

# 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

<b>Reference:</b>	CX6968	<b>Date:</b>	12 January 2021
<b>Code sections:</b>	9.12 <sup>1</sup>		
<b>Investigation:</b>	A consumer-reported alleged Code breach		

## The alleged Code breach:

The Consumer purchased life insurance including a Trauma 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 lodged a Trauma claim under their policy in February 2019, which was declined in September 2019.

The Consumer's legal representatives lodged a complaint with the Subscriber on 3 March 2020 relating to the declined Trauma claim and enclosed new medical evidence from the Consumer's treating specialist. The Subscriber confirmed that it received the complaint on 4 March 2020.

The Consumer's legal representatives subsequently lodged a Code breach allegation on 20 May 2020 alleging that the Subscriber was in breach of section 9.12 of the Code as it had failed to provide a final response to the Consumer's complaint within 45 calendar days.

The Life CCC contacted the Subscriber to seek more information in relation to the Code breach allegation. The Subscriber noted that it finalised the complaint on 16 October 2020, outside the 45 calendar day timeframe, but raised the 'where possible' carve out in section 9.12.

The Subscriber noted that it was not possible to finalise the complaint within 45 calendar days as the complaint was still being investigated and new medical evidence was being reviewed by the Subscriber.

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<sup>1</sup> The Code sections are provided in full in the last section of the Determination

## **Findings in accordance with Charter clause 7.4(b)(iii)<sup>2</sup>:**

The Life CCC determined that the Subscriber was not in breach of section 9.12 of the Code and that the allegation was unfounded.

### **The Life CCC findings and conclusion:**

#### **Section 9.12**

Section 9.12 of the Code creates an obligation for a subscriber to provide a final response to a complaint in writing within 45 calendar days, where possible.

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 representatives lodged the complaint on behalf of the Consumer on 3 March 2020, which the Subscriber received on 4 March 2020. The Subscriber provided its final response to the complaint on 16 October 2020, more than 45 calendar days after receiving the Consumer's complaint.

However, the Subscriber noted that it was not possible to finalise the Consumer's complaint within 45 calendar days as the complaint was still being investigated and new medical evidence was being reviewed.

The Consumer's 3 March 2020 complaint letter included a medical report from the Consumer's treating specialist, which was referred to the Subscriber's claims team for review. The Subscriber subsequently requested:

- a copy of the Consumer's MRI report,
- the Consumer to undertake an Independent Medical Examination (IME) review with the Consumer's treating specialist, and
- a file review from an accredited AMA 6 Whole Person Impairment (WPI) Specialist Assessor.

As the file review only occurred on 9 September 2020 due to the limited availability of the Specialist Assessor, the Subscriber was not able to provide its final response to the complaint within 45 calendar days. After receiving the information that it required, the Subscriber provided the Consumer with Procedural Fairness, issued its claim decision on 15 October 2020 and provided the final response to the complaint on 16 October 2020.

The Life CCC agrees that it was not possible for the Subscriber to provide its final response to the complaint within 45 calendar days, given that the Subscriber required additional information in order to provide a final response to the Consumer's complaint.

We also note that the Subscriber's final response to the Consumer's complaint of 16 October 2020 included all the information required under section 9.12(a) to (d).

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<sup>2</sup> 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.

## Key learnings

The 'where possible' carve out in section 9.10 and 9.12 applies where it is not possible for a subscriber to provide a final response to a complaint within the timeframe provided by the Code. The reason for the delay has to be outside of the subscriber's control and be necessary for the subscriber to provide its response to the complaint.

### Relevant Code Section

#### 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**)<sup>3</sup> 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**.

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.

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<sup>3</sup> FOS was replaced by the Australian Financial Complaints Authority (AFCA), effective 1 November 2018.