

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:	CX6296	Date:	25 November 2019
Code sections:	9.4, 9.5, 13.3(a) ¹		
Investigation:	Self-reported non-compliance by a Code subscriber		

The Code breach:

A Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) self-reported breaches of sections 9.4 and 9.5 of the Code.

The Subscriber self-reported the breaches due to an investigation by a financial services industry regulator (the Regulator) regarding a complaint from a Consumer about the independence of the Subscriber's complaints handling process.

The breaches were related to the Subscriber assigning the Consumer's complaint to the same person whose decision or conduct was the subject of the complaint. For example, assigning the complaint about the claim decline to the claims assessor who declined the claim.

As a result of the self-reported breach of section 9.4, the Life CCC also reviewed the Subscriber's compliance with section 13.3(a) of the Code.

The Subscriber noted that while it self-reported breaches of sections 9.4 and 9.5, it did not consider that the breaches amounted to significant breaches of the Code.

The Subscriber also noted that it considered itself 'partially compliant' with sections 9.4 and 9.5 and did not deem the breaches to be 'full breaches' of the Code.

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

The Life CCC assessed the matter and:

- confirmed the breach of section 9.4 of the Code, which was proven in whole and which amounted to serious and systemic non-compliance with the Code,
- determined that in this instance there was no evidence to indicate that the Subscriber was in breach of section 9.5 of the Code, and

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

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.

- determined that the Subscriber was in breach of section 13.3(a) of the Code, which was proven in whole and which amounted to serious and systemic non-compliance with the Code.

The Life CCC findings and conclusion:

Partial non-compliance

The Life CCC notes that the Subscriber has put forward that it was 'partially compliant' with sections 9.4 and 9.5 of the Code, and that the breaches were not 'full breaches'.

The Life CCC considers that the Subscriber's interpretation of compliance is incorrect - being 'partially compliant' with a Code obligation means that the Subscriber is non-compliant with that Code obligation. Being non-compliant with any one or more part of a Code obligation would result in a breach; there is no difference between a 'full breach' and a 'partial breach'.

Section 9.4

Section 9.4 of the Code creates an obligation for the complaint to be handled by someone different from the person whose decision or conduct is the subject of the complaint.

The Subscriber self-reported a breach of section 9.4 of the Code, as the Subscriber would often assign the complaint to the same person who handled the claim. This meant that the Subscriber did not have appropriate systems or processes in place to enable compliance with section 9.4 of the Code.

The breach affected multiple Consumers across multiple claims and complaints. The breach of section 9.4 undermined the independence of the complaints process and created actual or potentially unfair outcomes for Consumers as a complaint would be determined by the same person whose decision or conduct was the subject of the complaint.

While this does not automatically result in an unfair outcome for the Consumer, it is contrary to basic procedural fairness, the Life CCC notes that having an individual review their own conduct or decision is inherently unfair and will create a scenario where an independent review is not conducted.

As a result, the Life CCC confirmed the breach of section 9.4 of the Code and determined, in accordance with Charter clause 7.4(b)(iv),³ that the breach of section 9.4 of the Code amounted to serious and systemic non-compliance with the Code.

Section 9.5

Section 9.5 of the Code requires Subscribers to notify the Consumer of the name and contact details of the person assigned to liaise with the Consumer in relation to the complaint.

The Subscriber self-reported a breach of section 9.5 of the Code but confirmed that its process had been to notify the complainant of the name and contact details of the person assigned to liaise with the complainant.

Based on the information provided, the Subscriber self-reported a breach of section 9.5 of the Code as it provided the name and contact details of the person who was already dealing with the Consumer's claim.

³ 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.

In the Life CCC's view, there was no evidence to indicate that the Subscriber was in breach of section 9.5 of the Code, but rather the conduct confirmed the breach of section 9.4 of the Code.

Section 13.3(a)

Section 13.3(a) requires Subscribers to have appropriate systems and processes in place to enable compliance with the Code, and a failure of this would result in a breach of section 13.3(a).

The Life CCC reviewed the Subscriber's compliance with section 13.3(a) of the Code in light of the Subscriber's self-reported breach of section 9.4 of the Code.

As noted above, the Subscriber regularly assigned complaints to the same person whose conduct or decision was the subject of the complaint. As the Subscriber did not have appropriate systems or processes in place to enable compliance with section 9.4 of the Code, the Life CCC determined that the Subscriber was in breach of section 13.3(a) of the Code.

The lack of appropriate systems and processes affected multiple Consumers and created actual or potentially unfair outcomes for Consumers who had their complaints handled by the same person whose conduct or decision was the subject of the complaint.

As a result, the Life CCC determined, in accordance with Charter clause 7.4(b)(iv),⁴ that the breach of section 13.3(a) of the Code amounted to serious and systemic non-compliance with the Code.

Remediation

The Subscriber has since created a new position (Complaints Manager) which is responsible for overseeing, reporting, and managing all complaints. Given the relatively low number of complaints typically received by the Subscriber (approximately 50 complaints a year), the Subscriber noted that the Complaints Manager will independently manage all complaints and will undertake formal investigations of all complaints, including assessment of the information and the communication of the outcomes.

Given the size of the Subscriber's business, the Life CCC is satisfied that this should ensure that the Subscriber will be compliant with section 9.4 of the Code as the individual handling the claim and the complaint will not be the same person.

Key learnings

The Life CCC notes that Subscribers are expected to have adequate processes in place to enable compliance with the Code. Failure to have such processes would result in a breach of that section, in addition to a possible breach of section 13.3(a) of the Code.

Having the appropriate systems and processes, in addition to appropriate training and monitoring, is crucial in enabling compliance with the Code. Given that the Code has been in force since 1 July 2017, the Life CCC expects Subscribers to have appropriate systems and processes in place to enable compliance with all the obligations under the Code. Subscribers should conduct regular reviews of their processes to ensure that their processes correctly reflects and references the obligations under the Code.

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.

Relevant Code Sections

Section 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**.

Section 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**.

Section 13.3:

We will:

- a) have appropriate systems and processes in place to enable compliance with the **Code**;
- b) prepare an annual return to the **Life CCC** on **our** compliance with the **Code**; and
- c) have a governance process in place to report on **our** compliance with the **Code** to **our** Board of Directors or executive management.

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.