

# 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

<b>Reference:</b>	CX4411	<b>Date:</b>	22 June 2020
<b>Code sections:</b>	8.19, 9.4, 9.10 <sup>1</sup>		
<b>Investigation:</b>	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 submitted a TPD claim in September 2015, which was declined by the Subscriber in December 2016. The Consumer lodged the first complaint about the declined claim in February 2017. The first complaint contested the Subscriber's conclusion that the Consumer possessed the necessary skills to obtain employment without the need for further training.

The Subscriber noted that it resolved the first complaint on 29 May 2017 and re-opened the claim. As this was prior to the Subscriber's adoption of the Code on 30 June 2017, the first complaint was not covered by the Code. The Subscriber subsequently declined the claim on 12 July 2017.

On 8 August 2017, the Consumer's legal representatives submitted additional evidence and lodged a second complaint requesting that the Subscriber review its prior decline of the claim.

In response, the Subscriber reassessed the claim and sent Procedural Fairness to the Consumer on 9 November 2017.

The Code breach allegation was received by the Life CCC in February 2018, as part of the bulk referral that the Life CCC received from a plaintiff law firm. The Consumer alleged that the Subscriber was in breach of section 9.10 and 9.4 of the Code.

Complications arose in obtaining information that the Subscriber required to assess the claim, including delays in arranging a factual interview for the Consumer's employer and issues relating to obtaining a signed statement from the employer and external consultant.

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<sup>1</sup> The Code sections are provided in full in the last section of the Determination.

On 27 June 2018, the Consumer commenced legal proceedings against the Subscriber in the Victorian County Court. As a result, the Life CCC's investigation was placed on hold till 26 July 2019, when the Consumer advised that the legal proceedings had concluded.

As part of its investigation, the Life CCC also raised a possible breach of section 8.19 of the Code. The Subscriber conceded to a breach of section 8.19 of the Code but considered that it was compliant with section 9.4 and 9.10 of the Code.

### **Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>:**

The Life CCC determined that the Subscriber:

- was not in breach of section 9.10 of the Code and that the allegation was unfounded,
- was in breach of section 9.4 of the Code and that the allegation was proven in whole, and
- was in breach of section 8.19 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 a Trustee in responding to a complaint in writing within 90 calendar days of receiving the complaint, where possible.

As noted above, the Code did not apply to the first complaint as the complaint was lodged and resolved prior to the Subscriber's adoption of the Code on 30 June 2017. However, the Code applied to the second complaint lodged by the Consumer on 8 August 2017.

The Life CCC notes that there were complications in this matter as the Subscriber ceased to be the insurer for the Trustee in 2012, with another insurer's risk commencing prior to when the Consumer ceased work in 2013.

There were also delays in arranging a factual interview for the Consumer's employer and issues relating to obtaining a signed statement from the employer and external consultant.

Given the above, the Subscriber was entitled to rely on the 'where possible' carve out in section 9.10 of the Code, as it was not possible for the Subscriber to provide its final decision in relation to the complaint within 90 calendar days of receiving the complaint.

As a result, the Life CCC determined that the Subscriber was not in breach of section 9.10 of the Code, and that the allegation was unfounded.

#### **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.

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<sup>2</sup> 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.

The initial decision to decline the Consumer's claim was made by the Subscriber's claims assessor, KH. Based on the information available, KH was the individual who signed off the correspondence sent to the Consumer regarding both the first and second complaint.

The Subscriber stated that while KH signed off the correspondence sent to the Consumer, the complaints were reviewed and determined by another claims assessor who was not involved in the original claim decline.

The Life CCC notes that in instances where a claim decision is being reviewed, the person who made the claim decision should have no involvement in the review. While the claim review may have been conducted by another claims assessor, the correspondence received by the Consumer would lead the Consumer to naturally conclude that KH was the individual handling the complaints.

The purpose and intent of section 9.4 of the Code is not only to prevent bias in complaints handling, but to avoid the *appearance* of bias as well.

As the information available clearly indicates that the complaint was being handled by the same person who initially declined the claim, the Life CCC determined that the Subscriber was in breach of section 9.4 of the Code and that the allegation was proven in whole.

### **Section 8.19**

Section 8.19 requires a Subscriber to inform a Consumer of a claim decline in writing, and to include the information listed in section 8.19(a) to (c).

The Subscriber has acknowledged that its decline letter of 12 July 2017 did not include the information required under section 8.19(b) and 8.19(c) of the Code. As a result, the Life CCC determined that the Subscriber was in breach of section 8.19 of the Code.

The Subscriber conducted a review of its section 8.19 process and amended its template letters in October 2019 to include the information required under section 8.19 of the Code.

As the Subscriber did not have an adequate process to enable compliance with section 8.19 prior to October 2019, the Life CCC determined that the Subscriber's breach of section 8.19 of the Code amounted to serious and systemic non-compliance with the Code.

### **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 2<sup>3</sup> 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.

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<sup>3</sup> <https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10--Final.pdf>

## Relevant Code Sections

### 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
- c) **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
- d) 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 9.4:

**Your Complaint** will be handled by someone different from the person or persons whose decision or conduct is the subject of the **Complaint**.

### Section 9.10

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**.

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.