

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:	CX4570	Date:	12 March 2020
Code sections:	9.10, 14.7 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) and Income Protection (IP) 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 submitted TPD and IP claims in April 2014, both of which were declined by the Subscriber prior to its adoption of the Code. On 29 March 2017, the Consumer's legal representatives lodged a complaint with the Trustee regarding the prior declined TPD and IP claims.

This was before the Subscriber's adoption of the Code on 30 June 2017. As a result, any timeframes under the Code were reset to day 1 from the date that the Subscriber adopted the Code.

To review the TPD claim, the Subscriber requested additional medical information on 5 July 2017 and requested a Chief Medical Officer (CMO) review on 12 September 2017, with the TPD claim being accepted on 23 October 2017.

In relation to the IP claim, the Subscriber acknowledged that this aspect of the Consumer's complaint was initially overlooked, resulting in the IP claim decline only being communicated on 2 January 2018.

The Life CCC notes that this breach allegation was part of the bulk referral received by the Life CCC in February 2018 from a plaintiff law firm.

The Life CCC also raised a possible breach of section 14.7 of the Code as the Subscriber had not responded promptly to a request for policy documentation from the Consumer on 8 February 2017.

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

In the Subscriber's response to the Life CCC, the Subscriber conceded that it was in breach of sections 9.10 and 14.7 of the Code.

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, and
- was in breach of section 14.7 of the Code, and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

Section 9.10 of the Code creates an obligation for a Subscriber to assist the Trustee in responding to a complaint in writing within 90 calendar days of receiving the complaint.

The final response to the complaint must include the final decision, the reasons for that decision, the Consumer's right to copies of the information relied on, that if requested the information will be provided within ten business days, and the relevant External Dispute Resolution (EDR) timeframes and contact details.

The Consumer lodged a complaint about the prior declined TPD and IP claims on 29 March 2017. 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.

As the Subscriber adopted the Code on 30 June 2017, the Subscriber had to provide the final decision to enable the Trustee to respond to the Consumer by 28 September 2017.

The Subscriber provided its decision to accept the TPD claim on 23 October 2017. While this was approximately 1 month after the 28 September 2017 deadline, the '*where possible*' carve out in section 9.10 of the Code allows the Subscriber to exceed the section 9.10 timeframe if it was not possible to provide a response within 90 calendar days due to circumstances that are outside of the Subscriber's control.

In this instance, the Subscriber required additional medical information to assess the Consumer's TPD claim. The Subscriber only received the Consumer's medical information on 31 August 2017 and had to undertake multiple reviews and referrals prior to being able to provide a decision on the TPD claim review. As a result, the Life CCC determined that the Subscriber could rely on the carve out in relation to the TPD claim.

However, the Subscriber only started its review of the IP claim in October 2017, after an enquiry from the Trustee. The Subscriber acknowledged that it was in breach of section 9.10 of the Code as the Subscriber overlooked the Consumer's request to review the IP claim, instead focusing on the review of the TPD claim.

The Subscriber communicated its decision on the IP claim on 2 January 2018. The Subscriber noted that this breach was an isolated matter that was due to the human error of the assessor.

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 <https://lifecc.org.au/app/uploads/2019/07/Determination-CX4436.pdf>

As a result, 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.

Section 14.7

Section 14.7 creates an obligation for the Subscriber to provide the Consumer with a copy of their Life Insurance Policy documentation promptly, if requested. The Life CCC previously determined⁴ that 'Life Insurance Policy documentation' means, at a minimum, the:

- Product Disclosure Statement (PDS)
- Policy Document, and
- Policy Schedule.

The Life CCC also previously determined that 10 business days is an acceptable definition of '*promptly*' under section 14.7. The Life CCC noted that there could be legitimate reasons as to why a Subscriber is unable to provide the requested documents within 10 business days, and the Life CCC retains the discretion to review each case on its merits.

In this instance, the Consumer requested a copy of the Policy Document on 8 February 2018 by emailing the assessor directly. The Subscriber provided a copy of the Policy Document on 28 March 2018, approximately 23 business days after the expiry of the 10 business day timeframe.

The Subscriber has acknowledged a breach of section 14.7 of the Code as it did not respond to the Consumer's request '*promptly*'. The Subscriber noted that the breach was an isolated matter due to the assessor's delay in processing the Consumer's request, and the information was provided to the Consumer following a verbal follow up in March 2018.

As the assessor is no longer working at the Subscriber, the Subscriber was unable to provide more information in relation to the specific reason why the assessor did not process the request at an earlier date.

The Life CCC determined that the Subscriber was in breach of section 14.7 of the Code, and that the allegation was proven in whole.

Key learnings

The breaches in this matter occurred within 6 to 9 months of the Subscriber's initial adoption of the Code. The Subscriber has since implemented a number of process changes which allow the Subscriber to better identify and remediate instances of human error.

While human error is not completely avoidable, Subscribers should ensure that they have adequate processes and procedures in place to minimise delays and breaches caused by human error.

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;

⁴ <https://lifeccc.org.au/app/uploads/2019/07/Determination-CX4321.pdf>

- 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 14.7:

If **you** request any of **your Life Insurance Policy** documentation from **us**, **we** will provide this to **you** promptly and in an electronic form if **you** request, subject to any process for releasing policy documentation that **we** are required to carry out by law.

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.