

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:	CX11215	Date:	21 April 2023
Code sections:	8.14 ¹		
Investigation:	Significant Breach reported by Code Subscriber		

The alleged Code breaches:

On 27 January 2022, a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) reported a significant breach of section 8.14 of the Code.

To improve customers' claims management, the Subscriber implemented a system-based reporting tool on 20 December 2021. Upon using this tool, the Subscriber discovered that it failed to inform customers about the application of Unexpected Circumstances (UC) during the claim assessment process for several undetermined claims under section 8.14.

After investigating 57 open claims, the Subscriber found that it failed to notify 37 customers about the application of UC within the two and six-month timeframes under the Code as of 20 December 2021. The Subscriber acknowledged that its breach of section 8.14 of the Code was due to its inadequate UC processes from 1 July 2017 to 20 December 2021.

Given the duration and extent of the Subscriber's inadequate UC processes, which are also requirements under sections 8.16 and 8.17 of the Code, potential breaches of sections 8.16, 8.17, and 13.3(a) of the Code were raised.

After the Life CCC's request for further information, the Subscriber's Breach Determination Committee (BDC) assessed its compliance with sections 8.16, 8.17, and 13.3(a). The BDC found that the Subscriber had breached sections 8.16, 8.17, and 13.3(a) of the Code and deemed it to be significant. However, the Subscriber did not believe it necessary to notify the Life Code Compliance Committee (Life CCC) of the significant breach under section 13.4 of the Code since it had already filed a breach report with the Australian Securities and Investments Commission (ASIC) on 17 May 2022.

On 28 August 2022, the Subscriber confirmed it had completed its remediation actions relating to this matter.

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 assessed the matter and confirmed that the reported breach of section 8.14 of the Code was significant, as assessed by the Subscriber.

The Life CCC findings and conclusion:

Section 8.14

Section 8.14 requires subscribers to undertake all efforts to meet the timelines required by the Code. While subscribers will not be in breach of the Code if they cannot comply with a deadline due to a delay outside their control, they are required to inform the consumer of the UC.

The Subscriber noted the following reasons for the significant breach:

- Before the Subscriber implemented its system-based tool, it tracked its claims management and Code obligations requirements through manual data entry into shared spreadsheets.
- It had only generated a monthly report of the management of workflow tasks associated with its obligations under the Code.

The Subscriber further confirmed the breach of section 8.14 was significant as it had inadequate monitoring and compliance processes from 30 June 2017 to 20 December 2021.

Given the above, the Life CCC confirmed the Subscriber's reported significant breach of section 8.14 of the Code.

Remediation

On 28 August 2022, the Subscriber confirmed it had completed the remediation of this matter. The Subscriber:

- implemented the system-based reporting tool
- enhanced the system-based reporting to allow more granular reporting
- issued UC to all affected consumers
- established daily and/or weekly reporting to monitor the completion of tasks at a team and individual level
- completed staff training related to the implemented enhancements
- increased claim leadership team oversight of the Code obligations and requirements.

Given the above, the Life CCC was satisfied that the Subscriber had remediated the significant breach of section 8.14. Furthermore, the remedial actions implemented were appropriate to address the Subscriber's breaches of related sections - 8.16, 8.17 and 13.3(a) of the Code.

Key learnings

The Subscriber's use of manual processes proved inadequate in tracking compliance with its Code-related claim obligations. As a result, the Subscriber failed to issue UC letters to consumers correctly within the required two and six-month timeframes for four years, until the issue was identified in December 2021.

Although the Code does not expressly require subscribers to automate their processes, relying on manual processes that require human intervention increases the risk of errors and non-compliance with Code obligations. Subscribers should, therefore, regularly review their existing processes and controls to identify issues and opportunities for improvement.

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.

To minimise the risk of non-compliance, subscribers must take proactive steps, such as generating regular reports to monitor internal compliance with claims handling obligations. This will assist in identifying areas of non-compliance and emerging areas of risk.

Adhering to the Code's timeframes and obligations is essential to ensure that consumers receive adequate information and support in line with the spirit and intent of the Code. Therefore, subscribers must prioritise and invest in processes and controls that enable them to meet their obligations under the Code.

Relevant Code Sections

Section 8.14

All efforts will be made to meet the timelines required by the **Code**. However, timeframes for making claims decisions can be affected by factors outside **our** control (**Unexpected Circumstances**). Examples of this include the time taken by a superannuation trustee to review **our** decision or fulfil its legal obligations, or the time taken by **you** or **your** treating doctor to provide information. Where **we** cannot comply with a deadline required by the **Code** due to a delay that is out of **our** control, **we** will not have breached the **Code**. If there are external impacts on timeframes, **we** will inform **you** of this and **we** or the **Group Policy-owner** will keep **you** informed of progress.

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 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 13.3

We will:

- a) have appropriate systems and processes in place to enable compliance with the Code;
- b) prepare an annual return to the **Life CCC** on **our** compliance with the **Code**; and
- c) have a governance process in place to report on **our** compliance with the **Code** to **our** Board of Directors or executive management.

Section 13.4

If **we** identify a **Significant Breach** of the **Code** within **our** organisation, within ten **business days** of becoming aware of the breach **we** will report it to the **Life CCC** unless:

- a) the breach relates to a matter that has been reported to a regulator; and
- b) the regulator has been informed that the matter may also involve a breach of the **Code**.

Unexpected Circumstances:

- a) **your** claim has been notified to **us** more than 12 months after the later of the date of disability or the end of **your** waiting period, and there are reasonable delays obtaining evidence necessary for the assessment of **your** claim from the intervening period;

- b) for a claim for total and permanent disability, **we** cannot reasonably satisfy ourselves on the basis of the information provided in the six months after the end of **your** waiting period that **your** condition meets the requirements of **your Life Insurance Policy**;
- c) **we** have not received reports, records or information reasonably requested from an **Independent Service Provider**, **your** doctor, a government agency or other person or entity (including a **Reinsurer**);
- d) the **Policy-owner** or **Group Policy-owner** has disputed or taken a protracted period to consider **our** decision;
- e) **you** or **your Representative** have not responded to **our** reasonable enquiries or requests for documents or information concerning **your** claim;
- f) there are difficulties in communicating with **you** in relation to the claim due to circumstances beyond **our** control;
- g) there is a delay in the claims process that **you** have requested; or
- h) the claim is fraudulent or **we** reasonably suspect fraud or non-disclosure that requires further investigation.

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.