

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:	CX5925	Date:	31 July 2020
Code sections:	8.16, 8.18, 8.29 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 an Income Protection (IP) 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 on the claim directly to the Consumer rather than via the Trustee.

On 26 June 2018, the Consumer's Legal Representative (CLR) lodged an IP claim with the Subscriber. However, the CLR failed to provide the information requested by the Subscriber, resulting in the Subscriber closing the claim on 21 August 2018.

Subsequently, the claim was reopened on 17 September 2018 after the Subscriber received the outstanding information from the CLR via the Trustee. As a result, the two-month timeframe commenced on 17 September 2018 and the Subscriber was required to provide the final decision on the claim by 17 November 2018, unless Unexpected Circumstances (UC) applied.

The Life CCC received this Code breach allegation from the CLR in January 2019. It was alleged that the Subscriber was in breach of sections 8.16 and 8.29 of the Code. As part of its review of the file, the Life CCC also raised a possible breach of section 8.18 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 8.16 of the Code and that the allegation was proven in whole,

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.

- was not in breach of section 8.29 of the Code and that the allegation was unfounded, and
- was in breach of section 8.18 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.16

As the claim was re-opened on 17 September 2018, the two-month timeframe commenced on 17 September 2018 and therefore the Subscriber had to provide its decision on the claim by 17 November 2018.

The Life CCC noted that the final decision was communicated directly to the CLR on 16 April 2019. The Subscriber noted that while UC did not apply to the claim, the Subscriber had informed the Consumer in January 2019 that it was undertaking a non-disclosure review and could not finalise the claim at that stage.

The Subscriber acknowledged that this communication to the Consumer occurred in January 2019 and not within the required two-month timeframe specified in section 8.16 of the Code.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.16 of the Code.

Serious and systemic non-compliance

The Life CCC previously reviewed the Subscriber's section 8.16 processes and procedures as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC in February 2018.³ During that review, the Life CCC confirmed that the Subscriber had not had adequate section 8.16 processes in place since 30 June 2017.

Subsequently, the Subscriber self-reported, amongst other sections, a significant breach of section 8.16 regarding its ineffective UC processes across all three channels in July 2019. This occurred after the Life CCC had reviewed the Subscriber's processes as part of the bulk referral.

The Subscriber has confirmed that it has amended its section 8.16 processes and procedures and currently has robust processes from February 2020.

The Life CCC noted that due to the extent and duration of its overall non-compliant section 8.16 processes, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 8.16 amounted to serious and systemic non-compliance with the Code.

Section 8.29

Section 8.29 of the Code requires Subscribers to either prioritise the assessment and decision of a claim and/or make an advanced payment if the Consumer reasonably demonstrates that the Consumer is in urgent financial need.

The CLR alleged that the Consumer was in urgent financial hardship as a result of the Subscriber's delay in providing a decision on the claim. The Subscriber noted that it was

³ Life CCC Report on Claims and Complaints Handling Obligations issued in March 2020:

<https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>.

⁴ 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.

informed of the Consumer's urgent financial hardship from the Trustee on 9 November 2018 and prioritised the assessment of the review under section 8.29(a) of the Code. However, the Subscriber acknowledged that due to human error, the decision on the claim was not finalised until 16 April 2019.

The Life CCC noted that '**your Life Insurance Policy**' under section 8.27 of the Code was footnoted to exclude policies which were owned by a superannuation fund trustee and instead directed Consumers to contact the Trustee for financial hardship assistance. This meant that section 8.29 does not apply to policies that are owned by a superannuation fund trustee.

In this matter, as the policy was owned by the Trustee, section 8.29 would not apply to the CLR's financial hardship request. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.29 of the Code as section 8.29 did not apply to the matter.

Section 8.18

Section 8.18 sets out two independent elements for Subscribers; In relation to the first element, the Subscriber is required to advise the Consumer to seek financial advice to help manage a claim payment (financial advice wording), when the Subscriber accepts a claim which includes a lump sum payment.

In relation to the second element, if the Subscriber offers to pay a lump sum instead of ongoing payments in order to finalise an income-related claim, the Subscriber is required to suggest that the Consumer seek legal and financial advice before accepting the offer.

In this matter, as the Subscriber made a lump sum payment in relation to the income-related claim, the Life CCC investigated the Subscriber's compliance with the second element (legal and financial advice wordings) of section 8.18 after receiving a copy of the claim acceptance letter which was sent to the Consumer on 16 April 2019.

The Life CCC noted, and the Subscriber acknowledged, that its claim acceptance letter dated 16 April 2019 failed to include the legal and financial advice wordings. As a result, the Life CCC determined that the Subscriber was in breach of section 8.18 of the Code.

Serious and systemic non-compliance

The Subscriber confirmed that, upon review of its processes, it did not have an adequate level of compliance with section 8.18 of the Code.

As a result, the Subscriber self-reported a significant breach of section 8.18 regarding its non-compliant letter templates across all three channels which failed to include the financial advice wording for lump sum payments, and legal and financial advice wordings for income-related claims which were paid by lump sum payments.

The Subscriber confirmed that its letter template in relation to the first element (financial advice wording) was only compliant from 31 January 2020 and that its letter template in relation to the second element (legal and financial advice wordings) was compliant from 29 February 2020. The Life CCC reviewed the revised templates and confirmed that the new letter templates are compliant with the requirements under section 8.18 of the Code.

As the Subscriber's section 8.18 process prior to January/February 2020 was non-compliant with the Code, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the

⁵ Ibid.

Subscriber's breach of section 8.18 amounted to serious and systemic non-compliance with the Code.

Key Learnings

The hardship provisions (sections 8.27 to 8.30) in the Code do not require Subscribers to respond to requests for urgent financial assistance where the Trustee is the owner of the policy. However, consistent with the spirit of the Code, Subscribers are encouraged to refer the matter to the appropriate Trustee, or otherwise respond to or provide assistance where possible to assist Consumers during this challenging economic environment brought about by the Covid-19 pandemic.

The Life CCC further expects that in relation to compliance with section 8.18 of the Code, Subscribers will include the financial advice and/or legal advice wording in all correspondence with Consumers where the Consumer is receiving any form of monetary payment from a Subscriber.

In doing so, the Life CCC considers this best practice and in line with the life insurance industry's commitment to act in good faith while upholding the key Code promises of honesty, fairness, respect, transparency, and timeliness through its interactions with Consumers.

Relevant Code Sections

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 8.18:

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 8.29

If **you** reasonably demonstrate to **us** that **you** are in urgent financial need, **we** will:

- a) prioritise the assessment and decision in relation to **your** claim; and/or
- b) make an advance payment to assist in alleviating **your** immediate hardship.

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.