

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:	CX 11301	Date:	30 June 2023
Code sections:	5.3 ¹		
Investigation:	Significant Breach reported by a Code subscriber		

The alleged Code breach:

On 8 March 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 5.3 of the Code.

The Subscriber became aware of a technical issue when it implemented testing for a superannuation fund to be added onto its online insurance portal on 25 January 2022. Due to this technical issue, some consumers were unlikely to have made a consumer declaration, which the Subscriber used to fulfil its obligations under section 5.3 of the Code.

On 24 February 2022, the Subscriber confirmed that the breach was significant and impacted insurance applications made through its online portal between 1 March 2018 and 5 October 2021. On 28 October 2022, the Subscriber confirmed that it had remediated the significant breach of section 5.3.

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

The Life CCC assessed the matter and confirmed the reported breach of section 5.3 of the Code was significant, as assessed by the Subscriber.

The Life CCC findings and conclusion:

Section 5.3 requires subscribers to explain the duty of disclosure and the consequences of not disclosing all relevant information and answering all questions honestly and completely at the start of the application process, before asking any underwriting questions.

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 Subscriber offers an online insurance portal for consumers of four of its superannuation funds to apply for extra coverage. The portal allows consumers of these funds to apply for additional Death, Total and Permanent Disability, and Income Protection cover through their group life policies provided by their funds. The Subscriber issues the policies through its group distribution channel to these funds.

There was a technical issue when the Subscriber rolled out the updated online portal which resulted in consumers not seeing and/or making a consumer declaration prior to being asked the underwriting questions during the application process.

The Subscriber noted that the incident occurred in March 2018 when it implemented the updated versions of the online portal. The Subscriber first became aware of the technical issue when it implemented testing for another fund to be added onto its online insurance portal on 25 January 2022.

As a result, members who were interested in applying for additional covers were not informed of:

- the duty of disclosure/duty to take reasonable care
- the consequences of not disclosing all relevant information and answering all questions honestly and completely.

The Subscriber noted that the incident impacted consumers in the following circumstances:

- when a consumer chooses to get a quote and not complete an application in one sitting
- when a consumer exits the online facility between the point of receiving an online quotation and commencing an online application.

The Subscriber noted it was unable to generate data from the online portal to determine the exact number of consumers impacted by the incident. Therefore, it determined the following consumers to be impacted by the breach:

- Consumers who applied for insurance through the online portal between the breach period from 1 March 2018 to 5 October 2021; and
- Consumers who have had or may have a claim declined for misrepresentation or non-disclosure as being impacted.

The Subscriber confirmed that 37 claims have been impacted by the breach to date. However, the Subscriber noted that these 37 claims were not adversely affected by the breach.

Given the breach remained undetected since 2018 and the potential number of impacted consumers, the Life CCC confirm the Subscriber's reported significant breach of section 5.3 of the Code.

Remediation completed

On 28 October 2022, the Subscriber confirmed it has fully remediated the root cause of the significant breach in the table below.

Remediation actions	Completion date
System fix one – ‘Duty to Take Reasonable Care’ wording moved to the beginning of the application. This allows consumers to read and agree to these conditions before they commenced their application.	February 2022
Implemented a process for future claims for consumers who applied for cover during the breach period and were not informed of: <ul style="list-style-type: none">• their duty of disclosure/duty to take reasonable care• the consequences of not disclosing all relevant information and answering all questions honestly and completely.	June 2022
System fix two - All consumers that complete their application in the App will view the ‘Duty to Take Reasonable Care’ wording. The date and time that they view the application on the App will be recorded on a PDF.	August 2022
Past claims where the application may have been impacted were reviewed.	October 2022

Key learnings

The Subscriber’s breach of section 5.3 remained undetected for almost four years, potentially impacting a considerable number of consumers. This incident highlights the significance of the following measures:

- Performing regular reviews of all systems and communication channels to guarantee compliance with the obligations outlined in the Code.
- Conducting regular and thorough testing before implementing any updates or changes.
- Establishing robust monitoring processes to ensure internal compliance with the Code’s requirements.

It is crucial that all subscribers transitioning to Code 2.0 give proper consideration to the high service standards established in the current Code.

Relevant Code Sections

Section 5.3

At the start of the application process, before asking **you** any underwriting questions, **we** will explain the duty of disclosure and the consequences of not disclosing all relevant information and answering all questions honestly and completely.

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.