

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:	CX4712	Date:	7 October 2020
Code sections:	9.8, 9.10, 9.12 & 9.13 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

As part of the Consumer's employment benefit, the Consumer received two life insurance policies, one with a Total and Permanent Disability (TPD) benefit and the other with a Group Salary Continuance (GSC) benefit.

Both the Life Insurance policies were issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) and were owned by a Group policy-owner (the Trustee).

In this Matter, the Subscriber communicated directly with and provided the final complaint decisions to the Consumer's Legal Representative (CLR) rather than the Trustee.

On 11 December 2017, the CLR lodged a complaint (First Complaint) with the Subscriber regarding the declinature of the TPD and GSC claims. As the Subscriber received and handled the complaint directly without the involvement of the Trustee, the section 9.10 Code breach allegation did not apply to the Matter.

As the First Complaint was lodged on 11 December 2017, the 45-calendar day timeframe under section 9.12 of the Code commenced on that date and the Subscriber was required to provide a final decision on the complaint by 25 January 2018.

The Subscriber acknowledged receipt of the First Complaint on 22 January 2018 and requested an extension until 19 February 2018 to provide the final decision on the complaint. However, the Subscriber provided the final decision to the CLR on 8 March 2018.

On 26 July 2018, the CLR lodged a complaint (Second Complaint) with the Subscriber regarding the application of the offset clause under the GSC policy. As a result, the 45-calendar day timeframe under section 9.12 of the Code commenced on 26 July 2018 and the Subscriber was required to provide a final decision on the Second Complaint by 9 September 2018.

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

The Subscriber acknowledged receipt of the Second Complaint on 7 September 2018 and requested an extension until 21 September 2018 to provide the final decision on the complaint.

The CLR declined the extension request on 10 September 2018. On 21 September 2018, the Subscriber provided the final decision on the complaint to the CLR.

As part of the Life CCC's review of the file, we also raised possible breaches of sections 9.8 and 9.13 of the Code.²

The Subscriber conceded that it had breached sections 9.12 and 9.13 of the Code.

Findings in accordance with Charter clause 7.4(b)(iii)³:

The Life CCC determined that the Subscriber:

- was not in breach of section 9.10 of the Code as section 9.10 did not apply in this instance,
- was in breach of section 9.12 of the Code and that the allegation was proven in whole,
- was in breach of section 9.13 of the Code and that the allegation was proven in whole, and
- was in breach of section 9.8 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

As the Subscriber received and handled the complaints directly without the involvement of the Trustee, section 9.10 did not apply to the Matter.

Section 9.8

Section 9.8 requires a subscriber to make an arrangement with a consumer regarding keeping them regularly informed about the progress of their complaint.

First Complaint

The Subscriber noted within its complaint acknowledgement letter of 22 January 2018 that it would provide its final response by 19 February 2018 and further noted that if it was able to provide a complaint response before then, it would.

Subsequently, the Subscriber separately noted in a phone call to the CLR on 13 February 2018 that it would provide a response as soon as possible.

As previously confirmed under CX4454,⁴ the Life CCC determined that any arrangement proposed by the Subscriber in relation to section 9.8 should be clearly expressed and adhered to. The Subscriber was required to provide its final response by 19 February 2018. However, the final response was provided on 8 March 2018.

The Life CCC further determined that the Subscriber's verbal advice to the CLR that it would provide a response 'as soon as possible' was too vague to constitute an arrangement.

² Ibid.

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 See CX4454 Determination published: <https://lifeccc.org.au/app/uploads/2019/07/Determination-CX4454.pdf>.

Second Complaint

The Subscriber noted within its complaint acknowledgement letter of 2 August 2018 that it would attempt to respond within 45 or 90 days from the date of complaint notification (26 July 2018). The Life CCC determined that merely quoting the timeframe as stipulated under section 9.10 or 9.12 of the Code does not constitute an arrangement.

The Life CCC noted that there was a 36-day gap between the Subscriber's complaint acknowledgement letter of 2 August 2018 and the Subscriber's next correspondence which was the due date extension request of 7 September 2018.

The Life CCC's view is that it was a considerable gap and as a result, meant that the Subscriber did not keep the CLR regularly informed of the progress of the complaint.

The Life CCC further noted that the extension request was declined by the CLR on 10 September 2018. However, the Subscriber did not respond to the CLR or provide an alternative arrangement between 10 September 2018 and the date the Subscriber provided its final response, 21 September 2018.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.8 of the Code.

Serious and Systemic non-compliance

Given the Subscriber's non-compliant responses and lack of adequate control processes to ensure that arrangements were made, and Consumers kept regularly informed about the progress of their complaints as required under section 9.8 of the Code, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁵ that the Subscriber's breach of section 9.8 amounted to serious and systemic non-compliance with the Code.

The Life CCC continues to work with and provide guidance to the Subscriber to ensure that it implements adequate processes to support its compliance with section 9.8 of the Code.

Section 9.12

Section 9.12 sets out two separate elements for subscribers. The first element requires a subscriber to provide its final response to a complaint in writing within 45 calendar days of receiving the complaint. The second element requires a subscriber to provide the information required under section 9.12(a) to (d) within the subscriber's complaint response letter to a consumer.

First Complaint

The Subscriber provided its final response to the complaint on 8 March 2018. As noted above, this was outside the 45-calendar day timeframe which expired on 25 January 2018. The Life CCC further noted that the Subscriber's response did not include the information required under section 9.12(b) to (d) of the Code.

The Subscriber conceded that its response was not compliant with the requirements under section 9.12 of the Code. However, the Subscriber attributed the delay in providing the response to be partially due to the submission of new evidence by the CLR.

⁵ 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.

Based on the information available, the CLR provided additional medical evidence on 28 February 2018, after the 45-calendar day timeframe had expired on 25 January 2018. This meant that the new evidence did not cause the Subscriber's delay in providing a response.

Second Complaint

The Subscriber provided its final response to the complaint on 21 September 2018. As noted above and conceded by the Subscriber, this was outside the 45-calendar day timeframe which expired on 9 September 2018.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.12 of the Code.

While the Subscriber's second complaint response was in breach of section 9.12 as it did not comply with the timeframe required by section 9.12 of the Code, the content of the Subscriber's complaint response was compliant with section 9.12 and included the information required under section 9.12(a) to (d) of the Code.

Serious and Systemic non-compliance

The Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁶ that the Subscriber's breach of section 9.12 amounted to serious and systemic non-compliance with the Code.

This was because the Subscriber failed to meet the timeframe requirements on both complaints and did not have a compliant template letter prior to September 2018, indicating that the breach under section 9.12 of the Code was not limited to the Consumer in this Matter. The Life CCC further noted that the compliant template letter was only consistently used from 31 October 2018.

The Life CCC continues to work with the Subscriber to ensure that it implements adequate processes to support its compliance with section 9.12 of the Code.

Section 9.13

Section 9.13 sets out two separate elements for subscribers. The first element requires a subscriber to inform a consumer of the reasons for any delay before the end of the 45-calendar day timeframe if it becomes clear that the Subscriber is not able to provide its final response within 45 calendar days.

The second element requires a subscriber to inform a consumer of their right to take the complaint to the Australian Financial Complaints Authority (AFCA) if they are not satisfied with the reasons for any delay and include the contact details for AFCA.

First Complaint

The Subscriber did not respond to the first complaint within 45 calendar days and failed to provide the CLR with the reasons for the delay and the contact details of AFCA.

Although the Subscriber attributed the breach to be due to the unique and complex issues raised as a result of the complaints, which caused the Subscriber to depart from its usual Internal Dispute Resolution (IDR) process, the Life CCC's view is that the consideration of complex issues should not have prevented the Subscriber from meeting its obligations under the section.

⁶ Ibid.

Second Complaint

The Subscriber did not respond to the second complaint within 45 calendar days, and failed to provide the CLR with the reasons for the delay and the contact details of AFCA.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.13 of the Code.

Serious and Systemic non-compliance

The Subscriber did not documentation demonstrating its procedures to achieve compliance with section 9.13 and the template letter provided remained non-compliant as it did not include a section detailing the reasons for the delay. As a result, the Subscriber's section 9.13 processes were inadequate to enable compliance with the Code and indicated that that the breach was not an isolated incident that was limited to the facts and circumstances of this Matter.

The Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁷ that the Subscriber's breach of section 9.13 amounted to serious and systemic non-compliance with the Code.

The Life CCC continues to work with and provide guidance to the Subscriber to ensure that it implements adequate processes to support its compliance with section 9.13 of the Code.

Key Learnings

The Life CCC recommends that all Subscribers review their section 9.12 and 9.13 processes to ensure that claims assessors are aware of the obligations under both sections. The information in section 9.13 should be provided to Consumers prior to the expiry of the 45-calendar day timeframe in section 9.12 and should be provided as soon as the Subscriber becomes aware that it will not able to provide its final response within 45 calendar days.

In relation to section 9.8 of the Code, the Life CCC expects that Subscribers will proactively engage Consumers to make arrangements with them to keep them regularly informed about the progress of their complaints. The reasonableness of the arrangement will depend on whether the Consumer was satisfied with the arrangement and the reasonableness of the proposed timeframe, and Life CCC will consider the reasonableness of any arrangements on a case by case basis.

Relevant Code Sections

Section 9.8

We will make an arrangement with **you** for keeping **you** regularly informed about the progress of **your Complaint**.

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;

⁷ Ibid.

- 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**.

Section 9.12

Where possible, **we** will provide a final response to **your Complaint in writing** within 45 calendar days. **We** will tell **you**:

- 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) **your** right to take **your Complaint** to the Financial Ombudsman Service (**FOS**) if **you** are not satisfied with **our** decision, and the timeframe within which **you** must take **your Complaint** to **FOS**; and
- d) contact details for **FOS**.

Section 9.13

If **we** are unable to respond to **your Complaint** within 45 calendar days, **we** will inform **you** of the reasons for the delay before the end of the 45 calendar days, and inform **you** of **your** right to take **your Complaint** to **FOS** if **you** are not satisfied, along with contact details for **FOS**.

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.