

# 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>	CX 4500	<b>Date:</b>	17 August 2020
<b>Code sections:</b>	8.4, 8.16, 8.17 <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 purchased a life insurance policy which included Income Protection (IP) and Total & Permanent Disability (TPD) benefits. The policy was issued by the Subscriber and is a Group Policy owned by the Trustee.

The Consumer lodged TPD and IP claims with the Trustee on or before 19 June 2017. On 6 October 2017, the Subscriber wrote to the Consumer's legal representative to advise that it was still awaiting the Consumer's medical records and therefore was unable to complete the assessment of both the IP and TPD claims.

The Subscriber contacted the Consumer's legal representative on 6 July 2018 to provide its decision to accept the Consumer's IP claim. On 16 August 2018, the Subscriber contacted the Trustee advising that it was declining the TPD claim.

The Consumer's legal representative referred the matter for the Life CCC in March 2018 to consider a breach of section 8.16 and 8.17 of the Code. Based upon a review of the available information, the Life CCC also considered section 8.4 applicable to the matter.

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

The Life CCC determined that:

- the Subscriber was in breach of section 8.4 of the Code, and
- the Subscriber was in breach of section 8.16 and 8.17 of the Code, the allegations were proven in whole and amounted to serious and systemic non-compliance with 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> 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 Life CCC findings and conclusion:

### Section 8.4

Section 8.4 requires Subscribers to keep consumers informed about the progress of a claim at least every 20 business days.

The Subscriber conceded to a breach of section 8.4, noting that it failed to provide updates in the periods of:

- 24 July 2017 to 6 October 2017 (53 business days)
- 6 December 2017 to 18 January 2018 (29 business days)
- 2 February 2018 to 10 April 2018 (44 business days).

The Subscriber noted that in these periods, it had no significant developments to communicate or had previously contacted the Consumer's legal representative with information about the need for a medical examination.

The Life CCC noted that section 8.4 simply states *"we will keep you informed about the progress of your claim"* and considered that irrespective of whether there have been any developments on a claim, a subscriber is still required to provide an update even if it may be limited in detail.

The Life CCC therefore determined that the Subscriber was in breach of section 8.4 of the Code.

### Section 8.16

Section 8.16 of the Code requires a Subscriber to communicate its initial decision on income-related claims within two months, unless Unexpected Circumstances applies.

As the Trustee notified the Subscriber of the IP claim on 19 June 2017, prior to the Subscriber's adoption of the Code on 30 June 2017, the two-month timeframe to issue a decision on the claim is deemed to have begun when the Subscriber adopted the Code. As a result, the Subscriber had to provide the Trustee with its initial decision on the IP claim by 31 August 2017, unless Unexpected Circumstances applied.

The Subscriber provided its claims decision to the Consumer's legal representative on 6 July 2018, approximately 12 months and 7 days after it was notified of the claim.

The Subscriber considered Unexpected Circumstances definition (a)<sup>3</sup> applied to both the TPD and IP claim as the Consumer's date of disability commenced on 6 January 2012. This was communicated to the Consumer's legal representative on 6 October 2017, after the initial two-month timeframe had expired.

As the Subscriber did not inform the Consumer of Unexpected Circumstances prior to the expiry of the two-month timeframe, the Life CCC determined that the Subscriber was in breach of section 8.16 of the Code and that the allegation was proven in whole.

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<sup>3</sup> a) **your** claim has been notified to **us** more than 12 months after the later of the date of disability or the end of **your** waiting period, and there are reasonable delays obtaining evidence necessary for the assessment of **your** claim from the intervening period.

## **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.

As with section 8.16, the timeframe for section 8.17 began when the Subscriber adopted the Code, 30 June 2017. As a result, the Subscriber had to provide the Trustee with its decision on the TPD claim by 31 December 2017, unless Unexpected Circumstances applied.

As detailed above, the Subscriber considered that Unexpected Circumstances applied to both the TPD and IP claim and this was communicated to the Consumer's legal representative on 6 October 2017. While this amounted to a breach of section 8.16, this did not amount to a breach of the timeframe in section 8.17 of the Code.

However, the Life CCC reviewed the Subscriber's letter of 6 October and noted that the letter did not contain any reference to the existence of Unexpected Circumstances or advise that a decision on the claim was likely to be delayed. Instead, the letter simply noted that the Subscriber required further information to assess the claim.

This meant that the Consumer was not provided with the reasons for Unexpected Circumstances and was not informed of the right to disagree with the reasons. While the reasons for Unexpected Circumstances may have been valid in this instance, the Subscriber did not afford the Consumer an opportunity to disagree with the reasons for Unexpected Circumstances.

As a result, 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.

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

### **Section 8.16 & 8.17<sup>4</sup>**

The Life CCC found that the Subscriber's systems and processes were insufficient to enable compliance with section 8.16 and 8.17 of the Code as it:

- did not have a process to log claims where Unexpected Circumstances applied, and
- did not provide consumers with sufficient details as to why Unexpected Circumstances applied.

Upon adoption of the Code, the Subscriber used a template letter to communicate to consumers the reasons for a delay in the assessment of a claim, what additional information is needed and when it expected to receive this information. However, the template letter did not make specific reference to Unexpected Circumstances.

Between September 2017 and May 2018, the Subscriber updated its template letter to include more details about the reasons for the delay, with specific reference to Unexpected Circumstances as defined by the Code. In addition, it completed changes to its claims management system to enable the capture of Unexpected Circumstances on individual claim records by requiring assessors to select the appropriate reason and information required from a list of "drop down" options.

Since the implementation of remedial actions, the Subscriber monitors compliance with sections 8.16/8.17 via a monthly compliance report and the use of a reporting tool which

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<sup>4</sup> The Life CCC is developing further guidance to assist subscribers' understanding of their obligations under section 8.16/8.17.

produces a current dashboard of outstanding activities. Where claims near the relevant two or six months' timeframe, they are reviewed for potential Unexpected Circumstances application.

The Life CCC considers that the Subscriber now has processes in place to enable compliance with section 8.16 and 8.17 of the Code. However, given the breach of section 8.16 & 8.17 in this Matter occurred prior to the completion of these remedial actions, the Life CCC determined that this amounted to systemic non-compliance with the Code.

Notwithstanding the failure to properly communicate Unexpected Circumstances, in any event both the IP and TPD claim decisions were still made outside of the 12-month timeframe. In view of the extended delays in providing its decision and the likely financial detriment caused to the Consumer as a result, the Life CCC determined the breach of section 8.16 and 8.17 also amounted to serious non-compliance with the Code.

### Key learnings

Sections 8.16 and 8.17 provide Subscribers with two and six months' timeframe respectively to assess and determine income related and lump sum claims. The sections also provide Subscribers with the ability to apply Unexpected Circumstances to the claim, providing Subscribers with 12 months to assess a claim if the claim meets the definition of Unexpected Circumstances.

To access Unexpected Circumstances, Subscribers must contact the Consumer prior to the expiry of the initial two or six months' timeframe to inform the Consumer of the reasons for the delay, that the Consumer has the right to disagree with the reasons provided and how to contact the Subscriber if the Consumer disagrees.

This Unexpected Circumstances letter should not be framed as an update on the claim where the Subscriber seeks additional information to assess the claim. Instead, the letter is a formal notification to the Consumer that Unexpected Circumstances applies, and that the assessment of the claim has been delayed due to the reason for the Unexpected Circumstances.

## Relevant Code Sections

### Section 8.4

Prior to making a decision on **your** claim, **we** will keep **you** informed about the progress of **your** claim at least every 20 **business days** unless otherwise agreed with **you** or the **Group Policy-owner**. **We** will respond to **your** requests for information about **your** claim within ten **business days**.

### Section 8.16

For income-related claims, **we** will let **you** know **our** initial decision no later than two months after **we** are notified of **your** claim or two months after the end of **your** waiting period (whichever is later), unless **Unexpected Circumstances** apply. 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 8.17

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.