

# 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>	CX4657	<b>Date:</b> 2 October 2020
<b>Code sections:</b>	14.2, 14.7 <sup>1</sup>	
<b>Investigation:</b>	A consumer-reported alleged Code breach	

## The alleged Code breach:

The Consumer purchased a Loan Protection Policy in 2013 from a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The Consumer subsequently lodged a temporary disablement claim, which the Subscriber declined on 10 April 2018.

On 28 June 2018, the Consumer's representatives lodged an information request with the Subscriber for the Consumer's file, including the Consumer's policy documentation. The Subscriber responded to the information request on 20 July 2018 and provided a copy of the Consumer's file, including a copy of all written correspondence and a copy of the policy document. The Subscriber did not provide copies of the file notes and the call recordings.

On 17 August 2018, the Consumer's representatives lodged a complaint with the Subscriber, which was also sent to the Life CCC. The complaint requested a review of the claim decline and alleged that the Subscriber's refusal to provide the file notes was a breach of the Code.

The Subscriber responded to the complaint on 17 October 2018 and noted that the final decision was to maintain the decline as the Consumer did not meet the 90 day consecutive employment requirement.

However, on 7 November 2018 the Subscriber paid the Consumer's claim on an ex-gratia basis. This resulted in the Consumer's representatives confirming that they no longer required the Consumer's file.

The Life CCC contacted the Subscriber and raised a possible breach of sections 14.2 and 14.7 of the Code, in relation to this matter.

On 22 January 2019, the Consumer's representatives resubmitted its request for the Consumer's file. The Subscriber responded to this request on 6 February 2019, 10 business days after the request. The Subscriber's response included the file notes and call recordings previously requested by the Consumer.

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<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

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

The Life CCC determined that the Subscriber:

- was not in breach of section 14.2 of the Code and that the allegation was unfounded, and
- was not in breach of section 14.7 of the Code and that the allegation was unfounded.

## **The Life CCC findings and conclusion:**

### **Section 14.2**

Section 14.2 of the Code creates an obligation for Subscribers to grant access to a Consumer's information that the Subscriber has relied on in assessing the Consumer's application for insurance cover, their claim, or their complaint. This obligation is subject to the circumstances listed in section 14.5 of the Code. Section 14.2 does not contain a timeframe for the Subscriber to provide the Consumer with access to the relevant information.

The Consumer's representative lodged an information request on 28 June 2018, and the Subscriber responded to the request on 20 July 2018. The Subscriber's response included copies of all the information that it relied on to assess the claim but did not include its file notes or the call recordings on the file.

The Subscriber advised that the files notes were not included as the files notes were not relied on in its assessment of the claim. In relation to the call recordings, the Subscriber noted that the Consumer had purchased her policy in 2013, and the search for the Consumer's call recordings within its system was complex and time consuming and had not been completed by 20 July 2018.. As a result, the files notes and call recordings were not provided within the Subscriber's 20 July 2018 response.

As the Consumer's representative lodged a complaint on 17 August 2018, the Subscriber was in the process of collating the file notes and call recordings for the Consumer. However, after the Subscriber paid out the Consumer's claim on an ex-gratia basis on 7 November 2018, the Consumer's representatives informed the Subscriber that they no longer required the file notes and call recordings.

Subsequent to this, the Consumer's representatives made another request for the Consumer's file on 22 January 2019, which the Subscriber responded to on 6 February 2019, 10 business days after the request. The Subscriber's response included the file notes and call recordings that were previously requested.

The Life CCC notes that section 14.2 does not require the Subscriber to provide access within a stated timeframe. In addition, the files notes and call recordings did not fall under section 14.2, as this was not information that the Subscriber relied on in assessing the claim.

As there was no evidence to indicate that the Subscriber failed to provide the Consumer with access to the information about the Consumer that the Subscriber relied on in assessing the Consumer's claim, the Life CCC determined that the Subscriber was not in breach of section 14.2 of the Code, and that the allegation was unfounded.

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<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.

## **Section 14.7**

Section 14.7 creates an obligation for the Subscriber to provide the Consumer with a copy of their Life Insurance Policy documentation promptly, if requested. The Life CCC previously determined<sup>3</sup> that 'Life Insurance Policy documentation' means, at a minimum, the:

- Product Disclosure Statement (PDS)
- Policy Document, and
- Policy Schedule.

The Life CCC also previously determined<sup>4</sup> that 10 business days is an acceptable definition of '*promptly*' under section 14.7. The Life CCC noted that there could be legitimate reasons as to why a Subscriber is unable to provide the requested documents within 10 business days, and the Life CCC retains the discretion to review each case on its merits.

The Consumer's information request was made under the *Privacy Act 1988* (Cth), which provides for a 30 day timeframe for responding to information requests. The Subscriber responded to the Consumer's request for information on 20 July 2018. This was 16 business days after the request.

We note that the request was in relation to the Consumer's entire file, including any relevant Life Insurance Policy documentation. Given that the Consumer's information request was for the entire file, the Life CCC considered that the Subscriber's 16 business day response timeframe was reasonable in the circumstances.

As a result, the Life CCC determined that the Subscriber was not in breach of section 14.7 of the Code, and that the allegation was unfounded

### **Key learnings**

The Life CCC encourages Subscribers to respond to information requests as promptly as possible and retains the discretion to review each case on its merits.

## **Relevant Code Sections**

### **Section 14.2:**

Subject to section 14.5, **you** can access the information about **you** that **we** have relied on in assessing **your** application for insurance cover, **your** claim or **your Complaint**.

### **Section 14.5:**

In special circumstances, **we** may decline to provide access to or disclose information to **you**, such as:

- a) where information is protected from disclosure by law, including the Privacy Act 1988;
- b) where **we** reasonably determine that the information should be provided directly by **us** to **your** doctor;
- c) where the release of the information may be prejudicial to **us** in relation to a dispute about **your** insurance cover or **your** claim, or in relation to **your Complaint**; or
- d) where **we** reasonably believe that the information is commercial-in confidence.

### **Section 14.7:**

<sup>3</sup> <https://lifeccc.org.au/app/uploads/2019/07/Determination-CX4321.pdf> - it should be noted that Determination CX4321 was issued in July 2019, well after the events which occurred in this Determination CX4657.

<sup>4</sup> ibid

If **you** request any of **your Life Insurance Policy** documentation from **us**, **we** will provide this to **you** promptly and in an electronic form if **you** request, subject to any process for releasing policy documentation that **we** are required to carry out by law.

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.