

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:	CX4448	Date:	17 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 communicated its decision to the Trustee, as described under section 8.1 of the Code,² and the Trustee would then provide its decision to the Consumer.

The Consumer's Legal Representative (CLR) lodged a TPD claim on 1 February 2016. The claim was declined on 30 March 2017. On 25 January 2018, the CLR lodged a complaint regarding the prior declined claim. The Trustee received the complaint on 31 January 2018 and referred the complaint to the Subscriber on the same day.

The 90-calendar day timeframe under section 9.10 commenced on 31 January 2018 and the Subscriber was required to provide a decision on the claim to the Trustee to enable the Trustee to provide the final decision on the claim to the Consumer by 1 May 2018.

The Subscriber issued the final decision on the claim to the Trustee on 15 February 2019, 291 days outside the 90-calendar day timeframe under section 9.10 of the Code.

Due to the delay in communicating the decision on the claim to the Consumer, the CLR alleged that the Subscriber was in breach of section 9.10 of the Code. As part of our review of the Matter, we also raised potential non-compliance with section 8.7 of the Code.

The Subscriber acknowledged that it was in breach of sections 9.10 and 8.7 of the Code.

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

Section 9.10 of the Code sets out two separate elements for a Subscriber. The first element is that a Subscriber must provide a final response to the Trustee, to enable the Trustee to respond to the complaint in writing within 90 calendar days of receiving the complaint.

The second element is that the final response to the complaint must include the information required under section 9.10(a) to (d) of the Code.

As noted above, the Subscriber was required to communicate the final decision on the claim to the Trustee to enable the Trustee to provide the final decision to the Consumer by 1 May 2018.

The Life CCC noted that the final decision was communicated to the Trustee on 15 February 2019. The Subscriber acknowledged that it failed to provide a decision within 90 calendar days to the Trustee to enable the Trustee to provide the decision on the claim to the CLR by 1 May 2018.

The Life CCC also noted that the Subscriber's final decision letter to the Trustee dated 15 February 2019 did not include the information required under section 9.10(b) of the Code.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 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 received in 2018.⁴ During that review, the Life CCC confirmed that the Subscriber did not have adequate processes prior to March 2020 as the Subscriber's complaint response letter template did not include the information required under section 9.10(b) of the Code.

As the Subscriber's complaint response in this Matter (dated 15 February 2019) failed to include the information required under section 9.10(b) of the Code and was prior to March 2020, this indicated that the Subscriber did not have a compliant section 9.10 letter template for almost 3 years since Code inception.

The Life CCC also noted that the Subscriber took more than 9 months to resolve the complaint and its review of the claims decision.

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://lifecc.org.au/resources/claims-and-complaints-handling-obligations/>.

As a result, the Life CCC determined in accordance with Charter clause 7.4(b)(iv) that the Subscriber's breach of section 9.10 of the Code 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 identify that the authority it held was outdated, resulting in the Subscriber making multiple information requests for an updated authority and additional information from the Consumer.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code.

Key Learnings

The Life CCC expects Subscribers to conduct periodic reviews on ongoing claims to avoid multiple information requests and to identify the information that subscribers require 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.

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.

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, 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.