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:	CX6142	**Date:**	25 October 2021
Code sections:	8.10(b) & 8.17[1]		
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 a Total and Permanent Disability (TPD) 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 owned by a Group Policy-owner (the Trustee).

The Consumer lodged a TPD claim on 13 July 2018 which was accepted by the Subscriber on 30 January 2020. As part of the Subscriber's assessment of the claim the Consumer attended for three independent medical examinations (IMEs).

The Consumer's legal representatives made a referral to the Life CCC on 13 May 2019 and alleged a breach of section 8.17 on the basis that the Subscriber had not provided its decision on the claim within six months. The Consumer also alleged a breach of section 8.10(b) on the basis that the Subscriber refused to provide copies of the IMEs reports to the Consumer when requested to do so.

Findings in accordance with Charter clause 7.4(b)(iii)[2]:

The Life CCC assessed the allegations and determined that the Subscriber was in breach of sections 8.10(b) and 8.17 of the Code and that the breaches were proven in whole.

The Life CCC findings and conclusion:

Section 8.10(b)

Section 8.10 has four separate elements which a subscriber must fulfil if a consumer is required to attend an independent medical examination. In this matter, only element (b) was under dispute.

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

[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.

Under this element, a subscriber is required to provide a copy of the independent medical examination report when requested to do so by the consumer.

The Consumer attended three separate IMEs that were required by the Subscriber as part of its assessment of the TPD claim. After being notified that the IMEs reports were received by the Subscriber, the Consumer requested copies of these reports.

The Subscriber denied this request on the basis that the IMEs reports were incomplete and did not provide enough information for a decision to be made on the claim. The Subscriber advised that it had requested supplementary reports to be completed from the same medical practitioners that conducted the IMEs and would only release the IMEs reports after the supplementary reports were completed.

The Consumer's legal representatives continued to request copies of the IMEs from the Subscriber and made multiple written requests for these over a two month period. When the supplementary medical reports were received by the Subscriber, the Subscriber then provided copies of the original IMEs reports to the Consumer.

The Life CCC noted that section 8.10(b) requires the Subscriber to provide a copy of any independent medical examination report it holds when it is requested to do so by the Consumer. This does not depend on the completeness of the report or whether the report contains the appropriate level of information needed for the Subscriber to assess the claim.

As the Subscriber repeatedly failed to release the IMEs reports, despite multiple requests from the Consumer, the Life CCC determined that the Subscriber was in breach of section 8.10(b) of the Code and that the allegation was proven in the whole.

The Subscriber noted that, prior to this matter, the Subscriber had not received any requests for an incomplete IME report. The Subscriber has since confirmed that the Subscriber has amended its internal processes to provide additional guidance to staff on how to respond to such requests.

Section 8.17

Section 8.17 of the Code requires a subscriber to provide its decision on a lump sum claim within six months, unless Unexpected Circumstances (UC) applies. If UC applies, the subscriber has 12 months to provide its decision on the claim. If a subscriber cannot reach a decision within 12 months, then it must provide to the consumer details of its internal dispute resolution process.

The Consumer lodged a TPD claim on 13 July 2018. Under section 8.17 of the Code, a claim decision must be advised to the Consumer within six months of receiving the claim unless UC applies, that is, before 13 January 2019. In this matter the Subscriber determined that UC applied to the claim and advised the Consumer of this on 21 January 2019, outside the six-month timeframe.

The Life CCC noted that Code subscribers must inform consumers of the existence of UC within the initial timeframe provided (six months). As the Subscriber informed the Consumer of UC one week outside the six-month timeframe, the Life CCC determined there was a breach of section 8.17.

The Life CCC notes that the Subscriber's compliance framework around section 8.17 was the subject of a separate prior Life CCC review[3]. The Life CCC determined, at the time, that there

[3] https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf

was serious and systemic non-compliance of section 8.17 of the Code by the Subscriber as it didn't have fully compliant section 8.17 processes and procedures in place.

As the date of the breach under this matter occurred within the same period of the breach allegations raised in the Life CCC's review, the Life CCC similarly determined that this breach amounted to serious and systemic non-compliance with the Code.

Key learnings

The quality, completeness, accuracy or perceived bias of the IME report should not be a reason for refusing a consumer's request for information under section 8.10(b) of the Code.

In addition, the existence of UC during the management of a claim must be communicated by the subscriber to the consumer, or to the Group Policy-owner, prior to the expiry of the six-month timeframe if the subscriber wants to rely on this exception for not meeting claim assessment timeframe obligations as required under section 8.17.

Relevant Code Sections

Section 8.10:

Where we require you to attend an independent medical examination:

(a) we will meet the cost of the appointment (excluding missed appointment fees), production of any reports and extraordinary travel costs agreed in advance;
(b) you can request copies of your independent medical examination reports, which we will send to you, or your doctor where appropriate.
(c) we will avoid requesting more than one independent medical examination from the same type of specialist within six months where possible. If we do require more than one (such as where the claim is for a terminal illness or where superannuation legislation requires this), we will let you know the reasons for this; and
(d) if you request, you can choose from a list of doctors we nominate for your independent medical examination, although this may cause delays to your claim depending on your chosen doctor's availability.

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.