

# 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>	CX4786	<b>Date:</b>	28 October 2019
<b>Code sections:</b>	5.12 and 13.4 <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 significant breaches of Code obligations 5.12 and 13.4 of the Code.

Section 5.12 provides subscribers with a five business day timeframe to communicate a decision about whether to accept an application and on what terms, once a subscriber has received all the information it reasonably needs and has completed all reasonable enquiries relating to the application.

The Subscriber noted that the significant breach of section 5.12 was due to a substantial increase in the volume of referred underwriting applications received by them since June 2017. This resulted in the Subscriber having insufficient resources to deal with the volume of applications.

The Subscriber identified that its non-compliance with section 5.12 of the Code amounted to a significant breach of the Code as part of its compilation of data for its response to the Life CCC's annual data collection program for 2017-2018. This would have been undertaken by the Subscriber in or around June-August 2018.

The Subscriber identified more than 1,800 instances where it did not meet the five business day timeframe in section 5.12 of the Code.

In addition, section 13.4 of the Code requires subscribers to report a significant breach of the Code to the Life CCC within ten business days of becoming aware of the breach.

As the Subscriber did not report the significant breach of section 5.12 within ten business days of becoming aware of the breach, the Subscriber also self-reported a breach of section 13.4 of the Code to the Life CCC.

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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 the Subscriber was in breach of section 5.12 and section 13.4 of the Code. The Life CCC further determined that the breaches of section 5.12 and section 13.4 of the Code were significant, as assessed by the Subscriber, and were proven in whole.

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

The Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>3</sup> that the Subscriber's breach of section 5.12 of the Code amounted to systemic non-compliance with the Code as the Subscriber had identified over 1,800 instances, clearly a widespread issue affecting a substantial number of consumers.

The Subscriber advised that it had since increased the size of its underwriting team in response, with the increased resources having remedied the breach, as evidenced by an internal review indicating a non-compliance rate of 0.4% for the quarter ending in September 2018.

The Life CCC was satisfied that the Subscriber's remedial action was sufficient to prevent a recurrence of a significant breach of section 5.12 of the Code.

As there was no evidence to indicate that the affected Consumers suffered any actual or potential financial loss as a result of the breach, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>4</sup> that there was no basis to conclude that the Subscriber's breach of section 5.12 of the Code amounted to serious non-compliance with the Code.

In relation to section 13.4, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>5</sup> that the Subscriber's breach of section 13.4 of the Code amounted to serious non-compliance with the Code. This was because the Subscriber initially became aware of the significant breach in approximately June-August 2018 but only reported it to the Life CCC in October 2018.

One of the Code's key obligations for Subscribers is to have processes in place to detect and report significant breaches of the Code to the Life CCC within ten business days of becoming aware of the breach.

In the Life CCC's view, any failure to meet this important obligation indicates that a Subscriber does not have appropriate processes in place to review, identify and report significant breaches of the Code to the Life CCC. The Life CCC treats such breaches seriously and expects Subscribers to have robust processes in place to detect and report significant breaches of the Code to the Life CCC in a timely manner.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)<sup>6</sup> that, taking into account the subscriber's overall compliance status, there was no basis to conclude that the

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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.

<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.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Subscriber's breach of section 13.4 of the Code amounted to systemic non-compliance with the Code.

The Subscriber noted that it had amended its Breach Assessment Panel Incident Fact Sheet form and that staff now have a heightened awareness of the importance of the timely reporting of significant breaches to the Life CCC.

The Life CCC expects Subscribers to take their breach reporting requirements seriously and will closely examine further self-reported breaches from Subscribers in relation to the obligations under section 13.4 of the Code.

## Relevant Code Sections

### 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 13.4:

If **we** identify a **Significant Breach** of the **Code** within **our** organisation, within **ten business** days of becoming aware of the breach **we** will report it to the Life CCC unless:

- a) the breach relates to a matter that has been reported to a regulator; and
- b) the regulator has been informed that the matter may also involve a breach 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.