

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 4296	Date:	8 April 2019
Code section:	9.10 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer held life insurance cover as part of a Group Life policy owned by the trustee of his superannuation fund (the Trustee). The life insurance was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

In May 2016, the Subscriber declined a claim from the Consumer for a Total and Permanent Disability (TPD) benefit and the Trustee agreed with the decision. On 22 August 2016, the Consumer lodged a complaint with the Trustee and requested a review of the decision. The Trustee referred the complaint to the Subscriber for a response in September 2016.

In December 2017, the Consumer's legal representative made a referral to the Life CCC alleging a breach of section 9.10² of the Code on the basis that the Consumer had not received a response to the complaint within 90 calendar days.

Findings in accordance with Charter clause 7.4(b)(iii)³:

The Life CCC determined there was a breach and that the allegation in relation to section 9.10 of the Code was proven in whole.

The Life CCC findings and conclusion:

The Life CCC considers that section 9.10 outlines two obligations for Code subscribers. The first involves responding to a complaint in a timely manner; the second sets out the information the response should include and further consumer rights. The Life CCC's interpretation is set out in detail at the end of the document.

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

² The Code sections are provided in full in the last section of the Determination.

³ 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 Consumer lodged a complaint on 22 August 2016 with the Trustee and requested a review of the declined claim decision. The Trustee referred the complaint to the Subscriber for a response in September 2016.

The insurer became a Subscriber of the Life Insurance Code of Practice on 30 June 2017, at which stage it was bound by all the obligations of the Code. Section 9.10 of the Code requires the Subscriber to provide a response to a complaint referred to it by a trustee, and to do so, where possible, in a timeframe that enables the trustee to provide its final response to the complaint within 90 calendar days.

Any complaint that was open on the date that the Subscriber adopted the Code had the section 9.10 timeframe of 90 days reset from the date of Code adoption. Day 1 thus became 30 June 2017 and the 90 days elapsed on 28 September 2017.

Timeline of key dates:

In or around May 2016	The Subscriber declined the Consumer's claim and closed the file.
22 August 2016	The Consumer lodged a complaint with the Trustee requesting a review of the decision.
On or around 6 September 2016	The Trustee referred the complaint to the Subscriber. The Subscriber initiated a review. A claims assessor worked on the review but gave the file the incorrect status by failing to re-open it.
30 June 2017	The Subscriber adopted the Code. The timeframe to respond to the Consumer's complaint commenced (as per section 9.10 of the Code).
30 August 2017	The incorrect status of the file led to a loss of the tracking of outstanding tasks around this time. The claim stalled.
27 October 2017	The Trustee asked the Subscriber for an update via email. As a result, the Subscriber realised the file was not open and that the claim was not being progressed.
27 October 2017	The Subscriber re-opened the Consumer's claim and recommenced its review.
29 November 2017	The Subscriber decided to admit the Consumer's claim and communicated this to the Trustee.
4 December 2017	The Consumer submitted a Code breach allegation.

When answering an allegation of a breach of section 9.10, a Code subscriber must explain why it did not respond within a timeframe that enabled the trustee to respond in 90 calendar days.

The Subscriber's explanation revealed that although it initiated a review of the claim when it received the complaint, the claims assessor failed to re-open the claim on the system. This incorrect file status led to a failure to track outstanding actions on the claim – including timeframe obligations – around August 2017.

The claim stalled for two months, with the Subscriber only realising it remained unresolved when the Trustee contacted the Subscriber in October 2017.

The Subscriber concluded its review and informed the Trustee of its decision on 29 November 2017, outside the 90-day timeframe (which ended on 28 September 2017).

The Subscriber conceded a breach of section 9.10 due to human error and, because of this concession, the Life CCC did not investigate whether it had been possible for the Subscriber to respond in a timely manner.

The Life CCC formally determined that the Subscriber breached section 9.10 of the Code.

The Life CCC was satisfied that, based on the facts, this breach was a result of human error and an isolated incident. The Subscriber reviewed the files of the relevant claims assessor and found no other instances of files not being re-opened. The Subscriber also provided remedial training for the claims assessor.

In addition, the Subscriber paid interest to the Consumer for the period of August 2017 to November 2017, with August 2017 being the earliest that the Subscriber could have made a decision on the claim.

Relevant Code Section

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 approach to interpreting section 9.10

Section 9.10 of the Life Insurance Code of Practice applies whenever a Consumer has expressed a concern to the trustee of a superannuation fund that fits the definition of a complaint⁴ under the Code.

The Life CCC considers that Section 9.10 outlines two obligations for Code subscribers, as follows:

1. 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**.
2. You⁵ 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**.

It is the responsibility of a trustee to communicate a final complaint response to a consumer, but a trustee can refer a complaint to the Code subscriber and consider that response when forming its own final response. A trustee has 90 calendar days to provide its final response, where possible.

The 90-day timeframe begins from the date a complaint is received and includes the time a trustee takes to refer it to the Code subscriber; for the subscriber to review it and respond to the trustee; for the trustee to review the subscriber's response and form its own view; and, for the trustee to provide the final response. (The subscriber's review period isn't stipulated; depending on the circumstances in each scenario.)

The first obligation that Section 9.10 requires of the Subscriber is to respond to the Trustee, and to do so in a timeframe that enables the Trustee to provide its final response within the 90 days.

Depending on the arrangements in place regarding communication with the Consumer, the second obligation requires that the Subscriber provide the details in writing set out in 9.10 a) to d) directly to the Consumer, or via the Trustee to the Consumer. In this matter the Subscriber had to provide them to the Trustee.

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.

⁴ The Code defines a Complaint as an expression of dissatisfaction made to us, related to our products or services, or our Complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

⁵ **You** is defined in the Code as a **Life Insured, Policy-owner, or a Third Party Beneficiary**, as relevant to a particular section of the Code.