

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:	CX4392	Date:	16 July 2020
Code sections:	8.7, 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 its decision to the Trustee, as described under section 8.1 of the Code,² and the Trustee would then provide the decision to the Consumer.

The Consumer lodged a TPD claim on 10 September 2014, which was declined on 9 November 2015. The Consumer's Legal Representative (CLR) lodged a complaint with the Trustee on 21 June 2017 regarding the prior declined claim. The Trustee received the complaint on 27 June 2017 and referred the complaint to the Subscriber on the same day.

As the Subscriber adopted the Code on 30 June 2017, the 90-calendar day timeframe under section 9.10 of the Code commenced on 30 June 2017 and expired on 28 September 2017. This meant that the Subscriber had to provide its complaint response to the Trustee to enable the Trustee to issue its complaint response to the CLR by 28 September 2017. The Subscriber provided its complaint response to the Trustee on 31 October 2017.

The CLR made a referral to the Life CCC in March 2018 and alleged that the Subscriber was in breach of sections 8.7 and 9.10 of the Code.

When advised by the Subscriber in June 2018 that legal proceedings had commenced in relation to the matter, the Life CCC halted its investigation, as per section 7.3(b) of the Life CCC Charter, until October 2018 when it was formally advised that legal proceedings had concluded.

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

² Ibid.

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

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 8.7 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

The Subscriber conceded that its complaint response letter dated 31 October 2017 was outside the 90-calendar day timeframe and did not include the information required under section 9.10(b) of the Code.

However, the Subscriber put forward that the '*where possible*' carve out applied in this instance. The Subscriber noted that it was not possible for the Subscriber to provide a final response to the Trustee by 28 September 2017 as the Subscriber had to request new information as part of its response to the complaint.

The Subscriber requested a copy of the Consumer's Desktop Employability Assessment (DEA) report as part of its review. The Life CCC noted that there was a 5-week delay in requesting for the DEA report, resulting in the Subscriber only receiving all the information that it required on 10 October 2017. This was after the 90-calendar day timeframe expired on 28 September 2017.

As the Subscriber's delay in requesting for the additional information caused the breach of its timeframe obligation under section 9.10 of the Code, the Life CCC formed the view that the Subscriber was not entitled to rely on the '*where possible*' carve out and as a result was in breach of section 9.10 of the Code.

The Life CCC also determined that the Subscriber was in breach of section 9.10(b) of the Code as its final complaint response did not include the information required under section 9.10(b) of the Code.

Serious and systemic non-compliance

The Life CCC previously reviewed the Subscriber's section 9.10 processes and procedures as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC in February 2018.⁴ The Life CCC determined that prior to June 2018, the Subscriber did not have adequate processes to enable compliance with section 9.10 of the Code.

As the Subscriber's complaint response in this Matter (dated 31 October 2017) fell within this timeframe (prior to June 2018), at the time of the Subscriber's breach of section 9.10 the Subscriber had inadequate processes and procedures to enable compliance with all elements of section 9.10 of the Code.

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 Life CCC Report on Claims and Complaints Handling Obligations issued in March 2020 - <https://lifeccc.org.au/resources/claims-and-complaints-handling-obligations/>.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 9.10 amounted to serious and systemic non-compliance with the Code.

Section 8.7

Section 8.7 requires a Subscriber to request the information that it needs as early as possible and to avoid multiple information requests where possible.

The Subscriber acknowledged that it was in breach of section 8.7 of the Code. This was because the Subscriber failed to request the Consumer's DEA report as early as possible.

The Subscriber conceded that it could have requested the report after receiving the Consumer's medical information on 8 August 2017. Instead, the Subscriber only requested the DEA report on 14 September 2017.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code. The Life CCC notes that there was no further evidence to indicate that the breach of section 8.7 amounted to a widespread issue affecting other Consumers.

Key Learnings

As the Code has been operational for almost three years, the Life CCC expects all Subscribers to have comprehensive Code compliance processes fully embedded into their business operations, and to regularly review their systems and processes to ensure full and demonstrable compliance with all obligations of the Code.

The Life CCC expects Subscribers to ensure staff are aware of the need to request information required as early as possible. This is because a breach of section 8.7 of the Code could often result in significant delays in the consideration of complex claims or complaints and result in a breach of other sections within Chapter 8 and/or 9 of the Code.

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 8.7:

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

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,

⁵ 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.

- 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.