

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:	CX4549	Date:	29 September 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 and as part of that membership, the Consumer obtained life insurance with a Total and Permanent Disability (TPD) benefit. The Life Insurance policy was issued by a Life Insurance Company that is a subscriber to the Code (the Subscriber) and is a Group policy owned by the trustee of the Superannuation Fund (the Trustee).

The Consumer's legal representative lodged a TPD claim on behalf of the Consumer on or around 1 June 2016. The Subscriber declined the claim and on 27 June 2017, the Trustee communicated this to the Consumer's legal representative.

On 19 October 2017, the Consumer's legal representative wrote to the Trustee to lodge a complaint, requesting the claim decision be reviewed. The Trustee confirmed that it received the complaint on 30 October 2017 and provided a copy of the complaint to the Subscriber on 6 November 2017.

On 27 November 2017, the Trustee confirmed to the Consumer's legal representative that the Subscriber was reassessing the claim and asked for additional information in relation to the Consumer's medical history.

Between 27 November 2017 and 25 July 2018, the Subscriber sought additional information from the Consumer's medical practitioners and attempted to arrange for the Consumer to attend an Independent Medical Examination (IME).

The Consumer's legal representative subsequently issued court proceedings on 31 July 2018 in relation to the delays in assessing the claim.

The Consumer's legal representative referred the matter to the Life CCC in July 2018 alleging a possible breach of section 9.10 of the Code. The Life CCC's investigation was placed on hold on 6 August 2018 due to ongoing court proceedings and recommenced on 3 October 2019 upon confirmation of the matter's dismissal.

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 was:

- not in breach of section 9.10 of the Code and that the allegation was unfounded.

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.

The Consumer's legal representative lodged a complaint with the Trustee on 19 October 2017 seeking a review of the decision to decline the Consumer's claim. The Trustee received the complaint on 30 October 2017.

In order to be compliant with section 9.10, the Subscriber therefore needed to provide its response to enable the Trustee to respond to the Consumer's legal representative by 28 January 2018 (90 calendar days from 30 October 2017).

Provide a response "where possible"

The Life CCC has previously noted that there can be instances where a 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 that as a result, 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 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.

Further details about the Life CCC's interpretation and application of section 9.10 can be found in its Guidance Note 2³, issued in November 2019.

In this matter, the Subscriber considered that it was not possible to provide a response to the Trustee to enable it to respond to the complaint within 90 calendar days as it had sought but not received additional information in order to complete its assessment of the Consumer's claim.

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.

³ <https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10--Final.pdf>

On 8 November 2017, the Subscriber appointed a technical consultant to review the claim. The consultant's assessment was completed by 21 November 2017 and the subscriber assessed the recommendations arising from this on 23 November 2017. The recommendations included:

- requesting further information about the Consumer's surgical history,
- requesting special reports from the Consumer's treating doctors, and
- upon receipt and assessment on the reports, to consider the necessity of an IME.

Once the additional information from the Consumer had been provided, then between 6 December 2017 and 19 April 2018, the Subscriber made numerous attempts to obtain a medical report from three of the Consumer's previous treating doctors. However, it experienced difficulties in doing so, including a refusal from one doctor to discuss the matter or to complete a medical report.

In the absence of this information, on 24 April 2018 the Subscriber requested the Trustee contact the Consumer's legal representative to arrange for the Consumer to attend an IME. On 1 May 2018, the Consumer's legal representative responded to advise that it did not consider an IME to be necessary. The Subscriber subsequently referred the matter to its technical consultant for further review on 17 May 2018.

On 28 May 2018, the technical consultant confirmed to the Subscriber that an IME was required, but recommended that prior to arranging this an Employability Assessment should be carried out. Following difficulties in obtaining the information from a rehabilitation provider, the Subscriber sought further guidance from its technical consultant.

The technical consultant responded to the Subscriber on 29 June 2018 to confirm that in view of the ongoing difficulties, it should first arrange an IME with a specific focus on the Consumer's likely future capacity for employment before obtaining an Employability Assessment. The Consumer's legal representative issued court proceedings (31 July 2018) before the Subscriber was able to arrange for an IME.

The Life CCC agreed that, through a combination of the difficulties encountered in obtaining information from the Consumer's treating doctors and arranging an IME, it was not possible for the Trustee to provide its response to the complaint within the 90 calendar days as specified by the Code. Consequently, the Life CCC considered that the Subscriber was entitled to rely on the "where possible" carve out and was therefore not in breach of section 9.10 of the Code.

Key Learnings

The 'where possible' carve out in section 9.10 applies when the delay in responding to the Consumer's complaint is outside the control of the Subscriber, causing the Subscriber to be unable to respond to the complaint within the timeframe provided by the Code. The Life CCC encourages Subscribers to use this carve out sparingly and to endeavour to resolve complaints efficiently and fairly.

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**.

- 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.