

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

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| Reference: | CX4300 | Date: | 16 July 2020 |
| Code sections: | 8.17, 9.10 ¹ | | |
| Investigation: | A consumer-reported alleged Code breach | | |

The alleged Code breach:

The Consumer obtained two life insurance policies with Total and Permanent Disability (TPD) benefits that were issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

The first policy was purchased directly from the Subscriber, while the second policy was obtained as part of the Consumer's membership with a superannuation fund, with the second policy being owned by the Group policy-owner (the Trustee).

In this matter, the Subscriber communicated directly with the Consumer's Legal Representative (CLR) rather than the Trustee.

The CLR lodged the two TPD claims on 5 August 2016, prior to the Subscriber's adoption of the Code on 30 June 2017. As a result, the six-month timeframe commenced on 30 June 2017 and the Subscriber was required to provide a final decision on the claims by 31 December 2017, unless Unexpected Circumstances (UC) applied.

The Subscriber noted that it issued a UC letter to the CLR on 4 September 2017. On 26 September 2017, the CLR lodged a complaint with the Subscriber disputing the Subscriber's view that UC applied to the claims.

Due to the Subscriber's delays in issuing its decision on the claims, the CLR lodged a section 8.17 Code breach allegation with the Life CCC. As part of its review of the file, the Life CCC also raised a possible breach of section 9.10 of the Code.

When advised by the CLR that legal proceedings commenced on 10 January 2018, the Life CCC halted its investigation, as per section 7.3(b) of the Life CCC Charter, until such time as it was formally advised that legal proceedings had concluded.

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

As per section 2.21 of the Code,² the obligations in the Code do not apply to a matter after the commencement of legal proceedings. This meant that in this instance, the obligations in the Code did not apply to this matter after 10 January 2018.

Findings in accordance with Charter clause 7.4(b)(iii)³:

The Life CCC determined that the Subscriber:

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

The Life CCC findings and conclusion:

Section 8.17

The Subscriber was notified of the claims on 8 August 2016, prior to the Subscriber's adoption of the Code. As a result, the six-month timeframe commenced on 30 June 2017, when the Subscriber adopted the Code. Therefore, the Subscriber had to provide its decision on the claims by 31 December 2017, unless UC applied.

The Subscriber noted that UC applied to the claims and issued a UC letter to the CLR on 4 September 2017. The Subscriber's UC letter noted that clauses (c)⁴ and (h)⁵ of UC applied and that the Subscriber required the Consumer's Medicare history as part of its review of the claims assessment, which it had not received.

In addition, the Subscriber noted that the medical and insurance history submitted by the Consumer in his application form for the TPD policies was inconsistent with the information submitted by the Consumer in his ongoing claims with other insurers.

The Life CCC reviewed the UC letter and noted that it was compliant with the UC notification requirements under section 8.17 of the Code. As a result, the Subscriber could rely on the longer 12-month timeframe and provide its final decision on the claims by 30 June 2018.

However, legal proceedings commenced on 10 January 2018. Therefore, as per section 2.21 of the Code, the Code did not apply to the matter after 10 January 2018 and the 12 month timeframe was not applicable in this matter.

For the reasons above, the Life CCC determined that the Subscriber was not in breach of section 8.17 of the Code and that the allegation was unfounded.

Section 9.10

Section 9.10 of the Code requires Subscribers to respond to the Trustee so that the Trustee can respond to the Consumer within 90 calendar days of the Trustee receiving the complaint.

² Ibid.

³ 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.

⁴ **Unexpected Circumstances** mean: (c) **we** have not received reports, records or information reasonably requested from an **Independent Service Provider**, your doctor, a government agency or other person or entity (including **Reinsurer**).

⁵ **Unexpected Circumstances** mean: (h) the claim is fraudulent or **we** reasonably suspect fraud or non-disclosure that requires further investigation.

In addition, Subscribers must also provide the information required under section 9.10(a) to (d) of the Code within its final complaint response letter.

The Subscriber conceded that it failed to issue a formal complaint response to the CLR's complaint dated 26 September 2017. As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

The Subscriber confirmed that the breach was an isolated incident that was caused by the human error of the Claims Advisor. The Life CCC had reviewed the Subscriber's section 9.10 processes as part of its previous review into Subscribers' claims and complaints handling obligations⁶ and confirmed that the Subscriber's overall processes and procedures were adequate to support its compliance with section 9.10 of the Code.

The Life CCC further noted that based on its current investigations data, there were no other section 9.10 Code breach allegations open in relation to the Subscriber.

The Subscriber further confirmed that it had provided training to the relevant claims team regarding its complaints handling process. As a result, the Life CCC was satisfied that the Subscriber had adequately remedied its breach of section 9.10 of the Code.

Key learnings

While the Life CCC acknowledges that human error is difficult to completely prevent, the Life CCC expects all Subscribers to conduct regular Code trainings in addition to process reviews as part of the Subscribers' compliance framework to heighten their awareness of the obligations under the Code.

The Life CCC notes that in doing so, this would greatly minimise the risk of non-compliance of the Code whilst reaffirming the Subscribers' commitment in upholding high standards of service to consumers and increasing trust and confidence in the life insurance industry.

Relevant Code Sections

Section 2.21:

The **Code** does not apply once **you** commence proceedings in any court, tribunal or external alternative dispute resolution process (with the exception of **FOS** and the **SCT**).

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:

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;

⁶ Life CCC Report on Claims and Complaints Handling Obligations issued in March 2020 - <https://lifecc.org.au/resources/claims-and-complaints-handling-obligations/>.

- 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.