

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:	CX5929	Date:	2 December 2020
Code sections:	7.1, 8.17, 9.10, 9.12, 9.13 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer purchased life insurance including a Total and Permanent Disability (TPD) benefit which was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code). The Consumer's policy was sold under a superannuation structure, with the policy being owned by a Group Policy-owner (the Trustee).

The Consumer lodged a TPD claim with the Subscriber on 20 February 2018, which was withdrawn on 16 April 2018 by the Consumer's financial advisor as the Consumer's symptoms remained under investigation and a diagnosis had not been confirmed.

The Consumer's wife subsequently contacted the Subscriber to provide additional information on 20 April 2018. As a result, the Subscriber recommenced the assessment of the claim on the same day but did not re-open the claim in its system. This was despite the Subscriber confirming in a phone call to the Consumer's wife on 11 May 2018 that the new documentation had been assessed and that the claim was with management for review. The Subscriber has noted that the failure to re-open the claim was due to human error, and the claim was re-opened on 19 December 2018.

Due to the delays in the assessment of the claim, the Consumer's legal representatives submitted a complaint with the Subscriber on 7 December 2018. The Subscriber provided its complaint response on 29 January 2019 and accepted the Consumer's TPD claim on 27 May 2019.

On 30 January 2019, the Life CCC received a Code breach allegation from the Consumer's legal representatives alleging that the Subscriber was in breach of sections 7.1, 8.17, 9.12, and 9.13 of the Code.

As the Consumer's policy was owned by a superannuation fund trustee, sections 9.12 and 9.13 of the Code, which applies to complaints about policies that are not owned by a superannuation fund trustee, were not applicable to this matter. Instead, the Life CCC

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

reviewed the Subscriber's compliance with sections 9.10 and 9.11 of the Code, which are the equivalent provisions that apply to policies owned by a superannuation fund trustee.

The Life CCC contacted the Subscriber to seek more information in relation to the Code breach allegations relating to sections 7.1, 8.17 and 9.10 of the Code. In response, the Subscriber has acknowledged breaches of sections 8.17 and 9.10 of the Code.

The Life CCC noted that as the Subscriber provided its response to the Consumer within 90 calendar days, section 9.11 was not relevant in this instance.

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

The Life CCC determined that:

- sections 9.12 and 9.13 did not apply in this instance and that the allegation was unfounded,
- the Subscriber was in breach of section 9.10 of the Code and that the allegation was proven in whole,
- the Subscriber was in breach of section 8.17 of the Code and that the allegation was proven in whole, and
- the Subscriber was not in breach of section 7.1 of the Code and that the allegation was unfounded.

The Life CCC findings and conclusion:

Section 9.12 and 9.13

The Consumer's legal representatives alleged that the Subscriber was in breach of sections 9.12 and 9.13 of the Code. These two sections apply to complaints about life insurance policies that are not owned by a superannuation fund trustee.

The Subscriber has confirmed that the Consumer's policy was owned by a superannuation fund trustee. As sections 9.12 and 9.13 only apply to policies that are not owned by a superannuation fund trustee, the Life CCC determined that sections 9.12 and 9.13 did not apply in this instance and that the allegations were unfounded.

As the Consumer's policy was owned by a superannuation fund trustee, section 9.10 applied in this matter instead.

Sections 9.10 and 9.11

Section 9.10 requires a Subscriber to respond to the trustee so that it can provide a final response to the Consumer's complaint within 90 calendar days. Section 9.10 also lists the information that has to be part of the Subscriber's response to the complaint:

- a) the final decision in relation to the complaint, and the reasons for that decision,
- b) that the Consumer has a right to copies of the documents and information relied on, and if requested, copies will be provided within ten business days,
- c) that the Consumer has a right to lodge a complaint with the relevant External Dispute Resolution (EDR) scheme, and
- d) the contact details for the relevant EDR scheme.

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 Consumer's legal representatives lodged a complaint direct with the Subscriber on 7 December 2018. As a result, the Subscriber had to provide its response to the complaint by 7 March 2019, 90 calendar days from the date of the complaint. Based on the information available, the Subscriber provided its response to the Consumer on 29 January 2019, within 90 days from the date of the Consumer's complaint.

However, the Subscriber acknowledged that its complaint response to the Consumer was not compliant with section 9.10 of the Code as its response did not include the information required in section 9.10(b) of the Code. 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.

Section 9.11 allows a Consumer to request written reasons from a superannuation fund trustee if the trustee does not respond to the complaint within 90 calendar days. As the Consumer was provided with a response within 90 calendar days in this matter, section 9.11 was not relevant in this instance.

Section 9.10: systemic non-compliance

As part of the Life CCC's review of the bulk referral received in February 2018, the Life CCC reviewed the Subscriber's processes and procedures in relation to section 9.10 of the Code. The Life CCC determined that the Subscriber's section 9.10 process was systemically non-compliant with the Code as the Subscriber did not have a process to provide the wording required under section 9.10(b) to Consumers.

In July 2019, the Subscriber amended its template letter to include the information required under section 9.10(b) of the Code. However, this remediation occurred after the events in this matter. As a result, the Life CCC determined that the Subscriber's breach of section 9.10 in this matter formed part of the same systemic non-compliance with the Code.

Section 8.17

Section 8.17 of the Code requires the Subscriber to provide its decision on a lump sum claim within six months, unless Unexpected Circumstances (UC) applies. If UC applies, the Subscriber has 12 months to provide its decision on the claim.

The Consumer lodged the TPD claim on 20 February 2018. As a result, the Subscriber was required to provide a decision on 20 August 2018, six months from the date it received the claim.

However, the Consumer's financial advisor agreed to withdraw the claim on 16 April 2018, and the claim was closed on the same day. On 20 April 2018, the Subscriber received additional information from the Consumer's wife and the Subscriber restarted its assessment of the Consumer's TPD claim. Due to human error, the claim's status was not changed from 'closed' to 'open' till 19 December 2018.

As the Subscriber confirmed that it was actively assessing the claim from 20 April 2018 onwards, the only time that the claim was not being actively assessed was the 5 days between 16 April 2018 and 20 April 2018.

As a result, the six month timeframe still began on 20 February 2018, with a 5 day extension for the time period where the Subscriber was not assessing the claim. This results in the six month timeframe ending on 25 August 2018. The Subscriber provided the decision on the claim on 27 May 2019, approximately 9 months after the initial six month timeframe ended.

The Subscriber noted that UC applied in this instance as it was not able to reasonably satisfy itself on the basis of the information provided that the Consumer's condition met the requirements of the policy.

However, the Subscriber failed to notify the Consumer about the existence of UC and acknowledged that it was in breach of section 8.17 of the Code. As a result, the Life CCC determined that the Subscriber was in breach of section 8.17 of the Code and that the allegation was proven in whole.

Section 8.17: systemic non-compliance

As part of the Life CCC's review of the bulk referral received in February 2018, the Life CCC reviewed the Subscriber's processes and procedures in relation to section 8.17 of the Code.

The Life CCC's review identified that the Subscriber's section 8.17 process was non-compliant with the Code as the Subscriber did not provide adequate training to its staff in relation to notifying Consumers about UC and the Subscriber's process for informing Consumers of UC did not satisfy the requirement to inform the Consumer that the Consumer had the right to disagree with the reasons provided for UC.

This resulted in multiple breaches of section 8.17 of the Code that were similar to the breach in this matter. The Life CCC therefore determined that the Subscriber's section 8.17 processes at the time of the breach were non-compliant and that the breach formed part of the same systemic non-compliance with the Code.

To remediate the issue, the Subscriber introduced a new UC template letter in September 2019 and rolled out UC training to all its claims assessors in early 2020.

Section 7.1

Where a subscriber identifies that a Consumer requires additional support, section 7.1 requires the subscriber to take reasonable measures to provide additional support to the Consumer. Such Consumers may include older persons, Consumers with a disability, people from non-English speaking backgrounds and Indigenous people.

The Consumer's legal representatives alleged that the Subscriber did not take reasonable measures to provide the Consumer with additional support, noting that the Consumer suffered a serious neurological injury.

In response, the Subscriber noted that it trains its staff to determine if additional support is required based on their interactions with the Consumer and their authorised representatives. In this instance, the Subscriber noted that it received no indication through its interactions that the Consumer required additional support. In addition, the Consumer's representatives did not make a request for additional assistance.

The Life CCC notes that the requirement for additional support in section 7.1 applies when the Subscriber identifies that the Consumer requires additional support.

Given that the Consumer was represented and assisted by his financial advisor, his wife and his legal representatives, it appeared reasonable for the Subscriber to have determined that the Consumer did not require any additional support. As a result, the Life CCC determined that the Subscriber was not in breach of section 7.1 of the Code, and that the allegation was unfounded.

Key learnings

As part of the Life CCC's Claims and Complaints handling report³ released in March 2020, the Life CCC reviewed the section 8.17 and 9.10 processes and procedures for 11 Subscribers. The Life CCC provided guidance to Subscribers where gaps and inadequacies in the process were identified and has monitored the implementation of the agreed remediation measures.

The breaches in this instance were prior to the Subscriber's agreed remediation measures, and the Life CCC expects that the occurrence such breaches will continue to decline across the industry. The Life CCC will continue to closely examine any alleged breaches of sections 8.17 and 9.10 which relate to conduct occurring after the agreed remediation to assess if the remediation carried out by Subscribers was effective.

Relevant Code Sections

Section 7.1:

We recognise that some groups may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a **Complaint** and communicating with **us**. Where **we** identify that a customer requires additional support, **we** will take reasonable measures to ensure that **we** provide additional support.

Section 8.17:

For all claims other than income-related claims, **we** will let **you** know **our** decision no later than six months after **we** are notified of **your** claim or six months after the end of any waiting period, unless **Unexpected Circumstances** apply. Depending on **your** policy, **our** decision may be a requirement that **you** undertake a period of rehabilitation or retraining, or it may be a final decision on **your** benefits. Where **Unexpected Circumstances** apply, **our** decision will be made no later than 12 months after **we** are notified of **your** claim. **We** will let **you** know the reasons for the delay, and if **you** disagree **we** will review this. If **we** cannot make a decision within 12 months, **we** will give you details of **our Complaints** process.

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**.

Section 9.11:

³ <https://lifeccc.org.au/app/uploads/2020/03/Life-CCC-Claims-and-Complaints-Handling-Obligations-1.pdf>

If the superannuation fund trustee does not respond to **your Complaint** within 90 calendar days of receiving **your Complaint**, **you** can request written reasons from them for the delay. **You** have the right to take **your Complaint** to the **SCT** if **you** are not satisfied.

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**)⁴ 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.

⁴ FOS was replaced by the Australian Financial Complaints Authority (AFCA), effective 1 November 2018.