

# 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>	CX4575	<b>Date:</b>	31 July 2020
<b>Code sections:</b>	8.18, 9.10 <sup>1</sup>		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

## The alleged Code breach:

The Consumer is a member of a superannuation fund. As part of their membership, the Consumer obtained life insurance including a Total and Permanent Disability (TPD) benefit. 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), and the policy was owned by a Group Policy-owner (the Trustee).

The Consumer submitted a TPD claim on 11 December 2014, which was declined by the Subscriber on 23 March 2017.

The Consumer's legal representatives lodged a complaint with the Trustee about the declined claim on 25 September 2017. In response, the Subscriber initiated a review of the prior declined claim and requested additional information as part of its review.

The Subscriber subsequently accepted the claim on 9 August 2018, ten months after the Consumer's complaint.

This Code breach allegation was received by the Life CCC in February 2018 as part of a bulk referral from a plaintiff law firm.

As part of its investigation, the Life CCC also raised a possible breach of section 8.18 of the Code. The Subscriber initially conceded a breach of section 9.10 of the Code but amended this to a breach of section 8.17 of the Code. In relation to section 8.18, the Subscriber noted that its view was that the section did not apply to Group policies.

## Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>:

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

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

<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.

- 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 of the Code creates an obligation for a subscriber to assist the Trustee in responding to a complaint in writing within 90 calendar days of receiving the complaint.

The final response to the complaint must include the final decision, the reasons for that decision, the Consumer's right to copies of the information relied on, that if requested the information will be provided within ten business days, and the relevant External Dispute Resolution (EDR) timeframes and contact details.

As noted above, the Subscriber initially acknowledged a breach of section 9.10 but amended this to a breach of section 8.17 of the Code. The Life CCC previously considered this issue in CX4436<sup>3</sup> and in its Guidance Note on Section 9.10 of the Code.<sup>4</sup>

In relation to a complaint which amounts to a request for a review of a prior declined claim, the Life CCC considers that the final decision in relation to such a complaint would amount to a decision in relation to the review of the prior declined claim. This means that Subscribers are required to provide the decision in relation to the claim review within the timeframe specified in section 9.10 of the Code.

In this instance, the Consumer lodged the complaint requesting a review of the prior declined claim on 6 October 2017. As a result, the Subscriber had to provide its response to the Trustee to allow the Trustee to respond to the Consumer within 90 calendar days, on 4 January 2018.

Instead, the Subscriber provided its final response to the complaint on 9 August 2018, more than 7 months after the expiry of the 90 calendar day timeframe. As a result, 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.

As the delay in this instance was approximately 7 months, the Life CCC considers that this is a substantial delay which led to the Consumer's entitlements on the policy being delayed for 7 months. The Subscriber confirmed that it has paid interest to the Consumer in relation to the delay in its review of the prior declined claim.

As part of the Life CCC's overall review of the bulk referral, the Life CCC identified that the Subscriber's section 9.10 processes were inadequate to enable compliance with the Code prior to July 2019, when the Subscriber amended its section 9.10 process.

Taking this into account, the Life CCC determined that the Subscriber's breach of section 9.10 of the Code in this instance amounted to serious and systemic non-compliance with the Code, in accordance with Charter clause 7.4(b)(iv)<sup>5</sup>

### **Section 8.18**

Section 8.18 requires a Subscriber to suggest that the Consumer seek financial advice to help manage the claim payment if a Subscriber accepts a claim with a lump sum payment. For an income-related claim, if the Subscriber offers to pay a lump sum to finalise the claim, the

<sup>3</sup> <https://lifeccc.org.au/app/uploads/2019/07/Determination-CX4436.pdf>

<sup>4</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>5</sup> 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.

Subscriber is required to suggest that the Consumer seek financial and legal advice before accepting the offer.

The Subscriber noted that its view was that section 8.18 does not apply to Group policies as communicating the financial advice wording to the Trustee does not lead to positive Consumer outcomes and does not place any obligation on the Trustee to further communicate this to the Consumer.

The Life CCC previously considered this issue in CX4885<sup>6</sup> and determined that section 8.18 applies to group policies.

This was because section 8.18 notes that the financial advice wording should be provided to 'you'. 'You' is defined under the Code as either the Life Insured, the Policy-owner, or a Third Party Beneficiary.

In the case of Group policies, as the Subscriber would only be in contact with the Policy-owner (the Trustee), the Subscriber's obligation under section 8.18 would be to provide the Policy-owner with the financial advice wording on the understanding that the wording would be communicated to the Consumer.

As the Subscriber's claim acceptance email of 9 August 2018 did not suggest to the Consumer to seek financial advice, the Life CCC determined that the Subscriber was in breach of section 8.18 of the Code.

In this instance, the Subscriber had been non-compliant with its obligations in section 8.18 of the Code in relation to all claim acceptance letters for its group policies as the Subscriber's view was that section 8.18 did not apply to group policies.

As a result, the Life CCC determined that the Subscriber's breach of section 8.18 of the Code amounted to systemic non-compliance with the Code. The Life CCC continues to work with the Subscriber in relation to implementing adequate corrective action to remediate this breach.

### Key learnings

When a Consumer contacts a Subscriber to request that the Subscriber review a previous claim decline, this request amounts to an expression of dissatisfaction about the Subscriber's claims handling services. In such requests, a response is either implicitly expected or explicitly requested by the Consumer.

This request for a review of a prior declined claim falls under the definition of a complaint in the Code. 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 complaints.

## Relevant Code Sections

### 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.

<sup>6</sup> <https://lifeccc.org.au/app/uploads/2019/11/Determination-CX4885.pdf>

### 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**;
- 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.