

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:	CX4436	Date:	21 June 2019
Code sections:	9.10 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer is a member of a superannuation fund. As part of their membership, the Consumer obtained life insurance including a Total and Permanent Disability (TPD) benefit.

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), and the policy was owned by a Group Policy-owner (the Trustee).

The Consumer lodged a TPD claim in January 2014, and the Consumer's TPD claim was declined by the Subscriber in December 2015. The Consumer's legal representatives lodged a complaint with the Trustee regarding the decline in September 2016, and the complaint was referred to the Subscriber in December 2016.

The Subscriber re-opened the claim and requested more information from the Consumer's doctor. However, the information request was only sent to the Consumer's doctor in February 2017. The Subscriber continued to follow up its information request to the doctor throughout 2017 but did not receive any response.

The Subscriber was notified in January 2018 that the medical centre where the Consumer's doctor was employed had gone into liquidation. The Subscriber subsequently reviewed the claim in April 2018. The Subscriber determined that the Consumer satisfied the definition of being TPD, as the evidence provided indicated that the Consumer would not be able to return to work within the remainder of his working life. The Subscriber accepted the TPD claim on 4 May 2018.

In April 2018, the Consumer's legal representatives made a referral to the Life CCC alleging a breach of section 9.10² of the Code on the basis that the Subscriber had not provided its final decision in relation to the Consumer's complaint within 90 days.

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.

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

The Life CCC determined that the Subscriber breached section 9.10 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

The Consumer lodged a TPD claim in January 2014.

The insurer became a Subscriber of the Code on 30 June 2017, at which stage it was bound by all obligations of the Code. Any complaint open on the date the Subscriber adopted the Code had the timeframes under section 9.10 reset to day 1 from the day it adopted the Code. Day 1 thus became 30 June 2017 and the Subscriber had to provide its response to the Trustee within a timeframe that allowed the Trustee to respond to the Consumer within 90 calendar days, being 28 September 2017.

On review of the file, the Life CCC noted that the Subscriber did not provide a sufficient response to the Trustee to enable the Trustee to be able to provide its final response to the complaint by 28 September 2017. As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

The Subscriber acknowledged a breach of section 9.10 of the Code and also acknowledged that it was reasonable to conclude that a decision on the claim could have been made around late September 2017.

Serious non-compliance

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 9.10 of the Code amounted to serious non-compliance with the Code.

In this instance the Subscriber delayed its decision on the Consumer's claim by approximately 16 months. This likely resulted in actual or potential financial loss by the Consumer. The Life CCC noted that the Subscriber continued to pursue the same information request for over a year, even after the Subscriber was informed that the doctor's medical practice had gone into liquidation.

The Life CCC expects that Subscribers will take proactive action to assess claims in instances where it is clear that the Subscriber will not be able to obtain the information requested. This may include making the decision on the claim without the requested information, or by using alternative sources to obtain the required information.

The Subscriber confirmed that it will pay interest to the Consumer from 13 December 2016, the date that the Subscriber was notified of the Consumer's complaint by the Trustee.

Ambiguity in section 9.10 of the Code

As part of this investigation, the Subscriber raised the question of ambiguity in relation to section 9.10 of the Code. The Subscriber noted that it was unclear if a request from a Consumer to review a claim constituted a complaint. This was because the Subscriber's

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.

⁴ 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.

internal process treated any requests from Consumers to review a prior decline as a 'dispute' and did not respond to the Consumer's request as part of the Subscriber's complaints process.

In addition, the Subscriber considered that the Code is unclear in relation to what constitutes a final decision on a complaint when the Consumer was requesting that a previously declined claim be reviewed. The Subscriber suggested that a final decision on a complaint could mean the Subscriber's decision on a claim, or a decision by the Subscriber to agree to review the claim.

Will a claim review request be a complaint?

In relation to the request to review a claim decline, the Life CCC noted that the Code adopts the definition of a complaint in RG165.⁵ A complaint under the Code⁶ and RG165 is defined as an expression of dissatisfaction made in relation to an organisation's products, services or complaints handling process, where a response or resolution is explicitly or implicitly expected.

When a Consumer contacts a Subscriber to request that the Subscriber review a previous claim decline, this request amounts to an expression of dissatisfaction about the Subscriber's claims handling services. In such requests, a response is either implicitly expected or explicitly requested by the Consumer.

As a result, the Life CCC determined that the definition of a complaint under section 9.10 will include a scenario where a Consumer is requesting a review of the prior claim decline. While Subscribers may choose to deal with such complaints through their claims handling process, the Life CCC notes that the obligations under Chapter 9 of the Code will apply to such complaints.

What is the final decision on a complaint?

The Life CCC has observed some inconsistency in relation to how Subscribers have interpreted the 'final decision in relation to the complaint', with some Subscribers dealing with complaints that request a review of a claim through section 9.10 of the Code, while other Subscribers view the request to review a claim as being a new claim that is covered under the obligations in Chapter 8 of the Code.

The Life CCC notes that the Code is silent regarding the obligations that apply when a Subscriber re-opens a previously declined claim.

The Life CCC considered this issue and determined that the 'final decision' in relation to the complaint would mean the final resolution of the issue raised in the complaint. In the event where a Consumer was complaining about a previously declined claim, a final decision would be the Subscriber reviewing the claim and determining if the prior decision to decline the claim was merited.

The Life CCC notes that there can be instances where the Consumer submits additional information in support of their request for the claim to be reviewed, and that it may not be possible for the Subscriber to provide a final response in the timeframe provided by section 9.10 of the Code.

In such instances, a Subscriber may rely on the 'where possible' carve out in section 9.10 and state that it was not possible to provide a response to allow the Trustee to respond within 90

⁵ <https://download.asic.gov.au/media/4772056/rg165-published-18-june-2018.pdf>

⁶ The Code sections are provided in full in the last section of the Determination.

calendar days. However, the Life CCC will assess the reasonableness of such an assertion on a case by case basis, and the onus is on the Subscriber to demonstrate the reasonableness of this assertion.

In addition, the Life CCC notes that it will be guided by the timeframe obligations in section 8.7 and section 8.15 of the Code when reviewing a Subscriber's compliance with section 9.10 of the Code in relation to a Consumer's request to review a previously declined claim.

The obligations in section 8.7 and section 8.15 require Subscribers to request information as early as possible and make a decision on the claim within 10 business days once the Subscriber has all the information that it reasonably requires to assess the claim.

While a Subscriber may be provided with 90 days under section 9.10 (or six months under section 8.17), in the Life CCC's view Subscribers should view these timeframes as the maximum timeframe provided and proactively assess claims to be able to provide a decision to the Consumer as efficiently as possible.

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**.

Section 8.7:

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

Section 8.15:

Once **we** have all the information **we** reasonably need and have completed all reasonable enquiries to assess **your** claim, including **your** response to the evidence **we** are basing **our** decision on if **we** have presented this to **you**, **we** will let **you** know **our** decision on **your** claim within ten **business days**.

Chapter 15 Definitions:

Complaint means 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.

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 complaint⁷ 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. You⁸ will be informed:
 - 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.

⁷ 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.

⁸ **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.