

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:	CX4379	Date:	7 August 2020
Code sections:	8.5		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer held a life insurance policy with a Life Insurance Company that is a Subscriber to the Code and had been in receipt of Income Protection (IP) benefits since at least 2007. In May 2017, the Consumer lodged a claim with the Subscriber under the Total & Permanent Disability (TPD) benefit of his policy.

The Subscriber accepted the Consumer's TPD claim on 20 June 2017 on the basis of medical records which indicated he was totally and permanently disabled from 2014 and agreed to pay the 2014 sum insured amount.

In June 2017, the Consumer's legal representative contacted the Subscriber to express dissatisfaction that the TPD payment was based on the 2014 sum insured amount and to request payment of the full sum insured amount as at 2017.

Following a review of further medical evidence, the Subscriber wrote to the Consumer in September 2017 to confirm that that the effective date of disability was considered to be June 2017. The Subscriber subsequently paid the Consumer the full sum insured amount as at 2017, including a refund of premiums.

In November 2017, the Consumer lodged a dispute with the Financial Ombudsman Service (FOS)¹ alleging that the Subscriber had not acted in good faith as it had not advised him of his ability to claim under his TPD policy in 2014, that he was totally and permanently disabled as of 2014 and that the Subscriber should pay interest accordingly.

FOS then issued a Determination in September 2018, which found that the Consumer was totally and permanently disabled as of June 2017, that the Subscriber did not have to pay interest from 2014 because the Consumer had not made a claim at this time, there was no evidence to indicate he was totally and permanently disabled in 2014 and that the Subscriber was under no obligation to "alert" the Consumer about lodging a TPD claim. FOS however did

¹ Now Australian Financial Complaint Authority-AFCA

find that the Consumer was entitled to non-financial loss compensation as a result of the Subscriber changing the date of disability throughout the assessment of the claim.

The Consumer made a Code breach referral to the Life CCC in February 2018, alleging that the Subscriber had breached the Code in the handling of his claim. As per the requirements of clause 7.3(b) of the Charter, the matter was placed on hold pending its resolution of the FOS investigation. The Life CCC commenced its investigation in October 2018.

Findings in accordance with Charter clause 7.4(b)(iii)²:

Other than the Consumer's section 8.5 Code breach allegation, the Life CCC considered that the bulk of the issues raised by the Consumer pre-dated the introduction of the Code and therefore were outside the scope of its investigation powers.

The Life CCC reviewed the Subscriber's compliance with section 8.5 and determined that the Subscriber was not in breach of section 8.5 of the Code, and that the allegation was unfounded.

The Life CCC findings and conclusion:

Section 8.5

Section 8.5 requires the Subscriber to only ask for and rely on information and assessments that are relevant to the claim and policy, and to explain why the information is being requested.

The Consumer's legal representatives alleged that the Subscriber's request for further information from the Consumer's doctor in July 2017 was in breach of section 8.5 of the Code.

The Subscriber's request for information was made in response to the Consumer's legal representatives advising that the Consumer was unhappy with the TPD settlement being paid the full sum insured as at 2014. Instead, the Consumer requested payment of the full sum insured as at 2017.

On 29 June 2017 the Subscriber spoke with the Consumer's legal representative to explain that it would be contacting the Consumer's doctor and the reasons for this.

On 4 July 2017 the Subscriber wrote to the Consumer's treating doctor, seeking clarification as to his view on the Consumer's date of disablement and a copy of the questions asked was also provided to the Consumer's legal representative.

Based on the response provided by the Consumer's doctor, the Subscriber agreed that the Consumer was totally and permanently disabled from June 2017 and made the decision to pay the 2017 full sum insured, including a refund of premiums, in September 2017.

The Life CCC reviewed the Subscriber's request for further information on 4 July 2017 and noted that the request made to the Consumer's doctor was relevant to the claim and that the Subscriber had provided reasons to the Consumer's representative for the request on 29 June 2017.

The Life CCC therefore determined that the Subscriber was not in breach of section 8.5 of the Code.

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.

Relevant Code Sections

Section 8.5:

We will only ask for and rely on information and assessments that are relevant to your claim and policy, and we will explain why we are requesting these. This can include, for example, financial, occupational and medical information. If you disagree with the relevance of any information, we will review the request, and if you are not satisfied with our review we will tell you how you can make a Complaint.

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.