

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:	CX4817	Date:	26 July 2021
Code sections:	8.4, 8.15, 8.17 & 8.19		
Investigation:	AFCA reported alleged Code breach		

The alleged Code breach:

The Consumer applied for a credit card in 2006. The credit card included access to Consumer Credit Insurance (CCI), which consisted of multiple benefits including a Total and Permanent Disability (TPD) benefit. The Consumer was approved for the credit card and subsequently signed up for the CCI policy on 23 April 2008.

The CCI 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 CCI policy included a TPD benefit that was limited to the total amount outstanding on the nominated credit card of 6 consecutive months, up to a maximum of \$20,000.

The Consumer experienced an illness in 2011 and lodged a claim for the TPD benefit within her CCI policy on 9 April 2018. The Subscriber declined the claim on 1 May 2018 and noted that the Consumer had cancelled her CCI policy in 2008 as the Consumer was unhappy with the cost of the policy.

In June 2018, the Consumer lodged a complaint with the Financial Ombudsman Service (FOS), now known as the Australian Financial Complaints Authority (AFCA). The recommendation issued by FOS was in favour of the Consumer as the Subscriber was not able to provide evidence to prove that the Consumer's CCI policy was cancelled in 2008. As a result, the Subscriber was required to assess the Consumer's eligibility to lodge a claim under her policy.

The Subscriber accepted the FOS recommendation and commenced its assessment of the Consumer's CCI claim on 31 October 2018. Due to delays in the Subscriber's assessment of the CCI claim, the Consumer lodged a second complaint with AFCA in June 2019. The Subscriber subsequently accepted the Consumer's CCI claim on 9 August 2019 and paid the Consumer on 16 August 2019, including a payment of \$966.94 in interest due to delays in its handling of the claim.

The matter was referred to the Life CCC from FOS as a possible Code breach, and the Life CCC investigated the Subscriber's compliance with sections 8.4, 8.15, 8.17 and 8.19 of the Code.

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

The Life CCC determined that the Subscriber was in breach of sections 8.4, 8.15, 8.17 and 8.19 of the Code and that the allegations were proven in whole.

The Life CCC findings and conclusion:

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 contacted the Subscriber seeking a progress update on her claim on 18 December 2018. The Subscriber failed to respond within 10 business days and only provided a response on 8 January 2019, 12 business days after the Consumer's initial information request. As a result, the Subscriber acknowledged a breach of section 8.4 of the Code.

In addition, the Subscriber's review of the Matter identified 3 additional instances where it failed to provide the Consumer with updates on the claim at least every 20 business days:

- Between 23 October 2018 and 23 November 2018 (3 business day delay)
- Between 11 March 2019 and 8 April 2019 (1 business day delay)
- Between 1 July 2019 and 9 August 2019 (9 business days delay)

The Subscriber confirmed that while all system controls within its claims management system were operational and effective in alerting claims assessors of both timeframes required under section 8.4 of the Code. Instead, the breach of section 8.4 in this instance was caused by human error and an oversight of the claims assessor due to the complexities of the claim.

While there were multiple instances of a delayed response from the Subscriber in this matter, the Life CCC noted that the delays were relatively minor, ranging from 1 business day to a maximum of 9 business days. The Subscriber has since provided additional feedback and coaching to the claims assessor managing the Consumer's claim.

Due to the above, 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 8.17

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

The Subscriber declined the Consumer's CCI claim on 1 May 2018, and the Consumer subsequently lodged a complaint with FOS in June 2018. FOS issued a recommendation that the Subscriber was required to assess the Consumer's CCI claim, and the Subscriber reopened the Consumer's CCI claim on 31 October 2018.

The Subscriber initially declined the Consumer's claim as it identified that the Consumer had cancelled her CCI policy in 2008, prior to her illness in 2011. Given that the Subscriber did not assess the merits of the Consumer's CCI claim within its initial assessment of the claim in May

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.

2018, the Life CCC considered that the 6 month timeframe in section 8.17 began when the Subscriber reopened the claim on 31 October 2018.

Based on the information available, the Subscriber provided its decision to accept the CCI claim on 9 August 2019, more than 6 months after reopening the claim on 31 October 2018. While UC may have applied in this claim, the Subscriber did not inform the Consumer of UC in accordance with section 8.17 of the Code.

The Subscriber acknowledged that in 2018 its processes did not include sending consumers a UC letter. Instead, the Subscriber communicated UC to consumers as part of its regular phone, email and letter communications. As a result, the Subscriber acknowledged that it was in breach of section 8.17 as it did not inform the Consumer about UC in line with the requirements under section 8.17 of the Code.

Given the above, 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 also further determined that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber did not have adequate processes and procedures relating to informing consumers about the existence of UC at the time of the breach in early 2019, resulting in the breach of section 8.17 being unlikely to be limited to the facts and circumstances of this matter.

In addition, we note that the Life CCC previously reviewed the Subscriber's section 8.17 processes as part of the Life CCC's Claims and Complaints Handling Obligations report.² The report reviewed subscribers' section 8.17 processes and procedures in the second half of 2019, around the same time period as the breach of section 8.17 in this instance.

The Life CCC's review identified that the Subscriber:

- did not have a process to inform consumers of UC;
- did not communicate the reasons for the delay to the consumer or inform consumers that they had the right to disagree with the reasons provided; and
- did not have a process for providing its complaints process to the consumer when a claim exceeds 12 months.

The Life CCC notes that the Subscriber has since enhanced its systems and processes in June 2019 and January 2021 to enable it to be able to issue compliant UC letters to consumers.

Section 8.15

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

As part of the Subscriber's review of the matter, the Subscriber identified that it might have been in breach of section 8.15 of the Code. The Subscriber received all the information that it needed and completed all reasonable enquiries on 19 July 2019, but only communicated the decision to accept the CCI claim on 9 August 2019, 6 business days over the timeframe in section 8.15 of the Code.

² <https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>

The Subscriber has confirmed that the breach was due to the human error of the claims assessor and has since provided feedback to the relevant claims assessor as well as the broader team to remind them of their obligations 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.

Section 8.19

Section 8.19 requires a subscriber to communicate the decision to decline the claim in writing. The decline letter should include:

- a) the reasons for the decision;
- b) that the consumer has the right to request copies of the documents and information relied on, that if requested, copies of the documents and information will be provided within ten business days; and
- c) that the consumer has the right to request a review and to provide the subscriber's complaints process.

The Subscriber has acknowledged that it was in breach of section 8.19 of the Code in relation to its initial decline of the Consumer's CCI claim. The Subscriber noted that its decline letter of 1 May 2018 did not advise the Consumer of the information required in section 8.19(b) of the Code, specifically in relation to the Subscriber providing the information that it relied on to the Consumer within 10 business days if requested.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code and that the allegation was proven in whole.

The Life CCC further determined that the Subscriber's breach of section 8.19 amounted to serious and systemic non-compliance with the Code.

The Subscriber noted that its template decline letter at the time did not include the required information outlined under section 8.19 of the Code, specifically in relation to informing a consumer that they can request copies of the information that the subscriber relied on, and that the information will be provided within 10 business days.

Given that the Subscriber's template letter did not contain wording that was compliant with section 8.19, the breach of section 8.19 in this instance was unlikely to be limited to the facts and circumstances of this matter. The Subscriber has since amended its section 8.19 processes and revised its decline letter templates in October 2019 as part of the Life CCC's investigation in a separate matter.

Key Learnings

Whilst claims assessment 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 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. Subscribers must also provide adequate training for claims staff in systems and processes for meeting Code requirements.

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 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 8.19:

If **we** decline **your** claim **we** will let **you** know in writing:

- a) the reasons for **our** decision;
- b) that **you** have the right to copies of the documents and information **we** have relied on, 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**; and
- c) that you have the right to request a review if you disagree with our decision, and 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.