LIFE CODE COMPLIANCE COMMITTEE

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:	CX5936	**Date:**	25 June 2021
Code sections:	8.4, 8.15 and 8.17[1]		
Investigation:	AFCA 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 a Total and Permanent Disability (TPD) benefit. The life insurance policy was issued by the Subscriber and is a Group Policy owned by the Trustee.

Date	Event
2 August 2018	Consumer lodged a TPD claim with the Subscriber
12 November 2018	Consumer attended an Independent Medical Examination (IME) arranged by the Subscriber
9 December 2018	Consumer requested the Subscriber provide a copy of the IME report
11 December 2018	The Subscriber provided the Consumer with a copy of the IME report
11 December 2018	Consumer lodged a complaint with Australian Financial Complaints Authority due to delays in processing his claim
27 December 2018	The Subscriber requested a report from the Consumer's treating doctor
29 January 2019	Consumer requested the Subscriber provide the briefing notes they sent to the IME doctor
19 February 2019	The Subscriber provided the briefing notes to the Consumer
27 February 2019	The Subscriber received the Consumer's treating doctor's report
4 March 2019	The Subscriber requested their Chief Medical Officer (CMO) review the IME report and the treating doctor's report

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

8 March 2019	The Subscriber received the CMO's opinion
29 March 2019	The Subscriber accepted the Consumer's claim

The Life Code team received a breach allegation from the Australian Financial Complaints Authority (AFCA) in relation to the Subscriber's delay in providing its claims decision and its failure to provide the Consumer with information about his claim in a timely manner when requested.

Based on the information available, the Life CCC reviewed the Subscriber's compliance with sections 8.4, 8.15 and 8.17 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 sections 8.4, 8.15 and 8.17 of the Code and that the allegations were proven in whole.

The Life CCC findings and conclusion:

Section 8.4

Section 8.4 requires subscribers to keep a consumer informed about the progress of their claim at least every 20 business days unless otherwise agreed and to respond to a consumer's request for information about their claim within 10 business days.

On 29 January 2019, the Consumer requested a copy of the briefing documents, and the Subscriber provided the documents to the Consumer on 19 February 2019, 15 business days after the Consumer's request, 5 business days outside the 10 business day timeframe in section 8.4.

As a result, the Subscriber acknowledged that it was in breach of section 8.4 of the Code. The Subscriber noted that this delay was caused by human error as the claims assessor failed to follow its section 8.4 process.

To address this issue, the Subscriber has provided feedback to the claims assessor and has apologised to the Consumer about this delay and paid interest to the Consumer for the delays in the claims assessment. In addition, the Subscriber noted that the breach of section 8.4 was identified by its monthly exception report in February 2019 and logged as a breach in the Subscriber's system.

After reviewing all the information available, 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.

Section 8.15

Section 8.15 requires a subscriber to inform the consumer of its decision on a claim within 10 business days of receiving all the information it reasonably needs and completing all reasonable enquiries.

Based on the information available, the Subscriber received all the information that it required to make a decision on the claim on 8 March 2019, when the CMO provided their opinion.

[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.

However, the Subscriber only provided its decision on the claim to the Trustee on 2 April 2019, 17 business days after it had all the information that it required.

As a result, the Subscriber has acknowledged that it was in breach of section 8.15 of the Code. The Subscriber noted that the breach was due to the inherent complexities of the claim and inconsistent medical evidence and assessments.

The CMO opinion of 8 March 2019 suggested that the Subscriber should seek clarification from the IME doctor in relation to potential inconsistencies in the Consumer's clinical examination and how that translated to vocational function. The Subscriber initially referred this to its technical team but determined to accept the claim instead of pursuing the clarification with the IME doctor. This resulted in the Subscriber exceeding the 10 business day timeframe in section 8.15 as it was waiting for the technical team referral which it subsequently withdrew.

The Subscriber has provided compensation to the Consumer for the 7 business day delay in the assessment of his claim and has confirmed that the breach was an isolated matter that was caused by the complexity of the medical evidence in this Matter.

After reviewing all the information available, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code and that the allegation was proven in whole.

Section 8.17

Section 8.17 of the Code requires a subscriber to provide its decision on a lump sum claim within 6 months, unless Unexpected Circumstances (UC) applies. If UC applies, the subscriber has 12 months to provide its decision on the claim.

The Consumer's TPD claim was received by the Subscriber on 2 August 2018. This meant that the Subscriber needed to provide its decision on the claim by 2 February 2019 if UC did not apply. Based on the information available, the Subscriber communicated its decision on the claim to the Trustee on 2 April 2019, outside the 6 month timeframe.

The Subscriber has noted that definition (c)[3] of UC in Chapter 15 applied as it requested an opinion from the Consumer's treating doctor on 27 December 2018, which it received on 27 February 2019. However, the Subscriber acknowledged that it did not issue an UC letter to the Consumer to inform the Consumer of the existence of UC in the claim and provide the Consumer with an opportunity to disagree and ask for a review.

As the Consumer was not provided with the opportunity to disagree with the reasons for UC, this meant that the Subscriber was not entitled to apply UC to the claim and extend the timeframe to assess the claim from 6 to 12 months.

The Subscriber has acknowledged that at the time of the breach in February 2019, the Subscriber did not have a process to inform consumers about UC and instead informed consumers of delays in the claim as part of the regular updates on the claim.

In May 2019 the Subscriber implemented changes to its process including a template letter to advise consumers when UC applies to their claim. This is triggered by an automated UC task in the Subscriber's task tracking system.

After reviewing all the information available, 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.

[3] Chapter 15. Definitions - Unexpected Circumstances (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);

Given that at the time of the breach the Subscriber did not have a process to ensure that consumers were provided with the reasons for UC, this meant that the breach in this instance was not limited to the Consumer in this Matter and the Life CCC also determined that the breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code.

Key learnings

The Life CCC considers that Subscribers should have robust training programs in place for claims assessors, especially new or inexperienced staff. Subscribers should also closely supervise and monitor new or inexperienced staff to ensure compliance with the Code 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.

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 8.15

Once we have all the information we reasonably need and have completed all reasonable enquiries18 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.

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.