

Notice of Determination

by the Life Code Compliance Committee (Life CCC) on alleged non-compliance with the Life Insurance Code of Practice (the Code) by a subscriber

Reference:	CX7683	Date: 17 October 2022
Code sections:	1.5(a), 8.5, 8.6, 8.9(f), 14.1 ¹	
Investigation:	A consumer-reported alleged Code breach	

The alleged Code breach:

As part of their membership of a superannuation fund, the Consumer obtained a Life Insurance policy with an Income Protection (IP) benefit. The policy was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Code. The policy was owned by the superannuation fund trustee (the Trustee).

The Consumer lodged an IP claim in 2015 under the policy's Partial Disability (PD) provisions and the Subscriber accepted the claim. Under PD, a portion of the IP benefit is payable when the claimant becomes partially disabled and continues to work in a reduced capacity. The portion of the IP benefit paid per month is determined by the amount of income earned by the claimant for that month. For this reason, the Consumer was required to provide evidence of their income every month.

In May 2021, the Consumer referred concerns about their IP claim to the Life CCC. The Consumer alleged that the Subscriber failed to provide service in a clear and consistent manner, caused delays in the Consumer's benefit payments without explanation, and requested confidential information that was not needed and without the proper authority.

The Life CCC commenced a review of the Subscriber's compliance with sections 1.5(a), 8.6 and 8.9(f) of the Code and requested further information from the Subscriber. In its response to the Life CCC, the Subscriber disagreed that it had breached section 8.6 but acknowledged that it had breached sections 1.5(a) and 8.9(f). As part of the response, the Subscriber also identified and acknowledged that it had breached sections 8.5 and 14.1. 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 1.5(a), 8.5, 8.9(f), and 14.1 of the Code and that the allegations were proven in whole; and
- was not in breach of section 8.6 of the Code and that the allegation was unfounded.

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

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.

The Life CCC findings and conclusion:

Section 8.5

Section 8.5 of the Code requires a subscriber to only request and rely on information and assessments relevant to the claim, and to explain the reasons for requesting information.

During its investigation into this matter, the Subscriber identified and acknowledged a breach of section 8.5. The claims assessor had sought a medical report from the Consumer's general practitioner but failed to advise the Consumer of the request, or to explain why it needed the information.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.5 of the Code and that the allegation was proven in whole.

The Subscriber attributed the breach to an isolated skill gap and reported that its internal monitoring had identified no other breaches of section 8.5 of the Code.

Remediation

The Subscriber has since addressed the claims assessor's skill gap that caused the breach of section 8.5. In addition, the Subscriber has implemented Financial Services Council (FSC) Standard 26 – 'Consent for Accessing Health Information' (FSC Standard 26). This involved the introduction of additional processes to ensure consumers are informed about any request for information about their health.

Section 8.9(f)

Section 8.9(f) states that if a delay occurs, the subscriber will notify the consumer prior to the payment's due date and provide reasons for the delay. From the information supplied by the Subscriber the Life CCC noted that there were four instances where the monthly IP claim payments was not made on time:

- The first and second instance was caused by the Consumer submitting incomplete details of monthly income earned.
- The third instance was notified to the Consumer a day before the payment was due.
- The fourth instance was caused by the Subscriber's internal error and the Consumer was only notified of the delay after the payment was due, resulting in non-compliance with section 8.9(f) of the Code.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.9(f) of the Code and that the allegation was proven in whole.

In the fourth instance noted above, due to an internal error by the Subscriber, the Consumer's monthly claim benefit payment due on 27 January 2018 was not paid until 34 days later on 2 March 2018. In addition, the Subscriber did not notify the Consumer of the delay until 27 February 2018, a month after the payment was due.

Regardless of the reasons for the delay, any disruptions to ongoing IP payments can have a substantial impact on the claimant's life as they are often in a vulnerable position. Failure to pay the monthly benefit as scheduled can cause claimants uncertainty, distress, and financial strain when unable to pay bills or debt repayments on time.

For the above reasons, the Life CCC determined that the breach of section 8.9(f) of the Code amounted to a serious breach of the Code.

Section 14.1

Section 14.1 of the Code requires a subscriber to handle personal information according to the Privacy Principles set out in the *Privacy Act 1988*. As part of its response to the Code breach allegations, the Subscriber identified and acknowledged a breach of section 14.1 of the Code.

The Subscriber noted that its policy on the use of consumer authorities is that the most recently signed authority supersedes any prior ones. In October 2020, the Subscriber had requested a report from the Consumer's general practitioner using an authority completed in May 2019. However, this authority had been superseded by an authority completed by the Consumer to their psychologist in August 2019.

The use of an obsolete authority to obtain information from a third party had placed the Subscriber in breach of Australian Privacy Principle 3 (Collection of solicited personal information) of the *Privacy Act 1988*. As a result, the Life CCC determined that the Subscriber was in breach of section 14.1 of the Code and that the allegation was proven in whole.

As the Subscriber did not comply with provisions of the *Privacy Act 1988*, the Life CCC determined that the Subscriber's breach of section 14.1 of the Code amounted to serious non-compliance with the Code.

Remediation

The Subscriber reported that this breach was an isolated incident caused by the claims assessor's skill gap. Through its internal monitoring processes, the Subscriber did not identify any prior breaches of section 14.1 of the Code.

The Subscriber reported that it had addressed the claims assessor's skills gap that resulted in the breach. The Subscriber's implementation of FSC Standard 26 included the introduction of additional processes to ensure consumers are informed whenever a request for medical information is made and that the correct authority is used as well as training for all staff, whose role involved making such requests, regarding the obligations under FSC Standard 26.

Section 8.6

Section 8.6 of the Code requires a subscriber to only obtain information through a general authority that it reasonably believes is relevant to the consumer's claim.

The Subscriber sought updated medical information on a six-monthly basis. This information was required to ensure that the IP claim remained medically supported and to obtain an update on the Consumer's current symptoms and how these symptoms impacted capacity for work.

Based on this, the Life CCC determined that the Subscriber's request for medical information was reasonable and relevant to the ongoing assessment of the claim and did not constitute a breach of section 8.6 of the Code.

Section 1.5(a)

Section 1.5(a) of the Code requires that principles of clarity and transparency apply to a subscriber's products and services.

The Consumer's referral of this matter to the Life CCC raised numerous concerns about the Subscriber's claims handling process over five years. These centred on a perceived lack of clarity and transparency in how the Subscriber raised its requirements and that the Consumer frequently had to follow up actions by claims assessors.

The Subscriber acknowledged that its failure to inform the Consumer before initiating a request for medical information and provide reasons for the request also amounted to a breach of

section 1.5(a). This was because it had not acted transparently, and its processes lacked sufficient clarity.

As a result, the Life CCC determined that there was a breach of section 1.5(a) of the Code and that the allegation was proven in whole.

Key learnings

This case highlights several important issues for all subscribers about how they access medical information and manage claims involving ongoing payments to consumers, many of whom are vulnerable.

The Life CCC urges subscribers requesting third-party information to assess claims – particularly claims involving ongoing payments and regular assessments of eligibility – to ensure they consider the validity of the authority they are using. Subscribers should also refer to the relevant Privacy Principles in the *Privacy Act 1988* and the requirements set out in FSC Standard 26.

The Consumer in this matter experienced delays in relation to the payment of their income related benefit. A delay in a monthly benefit payment, particularly if it occurs without warning or explanation, can lead to a consumer suffering financial detriment and stress. This is because the consumer may be relying on the monthly benefit payment to meet their financial liabilities. Any delay in such payments should be communicated to consumers as early as possible to allow consumers to make any necessary arrangements.

The Life CCC encourages subscribers to embrace the continuous self-improvement implicit in the Code and review processes and monitoring frameworks to ensure they meet the important consumer protections it provides.

Relevant Code Sections

Section 1.5:

The principles that apply to **our** products and services that are covered by the **Code** are:

- a) clarity and transparency;
- b) fairness and respect;
- c) honesty;
- d) timeliness; and
- e) communications in plain language.

Section 8.5:

We will only ask for and rely on information and assessments that are relevant to your claim and policy, and we will explain why we are requesting these. This can include, for example, financial, occupational and medical information. If you disagree with the relevance of any information, we will review the request, and if you are not satisfied with our review we will tell you how you can make a complaint.

Section 8.6:

Where **we** require information from other sources, such as **your** doctor, accountant or another health professional, **we** may ask **you** for a general authority to obtain information about **you** from them. **We** will only use a general authority to obtain information that **we** reasonably believe is relevant to **your** claim. **You** can instead authorise **us** to request particular information from particular sources. However, this may cause delays in the assessment of **your** claim or mean that **we** are unable to assess **your** claim, and **we** may require further authorities before **we** can progress the assessment of **your** claim.

Section 8.9:

For income-related claims (such as income protection or business expense cover):

- a) information may need to be provided on an ongoing basis in order to review **your** entitlement to benefits or to calculate **your** payments. This can include financial as well as medical information;

- b) **we** will not require **you** to get ongoing statements from **your** doctor more frequently than reasonably necessary to assess **your** condition, so that **we** can determine **your** ongoing entitlement to benefits. For monitoring purposes, **we** may seek information from **your** doctor every six months, even if **your** condition is stable;
- c) **we** will not request a medical statement from **your** doctor for the sole reason of processing **your** regular payment;
- d) **we** will only request financial information in circumstances where it is required to assess **your** eligibility to claim or to calculate **your** entitlement;
- e) if **you** disagree with the relevance of any requested information, **we** will review this; and
- f) if **your** payment is going to be delayed, **we** will notify **you** prior to this and let **you** know the reasons for the delay.

Section 14.1:

14.1 **We** will abide by the principles of the Privacy Act 1988 and any other legal obligations when **we** collect, store, use and disclose personal information about **you**.

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.