

# 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:** CX4536 **Date:** 10 August 2020

**Code sections:** 9.10<sup>1</sup>

**Investigation:** A consumer-reported alleged Code breach

## The alleged Code breach:

The Consumer is a member of a Superannuation fund and as part of that membership, he obtained life insurance with Total and Permanent Disability (TPD) benefit. The Life Insurance policy was issued by a Subscriber to the Code and is a Group policy owned by the Trustee.

The Consumer lodged a TPD claim with his Superannuation fund on 1 March 2013, which was subsequently declined by the Subscriber on 17 October 2016 and communicated to the Consumer on 1 November 2016.

On 3 February 2017, the Consumer's legal representative lodged a complaint with the Trustee requesting the claim decline decision be reviewed. The Subscriber received a copy of the complaint on 17 February 2017 and responded to the Trustee to advise that, in order to reassess the claim, it required more information from the Consumer's GP.

The Subscriber received the medical information on 19 May 2017 and on 26 May 2017 it wrote to the Trustee to request that the Consumer attend an Independent Medical Examination (IME).

The Consumer failed to attend the IME scheduled for 6 July 2017. In the subsequent months up to March 2018, the Subscriber repeatedly attempted to rearrange the IME, but the Consumer was not able attend until 5 March 2018.

The Subscriber received a copy of the IME report on 21 March 2018 and wrote to the Trustee on 26 March 2018 confirming that it would be accepting the claim.

The Consumer's legal representative alleged that the Subscriber had taken in excess of 90 calendar days to accept the TPD claim after it lodged its complaint on 3 February 2017 and was therefore in breach of section 9.10 of the Code.

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

## **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 and the allegation was unfounded.

## **The Life CCC findings and conclusion:**

### **Section 9.10**

Section 9.10 of the Code requires a subscriber, where possible, to respond to the Trustee so that the Trustee can provide a final response to the complaint in writing within 90 calendar days of the Trustee receiving the complaint.

In this instance, the Trustee received the complaint from the Consumer on 3 February 2017. As the complaint was made prior to the Subscriber adopting the Code and remained unresolved at 1 July 2017, this meant that the Subscriber in this instance had to respond to the Trustee so that the Trustee could provide a final response to the Consumer by 28 September 2017, 90 calendar days from when the Trustee received the complaint from the Consumer.

Based on the information provided, the Subscriber provided its response to the Trustee on 26 March 2018, which was not within a timeframe to allow the Trustee to provide its final response to the Consumer by 28 September 2017.

The Subscriber applied the 'where possible' carve out and noted that it was not possible to provide a response to the Trustee to allow the Trustee to respond to the Consumer within 90 calendar days. This was because the Subscriber required additional medical information and the Consumer failed to attend a number of scheduled Independent Medical Examinations (IME).

The Subscriber wrote to the Trustee on 17 February 2017 to confirm that it would re-assess the Consumer's claim. On 7 June 2017, the Trustee wrote to the Consumer's legal representative on behalf of the Subscriber to ask the Consumer to attend an Independent Medical Examination (IME) which was scheduled for 6 July 2017. The Consumer's legal representative confirmed on the same day that the Consumer would attend the scheduled IME.

Based upon the information provided, between 6 July 2017 and 22 February 2018, the Consumer failed to attend the original IME appointment and several rearranged appointments. The Consumer finally attended the IME on 5 March 2018, the Subscriber received the results on 21 March 2018 and wrote to the Trustee to confirm that the claim had been accepted on 26 March 2018. The Subscriber has stated that the delays in the Consumer attending the IME meant that it was unable to accept the claim and provide its final response to the complaint until 26 March 2018.

The Life CCC agreed that the Subscriber made all reasonable efforts to accommodate the Consumer's wishes for new appointment dates, including his request for the IME to take place

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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.

via teleconference. The Life CCC therefore considered that the reasons for the delay in providing its final complaint response were outside of the Subscriber's control.

As a result, the Life CCC determined that the Subscriber was entitled to rely on the "where possible" carve out and therefore it had not breached section 9.10 of the Code.

## **Relevant Code Section/s**

### **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.