

## 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>	CX4574	<b>Date:</b>	30.06.2020
<b>Code sections:</b>	9.4 and 9.10		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

### The alleged Code breach:

The Consumer was a member of a Superannuation Fund. As part of the membership, the Consumer obtained life insurance with a Total and Permanent Disability (TPD) benefit. The life insurance policy was issued by the Subscriber and is a Group Policy owned by the trustee of the Superannuation Fund (the Trustee).

The Consumer lodged a complaint with the Trustee on 12 October 2017 in relation to the decline of his TPD claim in March 2017.

The Consumer's legal representative made a referral to the Life CCC on 13 July 2018 and alleged that the Subscriber was in breach of section 9.10 of the Code as the Subscriber failed to provide a decision in relation to the complaint within 90 days of the Trustee receiving the Consumer's complaint.

The Subscriber maintained the decision to decline the claim and the response to the complaint was sent to the Trustee on 6 September 2019.

The matter was placed on hold by the Life CCC, pending completion of the bulk referral investigation. The Life CCC commenced its review of this matter in October 2019. As part of its review of this matter, the Life CCC also raised a possible breach of section 9.4 of the Code.

### Findings in accordance with Charter clause 7.4(b)(iii)<sup>1</sup>:

The Life CCC determined that the Subscriber was in breach of sections 9.10 and 9.4 of the Code and that the allegations were proven in whole.

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<sup>1</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 Life CCC findings and conclusion:**

### **Section 9.10**

Section 9.10 requires a Subscriber to provide its response to the Trustee so that the Trustee can provide a final response to a Consumer's complaint in writing within 90 calendar days of the Trustee receiving the complaint.

In this instance, the Subscriber acknowledged a breach of section 9.10 of the Code. The complaint was lodged on 20 October 2017 and the Subscriber did not respond to the complaint until 15 March 2018, which was after the 90-calendar day timeframe that expired on 18 January 2018.

Accordingly, the Life CCC determined that the Subscriber was in breach of section 9.10 and that the allegation was proven in whole.

### **Serious and Systemic**

The Life CCC reviewed the Subscriber's section 9.10 processes as part of the Life CCC's response to receiving a bulk referral relating to specific sections of the Code, including section 9.10 of the Code.

As part of the review, the Life CCC determined that the Subscriber did not have adequate processes in place to enable compliance with section 9.10 of the Code.

The Life CCC's review identified that:

- The Subscriber did not adequately train its staff on compliance with section 9.10 of the Code, resulting in the Subscriber's complaint response template not being used consistently by its staff, and
- The Subscriber's process did not have the appropriate level of monitoring to identify if the appropriate templates were being used when responding to a complaint.

The Subscriber remediated its processes around section 9.10 of the Code in June 2018. As the Subscriber's breach of section 9.10 in this instance occurred prior to its remedial action in June 2018, the Life CCC determined that the section 9.10 breach amounted to serious and systemic non-compliance with the Code as per clause 7.4(b)(iv) of the Life CCC Charter.

### **Section 9.4**

Section 9.4 of the Code requires that the Consumer's complaint is handled by someone different from the person or persons whose decision or conduct is the subject of the complaint.

The Subscriber confirmed that it considered the request for a review of the claim's decision as part of the reassessment of the claim and not as a complaint. As such, the complaint was reviewed by the same Case Manager that handled the initial claim.

The Life CCC notes that in instances where a claim is being reviewed, the person who made the claim decision should not be involved in the review. The purpose of section 9.4 of the Code is to prevent bias and conflicts of interest in the complaints handling process. As the Subscriber has confirmed 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.

## Serious and Systemic

The Subscriber confirmed that prior to the release of Guidance Note 2<sup>2</sup> by the Life CCC (which notes that any scenario where a Consumer is requesting a review of the prior claim decline should be treated as complaint), the Subscriber did not have an adequate process to enable its compliance with the section 9.4 of the Code.

The Life CCC noted that for an extended period, the Subscriber did not have a process or framework in place which enabled them to correctly identify and trigger a complaints process for all claims-related complaints. As a result, the Life CCC determined that the breach of section 9.4 amounted to serious and systemic non-compliance of the Code, as per clause 7.4(b)(iv) of the Life CCC Charter.

## Remediation Actions

The Subscriber confirmed that it remediated its *declined claims complaint process guide* in April 2020 to ensure that any requests for a review of a claim will be correctly treated as a complaint. The Life CCC reviewed the remediated process guide and confirm that it is satisfied with the changes made by the Subscriber.

As a result, the Life CCC is satisfied that the Subscriber has remediated the breach of section 9.4 and therefore no further action is required.

## Key learnings

The definition of a complaint under chapter 9 of the Code 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 matters.

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.

## Relevant Code Sections

### 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**;

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

<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>

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.