

## 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

|                       |   |              |              |
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| <b>Reference:</b>     | CX 4342                                 | <b>Date:</b> | 11 June 2019 |
| <b>Code sections:</b> | 9.10 <sup>1</sup>                       |              |              |
| <b>Investigation:</b> | 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 her 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 July 2015, the Subscriber declined a claim from the Consumer for a Total and Permanent Disability (TPD) benefit. The Consumer lodged a complaint in February 2016 requesting a review of the decline, and the Subscriber responded in June 2016 stating that it declined to reassess the claim.

The Consumer subsequently lodged a second complaint regarding the decline on 4 July 2017.

In January 2018, the Consumer's legal representatives made a referral to the Life CCC alleging a breach of section 9.10<sup>2</sup> of the Code on the basis that the Consumer had not received a response to the complaint within 90 calendar days.

The Code breach referral was in relation to the Subscriber's alleged failure to respond to the Consumer's second complaint of 4 July 2017.

### Findings in accordance with Charter clause 7.4(b)(iii)<sup>3</sup>:

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

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<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

<sup>2</sup> The Code sections are provided in full in the last section of the Determination.

<sup>3</sup> 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:**

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 First Obligation); the second sets out the information the response should include and further consumer rights (the Second Obligation). The Life CCC's interpretation is set out in detail at the end of the document.

### **Background**

The Consumer's first complaint was lodged on 11 February 2016, and Consumer's second complaint was lodged on 4 July 2017. The insurer became a Subscriber of the Code 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.

As the Subscriber responded to the Consumer's first complaint in June 2016, the Life CCC considered that the first complaint was lodged and responded to prior to 30 June 2017 and as a result, was not covered by the Code. However, the second complaint was lodged on 4 July 2017 and was covered by the Code.

### **The First Obligation - Providing a response within 90 calendar days**

The Subscriber provided a response to the Trustee on 17 July 2017. As this was 13 days after the Consumer lodged her second complaint, the Life CCC determined that the Subscriber had not breached the First Obligation of s9.10 of the Code, as the Subscriber responded to the complaint in a timeframe to enable the Trustee to provide its response within 90 calendar days of receiving the Consumer's complaint.

### **The Second Obligation - Information to be provided**

The Life CCC determined that the Subscriber had breached the Second Obligation of section 9.10 of the Code as the Subscriber's response to the Trustee did not include any of the information required under section 9.10 of the Code. Instead, the Subscriber's response amounted to a refusal by the Subscriber to address the Consumer's concerns as the Subscriber noted that it had previously addressed the complaint in June 2016.

The Subscriber's response did not qualify as a response that satisfied the Second Obligation of section 9.10 of the Code as the Subscriber's response did not include:

- its final decision in relation to the complaint
- that the Consumer had the right to copies of the information relied on
- that the Consumer had the right to take the complaint to the relevant External Dispute Resolution (EDR) body, and
- the contact details of that EDR body.

The Life CCC notes that while the current version of the Code refers to the Superannuation Complaints Tribunal (SCT), the appropriate EDR scheme that subscribers should now refer

to within their complaint response letters would be the Australian Financial Complaints Tribunal (AFCA).

### **Serious and systemic non-compliance**

The Life CCC determined that the Subscriber's section 9.10 breach amounted to serious and systemic non-compliance with the Code. The Subscriber's process and template letter at the time of its response to the Trustee did not include any reference to section 9.10(b) of the Code. As a result, the Life CCC found that it was highly likely that all of the Subscriber's complaint responses were not compliant with the requirements under section 9.10 of the Code.

### **Remedial action**

The Life CCC notes that the Subscriber has since amended its process and its template letters to correctly reflect its obligations under section 9.10 of the Code.

## **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**.

- a) of **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's 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 complaint<sup>4</sup> 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. You<sup>5</sup> will be informed:

<sup>4</sup> 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.

<sup>5</sup> **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.

- a) of **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.