

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:	CX6197	Date:	30 June 2021
Code sections:	8.3, 8.4, 8.7, 8.14, 8.15, 8.17 & 8.24		
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 life insurance with Total and Permanent Disability (TPD) and Income Protection (IP) 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 was a group policy which was owned by the superannuation fund trustee (the Trustee).

The Consumer lodged an IP and two TPD claims (Original and Upgraded covers) with the Trustee on 14 May 2018. We note that the Consumer's allegations in this matter only related to the two TPD claims.

As the Consumer's policy was owned by the Trustee, as per section 8.1 of the Code, the Subscriber communicated its decision to accept the claims to the Trustee on or around 9 and 10 July 2019. The Trustee would then be responsible for communicating the claims decision to the Consumer.

On 21 June 2019, the Consumer made a complaint to the Code team alleging that the Subscriber had breached sections 8.3, 8.4, 8.7, 8.14, 8.15, 8.17 and 8.24 of the Code and the Life CCC commenced its investigation with respect of the alleged breaches.

Findings in accordance with Charter clause 7.4(b)(iii)¹:

The Life CCC determined that the Subscriber:

- was in breach of sections 8.3, 8.4, 8.7, 8.14, 8.15 and 8.17 of the Code and that the allegations were proven in whole, and
- was not in breach of section 8.24 of the Code and the allegation was unfounded.

¹ 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 Life CCC findings and conclusion:

Section 8.3

Section 8.3 states that within 10 business days of being notified about the claim, the subscriber will explain to the consumer their cover and the claim process, including why the subscriber will request certain information from the consumer and any waiting period before payments will be made. The subscriber will give the consumer the contact details that the consumer can use to get information about their claim.

The Consumer has alleged that he was not contacted by the Subscriber to explain the process of the TPD claim nor was he given the contact details of his case assessor. In addition, the Consumer has stated that he lodged his TPD claims on 14 May 2018 but was only contacted by the Subscriber on 28 June 2018.

The Subscriber confirmed that as part of its arrangement with the Trustee, the Trustee was responsible for communicating directly with the Consumer or his representatives. This meant that the Subscriber had to provide the information in section 8.3 to the Trustee, who would then communicate it to the Consumer.

However, the Subscriber did not include the details of the claims process in the communication which was provided to the Trustee on the 8 June 2018. As a result, the Subscriber has acknowledged that it has not complied with section 8.3 of the Code in this matter.

Accordingly, the Life CCC determined that the Subscriber was in breach of section 8.3 of the Code and the allegation was proven in whole. The Life CCC further determined that the Subscriber's breach of section 8.3 amounted to serious and systemic non-compliance with the Code.

This was because the Life CCC's other monitoring activities had identified that the Subscriber was also in breach of section 8.3 during the same period across multiple instances in a separate matter. The Life CCC identified that the breach in that matter was due to the inconsistency of the Subscriber's case assessors in providing information to consumers as required under section 8.3 of the Code.

This meant that the breach of section 8.3 in this instance was not limited to the circumstances in this matter and reflected the poor processes and procedures of the Subscriber in relation to enabling compliance with section 8.3 of the Code. The Subscriber has since undertaken a review of its section 8.3 templates and has also implemented a process guide for claims staff relating to the information that needs to be communicated to consumers under section 8.3 of the Code.

Section 8.4

Under section 8.4 of the Code, subscribers are required to provide updates on the 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 Consumer has stated that he was not regularly updated on the progress of his claim and only received updates if he or his solicitor contacted the Subscriber.

The Subscriber has acknowledged that it has breached section 8.4 of the Code in two instances during the claim assessment period as follows:

1. Email sent to the Trustee with an update on 12 April 2019 - sent 23 business days since the last contact with the Trustee; and

2. Email sent to the Trustee with an update on 17 May 2019 - sent 25 business days since the last contact with the Trustee.

Accordingly, the Life CCC determined that the Subscriber was in breach of section 8.4 of the Code and the allegation was proven in whole. The Life CCC further determined that the Subscriber's breach of section 8.4 amounted to serious and systemic non-compliance with the Code.

This was because the Life CCC's other monitoring activities had identified that the Subscriber was also in breach of section 8.4 of the Code across multiple instances in a different matter during the same period. The Subscriber has confirmed that the cause of the breach of section 8.4 was due to the staff turnover from 1 November 2018 to 30 July 2019 which resulted in a backlog of work. The Subscriber has since recruited new staff members to reduce the backlog of work.

Section 8.7

Section 8.7 requires subscribers to request the information that it needs 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 Consumer's payslips and leave records were not requested as early as possible and were requested over multiple information requests. The Subscriber noted that this was an isolated incident as it conducted a sample review of a subset of claims and did not identify any other breaches of section 8.7 of the Code.

As such, 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.

Section 8.17

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

As the TPD claim was lodged on 14 May 2018, the six-month timeframe for the Subscriber to provide a claims decision commenced on 14 May 2018 and expired on 14 November 2018 unless UC applied.

The Subscriber noted that UC applied; specifically, Chapter 15 UC definition clause (c) applied to the default cover and clause (h) applied to the increased level of cover as there were delays in receiving medical reports, records, and all the information requested in relation to the assessment of the default cover.²

However, the Subscriber provided the UC notification to the Consumer on 7 February 2019, which was after the expiry of six months from the claim notification date. 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. The Life CCC further determined that the Subscriber's breach of section 8.17 amounted to serious and systemic non-compliance with the Code.

This was because the Life CCC's other monitoring activities had identified that the Subscriber was also in breach of section 8.17 of the Code across multiple instances in a different matter during the same period.

² Chapter 15: **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**).

The main cause of the breach of section 8.17 in this instance was ineffective UC training and awareness of staff. As a result, case assessors applied UC inconsistently to claims and, in some instances, failed to notify the Consumer of UC.

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

Section 8.14

Section 8.14 of the Code requires all efforts to be made by the subscriber to meet the timelines required by the Code. However, timeframes for making claims decisions can be affected if Unexpected Circumstances apply.

The Consumer has alleged that the Subscriber has failed to meet the timelines required by the Code. The information available demonstrates that the Subscriber failed the obligation "all effort to be made" in this matter, given there were delays:

- in requesting information under section 8.4 of the Code; and the
- late notification of the UC to the Consumer under section 8.17 of the Code.

As such the Life CCC determined that the Subscriber was in breach of section 8.14 of the Code and the allegation was proven in whole.

Section 8.15

Section 8.15 requires a subscriber to communicate a claim decision within 10 business days of receiving all the information that the subscriber reasonably needs to assess a claim.

The Subscriber has acknowledged that it breached section 8.15 in relation to both covers.

The Subscriber had received all the information that it needed on 17 June 2019 for both claims and both claims were admitted on 9 and 10 July 2019, which was outside the 10-business day timeframe under section 8.15 of the Code.

Accordingly, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code and the allegation was proven in whole. The Life CCC further determined that the Subscriber's breach of section 8.15 of the Code amounted to serious and systemic non-compliance with the Code.

This was because the Life CCC's other monitoring activities had identified that the Subscriber was also in breach of section 8.15 of the Code across multiple instances in a different matter during the same period.

The Subscriber confirmed that the breach was due to a backlog of work by a third-party administrator, and a breakdown in its internal processes. As such, decisions were only communicated to the consumers after they were signed by the Claims Decision Committee resulting in a breach of section 8.15 of the Code. The Subscriber is in the process of improving its internal processes to ensure that communication of claims decisions to consumers is made in a timely manner within the timeframe in section 8.15 of the Code.

Section 8.24

Section 8.24 of the Code requires subscribers to provide empathy in claims management and to treat the consumer with compassion and respect.

The Consumer stated that his case assessor contacted him on 30 November 2019 and during their conversation the case assessor was dismissive of his condition and financial circumstances.

The Subscriber provided the recording of the phone call. In the recording, the case assessor did not appear to be disrespectful during the call. Given that the Code is silent on the definition of the “empathy, compassion and respect”, the Life CCC has reviewed the call recording based on a “reasonable person standard test” and did not find any evidence to indicate that the Subscriber’s case assessor was disrespectful or uncompassionate towards the Consumer.

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

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 requires 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. The Life CCC also encourages all subscribers to ensure adequate resourcing of the claims function to meet workload demands and code requirements and to provide training for claims staff in systems and processes to meet code requirements.

Relevant Code Sections

Section 8.3

Within ten business days of being notified about **your** claim, we will explain to **you your** cover and the claim process, including why **we** request certain information from **you** and any waiting period before payments will be made. We will give **you** contact details that **you** can use to get information about **your** 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 8.7:

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. 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 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.

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.