

# 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>	CX4896	<b>Date:</b>	19 June 2020
<b>Code sections:</b>	8.17, 8.18 & 9.10 <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 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).

We note that in this Matter, the Subscriber communicated its decision to the Trustee, as described under section 8.1 of the Code,<sup>2</sup> which then provided the decision to the Consumer.

On 3 February 2017, the Consumer's Legal Representative (CLR) lodged a complaint with the Trustee and requested that the claim decline decision be reviewed. In response to the complaint, the Subscriber re-opened the claim and closed the complaint on 21 February 2017.

This was prior to the Subscriber's Code adoption on 30 June 2017. The Subscriber subsequently provided the decision to accept the claim to the Trustee on 6 March 2018,

Since the Subscriber adopted the Code on 30 June 2017, the six-month timeframe under section 8.17 of the Code commenced on 30 June 2017 and the Subscriber was required to provide a claim decision by 31 December 2017 unless Unexpected Circumstances (UC) applied.

The Life CCC received this Code breach allegation from a plaintiff law firm in March 2018, which alleged that the Subscriber was in breach of section 9.10 of the Code. As part of its review of the file, the Life CCC also raised possible breaches of sections 8.17 and 8.18 of the Code.

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

<sup>2</sup> Ibid.

## **Findings in accordance with Charter clause 7.4(b)(iii)<sup>3</sup>:**

The Life CCC determined that the Subscriber:

- was not in breach of section 9.10 of the Code and that the allegation was unfounded,
- breached section 8.17 of the Code and that the allegation was proven in whole, and
- breached section 8.18 of the Code and that the allegation was proven in whole.

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

### **Section 9.10**

As the Subscriber received, responded to, and finalised the complaint prior to its adoption of the Code on 30 June 2017, the complaint predated the Code and section 9.10 did not apply to the Matter.

### **Section 8.17**

Section 8.17 of the Code requires a Subscriber to communicate its decision on the claim within six months, unless UC applies.

As noted above, as the claim was re-opened on 21 February 2017, the six-month timeframe commenced on 30 June 2017 and therefore the Subscriber had to provide its final claim decision by 31 December 2017.

The Life CCC noted that the final decision was communicated to the Trustee on 6 March 2018. The Subscriber noted that UC applied as there were delays in receiving the required medical information which prevented the claims assessor from finalising the claim.

However, the Subscriber acknowledged that it failed to issue a UC letter to the Trustee or consumer. Therefore, the Life CCC determined that the 12-month UC timeframe would not apply to the claim.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code as it failed to provide a decision on the claim by 31 December 2017.

### **Serious and systemic non-compliance**

The Life CCC reviewed the Subscriber's section 8.17 processes as part of the Life CCC's response to receiving a bulk referral relating to specific sections of the Code, including section 8.17 of the Code.

The Life CCC determined that the Subscriber's section 8.17 process was non-compliant with the Code as the Subscriber did not have a robust monitoring framework to ensure that claim advisors correctly identified and applied UC, resulting in multiple instances where no UC notification was sent to the Consumer.

To remediate this, the Subscriber amended its system in May 2018 and provided additional UC training to its staff to ensure that its claims assessors could correctly identify and notify Consumers of UC.

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<sup>3</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 Subscriber's breach of section 8.17 in this instance was in or around January 2018, within the timeframe include in the separate bulk referral review. As the Subscriber did not have adequate processes to enable compliance with section 8.17 of the Code at the time of the breach, the Life CCC determined that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv)<sup>4</sup> of the Life CCC Charter.

### **Section 8.18**

Section 8.18 creates an obligation for Subscribers to suggest that a Consumer seek financial advice to help manage a claim payment (financial advice wording) when the Subscriber is making a lump sum payment after accepting a claim.

The Life CCC investigated the Subscriber's compliance with section 8.18 after receiving a copy of the claim acceptance email that was sent to the Trustee on 6 March 2018. The claim acceptance email stated that the claim was accepted but did not include the financial advice wording as required by the Code.

The Subscriber noted that it did not consider itself to be in breach of section 8.18 on the basis that it did not communicate the claim acceptance directly to the Consumer. The Subscriber further noted that as the Trustee issued the final claim acceptance letter to the Consumer, the Trustee had its own processes in place to communicate the information to the Consumer.

Section 8.18 notes that the financial advice wording should be provided to 'you'. 'You' is defined under the Code<sup>5</sup> as either the Life Insured, the Policy-owner, or a Third Party Beneficiary.

In the Life CCC's view, this means that the Subscriber's obligations in relation to section 8.18 for superannuation policies are to provide the financial advice wording to the Trustee (the Policy-owner) on the understanding that the Policy-owner will pass on the financial advice wording to the Life Insured.

As this did not occur in this instance, the Life CCC determined that the Subscriber was in breach of section 8.18 of the Code.

### **Serious and systemic non-compliance**

The Subscriber acknowledged that the breach of section 8.18 of the Code amounted to serious and systemic non-compliance with the Code and subsequently, self-reported a significant breach of section 8.18 in January 2020.

The Subscriber noted that its self-reported significant breach of section 8.18 impacted all claims received through its Group channel between 1 July 2017 and 17 September 2019.

The Life CCC noted that for an extended period, the Subscriber did not have a compliant section 8.18 template letter (Superannuation Policies) or any other arrangement in place with Trustees to ensure that the requirements of the Section 8.18 of the Code were satisfied.

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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.

<sup>5</sup> The Code sections are provided in full in the last section of the Determination.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>6</sup> that the Subscriber's breach of section 8.18 amounted to serious and systemic non-compliance with the Code.

### **Remediation Actions**

The Subscriber confirmed that it had updated its lump sum template letter to the Trustees and included the financial advice wording as stipulated under section 8.18 of the Code in September 2019. The Life CCC has reviewed and confirmed that the amended template letter is compliant with the requirements under the section.

The Subscriber further confirmed that it notified the claims department of the updated template letter to ensure that the compliant template letter is used in the claim acceptance communication to the Trustee.

As a result, the Life CCC is satisfied that the Subscriber has remediated the breach of section 8.18 and therefore no further action is required.

### **Key Learnings**

As the Code has been operational for almost three years and is the life insurance industry's commitment to promoting high standards of customer service, the Life CCC expects Subscribers to have robust processes in place to enable Subscribers to identify and notify Consumers if UC applies to their claims.

As part of the Life CCC's Claims and Complaints Handling Obligations report,<sup>7</sup> the Life CCC reviewed the processes and procedures of 11 Subscribers and found that many Subscribers lacked robust frameworks for monitoring compliance with section 8.17 of the Code.

Subscribers must take their Code compliance seriously and compliance monitoring must be prioritised, ongoing and systematic. The Life CCC will continue to closely monitor Subscribers' compliance with section 8.17 and may consider the use of its sanctioning powers in the event of a failure to implement any agreed remedial action.

In relation to section 8.18, the section creates an obligation to provide the financial advice wording to a Consumer when accepting a lump sum claim. In instances where the policy is owned by a superannuation fund Trustee, a Subscriber should provide the financial advice wording to the Trustee on the understanding that the Trustee will pass this on to the Consumer.

As Trustees are not subscribers to the Code, the Life CCC expects that Subscribers will be proactive in ensuring that any obligations that a Subscriber has under the Code are met insofar as possible by the Subscriber's processes and procedures, instead of relying on a Trustee's processes and procedures.

In addition, in order to manage related reputational and other risks, the Life CCC encourages Subscribers to ensure that their relevant service agreements with Trustees are current and comprehensive.

In the Life CCC's view, doing so will enable a Subscriber to satisfy its obligation under section 8.18 of the Code.

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<sup>6</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.

<sup>7</sup> The report can be viewed on the Life CCC's website: <https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>

## Relevant Code Sections

### Section 8.1:

If **your** claim is covered by a **Group Policy**, **we** may be required to provide the communications referred to below to the **Group Policy-owner** (for example, the superannuation fund trustee which owns **your Life Insurance Policy**) in accordance with section 2.13. The **Group Policy-owner** will then communicate with **you** and assist with **your** claim. When **you** make a claim, **we** and/or the **Group Policy-owner** will let **you** know who will be in contact with **you**.

### 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.

### Section 9.10:

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**. **You** will be informed of:

- a) **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.