

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:	CX4569	Date:	31 July 2020
Code sections:	8.18 & 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 which included an Income Protection (IP) benefit and a Total and Permanent Disability (TPD) benefit. The TPD benefit had an additional Uplift TPD (UTPD) benefit attached to it.

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).

In this Matter, the Subscriber communicated the final decision to the Trustee on 4 July 2017 (IP and UTPD) and 30 August 2017 (TPD). As described under section 8.1 of the Code,² the Trustee was then responsible for communicating the final decision to the Consumer.

On 4 December 2017, the Consumer's Legal Representative (CLR) lodged a complaint with the Trustee requesting that the decision issued on 28 July 2017 be reviewed. The Trustee referred the complaint to the Subscriber on 5 December 2017.

In February 2018, due to the delay in responding to the Consumer's complaint, the CLR lodged a Code breach allegation with the Life CCC and alleged that the Subscriber was in breach of section 9.10 of the Code.

After reviewing the claims, the Subscriber formally communicated its decision to the Trustee regarding the UTPD claim on 31 May 2018 and the IP claim on 5 June 2018.

As part of its review of the file, the Life CCC also raised a possible breach of section 8.18 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 8.18 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

Section 9.10 sets out two separate elements for Subscribers. The first element is for the 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.

The second element is for the Subscriber to provide the information required under section 9.10(a) to (d) of the Code within its final complaint response letter.

In this Matter, the Trustee received the complaint from the CLR on 4 December 2017. This meant that the Subscriber had to respond to the Trustee so that the Trustee could provide a final response to the CLR by 4 March 2018, within 90 calendar days of the Trustee receiving the complaint.

Based on the information provided, the Subscriber provided the final complaint responses to the Trustee on 31 May 2018 and 5 June 2018. The Subscriber's responses were outside the 90-calendar day timeframe required for the Trustee to provide its final response to the CLR.

The Subscriber noted that it required additional medical information before it was able to finalise the claims and confirmed that it received all the information by 8 April 2018. As the required information was received after the 90 calendar days had expired, the Life CCC accepted that it was not possible for the Subscriber to provide its final decision on the complaint by 4 March 2018.

However, the Life CCC noted that the Subscriber failed to provide the information required under section 9.10(b) of the Code within its complaint response letters sent to the Trustee.

Section 9.10 requires that the information be provided to 'you'. 'You' is defined in the Code to be the 'Life Insured, Policy-owner or Third Party Beneficiary'. As the Trustee was the Policy-owner, the Subscriber had an obligation to provide the information under section 9.10(a) to (d) to the Trustee. 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.

Serious and systemic non-compliance

The Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 9.10 amounted to serious and systemic non-compliance with the Code.

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 The Life CCC is bound by its Charter to state, where applicable, whether it finds that a subscriber is responsible for serious and/or systemic non-compliance with the Code.

This was because the Subscriber did not have a compliant letter template until 31 October 2018 and further confirmed that it did not have adequate arrangements with the Trustee to ensure that the Trustee provided the information under section 9.10(b) of the Code within its decision letter to Consumers.

The Subscriber has since requested that all associated Trustees include the information under section 9.10(a) to (d) of the Code within their responses to Consumers. The Subscriber has also provided the Life CCC with an amended template letter which includes the information required under section 9.10 of the Code.

Section 8.18

Section 8.18 creates an obligation for Subscribers to suggest that a Consumer seek financial advice to help manage a claim payment (financial advice wording) when the Subscriber is making a lump sum payment after accepting a claim.

The Life CCC investigated the Subscriber's compliance with section 8.18 after receiving a copy of the claim acceptance email that was sent to the Trustee on 30 August 2017. The claim acceptance email stated that the claim was accepted but did not include the financial advice wording.

When the Subscriber does not contact the Consumer directly, the Subscriber should provide the financial advice wording to the Trustee on the understanding that the Trustee will pass on the financial advice wording to the Consumer (the Life Insured).

The Subscriber conceded that it failed to provide the financial advice wording to the Trustee (the Policy-owner). As a result, the Life CCC determined that the Subscriber was in breach of section 8.18 of the Code.

Serious and systemic non-compliance

The Life CCC further determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 8.18 amounted to serious and systemic non-compliance with the Code.

This was because the Subscriber did not have an adequate process or a compliant letter template in place to ensure that the financial advice wording was provided to Consumers and/or Trustees prior to 29 February 2020.

The Life CCC has since reviewed the Subscriber's revised section 8.18 letter template and can confirm that it is now compliant and includes the relevant financial advice wording as required under section 8.18 of the Code.

Key Learnings

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.

⁵ Ibid.

The Life CCC reminds all subscribers that this expectation extends to letter templates which the Life CCC observed was the subject of non-compliance in sections 9.10 and 8.18 of the Code in this Matter.

As noted in previous Determinations, Consumers should be made aware of their rights and protections under the Code. The Life CCC considers that Subscribers should communicate with Consumers with clarity and transparency.

For related discussion and interpretation of compliance with section 8.18 of the Code, subscribers are encouraged to refer to the Life CCC's Case Study 2019-2.⁶

Relevant Code Sections

Section 8.1:

If **you** 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 8.18:

If **we** accept **your** claim and it includes a lump sum payment, **we** will suggest **you** seek financial advice to help manage **your** claim payment. For an income-related claim, if **we** offer to pay **you** a lump sum instead of ongoing payments in order to finalise **your** claim, **we** will suggest that **you** seek financial and legal advice before accepting **our** offer.

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.

⁶ See Case Study published in November 2019: <https://lifeccc.org.au/app/uploads/2019/11/Case-Study-2019-2.pdf>