

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:	CX4405	Date:	23 January 2020
Code sections:	8.4, 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 that membership the Consumer has a life insurance policy which includes Total & Permanent Disability (TPD) benefits. The policy was issued by a Life Insurance Company that is a Subscriber to the Life Insurance Code of Practice (the Code) and is a Group Policy owned by the Trustee.

The Consumer lodged a TPD claim with the Trustee on 26 May 2017. On the 12 February 2018, the Subscriber wrote to the Consumer's legal representative to advise that it was awaiting the Consumer's hospital records and therefore was unable to complete the assessment of the claim at that time. The Subscriber contacted the Trustee on 27 June 2018 to provide its decision to accept the Consumer's claim.

The matter was referred to the Code team by the Consumer's legal representative to consider a breach of section 8.17 of the Code.

In the course of the Life CCC's investigation, we also raised a possible breach of section 8.4 of the Code.

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

The Life CCC determined that the Subscriber:

- was in breach of section 8.4 of the Code and that the allegation was proven in whole and
- was in breach of section 8.17 of the Code and that the allegation was proven in whole.

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 findings and conclusion:

Section 8.4

Section 8.4 requires subscribers to keep consumers informed about the progress of a claim at least every 20 business days.

Records show that the Subscriber provided the Consumer's legal representative with an update on the progression on the claim in an email of 3 August 2017, in which it requested details of the Consumer's treating doctor. The next update was not provided until 12 September 2017, when the Subscriber contacted the legal representative to request a signed authority to access the Consumer's medical records.

To comply with section 8.4, the Subscriber should have provided the Consumer with an update within at least 20 business days of 3 August 2017, being 31 August 2017 at the latest. In providing the next update on 12 September 2017, the Subscriber took a total of 28 business days.

The Life CCC therefore determined that the Subscriber was in breach of section 8.4 of the Code.

Section 8.4: Systemic non-compliance

The Life CCC notes that the breach of section 8.4 was limited to one instance occurring in August/September 2017. As a result of further enquiries, it was further satisfied that the breach was a one-off oversight and that the processes the Subscriber had in place, would generally enable it to comply with section 8.4. The Life CCC therefore determined that the breach of section 8.4 of the Code does not amount to systemic non-compliance with the Code.

Section 8.4: Serious non-compliance

As the delay in the Subscriber providing an update totalled only 8 business days and in the context of otherwise regular contact with the Consumer's legal representative throughout the assessment of the claim, the Life CCC does not consider the breach of section 8.4 to have had a material impact and therefore does not amount to serious non-compliance with the Code.

Section 8.17

The Consumer lodged a TPD claim with the Trustee on 26 May 2017. However, the Code is only binding on the Subscriber from 30 June 2017, the date it adopted the Code. As a result, the six-month timeframe for the Subscriber to issue a decision on the claim is deemed to have begun on 30 June 2017.

For the Subscriber to be compliant with section 8.17, it had to provide the Trustee with its decision by 31 December 2017, unless Unexpected Circumstances applied.

The Life CCC has previously determined that, in the event a decision on a claim is unlikely to be made within the six months, subscribers should inform the consumer of the existence of Unexpected Circumstances within that six-month time frame. Further, subscribers must inform the Consumer in writing of the specific reasons for the use of Unexpected Circumstances, the fact that the consumer has the right to disagree with the reasons given, and that the subscriber will review the reasons if the consumer disagrees.

The Subscriber provided its claims decision to the Trustee on 27 June 2018, approximately eleven months after it was notified of the claim. However, the Subscriber considered that Unexpected Circumstances applied to this claim and confirmed this in writing to the Consumer's legal representative in a letter of 12 February 2018.

The Life CCC notes that the letter of 12 February 2018 was sent approximately seven months after the Subscriber was notified of the claim and therefore it is not entitled to rely on Unexpected Circumstances. In any event, the Life CCC further noted that the content of this letter did not specifically reference the existence of Unexpected Circumstances and therefore would not be considered compliant with section 8.17 of the Code.

The Life CCC considered that it should have been evident to the Subscriber by at least 22 November 2017 that Unexpected Circumstances might apply. Between 12 September 2017 and 10 November 2017, the Subscriber made a number of requests for the Consumer's legal representative to provide an up to date signed authority form from the Consumer in order to access medical records. The Subscriber only received the completed authority form on 16 November 2017 and uploaded this to the hospital system on 22 November 2017.

In view of the delays in obtaining a signed authority form, the Life CCC formed the view that Unexpected Circumstances³ are likely to have applied to this matter. Given the authority form was only provided to the hospital on 22 November 2017, the Life CCC notes that the Subscriber should have reasonably identified at this point that it would be highly unlikely to receive these records prior to the expiry of the six-months (30 December 2017) and should have issued an Unexpected Circumstances letter.

As the Subscriber failed to correctly issue Unexpected Circumstances the Life CCC determined that it was in breach section 8.17 of the Code.

Section 8.17: Serious and systemic non-compliance

The Life CCC reviewed the Subscriber's processes relating to section 8.17 and found them to be non-compliant with the Code requirements as the Subscriber:

- did not have a process to log claims where Unexpected Circumstances applied, and
- did not provide consumers with sufficient details as to why Unexpected Circumstances applied.

Upon adoption of the Code, the Subscriber used a template letter to communicate to consumers the reasons for a delay in the assessment of a claim, what additional information was needed and when it expected to receive this information. However, the template letter did not make specific reference to Unexpected Circumstances.

Between September 2017 and May 2018, the Subscriber updated this template letter to include more details about the reasons for the delay, with specific reference to Unexpected Circumstances as defined by the Code. In addition, it completed changes to its claims management system to enable the capture of Unexpected Circumstances on individual claim record by requiring assessors to select the appropriate reason and information required from a list of "drop down" options.

The Subscriber now monitors compliance with sections 8.17 via a monthly compliance report and the use of a reporting tool which produces a current dashboard of outstanding activities, allowing those claims near the relevant 2 or 6-month timeframes to be pro-actively reviewed for potential Unexpected Circumstances application.

The Life CCC has reviewed the revised template letter and the content of the Subscriber's guidance material and is satisfied that it now has processes in place to enable compliance with section 8.17 of the Code.

However, given the breach of section 8.17 in this matter occurred prior to the completion of these remedial actions, the Life CCC determined that the breach of section 8.17 amounted to systemic non-compliance with the Code.

³ Unexpected Circumstances (e): you or Your Representative have not responded to our reasonable enquiries or requests for documents or information concerning your claim.

Although the Subscriber took approximately eleven months to reach a decision on the claim, the Life CCC considers that an Unexpected Circumstances situation was likely to have applied. If the Subscriber had correctly issued the Unexpected Circumstances letter, it would have twelve months in which to complete assessment of the claim. It is noted that the Subscriber did in fact reach its decision within twelve months.

Notwithstanding the failure to properly communicate Unexpected Circumstances, the Life CCC considers the delays in assessing the claim were outside the Subscriber's control and any financial detriment to the Consumer were, as a result, unavoidable. The Life CCC therefore determined that the breach of section 8.17 did not amount to serious non-compliance with the Code.

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 8.17:

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.

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) 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.