

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:	CX6061	Date:	26 August 2020
Code sections:	8.4, 8.7, 8.17 ¹		
Investigation:	A consumer-reported alleged Code breach		

The Code breach:

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained life insurance with a Total and Permanent Disability (TPD) benefit. The Life Insurance policy was issued by a subscriber to the Code (the Subscriber) and was a Group policy owned by the Trustee.

The Consumer lodged a TPD claim with the Trustee on 13 July 2017, and the Subscriber was notified of the claim on 18 July 2017.

As the claim was notified to it more than 12 months after the date of disability and it was experiencing difficulties in obtaining information required to assess the claim, the Subscriber issued an Unexpected Circumstances letter to the Consumer's legal representatives on 15 January 2018.

The Subscriber issued a further letter to the Consumer's legal representative on 18 July 2018 to advise that due to outstanding medical information, it was unable to complete its assessment of the claim and provide its decision within 12 months.

The Consumer's legal representative subsequently issued court proceedings against the Subscriber on 20 September 2018, in respect of the delay in providing the claims decision.

The Consumer's legal representative referred the matter to the Life CCC on 25 March 2019, alleging a breach of section 8.17 of the Code. On 12 August 2019, the Consumer's representative confirmed to the Code team that the court proceedings had been concluded and that the Subscriber had accepted the Consumer's claim. Consistent with its Charter², the Life CCC was then in a position to commence its investigation. During the course of the Life CCC's investigation, the Subscriber also self-reported breaches of section 8.4 and 8.7 of the Code.

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

² The Life CCC Charter section 7.3(b) requires that in respect of any breach allegation received which is also the subject of a dispute before any external dispute resolution scheme or regulatory body, then the Life CCC must await the final outcome or determination of that body before deciding to carry out its investigation.

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

The Life CCC assessed the matter and confirmed the self-reported breach of sections 8.4 & 8.7 of the Code.

The Life CCC also determined that the Subscriber was in breach of section 8.17 of the Code, that the allegation was proven in whole and amounted to serious and systemic non-compliance with the Code.

The Life CCC findings and conclusion:

Section 8.4

Section 8.4 of the Code requires a subscriber to provide a consumer with updates on their claim at least every 20 business days, unless otherwise agreed with the consumer or the Group Policy-owner and to respond to requests for information about the claim within ten business days.

In this case, the Consumer's legal representative submitted a request to the Subscriber for it to release the Consumer's medical reports on 24 April 2018. However, the Subscriber did not provide the information until 14 May 2018, 13 business days (excluding public holidays) after the request was made. This was three days in excess of the ten business days requirement in section 8.4.

Further, on 14 May 2018, the Subscriber was due to provide an update on the progression of the claim (required every 20 business days). Whilst it provided a cover email to the Consumer's legal representative, along with the medical records, on 14 May 2018, it did not provide an update on the status of the claim. The Subscriber did not provide its next update until 11 June 2018. As a result, the Subscriber self-reported a breach of section 8.4 of the Code which was confirmed by the Life CCC.

The Life CCC noted that there were only two instances where the Subscriber had breached section 8.4 in the entire period of the claim assessment (a period in excess of 12 months).

Section 8.7

Section 8.7 requires subscribers to request the information needed as early as possible and to avoid multiple information requests.

The Subscriber stated that it formally established on 28 March 2018 that an Employability Assessment was required but did not initiate a request until 1 May 2018, approximately a month later. It attributed the delay to resource pressures at the time and noted that this was an isolated incident. As a result, the Subscriber self-reported a breach of section 8.7 of the Code which was confirmed by the Life CCC.

As part of investigating another matter, the Life CCC had previously determined that the Subscriber had sufficient processes in place ([CX4393](#)) to enable compliance with section 8.7 of the Code and therefore it agreed that the breach was likely to be isolated in its nature.

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.

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.

The Subscriber disagreed with this Code breach allegation on the basis that while it did not provide a decision on the claim within six months, it complied with section 8.17 as Unexpected Circumstances applied, and it notified the Consumer of Unexpected Circumstances.

The Subscriber was notified of the Consumer's TPD claim on 18 July 2017. To be compliant with section 8.17, the Subscriber needed to provide the Trustee with a decision on the Consumer's claim by 18 January 2018, unless Unexpected Circumstances applied.

The Subscriber issued a letter to the Consumer's legal representative on 15 January 2018 advising of the Unexpected Circumstances, as it was notified of the claim more than twelve months after the date of disability in June 2016 and it required further evidence to continue with the assessment of the claim.

As Unexpected Circumstances applied in this instance, the Subscriber had 12 months to provide its decision on the claim (18 July 2018). As of 20 September 2018, two months after the 12 month period had expired, the Subscriber had not provided its decision on the claim, and the Consumer's legal representative issued court proceedings.

The Subscriber stated that the court proceedings meant that section 8.17 did not apply due to section 2.21 as *"this particular matter ceased to be subject of the Code"*.

The Life CCC previously formed the view that the effect of section 2.21⁴ of the Code is that any events occurring subsequent to the commencement of court proceedings would not be covered by the provisions of the Code. As the breach of section 8.17 had already occurred prior to court proceedings being issued, the Life CCC considered that section 8.17 applied in this instance and that the Subscriber was in breach of section 8.17 of the Code as it did not provide its decision on the claim within 12 months.

Serious and systemic non-compliance

The Life CCC had previously reviewed the Subscriber's overall section 8.17 processes and procedures as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC in February 2018.⁵ During that review, the Life CCC confirmed that the Subscriber did not have adequate processes to enable its compliance with section 8.17 of the code. In particular, the Life CCC identified inconsistencies in the Subscriber's Unexpected Circumstances template letter, how Unexpected Circumstances was communicated and the training it provided to its staff in this area.

While most of the agreed remedial actions have since taken place, including consistent use of a revised Unexpected Circumstances template letter, the Life CCC continues to work with the Subscriber regarding the training provided to staff in this area.

The Life CCC also noted that the claim in this matter was subsequently accepted following resolution of the court proceedings. However, in view of the extended delay in the Subscriber

⁴ 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).

⁵ 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>.

providing its decision, it is likely that the Consumer would have suffered a significant financial detriment.

The Life CCC therefore determined that the breach of section 8.17 amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv) of the Life CCC Charter.

Key learnings

The Life CCC considers that subscribers should view the timeframes in section 8.17 as a maximum allowed timeframe and always seek to handle claims efficiently, given the potential for significant impact or financial hardship of any unnecessary delay upon a consumer.

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 8.7

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

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.