

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 4544	Date: 7 August 2020
Code sections:	9.10 ¹	
Investigation:	A consumer-reported alleged Code breach	

The alleged Code breach:

The Consumer held life insurance cover as part of a Group Life policy, owned by the Trustee of his superannuation fund. The life insurance was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code).

The Consumer's legal representative lodged a Total and Permanent Disability (TPD) claim on behalf of the Consumer on 16 February 2016, which was subsequently declined by the Subscriber on 14 February 2017. The Consumer lodged a complaint with the Subscriber on 20 June 2017 (Complaint 1), requesting a review of the declined decision. The Subscriber reviewed the claim and communicated its decision to uphold the decline to the Trustee on 4 July 2017.

The Consumer's representative lodged a second complaint with the Trustee on 14 September 2017 (Complaint 2) disputing the Subscriber's previous response that the Consumer was not Totally and Permanently Disabled and providing additional supporting information. The Subscriber was provided with a copy of the complaint on 21 September 2017. The Subscriber provided its final response to the Trustee on 6 October 2017 maintaining its decline of the claim.

While the Trustee was reviewing the Subscriber's response, the Consumer's representative provided further information to the Trustee in support of the claim on 17 November 2017, which was passed on to the Subscriber on 20 November 2017. The Subscriber wrote to the Trustee on 21 November 2017 to advise that it was maintaining its decline decision.

On 21 March 2018, the Trustee wrote to the Consumer's representative to confirm that it had also upheld the Subscriber's decision to decline the claim.

The Consumer's representative subsequently made a referral of an alleged Code breach to the Life CCC, alleging that the Subscriber had breached section 9.10 of the Code by not providing a response to the complaint within 90 calendar days.

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

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

The Life CCC determined that the Subscriber:

- was in breach of section 9.10, that the allegation was proven in whole and amounted to serious and systemic non-compliance with the Code.²

The Life CCC findings and conclusion:

Elements in section 9.10

Section 9.10 requires that Subscribers, where possible, 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 addition, section 9.10 also requires Subscribers to provide the information listed under section 9.10(a) to (d) of the Code within its final complaint response letter.

Complaint 1: Final response within 90 calendar days

The Consumer's legal representative lodged a complaint on 20 June 2017 with the Trustee and requested a review of the decision. The Trustee referred the complaint to the Subscriber for a response on 27 June 2017.

Section 9.10 of the Code requires the Subscriber to provide a response to enable the Trustee to provide its final response to the complaint within 90 calendar days.

Any complaint which was open at the date the Subscriber adopted the Code had the timeframe of 90 days under section 9.10 reset from the date of Code adoption.

The insurer became a Subscriber of the Life Insurance Code of Practice on 30 June 2017, at which stage it was bound by all the obligations under the Code. Hence Day 1 was 30 June 2017 and the 90 days elapsed on 28 September 2017.

The Subscriber provided its final response to the Trustee on 4 July 2017 and therefore was compliant with the 90 calendar day timeframe in relation to the first complaint.

Complaint 1: Providing the information in 9.10(a) to (d)

The Life CCC reviewed the Subscriber's response to Complaint 1 and noted that the information required under section 9.10(b)-(d) was not included within the Subscriber's response to the Trustee. In circumstances where the Subscriber does not have direct control over the response provided to the Consumer, the Subscriber should provide the information in section 9.10(a)-(d) in its response to the Trustee on the understanding that the Trustee will relay the information to the Consumer.

As this did not occur in this instance, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code in relation to the first complaint.

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.

Complaint 2: Final response within 90 calendar days:

The Consumer's representative lodged a second complaint with the Trustee on 14 September 2017 disputing the Subscriber's previous response that the Consumer was not TPD and providing additional supporting information. The Subscriber was provided with a copy of the complaint on 21 September 2017. To comply with section 9.10, the Subscriber needed to have completed its review to enable the Trustee to reply to the Consumer no later than 20 December 2017.

The Subscriber provided its final response to the Trustee on 6 October 2017 and therefore was compliant with the 90 calendar day timeframe in relation to the second complaint.

Complaint 2: Providing the information in 9.10(a) to (d)

The Life CCC reviewed the Subscriber's response to Complaint 2 and noted that the information required under section 9.10(b)-(d) was not included within the Subscriber's response to the Trustee.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 of the Code in relation to the second complaint.

Consumer's provision of further information

On 17 November 2017, the Consumer's legal representative provided the Trustee and the Subscriber with copies of the Consumer's workers compensation file that had not previously been considered as part of the claim assessment.

The Subscriber responded to the Trustee on 21 November 2017, confirming that this additional information had been reviewed but that it was maintaining its decision to decline the Consumer's claim.

The Life CCC determined that, as the letter of 17 November 2017 only contained a link to download a copy of documents in support of the claim and there were no new issues raised, the correspondence did not constitute a separate complaint. Instead, the 17 November 2017 letter was part of the Consumer's submission in his second complaint, which was still ongoing at the time.

Serious or systemic³

The Subscriber took the view that it did not need to provide reference to the consumer's right to information it had used in assessing a complaint (section 9.10 (b)) in its complaint response letters as it would have already provided this when it issued its procedural fairness letter.

The Subscriber's usual practice was to provide consumers with copies of all documents considered when making its claims decision along with its procedural fairness letter prior to any "detrimental decision." It confirmed in this matter that procedural fairness was issued to the Consumer on or about 27 October 2016 and therefore the Subscriber considered it had complied with section 9.10(b) on this basis.

It is the Life CCC's view that it is inappropriate for a subscriber to assume that a consumer has retained copies of information they were provided as part of procedural fairness, particularly when a complaint may follow sometime after this was issued. In this matter, the complaints were made some eight months after the procedural fairness letter was issued to the Consumer.

³ Under its Charter clause 7.4(iv) the Life CCC must if applicable, state any finding by the Life CCC that the Code Subscriber is responsible for serious or systemic non-compliance with the Code

The Subscriber acknowledged that it failed to provide this information and therefore that it had breached section 9.10 (c) and (d) of the Code. Whilst there was no apparent financial detriment to the Consumer arising from the breach of the Code, the Life CCC determined that the Subscriber's systems and processes to enable compliance with the Code were insufficient and therefore that the Subscriber's breach of section 9.10 amounted to serious and systemic non-compliance of the Code.

The Life CCC is continuing to work with the Subscriber to implement the appropriate remediation and will closely monitor this to ensure it is effectively implemented.

Key learnings

In this matter, the Subscriber provided a copy of its template letter for communicating its *claim outcome decision* to consumers, however it does not appear to use a templated complaint response letter. The Life CCC considers that the maintenance and usage of appropriate and robust template letters is good practice and can be effective in ensuring a high level of compliance with the elements of section 9.10.

For related discussion and interpretation of compliance with section 9.10 of the Code, subscribers are encouraged to refer to the Life CCC's Guidance Note 2.⁴

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.

⁴ [https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10- - Final.pdf](https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10--Final.pdf)