

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:	CX6598	Date:	22 December 2021
Code sections:	8.4, 8.15, 8.17 ¹		
Investigation:	An AFCA referral of an alleged Code breach		

The alleged Code breaches:

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained a Total and Permanent Disability (TPD) policy that was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The policy was owned by a Group policy-owner (the Trustee).

The Consumer lodged a TPD claim with the Subscriber on 20 October 2016 prior to the Subscriber's adoption of the Code on 30 June 2017. As a result, the six-month timeframe under section 8.17 commenced on 30 June 2017 and the Subscriber was required to provide a decision on the claim by 31 December 2017, unless Unexpected Circumstances (UC) applied.

The Subscriber noted that UC applied to the claim and, as it did not receive the information required to assess the claim from the Consumer, the claim was closed between 18 April 2018 and 4 February 2019. The Subscriber issued the final decision on the claim to the Consumer on 24 April 2019.

However, the Subscriber acknowledged that, as it did not notify the Consumer that UC applied to the claim within six months and provide details of its complaints process within 12 months, it had breached section 8.17 of the Code.

The Life CCC received a Code referral from the Australian Financial Complaints Authority (AFCA) in December 2019 which alleged that the Subscriber had unreasonably delayed the assessment of the claim. As part of its review of the matter, the Life CCC raised and the Subscriber acknowledged that it had also breached sections 8.4 and 8.15 of the Code.

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

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.

sections 8.4, 8.15 and 8.17 of the Code and that the allegations were proven in whole.

The Life CCC findings and conclusion:

Section 8.4

Section 8.4 of the Code requires subscribers to provide consumers with updates on their claim at least every 20 business days unless otherwise agreed, and to respond to requests for information about the claim within 10 business days.

The Subscriber acknowledged that it had breached section 8.4 of the Code as it did not provide the Consumer with an update at least every 20 business days on the following occasions during the claim assessment period:

- First occasion: There was a 33-business day gap between the Subscriber's update on 6 July 2017 and the next on 22 August 2017.
- Second occasion: There was a 66-business day gap between the Subscriber's update on 22 August 2017 and the next on 22 November 2017.
- Third occasion: There was a 89-business day gap between the Subscriber's update on 22 November 2017 and the next on 4 April 2018.
- Fourth occasion: There was a 28-business day gap between the Subscriber's update on 7 March 2019 and the next on 16 April 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.

Systemic non-compliance

The Subscriber acknowledged that the breach of section 8.4 amounted to systemic non-compliance with the Code. The Subscriber noted that it was non-compliant on the four occasions due to the lack of automation in its operating systems following its adoption of the Code on 30 June 2017 and human error from the claims assessor.

As a result, the Subscriber confirmed that these control failures indicated that the breach of section 8.4 potentially impacted more than one consumer during the above-mentioned period. Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)³ that the Subscriber's breach of section 8.4 amounted to systemic non-compliance with the Code.

The Subscriber confirmed that it implemented various remedial actions in October 2018 which included assessor training and systems enhancements (automated tasks within its claims system to remind the Claims Team of upcoming due dates) to ensure that it has adequate processes to support its compliance with section 8.4 of the Code.

Section 8.15

Section 8.15 states that the Subscriber has ten business days to provide the Consumer its decision on the claim once all information has been received and all reasonable enquiries have been made by the Subscriber.

The Subscriber acknowledged that it had breached the 10-business day requirement under section 8.15. The Subscriber confirmed that while it had received all the information required to assess the claim on 4 February 2019, due to an oversight from the claims assessor and complexity of the claim, the decision was only issued to the Consumer on 24 April 2019.

³ Ibid.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.15 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 UC applies. In addition, subscribers are also required to provide the consumer with its complaints process if a decision cannot be made within 12 months.

As the claim was lodged with the Subscriber on 20 October 2016, prior to its adoption of the Code, the Subscriber was required to issue a decision on the claim by 31 December 2017, unless UC applied. The Subscriber issued the decision on the claim to the Trustee on 26 April 2019.

The Subscriber noted that UC applied to the claim as there were delays⁴ in receiving information from the Consumer, and uncertainty⁵ during the claim assessment process regarding whether the Consumer had intended to lodge a TPD claim or a claim under a separate policy. As a result, the claim was closed between 18 April 2018 and 4 February 2019.

While the Subscriber was entitled to apply UC to the claim, the Subscriber acknowledged that it had breached section 8.17 of the Code as it did not notify the Consumer that UC applied to the claim within the six-month timeframe, and also did not provide the Consumer with its complaints process when a decision could not be made within 12 months.

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.

Systemic non-compliance

The Subscriber acknowledged that the breach amounted to systemic non-compliance with the Code. This was because prior to October 2018, the Subscriber had newly developed, largely untested processes and did not have an automation in its operating systems. As a result, the Subscriber confirmed that these control failures indicated that the breach of section 8.17 potentially impacted more than one consumer during the above-mentioned period.

Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁶ that the Subscriber's breach of section 8.17 amounted to systemic non-compliance with the Code.

The Subscriber confirmed that it enhanced its section 8.17 processes in October 2018 (which included assessor training and systems enhancements) and further introduced an automated diary-based reminder task within its claims system and currently generates daily workflow reports to monitor compliance with section 8.17 of the Code.

Key learnings

The Subscriber's breaches of sections 8.4, 8.15 and 8.17 were caused by a combination of human error, untested processes and a lack of automation within its claims system immediately following its adoption of the Code on 30 June 2017.

⁴ Chapter 15 UC definition (e): You or your Representative have not responded to our reasonable enquiries or requests for documents or information concerning your claim.

⁵ Chapter 15 UC definition (f): there are difficulties in communicating with you in relation to the claim due to circumstances beyond our control.

⁶ 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 understands that these were common issues experienced by many subscribers as significant changes to a subscriber's existing systems and processes were required to ensure full compliance with the requirements under the Code. The Life CCC notes however, that the Code provided subscribers with a transition period between 1 October 2016 and 30 June 2017 to provide time for them to ensure that they had robust compliance frameworks and processes in place.

The Life CCC is pleased to note that the Subscriber in this matter has conducted robust ongoing staff training and implemented enhanced monitoring systems, including automated diary alerts for claims assessors and daily workflow reports to minimise the risk of human error and ensure adherence to the claims handling timeframes under the Code going forward.

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 enquiries¹⁸ 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.

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.