

# 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>	CX6746	<b>Date:</b>	20 August 2021
<b>Code sections:</b>	8.9(f) and 8.16		
<b>Investigation:</b>	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 a life insurance policy with an Income Protection (IP) 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 the policy was a group policy which was owned by the superannuation fund trustee (the Trustee).

The Consumer lodged an initial IP claim with the Subscriber, which was received on 5 October 2018. The initial IP claim had a date of disability of 20 April 2016 with a 60 day waiting period, commencing on 19 June 2016. As the Consumer returned to work on 22 October 2017, the disability period for the initial claim ceased on that date. The Subscriber assessed the initial claim and issued an Unexpected Circumstances (UC) letter on 17 November 2018 due to the Consumer's late lodgement of the claim.

On 16 July 2019, the Subscriber informed the Consumer's legal representatives (CLR) that the Consumer's IP claim would be assessed as two separate claims. The initial claim would assess the Consumer's disability period between 19 June 2016 and 22 October 2017, while the second claim would assess the Consumer's disability period from 9 August 2018, when the Consumer ceased working for the second time.

This was because the Consumer returned to work on 22 October 2017 but experienced a relapse of their condition and ceased work for a second time on 9 August 2018. As the relapse occurred more than six months after the end of the first claim, the second period of disability was not a recurrent claim under the policy's terms and conditions and had to be assessed as a separate claim. The second IP claim was deemed to have a claim received date of 16 July 2019 as that was the date the Subscriber informed the CLR that the claim would be assessed separately.

The Subscriber finalised its assessment of the initial IP claim on 28 January 2020, and subsequently commenced its assessment of the second IP claim on or around 3 February 2020. The Subscriber sent a UC letter on the second IP claim to the CLR on 2 April 2020 and subsequently declined the second IP claim on 23 March 2021.

On 19 February 2020, the Consumer made a complaint to Life CCC alleging that the Subscriber has breached section 8.9(f) of the Code. The Life CCC commenced an investigation of the Subscriber's compliance in respect of sections 8.9(f) and 8.16 of the Code.

## **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 8.9(f) of the Code and that the allegation was unfounded, and
- was in breach of section 8.16 of the Code and that the allegation was proven in whole.

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

### **Section 8.9 (f)**

Section 8.9(f) of the Code states that if an IP payment is going to be delayed, the subscriber will notify the consumer prior to this and provide the reasons for the delay.

The Consumer's initial IP claim was accepted on 28 January 2020 for the period of 19 June 2016 to 22 October 2017. As the Consumer lodged the initial IP claim after the period of disability was over (5 October 2018), there were no on-going IP payments for the initial claim.

The Subscriber noted that it paid and finalised the initial IP claim on 28 January 2020 and as a result there was no delay in relation to the payment of the benefit to the Consumer. In addition, the Consumer's second IP claim was declined and thus no payments were made.

We note that section 8.9(f) applies to scenarios where the IP claim has been accepted but there is a delay in the subscriber paying the benefit to the consumer. As this did not occur in either the initial IP claim or the second IP claim, section 8.9(f) was not applicable in this instance and the Life CCC determined that the Subscriber was not in breach of section 8.9(f) of the Code and that the allegation was unfounded.

### **Section 8.16**

Section 8.16 of the Code requires a subscriber to communicate its decision on a claim within two months, unless Unexpected Circumstances (UC) applied.

The initial IP claim was received by the Subscriber on 5 October 2018, and it provided the UC letter to the Consumer on 17 November 2018, within the initial 2 month claim assessment timeframe.

For the second IP claim, the Subscriber acknowledged that it breached section 8.16 of the Code as it did not send the UC letter to the Consumer within the initial 2 month claim assessment timeframe. As the Subscriber notified the CLR about the second claim on 16 July 2019, the Subscriber noted that the assessment of the second claim should have started on that date and that it should have informed the Consumer about the existence of UC by 16 September 2019, 2 months from the date it received the claim.

However, the Subscriber only sent the UC letter on 2 April 2020. The Subscriber noted that this was because it incorrectly recorded the start date of the second IP claim as 3 February 2020, shortly after the initial IP claim was finalised. In addition, the Subscriber noted that a non-compliant UC letter template was used as the UC letter did not inform the Consumer that they could disagree with the reasons for the delay, and that the Subscriber would review this if they disagreed.

Accordingly, the Life CCC determined that the Subscriber was in breach of section 8.16 of the Code and that the allegation was proven in whole.

---

<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 Life CCC further determined that the breach of section 8.16 amounted to serious and systemic non-compliance with the Code. This was because a non-compliant UC template letter was used to notify the application of UC to the Consumer's second IP claim.

Furthermore, the Subscriber confirmed that whilst its UC template letter was updated in September 2019, due to an oversight it was not implemented across the Subscriber's business until much later. The Subscriber further confirmed that the updated section 8.16 letter template for the fund related to this case was only implemented on 27 July 2020.

The Life CCC continues to provide guidance and monitor the progress of the Subscriber's remediation actions in relation to section 8.16 the Code under a different significant breach matter.

### Key Learnings

The Life CCC notes that this is an example of how a Subscriber's failure to ensure that it had adequate internal compliance monitoring processes resulted in further instances of non-compliance with the Code over an extended period.

As the Code has been operational for more than four years, the Life CCC expects all subscribers to have robust monitoring processes in place as part of their compliance frameworks to minimise the risk of potential errors, particularly in relation to completed remediation actions.

The Life CCC expects all subscribers to take their Code obligations seriously and to monitor the implementation of remediation activities to ensure that they are complete, effective and effectively communicated to staff.

### Relevant Code Sections

#### Section 8.9(f):

If **your** payment is going to be delayed, **we** will notify **you** prior to this and let **you** know the reasons for the delay.

#### 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.

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.