

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:	CX4732	Date:	25 February 2020
Code sections:	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 obtained life insurance with Total and Permanent Disability (TPD) benefit. The Life Insurance policy 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 23 May 2017. The Subscriber contacted the Trustee on 1 February 2018 to provide its decision to accept the Consumer's claim, which was communicated to the Consumer on 26 February 2018.

The Consumer's legal representative made a referral to the Life CCC in October 2018, alleging that the Subscriber was in breach of section 8.17 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 8.17 of the Code and that the allegation was proven in whole.

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.

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 Consumer lodged a TPD claim on 23 May 2017. 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.

In this matter the Subscriber provided its claims decision to the Trustee on 1 February 2018, approximately one month after the expiry of the six-month timeframe. As the Subscriber required additional information to complete its assessment of the claim, it considered that Unexpected Circumstances applied. However, it has conceded that this was never communicated to the Trustee or Consumer.

As the Subscriber failed to communicate the existence of Unexpected Circumstances to the Consumer, the Subscriber was not entitled to rely on Unexpected Circumstances and had to provide the decision to the Consumer by 31 December 2017.

As the Subscriber only provided the decision on the claim on 1 February 2018, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code.

Serious and systemic non-compliance.

The Life CCC found that the Subscriber:

- did not have a process to inform consumers of Unexpected Circumstances,
- did not communicate the reasons for the delay to the consumer or inform consumers that they had the right to disagree with the reasons provided, and
- did not have a process for providing its complaints process to the consumer when a claim exceeded 12 months.

The Subscriber introduced an Unexpected Circumstances template letter in July 2018 and introduced automated reminder tasks in its claims system in October 2019. The Life CCC continues to work with the Subscriber to ensure that it has sufficient processes in place to track compliance with section 8.17 and that it is also supported by staff training.

As the breach of section 8.17 occurred prior to the changes detailed above, the Life CCC determined the breach to amount to systemic non-compliance with the Code, as per clause 7.4(b)(iv)³ of the Life CCC Charter.

Although the Subscriber took approximately seven months to reach a decision on the claim (from the date the Code applied), as detailed above the Life CCC takes the view that Unexpected Circumstances likely applied to the claim.

If the Subscriber had correctly issued the Unexpected Circumstances letter, it would have had 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; only one month in excess of the six-month timeframe specified by section 8.17 of the Code.

Notwithstanding the failure to properly communicate Unexpected Circumstances, the Life CCC team considered that the delays in assessing the claim were outside the Subscriber's control.

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 Life CCC therefore determined that the breach of section 8.17 of the Code did not amount to serious non-compliance with the Code, as per clause 7.4(b)(iv) of the Life CCC Charter.

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.

Relevant Code Sections

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.