

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:	CX4541	Date:	7 October 2020
Code sections:	8.17, 8.19 & 9.10 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 including a Total and Permanent Disability (TPD) benefit. The life insurance 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 a TPD claim with the Trustee on 15 June 2015. The Subscriber assessed and declined the claim on 14 December 2016. As the Subscriber only adopted the Code on 30 June 2017, the Consumer's claim in June 2015 is not covered by the Code.

On 18 July 2017, the Consumer's Legal Representative (CLR) lodged a complaint with the Trustee and requested a review of the Consumer's claim. As this was after the Subscriber adopted the Code, the relevant timeframes under the Code applied to this complaint.

The Trustee acknowledged the complaint on 27 July 2017 and noted that the complaint would be referred to the Subscriber for a review of its decision on the claim before providing the final decision to the Consumer.

The Subscriber wrote to the Consumer and acknowledged receipt of the complaint in its response dated 17 August 2017. On 8 September 2017, the Subscriber informed the Trustee that its decision was to re-open the claim and to refer it to their Case Management Team for assessment.

The Subscriber re-assessed the claim and informed the Trustee of its decision to maintain its decision to decline the claim on 12 September 2018, over a year after re-opening the claim. The Trustee affirmed the Subscriber's decision to decline the Consumer's TPD claim and communicated this to the CLR on 21 February 2019.

The CLR made a referral to the Life CCC in March 2018 and alleged that the Subscriber was in breach of section 9.10 of the Code as the Subscriber failed to make a decision on the TPD claim within 90 calendar days.

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

As part of its review of the file, the Life CCC also raised possible breaches of sections 8.17 and 8.19 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 8.17 of the Code and that the allegation was proven in whole,
- in breach of section 9.10 of the Code and that the allegation was proven in whole, and
- in breach of section 8.19 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

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 (UC) applies.

As the Consumer's TPD claim was re-opened on 8 September 2017, the Subscriber had to provide its final claim decision by 8 March 2018.

We note that the final claims decision was provided on 12 September 2018, more than a year after the Subscriber re-opened the claim. The Subscriber alleged that UC applied as its claims assessor did not receive further information which was required to make a final decision on the claim.

However, as the claim assessor did not notify the Consumer of UC, the Life CCC determined that the 12-month UC timeframe did not apply to the claim. As a result, the Subscriber was in breach of section 8.17 of the Code as it did not provide a decision on the claim by 8 March 2018.

Serious and Systemic non-compliance

The Life CCC noted that the Subscriber did not have a process to ensure that the Consumer was informed of UC prior to the expiry of the six-month timeframe and to inform Consumers of their right to disagree with the reasons provided.

The Subscriber acknowledged its breach of section 8.17 and that it did not have a compliant process to enable compliance with section 8.17 at the time of the breach in March 2018.

As a result, the breach was not limited to the circumstances of this matter and the Life CCC determined that the Subscriber's breach of section 8.17 amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv)³ of the Life CCC Charter.

Remediation Actions: section 8.17

The Subscriber enhanced its process in June 2018, including the introduction of a UC template letter.

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.

³ 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.

The Life CCC reviewed the remedial actions including the new UC template letter and is satisfied that the Subscriber has remediated its breach of section 8.17 of the Code. As a result, no further action is required by the Subscriber.

Section 9.10

Section 9.10 of the Code requires a subscriber to communicate its decision on the complaint to the Trustee to enable the Trustee to provide its complaint response to the Consumer within 90 calendar days of receiving the complaint. The section also requires a subscriber to provide the information listed in section 9.10(a) – (d).

As noted above, the Subscriber provided its final response to the complaint on 8 September 2017, within 90 calendar days. However, the Subscriber's final response did not include the information required under section 9.10(a) – (d) of the Code.

The Subscriber alleged that it did not communicate directly with the Consumer, therefore, the Trustee had the responsibility to provide the information under section 9.10(a) – (d) of the Code.

However, the Life CCC noted that in this matter the Subscriber provided a response to the complaint directly to the CLR on 8 September 2017. The Subscriber's response failed to include the information required under section 9.10(a) – (d). The Subscriber also provided an identical correspondence to the Trustee which also did not include the information required under section 9.10(a) – (d).

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

Serious and Systemic non-compliance

The Subscriber provided the Life CCC with its section 9.10 template letter as part of its response to a separate matter. The Life CCC reviewed the template letter and noted that it was compliant with the requirements under the section.

However, the template was not used to respond to the Consumer in this matter. While the reason for the template not being used is unclear, this indicated that the template letter was not being used consistently by the Subscriber and that the Subscriber's training and monitoring processes were inadequate to ensure compliance with the Subscriber's obligations under the section.

As a result, the Life CCC determined that the Subscriber's breach of section 9.10 of the Code amounted to serious and systemic non-compliance⁴ with the Code as per clause 7.4(b)(iv)⁴ of the Life CCC Charter.

Remediation Actions: Section 9.10

As a part of the remediation, the Subscriber has since revised its template letter and enhanced its existing processes by including a peer checking of complaint files to ensure that the correct template letter is being used while responding to complaints. The Subscriber has also provided additional training to all staff to ensure that the staff are familiar with and understand the requirements of the Code.

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.

The Life CCC reviewed the remedial actions including the revised template letter and is satisfied that the Subscriber has remediated its breach of section 9.10 of the Code. As a result, no further action is required by the Subscriber.

Section 8.19

Section 8.19 of the Code sets out two separate elements that subscribers are required to provide a consumer or trustee with when a claim is declined. Firstly, subscribers are required to provide the information under section 8.19(a) – (c) in writing within the decline letter. Secondly, subscribers must provide copies of the documents relied on to decline the claim within ten business days if requested.

The Life CCC only examined the Subscriber's compliance with the first element as the Consumer did not request that the Subscriber provide copies of the documents and information relied on to decline the claim.

The Life CCC noted that the Subscriber's claim decline letter to the Trustee, dated 12 September 2018, did not include the information required under section 8.19(b) and (c).

The Subscriber alleged that the decline letter provided to the Trustee was not a decline letter directed at the Consumer and therefore should not be assessed under section 8.19 of the Code. The Subscriber also alleged that as it did not issue the decline letter directly to the Consumer, the Trustee had the responsibility to provide the information under section 8.19(a) – (c) of the Code to the Consumer.

In the Life CCC's view, it is not appropriate for Subscribers to rely on third parties who are not bound by the Code to fulfil the Subscriber's Code obligations.

The Life CCC noted that section 8.19 requires that the Subscriber let '*you*' know in writing if the claim is declined. The Code defines '*you*' to be a Life Insured, Policy-owner or Third-Party Beneficiary.

In this instance, the Trustee was the Policy-owner. This means that the Subscriber's decline letter to the Trustee should have contained the information required under section 8.19(a) – (c) of the Code.

As the Subscriber's decline letter of 12 September 2018 did not include the information required under section 8.19(a) – (c) of the Code, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code.

Serious and Systemic non-compliance

As a part of the review, the Life CCC requested that the Subscriber provide a copy of its section 8.19 decline template letter for Group policies, which the Subscriber was unable to provide. In the view of the Life CCC, this indicated that the Subscriber did not have a clear and consistent process to ensure that the information under section 8.19 of the Code was provided to the Trustee or Consumer.

As a result, the Life CCC determined that the Subscriber's breach of section 8.19 of the Code amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv)⁵ of the Life CCC Charter.

⁵ 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.

Remediation Actions: Section 8.19

As a part of the remediation, the Subscriber has since implemented a Decline template letter to its Claims team to include the information required under section 8.19 (a) to (c) of the Code. The Subscriber has also followed this by providing additional training to the case managers outlining the changes and the requirement to use the new template.

The Life CCC reviewed the remedial actions including the template letter and is satisfied that the Subscriber has remediated its breach of section 8.19 of the Code. As a result, no further action is required by the Subscriber.

Key learnings

When a Consumer lodges a complaint about a claim that has already been declined, Subscribers have 90 calendar days to provide a final response to the complaint (45 calendar days if the policy is not owned by a superannuation fund trustee). The final response to the complaint should include the Subscriber's decision regarding its review of the claim decline.

In this instance, the Consumer complained about a claim decline that was made prior to the Subscriber's adoption of the Code. As a result, the Life CCC assessed the Subscriber's compliance with section 8.17 instead, which provides Subscribers with 6 months to assess a lump sum claim if UC does not apply.

If a Subscriber has relied on the timeframe in section 8.17 in the assessment of a claim, it is unfair to the Consumer to 're-set' the clock and take an additional six months to review a prior declined claim.

In relation to sections 8.19 and 9.10 of the Code, Subscribers cannot rely on third parties (Trustees) who are not bound by the Code to fulfil their Code obligations.

As such, Subscribers must provide the information under section 8.19(a) – (c) and section 9.10(a) – (d) to the party that they communicate with, which depending on their individual arrangements may be the Trustee or the Consumer. In doing so, they would have fulfilled their obligations under the Code.

Relevant Code Sections

Section 8.1:

If **your** claim is covered by a **Group Policy**, **we** may be required to provide the communications referred to below to the **Group Policy-owner** (for example, the superannuation fund trustee which owns **your Life Insurance Policy**) in accordance with section 2.13. The **Group Policy-owner** will then communicate with **you** and assist with **your** claim. When **you** make a claim, **we** and/or the **Group Policy-owner** will let **you** know who will be in contact with **you**.

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.

Section 9.10:

Where possible, **we** will respond to the superannuation fund trustee so that it can provide a final response to **your Complaint** in writing within 90 calendar days of the superannuation fund trustee receiving **your Complaint**.

- a) of **our** final decision in relation to **your Complaint** and the reasons for that decision;
- b) that **you** have the right to copies of the documents and information **we** relied on in assessing **your Complaint**, and if **you** request **we** will provide **you** (or **your** doctor, where appropriate) with copies within ten **business days**, in accordance with the Access to Information section of the **Code**;
- c) that **you** may have the right to take **your Complaint** to the Superannuation Complaints Tribunal (**SCT**) if **you** are not satisfied with **our** decision and the timeframe within which **you** must take **your Complaint** to the **SCT**; and
- d) contact details for the **SCT**.

Section 8.19:

If **we** decline **your** claim **we** will let **you** know in writing:

- a) the reasons for **our** decision;
- b) that **you** have the right to copies of the documents and information **we** have relied on, and if **you** request **we** will provide **you** (or **your** doctor, where appropriate) with copies within ten **business days**, in accordance with the Access to Information section of the **Code**; and
- c) that you have the right to request a review if you disagree with our decision, and 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.