LIFE
CODE
COMPLIANCE
COMMITTEE

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:	CX5976	**Date:**	14 October 2020
Code sections:	3.1, 3.4, 3.7, 5.2, 7.1, 7.2, 8.2, 8.3, 8.19, 8.20, 9.3, 9.4, 9.5, 11.1 and 14.7[1]		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer obtained life insurance with an Accidental Injury benefit in or around 2004. The life insurance was issued by a Life Insurance Company who became a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) on 30 June 2017.

On or around 16 January 2018, the Consumer lodged an Accidental Injury claim, which was declined by the Subscriber on 15 March 2018.

On 27 June 2018, the Consumer lodged a complaint with the Subscriber regarding the decline of his claim. The Subscriber wrote to the Consumer on 3 July 2018 to acknowledge the complaint and provided its response to the complaint on 25 July 2018, in which the Subscriber noted that it was maintaining its decision to decline the claim.

The Consumer's legal representatives (CLR) lodged a Code breach allegation with the Life CCC on 7 February 2019 in relation to sections 3.1, 3.4, 3.7, 5.2, 7.1, 7.2, 8.2, 8.3, 8.19, 8.20, 9.3, 9.4, 9.5 and 11.1 of the Code. In addition to these sections, the Life CCC also reviewed the Subscriber's compliance with section 14.7 of the Code.

Findings in accordance with Charter clause 7.4(b)(iii)[2]:

The Life CCC determined that:

- sections 3.1, 3.4, 3.7, 7.1 and 7.2 of the Code did not apply in this matter and that the allegations were unfounded,
- the Subscriber was not in breach of sections 5.2, 8.2, 8.3, 8.20, 9.3, 9.4 and 11.1 of the Code and that the allegations were unfounded, and
- the Subscriber was in breach of sections 8.19, 9.5 and 14.7 of the Code and that the allegations were proven in whole.

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

The Life CCC findings and conclusion:

Section 3.1

Section 3.1 of the Code creates requirements for subscribers in relation to the design and introduction of Life Insurance Policies after a subscriber adopted the Code. The CLR lodged a section 3.1 Code breach allegation and alleged that the Subscriber had failed or refused to provide policy information which was clear and informative.

Section 3.1 of the Code did not apply to policies that were designed and introduced prior to the Subscriber's adoption of the Code. As the policy in question was designed and introduced in 2004, the Life CCC determined that section 3.1 did not apply in this matter and that the allegation was unfounded.

Section 3.4

Section 3.4 of the Code requires a subscriber to provide documentation that explains key information to a Consumer in plain language when a Consumer purchases a Life Insurance Policy. The section notes that the information required under section 3.4 (a) to (j) should be provided 'when you buy a Life Insurance Policy'.

The CLR lodged a section 3.4 Code breach allegation, noting that the Consumer made multiple requests to the Subscriber for information and alleged that the Subscriber had failed to clearly explain the information in section 3.4 of the Code.

While the Consumer was entitled to request that the Subscriber provide him with the information listed in section 3.4, the Subscriber's obligations in responding to this request are covered under section 14.7 of the Code. The Life CCC noted that section 3.4 is limited to the information provided to the Consumer at the point when the Consumer purchased the policy.

Given that the Consumer purchased the policy in 2004, prior to the Subscriber's adoption of the Code, the Life CCC determined that section 3.4 did not apply in this matter and that the allegation was unfounded.

Section 3.7

Section 3.7 of the Code requires a subscriber to make any PDS available online prior to making an application for a new Life Insurance Policy.

The CLR lodged a section 3.7 Code breach allegation and alleged that the Subscriber failed or refused to provide a PDS to the Consumer.

The Subscriber disagreed with the allegation and confirmed that the PDS was available online prior to the Consumer making his application for the policy in 2004.

While the Consumer is entitled to request a copy of the PDS at any point, the Subscriber's obligation under section 3.7 only covers whether the PDS was available online prior to the Consumer purchasing the policy. As this was also prior to the Subscriber's adoption of the Code, the Life CCC determined that section 3.7 did not apply in this matter and that the allegation was unfounded.

Section 5.2

Section 5.2 of the Code requires a subscriber to send all communications about the policy to the policy-owner.

The CLR lodged a section 5.2 Code breach allegation and alleged that the Subscriber failed to provide responses to their requests for the PDS and other policy information.

While such an allegation may amount to a breach of other sections of the Code, this was not relevant to section 5.2 of the Code as this section only prevents a subscriber from sending communication to individuals other than the policy-owner and does not create any obligations in relation to responding to a request for information.

Based on the Life CCC's review, the Life CCC did not identify any instances where the Subscriber sent communication about the policy to someone other than the policy-owner or his representatives. As a result, the Life CCC determined that the Subscriber was not in breach of section 5.2 and that the allegation was unfounded.

Section 7.1

Under section 7.1 of the Code, subscribers have to ensure that they take reasonable measures to ensure that Consumers are provided additional support when a Consumer is identified as requiring additional support. Such Consumers include older persons, people with a disability, people from non-English speaking backgrounds and Indigenous people.

The CLR lodged a section 7.1 Code breach allegation and alleged that the Subscriber failed to provide support to the Consumer, who was a person from a non-English speaking background.

The Subscriber disagreed with the allegation and noted that it has number of policies and guidelines in place to identify and support Consumers, in line with section 7.1. The Subscriber noted that in this instance, the Consumer demonstrated an ability to engage directly with its staff without requiring any additional support, and there were no explicit or implicit indicators that the Consumer required additional support in relation to the Consumer's comprehension of English.

In addition, the Consumer was represented by a financial advisor throughout the course of the claim, who acted as the Consumer's intermediary. For the reasons above, the Subscriber determined that the Consumer did not require additional support. As there was no evidence to demonstrate that the Consumer required additional support, the Life CCC determined that section 7.1 did not apply in this matter and that the allegation was unfounded.

Section 7.2

Section 7.2 of the Code requires a subscriber to have processes in place to train its staff to identify and provide additional support to Consumers who are having difficulty with the process of buying insurance, making an inquiry, making a claim, making a complaint, or making an informed decision.

The CLR lodged a section 7.2 Code breach allegation and alleged that the Subscriber failed to provide additional support to the Consumer, who was a person from a non-English speaking background.

The Subscriber raised the same points as provided its response to the section 7.1 Code breach allegation. For the reasons listed above, there was no evidence to demonstrate that the Consumer required additional support, and the Life CCC determined that section 7.2 did not apply in this matter and that the allegation was unfounded.

Section 8.2

Section 8.2 of the Code requires a subscriber to consider all the features of the Life Insurance Policy to ensure that the Consumer is claiming for all available benefits, and to not discourage the Consumer from making a claim.

The CLR lodged a section 8.2 Code breach allegation and alleged that the Subscriber discouraged the Consumer from making a claim in its email of 26 November 2018 as the Subscriber refused to provide copies of the requested information unless a subpoena was served and sought to impose a financial penalty on the Consumer for requesting a copy of the insurance policy and claim forms.

The Subscriber disagreed with the allegation and noted that the Consumer first notified it of his intent to lodge a claim on 14 December 2017. The Subscriber then issued the claims form for an Accidental Injury claim on 18 December 2017, with the Consumer lodging the claim on 17 January 2018.

In relation to the Subscriber's email of 26 November 2018, the email did not demand that the CLR issue a subpoena, but simply confirmed that no subpoena has been issued.

As there was no evidence to demonstrate that the Subscriber discouraged the Consumer from lodging a claim, the Life CCC determined that the Subscriber was not in breach of section 8.2 and that the allegation was unfounded.

Section 8.3

Section 8.3 of the Code requires a subscriber to explain the claim process to the Consumer within ten business days of the subscriber being notified[3] of the claim.

The CLR lodged a section 8.3 Code breach allegation and alleged that the Subscriber failed to explain its claims process to the Consumer.

The Subscriber disagreed with the allegation, confirming that it was notified of the claim on 14 December 2017 via a phone-call. The Subscriber's representative who answered that call explained to the Consumer's financial advisor about the policy requirements to meet a claim, confirmed that partial benefits existed, and advised that she would send him the required claim forms.

The Subscriber's letter sent to the Consumer on 18 December 2017 listed the claims documentation required, confirmed the claim type and explained that upon receipt of the claim, the claim would be assigned to a claims consultant for the ongoing management of the claim. The letter also provided the contact details for the Subscriber's claims team. In addition, in accordance with the Subscriber's standard practice, the assigned claims consultant called the Consumer on 29 January 2018 to introduce themselves and re-confirm the remaining claims process, following the receipt of the claim on 17 January 2018.

Based on the information available, the Subscriber adequately explained its claim process to the Consumer in the initial phone call and the letter sent on 18 December 2017, with additional confirmation provided in the second phone call on 29 January 2018. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.3 and that the allegation was unfounded.

[3] In relation to section 8.3. the Life CCC has interprets a notified claim as the initial contact made by the claimant in respect of a potential claim. This could take the form of a physical submission or a telephone call.

Section 8.19

Section 8.19 of the Code consists of two elements, the first being the information that the Subscriber must include within its decline letter, and the second being that the Subscriber has to provide the information that it relied on when declining the claim within ten business days, if requested.

In this instance, the CLR lodged a section 8.19 Code breach allegation and alleged that the Subscriber failed to provide copies of the documents that it relied upon in declining the claim.

Based on our review, the CLR did not request copies of the documents that the Subscriber relied on. Instead, on 24 October 2018 the CLR made a request for the Consumer's insurance cover, the date the cover commenced, a list of claim requirements, copies of the policies, copy of the claim files and copies of the annual statements. This amounts to an information request which is governed by Chapter 14 of the Code.

However, the Subscriber acknowledged a breach of section 8.19 as its decline letter of 15 March 2018 did not include the wording required under section 8.19(b) of the Code. We note that this issue was remediated by the Subscriber in December 2018 as part of another matter.

As the breach occurred in March 2018, prior to the Subscriber's remediation in December 2018, at the time of the breach the Subscriber did not have a compliant section 8.19 process, and this meant that the breach in this instance was not limited to this matter.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.19, that the allegation was proven in whole, and that the breach amounted to systemic non-compliance with the Code.

Section 8.20

Section 8.20 of the Code requires a subscriber to have claims assessors that are appropriately skilled and trained to make objective decisions, that the claims assessors will not make claims decisions until they have demonstrated competence, and that their remuneration and bonuses will not be based on declined claims or deferred decisions.

The CLR lodged a section 8.20 Code breach allegation and alleged that the Subscriber failed to have appropriately trained and skilled claims assessors.

The Subscriber disagreed with the allegation and noted that it had a formal accreditation program for new claims assessors prior to granting a delegated decision-making authority. The Subscriber also required all claims handling staff to undertake a mandatory ANZIF e-learning module specific to the Code and its requirements. In addition, the Subscriber noted that it maintained and regularly updated guides and reference material for its claims assessors to refer to and use in training and in ongoing assessment work.

Based on the information available, there was no evidence to demonstrate that the Subscriber did not ensure that its claims assessors were appropriately trained and skilled. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.20 and that the allegation was unfounded.

Section 9.3

Section 9.3 of the Code requires a subscriber to make information about its complaints process and the Consumer's right to make a complaint available on its website and relevant communications.

The CLR lodged a section 9.3 Code breach allegation and alleged that the Subscriber failed to make the relevant complaints handling process information available.

The Subscriber disagreed with the allegation and noted that its complaints handling process was outlined on its website. A review of the Subscriber's website confirmed that its complaints process was explained on its 'contact us' webpage.

In addition, the Subscriber confirmed that information on how to make a complaint is included in relevant communications such as its PDS, the policy issued at policy inception, the letters sent to Consumers when Unexpected Circumstances apply, claim decline letters and complaint acknowledgement and response letters.

Based on the information available, the Life CCC did not identify any relevant communications where the Subscriber did not make the information required under section 9.3 available. As a result, the Life CCC determined that the Subscriber was not in breach of section 9.3 and that the allegation was unfounded.

Section 9.4

Section 9.4 of the Code requires the Consumer's complaint to be handled by someone different from the person whose decision or conduct is the subject of the complaint.

The CLR lodged a section 9.4 Code breach allegation and alleged that the Subscriber refused to have the complaint handled by a person other than the person whose conduct was complained about.

The Subscriber disagreed with the allegation and noted that the Subscriber's claims resolve consultant who managed the complaint response was a different person to the claims assessor who assessed the claim.

We note that the claim decline letter of 15 March 2018 was signed by LH (claims consultant), while the complaint response letter of 25 July 2018 was signed by LK (claims resolve consultant). Having confirmed that the complaint was handled by a different person, the Life CCC determined that the Subscriber was not in breach of section 9.4 and that the allegation was unfounded.

Section 9.5

Section 9.5 of the Code requires a subscriber to notify the Consumer of the name and contact details of the person assigned to liaise with the Consumer in relation to the complaint.

The CLR lodged a section 9.5 Code breach allegation and alleged that the Subscriber failed to provide notification of the identity and contact details of the person assigned to handle the complaint.

The Subscriber acknowledged that it did not fully comply with section 9.5 of the Code as it did not provide the specific contact details for the second person who was assigned to the complaint. The Consumer initially complained on 27 June 2018, and the Subscriber sent an acknowledgement letter via post on 3 July 2018 which included the name and contact details of the initial person assigned to handle the complaint. This was compliant with section 9.5 of the Code.

However, the complaint was re-allocated to another member in the Subscriber's complaints team, and the second person assigned to the complaint (LK) called the Consumer on 18 July 2018 to introduce themselves as the person investigating the complaint. In this instance, LK

provided their name and confirmed their role at the Subscriber but did not provide their specific contact details to the Consumer as part of the call.

The Subscriber sent the final written complaint response 5 business days later on 25 July 2018, and that letter contained LK's direct contact details. The Subscriber noted that it was its standard practice when changing consultants to pass on new contact details of the new person assigned to the complaint.

The Subscriber further noted that there was only a 5 business day gap between LK's initial call and the provision of their direct contact details, which would have minimised any impact resulting from the breach. In addition, the Consumer could have contacted LK via the contact details on the 3 July 2018 complaint acknowledgement letter.

The Life CCC determined that the Subscriber was in breach of section 9.5 and that the allegation was proven in whole. The Life CCC did not find any evidence demonstrating that the breach was a widespread issue which was not limited to the facts of this specific matter.

Section 11.1

Under section 11.1 of the Code, subscribers are required to make their customers aware of the Code, including providing information about the Code on their websites and in their relevant marketing documents.

The CLR lodged a section 11.1 Code breach allegation and alleged that the Subscriber failed to make their customers aware of the Code by failing to publish details of the Code on its website, correspondence, or policy documents.

The Subscriber disagreed with the allegation, noting that its website had included information about the Code since June 2017. The Life CCC reviewed the Subscriber's website and confirmed that it contained a dedicated Code page which provided information about the Code.

In relation to the relevant marketing documents, the Subscriber noted that the PDS and policy documents provided to the Consumer in 2004 did not contain references to the Code as this was prior to the formal commencement of the Code, and the Subscriber's adoption of it, on 30 June 2017. The Subscriber confirmed that all relevant marketing documents issued subsequent to its adoption of the Code have included information about the Code.

As a result, the Life CCC determined that the Subscriber was not in breach of section 11.1 and that the allegation was unfounded.

Section 14.7

Section 14.7 of the Code requires a subscriber, if requested, to promptly provide Life Insurance policy documentation, subject to any process for releasing the documentation that is required by law. The Life CCC previously determined promptly in relation to section 14.7 to mean 10 business days.[4]

The CLR made multiple information requests for the Consumer's Life Insurance policy documentation. The CLR initially made a request for policy information on 25 October 2018. This request was processed by the Subscriber on 27 November 2018. On 27 January 2019, the CLR lodged a second request for policy information. The Subscriber responded on 5 February 2019, requesting further information and the completion of a form to allow the Subscriber to release the information. No response was received from the CLR.

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[4] https://lifeccc.org.au/app/uploads/2019/07/Determination-CX4321.pdf

The Subscriber acknowledged that it was in breach of section 14.7 in relation to the 25 October 2018 request as it did not respond to the request in a timely manner due to an internal handling errors, where a staff member processed the third party authority and closed the case by mistake.

The Subscriber noted that this was an isolated incident and they had reviewed the quality of work of the staff member between September 2018 and March 2019 and did not identify any other similar errors.

In addition, the Subscriber conducted an internal review of the number of days taken to respond to requests for policy documentation, with the Subscriber responding to requests in 6.4 business days on average across 39,095 requests, below the 10 business day timeframe previously determined by the Life CCC.

As a result, the Life CCC determined that the Subscriber was in breach of section 14.7 and that the allegation was proven in whole.

Relevant Code Sections

Section 3.1:
When **we** design and introduce new **Life Insurance Policies** after **we** have adopted the **Code**, **we** will:

a) define suitable customers for the product;
b) include benefits intended to cover genuine risks that generally affect the relevant customers;
c) incorporate plain language into **our** sales and policy information, and consumer-test the plain language information required in sections 3.4 and 6.3;
d) ensure that the policy information for policies sold directly to individuals (with no financial adviser/planner or **Group Policy-owner**) is clear and informative for a consumer to reasonably assess the suitability of the policy for them; and
e) regularly review **our** on-sale products to ensure they remain generally suitable for the relevant customers. **We** will re-design **our** on-sale products where necessary.

Section 3.4:
When **you** buy a **Life Insurance Policy**, **you** will be provided with documentation that clearly explains the following key information in plain language:

a) the types of cover **you** are insured for;
b) how much **you** are insured for, if there is a fixed amount assigned to **your** cover;
c) how much **your** cover costs;
d) the cooling-off period;
e) specific events **you** are not covered for (exclusions);
f) for key medical definitions in cover where a benefit is payable for a defined medical event, a general description of circumstances in which benefits would be paid, and specifically whether or not benefits are payable on diagnosis or require a certain degree of severity in order to be payable;
g) any waiting periods that apply before **you** can access benefits;
h) a description of how the price **you** pay is structured, for instance whether the cover has stepped or level **premiums** or a single **premium**;
i) information about the impact a claim could have on other benefits or income if it is relevant to **your** policy; and
j) information about **our** claims and **Complaints** process.

Section 3.7:
Any product disclosure statement (**PDS**) that **we** have prepared for a **Life Insurance Policy** will be made available online for **you** to view prior to making an application for a new **Life Insurance Policy**. If **you** ask **us** for a **PDS** that has not been prepared by **us** (for example, if it was prepared by a

superannuation fund trustee or other **Group Policy-owner**), **we** will refer **you** to the relevant party for a copy and **we** will encourage those that **we** work with to make these available online.

Section 5.2:
We are legally required to send all communications about **your** policy to the **Policy-owner**. However, where the **Policy-owner** is different from the **Life Insured, we** will not communicate personal medical information about a **Life Insured** to a **Policy-owner** unless the **Life Insured** has given consent for this.

Section 7.1:
We recognise that some groups may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a **Complaint** and communicating with **us**. Where **we** identify that a customer requires additional support, **we** will take reasonable measures to ensure that **we** provide additional support.

Section 7.2
We will have processes in place to train **our** staff to help identify and engage appropriately with consumers who are having particular difficulty with the process of buying insurance, making an inquiry, making a claim or making a **Complaint**, or who may not be capable of making an informed decision, and to refer these consumers for appropriate additional support where required. **We** will take into account someone's capability when making decisions that impact them.

Section 8.2:
When **you** make a claim **we** will consider all of the features of the **Life Insurance Policy** to which **your** claim relates in order to ensure **you** are claiming for all available benefits under **your Life Insurance Policy**. **We** will not discourage **you** from making a claim.

Section 8.3
Within ten **business days** of being notified about **your** claim, **we** will explain to **you your** cover and the claim process, including why **we** request certain information from **you** and any waiting period before payments will be made. **We** will give **you** contact details that **you** can use to get information about **your** claim.

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
c) **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
d) 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 8.20:
Our claims assessors will be appropriately skilled and trained to make objective decisions. They will not make claims decisions on **our** behalf until they have demonstrated technical competency and an understanding of all relevant law, the **Code** and relevant **FSC** Standards and Guidance. Remuneration and entitlements to bonuses will not be based on declined claims or deferrals of decisions

Section 9.3:
We will make information about **your** right to make a **Complaint** and **our** process for handling **Complaints** available on **our** website and in **our** relevant communications.

Section 9.4:
Your Complaint will be handled by someone different from the person or persons whose decision or conduct is the subject of the **Complaint**.

Section 9.5:
We will notify **you** of the name and contact details of the person assigned to liaise with **you** in relation to **your Complaint**.

Section 11.1
We will make **our** customers aware of the **Code**, which will include providing information about the **Code** on **our** websites and in **our** relevant marketing documents.

Section 14.7:
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.