

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:	CX4784	Date:	3 March 2020
Code sections:	9.12 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer obtained life insurance issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The policy included an Income Protection (IP) benefit.

The Consumer made a claim under the policy's IP benefit, leading to the Consumer lodging a dispute with the Subscriber at the Financial Ombudsman Service (FOS)². FOS issued a Determination in favour of the Consumer in May 2016.

The Consumer's legal representatives wrote to the Subscriber on 6 July 2018 and sought additional partial benefits from June 2014 to January 2016 and additional total benefits from January 2016 to April 2017. The Consumer's legal representatives referred to this request as a '*claim/complaint*'.

The Subscriber responded on 21 September 2018 and sought additional information regarding the Consumer's medical history.

The Consumer's legal representatives made a referral to the Life CCC on 29 October 2018 alleging a breach of section 9.12 of the Code on the basis that the Subscriber did not provide its final decision in relation to the Consumer's complaint within 45 calendar days.

The Subscriber has maintained that it did not consider the letter it received on 6 July 2018 to be a complaint as the letter did not amount to an expression of dissatisfaction. The Subscriber further noted that the content of the letter dealt with lodging a new claim for the periods specified in the letter and included reference to supporting evidence. As a result, the Subscriber classified the letter as a new claim and did not lodge a complaint within its system.

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

² FOS was replaced by the Australian Financial Complaints Authority (AFCA), effective 1 November 2018.

Findings in accordance with Charter clause 7.4(b)(iii)³:

The Life CCC determined that the Subscriber was in breach of section 9.12 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.12

Section 9.12 of the Code creates an obligation for a subscriber to provide a final response to a complaint in writing within 45 calendar days.

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 on 6 July 2018. The Consumer's correspondence explicitly noted that the correspondence amounted to a complaint. As noted above, the Subscriber's view is that the correspondence did not amount to a complaint as the letter did not amount to an expression of dissatisfaction.

The Life CCC notes that:

- the correspondence from the Consumer dated 6 July 2018 explicitly noted that the request should be treated as a complaint, and
- the correspondence was sent to both the Subscriber's claims and complaints teams.

Given the above, the Life CCC determined that the Consumer's correspondence of 6 July 2018 amounted to a complaint.

In this instance, the Subscriber did not provide its final response to the Consumer's complaint as the Subscriber incorrectly classified the correspondence. As a result, the Life CCC determined that the Subscriber was in breach of section 9.12 of the Code and that the allegation was proven in whole.

The Subscriber was in breach of section 9.12 in this instance due to its incorrect classification of the correspondence from the Consumer's legal representatives on 6 July 2018.

Subscribers should lodge correspondence as a complaint in all instances where the Consumer notes that the correspondence is a complaint. This is a clear expression of dissatisfaction that explicitly requires a response.

The incorrect classification indicates that the Subscriber's processes and procedures regarding the classification of complaints is inadequate and may not be compliant with the Code.

As a result, the Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁴

³ 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.

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.

that the Subscriber's breach of section 9.12 of the Code amounted to serious and systemic non-compliance with the Code. The Life CCC continues to work with the Subscriber in relation to implementing adequate corrective action to remediate this breach.

Key learnings

If a Subscriber is unsure as to how it should classify and respond to correspondence which may amount to a complaint, it should contact the Consumer to seek their clarification as to whether they were lodging a formal complaint.

In scenarios where the Consumer specifically and explicitly notes that they are lodging a complaint, it is not appropriate for the Subscriber to make a unilateral decision that the Consumer is not intending to lodge a complaint.

Whether the Subscriber chooses to review the request from the Consumer via its claims or complaints process is an internal decision for the Subscriber. However, if the Consumer lodges a complaint, the Subscriber has to adhere to its obligations under Chapter 9 of the Code, including providing a final response to the Consumer's complaint as per section 9.12 of the Code.

Relevant Code Section

Section 9.12:

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

- 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) **your** right to take **your** Complaint to the Financial Ombudsman Service (**FOS**)⁵ if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your** Complaint to **FOS**; and
- d) contact details for **FOS**.

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.

⁵ FOS was replaced by the Australian Financial Complaints Authority (AFCA), effective 1 November 2018.