

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:	CX 4638	Date:	19 August 2020
Code sections:	8.3, 8.7, 8.14 & 8.16 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).

The Consumer lodged an IP claim on 24 May 2018. On 14 August 2018, the Consumer's legal representatives wrote to the Subscriber, noting a decision on the claim had not yet been made and requested an update on the claim.

Throughout the claim assessment period, the Subscriber made repeated requests that the Consumer provide information that was already in its possession, until it finally accepted the Consumer's IP claim on 25 September 2018.

The Consumer's legal representative made a referral to the Life CCC on 28 August 2018, alleging that the Subscriber was in breach of the Code in relation to the delay on the claim decision and its repeated requests for information which it had already been provided.

The Life CCC reviewed the Subscriber's compliance with sections 8.7 and 8.16 of the Code. As part of the Life CCC's investigation, the Subscriber also self-identified breaches of sections 8.3 and 8.14 of the Code.

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

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

The Life CCC determined that:

- the Subscriber was in breach of section 8.3 of the Code,
- the Subscriber was in breach of section 8.7 of the Code and the allegation was proven in whole,
- the Subscriber was not in breach of section 8.14 of the Code, and
- the Subscriber was in breach of section 8.16 of the Code and the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.3

As a part of the review of this matter, the Subscriber self-identified and reported a breach of section 8.3 of the Code.

Section 8.3 require subscribers to provide consumers with information about their cover, the claim process, why certain information is being requested and details of any waiting period applicable before payments will be made. Subscribers must also provide consumers with contact details that they can use to obtain information about the claim. Also, this information should be provided to the Consumer within ten business days of being notified of the claim.

The Consumer's representative lodged an IP claim on 24 May 2018. The Trustee, on behalf of the Subscriber, sent an email to the Consumer on 7 June 2018 to acknowledge receipt of the claim. Whilst the acknowledgement letter was sent to the Consumer within ten business days, the Subscriber has conceded to a breach of section 8.3 in respect of the content of this letter.

The Life CCC noted that that whilst the email of 7 June 2018 listed the information required to assess the claim, it did not provide reasons why it was being requested. The letter went on to incorrectly state that the claim assessment duration can take up to 6 months (or 12 months if Unexpected Circumstances apply). As this was an IP claim, under the provisions of section 8.16 of the Code, a subscriber has to provide its initial decision within 2 months (or 12 months if Unexpected Circumstances apply). Finally, the email did not state whether any waiting period applied to the claim.

The Life CCC therefore confirmed that the Subscriber was in breach of section 8.3 of the Code in this instance.

The Subscriber advised that the cause of the breach was due to the failure of the claims assessor to use the correct template letter. The Subscriber confirmed that it provided the feedback to the relevant individual and refresher training to all staff to ensure continuous compliance with the Code.

The Life CCC reviewed the Subscriber's training material in respect of section 8.3 of the Code along with correct template letter and was satisfied with the contents of both.

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.

Section 8.7

Section 8.7 requires a Subscriber to request the information that it needs as early as possible and to avoid multiple information requests where possible. The Consumer alleged that the Subscriber did not request the information that it needed as early as possible.

Following its initial assessment of the claim, on 20 June 2018 the Subscriber requested the Consumer provide a copy of his WorkCover (WC) claim file. The Consumer's representative responded to the Subscriber on 21 June 2018 to confirm that the WC claim file had already been provided on 24 May 2018 but also provided another copy.

Despite this, on 18 July 2018 and 21 August 2018, the Subscriber made a further request for the Consumer's representative to provide a copy of the WC file. The Consumer's representative provided another copy to the Subscriber on 19 July 2018 and 23 August 2018, respectively.

The Subscriber acknowledged the breach and confirmed that the cause of the breach was due to an oversight of the individual claims assessor. The Subscriber noted that the original copy of the WC file (provided 19 July 2018) did not include the list of benefits paid and that this information was required to complete the claim assessment but could have been requested much earlier.

As a result, the Life CCC determined that the multiple requests for information were unnecessary and therefore the Subscriber was in breach of section 8.7 of the Code.

It further determined in accordance with Charter clause 7.4(b)(iv), that the Subscriber's breach of section 8.7 amounted to serious non-compliance with the Code.

This was because the Life CCC considered the repeated requests for the WC file to have caused a substantial delay in the Subscriber's assessment of the claim of approximately two months. As this was an IP policy, a two month delay meant that the Consumer did not have an income during that period. The Subscriber confirmed that it paid interest to the Consumer totalling \$66.

Section 8.16

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

The Consumer lodged an Income Protection claim on 24 May 2018. To be compliant with section 8.16, the Subscriber was required to provide its initial decision no later than 25 July 2018.

The Subscriber wrote to the Consumer's representative on 29 July 2018 to advise that it was still waiting on information to complete the assessment of the claim. The Subscriber made its decision to accept the Consumer's claim and communicated this on 25 September 2018.

Whilst the Subscriber's letter of 29 July 2018 explained that it was unlikely the claim assessment would be completed within 2 months of it being received, the Life CCC noted that this was provided after the expiration of the 2-month period. Further, the letter failed to explain that the Subscriber now had 12 months within which to make its decision. The Subscriber also acknowledged that in the circumstances, the claim was not suitable for Unexpected Circumstances.

The Life CCC therefore determined that the Subscriber was in breach of section 8.16 of the Code.

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv), that the Subscriber's breach of section 8.16 amounted to serious and systemic non-compliance with the Code.

This was because the Life CCC had previously reviewed the Subscriber's section 8.16 process 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's processes were insufficient to enable compliance with section 8.16 of the Code. The Life CCC is continuing to work with the Subscriber to fully remediate this issue.

The Life CCC also noted that the Subscriber paid the Consumer interest in recognition of the delays in deciding the claim. Although the interest payment was minimal, given the period from lodgement of the claim (24 May 2018) to acceptance (25 September 2018) was four months, a consumer awaiting payment of a benefit designed to replace lost income would have experienced significant stress during this period.

Section 8.14

As part of the review of this matter, the Subscriber also self-reported a breach of section 8.14 of the Code.

Section 8.14 contains two separate elements. The first states that all efforts will be made to meet the timelines required by the Code but notes that a subscriber will not be in breach of the Code if it cannot comply with a deadline due to a delay outside its control. The second element requires subscribers to keep a consumer or Group Policy-owner informed of its progress, where there are external impacts on timeframes in relation to claims decisions and benefit payments.

The Life CCC notes that in relation to the first element, "all efforts" is a subjective term and the Life CCC will consider this on a case by case basis.

The Subscriber self-reported a breach of section 8.14 of the Code in that the delays in the assessment of the Consumer's claim were the result of its failure to correctly identify that it had already been provided with information (WC file) which it believed was outstanding.

The Life CCC considered that this conduct was more correctly considered in relation to the requirements of section 8.7 and section 8.16, and that section 8.14 of the Code did not apply in this instance.

Key learnings

The failure in this matter to identify that the Subscriber already had in its possession information needed to complete the assessment of the claim resulted in numerous unnecessary requests of the Consumer and consequently caused a delay of two months in accepting the claim.

Subscribers should avoid causing unnecessary delays when assessing a claim, especially when assessing IP claims which are intended to replace the Consumer's income. A delay in the assessment of the Consumer's claim has the potential to cause financial hardship, even if the amount involved may not be substantial.

³ <https://lifeccc.org.au/resources/claims-and-complaints-handling-obligations/>

The Life CCC expects that Subscribers should conduct periodic reviews and run regular reporting on ongoing claims to ensure that relevant information is requested as early as possible and outstanding/received information is recorded to ensure assessment can be completed within the timeframes required by Section 8 of the Code.

Relevant Code Sections

Section 8.3

Within ten **business days** of being notified about **your** claim, **we** will explain to **you your** cover and the claim process, including why **we** request certain information from **you** and any waiting period before payments will be made. **We** will give **you** contact details that **you** can use to get information about **your** claim.

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**.

Section 8.7

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

Section 8.14

All efforts will be made to meet the timelines required by the **Code**. However, timeframes for making claims decisions can be affected by factors outside **our** control (**Unexpected Circumstances**). Examples of this include the time taken by a superannuation trustee to review **our** decision or fulfil its legal obligations, or the time taken by **you** or **your** treating doctor to provide information. Where **we** cannot comply with a deadline required by the **Code** due to a delay that is out of **our** control, **we** will not have breached the **Code**. If there are external impacts on timeframes, **we** will inform **you** of this and **we** or the **Group Policy-owner** will keep **you** informed of progress.

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.

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.