

CASE STUDY 2022-2

Beware of DIY interpretations of the Code

Practices built on a flawed interpretation of Code obligations – combined with ineffective processes, training and monitoring – led one subscriber to commit multiple systemic breaches.

The following case study is based on a recent determination by the Life Insurance Code Compliance Committee (Life CCC). The case was referred to it by the Australian Financial Complaints Authority (AFCA) following a consumer complaint about the handling of an income protection claim.

The Life CCC found that the Subscriber in question had breached Code requirements about timely and informed communication with consumers during the life of a claim (sections 8.4, 8.15 and 8.16) and had also breached section 13.3a, which requires subscribers to have appropriate systems and processes in place to enable compliance with the Code.

Investigation into the root cause of the breaches revealed that one process was informed by an incorrect interpretation of the Code. This was compounded by other systemic issues including staff failing to understand exactly how the Code protects consumers, particularly those in vulnerable circumstances.

The background

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained an Income Protection (IP) policy. The policy was issued by a life insurance company which is a subscriber (the Subscriber) to the Life Insurance Code (the Code) and the policy was owned by a group policy-owner (the Trustee).

The Consumer lodged an IP claim with the Subscriber in September 2019. Under section 8.16, a subscriber has two months to provide a decision on a claim, unless Unexpected Circumstances (UC) apply. The Subscriber in this instance, deciding that UC did apply, issued its decision to the Trustee in mid-2020. The Consumer complained to AFCA that the Subscriber had breached section 8.4 of the Code by failing to provide an update on the progress of the claim at least every 20 business days during the claim assessment period.

The breach allegation was referred to the Life CCC, which identified potential breaches of sections 8.4, 8.15 and 8.16. The Subscriber acknowledged these breaches and has taken measures to prevent similar situations arising again.

The nuts and bolts of the breaches

Section 8.4 sets out two separate and independent requirements: that subscribers provide consumers with updates on claims at least every 20 business days (element 1) and that they respond to requests for information about the claim within 10 business days (element 2).

Although the Consumer's complaint to AFCA alleged that the Subscriber had breached element 1 of section 8.4, the Subscriber was able to demonstrate that it had provided the Consumer or their authorised representative with the required updates every 20 business days.

However, the Subscriber acknowledged a breach of element 2 of section 8.4 as it had not responded to an information request from the Consumer's legal representative within 10 business days. The Subscriber noted that this breach was due to human error.

Section 8.15 requires a subscriber to communicate a claim decision within 10 business days of receiving all the information that the subscriber reasonably needs to assess a claim.

The Consumer had supplied information needed to assess the claim in response to a Procedural Fairness (PF) letter from the Subscriber flagging the claim's likely decline. When the Subscriber subsequently declined the claim, it communicated this decision nine business days later than the timeframe required under the Code, resulting in a breach of section 8.15.

As this would have affected all consumers in this category for three years prior to the issue's detection, the Life CCC determined that the Subscriber's breach of 8.15 amounted to systemic non-compliance with the Code.

Inquiries into the root cause of this breach revealed that the Subscriber's process was built on an incorrect interpretation of section 8.15. This was because the Subscriber regarded the issuance of a PF as a final claim decision for the purposes of measuring compliance with the timeframe in section 8.15. This does not align with the Life CCC's interpretation.

The Life CCC reminds subscribers that a PF letter is not covered by the timeframe in section 8.15. At the point of issuing the PF letter, the Subscriber has not completed all reasonable enquiries and section 8.15 explicitly regards the Consumer's response to the PF letter as a reasonable enquiry. The 10 business day section 8.15 timeframe commences once the Subscriber receives the consumer's response, or the next business day after it was due.

The Life CCC's interpretation of the obligations in section 8.15, as well as the information and evidence it will ask subscribers to provide when it investigates potential breaches of these, will be outlined in detail in a Guidance Note to be published in coming months.

Section 8.16 requires the subscriber to communicate its decision on an income-related claim within two months, unless Unexpected Circumstances (UC) apply. If UC apply, 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.

Although the Subscriber informed the Consumer that UC applied, the Subscriber breached 8.16 by failing to inform the Consumer of their right to disagree with the reasons for the delay, or to say that if the Consumer did disagree, the Subscriber would review the reasons provided.

The Subscriber acknowledged that it had inadequate section 8.16 processes and procedures in place for several months in 2019–2020, and again in early 2021. This caused multiple instances of non-compliance with UC requirements across various claims.

The Subscriber attributed its 8.16 process failures to a combination of factors, including:

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

Given the duration and extent of the problem, the Life CCC determined that the Subscriber's breach of section 8.16 amounted to serious and systemic non-compliance with the Code. This led to a determination that the Subscriber had breached **section 13.3(a)**, a requirement that subscribers have appropriate systems and processes in place to enable compliance with the Code, which was both serious and systemic.

How the Subscriber addressed the problems

The Subscriber has reported that numerous measures have been taken to correct the problems that led to the breaches. Remediation for the 8.15 breaches commenced in September 2020 and included implementing system upgrades and aligning its interpretation and measurement of the section's requirements with the Life CCC's approach.

In December 2021, the Subscriber confirmed it had implemented the following actions and controls to address section 8.16 process failures:

- Quality owners and team leaders now monitor, validate and correct the true or false breaches identified by the system. The Subscriber also provides monthly Code reporting with rates of compliance to the business for review.
- The Quality Assurance team performs a monthly review on a random sample of approximately 45 claims (including section 8.16 claims) to ensure compliance.

- Prior to applying UC, quality owners and/or team leaders are required to review the claims and to check that case managers have correctly notified consumers or their representatives once UC is applied.
- A copy of a compliant UC template letter was uploaded and stored within the claims system.
- The Subscriber also introduced and implemented refresher training for case managers to ensure and reinforce the requirement to provide the correct UC letters to consumers.

The Life CCC will continue to monitor the Subscriber's compliance frameworks. If issues in the breached areas persist, the Code empowers the Life CCC to enforce sanctions if necessary.

Lessons to be learned

Since the Code came into operation in 2017, the Life CCC has published material on its website to help subscribers understand the Code and align their approach and processes with what the Life CCC considers to be industry best practice. These include Guidance Notes and de-identified Determinations. As noted above, a Guidance Note on section 8.15 will be published soon. The Life CCC and its Code Team also actively welcome inquiries about Code interpretation from subscribers.

The Life CCC was concerned to note that, in this case, the Subscriber's misinterpretation of the requirements under section 8.15 continued for more than three years, affecting numerous consumers. The Life CCC was also disappointed that section 8.16 process failures arose from a combination of process-related issues and ineffective staff training and monitoring in a business where these had previously been robust.

The lack of training and understanding was a significant contributor which resulted in the Subscriber's breach of sections 8.4 and 8.16 of the Code in this case. The Life CCC reminds all subscribers that it is important to continually refresh training and ensure it is effective so that staff are aware of the Code's obligations and the reasons behind these important consumer protections.

Financial landscapes change, as do community expectations. Codes of Practice evolve to reflect those changes and the Life CCC urges subscribers to remember that adhering to a Code is an ongoing process that requires continuous awareness and attention.

The protections in the Code that ensure all consumers receive effective, informed and timely communication – especially during the life of a claim – are even more important for consumers who find themselves in vulnerable circumstances, which might include those making claims under income protection policies.

Neglecting to inform consumers about their rights in a UC communication could have potent real-world implications for those awaiting claim decisions, particularly if they are waiting for unacceptably long periods.

In conclusion

The Life CCC encourages all subscribers to seek guidance regarding any uncertainty relating to the interpretation of the obligations in the Code. In doing so, subscribers will embody the spirit of the Code by striving to consistently meet the high standards of the Code as members of a responsible and committed consumer-focused industry.

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.