

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

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| Reference: | CX7534 | Date: | 1 December 2021 |
| Code sections: | 8.17 & 8.19 | | |
| 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 policy was issued by a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) and was owned by the superannuation fund trustee (the Trustee).

The Consumer's legal representatives (CLR) lodged a TPD claim with the Trustee on 27 August 2020 and the Trustee notified the Subscriber of the TPD claim on 2 September 2020. In this matter the Subscriber communicated with the Trustee, who would then communicate with the Consumer and their CLR.

As part of its assessment of the TPD claim, the Subscriber requested the Consumer's claim files from two other insurers. When the initial six month timeframe approached, the Subscriber had not received all the information that it needed to make a decision on the claim. As a result, the Subscriber sent an Unexpected Circumstances (UC) letter to the Trustee on 15 February 2021.

On 5 March 2021, the CLR wrote to the Life CCC to lodge a Code breach allegation in relation to section 8.17, noting that the Consumer was still waiting for a decision on the claim.

The Subscriber subsequently issued a Procedural Fairness (PF) letter on 8 March 2021, re-issued a PF letter on 18 March 2021 and declined the TPD claim on 26 April 2021.

After receiving a copy of the Subscriber's decline letter of 26 April 2021, the Life CCC also reviewed the Subscriber's compliance with section 8.19 of the Code.

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

The Life CCC determined that the Subscriber:

- was not in breach of section 8.17 of the Code and that the allegation was unfounded; and
- was in breach of section 8.19 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 8.17

Section 8.17 of the Code requires a subscriber to provide its decision on a lump sum claim within 6 months, unless UC applies. If UC applies, the subscriber has 12 months to provide its decision on the claim.

In this matter, the CLR lodged the TPD claim with the Trustee on 27 August 2020. The Trustee notified the Subscriber of the claim on 2 September 2020. As the six month timeframe in section 8.17 started when the Subscriber was notified of the claim, the Subscriber had until 2 March 2021 to provide a decision on the claim, unless UC applied.

The Subscriber assessed the claim and requested the Consumer's claim files from two other insurers. As the Subscriber had not received all the information that it requested, the Subscriber was not able to provide a decision within the initial six month timeframe.

The Subscriber stated that UC applied as the claim was lodged more than 12 months after the Consumer's date of disability (September 2013) and there were reasonable delays in obtaining the evidence necessary for the assessment of the claim as the Subscriber had not received information that it required from one of the Consumer's other insurers.

The Subscriber communicated this to the Trustee on 15 February 2021, prior to the expiry of the initial six-month timeframe on 2 March 2021. The Life CCC reviewed the Subscriber's UC letter that was sent to the Trustee and notes that the UC letter included all the information required by section 8.17 of the Code. This meant that the Subscriber had 12 months to provide its decision on the claim (2 September 2021).

The Subscriber subsequently declined the Consumer's TPD claim on 26 April 2021, prior to the expiry of the 12 month timeframe. Due to the above, the Life CCC determined that the Subscriber was not in breach of section 8.17 of the Code and that the allegation was unfounded.

Section 8.19

Section 8.19 requires a subscriber to inform a consumer of a claim decline in writing, and to include the information listed in section 8.19(a) to (c) of the Code.

The Subscriber sent a decline letter to the Trustee on 26 April 2021. The Life CCC reviewed the decline letter and noted that the letter did not include the information required under section 8.19 of the Code, specifically the information required by section 8.19(b) of the Code.

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.

Section 8.19(b) requires a subscriber to inform a consumer about their right to request copies of the documents and information that the subscriber relied on, and to notify the consumer that if requested the information will be provided within ten business days.

The Subscriber acknowledged that its decline letter did not include the information required by section 8.19(b) of the Code and that this amounted to a breach of section 8.19 of the Code. 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 systemic but not serious non-compliance with the Code.

The Life CCC noted that the Subscriber's breach of section 8.19 was unlikely to have caused a material financial loss to the impacted Consumer as the information referred to in the section 8.19(b) wording was provided to the Consumer as part of the PF letters sent on 8 March 2021 and 18 March 2021.

In addition, the Subscriber also confirmed that there was a negligible impact on its ability to provide its services as a result of the breach and that it had not received any complaints from consumers in relation to this issue.

However, the Subscriber acknowledged that the breach was likely to be systemic in nature as the same letter template would have applied to all declined claims, amounting to approximately 360 claims a year. The Subscriber has confirmed that it updated its claim decline letter template to meet the requirements of section 8.19 of the Code on 16 September 2021.

Key Learnings

The Code came into force in July 2017, and most subscribers have been subscribers to the Code for over 4 years. Within that time, the Life CCC has issued over 150 Determinations, Case Studies and Guidance Notes.

Breaches such as the breach of section 8.19 that occurred in this matter are avoidable and easily remedied by subscribers. The Life CCC encourages subscribers to regularly review their processes, procedures and communications with consumers against the requirements of the Code and guidance provided by the Life CCC to ensure that subscribers have robust processes and procedures that are appropriately designed to meet the obligations and requirements of the Code.

Relevant Code Sections

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.