

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:	CX 4455	Date:	20 July 2020
Code sections:	8.16, 9.10, 11.1 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer was a member of an Employer default Superannuation fund. As part of that membership the Consumer has a life insurance cover which includes a Total & Permanent Disability (TPD), Income Protection (IP) and Death benefits. The policy was issued by the Subscriber and is a Group Policy owned by the Trustee.

On 19 August 2014, the Consumer lodged a complaint with the Trustee, advising that he never signed up to the Subscriber's Death and TPD insurance policies and requested these be cancelled and his premiums refunded. The Trustee carried out the Consumer's request on 17 September 2014.

The Consumer submitted an IP claim with the Trustee on 24 October 2016. As a result of delays in assessing the claim, the Consumer made a complaint to the Trustee on 4 April 2017. The Trustee responded to the Consumer on 19 May 2017 advising that the delays were the result of it having to wait for information from the Consumer's retail insurance provider, from whom he had already been receiving an IP benefit.

The Subscriber subsequently accepted the claim and the Trustee communicated the decision to the Consumer on 21 September 2017. Although the Consumer's claim was accepted, the Trustee advised that as the Consumer was already in receipt of an IP benefit from his retail policy, the net benefit would be \$0, as a result of an offset. The Consumer was given the option to withdraw his claim, so as not to affect any future claims.

On 24 October 2017, the Consumer lodged a further complaint with the Trustee, asking it to review its claims decision. The Trustee responded to the Consumer's complaint on 27 November 2017 upholding the claim decision.

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

The Consumer referred the matter to the Life CCC on 8 May 2018 to consider the Subscriber's conduct in the handling of this claim and subsequent complaint. Upon a review of the available information, the Life CCC considered sections 8.16, 9.10 and 11.1 of the Code were applicable.

Findings in accordance with Charter clause 7.4(b)(iii)²:

The Life CCC determined that the Subscriber:

- was not in breach of section 8.16 of the Code and the allegation was unfounded,
- was in breach of section 9.10 of the Code, that the allegation was proven in whole and amounted to systemic non-compliance with the Code, and
- was in breach of section 11.1 of the Code, that the allegation was proven in whole and amounted to serious and systemic non-compliance with the Code.

The Life CCC findings and conclusions:

Section 8.16

Section 8.16 of the Code requires Subscribers to make a decision on an income-related claim no later than two months after it is notified of the claim, unless unexpected circumstances apply.

Based upon a plain reading of section 8.16, the section sets out four separate elements for Code subscribers. The four elements are as follows:

1. Inform the consumer of the Subscriber's initial decision no later than two months after the claim is notified, or two months after the end of any waiting period, unless Unexpected Circumstances apply.
2. Inform the consumer of the Subscriber's decision no later than twelve months after the claim is notified if Unexpected Circumstances apply.
3. If Unexpected Circumstances applies, the Subscriber must inform the consumer of the reasons for the delay, and that the consumer can disagree with the reasons. The Subscriber will conduct a review if the consumer disagrees.
4. Provide the consumer with the Subscriber's complaints process if a decision cannot be made within twelve months.

Element 1

The two-month timeframe begins from the date the subscriber is notified of the claim or from the date the subscriber adopted the Code if it adopted the Code after the date it is notified of the claim. Based on the information provided the decision letter was sent to the Consumer within two months of the relevant date and therefore satisfied the requirements of element 1; consequently, the remaining elements of the section 8.16 of the code do not apply. As a result, the Life CCC determined that that the Subscriber was not in breach of section 8.16 of the Code.

² 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.

Section 9.10

Section 9.10 requires a Subscriber to provide a final response to a Consumer's complaint within 90 days of the fund Trustee receiving it. Based on a plain reading of section 9.10, the section sets out two separate elements for Code subscribers.³

The two elements are as follows:

1. 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.
2. You will be informed:
 - 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.

Element 1

The Consumer lodged a complaint with the Trustee and a copy was provided to the Subscriber on 24 October 2017. To comply with this element, the Subscriber was required to complete its review and allow sufficient time for the Trustee to respond to the complaint within the 90-day timeframe (22 January 2018).

As the Subscriber provided its response to the Trustee on 27 November 2017, it satisfied the requirements of element 1.

Element 2

The Life CCC has previously determined that a Subscriber must inform the consumer or Trustee owner in writing, of each requirement set out in 9.10 (a) to (d) of the section.

The Life CCC noted that the Subscriber's complaint response provided to the Trustee on 27 November 2017 contained the information required at (a), (c) and (d) but did not provide information about the Consumer's right to access documents (b).

Copies of its exchanges with the Trustee were provided by the Subscriber in preparing its response to the Consumer's complaint. The Subscriber considered the complaint as a request for the Trustee to review its decision on the claim and therefore deemed that the Trustee was responsible for responding to the complaint.

³ The Life CCC issued a Guidance Note in November 2019-Guidance Note 2 "Interpreting and applying Life Insurance Code of Practice section 9.10".

The Subscriber also noted that the Trustee had already released claim-related information to the Consumer by way of a Right to Information (RTI) request, in September 2017. After issuing its response to the Consumer, representatives of the Trustee also met with the Consumer to discuss his concerns.

Although by the time the Subscriber had issued its complaint response, the Consumer had already been provided with the information and documents to which he was entitled, section 9.10 of the Code refers to the Consumer's right, under the Code, to documents and information which a Subscriber has relied upon to assess the complaint.

The Life CCC therefore considered that, in the circumstances, the Subscriber should have communicated to the Consumer (via the Trustee) that as part of the complaint response it had considered the same information as had already been released to him, but that his entitlement to the view this information as per section 9.10 of the Code, remained.

By failing to do so, the Life CCC determined that the Subscriber did not meet the requirements as set out by element 2 of the section 9.10 of the Code and therefore was in breach of section 9.10 of the Code. It was also noted that the Subscriber did not have sufficient processes in place to ensure compliance with section 9.10(b) in particular and therefore the Life CCC further determined that the breach of section 9.10 amounted to systemic non-compliance with the Code.

The Subscriber has since satisfied the Life CCC that it now has processes in place to ensure its complaints handling processes fully enable compliance with all requirements as set out in section 9.10 of the Code.

Section 11.1

Section 11.1 of the Code requires Subscribers to make consumer aware of the Code and provides as follows:

"We will make our customers aware of the Code, which will include providing information about the Code on our websites and in our relevant marketing documents."

The Consumer alleged that the Trustee's website did not make any reference to the Subscriber being the insurer and a subscriber to the Code, nor provide details of the Code.

The Subscriber does not operate its own website, rather it has a dedicated "life insurance" page on the Trustee's website. The Life CCC is of the view that consumers need to know who issues the life insurance product and that this entity is a Code Subscriber, and that they have the option to make a complaint if they think the Subscriber has not complied with the Code.

As the Subscriber failed to ensure that it had information about the Code on the Trustee's website, the Life CCC determined that it was in breach of section 11.1 of the Code. Given the Trustee's website made no reference to the Code or that its insurer was a Subscriber, it is likely that consumers may not have been aware of their rights under the Code and therefore the Life CCC further determined that the breach of section 11.1 of the Code amounted to serious and systemic non-compliance.

At the request of the Life CCC, the Subscriber made arrangements for this information to be placed on the Trustee's website and the Life CCC is now satisfied that this meets the requirements of section 11.1 of the Code.

Key Learnings

The Life CCC considers that section 9.10(b) requires the Subscriber to clearly set out the Consumer's rights in relation to requesting the information that the Subscriber relied upon in determining the complaint. Subscribers are encouraged to refer to Guidance Note 2⁴ for additional clarification regarding the Life CCC's interpretation of section 9.10.

The Life CCC notes that one of the Key Code Promises made by Subscribers is to be transparent. One of the ways that Subscribers keep this promise is by having a website that is compliant with the requirements under the Code. Subscribers are encouraged to refer to Guidance Note 3⁵ for the information required on a Subscriber's website.

Relevant Code Sections

Section 8.16:

For income-related claims, **we** will let **you** know **our** initial decision no later than two months after **we** are notified of **your** claim or two months after the end of **your** waiting period (whichever is later), unless **Unexpected Circumstances** apply. Where **Unexpected Circumstances** apply, **our** decision will be made no later than 12 months after **we** are notified of **your** claim. **We** will let **you** know the reasons for the delay, and if **you** disagree **we** will review this. If **we** cannot make a decision within 12 months, **we** will give **you** details of **our Complaints** process.

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**.

Section 11.1:

We will make **our** customers aware of the **Code**, which will include providing information about the **Code** on **our** websites and in **our** relevant marketing documents.

⁴ <https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10.pdf>

⁵ <https://lifeccc.org.au/app/uploads/2020/06/GN3-Providing-info-about-complaints-process-and-the-Code.pdf>

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.