

# 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

<b>Reference:</b>	CX4465	<b>Date:</b>	17 June 2019
<b>Code section:</b>	9.10 <sup>1</sup>		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

## The alleged Code breach:

The Consumer is a member of a superannuation fund and as part of that membership, the Consumer obtained life insurance with Total and Permanent Disability (TPD) cover.

The Consumer lodged a TPD claim 26 July 2016 and the Subscriber issued Procedural Fairness on 21 December 2016. The Subscriber declined the Consumer's claim on 20 March 2017, on the basis that the Consumer's claim did not meet the definition of the TPD policy.

On 5 February 2018, the Consumer's legal representative lodged a complaint with both the Subscriber and the Trustee seeking a review of the Consumer's claim. The Subscriber provided its complaint response to the Trustee on 12 March 2018, in which it maintained its position as set out in its initial decline letter.

In May 2018, the Consumer's legal representative made a referral to the Life CCC alleging a breach of section 9.10 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)<sup>2</sup>:

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

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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 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.

information the response should include, including explicit clarification of further consumer rights. The Life CCC's interpretation is set out in detail at the end of this document.

**Timeline of key dates:**

<b>Date</b>	<b>Event</b>
26 July 2016	Consumer lodged TPD claim.
21 December 2016	Subscriber issued Procedural Fairness letter.
1 February 2017	Consumer's legal representative responded to Procedural Fairness and provided additional information in support of the claim.
3 March 2017	Subscriber completed a review of the additional information and made a recommendation to decline the claim.
20 March 2017	Subscriber notified the Trustee of the decision to decline the claim.
5 February 2018	Consumer's legal representative lodged a complaint on behalf of the Consumer, disputing the decision that the member was not TPD.
12 March 2018	Subscriber provided its complaint response to the Trustee, confirming that the decline decision was maintained.

The Consumer's representative lodged a complaint with the Trustee and the Subscriber on 5 February 2018, seeking a review of the decision that the Consumer was not TPD. To comply with the first obligation, the Subscriber needed to have completed its review to enable the Trustee to rely to the Consumer no later than 6 May 2018.

The Subscriber, in providing its response to the Trustee on 12 March 2018, enabled the latter to reply to the Consumer's complaint before the 90-calender day timeframe. As the complaint response was issued within 90 calendar days of 5 February 2018, the Subscriber satisfied the requirement of the first obligation.

Section 9.10 of the Code also requires the Subscriber to provide the Trustee with the information in section 9.10(a) to (d) as part of the Subscriber's response to the Consumer's complaint.

The Subscriber's complaint response detailed the issues considered, specifically, whether or not its application of the TPD definition was correct. It went on to reference the information the Subscriber considered when reviewing the complaint, which included an employer's statement, the Consumer's claim form and further submissions made by the Consumer's legal representative. The response concluded that the Subscriber's decision to decline the claim (on the basis that the Consumer did not meet the TPD definition of the policy) was correct and provided details of the Subscriber's Internal Dispute Resolution (IDR) process if the Consumer was unhappy with this decision.

The Subscriber considered that it had complied with the second obligation, and therefore was of the view that it was not in breach of section 9.10.

Although the Subscriber's response to the Consumer's complaint (provided to the Trustee) included the information as required under section 9.10(a), it did not provide all the information specified at section 9.10(b) to (d). It had therefore not satisfied the requirements of the second obligation.

The Life CCC therefore formally determined that the Subscriber breached section 9.10 of the Code. It also determined that, based on the facts, this was a systemic breach of the Code as this was, at that time, the Subscriber's standard procedure when responding to complaints and it did not use a complaint response template letter which incorporated all aspects of

section 9.10(a) to (d). . The Life CCC continues to work with the Subscriber to ensure future compliance with 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**. **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**)<sup>3</sup> 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**.

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<sup>3</sup> The Code refers to the Superannuation Complaints Tribunal (SCT) which has since merged with the Financial Ombudsman Service to form AFCA. All complaints made after 31 October 2018 are dealt with by AFCA. Subscribers should refer to AFCA in written responses to complaints.

## 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 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 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.

<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.