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:	CX6806	**Date:**	24 February 2021
Code sections:	8.2, 8.4, 8.17[1]		
Investigation:	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 a life insurance policy with a default Total and Permanent Disability (TPD) 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 in this matter, the Subscriber communicated directly with the Consumer rather than through the Trustee.

The Consumer lodged a TPD claim directly with the Subscriber on 13 March 2019. As the Subscriber had not provided a decision on the TPD claim within 12 months, the Consumer lodged a Code breach allegation with the Life CCC on 19 March 2020 which alleged that the Subscriber was in breach of section 8.17 of the Code.

As part of its review of the matter, the Life CCC and the Subscriber raised possible breaches of sections 8.4 and 8.2 of the Code respectively. The Subscriber acknowledged that it was in breach of sections 8.2, 8.4 and 8.17 of the Code on the basis that it:

- failed to provide an update on the progress of the claim to the Consumer within every 20 business days on three occasions,
- did not include all the information required under the Code in its Unexpected Circumstances (UC) letter, and
- did not consider all features of the policy at the time of the TPD claim submission.

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

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

The Life CCC determined that the Subscriber:

- was in breach of section 8.17 of the Code and that the allegation was proven in whole,
- was in breach of section 8.4 of the Code and that the allegation was proven in whole, and
- was in breach of section 8.2 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.17

Section 8.17 of the Code requires a subscriber to provide its decision on a lump sum claim within six months, unless UC applies. If UC applies, the subscriber has 12 months to provide its decision on the claim.

The Consumer lodged a TPD claim directly with the Subscriber on 13 March 2019. As a result, the Subscriber was required to provide its decision on the claim by 13 September 2019, unless UC applied. The Subscriber noted that it was unable to provide a decision on the claim, as it was not able to reasonably satisfy itself, based on the information that it had, that the Consumer met the requirements of the policy.

In line with section 8.17 of the Code, the Subscriber issued a UC letter to the Consumer on 27 August 2019, within the six-month timeframe which expired on 13 September 2019. However, the UC letter was not compliant with the Code as the letter did not inform the Consumer of his right to disagree with the reasons for the delay or that the Subscriber would review the decision if the Consumer disagreed.

As determined in CX7127,[3] the Life CCC was aware that the Subscriber had previously amended its section 8.17 process and UC letter templates in January 2020 as a result of a separate prior Life CCC investigation. This meant that at the time of the breach in August 2019, the non-compliant UC letter would not have been limited to the Consumer in this matter.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code, that the allegation was proven in whole and that in accordance with Charter clause 7.4(b)(iv)[4] that the Subscriber's breach amounted to systemic non-compliance with the Code.

Section 8.4

Section 8.4 of the Code requires a subscriber to provide a consumer with updates on their claim at least every 20 business days unless otherwise agreed and to respond to requests for information about the claim within 10 business days.

The Subscriber acknowledged that due to human error, it did not provide the Consumer with an update on the claim at least every 20 business days on three occasions during the lengthy and complex claim assessment period.

[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.

[3] See published Determination CX7127: https://lifeccc.org.au/app/uploads/2021/02/Determination-CX7127.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 noted that the human error occurred due to unexpected leave by staff who managed the case which impacted on the Subscriber's ability to comply with the Code timeframes.

As a result, 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.

The Subscriber has since confirmed that it has implemented a new reporting system to prevent further instances of non-compliance with Code timeframes caused by unexpected absences from staff.

Section 8.2

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

The Subscriber acknowledged that it had breached section 8.2 of the Code as did not consider all of the features of the policy at the time of the claim submission. This was because the Subscriber had sought to rely on a more favourable definition of TPD which was already available on the Consumer's ongoing claims.

As a result, the Subscriber noted that due to an oversight, it did not request further information from the Consumer at the claim lodgement period. However, the Subscriber confirmed that the oversight was corrected internally before it could impact on the Consumer's ability to claim on all available benefits of the policy.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.2 of the Code and that the allegation was proven in whole.

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.

The Life CCC acknowledges that human error is difficult to completely prevent. However, the Life CCC expects all subscribers to conduct regular Code training in addition to process reviews as part of the subscribers' compliance framework to heighten and maintain staff awareness of the obligations under the Code. In doing so, this would greatly minimise the risk of non-compliance with the Code.

Relevant Code Sections

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 8.4:

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 8.17:

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.

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.