

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:	CX6097	Date:	20 January 2021
Code sections:	8.4, 8.7, 8.14, 8.15, 8.17, 9.10 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 a life insurance policy with a default level and an increased level of Total and Permanent Disability (TPD) benefits. 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,² and the Trustee then provided the decision to the Consumer.

The Consumer's Legal Representative (CLR), on behalf of the Consumer, lodged a TPD claim in respect of both covers with the Trustee on 12 December 2017. The Trustee notified the Subscriber of the claim lodgement on 13 December 2017. As a result, the six-month timeframe commenced on 13 December 2017 and the Subscriber was required to provide a final decision on the claim (both covers) by 13 June 2018 unless Unexpected Circumstances (UC) applied.

The Trustee issued the final decision letters to the CLR in relation to the default cover and increased level of cover on 25 March 2019 and 25 June 2019 respectively. The Subscriber noted that UC applied to the claim but acknowledged that as it did not notify the CLR that UC applied, it could not rely on the longer 12-month UC timeframe, and therefore breached section 8.17 of the Code.

The Life CCC received a Code breach referral from the CLR in April 2019 which alleged that the Subscriber was in breach of sections 8.4, 8.7, 8.14 and 8.17 of the Code. As part of its review of the file, the Life CCC also raised possible breaches of sections 8.15 and 9.10 of the Code.

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

² Ibid.

The Subscriber acknowledged that it had breached sections 8.4, 8.7, 8.14, 8.15, 8.17 and 9.10 of the Code.

Findings in accordance with Charter clause 7.4(b)(iii)³:

The Life CCC determined that the Subscriber:

- was in breach of section 8.4 of the Code and that the allegation was proven in whole,
- was in breach of section 8.7 of the Code and that the allegation was proven in whole,
- was in breach of section 8.17 of the Code and that the allegation was proven in whole,
- was in breach of section 8.14 of the Code and that the allegation was proven in whole,
- was in breach of section 8.15 of the Code and that the allegation was proven in whole, and
- was in breach of section 9.10 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.4

Under section 8.4 of the Code, subscribers are required to provide updates on a claim prior to making a decision at least every 20 business days unless otherwise agreed, and to respond to requests for information within 10 business days.

We note that the Trustee appointed a third-party administrator which acted on behalf of the Trustee and the Subscriber and communicated directly with the CLR throughout the claim assessment timeline. Therefore, correspondences from the third-party administrator are referenced here as “the Trustee”.

The Subscriber acknowledged that it, through the Trustee, did not provide the CLR with an update on the claim at least every 20 business days on the following two occasions during the claim assessment period:

- First occasion: There was a 24-business day gap between the Trustee’s correspondence on 2 November 2018 and the next on 6 December 2018, and
- Second occasion: There was a 26-business day gap between the Trustee’s correspondence on 20 February 2019 and the next on 28 March 2019.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.4 of the Code.

Serious and systemic non-compliance

The Subscriber agreed that its breach of section 8.4 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber had self-reported a significant breach of section 8.4 (amongst other sections) in relation to its Group channel in July 2019 for the period of 1 November 2018 and 30 July 2019 under a separate matter.

The significant breach report listed the cause of the breach of section 8.4 to be due to the staff turnover which resulted in a backlog of work. Given that the two instances of non-compliance with section 8.4 above were during the same period and therefore linked to the significant

³ 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.

breach matter, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 8.4 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.7

Section 8.7 requires a subscriber to request the information that it needs in relation to a claim as early as possible and to avoid multiple information requests where possible.

The Subscriber acknowledged that it had breached section 8.7 of the Code, as the Independent Medical Examination (IME) reports that it relied on as the basis for the claim decision (both covers) could have been requested shortly after 18 May 2018, rather than in September 2018. The reason for the delay was isolated human error.

As a result of the delayed request, the Subscriber received the reports in December 2018 which caused the delay in issuing the decision on the claim.

Therefore, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code as the Subscriber failed to request the two reports as early as possible.

Section 8.17

Section 8.17 of the Code requires a subscriber to communicate its decision on a claim within six months, unless UC applied.

The Subscriber was notified of the claim by the Trustee on 13 December 2017. As a result, the Subscriber was required to issue a decision on the claim (both covers) by 13 June 2018 unless UC applied.

The Trustee issued the decisions in relation to the default level of cover on 25 March 2019 and the increased level of cover on 25 June 2019. The Subscriber considered that UC applied as:

- There were delays in receiving various information in relation to the assessment of the default cover,⁵ and
- The Subscriber reasonably suspected that the Consumer failed to disclose a separate and unrelated condition at the time of the application for the increased level of cover which required further investigation in the assessment of the increased level of cover.⁶

However, the Subscriber acknowledged that as it did not notify the CLR that UC applied, then the Subscriber could not rely on the longer 12-month UC timeframe under section 8.17 of the Code. The Subscriber was required to issue its decision on each cover by 13 June 2018.

As the decisions on both covers were made after this timeframe, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code.

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.

⁵ **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 a **Reinsurer**).

⁶ **Unexpected Circumstances** means (amongst other definitions): h) the claim is fraudulent or **we** reasonably suspect fraud or non-disclosure that requires further investigation.

Serious and systemic non-compliance

The Subscriber agreed that its breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber had self-reported a significant breach of section 8.17 (amongst other sections) across all channels in July 2019 for the period of 1 July 2018 and 30 July 2019 under a separate matter.

The significant breach report listed the cause of the breach of section 8.17 to be due to ineffective UC training and awareness of staff. As a result, case managers applied UC inconsistently to claims and, in some instances, failed to notify the Consumer of UC.

We note that the date of the breach in this matter, 14 June 2018, was prior to the reported period in the significant breach matter. However, given that the cause of the breach in this matter was the case manager's failure to notify the Consumer that UC applied to both covers, which was the same cause reported under the significant breach, the breach in this matter in all likelihood is linked to the self-reported significant breach matter.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁷ that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.14

Section 8.14 contains two separate elements:

- The first element states that all efforts will be made to meet the timelines required by the Code but notes that a subscriber will not be in breach of the Code if it cannot comply with a deadline due to a delay outside its control.
- The second element requires a subscriber to keep a consumer or Group Policy-owner informed of its progress, where there are external impacts on timeframes in relation to claims decisions and benefits payments.

The Life CCC previously determined that in relation to the first element, "all efforts" is a subjective term and the Life CCC will consider this on a case by case basis.⁸

The Subscriber acknowledged that it had breached section 8.14 of the Code as it had breached sections 8.4 and 8.17 of the Code noted above because:

- it failed to provide the consumer with timely updates in relation to the claims assessments on two occasions, and
- UC did not apply as the Subscriber did not notify the CLR that UC applied to the claims.

While the Life CCC noted that the claims were particularly complex and required a significant amount of information throughout the assessment period, given the Subscriber's repeated breach of sections 8.4 and 8.17 during that period, the Subscriber did not have robust processes at that time to enable it to meet the standard of "all efforts" to comply with the timeframes required by the Code.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.14 of the Code.

⁷ 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.

⁸ See published Determination CX4638: <https://lifeccc.org.au/app/uploads/2020/09/Determination-CX4638.pdf>.

Serious and systemic non-compliance

The Subscriber agreed that its breach of section 8.14 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber acknowledged that it had inadequate internal processes regarding sections 8.4 and 8.17 over a period of time, which resulted in the breaches in this matter and the significant breaches reported under separate matters as noted above.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁹ that the Subscriber's breach of section 8.14 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.15

Section 8.15 requires a subscriber to communicate a claim decision within ten business days of receiving all the information that the subscriber reasonably needs to assess a claim.

The Subscriber acknowledged that it had breached section 8.15 in relation to the claim decision in respect of each of the two covers as follows:

- **Default cover:** Although the CLR was informed on 21 December 2018 that the claim assessment was completed by the case manager, the final decision was only issued on 25 March 2019. This was 53 business days after the 10-business day timeframe had expired on 9 January 2019.
- **Increased level of cover:** Although the last piece of information required to assess the increased cover claim was received on 3 June 2019, the final decision was only issued on 25 June 2019. This was six business days after the 10-business day timeframe had expired on 17 June 2019.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code.

Serious and systemic non-compliance

The Subscriber agreed that its breach of section 8.15 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber had self-reported a significant breach of section 8.15 (in addition to another section) across all channels in February 2020 for the period of 1 July 2018 and 31 July 2019 under a separate matter.

The significant breach report listed the causes of the breach of section 8.15 to be due to the backlog of work experienced by the third-party administrator and a breakdown in internal processes – whereby decisions were only communicated to consumers after they have been signed off by the Claims Decision Committee, thus breaching the timeframes stipulated under the Code.

Given that the non-compliance with section 8.15 in this matter was during the same period and linked to the significant breach matter, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)¹⁰ that the Subscriber's breach of section 8.15 of the Code amounted to serious and systemic non-compliance with the Code.

⁹ 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.

¹⁰ Ibid.

Section 9.10

Section 9.10 contains two separate elements:

- The first element requires a subscriber to respond to a Trustee to enable the Trustee to respond to a Consumer within 90 calendar days of the Trustee receiving a complaint.
- The second element requires a subscriber to provide the information under section 9.10(a) to (d) of the Code within its final complaint response letter.

The Life CCC assessed the Subscriber's compliance with the second element as the Subscriber was compliant with the first element, having responded to the CLR's complaint dated 16 April 2019 on 3 July 2019, within 90 calendar days.

However, due to isolated human error, the Subscriber's complaint response did not include the information required under section 9.10(b) of the Code, and the Subscriber acknowledged that it had breached section 9.10 of the Code in this instance.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

Remediation Actions

The Life CCC continues to provide guidance and monitor the progress of the Subscriber's remediation actions in relation to sections 8.4, 8.17 and 8.15 of the Code under two separate files.

Key Learnings

Whilst claims processing can often be complex and lengthy, subscribers must strive to consistently meet the high standards of the Code to demonstrate a responsible and committed customer-focussed industry.

Whilst recognising that most of the procedural failures in this matter require sustained remediation, the Life CCC is nonetheless encouraged by the Subscriber's improving compliance culture, demonstrated in this instance by the effective operation of their claims compliance review and breach detection measures, followed by comprehensive self-reporting.

The Life CCC encourages all subscribers to embed effective Code breach identification, assessment and internal and external reporting mechanisms within their organisational compliance cultures.

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 8.4:

Prior to making a decision on **your** claim, **we** will keep **you** informed about the progress of **your** claim at least every 20 **business days** unless otherwise agreed with **you** or the **Group Policy-owner**. **We** will respond to **your** requests for information about **your** claim within ten **business days**.

Section 8.7:

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

Section 8.14:

All efforts will be made to meet the timelines required by the **Code**. However, timeframes for making claims decisions can be affected by factors outside **our** control (**Unexpected Circumstances**). Examples of this include the time taken by a superannuation trustee to review **our** decision or fulfil its legal obligations, or the time taken by **you** or **your** treating doctor to provide information. Where **we** cannot comply with a deadline required by the **Code** due to a delay that is out of **our** control, **we** will not have breached the **Code**. If there are external impacts on timeframes, **we** will inform **you** of this and **we** or the **Group Policy-owner** will keep **you** informed of progress.

Section 8.15:

Once **we** have all the information **we** reasonably need and have completed all reasonable enquiries to assess **your** claim, including **your** response to the evidence **we** are basing **our** decision on if **we** have presented this to **you**, **we** will let **you** know **our** decision on **your** claim within ten **business days**.

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 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.