LIFE
CODE
COMPLIANCE
COMMITTEE

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:	CX11081	**Date:**	17 October 2022
Code sections:	8.2, 8.4, 8.15, 8.20, 8.24[1]		
Investigation:	An AFCA referral of an alleged Code breach		

The alleged Code breaches:

The Consumer obtained a Life Insurance policy with a Total and Permanent Disability (TPD) and Trauma benefit in 2017. The policy was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

The Consumer's financial adviser lodged the claim with the Subscriber on 1 September 2020. On 22 September 2020, the Subscriber wrote to the Consumer in relation to the unilateral update of the Consumer's policy. The updated policy had a further exclusion specifically in relation to the Trauma benefit. Due to the Subscriber's administration error, the exclusion was not reflected on the 2017 policy schedule.

The Subscriber informed the Consumer's financial adviser of its intention to decline the claim based on the exclusion on the policy. The Subscriber further offered the Consumer the opportunity to withdraw the claim to avoid receiving an unfavourable outcome on the claim. On 30 October 2020, the Subscriber closed the claim, in error.

The Consumer's Legal Representative (CLR) lodged a complaint with the Subscriber on 11 December 2020. The Subscriber provided its complaint response to the CLR on 22 January 2021 and issued the decision on the claim on 22 January 2021. The CLR lodged a complaint with the Australian Financial Complaints Authority (AFCA) on 19 February 2021, regarding the Subscriber's decision to decline the claim.

AFCA referred the matter to the Life CCC on 22 October 2021. The referral alleged that the Subscriber may have breached its obligations under sections 8.4 and 8.15 of the Code. As part of its review of the alleged Code breaches the Life CCC also investigated possible breaches of sections 8.2, 8.4, 8.20 and 8.24 of the Code.

[1] The Code sections are provided in full in the last section of the Determination.

The Subscriber disagreed that it had breached sections 8.2, 8.20 and 8.24 of the Code, but acknowledged that it breached sections 8.4 and 8.15 of the Code.

Findings in accordance with Charter clause 7.4(b)(iii)[2]:

The Life CCC determined that the Subscriber:

- Was in breach of sections 8.2, 8.4 and 8.15 of the Code and that the allegations were proven in whole, and

- Was not in breach of sections 8.20 and 8.24 of the Code and that the allegations were unfounded.

The Life CCC findings and conclusion:

Section 8.2

Section 8.2 of the Code sets out two separate and independent requirements. Subscribers are required to consider all the features of a Life Insurance Policy to ensure that a Consumer is claiming all available benefits under the policy (first element), and subscribers will not discourage a Consumer from making a claim (second element).

On 30 September 2020, the Subscriber informed the Consumer's financial adviser of its intention to decline the claim. The Subscriber offered the adviser the opportunity to withdraw the claim so that the claim would not be formally declined. The Subscriber explained that if the claim were to be formally declined, the Consumer would have to disclose the declined status of the claim if they were to apply for insurance in the future.

The Subscriber disagreed that it was in breach of section 8.2 of the Code. The Subscriber explained that the intention behind the offer to withdraw the claim was to enable the adviser to discuss a range of options with the Consumer.

The Subscriber further confirmed that it was an isolated incident and provided feedback to the individual claims consultant. This is because it is not the standard practice to request, suggest or provide consumers with the opportunity to withdraw their claim to avoid an unfavourable decision on the claim.

However, the Life CCC noted that the offer to withdraw the claim to avoid an unfavourable decision is a form of discouragement, regardless of the intention. Given that, and the Subscriber's acknowledgement that it was an isolated incident, the Life CCC determined that the Subscriber was in breach of section 8.2 of the Code and that the allegation was proven in whole.

[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.

Serious non-compliance

The Life CCC noted that the Subscriber subsequently admitted the claim, as part of the AFCA complaint resolution. As a result, the Consumer received the benefits under the policy in addition to interest and compensation. This meant that the potential consumer financial detriment would have been significant if the Consumer had withdrawn the claim.

Given that, the Life CCC determined in accordance with the Charter clause 7.4(b)(iv)[3] that the Subscriber's breach of section 8.2 amounted to serious non-compliance with the Code.

Remediation completed

The Subscriber confirmed that, in November 2021, it has reminded the claims teams of the correct process to follow in matters involving an unfavourable decision. The Subscriber further confirmed that its quality assurance team continues to monitor compliance with the approved internal process during regular reviews.

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.

The Subscriber acknowledged that it had breached section 8.4 of the Code from 1 October 2020 to 10 January 2021. The individual claims consultant had incorrectly closed the Consumer's claim on 30 October 2020. This meant that the Subscriber's system no longer auto-generated reminders which would otherwise have prompted the claims consultant to provide updates every 20 business days. The Subscriber noted that this was an isolated incident that occurred due to human error.

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 acknowledged that due to human error it had breached section 8.15 of the Code. The Subscriber referred the claim to its underwriting team on 8 September 2020. The underwriting team confirmed that the exclusion applied to the claim, which was omitted on the Consumer's 2017 policy schedule due to an administration error.

The Subscriber received the underwriting team's response on 9 September 2020 and was required to issue the decision on the claim by 24 September 2020. However, it issued the decision on the claim to the Consumer on 22 January 2021.

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[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.

Accordingly, 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.

Serious non-compliance

The Life CCC noted that there was a delay of approximately four months (from 24 September 2020 to 21 January 2021) before the Subscriber issued the decision to decline the claim on 22 January 2021. The Life CCC further noted that the Consumer subsequently lodged a complaint with AFCA regarding the claim decision on 19 February 2021.

This meant that the delay had a material impact on the Consumer as the Consumer would have been able to lodge a complaint with AFCA and receive their benefits four months earlier if the Subscriber had issued the decision on the claim in September 2020. This impact was recognised by the Subscriber as the Consumer:

- Received an interest payment for the period from the date the claim should have been accepted and the benefit should have been paid (18 September 2020) until the date it was paid.

- Received further compensation for non-financial loss due to the Subscriber's unreasonable delay (claims handling conduct) which caused the Consumer unnecessary stress and inconvenience.

Given the above, the Life CCC determined, in accordance with the Charter clause 7.4(b)(iv), that the Subscriber's breach of section 8.15 amounted to serious non-compliance with the Code.

Remediation

On 16 September 2022, the Subscriber confirmed that:

- Its Quality Assurance team continues to monitor its compliance with section 8.15 of the Code.
- Its Claims team has reviewed their claims withdrawal process documents.
- It will update the claims withdrawal process by mid-October 2022 and the Compliance team will also review the process.

The Life CCC continues to monitor the Subscriber's remediation actions.

Section 8.20

Section 8.20 of the Code requires subscribers to have claims assessors who are appropriately skilled and trained to make objective decisions, and to only allow assessors who have demonstrated technical competency to make decisions. In addition, remuneration and entitlements will not be based on declined or deferred claim decisions.

The Subscriber disagreed that it breached section 8.20 of the Code. Based on the information available, the Chief Medical Officer (CMO) reviewed the medical information and applied the exclusion to the policy. The Life CCC noted that the CMO's decision to apply the

exclusion to the policy resulted in the Subscriber's ultimate decision to decline the claim. Consequently, the claims consultant was guided by the CMO's opinion and decision.

As a result, there was no evidence which indicated that the claims consultant was not appropriately skilled and trained to make objective decisions. Accordingly, the Life CCC determined that the Subscriber was not in breach of section 8.20 of the Code and that the allegation was unfounded.

Section 8.24

Section 8.24 of the Code requires subscribers to be empathetic in claims management and to treat consumers with compassion and respect.

The Subscriber disagreed that it breached section 8.24 of the Code. The Subscriber noted that its staff interacted with the consumer throughout the claim process with compassion and respect.

Based on the Life CCC's review of the information available, there was no evidence that the Subscriber had breached section 8.24 in its interactions with the Consumer. As a result, the Life CCC determined that the Subscriber was not in breach of section 8.24 of the Code and that the allegation was unfounded.

Key learnings

In this matter, human error and staff failure to comply with approved internal processes and procedures resulted in the breaches of sections 8.2 and 8.15 of the Code. Concerningly, on this occasion, the Subscriber's failure to ensure that staff complied with the correct section 8.2 processes and procedures almost resulted in actual financial loss to the Consumer. If the Consumer had taken the Subscriber's advice and withdrawn the claim, they would not have received the benefits of approximately $200,000, to which they were entitled under the policy.

The Life CCC notes that this is an example of the significant impact which could occur to consumers' detriment if subscribers fail to comply with their obligations under the Code.

A key purpose of the Code is to ensure that the best interests of consumers are prioritised. It is therefore essential that the actions of subscribers reflect not only the letter of the Code, but also the spirit in which it is intended.

Relevant Code Sections

Section 8.2

When **you** make a claim **we** will consider all of the features of the **Life Insurance Policy** to which **your** claim relates in order to ensure **you** are claiming for all available benefits under **your Life Insurance Policy**. **We** will not discourage **you** from making a claim.

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 8.20

Our claims assessors will be appropriately skilled and trained to make objective decisions. They will not make claims decisions on **our** behalf until they have demonstrated technical competency and an understanding of all relevant law, the **Code** and relevant **FSC** Standards and Guidance. Remuneration and entitlements to bonuses will not be based on declined claims or deferrals of decisions.

Section 8.24

We acknowledge that claims time is difficult for **our** customers, and that empathy is required in **our** claims management. **We** will treat **you** with compassion and respect.

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.