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:	CX5919	**Date:**	26 March 2021
Code sections:	1.5, 1.6, 8.4, 8.5, 8.6, 8.11(d), 8.17, 8.20, 8.24, 9.12, 10.3, 10.4[1]		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breaches:

The Consumer obtained a life insurance policy with a 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).

The Consumer lodged the TPD claim with the Subscriber on 27 October 2017. As a result, the Subscriber was required to provide a decision on the claim by 27 April 2018 unless Unexpected Circumstances (UC) applied.

The Subscriber issued its decision to decline the claim on 17 August 2018 and the Consumer subsequently lodged a complaint with the Australian Financial Complaints Authority (AFCA) on 14 September 2018 which alleged that the Subscriber had breached sections 1.5, 1.6, 8.5, 8.6, 8.11(d), 8.20, 8.24, 9.12, 10.3 and 10.4 of the Code.

On 24 January 2019, AFCA referred the matter to the Life CCC. On 13 February 2020, the Life CCC commenced its investigation after the Consumer informed the Life CCC that the AFCA complaint had been concluded and provided a copy of the signed privacy authority.

As part of its review of the file, the Life CCC also raised possible breaches of sections 8.4 and 8.17 of the Code. The Subscriber acknowledged that it was in breach of sections 1.5, 8.4, 8.5, 8.17, 9.12 and 10.4 of the Code, but asserted that it was not in breach of sections 1.6, 8.6, 8.11(d), 8.20, 8.24 and 10.3 of the Code.

[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:

- section 8.11(d) of the Code did not apply in this matter and that the allegation was unfounded,
- the Subscriber was in breach of sections 1.5, 8.4, 8.5, 8.17, 9.12 and 10.4 of the Code and that the allegations were proven in whole, and
- the Subscriber was not in breach of sections 1.6, 8.6, 8.20, 8.24 and 10.3 of the Code and that the allegations were unfounded.

The Life CCC findings and conclusion:

Section 8.11(d)

Section 8.11(d) requires a subscriber to use an interviewer that has appropriate training or experience to carry out an interview if a claim involves mental illness.

The Life CCC agreed with the Subscriber's view that that section 8.11 of the Code did not apply to this Matter as it was a TPD claim which did not involve mental illness. As a result, the Life CCC determined that section 8.11(d) of the Code did not apply in this Matter and that the allegation was unfounded.

Section 8.4

Section 8.4 requires a subscriber 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.

The Subscriber acknowledged that it had breached section 8.4 of the Code as it did not respond to the Consumer's correspondence dated 19 February 2018 within 10 business days. The Consumer had requested clarification on the relevance of clinical notes sought by the Subscriber.

The Subscriber noted the reason for the breach was due to its view that the Consumer's correspondence dated 13 and 19 February 2018 were largely similar, and that its Case Manager had previously responded to the 13 February 2018 correspondence on 16 February 2018.

However, the Life CCC reviewed the correspondence dated 13 February 2018 and noted that it differed from the one on 19 February 2018. The initial correspondence requested clarification on the timing of the request for information while the correspondence dated 19 February 2018 requested clarification on the relevance of the clinical notes sought. Irrespective of whether they were repetition of prior queries, section 8.4 requires subscribers to respond to all requests for information within 10 business days.

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.

[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.

Section 8.5

Section 8.5 requires a subscriber to only ask for relevant information and to explain why the subscriber is requesting the information. Additionally, if a Consumer disagrees with the relevance of any information, the subscriber will review the request. The subscriber will also inform the Consumer how to make a complaint if the Consumer is not satisfied with the review.

The Subscriber acknowledged that it had breached section 8.5 of the Code as the letter to the Consumer dated 9 February 2018 did not expressly advise the Consumer of their right to a review should they disagree with the relevance of the information requested. The Subscriber noted that due to human error, the Case Manager did not utilise the correct letter template.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.5 of the Code and that the allegation was proven in whole.

The Life CCC reviewed a copy of the standard section 8.5 letter templates provided by the Subscriber and confirmed that they are compliant with the requirements under section 8.5 of the Code.

Section 8.6

Section 8.6 enables a subscriber to request a Consumer to provide a general authority so that the subscriber can obtain additional information that it reasonably believes is relevant to the assessment of a claim.

The Consumer alleged that the Subscriber had breached section 8.6 of the Code as the Subscriber contacted the Consumer's General Practitioner (GP) on one occasion without notifying the Consumer. A condition that the Subscriber would notify the Consumer prior to any request being made for further information from any sources was stated on the signed medical and information authorities.

The Life CCC noted that while the Subscriber had generally complied with the condition, but had inadvertently contacted the Consumer's GP on that particular occasion contrary to the Consumer's wishes, the Subscriber had nonetheless obtained information that it was entitled to in accordance with the two authorities provided by the Consumer.

As a result, the condition was a separate agreement and not a requirement under section 8.6 of the Code. Therefore, the Life CCC determined that the Subscriber was not in breach of section 8.6 of the Code and that the allegation was unfounded.

Section 8.17

Section 8.17 requires a subscriber to communicate its decision on a claim within six months, unless Unexpected Circumstances (UC) applied. The TPD claim was lodged on 27 October 2017 and the decision was issued on 17 August 2018.

The Subscriber noted that while it considered that clause (b) of UC applied,[3] it acknowledged that it had breached section 8.17 as the UC letter was issued on 8 June 2018, well after the six-month timeframe expired on 27 April 2018.

[3] **Unexpected Circumstances** means (amongst other definitions): b) for a claim for total and permanent disability, **we** cannot reasonably satisfy ourselves on the basis of the information provided in the six months after the end of **your** waiting period that **your** condition meets the requirements of **your Life Insurance Policy**.

As a result, 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.

Serious and systemic non-compliance

The Subscriber acknowledged 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 confirmed that:

- prior to 20 April 2020, it did not have a compliant section 8.17 Quality Assurance (QA) question-set;
- a number of breaches by the Subscriber of section 8.17 had been identified as part of the Life CCC's bulk referral investigation during 2018/19; and
- it had only updated its training material, procedure documents and system reporting to ensure that it was fully compliant with the requirements under section 8.17 of the Code effective from 19 September 2019 (following the bulk referral investigation).

As a result, given that the Subscriber's breach in this Matter (April 2018) was prior to 20 April 2020, it was during the period that the Subscriber did not have adequate section 8.17 processes and procedures. Therefore, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)[4] that the Subscriber's breach of section 8.17 amounted to serious and 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 remuneration and bonuses will not be based on declined claims or deferred decisions.

In summary, the Consumer alleged that the Subscriber breached section 8.20 because:

- the interviewer was not medically trained and therefore an inappropriate person to interview/assess the Consumer's TPD claim;
- the Subscriber did not properly explain the relevance of the clinical notes requested on purpose, as they did not want the Consumer to know that they were looking into her mental health; and
- the Subscriber's predetermination of the claim decline (by letter dated 10 July 2018) prior to the formal decline dated 17 August 2018 indicated standard refusal and failure to properly assess information submitted after 10 July 2018.

The Life CCC investigated and noted that there was no evidence which indicated that the Subscriber had breached section 8.20 for the following reasons:

- the Code does not require an interviewer to be medically trained (other than section 8.11(d) which requires an interviewer to be appropriately trained or experienced for a claim involving mental illness – which was not the case in this Matter) and based on the interview transcript, the questions were relevant to the claim assessment;

[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's failure to respond to, properly explain and review the relevance of the clinical notes was addressed under sections 8.4 and 8.5 of the Code and acknowledged by the Subscriber; and

- the Code does not prevent a subscriber from arriving at a decision early prior to the communication of the formal decision. The Subscriber further confirmed that all financial and medical information submitted for the TPD claim were reviewed by senior claims management and senior technical claims staff in entirety prior to formally declining the claim on 17 August 2018.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.20 of the Code and that the allegation was unfounded.

Section 8.24

Section 8.24 states that empathy is required in a subscriber's claims management and that a subscriber will treat a Consumer with compassion and respect.

In summary, the Consumer alleged that the Subscriber breached section 8.24 because:

- the Subscriber failed to provide prior notice of all the interview topics despite having the opportunity to disclose this information when enquiries were made. This also included the lack of prior opportunity to review the medical excerpts referred to in the interview;

- the Subscriber did not properly explain the relevance of the clinical notes requested on purpose as they did not want the Consumer to know that they were also looking into her mental health (same allegation under section 8.20 above);

- an Internal Dispute Resolution (IDR) response (regarding the Consumer's related complaint to the subscriber about the claim handling) was inadequate and failed to address the issues raised;

- Identical claim declined letters (predetermination by letter dated 10 July 2018) prior to the formal decline dated 17 August 2018 indicated complete lack of respect for the Consumer, her representative and the claims process; and

- Failure to pinpoint specific information relied on which was central to the Subscriber's decision to decline the claim indicated standard refusal.

The Life CCC investigated and agreed with the Subscriber that there was no information which indicated that the Subscriber had breached section 8.24 for the following reasons:

- there is no requirement under chapter 8 of the Code that requires a subscriber to provide prior notice of the interview topics to be discussed during the interview or to provide the Consumer with immediate opportunity to review interview material during the interview. A copy of the medical excerpts and interview transcript were provided to the Consumer after the interview;

- the Subscriber's failure to respond to, properly explain and review the relevance of the clinical notes was addressed under sections 8.4 and 8.5 of the Code and acknowledged by the Subscriber;

- the Subscriber's responses dated 11 July 2018 and 31 July 2018 (final complaint IDR response) addressed the Consumer's concerns regarding the Subscriber's conduct during the claims assessment;

- the Code does not prevent a subscriber from arriving at its decision early, but the Subscriber confirmed that its senior management and claims staff reviewed all the information in entirety prior to issuing the formal decline letter dated 17 August 2018; and
- the Subscriber responded to the Consumer's correspondence within 10 business days and provided the table of information considered prior to its decision.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.24 of the Code and that the allegation was unfounded.

Section 9.12

There are two elements under section 9.12 of the Code. The first element requires a subscriber to provide its final response to a complaint in writing within 45 calendar days of receiving the complaint. The second element requires a subscriber the provide the information required under section 9.12(a) to (d) of the Code.

The Subscriber acknowledged that it breached section 9.12(b) of the Code as it failed to provide copies of the information relied on in its final complaint response within ten business days. The Life CCC noted that the Subscriber issued the complaint response on 31 July 2018 and the Consumer requested copies of the information on 3 August 2018. However, it was not until 27 August 2018 (six business days after the ten-business day timeframe expired on 17 August 2018) that the Consumer received all copies of the information relied on in the IDR response.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.12 of the Code, that the allegation was proven in whole.

Section 10.3

Section 10.3 requires all Independent Service Providers (ISPs) contracted by subscribers to demonstrate honesty, fairness, respect, transparency and timeliness towards consumers and subscribers.

The Consumer alleged that the Subscriber had breached section 10.3 as, in the Consumer's view, in addition to not being informed of the topics of interview discussion or given the opportunity to review the medical excerpts used in the interview, the interviewer had asked irrelevant questions regarding mental health problems and use of certain medication.

The Life CCC reviewed the interview transcript and noted that while questions pertaining to the Consumer's mental health were asked, they were relevant to the extent of verifying the disclosures that were made during the application for the TPD cover.

While the Life CCC understands that the Consumer would have appreciated being informed prior to the interview that there was a possibility that her mental health and prior medical usage would be discussed during the interview, there is no obligation under the Code for subscribers to provide such notice prior to an interview.

As a result, the Life CCC determined that the Subscriber was not in breach of section 10.3 of the Code and that the allegation was unfounded.

Section 10.4

Section 10.4 requires a subscriber to only engage ISPs who have demonstrated their expertise, experience, qualifications and integrity, and who hold any required Federal, State,

Territory or industry licences. In addition, the subscriber is also required to include within its contracts with ISPs the reference to the relevant States' and Territories' Expert Witness Code of Conduct.

The Consumer alleged that the Subscriber had breached section 10.4 in relation to the conduct of the ISP during the interview discussed under section 10.3 above.

While there was no evidence which indicated that the Subscriber engaged ISPs who did not have expertise, experience, qualifications or integrity, the Subscriber acknowledged that it had breached section 10.4 because upon a review of a sample of its claims service agreements, it identified that not all agreements which expired by 31 December 2019 made references to the relevant State and Territories' Expert Witness Code of Conduct.

As a result, the Life CCC determined that the Subscriber was in breach of section 10.4 of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

The Subscriber acknowledged that the breach of section 10.4 amounted to serious and systemic non-compliance with the Code because the Subscriber's review of its claim services agreements identified that it did not have adequate processes between 1 July 2017 and 31 December 2019 to ensure that its contracts with ISPs were fully compliant with the requirements of section 10.4 of the Code.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)[5] that the Subscriber's breach of section 10.4 of the Code amounted to serious and systemic non-compliance with the Code.

The Subscriber has since confirmed that all of its current claims service agreements are fully compliant with section 10.4 of the Code.

Section 1.5

Section 1.5 of the Code sets out the principles that apply to subscribers' products and services. These principles are:

(a) clarity and transparency;

(b) fairness and respect;

(c) honesty;

(d) timeliness; and

(e) communications in plain language.

The Subscriber acknowledged that, given that it had breached sections 8.4, 8.5, 8.17 and 9.12 outlined above, it had breached section 1.5 (a), (b) and (d) of the Code as:

- the Subscriber did not respect the Consumer's request on one occasion by not notifying the Consumer prior to contacting Consumer's GP;

[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.

- did not respond to and provide information in a timely manner – (UC letter, copies of information relied on in the IDR response and notifying the consumer of the right to disagree with the review of the relevance of information sought); and
- while there is no requirement for subscribers to provide prior notice of interview topics, the Consumer's email dated 13 February 2018 specifically requested 'more detail' and the 'purpose' of the interview. Therefore, the Subscriber's response dated 16 February 2018 lacked clarity as it omitted to mention the possibility of exploring topics such as the Consumer's mental health and history of medical usage.

As a result, the Life CCC determined that the Subscriber was in breach of section 1.5 of the Code and that the allegation was proven in whole.

Section 1.6

Section 1.6 requires a subscriber and the consumer to act honestly and fairly towards each other, and for the subscriber to have due regard for the consumer's interest.

The Life CCC noted that while the Subscriber breached sections 8.4, 8.5, 8.17, 9.12 and 10.4 of the Code in this matter, there was no evidence which indicated that the Subscriber had acted dishonestly or unfairly.

As a result, the Life CCC determined that the Subscriber was not in breach of section 1.6 of the Code and that the allegation was unfounded.

Key Learnings

This Matter is an example of the importance of having robust compliance frameworks in place as a breach of one section in the Code may result in a breach of the underpinning Code principles. In this Matter, the Life CCC notes that the Subscriber's delays in providing the information relied on in its complaint response under Chapter 9 of the Code meant that the Subscriber failed to respond in a timely manner, in breach of section 1.5(d) of the Code.

Similarly, the Subscriber's untimely and/or incomplete responses to the Consumer in relation to the interview topics and the IDR and clearly engendered Consumer concern and distrust in the overall process, and were not consistent with the spirit of the Code. The duty of utmost good faith is a long-standing core principle in the relationship subscribers have with their policyholders. It fundamentally underpins the trust which consumers place in their insurers.

Whilst robust systems tracking, and standardised compliant letter templates are helpful in ensuring systematic compliance with the Code, the Life CCC reminds subscribers of the human element associated with every claim and/or complaint and the community expectation that claims and/or complaints will be handled consistently and compassionately, with commercial standards of decency and fairness, and in a timely manner.

Relevant Code Sections

Section 1.5

The principles that apply to **our** products and services that are covered by the **Code** are:

a) clarity and transparency;
b) fairness and respect;
c) honesty;
d) timeliness; and
e) communications in plain language

Section 1.6

We acknowledge that a contract of insurance is based on the principle of utmost good faith which requires both **us** and **you** to act honestly and fairly towards each other, and for **us** to have due regard for **your i**nterests.

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 8.5

We will only ask for and rely on information and assessments that are relevant to **your** claim and policy, and **we** will explain why **we** are requesting these. This can include, for example, financial, occupational and medical information. If **you** disagree with the relevance of any information, **we** will review the request, and if **you** are not satisfied with **our** review **we** will tell **you** how **you** can make a **Complaint**.

Section 8.6

Where **we** require information from other sources, such as **your** doctor, accountant or another health professional, **we** may ask **you** for a general authority to obtain information about **you** from them. **We** will only use a general authority to obtain information that **we** reasonably believe is relevant to **your** claim. **You** can instead authorise **us** to request particular information from particular sources. However, this may cause delays in the assessment of **your** claim or mean that **we** are unable to assess **your** claim, and **we** may require further authorities before **we** can progress the assessment of **your** claim.

Section 8.11(d)

Where **we** require interviews to be carried out:

(d) if the interview relates to a claim involving mental illness, **we** will only use an interviewer that **we** are satisfied has appropriate training or experience to carry out the interview.

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 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 8.24

We acknowledge that claims time is difficult for **our** customers, and that empathy is required in **our** claims management. **We** will treat **you** with compassion and respect.

Section 9.12

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

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) **your** right to take **your** Complaint to the Financial Ombudsman Service (**FOS**) if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your** Complaint to **FOS**; and
d) contact details for **FOS**.

Section 10.3

We will require **Independent Service Providers** to act with honesty, fairness, respect, transparency and timeliness towards **you** and **us**.

Section 10.4

We will only enter into contracts with **Independent Service Providers** who reasonably satisfy **us** of their expertise, experience, qualifications and integrity, and who hold any required Federal, State, Territory or industry licensing. **Our** contracts will include reference to the relevant States' and Territories' Expert Witness Code of Conduct.

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.