

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:	CX7867	Date:	18 May 2022
Code sections:	8.4, 8.16 and 13.3(a) ¹		
Investigation:	An AFCA referral of an alleged Code breach		

The alleged Code breaches:

The Consumer obtained an Income Protection (IP) 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 Consumer lodged and the Subscriber was notified of the IP claim on 8 October 2020. The Consumer's IP policy had a 90 day waiting period which commenced on 31 August 2020 and ended on 29 November 2020. As a result, the two-month timeframe under section 8.16 commenced on 29 November 2020 and the Subscriber was required to issue a decision on the claim by 29 January 2021, unless Unexpected Circumstances (UC) applied.

Following the Consumer's complaint to the Australian Financial Complaints Authority (AFCA), the Subscriber issued the decision on the claim on or around 16 July 2021.

On 2 August 2021, AFCA referred the Code breach allegation to the Life CCC as the Consumer alleged that the Subscriber had breached section 8.4 of the Code in that 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.

The Subscriber acknowledged that due to human error, it did not provide the Consumer with an update within 20 business days on two occasions in breach of section 8.4 of the Code.

As part of the review of the file, the Life CCC also raised possible breaches of sections 8.4 and 8.16 of the Code. The Subscriber acknowledged that it had breached sections 8.4 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, 8.16, 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 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 Life CCC raised and the Subscriber acknowledged that due to human error, it 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 on two occasions, between the periods, from 8 October 2020 to 11 November 2020 and 20 November 2020 to 12 January 2021.

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 8.16

Section 8.16 of the Code requires a subscriber to communicate its decision on a claim within two months, unless UC applies. In addition, subscribers are also required to provide consumers with their complaints process if a decision cannot be made within 12 months.

The Subscriber was notified of the IP claim on 8 October 2020 and the Consumer's 90 day waiting period ended on 29 November 2020. As a result, the two-month timeframe commenced on 29 November 2020 and the Subscriber was required to issue a decision on the claim by 29 January 2021, unless Unexpected Circumstances (UC) applied.

The Subscriber acknowledged that it had breached section 8.16 of the Code as it failed to inform the Consumer that UC applied to the claim within two months by 29 January 2021.

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.

Serious and systemic non-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.

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.

- There was inadequate control in place to ensure that case managers adhered to the internal section 8.16 processes and procedures.

As a result, given the duration and extent to which the Subscriber did not have adequate section 8.16 processes and procedures which was not limited to the Consumer and circumstances in this matter, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)³ 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 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 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 has been uploaded and stored within the claims system.
- The Subscriber has 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.

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)⁴ 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.

³ 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.

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.

Key learnings

Over the last five years since the Code came into operation on 30 June 2017, the Life CCC has published through its website various 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.

It is disappointing to note that the section 8.16 process failures which occurred in this matter, as confirmed by the Subscriber, arose from a combination of process-related and ineffective staff training and monitoring which was previously robust.

The Life CCC expects subscribers to ensure they continue to have adequate controls in place by conducting periodic reviews of their systems and processes to ensure claims and regular reporting are managed in accordance with the processes and timeframes required under the Code.

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 8.16:

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.