



Guidance Note No. 2

Interpreting and applying Life Insurance Code of Practice section 9.10

Overview

Section 9.10 of the Life Insurance Code of Practice (the Code) deals with subscribers¹ obligations to respond in a timely way to complaints received via a superannuation trustee.

This Guidance Note explains how the Life Code Compliance Committee (the Committee) interprets the obligations in section 9.10, as well as what information and evidence we will ask subscribers to provide when we investigate potential breaches of these obligations.

¹ 'Subscriber' in this Guidance Note means the entity that is bound by the Code, as described by section 2.1 of the Code.

Code section 9.10

SECTION 9.10 STATES:

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**.

You² 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**)³ 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 **SCT**.

When the section applies

Code section 9.10 applies whenever a superannuation trustee receives a complaint from a person or their representative and refers the complaint to the subscriber. Section 9.10 would apply to any complaint referred by the trustee to the subscriber where the trustee is seeking the subscriber's support and assistance in relation to responding to the complaint.

If the correspondence meets the Code's definition of a complaint⁴, section 9.10 applies **regardless** of whether the subscriber recognised the correspondence as a complaint and treated it accordingly.



The subscriber must respond to the trustee, where possible, within a timeframe that would allow the trustee to respond to the complaint within

90 calendar days

² **You** is defined in the Code as a **Life Insured**, **Policy-owner** or a **Third-Party Beneficiary**, as relevant to the particular section of the Code.

³ The Code refers to the Superannuation Complaints Tribunal, which has since merged with the Financial Ombudsman Service to form AFCA. Subscribers should refer to AFCA in written responses to complaints.

⁴ A **Complaint** is defined in the Code 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.'

Interpreting the obligations

The Committee considers that section 9.10 sets out **two** obligations for subscribers: a **timeframe** obligation and an **information** obligation.

Obligation 1. Timeframe

The subscriber must respond to the trustee, where possible, within a timeframe that would allow the trustee to respond to the complaint within 90 calendar days. The same timeframe applies when the complaint concerns a customer's request for a declined claim to be reviewed.

The 90-calendar day timeframe:

- **begins** on the date the complaint is received by the trustee
- **ends** on the date the person or their representative receives the written final response to the complaint.

Depending on the arrangement the subscriber has with the trustee, the timeframe for the subscriber to respond to the trustee may be less than 90 calendar days. This is because the 90-calendar day timeframe includes the time taken for the trustee to refer the complaint to the subscriber, and for the trustee to review the subscriber's response and provide the final response to the person or their representative.

Essentially it requires subscriber to respond to the trustee in a timely way to put the trustee in a position where it *can provide a final response* to the person or their representative within 90 days.



... the timeframe for the subscriber to respond to the trustee may be less than 90 calendar days.

When assessing whether the subscriber has responded within a timeframe that would allow the person or their representative to receive the response within 90 calendar days, the Committee will consider:

- the arrangements the subscriber has with the trustee (such as any agreed timeframes and whether the subscriber is to provide the response to the trustee or directly to the person or their representative)
- the specific circumstances of the complaint (such as its complexity).



NON-COMPLIANCE EXAMPLE

The subscriber exceeds the 90-day timeframe because it didn't consider the person's expression of dissatisfaction to be a complaint until it had already been unresolved for five days.



GOOD PRACTICE EXAMPLE

The subscriber's contractual arrangements with the trustee set out clear complaint response responsibilities and timeframes.

“WHERE POSSIBLE” CARVE OUT

While the Code applies only to the subscriber, the actions of both the subscriber and the trustee affect whether the person or their representative receives a response within 90 calendar days.

Therefore, when investigating potential breaches of section 9.10, the Committee will consider whether the subscriber did everything reasonable to allow the timeframe to be met. Where the subscriber has acted reasonably to meet the timeframe, but it is exceeded solely due to the action or inaction of the trustee, the subscriber is entitled to rely on the ‘where possible’ carve out in section 9.10 of the Code. This would mean that the subscriber will not be in breach of section 9.10 of the Code.

For example, the section 9.10 carve out could be applied when there is a late referral of a complaint to a subscriber by a trustee, or when there is a significant delay in relation to a person or their representative responding to a request for further information. Whether the subscriber did everything reasonable to allow the timeframe to be met will be assessed by the Committee on a case-by-case basis.

Obligation 2. Information

The subscriber must provide, in writing, the information set out in 9.10 (a) – (d), either directly to the person or their representative (the life insured) or to the trustee (the policy owner) for it to pass on to the person or their representative. This information must be included in the written response to the complaint even if it has been provided to the person or their representative previously.



NON-COMPLIANCE EXAMPLES

- ✘ The written response doesn't include **all** the information about the person or their representative's right to documents contained in 9.10(b), including the ten-day timeframe.
- ✘ The written response includes details of the subscriber's complaints process, but not AFCA's.



While the Code applies only to the subscriber, the actions of both the subscriber and the trustee affect whether the person or their representative receives a response within 90 calendar days.

COMPLAINT REGARDING A CLAIM DECLINE

The Life CCC notes that the Code is silent in relation to a review of a prior claim decline. If a claim has been previously declined, the subscriber was already provided with the relevant timeframe to assess the claim under the Code. As a result, it would not be appropriate to provide the subscriber with the full timeframe under Chapter 8 of the Code in relation to a complaint regarding a prior claim decline.

Instead, where a complaint concerns a request for a declined claim to be reviewed, the ‘final decision’ required by section 9.10 (a) must include the subscriber’s decision to **accept or decline** the claim. As noted above, this decision has to be provided in a timeframe that is compliant with Obligation 1 of section 9.10 of the Code.

A decision to re-open the claim does **not** qualify as the ‘final decision’ and so would not satisfy the information obligation.

Whether the subscriber should provide the response to the person or their representative directly or to the trustee depends on the specific arrangement the subscriber has with the trustee.



GOOD PRACTICE EXAMPLES

- ✓ The written response includes the information in 9.10(b) **and** attaches the information the subscriber relied on to assess the complaint.
- ✓ The written response includes contact details for both the subscriber’s internal dispute resolution and that of AFCA.

Demonstrating compliance

When the Committee receives an allegation that a subscriber has breached section 9.10, we will generally ask the subscriber to provide the following information and evidence:

INFORMATION OR EVIDENCE	WHAT WE WILL CONSIDER
Copy of the subscriber’s written response to the trustee or person or their representative	<ul style="list-style-type: none">• whether each of the items in 9.10 (a–d) is included• the date the response was sent
Brief description of any relevant arrangements between the subscriber and trustee	<ul style="list-style-type: none">• any timeframes agreed between the subscriber and trustee• whether the subscriber or the trustee was responsible for providing the person or their representative with the written response

In some cases, the Committee may ask for additional information and/or evidence.

Related Code sections

Where there is a potential breach of section 9.10, the Committee may also investigate whether there has been a breach of related sections of the Code, including sections:

- **8.7⁵**
We will request the information we need as early as possible and will avoid multiple information requests where possible.
- **8.15⁶**
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.
- **9.4**
Your Complaint will be handled by someone different from the person or persons whose decision or conduct is the subject of the Complaint.
- **9.5**
We will notify you of the name and contact details of the person assigned to liaise with you in relation to your Complaint.
- **9.8**
We will make an arrangement with you for keeping you regularly informed about the progress of your Complaint.

⁵ Applicable when the person or their representative lodges a complaint about a prior declined claim.

⁶ Applicable when the person or their representative lodges a complaint about a prior declined claim.

About the Committee

The Committee is the independent body responsible for the administration and enforcement of the Code. It acts in accordance with its Charter, which sets out the powers, duties, functions and responsibilities of the Committee, subject to any provisions in the Code.

Guidance Notes

Guidance Notes are subject to change by the Committee and this document reflects the Committee's views as at the date of publication. The Committee considers all matters on the basis of their individual circumstances and this document does not anticipate all possible issues that might come before the Committee.