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:	CX 4537	**Date:**	27 November 2019
Code section:	8.17, 9.10[1]		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer is a member of a superannuation fund and as part of that membership, the Consumer obtained life insurance with Total and Permanent Disability (TPD) cover.

The Consumer lodged a TPD claim on 16 April 2016 and the Subscriber declined the Consumer's claim on 8 November 2016.

On 10 March 2017, the Consumer's legal representative lodged a complaint with the Trustee seeking a review of the Consumer's claim, a copy of which was then passed to the Subscriber on 21 March 2017. The Subscriber re-opened the claim on 5 April 2017 and provided its complaint response to the Trustee on 15 March 2018, in which it maintained its position as set out in its initial decline letter.

On 22 June 2018, the Consumer's legal representative made a referral to the Life CCC alleging a breach of section 9.10 of the Code on the basis that the Consumer had not received a response to the complaint within 90 calendar days.

As part of its review of the matter, the Life CCC also raised a possible breach of section 8.17 of the Code.

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

The Life CCC Determined that the Subscriber breached section 8.17 of the Code and that the allegation was proven in whole.

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

[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.

The Life CCC exercised its discretion under clause 7.2 (a) of the Charter to determine that the alleged breach of section 9.10 of the Code fell outside the scope of its powers to investigate.

The Life CCC findings and conclusion:

Section 8.17

The Subscriber was notified of the Consumer's claim on or before 16 April 2016. Although the Subscriber provided a decision to decline the claim on 8 November 2016, the Consumer subsequently lodged a complaint and requested the claim be re-assessed. The Subscriber agreed to the Consumer's request and re-opened the claim on 5 April 2017.

The insurer became a Subscriber of the Code on 30 June 2017. 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.

On review of the key dates and facts of the case, it was noted that the Subscriber provided its decision on the claim to the Group Policy owner – in this case, the Trustee – on 15 March 2018. Given that the decision was provided after 31 December 2017, this meant that the Subscriber did not meet the six-month timeframe provided by section 8.17 of the Code.

Unexpected circumstances

If Unexpected Circumstances apply, the Subscriber has 12 months to make its decision. In such a case, the Subscriber must show that Unexpected Circumstances was applicable and communicate this to the Trustee prior to the expiration of the six-month timeframe.

In response to Life CCC enquiries, the Subscriber stated that Unexpected Circumstances applied in this claim as a result of the Consumer disagreeing with its decision that an Independent Medical Examination (IME) was required.

The Life CCC determined that whilst the delays in receiving the results of the IME qualified under the Unexpected Circumstances (Definition C), the Subscriber could not rely on them after the event because it did not inform the Consumer at the time that this was the reason for the delay nor explain that they would not meet the six-month timeframe due to Unexpected Circumstances.

Section 8.17 requires the Subscriber to inform the Trustee:

- of the Subscriber's view that Unexpected Circumstances apply,
- of the reasons for Unexpected Circumstances,
- that the consumer can disagree with the reasons given, and
- that the Subscriber will review this if the Consumer agrees.

Further, the above information needs to be provided within 6 months.

In this matter, whilst the Subscriber provided regular updates to the Trustee on the status of the Consumer's claim, its updates did not make any reference to the existence of Unexpected Circumstances. While Unexpected Circumstances did apply in this matter, the Subscriber did

not notify the Trustee about this and as a result the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code.

Serious or systemic non-compliance

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)[3] that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code, as the Subscriber did not have adequate arrangements to ensure compliance with section 8.17 of the Code.

The breach was serious as the deficiency in the Subscriber's section 8.17 compliance process was not detected by the Subscriber until the Life CCC's investigation of the specific Code breach allegation.

The breach was systemic as, prior to 1 July 2018, the Subscriber identified at least 35 other instances where it was not compliant with section 8.17 as it did not have sufficient processes in place in order to identify where Unexpected Circumstances might exist, the reasons why Unexpected Circumstances may apply and to communicate this to the policy owner/consumer along with their right to disagree with the reasons given.

Section 9.10

On 10 March 2017 the Consumer's legal representative lodged a complaint with the Trustee requesting it review its decision to decline the Consumer's claim.

The Subscriber received a copy of the complaint on 21 March 2017 and provided the Trustee with its response on 5 April 2017, agreeing to re-open the claim and requesting the Consumer provide additional medical records and to attend an IME. The Trustee wrote to the Consumer's legal representative on 26 April 2017 confirming that, as the Subscriber had agreed to undertake a review of the claim, the complaint was now closed.

As the Consumer's complaint and the Subscriber's final response occurred prior to its adoption of the Code on 30 June 2017, the Life CCC exercised its discretion under clause 7.2 (a) of the Charter to determine the alleged breach of section 9.10 falls outside the scope of the Life CCC's investigation powers.

The Life CCC's approach to section 9.10

The Life CCC has recently developed its interpretation of section 9.10. It determined that where a complaint concerns a request for a declined claim to be reviewed, the 'final decision' required by section 9.10 (a) would be a decision by the subscriber to accept or decline the claim. A decision to reopen the claim does not qualify as the 'final decision'.

Whilst this matter has been assessed as a breach of section 8.17, under the LCCC's new interpretation the Subscriber would have been in breach of section 9.10 of the Code only.

Further details can be found in the Life CCC's Guidance Note 2: Interpreting and applying Life Insurance Code of Practice section 9.10 (November 2019).

[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.

Relevant Code Sections

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 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**. **You** will be informed of:

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) 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**.

The Life CCC approach to interpreting section 8.17

The Life CCC considered section 8.17 and has developed the following approach to interpreting the obligation:

Section 8.17 of the Code creates four separate obligations for subscribers:

1. Inform the consumer of the subscriber's decision no later than six months after the claim is notified, or six months after the end of any waiting period, unless Unexpected Circumstances apply.
2. Inform the consumer of the subscriber's decision no later than 12 months after the claim is notified if 'Unexpected Circumstances' apply.
3. If 'Unexpected Circumstances' apply, the subscriber has to inform the consumer of the reasons for the delay, and that the consumer can disagree with the reasons. The subscriber will conduct a review if the consumer disagrees.
4. Provide the consumer with the subscriber's complaints process if a decision cannot be made within 12 months.

These four obligations are separate from each other, and it is possible for a Code subscriber to meet some but not all of the obligations and thus be in breach of section 8.17.

The term 'decision' means to admit/ decline a claim ('final decision') or commence rehabilitation or retraining for claims covered by section 8.17.

The term 'notified' is interpreted by the Life CCC to be the plain language meaning of the word. Claim 'notified' refers to the initial contact made by the claimant in respect of a potential claim. This could take the form of a physical submission (letter, email, etc.) or a telephone call. The Claim Notification Date is the date on which the claim was first notified. (The Life CCC is aware that subscribers may not be using the point in time as defined above for 'notified' to measure claim duration and is considering its further position on this matter.)

The Life CCC determined that Code subscribers have to inform consumers of the existence of 'Unexpected Circumstances' within the initial timeframe provided (six months) plus one business day if they want to rely on this exception for not meeting claim assessment timeframe obligations.

Code subscribers must inform consumers of the complaints process if 'Unexpected Circumstances' applies and a decision is unable to be made within 12 months plus one business day. The subscriber should also explain why it could not make a decision within those timeframes, though this is not explicitly stated in the Code obligation.

All communication required under section 8.17 is to be completed in writing.

Section 8.1 of the Code states that communications may be required to be provided to the Group Policy-owner if a claim is covered by a Group Policy. In that case, the Code subscriber will be required to direct all communication to the Group Policy-owner.

For a subscriber to be compliant with section 8.17, the subscriber has to inform the Group Policy-owner of the 'Unexpected Circumstances', the reasons for the 'Unexpected Circumstances', that the consumer has the right to disagree with the reasons for 'Unexpected Circumstances', and that the subscriber will review the reasons if the consumer disagrees.

As Group Policy-owners are not subscribers to the Code, whether or not the Group Policy-owner passes on this information to the consumer will not affect a subscriber's compliance with section 8.17 of 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.