

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:	CX4785	Date:	7 October 2020
Code sections:	8.17, 8.19, 8.29, 8.30, 9.12 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer obtained two life insurance policies with Total and Permanent Disability (TPD) benefits that were issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

The Consumer lodged the two TPD claims on 1 May 2017, prior to the Subscriber's adoption of the Code on 30 June 2017. As a result, the six-month timeframe commenced on 30 June 2017 and the Subscriber was required to provide a final decision on the claims by 31 December 2017, unless Unexpected Circumstances (UC) applied.

Throughout the claims timeline, the Subscriber continually received, assessed and declined the claims multiple times based on the additional information provided by the Consumer each time.

The Subscriber issued its initial decision to decline the two claims on 5 July 2017 (First Decline), and subsequently maintained its decision to decline the claim on 17 November 2017 (Second Decline) and 29 March 2018 (Third Decline).

The Consumer's Legal Representative (CLR) lodged a complaint dated 14 September 2018 (First Complaint) regarding the Second Decline and Third Decline. As a result, the 45-calendar day timeframe commenced on 14 September 2018 and the Subscriber was required to provide a complaint response by 29 October 2018.

The Subscriber noted that it did not consider the First Complaint to be classified as a 'complaint' as it did not contain details of the Consumer's dissatisfaction. As a result, the Subscriber only acknowledged that the claims were re-opened for further assessment in its response dated 1 October 2018 but did not provide a complaint response which complied with the requirements under section 9.12 of the Code.

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

Due to the delays in receiving a response to the First Complaint and decision on the claims, the Life CCC received the initial sections 8.29 and 9.12 Code breach allegations from the CLR in October 2018.

The Subscriber issued its decision to maintain the decline on the claims on 1 November 2018 (Fourth Decline). As a result, the CLR lodged a complaint dated 28 March 2019 (Second Complaint). The 45-calendar day timeframe commenced on 28 March 2019 and the Subscriber was required to provide a complaint response by 12 May 2019.

Like the First Complaint, the Subscriber did not consider the Second Complaint to be classified as a 'complaint' and did not respond to the complaint in compliance with the requirements under section 9.12 of the Code. The Subscriber, however, noted that as it awaited further information on the claims, it was unable to make a decision on the claims as at 23 December 2019.

Due to the delays in receiving a decision on the claims, the Life CCC received an additional section 8.17 Code breach allegation from the CLR in December 2019. As part of its review of the file, the Life CCC also raised a possible breach of section 8.19 of the Code. The Subscriber also raised and acknowledged a breach of section 8.30 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 9.12 of the Code and that the allegation was proven in whole,
- was in breach of section 8.29 of the Code and that the allegation was proven in whole,
- was in breach of section 8.30 of the Code and that it was proven in whole,
- was not in breach of section 8.17 of the Code and that the allegation was unfounded, and
- was in breach of section 8.19 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.12

Subscribers must comply with two requirements under section 9.12 of the Code. The first requirement is for the Subscriber to provide its final response to the complaint in writing within 45 calendar days of receiving the complaint.

The second requirement is for the Subscriber to provide the information required under section 9.12(a) to (d) within the Subscriber's complaint response letter to the Consumer.

First & Second Complaints

As noted above, the CLR lodged two complaints on 14 September 2018 and 28 March 2019. As a result, the Subscriber was required to respond to the complaints by 29 October 2018 and 12 May 2019 respectively.

The Subscriber's view was that the two correspondences did not indicate that the Consumer was dissatisfied. As a result, the Subscriber did not treat either correspondence as a complaint and the Subscriber did not respond to the complaints as required under section 9.12 of the

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.

Code. The Life CCC further noted that the Subscriber's response to the First Complaint dated 1 October 2018 did not include the information required under section 9.12(a) to (d) of the Code.

ASIC defined a complaint to be "*An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.*"³

The Life CCC noted that both the two correspondences explicitly stated that they were formal complaints, therefore should have been classified as complaints.

As the Subscriber failed to correctly classify both the correspondences as complaints, it failed to provide its complaint response within the required timeframe in section 9.12 of the Code. The Life CCC therefore determined that the Subscriber was in breach of section 9.12 of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

The Subscriber's incorrect classification of both complaints indicated that the Subscriber's processes and procedures regarding the classification of complaints were inadequate.

Further, the Subscriber's breach of section 9.12 of the Code was not limited to this matter as the Subscriber's inadequate section 9.12 processes were also identified during a separate investigation.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 9.12 in this matter amounted to serious and systemic non-compliance with the Code.

The Subscriber confirmed that it has amended its processes from 27 March 2020 to classify all matters where there is an explicit or implied expression of dissatisfaction as complaints.

Section 8.29

Section 8.29 of the Code requires subscribers to either prioritise the assessment and decision of a claim and/or make an advanced payment if the Consumer reasonably demonstrates that the Consumer is in urgent financial need.

The CLR expressly informed the Subscriber on 15 October 2018 that the Consumer was in urgent financial hardship and requested that the Subscriber expedite its review of the complaint dated 14 September 2018.

The Subscriber acknowledged that it could have done more to prioritise the assessment and decision of the claims. As a result, the Life CCC determined that the Subscriber was in breach of section 8.29 of the Code.

Serious and systemic non-compliance

The Life CCC noted that based on the information provided by the Subscriber in relation to its section 8.29 processes and procedures, the Subscriber did not have adequate processes and procedures to comply with the requirements under the section.

³ See RG165 Guide: <https://download.asic.gov.au/media/4772056/rg165-published-18-june-2018.pdf>.

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 Subscriber's processes did not indicate how the Subscriber prioritised the assessment and decision of a claim, nor include the circumstances in which the Subscriber would determine that it would make an advance payment if a Consumer demonstrated that they were in urgent financial need.

The Subscriber confirmed on 18 June 2020 that it had implemented a new financial hardship assessment and prioritisation process and provided relevant training to its staff.

The Life CCC reviewed the Subscriber's new process and noted that the Subscriber now has clear procedures in respect of the two requirements under the section, including a one business day timeframe to acknowledge the Consumer's financial assistance request and to request further information through a letter template. The Subscriber also monitors staff compliance with the timeframe through system reports and managerial overview.

It was clear to the Life CCC that prior to the new process implemented on 18 June 2020, the Subscriber did not have adequate processes to enable compliance with section 8.29 and the breach of section 8.29 of the Code was not limited to the Consumer in this matter only.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 8.29 amounted to serious and systemic non-compliance with the Code.

Section 8.30

Section 8.30 of the Code creates the following requirements for subscribers:

- notify the Consumer about its decision on the financial hardship request within five business days of receipt of the documentation that was requested from the Consumer,
- inform the Consumer of their right to disagree with the decision provided and review the decision if the Consumer disagrees, and
- if subscribers accept that the Consumer is in urgent financial need, subscribers will confirm the acceptance of the arrangement under section 8.29 of the Code in writing.

The Subscriber raised and acknowledged that it breached section 8.30 of the Code as it failed to communicate a decision within five business days, by 22 October 2018, of accepting that the Consumer was in urgent financial need on 15 October 2018.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.30 of the Code.

Serious and systemic non-compliance

The Life CCC noted that based on the information provided by the Subscriber, the Subscriber did not have adequate processes and procedures to comply with the requirements under the section.

This was evidenced by the lack of systems in place to track and alert claim assessors to issue a decision within five business days of accepting that the Consumer was in urgent financial need. In addition, the Subscriber did not have procedures in place to ensure that the Consumer was informed of the right to disagree with the decision provided and that the subscriber would review it if the Consumer disagreed.

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.

The Subscriber confirmed on 18 June 2020 that as part of the newly implemented financial hardship process, the Subscriber tracks compliance with the five-day requirement through its systems daily. In addition, the Subscriber now uses a newly implemented letter template to notify the Consumer of the decision, the right to disagree with the decision and the invitation to contact the Subscriber through the complaints details provided in the letter.

It was clear to the Life CCC that the Subscriber did not have adequate processes to enable compliance with section 8.30 prior to 18 June 2020 and that the breach of section 8.30 of the Code was not limited to the Consumer in this matter only.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁶ that the Subscriber's breach of section 8.30 amounted to serious and systemic non-compliance with the Code.

No breach of section 8.17

The CLR alleged that the Subscriber had breached section 8.17 of the Code as the Subscriber failed to provide a final decision on the claim within six months from the date the CLR lodged the Second Complaint on 28 March 2019.

As the Subscriber issued its initial decision on the claim on 5 July 2017, within six months from 30 June 2017, the Life CCC determined that the Subscriber was not in breach of section 8.17 of the Code.

Section 8.19

Section 8.19 of the Code creates two requirements that subscribers are required to fulfil when a claim is declined. Firstly, subscribers are required to provide the information under section 8.19(a) to (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 requirement 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 none of the Subscriber's four claim decline letters included the information required under section 8.19(b) of the Code. The Subscriber alleged that as the information relied on had been provided to the Consumer along with the Procedural Fairness (PF) letters, there was no requirement for the Subscriber to include the section 8.19(b) wording within the decline letters.

The Life CCC previously confirmed that a subscriber did not have to include the section 8.19(b) wording within its decline letter if it had attached all the information it relied on with the decline letter.⁷

In this matter, as the Subscriber failed to include the section 8.19(b) wording within its four decline letters, or otherwise attach the information it relied on with the four decline letters, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code.

⁶ 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.

⁷ See CX4360 Determination issued in October 2019: <https://lifeccc.org.au/resources/notice-of-determination-cx4360/>.

Serious and systemic non-compliance

As the Subscriber did not have in place the practice of attaching the information it relied on with the decline letter or a compliant letter template prior to June 2020, this indicated that the Subscriber's breach of section 8.19 was not limited to this matter, and that the Subscriber did not have adequate processes and procedures to enable compliance with section 8.19 of the Code since its Code adoption.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁸ that the Subscriber's breach of section 8.19 amounted to serious and systemic non-compliance with the Code.

Key Learnings

The Life CCC notes that this is, contrary to the purpose and spirit of the Code, an example of how a Subscriber's failure to ensure that it has adequate processes and procedures unnecessarily extended the Consumer's difficult financial circumstances

Given that the hardship provisions (sections 8.29 and 8.30) are intended to provide additional support to vulnerable consumers in financial difficulty, the Life CCC noted that on this occasion, the Subscriber failed to live up to the key Code promises and high standards of customer service. In the current challenging economic environment, resulting from the impacts of COVID-19, adherence by subscribers to the Code's hardship provisions is particularly important.

The Life CCC expects subscribers to conduct regular process reviews to ensure that they have robust processes and procedures to appropriately classify and respond to a complaint in a timely manner. As noted in CX4784,⁹ the Life CCC recommends that a subscriber proactively contact a Consumer to seek further clarification if there is uncertainty as to whether a correspondence is a complaint.

Similarly, the Life CCC expects subscribers to review their section 8.19 processes to ensure that the Consumers receive the information stipulated under the section, given that Consumers may often be vulnerable after being informed of the declination of their claim. The Life CCC recommends that in doing so, this will prevent any potential and unintended Consumer harm.

Relevant Code Sections

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.

⁸ 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.

⁹ See CX4784 Determination issued in March 2020: <https://lifeccc.org.au/app/uploads/2020/04/Determination-CX4784.pdf>.

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.

Section 8.29

If **you** reasonably demonstrate to **us** that **you** are in urgent financial need, **we** will:

- a) prioritise the assessment and decision in relation to **your** claim; and/or
- b) make an advance payment to assist in alleviating **your** immediate hardship.

Section 8.30

We will notify **you** about **our** decision within five **business days** of receipt of the documentation **we** have reasonably requested from **you**. If **you** disagree with **our** decision, **we** will review this. If **we** accept **your** request, **we** will confirm the arrangement **in writing**.

Section 9.12:

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

- 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) **your** right to take **your** Complaint to the Financial Ombudsman Service (**FOS**) if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your** Complaint to **FOS**; and
- d) contact details for **FOS**.

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.