

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:	CX4339	Date:	8 November 2019
Code sections:	9.10, 8.29 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 September 2013 that was declined by the Subscriber in March 2015. The Consumer's legal representatives subsequently lodged a complaint and requested a review of the Consumer's claim on 18 July 2017.

This letter was sent via post and fax to the Trustee and the Subscriber and included additional medical evidence in support of the Consumer's complaint and request for a claim review.

The Trustee referred the complaint to the Subscriber on 25 July 2017. The Subscriber responded to the Trustee on 7 February 2018 noting that the Subscriber would re-open the claim if the Consumer attended three Independent Medical Examinations (IMEs) and provided additional information in support of the request.

In January 2018, the Consumer's legal representatives 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.

In February 2019, the Consumer's legal representatives made a second Code breach allegation to the Life CCC alleging a breach of section 8.29 of the Code on the basis that the Subscriber had not responded to the Consumer's demonstration of urgent financial need.

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

Findings in accordance with Charter clause 7.4(b)(iii)²:

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

The Life CCC further determined that section 8.29 of the Code was not applicable in this matter and that the allegation was unfounded.

The Life CCC findings and conclusion:

Is a request to review a claim a complaint?

The Subscriber had initially put forward its view that the request to review the prior claim decline on 18 July 2017 was not a complaint and section 9.10 did not apply.

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.*

The Life CCC previously determined³ 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.

In addition, in this instance the Consumer's request to review the claim decline explicitly stated that the correspondence was a formal complaint. This means that a Subscriber had to treat the correspondence as a complaint, as it was an expression of dissatisfaction related to the Subscriber's services where a resolution was explicitly expected.

The Life CCC determined that section 9.10 applied in relation to the Consumer's request to review the claim decline and that the Consumer's correspondence of 18 July 2017 was a complaint.

Section 9.10

Section 9.10 of the Code creates an obligation for Subscribers, where possible, to respond to the Trustee so that the Trustee can provide a final response to the complaint in writing within 90 calendar days of the Trustee receiving the complaint.

In addition, section 9.10 has a content obligation which requires subscribers to provide the information listed in section 9.10(a) to (d).

In this instance, the Trustee received the complaint from the Consumer on 18 July 2017. This meant that the Subscriber in this instance had to respond to the Trustee so that the Trustee could provide a final response to the Consumer by 16 October 2017, 90 calendar days from when the Trustee received the complaint from the Consumer.

Based on the information provided, the Subscriber provided its response to the Trustee on 7 February 2018, which was clearly not within a timeframe to allow the Trustee to provide its final response to the Consumer by 16 October 2017.

The Subscriber applied the 'where possible' carve out and noted that it was not possible to provide a response to the Trustee to allow the Trustee to respond to the Consumer within 90 calendar days. This was because the Subscriber required the additional information that was

² 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.

³ See Life CCC Determination CX4436.

requested as part of the Subscriber's letter of 7 February 2018 in order to provide its response to the Trustee.

The Life CCC determined that this was not a reasonable use of the 'where possible' carve out as the Subscriber only made the request for the information that it required on 7 February 2018, almost 4 months after the Trustee's response to the Consumer was due.

The delay that caused the Subscriber to be unable to respond to the Trustee was wholly within the control of the Subscriber. In such cases, a Subscriber is not entitled to rely on the 'where possible' carve out in section 9.10 of the Code.

In addition, the 7 February 2018 letter put forward by the Subscriber did not contain the information in section 9.10(a) to (d) and did not constitute a final response to a complaint. The Subscriber's letter of 7 February 2018 was an information request and did not reference the Consumer's complaint or respond to the complaint.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code.

Serious and systemic non-compliance

The Subscriber conducted a review of the complaints it received between July 2017 and February 2018 and identified 23 instances where a complaint was received in relation to a declined claim, but no complaint was logged.

This meant that compliance with section 9.10 for each these 23 instances was not tracked and likely amounted to breaches of section 9.10 of the Code.

Based on the available information, as at 18 July 2017 the Subscriber did not have a robust process in place to record and track complaints regarding prior claim declines, resulting in the Subscriber having inadequate arrangements to ensure compliance with its Code obligations under section 9.10 of the Code.

As a result, the Life CCC 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 and systemic non-compliance with the Code.

The Subscriber noted that it amended its complaints process on 19 February 2018 and has stated that it currently records all requests to review a claim decline as complaints. The Subscriber's current processes and procedures for section 9.10 are being reviewed by the Life CCC as part of the Life CCC's response to the bulk referral received from a plaintiff law firm.

Section 8.29

Section 8.29 requires a Subscriber to either prioritise the assessment and decision of a claim and/or make an advanced payment if the Consumer reasonably demonstrates that the Consumer is in urgent financial need.

In this instance, the Consumer's legal representatives notified the Trustee's claims administrator in 2014 that the Consumer was in urgent financial need. However, the Subscriber has maintained that it has no record of any demonstration of urgent financial need by the Consumer or their legal representative.

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.

We note that the demonstration of urgent financial need occurred in 2014, 3 years prior to the Subscriber's adoption of the Code on 30 June 2017.

In addition, there was no evidence to indicate that the Trustee's claims administrator forwarded this demonstration of urgent financial need to the Subscriber. As section 8.29 only applies when the Consumer has demonstrated to the Subscriber that they have an urgent financial need, the Life CCC determined that section 8.29 of the Code was not applicable in this matter.

Key learnings

The definition of a complaint under section 9.10 can 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. Subscribers are encouraged to refer to Guidance Note 2⁵ for additional clarification regarding the Life CCC's interpretation of section 9.10 obligations.

While Subscribers are entitled to apply the 'where possible' carve out under section 9.10 of the Code, the Life CCC will consider if the application of the carve out is reasonable and appropriate for the circumstances.

A reasonable application of the 'where possible' carve out will depend, for example, on whether the delay is caused by the Subscriber or is due to external factors outside the Subscriber's control.

Relevant Code Sections

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 8.29

If **you** reasonably demonstrate to **us** that **you** are in urgent financial need, **we** will:

- a) prioritise the assessment and decision in relation to **your** claim; and/or
- b) make an advance payment to assist in alleviating **your** immediate hardship

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.

⁵ <https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10--Final.pdf>

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.