

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:	CX4597	Date:	17 August 2020
Code sections:	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 with Total and Permanent Disability (TPD) benefit. 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).

The Consumer lodged a TPD claim on 29 April 2016, which was subsequently declined on an unspecified date. The Consumer's legal representative submitted a complaint to the Trustee requesting a review of this decision on 1 March 2017. The Subscriber again declined the claim and provided its response to the Consumer's legal representative on 9 May 2017.

The Consumer's legal representative submitted a further complaint on 27 November 2017. On 13 December 2017, the Subscriber confirmed that it would reopen and reassess the Consumer's claim.

On 31 January 2018, the Subscriber provided a decision to the Trustee, maintaining its original decline. However, the Trustee disagreed with the Subscriber's decision and requested the Subscriber to provide further information in support of its position.

Between March and November 2018, the Subscriber made further enquiries to confirm details about the Consumer's employment history and whether he was Totally and Permanently disabled. Following completion of these enquiries, the Subscriber wrote to the Trustee on 19 December 2018 to confirm that it was accepting the Consumer's claim.

The Consumer's legal representative referred the matter to the Life CCC on 26 April 2018, alleging a possible breach of section 9.10 of the Code.

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)²:

The Life CCC determined that the Subscriber:

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

The Life CCC findings and conclusion:

Section 9.10

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 the final complaint response letter to Consumers.

Final response within 90 calendar days

The Consumer's legal representative lodged a complaint with the Trustee on 27 November 2017, seeking a review of the Subscriber's decision to decline the Consumer's claim. To be compliant with section 9.10, the Subscriber therefore needed to provide its response to enable the Trustee to respond to the Consumer by 25 February 2018 (90 calendar days from 27 November 2017).

The Subscriber communicated its decline of the claim to the Trustee on 31 January 2018. However, the Trustee disagreed with this decision and did not pass on the complaint response to the Consumer's legal representative. The Subscriber subsequently provided its decision to accept the claim outside the 90 calendar day timeframe on 19 December 2018.

While the Subscriber provided a response prior to the 90 calendar day timeframe, the response provided was not sufficient to enable the Trustee to provide a final response to the complaint in writing within 90 calendar days.

Provide a response "where possible"

The Life CCC noted that there can be instances where the Consumer submits additional information in support of their request for the claim to be reviewed or a Subscriber may request further information to complete its view, and therefore it may not be possible for the Subscriber to provide a final response in the timeframe provided by section 9.10 of the Code.

In such instances, a Subscriber may rely on the "where possible" carve out in section 9.10 and state that it was not possible to provide a response to allow the Trustee to respond within 90 calendar days. However, the Life CCC has previously determined that it will assess the reasonableness of such an assertion on a case by case basis, and the onus is on the Subscriber to demonstrate the reasonableness of this assertion, if made.

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.

On 5 March 2018, the Trustee sent an email to the Subscriber detailing its findings on the Subscriber's decision to decline the Consumer's claim. The Trustee confirmed that it was deferring further consideration of the claim and requested the Subscriber to provide evidence that led it to accept that the Consumer was employed under a contract of no less than twelve months.

The Subscriber emailed the Consumer's legal representative on 4 April 2018 to request it provide further information about the Consumer's employment history. The Consumer's legal representative provided this information on 15 May 2018. The Subscriber emailed the Trustee on 22 May 2018 to confirm that having reviewed this information, it maintained its decline decision.

Between 28 May 2018 and 31 May 2018, the Subscriber exchanged emails with the Trustee about the Consumer's employment and the impact on whether or not he met the TPD definition. After seeking internal legal advice and upon the recommendation of the Trustee, the Subscriber emailed the Consumer's legal representative on 5 June 2018 to seek more information about the Consumer's treating GP in order to request a medical report. The Subscriber was provided with details of the GP on 8 June 2018.

Despite a number of follow up requests, the GP did not provide the medical report until 7 August 2018. Upon receipt of the report, the Subscriber contacted the Consumer's legal representative to provide details of the findings and its intention to arrange an Independent Medical Examination (IME) for the Consumer.

Due to the Consumer's ongoing medical treatment, the Subscriber was forced to cancel an agreed IME scheduled for 14 September 2018. On 4 October 2018 the Subscriber wrote to the Consumer's legal representative to advise that Unexpected Circumstances applied. However, as the Life CCC had previously determined that it would assess "reopened" claims against the timeframes of section 9.10, rather than section 8.17, the Subscriber could not rely on the extra time allowed by Unexpected Circumstances.

The Subscriber received a medical report from the Consumer's treating Haematologist on 5 November 2018 and following a review by its own Medical Officer on 12 December 2018, it wrote to the Trustee on 19 December 2018 to advise that it was accepting the claim.

Through a combination of the requests for information from the Trustee and the additional enquiries required of the Consumer's medical records, it was not possible for the Subscriber to provide a decision on the claim (and therefore a response to the complaint) within the 90 calendar days as specified by the Code. As a consequence, the Life CCC determined the Subscriber was entitled to rely on the "where possible" carve out and is therefore not in breach of this particular element of section 9.10 of the Code.

Provide the information in 9.10(a) to (d)

Section 9.10 of the Code also requires subscribers to provide the information detailed at subsections 9.10(a) to (d).

As noted above the Life CCC considered the Subscriber's final complaint response to be the claim acceptance letter sent to the Trustee on 19 December 2018. The Life CCC is of the view that section 9.10 was primarily drafted to address a "negative" outcome to a Consumer's

complaint, reflected in the section's requirement to include information about how a Consumer can progress a complaint further if they are not satisfied with a decision. It is unlikely, in a situation where a final complaint response is the acceptance of a claim, that a Consumer would not be satisfied with the decision.

However, there may, for example, be circumstances where a consumer might be dissatisfied with the level of payment or a subscriber's handling of the claim and/or complaint.

Consequently, where a final complaint response also serves as a claim acceptance letter, the Life CCC considers that section 9.10 still requires subscribers to provide the information specified at (a) to (d). In addition, where an accepted claim includes the payment of a lump sum, as per section 8.18 of the Code, subscribers also have an obligation to suggest that a consumer seek financial advice.

The Life CCC was satisfied that the Subscriber's letter of 19 December 2018 contained the information required by section 9.10(a) and section 8.18 of the Code. However, whilst the letter lists the information relied upon to reach the decision and provides contact details should the Consumer require further information, it did not meet the requirements of section 9.10(b) to (d).

The Life CCC therefore determined that the Subscriber did not meet this requirement of section 9.10, and therefore was in breach of the section as a whole.

Systemic non-compliance

The Subscriber confirmed that it uses templates when responding to complaints, which the Life CCC has assessed are sufficient to enable it to comply with section 9.10 of the Code.

However, the Subscriber does not appear to use a complaint response template letter which provides the information as specified by section 9.10 (b) to (d) in instances where a complaint response is the decision to accept a "reopened" claim. The Life CCC will work with the Subscriber to ensure that it makes changes to its claims acceptance letter template (where this also serves as a final complaint response letter, to include the information as required by section 9.10 (b) to (d) of the Code).

The Life CCC further considered that any detriment caused to the Consumer from the omission of the information specified by section 9.10 (b) to (d), was mitigated by the fact that the claim acceptance letter of 19 December 2018 did provide the reasons for the decision, contact details if the Consumer had further enquiries and a list of the documents relied upon in making the decision.

The Life CCC therefore determined that the breach of section 9.10 of the Code amounted to systemic but not serious non-compliance with the Code.

Key Learnings

As detailed above, in this matter the Consumer's complaint concerned a request for the Subscriber to reassess a declined TPD claim.

If a claim has been previously declined, the subscriber was already provided with the relevant timeframe to assess the claim under the Code. As a result, the Life CCC considers it would not be appropriate to provide subscribers with the full timeframe under Chapter 8 of the Code in relation to a complaint regarding a prior claim decline.

Consequently, where a complaint concerns a request for a declined claim to be reviewed, the timeframes for completing a review of the prior declined claim will be assessed against section 9.10 of the Code. Where the time taken to assess such a claim exceeds the timeframes

stipulated in section 9.10, a Subscriber may be entitled to apply the 'where possible' carve out in section 9.10, but only in circumstances where the delay is outside the Subscriber's control.

Further details about the Life CCC's approach to interpreting and applying section 9.10 of the Code can be found in Guidance Note 2 on the [Life CCC website](#).

Relevant Code Sections

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.