

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:	CX4571	Date:	14 January 2020
Code sections:	8.19 & 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 that membership, the Consumer obtained life insurance with Total and Permanent Disability (TPD) benefit. The Life Insurance policy 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).

We note that in this Matter the Subscriber was required to communicate with the Trustee instead of the Consumer, as described under section 8.1 of the Code,² and the Trustee would then provide its final decision to the Consumer.

On 10 March 2017, the Consumer's Legal Representative (CLR) lodged a complaint with the Trustee requesting the claim decline decision issued in September 2015 be reviewed. The Subscriber received a copy of the complaint on 21 March 2017 and in response, re-opened the claim on 28 March 2017. The complaint was closed on 2 May 2017.

As the complaint was lodged and closed prior to the Subscriber's Code adoption on 30 June 2017, the section 9.10 Code breach allegation did not apply to the Matter.

The Subscriber reviewed its decision and issued Procedural Fairness (PF)³ to the CLR on 29 September 2017. However, as the Subscriber did not receive any further submissions within the 28-day PF timeframe, the Subscriber issued its first decline letter to the Trustee on 1 November 2017.

Subsequently, the Subscriber received the PF response from the CLR on 21 November 2017. In the response, it was confirmed that the CLR had requested for further information and that it would be provided to the Subscriber for review once available. The CLR further requested

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

² Ibid.

³ Procedural Fairness is a legal principle that ensures fair decision making. In relation to life insurance claims, it involves the insurer providing the insured with the reasoning for its planned decision on the claim, including all the information that the insurer relied on in making its decision.

that a final claim decision be deferred until the Subscriber had considered all the additional information.

On 5 January 2018, the Subscriber received the final submission from the CLR and issued its second decline letter to the Trustee on 16 January 2018, within ten business days.

As part of the Life CCC's review of the file, we also raised a possible breach of section 8.19 of the Code.⁴

Findings in accordance with Charter clause 7.4(b)(iii)⁵:

The Life CCC determined that the Subscriber:

- Section 9.10 of the Code did not apply as the complaint and the complaint response predated the Subscriber's adoption of the Code;
- breached section 8.19 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

As the Subscriber received and finalised the complaint prior to the Code adoption on 30 June 2017, the complaint predated the Code and hence, section 9.10 did not apply to the Matter.

Section 8.19

Section 8.19 creates two separate obligations for Subscribers. In relation to the first obligation, the Subscriber must provide the information required under section 8.19(a) to (c) in writing to the Consumer when the decision is to decline the claim.

The second obligation is in relation to the Subscriber providing the information and documents that it relied on in making its decision to decline the claim to the Consumer within 10 business days, if requested by the Consumer.

The Life CCC's investigation in this matter was limited to the first obligation of section 8.19 of the Code.

The Subscriber issued two decline letters to the Trustee on 1 November 2017 and 16 January 2018. The Life CCC reviewed both the letters and noted that neither of the letters included the information required under section 8.19(b) of the Code, specifically that the Subscriber will provide the information that it relied on within 10 business days if requested.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code.

The Life CCC further noted that the Subscriber amended its decline letter template in December 2018 as a part of its remediation action in relation to a separate matter (CX4331⁶) and that the amended decline letter template included the information required under section 8.19(b) of the Code.

⁴ The Code sections are provided in full in the last section of the Determination.

⁵ 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.

⁶ <https://lifeccc.org.au/resources/notice-of-determination-cx4331/>

As previously confirmed under CX4331, the Subscriber acknowledged that prior to the amended template, it was likely that all of its claim decline letters omitted the appropriate wording as required by section 8.19(b) of the Code.

Accordingly, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁷ that the Subscriber's breach of section 8.19 of the Code amounted to systemic non-compliance with the Code. Given that the absence of the section 8.19(b) wording was unlikely to cause actual or potential financial loss to this Consumer, the Life CCC determined that there was no basis to conclude that the breach amounted to serious non-compliance with the Code.

Key Learnings

The Life CCC observes that a number of Subscribers have been in breach of section 8.19 by failing to include the information required under section 8.19(b) of the Code in their template decline letters. The obligation to inform Consumers of their rights under the section is especially crucial given that Consumers may often be vulnerable after being informed of the declination of their claim.

The Life CCC recommends that all Subscribers review their section 8.19 processes to ensure that the Consumers receive the information stipulated under the section to prevent any potential and unintended Consumer harm.

Relevant Code Sections

Section 8.1:

If **your** claim is covered by a **Group Policy**, **we** may be required to provide the communications referred to below to the **Group Policy-owner** (for example, the superannuation fund trustee which owns **your Life Insurance Policy**) in accordance with section 2.13. The **Group Policy-owner** will then communicate with **you** and assist with **your** claim. When **you** make a claim, **we** and/or the **Group Policy-owner** will let **you** know who will be in contact with **you**.

Section 8.19:

If **we** decline **your** claim **we** will let **you** know **in writing**:

- a) the reasons for **our** decision;
- b) that **you** have the right to copies of the documents and information **we** have relied on, 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**; and
- c) that **you** have the right to request a review if **you** disagree with **our** decision, and **we** will give **you** details of **our Complaints** process.

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**;

⁷ 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.

- 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**.

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.