

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:	CX7658	Date:	18 May 2022
Code sections:	8.4, 8.15, 8.16, 13.3(a) 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 an Income Protection (IP) policy. 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 is owned by a Group policy-owner (the Trustee).

The Consumer lodged an IP claim with the Subscriber on 6 September 2019. As a result, the two-month timeframe under section 8.16 commenced on 6 September 2019 and the Subscriber was required to provide a decision on the claim by 6 November 2019, unless Unexpected Circumstances (UC) applied.

The Subscriber issued the claim decision to the Trustee on 18 June 2020 as required under section 8.1 of the Code.

On 26 April 2021, the Australian Financial Complaints Authority (AFCA) referred the matter to the Life CCC as the Consumer alleged that the Subscriber had breached section 8.4 of the Code as it did not provide the Consumer with an update on the progress of the claim at least every 20 business days during the claim assessment period.

As part of its review of the file, the Life CCC also raised possible breaches of sections 8.4, 8.15 and 8.16 of the Code. The Subscriber acknowledged that it was in breach of sections 8.4, 8.15 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, 8.15, 8.16 and 13.3(a) 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 sets out two separate and independent requirements of the Code Subscribers to provide consumers with updates on their claim at least every 20 business days (element 1) and to respond to requests for information about the claim within 10 business days (element 2).

The Consumer alleged that the Subscriber did not provide an update on the progress of the claim at least every 20 business days on multiple occasions throughout the claim assessment period (element 1). However, based on the timeline and information provided by the Subscriber, the Life CCC notes that the Subscriber had complied with the 20 business day requirement (element 1) as it provided the Consumer or their authorised representative with updates on the progress of the claim at least every 20 business days throughout the claim assessment period.³

Notwithstanding the above, the Subscriber acknowledged that it had breached the 10 business day timeframe (element 2) under section 8.4 as, due to human error, it did not respond to the Consumer's Legal Representative's (CLR) information request within 10 business days. The Subscriber noted that it had received the request for information on 1 June 2020, but only responded on 18 June 2020, 3 business days outside of the prescribed 10 business days which expired on 15 June 2020.

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.

Section 8.15

Section 8.15 requires a subscriber to communicate a claim decision within ten business days of receiving all the information that the subscriber reasonably needs to assess a claim.

The Subscriber confirmed that it had received all the information required to assess the claim, which was the Consumer's response to the Subscriber's Procedural Fairness (PF), on 22 May 2020. Therefore, the 10 business day timeframe commenced on 23 May 2020 and the Subscriber was required to communicate the claim decision to the Trustee by 5 June 2020.

The Subscriber acknowledged it was in breach of section 8.15 as it had only communicated the claim decision to the Trustee on 18 June 2020, which was 9 business days outside of the prescribed 10 business days which expired on 5 June 2020.

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 Chapter 2, section 2.12, Communicate with you under the Code: **We** will have complied with a requirement to communicate to **you** under the **Code** if **we** communicate to any one of the **Life Insured, Policy-owner, Third Party Beneficiary** or **Representative**, as appropriate to **your** circumstances and subject to privacy and confidentiality requirements.

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

Systemic non-compliance

The Subscriber confirmed that, prior to September 2020, it had treated the issuance of PF as a claim decision for the purposes of measuring compliance with section 8.15 of the Code for claims which were likely to be declined. The Subscriber acknowledged that this did not align with the Life CCC's interpretation of section 8.15 of the Code.

As the Subscriber's incorrect interpretation of section 8.15 impacted all consumers who were likely to have their claims declined prior to September 2020, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 8.15 was not limited to the Consumer in this matter and amounted to systemic non-compliance with the Code.

Remedial actions

The Subscriber confirmed that it undertook the following remediation actions since September 2020 to address the breach:

- Implemented system upgrades; and
- Aligned its interpretation and measurement of the requirements under section 8.15 of the Code with the Life CCC's approach.

The Life CCC continues to monitor the Subscriber's section 8.15 compliance frameworks.

Section 8.16

Section 8.16 of the Code requires the subscriber to communicate its decision on an income-related claim within two months, unless Unexpected Circumstances (UC) applies. If UC applies, subscribers are required to inform consumers of the reasons for the delay, their right to disagree with the reasons provided and that subscribers will conduct a review if consumers disagree.

As noted above, the Consumer lodged and the Subscriber received the IP claim on 6 September 2019. As a result, the Subscriber was required to communicate its decision on the claim within 2 months, unless Unexpected Circumstances (UC) applies, by 6 November 2019.

Whilst the Subscriber informed the Consumer that UC applied in its correspondence dated 5 November 2019, the Subscriber acknowledged that it had breached section 8.16 of the Code as the UC letter dated 5 November 2019 was non-compliant in that it did not inform the Consumer of the right to disagree with the reasons provided for the delay, and that if they disagree the Subscriber will review it.

⁴ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

As a result, 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.

Systemic and serious compliance

The Subscriber acknowledged and confirmed that it did not have adequate section 8.16 processes and procedures between the periods of November 2019 and June 2020, and subsequently between January 2021 and May 2021, which resulted in multiple instances of non-compliance with the UC requirements under section 8.16 in various claims.

The Subscriber noted its section 8.16 process failures occurred due to a combination of factors:

- There was a knowledge gap in understanding the claims procedure among some of the case managers due to inadequate training and staff turnover.
- There was inadequate control in place to ensure that case managers adhered to the internal section 8.16 processes and procedures.
- There were different versions of the templated section 8.16 UC letter (some were compliant, some were not) stored in the claims system and used by all case managers for different products.

As a result, given the duration and extent to which the Subscriber did not have adequate section 8.16 processes and procedures and that the breach was not limited to the Consumer in this matter, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 8.16 amounted to serious and systemic non-compliance with the Code.

Remedial actions

In December 2021, the Subscriber confirmed that it has implemented the following remedial actions on an ongoing basis to address the section 8.16 process failures:

- Quality owners and team leaders monitor, validate and correct the true or false breaches identified by the system, and provide a monthly Code reporting with rates of compliance to the business for review.
- The Quality Assurance team performs a review on a random sample of approximately 45 claims (which includes some section 8.16 claims) each month to ensure compliance with the Code.
- Starting October 2021, prior to applying UC in the claim system, the quality owners and/or the team leaders ensure that case managers have correctly notified consumers or their representatives about the UC.
- A copy of a compliant UC template letter was uploaded and stored within the claims system and
- The Subscriber implemented UC training for case managers to ensure and reinforce the requirement to provide the correct UC letters to consumers.

The Life CCC continues to monitor the Subscriber's section 8.16 compliance frameworks.

⁵ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

Section 13.3(a)

Section 13.3(a) requires subscribers to have appropriate systems and processes in place to enable compliance with the Code.

Given that the Subscriber confirmed that it did not have appropriate systems and processes in place to enable compliance with section 8.16 of the Code, the Life CCC determined that the Subscriber was in breach of section 13.3(a) of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

As the Subscriber confirmed that it did not have appropriate section 8.16 systems and processes in place for the periods between November 2019 and June 2020, and between January 2021 and May 2021, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁶ that the Subscriber's breach of 13.3(a) amounted to serious and systemic non-compliance with the Code.

In December 2021, the Subscriber confirmed that it has since implemented further controls such as the requirement of the quality owner or team manager to review the relevant claims prior to applying Unexpected Circumstances and refresher training for claim staff.

Key learnings

Over the last five years since the Code came into operation on 30 June 2017, the Life CCC has published various through its website guidance materials (which included de-identified Determinations on various Code breach sections and Guidance Notes) to assist subscribers with understanding and aligning their approach and processes according to what the Life CCC considers to be industry best practice.

In this matter, The Life CCC was disappointed to note that the Subscriber's misinterpretation of the requirements under section 8.15 continued over a period of more than three years, possibly affecting number of consumers. The Life CCC was also disappointed to note that the Subscriber's section 8.16 process failures which occurred in this matter arose from a combination of process-related and ineffective staff training and monitoring which was previously robust.

The Life CCC encourages all subscribers to seek further guidance and direction if they encounter any challenges with ensuring that their processes and procedures remain adequate. In doing so, subscribers will embody the spirit of the Code by striving to consistently meet the high standards of the Code to demonstrate a responsible and committed customer-focused industry.

⁶ The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

Relevant Code Sections

Sections 8.1:

If **your** claim is covered by a **Group Policy**, **we** may be required to provide the communications referred to below to the **Group Policy-owner** (for example, the superannuation fund trustee which owns **your Life Insurance Policy**) in accordance with section 2.13. The **Group Policy-owner** will then communicate with **you** and assist with **your** claim. When **you** make a claim, **we** and/or the **Group Policy-owner** will let **you** know who will be in contact with **you**.

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 8.16:

For income-related claims, **we** will let **you** know **our** initial decision no later than two months after **we** are notified of **your** claim or two months after the end of **your** waiting period (whichever is later), unless **Unexpected Circumstances** apply. 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 13.3(a):

We will:

- a) have appropriate systems and processes in place to enable compliance with the **Code**;

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.