

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:	CX5997	Date:	30 July 2021
Code sections:	8.3, 8.4, 8.7, 8.16, 9.10 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breaches:

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained two life insurance policies, a Temporary Salary Continuance (TSC) and a Total and Permanent Disability (TPD) policy. Both life insurance policies were issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code), and the policies were Group policies which were owned by a Group policy-owner (the Trustee).

In this matter, the Subscriber communicated directly with the Consumer's Legal Representative (CLR) rather than through the Trustee.

The Consumer lodged a TSC claim on 3 October 2012 and a TPD claim on 15 October 2014. The Subscriber initially accepted the TSC claim in 2012 and income protection benefits were paid until March 2017. Eventually, the Subscriber declined both claims on 12 April 2017. As these events occurred prior to the Subscriber's adoption of the Code on 1 July 2017, they were not covered by the Code.

Subsequently, the CLR lodged three complaints with the Subscriber on 4 July 2017, 12 April 2018 and 22 June 2018. The complaints were in relation to the Subscriber's decision to decline the claims on 12 April 2017 and the delays incurred in the reassessment of the claims.

The CLR referred the matter to the Life CCC on 20 February 2019. The CLR alleged that the Subscriber had breached sections 8.3, 8.4, and 8.16 of the Code. The Life CCC's investigation was placed on hold between 5 July 2019 and 25 May 2020 due to legal proceedings which were initiated by the Consumer.

As part of the Life CCC's review of the matter, the Subscriber also raised a possible breach of sections 8.7 and 9.10 of the Code and acknowledged that it was in breach of sections 8.4, 8.7 and 9.10 of the Code but asserted that it was not in breach of sections 8.3 and 8.16 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 the Subscriber:

- was in breach of sections 8.4, 8.7 and 9.10 of the Code and that the allegations were proven in whole, and
- was not in breach of sections 8.3 and 8.16 of the Code and that the allegations were unfounded.

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.

Given that the two claims were lodged and declined prior to the Subscriber's adoption of the Code on 1 July 2017, therefore the requirements under section 8.3 do not apply to this matter. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.3 of the Code and that the allegation was unfounded.

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 Subscriber acknowledged that it had breached section 8.4 of the Code as it failed to provide the CLR with an update on the progress of the claims within 20 business days throughout the claims reassessment period from 24 April 2018 until the matter was litigated in July 2019.

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.

Serious and systemic non-compliance

The Life CCC reviewed the Subscriber's section 8.4 processes and procedures previously as part of a separate matter. During the review, the Life CCC determined and the Subscriber acknowledged that it did not have adequate processes in place between 1 July 2017 and 31 December 2018. The review identified that the Subscriber had more than 6,800 breaches of section 8.4 of the Code during that period.

Given that the Subscriber was not compliant with section 8.4 in this matter between 24 April 2018 and July 2019, which also occurred during the period where the Subscriber did not have adequate section 8.4 processes, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)³ that the Subscriber's breach of section 8.4 of the Code amounted to serious and systemic non-compliance with the Code.

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.

³ Ibid.

Since the remediation in late 2018, the Subscriber has reported a compliance rate of more than 99% in relation to section 8.4 of the Code.

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.

As a part of the investigation, the Subscriber raised and acknowledged that it had breached section 8.7 of the Code. The Subscriber confirmed that when the two claims were reopened on 15 June 2018, due to an oversight, the case manager failed to request for additional information in a timely manner causing delays to the reassessment of both claims. The Subscriber also confirmed that the breach was limited to this matter and after reviewing it did not find any other similar breach.

Section 8.16

Section 8.16 of the Code requires subscribers to provide an initial decision for income-related claims within two months after subscribers are notified of the claim or within 12 months if Unexpected Circumstances (UC) apply.

The TSC claim, which was an income-related claim, was lodged and initially accepted in 2012. As a result, section 8.16 does not apply in this matter as the Subscriber had issued an initial decision on the claim which occurred prior to the Subscriber's adoption of the Code on 1 July 2017.

Accordingly, the Life CCC determined that the Subscriber was not in breach of section 8.16 of the Code and that the allegation was unfounded.

Section 9.10

Section 9.10 contains two separate elements:

- The first element requires a subscriber to respond to a Trustee to enable the Trustee to respond to a Consumer within 90 calendar days of the Trustee receiving a complaint.
- The second element requires a subscriber to provide the information under section 9.10(a) to (d) of the Code within its final complaint response letter.

The CLR lodged three complaints with the Subscriber on 4 July 2017, 12 April 2018 and 22 June 2018. The complaints were in relation to the Subscriber's decision to decline the claims on 12 April 2017 and the delays incurred in the reassessment of the claims.

As the Subscriber did not provide a compliant complaint response to the three complaints, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

Serious and systemic non-compliance

The Life CCC reviewed the Subscriber's section 9.10 processes and procedures previously as part of its investigation of the bulk referral from a plaintiff law firm in 2018.⁴

During the review, the Life CCC determined that the Subscriber did not have adequate processes in place prior to June 2018 as the Subscriber did not have robust monitoring to ensure that staff complied with its internal processes and procedures. The Life CCC also noted that staff did not receive adequate training which resulted in inconsistent usage of the section 9.10 letter template in complaint responses.

⁴ <https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>

While the breach in this matter occurred due to the failure to manually refer the complaints received by the claims team to the complaints team, the breach on all three instances indicated that the Subscriber's overall complaints processes were insufficient prior to remediation in June 2018.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 9.10 of the Code amounted to serious and systemic non-compliance with the Code.

Key Learnings

Given that the Code is currently in its fifth year of operation, the Life CCC expects subscribers to conduct regular process reviews and have robust monitoring processes in place to minimise the risk of internal non-compliance which results in delays to the claims assessment process. The Life CCC also expects subscribers to provide ongoing training to staff in claims assessment and complaints management processes to ensure compliance with the Code. In doing so, the Life CCC expects such breaches to continue to decline across the industry.

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 8.16:

For income-related claims, **we** will let **you** know **our** decision no later than two months after **we** are notified of **your** claim or two 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 9.10:

Where possible, **we** will respond to the superannuation fund trustee so that it can provide a final response to **your Complaint** in writing within 90 calendar days of the superannuation fund trustee receiving **your Complaint**. **You** will be informed of:

- a) **our** final decision in relation to **your Complaint** and the reasons for that decision;

⁵ Ibid.

- 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) that **you** may have the right to take **your Complaint** to the Superannuation Complaints Tribunal (**SCT**) if **you** are not satisfied with **our** decision and the timeframe within which **you** must take **your Complaint** to the **SCT**; and
- d) contact details for the **SCT**.

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.