

# 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>	CX4696	<b>Date:</b>	7 October 2020
<b>Code sections:</b>	8.17, 8.18, 8.27, 9.10 <sup>1</sup>		
<b>Investigation:</b>	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 a Total and Permanent Disability (TPD) 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 is owned by a Group policy-owner (the Trustee).

We note that in this matter, the Subscriber communicated its decision to the Trustee, as described under section 8.1 of the Code,<sup>2</sup> and the Trustee then provided the decision to the Consumer.

The Consumer lodged a TPD claim with the Trustee on 4 February 2015. The Subscriber declined the claim on 20 April 2017. As the initial decline of the claim occurred prior to the Subscriber's Code adoption on 30 June 2017, section 8.17 did not apply to the matter.

On 31 January 2018, the Consumer's Legal Representative (CLR) lodged a complaint with the Trustee regarding the prior decision to decline the claim. The Trustee received and referred the complaint to the Subscriber on 7 February 2018.

As a result, the 90-calendar day timeframe under section 9.10 of the Code commenced on 7 February 2018 and expired on 8 May 2018. This meant that the Subscriber had to provide its complaint response to the Trustee to enable the Trustee to issue its complaint response to the CLR by 8 May 2018.

The Life CCC noted that the Subscriber issued a final decision on the claim to the Trustee on 4 December 2018.

The Life CCC received a Code breach referral in October 2018 which alleged that the Subscriber was in breach of sections 8.17, 9.10 and 8.27 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.

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

<sup>2</sup> Ibid.

## Findings in accordance with Charter clause 7.4(b)(iii)<sup>3</sup>:

The Life CCC determined that the Subscriber:

- was not in breach of section 8.17 of the Code as section 8.17 did not apply in this instance,
- was in breach of section 9.10 of the Code and that the allegation was proven in whole,
- was not in breach of section 8.27 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 8.17

As the Subscriber issued the initial decision on the claim on 20 April 2017, prior to the Subscriber's adoption of the Code on 30 June 2017, the initial decision predated the Code. As a result, the Life CCC determined that the section 8.17 allegation did not apply in this Matter.

### Section 9.10

Section 9.10 of the Code requires a subscriber to respond to a trustee so that the trustee can respond to the consumer within 90 calendar days of the Trustee receiving the complaint. In addition, a subscriber must also provide the information required under section 9.10(a) to (d) of the Code within its final complaint response letter.

The Subscriber put forward that the '*where possible*' carve out applied in this instance. The Subscriber noted that it was not possible for the Subscriber to provide a final response to the Trustee by 8 May 2018 because the Subscriber had to request new information as the complaint relied on new medical evidence and raised new issues.

The Life CCC noted that the Subscriber and the Trustee undertook a combined reassessment of the claim where both parties consulted with each other regarding the further information required to reassess the claim.

As the Subscriber only received a response from the Trustee regarding the information it considered was required on 30 April 2018, the Life CCC agreed that the Subscriber could rely on the '*where possible*' carve out, as it was not possible for the Subscriber to provide a final response to the complaint by 8 May 2018.

The Subscriber however conceded that its complaint response to the Trustee failed to include the information required under section 9.10(a) to (d) of the Code.

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 Life CCC previously reviewed the Subscriber's section 9.10 processes and procedures as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC

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<sup>3</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.

in February 2018.<sup>4</sup> The Life CCC determined that prior to November 2018, the Subscriber did not have adequate processes to enable compliance with section 9.10 of the Code because the Subscriber:

- did not have a compliant section 9.10 letter template, and
- did not have an arrangement with all associated Trustees of Group policies to ensure that the Trustees include the information required under section 9.10(a) to (d) within the complaint responses sent to Consumers.

Since the Subscriber's non-compliant response in this matter (dated 28 March 2018) was sent at the time when the Subscriber's section 9.10 processes were non-compliant, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>5</sup> that the Subscriber's breach of section 9.10 amounted to serious and systemic non-compliance with the Code.

### **Section 8.27**

Section 8.27 states that a consumer can notify a subscriber during the assessment of a claim that they are in urgent financial need of the benefits of the policy obtained as a result of the condition that has caused the claim. This is in order to help a subscriber determine whether to prioritise its claim assessment or decision, or make an advance payment in order to help the consumer.

The CLR alleged that the Subscriber was in breach of section 8.27 of the Code on the basis that the Trustee was notified of the Consumer's urgent financial hardship, but there was no indication that the assessment of the claim had been prioritised.

The Subscriber noted that it did not consider itself to be in breach of section 8.27 on the basis that it was not notified by the Trustee that the Consumer was in urgent financial need. As a result, the Subscriber confirmed that no action was taken.

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.

As the policy was owned by the Trustee, the Code does not require the Subscriber to respond to the CLR's request for urgent financial need assistance. In addition, there was no evidence to indicate that the Trustee notified the Subscriber of the fact that the Consumer was in urgent financial need.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.27 of the Code and the allegation was unfounded.

### **Section 8.18**

Section 8.18 creates an obligation for Subscribers to suggest that a Consumer seek financial advice to help manage a claim payment (financial advice wording) within the claim acceptance letter for a lump sum payment.

The Life CCC investigated the Subscriber's compliance with section 8.18 after receiving a copy of the claim acceptance letter that was sent to the Trustee dated 4 December 2018. The

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<sup>4</sup> Life CCC Report on Claims and Complaints Handling Obligations issued in March 2020 – <https://lifeccc.org.au/resources/claims-and-complaints-handling-obligations/>.

<sup>5</sup> 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.

Life CCC reviewed the claim acceptance letter and noted that it failed to include the financial advice wording. 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 had an inadequate level of compliance with section 8.18.

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

The Subscriber confirmed that its letter template in relation to the first obligation (financial advice wording) was only compliant from 31 January 2020, and that its letter template in relation to the second obligation (legal and financial advice wordings) was compliant from 29 February 2020.

As the Subscriber had failed to have compliant section 8.18 letter templates since Code inception, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)<sup>6</sup> that the Subscriber's breach of section 8.18 amounted to serious and systemic non-compliance with the Code.

The Life CCC further confirmed that the revised section 8.18 letter templates were compliant with the requirements under section 8.18 of the Code.

### **Key learnings**

Whilst 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, if a Subscriber receives a direct notification of financial hardship, or similar request for assistance, then Subscribers are strongly encouraged to refer the matter to the appropriate Trustee, or otherwise respond to, or provide assistance where possible to assist Consumers.

In doing so, the Life CCC considers this best practice and in line with the spirit of the Code, and particularly important in the current challenging economic environment, resulting from the impacts of COVID-19.

As the Code has been operational for almost three years, the Life CCC expects all Subscribers to have comprehensive Code compliance processes fully embedded into their business operations, and to regularly review their systems and processes to ensure full and demonstrable compliance with all obligations of 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**.

<sup>6</sup> Ibid.

#### **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 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 8.27:**

While **we** are assessing **your** claim, **you** can tell **us** if **you** are in urgent financial need of the benefits **you** are covered for under **your Life Insurance Policy**, as a result of the condition that has caused the claim.

#### **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**. **You** will be informed of:

- a) **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**.

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.