

## 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>	CX4633	<b>Date:</b>	7 February 2020
<b>Code sections:</b>	8.15, 8.17, 8.18 <sup>1</sup>		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

### The alleged Code breach:

The Consumer is a member of Superannuation fund. As part of that membership, the Consumer has a life insurance policy including Income Protection (IP) benefits and Total and Permanent Disability Benefits (TPD).

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 with the Trustee on 18 May 2016 and on 4 July 2017 the Subscriber notified the Trustee of its decision to accept the claim.

On the 21 July 2017, the Trustee wrote to the Subscriber to query the date of disablement and termination of employment. The Subscriber responded to the Trustee on 24 July 2017, confirmed that the dates it had used to calculate the Consumer's benefit were incorrect and therefore it had overpaid \$6,000. The Trustee paid the refund to the Subscriber on 29 August 2017.

On 11 December 2017, the Trustee provided the Subscriber with a copy of its Chief Medical Officer's assessment of the claim which stated it did not consider the Consumer to meet the definition of TPD; the Trustee requested the Subscriber to provide its response.

The Subscriber provided its response to the Trustee on 2 January 2018, maintaining its decision to accept the claim. The Trustee subsequently accepted the claim in March 2018 and communicated the claim acceptance to the Consumer on 27 March 2018.

The Consumer's legal representative made a referral to the Life CCC in August 2018 and alleged that the Subscriber was in breach of section 8.17 of the Code as the Subscriber failed to provide a decision within six months as required by the Code.

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

As part of its review of this matter, the Life CCC also raised possible breaches of sections 8.15 and 8.18 of the Code.

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

The Life CCC determined that the Subscriber was:

- not in breach of section 8.17 of the Code,
- not in breach of section 8.15 of the Code, and
- in breach of section 8.18 of the Code, that the allegation was proven in whole but did not amount to serious or systemic non-compliance with the Code.

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

#### **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.

The Consumer lodged a TPD claim with the Trustee on 18 May 2016. Any claim being assessed 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.

As detailed above, the Subscriber communicated its decision to accept the claim to the Trustee on 4 July 2017. The Life CCC therefore determined that the Subscriber was not in breach of section 8.17 of the Code.

#### **Section 8.15**

As detailed above, the Trustee had queries regarding the Subscriber's decision and requested that the Subscriber review its decision in light of an additional medical report obtained by the Trustee.

The Life CCC determined that the Subscriber had met its obligations under section 8.17 in providing its decision to the Trustee within six-months (4 July 2017), irrespective of the fact that this was not communicated to the Consumer as the Trustee was undertaking its own review of the decision.

However, given the Trustee has provided the Subscriber with new information and requested the decision be reviewed, the Life CCC considered that the Subscriber had obligations under section 8.15 of the Code.

Section 8.15 requires a Subscriber to communicate its decision (in this case, to the Trustee) within ten business days once it has all the information it reasonably needs and has completed all reasonable enquiries.

The Trustee forwarded the medical evidence to the Subscriber on 11 December 2017. On 13 December 2017, the Subscriber responded to the Trustee to advise that as the claim had been closed, they would need to request the files from archiving which could take between one and

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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.

two weeks. It confirmed it would review the claim upon receipt and respond accordingly. The Subscriber provided its decision to maintain its acceptance of the claim on 2 January 2018.

Section 8.15 provides for “reasonable enquiries” and the Life CCC has previously determined that this will be assessed on a case by case basis. The Life CCC considers it reasonable to allow time for the Subscriber to request its files from archive and then to review those. It is not known when the files were received, however even allowing just one week for it to receive the claim files -18 December 2017- and not taking into account time required to review the information, the Subscriber would be required to provide its decision to the Trustee by 4 January 2018 at the earliest (10 business days from 18 December 2017).

In providing its decision to the Trustee on the 2 January 2018, the Life CCC determined that the Subscriber was not in breach of section 8.15 of the Code.

### **Section 8.18**

Section 8.18 requires subscribers to suggest financial advice is sought by a consumer to help manage the claim payment when a claim for lump sum payment is made.

The Subscriber conceded to a breach of section 8.18 of the Code as its acceptance letter to the Trustee on 4 July 2017 did not include the suggestion that the Consumer should seek financial advice.

The breach occurred as a result of a staff error. Whilst the Subscriber’s template claim acceptance letter it issues to trustees states “we suggest that you advise the member to seek financial advice to help manage their claim payment”, the Subscriber confirmed that a staff member sent out the wrong template letter.

The Subscriber has since taken corrective actions including re-training staff on Code compliance process and procedures and running training and reinforcement sessions on embedding the Code, to ensure templates available on their systems are used for all letters. It also introduced a peer checking process within the team to monitor ongoing compliance with the Code.

The Life CCC noted the potential for the Consumer to have been financially disadvantaged by the Subscriber’s use of an incorrect template which omitted the required recommendation that they seek financial advice.

However, ultimately it was the Trustee who communicated the decision to the Consumer and in its letter of 27 March 2018, the Trustee did provide information on how the Consumer can seek assistance with managing the payment.

The Life CCC therefore determined that the Subscriber’s breach of section 8.18 did not amount to serious or systemic non-compliance with the Code as per clause 7.4(b)(iv)<sup>3</sup> of the Life CCC Charter.

### **Key learnings**

Whilst the Life CCC considers the use of templates letters to be good practice, it is important that Subscribers review those templates on a regular basis to ensure they continue to enable

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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.

compliance with the Code and that staff are sufficiently trained to use the correct template for the appropriate scenario.

## **Relevant Code Sections**

### **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.

### **Section 8.18:**

If we accept your claim and it includes a lump sum payment, we will suggest you seek financial advice to help manage your claim payment. For an income-related claim, if we offer to pay you a lump sum instead of ongoing payments in order to finalise your claim, we will suggest that you seek financial and legal advice before accepting our offer.

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.