

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 4777	Date:	24 August 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 has a life insurance policy which includes a Total & Permanent Disability (TPD) benefit. The policy was issued by a subscriber to the Code (the Subscriber) and is a Group Policy owned by the Trustee.

The Consumer submitted a TPD claim with the Trustee in March 2015, which was declined by the Subscriber in August 2016. On 7 August 2017, the Consumer's legal representative lodged a complaint with the Trustee to request that the claim be reconsidered.

The Consumer's legal representatives made follow up enquiries of the Subscriber on 24 November 2017 and 5 January 2018. The Subscriber responded on 10 January 2018, stating that the file had been reallocated to a new claims assessor and requested two current treating doctor reports from the Consumer. The Subscriber sent their decision to the Trustee accepting the claim on 27 February 2018.

The Consumer's legal representative referred the matter for the Life CCC in March 2018 to consider a breach of section 9.10 of the Code. Based upon a review of the available information, the Life CCC also considered section 8.18 applicable to the matter.

Findings in accordance with Charter clause 7.4(b)(iii)²:

The Life CCC determined that:

- the Subscriber was in breach of section 8.18 of the Code, which amounted to systemic non-compliance with the Code, and

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

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.

- the Subscriber was in breach of section 9.10 of the Code, the allegations were proven in whole and amounted to serious and systemic non-compliance with the Code.

The Life CCC findings and conclusion:

Section 8.18

Section 8.18 of the Code requires subscribers to suggest that consumers seek financial advice to help manage their claim payment (financial advice wording) when the subscriber is making a lump sum payment. There is no minimum amount for a lump sum payment.

The Life CCC noted that the claim acceptance letter sent by the Subscriber to the Trustee on 27 February 2018 did not include the financial advice wording as required by section 8.18 of the Code.

The Subscriber submitted that it did not consider that section 8.18 of the Code applied to superannuation policies as the Trustee makes the final decision regarding a claim and would be the one making the payment to the Consumer. Consequently, the Subscriber took the view that advising the consumer to seek financial advice was an obligation of the Trustee.

The Life CCC previously considered this issue in CX4885³ and determined that section 8.18 applied 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 this did not occur in this instance, the Life CCC therefore determined that the Subscriber was in breach of section 8.18 of the Code.

Systemic non-compliance

The Subscriber has confirmed that it does not currently advise Trustees that consumers should seek financial advice in respect of claims where it makes a lump sum payment. It does, however, include the wording required by section 8.18 in its claims acceptance template letters for non-Group policies.

As the Subscriber is in breach of section 8.18 in relation to all claim acceptance letters issued in respect of Group policies, the Life CCC determined that the breach of section 8.18 of the Code amounted to systemic non-compliance with the Code.

The Life CCC further noted that whilst it had not been possible in this matter to identify a financial detriment to the Consumer as a result of the breach of section 8.18, there was the possibility of potential impact to a wider group of consumers. The Life CCC is currently working with the Subscriber to ensure that it amends its processes to include the wording required by section 8.18 of the Code in its Group policy claim acceptance template letters.

³ <https://lifeccc.org.au/app/uploads/2019/11/Determination-CX4885.pdf>

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.

The Consumer's representative lodged a complaint with the Trustee on 7 August 2017, requesting a review of the claim decision previously declined in August 2016. To comply with section 9.10, the Subscriber was required to complete its review and allow sufficient time for the Trustee to respond to the complaint within the 90-day timeframe (5 November 2017).

The Subscriber did not treat the letter of 7 August 2017 as a complaint, and believed it was appropriate to manage the matter as a continuation of the claims handling process. As new information was provided with the complaint, the Subscriber reviewed this as part of their assessment processes and reopened the claim from 17 August 2017. It provided its decision on the claim to the Trustee on 27 February 2018 (a total of 204 calendar days between receipt of the complaint and the date the claim was accepted).

As the Subscriber did not provide its decision on the claim within 90 calendar days, the Subscriber has conceded to a breach of section 9.10 of the Code.

Section 9.10 of the Code also requires the Subscriber to provide the Trustee with the information in section 9.10 (a) to (d) as part of the Subscriber's response to the Consumer's complaint, unless otherwise arranged with the Trustee.

The Life CCC has previously formed the view that subscribers must provide the information set out in (a) to (d) either directly to the Consumer or to the Trustee, depending on the communication arrangement in place.⁴

In this matter, the Subscriber's claim acceptance letter of 27 February 2018 sent to the Trustee provided the information as set out in section 9.10 (a), (c) & (d), but did not include the information in section 9.10 (b).

For the reasons listed above, 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 found the Subscriber's processes insufficient to enable compliance with section 9.10 of the Code. When a consumer lodged a request for the Subscriber to review a declined claim, the Subscriber did not log this as a complaint but instead reopened the original claim and assessed this in line with the provisions of Chapter 8 of the Code.

The Life CCC has previously set out its view that requests for a reassessment of a declined claim should be treated as a complaint and the timeframes of section 9.10 applied, rather than those of Chapter 8. As demonstrated in this matter, the breach of section 9.10 was a direct result of the failure to treat a claim review request as a complaint.

⁴ [Guidance Note 2: Interpreting and applying Life Insurance Code of Practice section 9.10, November 2019.](#)

The Subscriber updated its processes in February 2018 to reflect this interpretation and the Life CCC considered these changes to be sufficient to enable compliance with section 9.10 of the Code.

However, as the Subscriber did not treat a request for a declined claim to be reviewed as a complaint prior to February 2018, the Life CCC therefore determined the breach in this matter amounted to systemic non-compliance with the Code as the breach was not limited to this matter.

The Life CCC also noted that the Subscriber took a total of 204 calendar days to provide its complaint response (a total of 114 calendar days in excess of timeframe specified by section 9.10). Due to the length of the delay, Life CCC determined that the breach of section 9.10 amounted to serious non-compliance with the Code.

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.

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.