

# 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>	CX4502	<b>Date:</b>	5 February 2020
<b>Code sections:</b>	8.4, 8.15, 8.17 <sup>1</sup>		
<b>Investigation:</b>	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 on or around 1 June 2017, prior to the Subscriber's adoption of the Code on 30 June 2017.

The Subscriber wrote to the Consumer's legal representatives on 18 December 2017 to advise that Unexpected Circumstances applied as the Subscriber had not received medical information that it required to assess the claim.

The Subscriber subsequently received the medical information that it required on 21 December 2017 and provided its decision to the Trustee to accept the claim on 19 April 2018.

In May 2018, the Consumer's legal representatives made a referral to the Life CCC alleging a breach of section 8.17 of the Code. As part of its review of the file, the Life CCC also raised a possible breach of sections 8.4 and 8.15 of the Code.

## Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>:

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,
- was not breach of section 8.17 of the Code and that the allegation was unfounded, and
- was in breach of section 8.15 of the Code and that the allegation was proven in whole.

<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

<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.

## 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 twenty 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.

The Subscriber acknowledged that it was in breach of section 8.4 of the Code as:

- it did not provide an update to the Consumer every twenty business days from 1 July 2017 to 31 August 2017 as it could not locate the correspondence that was sent to the Consumer on 31 July 2017, and
- it responded to the Consumer's request for information dated 8 August 2017 on 31 August 2017, outside the ten business days timeframe.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.4 of the Code in relation to failing to provide an update every twenty business days and in relation to failing to respond to the Consumer's request for information within ten business days.

Other than the missed update on 31 July 2017, the Subscriber provided updates to the Consumer's legal representatives on nine further occasions, all of which were compliant with the timeframe in section 8.4 of the Code.

In addition, the Subscriber noted that it only received the Consumer's 8 August 2017 request for information on 17 August 2017, eleven business days before the Subscriber provided its response on 31 August 2017. This resulted in a delay of one business day.

Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>3</sup> 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 8.17

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 instance the Subscriber notified the Consumer on 18 December 2017 that Unexpected Circumstances applied. Unexpected Circumstances applied as the claim was notified to the Subscriber more than 12 months after the date of disability and the Subscriber had not received the medical information that it required to assess the claim.

The Consumer subsequently provided the requested medical information to the Subscriber on 21 December 2017. While the information was provided before the end of the initial six month timeframe, the Subscriber received the information only four business days prior to the end of the six month timeframe and in such circumstances, the Life CCC considered it reasonable that the Subscriber could continue to rely on the extended 12 month timeframe provided by Unexpected Circumstances.

As the Subscriber provided its decision to accept the claim on 19 April 2018, this was within the 12 month timeframe and the Life CCC determined that the Subscriber was not in breach of section 8.17 of the Code.

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<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.

The Life CCC notes that while the Subscriber's communication of the claim acceptance on 19 April 2018 was not in breach of section 8.17 of the Code, this was in breach of section 8.15 of the Code.

### **Section 8.15**

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

The Subscriber acknowledged that it was in breach of section 8.15 of the Code as:

- it received all the information that it needed on 21 December 2017,
- should have provided the decision on the claim within ten business days (9 January 2018),
- only provided the decision to the Trustee on 19 April 2018, and
- this amounted to a delay of 68 business days.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code as the Subscriber did not provide the decision on the claim within ten business days of receiving all the information that it required to assess the claim.

The Subscriber has confirmed that it paid interest to the Consumer from 31 December 2018 to 19 April 2018 as part of its remediation of this breach.

The Life CCC considers that the delay in this matter was significant, with the Subscriber's delay amounting to over two months. The Subscriber noted that it implemented a review process for all lump sum claims in April 2018 which, had it been in place at the time, would have identified the breach in this Matter. The Subscriber also amended its section 8.15 process in September 2019 as part of the Life CCC's investigation in another matter.

Due to the length of the delay, and the fact that prior to April 2018 the Subscriber did not have an adequate process to monitor its compliance with section 8.15 of the Code, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>4</sup> that the Subscriber's breach of section 8.15 of the Code amounted to serious and systemic non-compliance with the Code.

### **Key learnings**

Subscribers should inform Consumers of Unexpected Circumstances as soon as the Unexpected Circumstances are identified. When Unexpected Circumstances apply, this provides the Subscriber with 12 months to provide its decision on a claim.

While section 8.17 provides Subscribers with 12 months, Subscribers will still have to request information as early as possible (section 8.7) and provide its decision within 10 business days of receiving all the information that it required and completing all reasonable enquiries (section 8.15).

The Life CCC considers that Subscribers should view the timeframes in section 8.17 as a maximum allowed timeframe and always seek to handle claims efficiently.

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<sup>4</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.

## 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 8.15:

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.

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.