the 20 business day timeframe. As a result, the Life CCC determined that the Subscriber did not meet its obligations under section 8.4 of the Code and was in breach of section 8.4 of the Code.

As the breach amounted to a delay of one business day, 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 8.4 of the Code amounted to serious or systemic non-compliance with the Code.

Section 8.7

Section 8.7 requires subscribers to request the information needed as early as possible and avoid multiple information requests where possible. In this matter, the Subscriber acknowledged its breach of section 8.7 of the Code and noted that the delay in finalising the IME request was excessive.

The Subscriber stated that the delays were caused by the complexities in the claim regarding the Consumer's ongoing employment and the concurrent claim with the second trustee.

The Life CCC noted that the Subscriber received information on the Consumer's ongoing employment in late August 2017, but only requested the IME in November 2017. The Subscriber acknowledged that it could have requested the IME in late August 2017 and that the delay in requesting the IME was excessive.

As a result, the Life CCC determined that the IME request was not made as early as possible and was a breach of section 8.7 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 Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the breach of section 8.7 of the Code amounted to serious non-compliance with the Code. This was because there was a lengthy delay in relation to communicating the decision to the Consumer which was likely to have caused actual or potential financial loss to the Consumer. The Subscriber has confirmed that it will be paying interest to the Consumer.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁵ that there was no basis to conclude that the Subscriber's breach of section 8.7 of the Code amounted to systemic non-compliance with the Code.

There was no evidence to indicate that this was a widespread issue and the delay in requesting the IME was due to the complexity of the matter and the complications regarding managing the concurrent claim with the second trustee.

Section 8.15

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

In this matter, the Subscriber communicated its decision to accept the claim to the Trustee on 26 March 2018. As the Subscriber received all the information that it reasonably needed to assess the claim on 5 February 2018, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code.

The Subscriber noted that it had arranged a case conference to ensure a consistent approach between the two teams assessing the Consumer's TPD claims. The Subscriber put forward that the case conference was a reasonable enquiry under section 8.15 of the Code.

The Life CCC determined that a case conference between the two claims assessors in this instance was not a reasonable enquiry as the case conference did not further the assessment of the claim, nor did it obtain any new information or opinion that would have assisted in assessing the merits of the Consumer's claim.

In addition, the Life CCC noted that the case conference did not occur due to delays in the assessment of the claim under the policy owned by the second trustee, but that the Subscriber was still able to make its decision on the claim. This would indicate that the case conference was not required for the assessment of the claim.

The Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁶ that the breach of section 8.15 of the Code amounted to serious non-compliance with the Code as the delay by the Subscriber was likely to have resulted in the Consumer suffering actual or potential financial loss.

The Life CCC notes that the Subscriber took approximately 35 business days to communicate the decision to the Trustee, more than three times the ten business day timeframe provided by section 8.15 of the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁷ that there was no basis to conclude that the Subscriber's breach of section 8.15 of the Code amounted to systemic non-compliance with the Code.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

As the primary cause of the breach of section 8.15 was the failed case conference, there was no evidence to indicate that the breach was a more widespread issue. The breach was considered to be an isolated incident that was limited to the circumstances of this matter as consumers having multiple claims across multiple policies issued by the same insurer is a rare scenario.

The Life CCC further notes that the breach of section 8.15 potentially would not have occurred if the case conference had not been delayed and cancelled. This further indicates that the issue was isolated to the specific facts of this matter.

Key Learnings

The Life CCC expects Subscribers to handle claims efficiently, keeping in mind the obligations in sections 8.7 and 8.15 of the Code. These sections combine to create an obligation for Subscribers to request information as early as possible and make a decision within ten business days of receiving all the information that a Subscriber reasonably requires.

These two sections provide important safeguards and protections for Consumers and the Life CCC will continue to closely examine Subscribers' compliance with these sections.

Relevant Code Sections

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.

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.