

# 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>	CX6202	<b>Date:</b>	14 September 2020
<b>Code sections:</b>	8.4, 8.7, 8.17		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

## The alleged Code breach:

The Consumer was a member of a Superannuation Fund. As part of the membership, the Consumer obtained life insurance 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) and is a Group Policy owned by the trustee of the Superannuation Fund (the Trustee).

The Consumer's legal representative lodged a TPD claim with the Trustee on 3 April 2018 and the Trustee referred it to the Subscriber on 11 April 2018. The Subscriber declined the claim on 3 February 2020.

The Consumer's legal representative made a referral to the Life CCC on 27 June 2019 with the allegation that the Subscriber failed to comply with Life CCC Code and that the Subscriber's delay in the claim assessment caused the Consumer financial hardship. The Life CCC commenced its investigation of this matter concerning sections 8.4, 8.7 and 8.17.

The Life CCC noted that section 8.29 did not apply in this matter given the policy is owned by the Superannuation trustee.

## Findings in accordance with Charter clause 7.4(b)(iii)<sup>1</sup>:

The Life CCC determined that:

- the Subscriber was not in breach of section 8.4 of the Code and that the allegation was unfounded,
- the Subscriber was in breach of section 8.7 of the Code, that the allegation was proven in whole, and that the breach amounted to serious non-compliance of the Code, as per clause 7.4(b)(iv) of the Life CCC Charter,

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<sup>1</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.

- the Subscriber was in breach of section 8.17 of the Code, that the allegation was proven in whole, and that the breach of section 8.17 amounted to serious and systemic non-compliance of the Code, as per clause 7.4(b)(iv) of the Life CCC Charter.

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

### **Section 8.4**

Section 8.4 of the Code sets out two compliance elements for subscribers. Firstly, to provide consumers with updates on their claim at least every twenty business days unless otherwise agreed with the consumer or the Group Policy-owner. The second element requires a subscriber to respond to requests for information about the claim within ten business days.

In this matter, the Life CCC only assessed the Subscriber's compliance with the first element as there was no evidence to show that the Subscriber was not compliant with the second element of section 8.4 of the Code.

As part of the Subscriber's initial response to the Life CCC's investigation, the Subscriber provided a schedule of the Consumer's updates. The Life CCC reviewed the schedule and noted that the Subscriber had provided updates to the Consumer at least every twenty business days. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.4 of the Code.

### **Section 8.7**

Section 8.7 sets out two compliance elements for subscribers. The first element in section 8.7 requires a subscriber to request the information needed as early as possible. The second element in section 8.7 requires subscribers to avoid multiple information requests.

The Subscriber acknowledged the breach of section 8.7 of the Code with respect to requesting the Consumer's Education Training and Experience (ETE). The Consumer's legal representative provided the ETE information to the Subscriber on 26 February 2019. However, the Subscriber did not review the ETE information until 10 May 2019, which resulted in a delayed request for further information.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code and that the allegation was proven in whole for the purposes of clause 7.4(iii) of the Charter.

### **Serious non-compliance**

The Subscriber confirmed that the delay was due to the human error of the case assessor at the time and was not a systemic issue. The Subscriber further confirmed that the case assessor who assessed this claim ceased employment with the business unit shortly after. Based on this information and considering that the Life CCC has not received any other allegation of a similar nature against the Subscriber, the Life CCC was satisfied that this was an isolated incident that was limited to the specific case assessor's actions. However, the Life CCC notes that delay above two months was lengthy and would have caused financial detrimental to the Consumer. As a result, the Life CCC determined that breach of section 8.7 of the Code amounted to serious non-compliance of the Code, as per clause 7.4(b)(iv) of the Life CCC Charter.

## **Section 8.17**

Section 8.17 of the Code requires a subscriber to communicate its decision on lump sum claims within six months of receiving the claim, unless Unexpected Circumstances (**UC**) applies.

The Subscriber acknowledged the breach and confirmed that although UC applied, it failed to communicate the same to the Consumer. This was caused by an oversight by the claim assessor.

The TPD claim was referred to the Subscriber on 11 April 2018. The Subscriber's six-month timeframe to provide a claims decision expired on 11 October 2018. The Subscriber provided its final claims decision to the Trustee on 3 February 2020, and this was 22 months after the consumer lodged the claim.

The Subscriber confirmed that UC applied in this case because the claim was lodged late (for a loss that occurred in 2011). Due to the delay in the lodgement of the claim, the Subscriber needed additional information to assess the claim. However, the Subscriber failed to issue the UC notification to the Consumer.

As the Subscriber failed to notify the Consumer of UC and provide a decision within six months of receiving the claim, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code, and the allegation was proven in whole for the purposes of clause 7.4(iii) of the Charter.

## **Serious and Systemic non-compliance**

The Life CCC had previously reviewed the Subscriber's overall section 8.17 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.<sup>2</sup> During that review, the Life CCC confirmed that the Subscriber did not have adequate processes to enable its compliance with section 8.17 of the Code. In particular, the Life CCC identified inconsistencies in the Subscriber's UC template letter, how UC was communicated and the training it provided to its staff in this area.

The Subscriber has since (from September 2019 onwards) remediated its processes around section 8.17 of the Code. This included consistent use of a revised UC template letter and provision of additional UC training to its staff.

As the Subscriber's breach of section 8.17 in this instance occurred before its remedial action in September 2019, the Life CCC determined that the Subscriber's breach of section 8.17 in this instance amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv) of the Life CCC Charter.

## **Key learnings**

The Life CCC expects subscribers to handle claims efficiently, provide robust training for new or inexperienced staff, supervise and monitor such staff closely, and identify and remediate any breaches as early as possible. The Life CCC notes that the Code does not contain any exceptions to its obligations in relation to new or inexperienced staff. The Life CCC notes that the hardship provisions (sections 8.27 to 8.30) in the Code do not require Subscribers to respond to requests for urgent financial assistance where the Trustee is the owner of the policy. However, consistent with the spirit of the Code, Subscribers are encouraged to refer

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<sup>2</sup> Life CCC Report on Claims and Complaints Handling Obligations issued in March 2020:

<https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>.

the matter to the appropriate Trustee, or otherwise respond to or provide assistance where possible to assist Consumers, especially during the current challenging economic environment brought about by the Covid-19 pandemic.

## Relevant Code Sections

### 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 8.17:

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 8.29:

If **you** reasonably demonstrate to us that you are in urgent financial need, we will:

- a) priorities the assessment and decision in relation to **your** claim; and/or
- b) make an advance payment to assist in alleviating **your** immediate hardship.

[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. ]