

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:	CX6709	Date:	21 December 2020
Code sections:	8.16 ¹		
Investigation:	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 an Income Protection (IP) 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, and the Trustee then provided the decision to the Consumer.

The Consumer lodged an IP claim with the Trustee on 17 December 2019. The Subscriber was notified of the claim on 3 January 2020. As a result, the two-month timeframe commenced on 3 January 2020 and the Subscriber was required to provide the final decision on the claim by 3 March 2020, unless Unexpected Circumstances (UC) applied.

The Subscriber noted that as there were delays in receiving the outstanding information needed to assess the claim, it issued a UC letter to the Consumer on 18 February 2020. The Life CCC noted that the Subscriber issued a final decision on the claim to the Trustee on 9 April 2020.

The Life CCC investigated this matter as the Consumer lodged a Code breach referral in February 2020 which alleged that the Subscriber was in breach of section 8.16 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 8.16 of the Code and that the allegation was 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 8.16

The Subscriber was notified of the claim on 3 January 2020. As a result, the two-month timeframe commenced on 3 January 2020 and the Subscriber was required to provide its decision on the claim by 3 March 2020, unless UC applied.

The Subscriber assessed that definition (c) of UC³ applied to the claim and issued a UC letter to the Consumer on 18 February 2020. The Subscriber's UC letter noted that it was unable to issue a decision on the claim by 3 March 2020 as a medical report from the Consumer's treating specialist and details of employment records from the Consumer's employer remained outstanding.

The Life CCC reviewed the UC letter and noted that it did not inform the Consumer of:

- the option to contact the Subscriber if the Consumer disagreed with the reasons provided for the delay in issuing the claims decision, and
- that the Subscriber would conduct a review if notified of the disagreement.

While the Subscriber acknowledged that the UC letter did not specifically include the above-mentioned points, the Subscriber noted that the letter advised the Consumer to call the claims assessor if there were '*any questions or concerns*' about the claim. The Subscriber further contended that there was no clear requirement in the Code which required subscribers to communicate UC in writing.

The Life CCC considers that while the Code does not explicitly require subscribers to communicate UC in writing, it noted that the Subscriber was unable to provide the Life CCC with any evidence which indicated that the Subscriber had communicated the above-mentioned UC information to the Consumer.

The Life CCC further noted that the wordings '*any questions or concerns*' were too vague and did not clearly inform the Consumer about their right to disagree with the reasons provided for UC, and that the Subscriber would conduct a review if notified of the disagreement.

As a result, the Life CCC determined that the Subscriber's UC letter was not compliant with the UC requirements under section 8.16 of the Code. The Life CCC therefore determined that the Subscriber was in breach of section 8.16 of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

The Life CCC previously reviewed the Subscriber's section 8.16 processes and procedures as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC in February 2018.⁴

During that review, the Life CCC was advised that the Subscriber had implemented a compliant UC letter template only after September 2019, when the template was updated to contain all relevant information. However, the Life CCC noted that the Subscriber's UC letter

³ **Unexpected Circumstances** means (amongst other definitions): (c) we have not received reports, records or information reasonably requested from an **Independent Service Provider**, your doctor, a government agency or other person or entity (including **Reinsurer**).

⁴ See published Life CCC Report on Claims and Complaints Handling Obligations in March 2020: <https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>

in this matter (dated 18 February 2020) remained non-compliant. When queried, the Subscriber confirmed that while the UC letter template was updated in September 2019, due to an oversight, it was not implemented across the business until 23 April 2020.

This meant that the Subscriber did not have a compliant template letter to enable compliance with section 8.16 of the Code between 30 June 2017 and 23 April 2020, and the use of the non-compliant UC letter template would have impacted multiple consumers.

Given the extent and duration of the breach, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 8.16 in this matter amounted to serious and systemic non-compliance with the Code.

Key Learnings

The Life CCC notes that this is an example of how a Subscriber's failure to ensure that it had adequate internal compliance monitoring processes resulted in further instances of non-compliance with the Code over an extended period.

As the Code has been operational for more than three years, the Life CCC expects all subscribers to have robust monitoring processes in place as part of their compliance frameworks to minimise the risk of potential errors, particularly in relation to completed remediation actions.

The Life CCC expects all subscribers to take their Code obligations seriously and to monitor the implementation of remediation activities to ensure that they are complete, effective and communicated to staff.

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**.

Section 8.16:

For income-related claims, **we** will let **you** know **our** initial decision no later than two months after **we** are notified of **your** claim or two months after the end of **your** waiting period (whichever is later), unless **Unexpected Circumstances** apply. 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.

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.

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.