

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:	CX7628	Date:	17 October 2022
Code sections:	8.4, 8.5, 8.7, 8.17, 9.10 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breaches:

The Consumer is a member of a superannuation fund (the Trustee). As part of their membership, the Consumer obtained a Total and Permanent Disability (TPD) policy. The TPD policy was issued by a Life Insurance company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) and is a Group Policy owned by the Trustee.

The Consumer's Legal Representative (CLR) lodged a TPD claim with the Subscriber on 2 July 2019. As a result, the six-month timeframe commenced on 2 July 2019 and the Subscriber was required to issue a decision by 2 January 2020 unless Unexpected Circumstances (UC) applied.

The Subscriber noted that UC did not apply to the claim. There were avoidable delays in requesting information from the Consumer. The Subscriber confirmed that it issued the decision on the claim to the Trustee on 13 May 2021.

On 12 April 2021, the CLR lodged a complaint with the Life CCC which alleged that the Subscriber had breached its obligations under sections 8.17 and 9.10 of the Code. The CLR alleged that the Subscriber failed to issue a decision on the TPD claim within six months and did not adequately respond to the CLR's complaints.

The Life CCC reviewed the Subscriber's compliance with sections 8.4, 8.5, 8.7, 8.17 and 9.10 of the Code. The Subscriber acknowledged that, due to human error and performance issues from the claims assessor, it had breached sections 8.4, 8.5, 8.7 and 8.17 of the Code. However, the Subscriber disagreed that it had breached section 9.10 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, 8.5, 8.7 and 8.17 of the Code, the allegations were proven in whole; and
- was not in breach of section 9.10 of the Code and that the allegation was unfounded.

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 (element 1), and to respond to requests for information about the claim within 10 business days (element 2).

The Subscriber acknowledged that it had breached both elements under section 8.4 on the following dates:

- In relation to element 1, it did not provide an update on the progress of the Consumer's claim at least every 20 business days on three occasions: 14 August 2019, 30 October 2019 and 3 September 2020 (it only provided a partial update on 2 September 2020).
- In relation to element 2, it did not respond or provide the information requested by the Consumer within 10 business days on five occasions: 2 October 2019, 6 November 2019, 12 February 2020, 27 January 2021 and 13 May 2021.

Accordingly, 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.

Serious and systemic non-compliance

The Subscriber reviewed the claims assessor's portfolio of 110 claims between 1 August 2019 and 7 September 2021 and identified a total of 79 breaches of section 8.4 of the Code which spanned over a two-year period.

While the claims assessor had since ceased their employment with a third-party administrator, the Subscriber acknowledged that due to the nature and extent of the claims assessor's non-compliance with section 8.4, the breach amounted to both serious and systemic non-compliance with the Code.

Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)³ that the Subscriber's breach of section 8.4 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.5

Section 8.5 requires a subscriber to only ask for relevant claim information and to explain why it is requesting the information (element 1). Additionally, if a consumer disagrees with

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 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.

the relevance of any information, the subscriber will review the request (element 2). The subscriber will also inform the consumer how to make a complaint if the consumer is not satisfied with the review (element 3).

The Subscriber acknowledged that it had breached element 1 of section 8.5, as it requested information from the Consumer but did not provide a reason for the request on four occasions: 4 September 2019, 2 October 2019, 30 July 2020 and 13 November 2020.

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.

Serious and systemic non-compliance

The Subscriber's review of the claims assessor's portfolio of claims identified a total of 13 breaches of section 8.5 of the Code which spanned over a two-year period.

Due to the nature and extent of the claims assessor's non-compliance with section 8.5, the breach amounted to both serious and systemic non-compliance with the Code.

Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv) that the Subscriber's breach of section 8.5 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.7

Section 8.7 requires a subscriber to request the information that it needs as early as possible (element 1) and to avoid multiple information requests where possible (element 2).

The Subscriber acknowledged that it had breached element 1 of section 8.7 as it did not request information from the Consumer as early as possible on two occasions: 4 September 2019 and 20 December 2019.

The Life CCC determined that the Subscriber was in breach of section 8.7 of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

The Subscriber's review of the claims assessor's portfolio of claims identified a total of 39 breaches of section 8.7 of the Code which spanned over a two-year period.

Due to the nature and extent of the claims assessor's non-compliance with section 8.7, the breach amounted to both serious and systemic non-compliance with the Code.

The Subscriber further confirmed that it paid the Consumer an interest payment of \$3,294 in acknowledgement of Code-related delays in this matter which resulted in consumer financial detriment.

Given the above, the Life CCC determined in accordance with Charter clause 7.4(b)(iv) that the Subscriber's breach of section 8.7 of the Code amounted to serious and systemic non-compliance with the Code.

Section 8.17

Section 8.17 of the Code requires the Subscriber to communicate its decision on a lump sum claim within six months, unless UC applied.

The Subscriber acknowledged that it had breached section 8.17 as UC did not apply to the claim. Instead, there were avoidable delays during the claim assessment as the claims assessor failed to request the Consumer's employment information as early as possible. As a result, the Subscriber did not issue a decision on the claim within six months by 2 January 2020.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code and that the allegation was proven in whole.

Serious and systemic non-compliance

The Subscriber confirmed that its breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code. This was because the Subscriber noted that the breach in this matter occurred during the same period as a previously reported significant breach matter regarding section 8.17 where it did not have adequate section 8.17 processes or preventative controls.

In addition, the Subscriber further confirmed that its review of the claims assessor's portfolio of claims identified a total of 24 breaches of section 8.17 of the Code which spanned over a two-year period.

Therefore, the Life CCC determined in accordance with Charter clause 7.4(b)(iv) that the Subscriber's breach of section 8.17 of the Code amounted to serious and systemic non-compliance with the Code.

Section 9.10

Section 9.10 requires a subscriber to respond to a Trustee to enable the Trustee to respond to a consumer within 90 calendar days of the Trustee receiving a complaint (element 1), and for a subscriber to provide the information under section 9.10(a) to (d) of the Code within its final complaint response letter (element 2).

The CLR lodged a complaint with the Trustee on 9 December 2020. The CLR alleged that the Subscriber breached its obligations under section 9.10 of the Code because it did not provide an adequate response to the complaint dated 9 December 2020 within 90 days of the complaint being lodged.

Upon review of the matter, the Subscriber confirmed that it never received the complaint from the Consumer, CLR, or the Trustee. As the Subscriber did not receive the complaint, the obligations under section 9.10 of the Code could not apply to the Subscriber in this matter.

Under the circumstances of this matter, the Life CCC determined that the Subscriber was not in breach of section 9.10 of the Code and that the allegation was unfounded.

Remediation

The Subscriber noted that the claims assessor received Code-related training and support on 14 May 2019, 21 August 2020 and 21 April 2021. The claims assessor was also subjected to ongoing reviews which culminated in formal performance management.

The Subscriber further noted that it is in the process of identifying the customers who require remediation of the Code breaches in the form of an interest payment.

The Subscriber noted the following controls have been implemented and enhanced over the past 9 to 12 months to manage the risk of future reoccurrence of breaches of sections 8.4, 8.5, 8.7 and 8.17:

- The Subscriber developed and enhanced a full suite of management reporting at an individual and team level as well as overall portfolio monitoring activities. This provides better identification of trends and enables improved portfolio monitoring activities.
- A milestone review process was implemented within the third-party administrator. This provides specific timeframe touchpoints for claims to be reviewed by both the Subscriber and their third-party administrator.
- The Subscriber has updated the Claims Authority and Delegation Charter. The charter now specifically references consequences which may be applied in the event of significant compliance issues. Consequences can include removal of a claims portfolio or suspension of an individual assessor's claims authorities.
- The quality assurance process for the claims assessment model across both the Subscriber and their third-party administrator has been enhanced.

Key learnings

In this matter, a single claims assessor's underperformance adversely impacted a significant number of consumers within the assessor's claims portfolio over a two-year period. This demonstrates the importance of ensuring that subscribers have in place appropriate processes and systems to provide training and support for claims assessors, to monitor performance and provide guidance on performance improvement. Such processes include:

- Regular comprehensive Code-related training programs and refresher training.
- Provision of supervision, support and guidance for claims assessment staff on Code obligations and application to claims.
- Robust monitoring of staff compliance with internal processes and procedures.
- Robust risk mitigation and escalation strategies to address staff performance related issues.

The consequence of failing to have any of the above-mentioned processes in place can result in a significant breach of the Code, and detriment to consumers, which occurred in this matter.

The Life CCC reminds subscribers of their ongoing commitment to the Code by ensuring that they continue to provide high standards of customer service, meeting the community expectations.

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 8.5

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 8.7

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

Section 8.17

For all claims other than income-related claims, **we** will let **you** know **our** decision no later than six months after **we** are notified of **your** claim or six months after the end of any waiting period, unless **Unexpected Circumstances** apply. Depending on **your** policy, **our** decision may be a requirement that **you** undertake a period of rehabilitation or retraining, or it may be a final decision on **your** benefits. 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 9.10

Where possible, **we** will respond to the superannuation fund trustee so that it can provide a final response to **your Complaint** in writing within 90 calendar days of the superannuation fund trustee receiving **your Complaint**. **You** will be informed of:

- a) **our** final decision in relation to **your Complaint** and the reasons for that decision;
- b) that **you** have the right to copies of the documents and information **we** relied on in assessing **your Complaint**, and if **you** request **we** will provide **you** (or **your** doctor, where appropriate) with copies within ten **business days**, in accordance with the Access to Information section of the **Code**;
- c) that **you** may have the right to take **your Complaint** to the Superannuation Complaints Tribunal (**SCT**) if **you** are not satisfied with **our** decision and the timeframe within which **you** must take **your Complaint** to the **SCT**; and
- d) contact details for the **SCT**.

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.