

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:	CX4375	Date:	5 February 2020
Code sections:	8.4, 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. 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 submitted a TPD claim in December 2016 and lodged a complaint with the Trustee on 2 June 2017 regarding the delay in the assessment of the claim.

This was prior to the Subscriber's adoption of the Code on 30 June 2017. As a result, any timeframes under the Code were reset to day 1 from the date that the Subscriber adopted the Code.

The Consumer's legal representatives made a referral to the Life CCC on 22 February 2018 alleging a breach of section 8.17 of the Code on the basis that the Subscriber did not provide its decision on the claim within six months. The Life CCC notes that this breach allegation was part of the bulk referral received by the Life CCC in February 2018.

On 27 February 2018, the Subscriber applied Unexpected Circumstances to the claim on the basis that the Subscriber did not have sufficient information to determine if the Consumer met the definition of TPD under the policy.

The Subscriber subsequently accepted the TPD claim on 11 April 2018 and paid out the benefit under the policy on 22 May 2018.

The Life CCC also raised possible breaches of sections 8.4 and 9.10 of the Code. As part of the Subscriber's response to the Life CCC, the Subscriber conceded breaches of sections 8.4 and 9.10 of the Code but noted that it considered that it was compliant with section 8.17 of the Code.

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

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, the allegation was proven in whole, and that the breach amounted to serious and systemic non-compliance with the Code,
- was in breach of section 8.17 of the Code, the allegation was proven in whole, and that the breach amounted to serious and systemic non-compliance with the Code, and
- was in breach of section 9.10 of the Code, the allegation was proven in whole, and that there was no basis to conclude that the breach amounted to serious and systemic non-compliance with the Code.

The Life CCC findings and conclusion:

Section 8.4

Section 8.4 of the Code creates two obligations for Subscribers. Firstly, to provide consumers with updates on their claim at least every 20 business days unless otherwise agreed with the consumer or the Group Policy-owner. The second obligation requires a Subscriber to respond to requests for information about the claim within ten business days.

In this matter, the Life CCC only assessed the Subscriber's compliance with the first obligation as there was no evidence to indicate that the Subscriber was not compliant with the second obligation of section 8.4 of the Code.

The Subscriber provided a chronology of events and conceded to a breach of section 8.4. The Life CCC's review of the chronology identified three instances where the Subscriber did not provide an update at least every 20 business days. As a result, the Life CCC determined that the Subscriber was in breach of section 8.4 of the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)³ that the Subscriber's breach of section 8.4 of the Code amounted to serious and systemic non-compliance with the Code. The Subscriber in this instance had also self-reported a significant breach of section 8.4 and identified over 5,800 breaches of section 8.4 in its submission to the 2017-2018 Life CCC Annual Data and Compliance Programme (ADCP).

Given the number of breaches identified, this indicated that the Subscriber did not have an adequate process to enable compliance with section 8.4 of the Code and meant that the breaches affected multiple consumers across multiple claims, resulting in serious and systemic non-compliance with the Code.

The Life CCC is currently working with the Subscriber to remediate its non-compliance with section 8.4 of the Code as part of the Subscriber's self-reported significant breach of section 8.4.

Section 8.17

Section 8.17 of the Code requires a subscriber to communicate its decision on lump sum claims within six months, unless Unexpected Circumstances applies.

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.

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 Consumer lodged a TPD claim in December 2016, prior to the Subscriber's adoption of the Code. Any claim being assessed on the date a 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.

The Subscriber put forward that Unexpected Circumstances applied as the Subscriber did not have sufficient information to finalise the claim. However, the Subscriber only notified the Consumer of the existence of Unexpected Circumstances on 27 February 2018, after the initial six month timeframe had expired.

In addition, the Subscriber's Unexpected Circumstances notification letter was not compliant with section 8.17 of the Code as the notification did not inform the Consumer of their right to disagree with the reasons for the delay.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code in relation to failing to inform the Consumer about Unexpected Circumstances within six months and for failing to inform the Consumer about their right to disagree with the reasons for the delay.

The Life CCC reviewed the Subscriber's section 8.17 process and noted that the process did not include any reference to the timeframe required to provide a consumer with the Unexpected Circumstances notification.

The Subscriber also did not have a compliant Unexpected Circumstances template letter until June 2018, resulting in the Unexpected Circumstances letter failing to inform the Consumer about their right to disagree with the reasons provided. This meant that the Subscriber's breach of section 8.17 in this matter was not limited to this matter and was likely to have occurred in other instances as well.

As a result, the Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code.

Section 9.10

Section 9.10 of the Code creates an obligation for a subscriber to assist the Trustee in responding to a complaint in writing within 90 calendar days of receiving the complaint.

The final response to the complaint must include the final decision, the reasons for that decision, the Consumer's right to copies of the information relied on, that if requested the information will be provided within ten business days, and the relevant External Dispute Resolution (EDR) timeframes and contact details.

As noted above, the Consumer lodged a complaint on 2 June 2017. As this was prior to the Subscriber's adoption of the Code on 30 June 2017, the timeframe for the Subscriber to respond to the Trustee started on 30 June 2017, the day that the Subscriber adopted the Code. As the Subscriber did not provide a response to the complaint, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

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.

The Subscriber noted that the complaint was not lodged into its complaints management system due to a systems error. The systems error related to the Subscriber's email indexing system failing to properly index the complaint.

The Subscriber conducted an investigation into the systems error and has confirmed that this was an isolated incident that it has not been able to replicate, noting that approximately 800 emails are successfully indexed every day. In addition, no other similar incident has been identified or raised.

Given that the issue cannot be replicated, the Life CCC was satisfied that this was an isolated incident limited to the facts of the matter and further determined in accordance with Charter clause 7.4(b)(iv)⁵ that there was no basis to determine that the breach amounted to serious or systemic non-compliance with the Code.

Key learnings

The Life CCC notes that Unexpected Circumstances has to be provided to a consumer within the initial timeframe provided by section 8.16 or 8.17 of the Code.

The Unexpected Circumstances notification should be provided in writing. The notification should contain the reasons for the delay and inform a consumer about their right to disagree with the reasons provided.

The Life CCC notes that providing a consumer with a general update on the file and noting that information was still outstanding does not qualify as informing a consumer about Unexpected Circumstances.

The Unexpected Circumstances notification must be clear regarding the fact that there is a delay in the communication of a decision, and clearly provide the reasons for the delay, in addition to giving the consumer an option to disagree.

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.

Section 9.10

⁵ 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.

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**.

- a) of **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 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.