

# 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>	CX6121	<b>Date:</b>	8 December 2020
<b>Code sections:</b>	14.2, 14.3, 14.6, 14.7 <sup>1</sup>		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

## The alleged Code breaches:

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained life insurance with an Extra Death (ED) 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 was owned by a Group policy-owner (the Trustee).

The Consumer lodged a claim with the Subscriber on 21 February 2017 which was declined on 6 June 2017. As the claim lodgement and decline occurred prior to the Subscriber's adoption of the Code on 30 June 2017, both events were not covered by the Code.

On 10 April 2019, the Consumer's Legal Representative (CLR) lodged an information request with the Subscriber for a complete copy of the Consumer's file, which included the Consumer's policy documentation. The Subscriber provided its initial response to the request on 17 April 2019 but only partially fulfilled the Consumer's information request.

On 2 May 2019, the CLR lodged a follow-up information request with the Subscriber. The follow-up request included the initial request on 10 April 2019 and an additional request for two complete copies of the Consumer's Total and Permanent Disability (TPD) and Income Protection (IP) files, including the Consumer's TPD and IP policy documentations. The Subscriber responded to the follow-up request on 14 May 2019 but only finalised its response to the 10 April 2019 information request on 21 August 2019.

The Life CCC noted that the CLR did not act on behalf of the Consumer in this matter between 20 May 2019 and 10 June 2019.

The Life CCC investigated this matter after it received the Code breach referral from the CLR on 2 May 2019. The referral alleged that the Subscriber declined to provide the information requested and had breached sections 14.2, 14.3, 14.6 and 14.7 of the Code.

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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,
- was not in breach of section 14.3 of the Code and that the allegation was unfounded,
- was not in breach of section 14.6 of the Code and that the allegation was unfounded, and
- was in breach of section 14.7 of the Code and that the allegation was proven in whole.

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

### **Section 14.2**

Section 14.2 of the Code creates a requirement for a Subscriber to grant a Consumer access to the Consumer's information that the Subscriber has relied on in assessing the Consumer's application for insurance cover, their claim, or their complaint.

The requirement under section 14.2 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.

### **Information Request (10 April 2019)**

The CLR lodged an information request with the Subscriber on 10 April 2019 for a complete copy of the Consumer's file, which included the Consumer's application for the policy and claim file.

The Subscriber provided the CLR with a copy of the Consumer's application for the policy and claim file on 20 August 2019. The Life CCC noted that the Subscriber responded to the information request via multiple correspondences between 17 April 2019 and 21 August 2019.

### **Follow-up Information Request (2 May 2019)**

The CLR lodged a follow-up information request with the Subscriber on 2 May 2019. The follow-up request included the initial request on 10 April 2019 and an additional request for two complete copies of the Consumer's Total and Permanent Disability (TPD) and Income Protection (IP) files, including the Consumer's TPD and IP policy documentations.

The Subscriber responded to the follow-up request on 14 May 2019. The response noted that the Consumer did not have a TPD or IP benefit under the policy. As a result, the Subscriber could not provide any TPD or IP-related information.

The Life CCC noted that the Subscriber provided a copy of the Consumer's application for the policy on 14 May 2019 (which was provided again on 20 August 2019).

As the Subscriber granted the Consumer access to the information that the Subscriber relied on in assessing the Consumer's application for insurance cover, their claim, or their complaint, 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 14.3**

Section 14.3 of the Code creates a requirement for a Subscriber to grant a Consumer access to reports from Independent Service Providers that the Subscriber has relied on in assessing the Consumer's application for insurance cover or a claim.

The requirement under section 14.3 is subject to the circumstances listed in section 14.5 of the Code. Section 14.3 does not contain a timeframe for the Subscriber to provide the Consumer with access to the relevant information.

Based on the information available, the Life CCC noted that the CLR did not request access to reports from Independent Service Providers that the Subscriber relied on in assessing the Consumer's application for the cover or a claim.

As a result, section 14.3 was not applicable in this instance and the Life CCC determined that the Subscriber was not in breach of section 14.3 of the Code and that the allegation was unfounded.

### **Section 14.6**

Section 14.6 of the Code sets out the requirements under section 14.6 (a) to (c) that a Subscriber must comply with if it declines to provide access to or disclose information to the Consumer.

Based on the information available, the Subscriber did not decline to provide access to or disclose information to the Consumer. As a result, section 14.6 was not applicable in this instance and the Life CCC determined that the Subscriber was not in breach of section 14.6 of the Code and that the allegation was unfounded.

### **Section 14.7**

Section 14.7 creates a requirement for the Subscriber to provide the Consumer with a copy of their Life Insurance Policy documentation promptly, if requested. The Life CCC determined previously that a 10 business day timeframe is an acceptable definition of 'promptly' and that 'Life Insurance Policy documentation' should, at a minimum, include the following documents:<sup>3</sup>

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

The Life CCC acknowledges that there could be legitimate reasons as to why a Subscriber is unable to provide the requested documents within 10 business days. Therefore, the Life CCC retains its discretion to review each case on its merits.

### **Information Request (10 April 2019)**

As noted above, the CLR lodged an information request with the Subscriber on 10 April 2019. The Subscriber responded to the information request in full on 21 August 2019.

The Life CCC noted that the CLR withdrew its authority on the file between 20 May 2019 and 10 June 2019. The Subscriber confirmed that it was informed of the CLR's withdrawal of and reinstatement of authority on 21 May 2019 and 17 June 2019 respectively. As a result, the

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<sup>3</sup> See published Determination CX4657 in October 2020 which sets out the Life CCC's determination of 'promptly' and the documents that a subscriber should provide at a minimum in relation to the term 'Life Insurance Policy documentation': <https://lifeccc.org.au/app/uploads/2020/10/Determination-CX4657.pdf>.

Subscriber noted that it did not provide the CLR with any further information between 21 May 2019 and 17 June 2019.

As the Subscriber was informed of the CLR's reinstatement of authority on 17 June 2019, this meant that the Subscriber should have provided the CLR with the outstanding information within 10 business days from 17 June 2019.

As the Subscriber only responded to the information request in full on 21 August 2019, this meant that the Subscriber took 47 business days (or 65 calendar days) from 17 June 2019 to respond to the initial 10 April 2019 information request. Therefore, the Life CCC determined that the Subscriber was in breach of section 14.7 of the Code as the Subscriber did not provide the information in relation to the information request on 10 April 2019 promptly in the circumstances.

Separately, the Life CCC also assessed whether the Subscriber responded to the follow-up request promptly. Since the follow-up request was lodged on 2 May 2019 and the Subscriber responded on 14 May 2019, within eight business days, the Life CCC determined that the Subscriber responded promptly to the follow-up request.

### Key Learnings

While all subscribers are expected to have adequate processes in place to ensure that they record, respond to and provide information requested in a timely manner, Consumers and their representatives should also ensure that they maintain an open line of communication with subscribers. The Life CCC encourages all parties to adopt an open and proactive two-way communication in all matters.

## 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 14.3:

Subject to section 14.5, **you** can access the reports from **Independent Service Providers** that **we** have relied on in assessing **your** application for insurance cover or **your** claim.

### 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 14.6:

If **we** decline to provide access to or disclose information to **you**:

- a) **we** will not do so unreasonably;
- b) **we** will give **you** a schedule of the documents **we** have declined to provide and give **you** reasons for doing so; and

c) **we** will provide details of **our Complaints** process.

**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.