

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:	CX6548	Date:	9 December 2020
Code sections:	Section 1.5(b), 1.5(c), 8.9(b) and 9.12 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breach:

The Consumer obtained life insurance with an Income Protection (IP) benefit in February 2013. The life insurance was issued by a Life Insurance Company who became a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code) on 30 June 2017.

The Consumer suffered an injury in or around October 2014 and lodged a claim on the policy in November 2014. The Subscriber subsequently accepted the Consumer's claim and started paying the IP benefits under the policy.

In March 2019, the Subscriber became aware that the Consumer might also be in receipt of income from multiple other sources. As a result, the Subscriber advised the Consumer on 1 April 2019 that they would not be making further payments until the Consumer provided three complete tax returns for the financial years ending 30 June 2016, 30 June 2017 and 30 June 2018.

In response, on 5 April 2019 the Consumer lodged a complaint at the Australian Financial Complaints Authority (AFCA) in relation to the stopped payments. The Consumer's representatives also sent the Subscriber correspondence regarding the complaint on 4 June 2019 and provided the tax returns requested by the Subscriber.

The AFCA dispute was subsequently closed in July 2019 as the Subscriber reinstated the Consumer's IP payments on 8 May 2019.

On 19 November 2019, the Consumer's representatives lodged a Code breach allegation with the Life CCC alleging that the Subscriber was in breach of sections 1.5(b), 1.5(c), 8.9(b) and 9.12 of the Code.

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 sections 1.5(b), 1.5(c) and 8.9(b) of the Code and that the allegations were unfounded, and
- that section 9.12 of the Code did not apply in this matter and that the allegation was unfounded.

The Life CCC findings and conclusion:

Section 1.5(b) and 1.5(c)

Section 1.5 of the Code states that the principles that apply to the subscribers' products and services are principles of:

- (a) clarity and transparency;
- (b) fairness and respect;
- (c) honesty;
- (d) timeliness; and
- (e) communications in plain language.

The Consumer's representatives alleged that the Subscriber was in breach of section 1.5(b) and 1.5(c) of the Code as the Subscriber had failed to provide its services in an honest, fair and transparent way because the Subscriber had:

- asserted that the Consumer had not disclosed her other insurance policies,
- asserted that the Consumer had not disclosed her return to work in 2016, and
- stopped the Consumer's payments without substantiating the claim of overpayment.

Disclosure of other insurance policies

The Consumer applied for the policy on 26 February 2013 and informed the Subscriber that she had insurance cover with another insurer which she planned to replace with the cover from the Subscriber. On 22 February 2014, the Consumer confirmed with the Subscriber that she did not hold any other insurance cover.

The Subscriber became aware of the Consumer's other insurance policies from a phone call with the Consumer on 29 March 2019. As part of that phone call, the Subscriber informed the Consumer that it would not make further IP payments until it received three complete tax returns for the financial years of 2016, 2017 and 2018. This gave the Consumer 21 days to provide the three tax returns as the Consumer's next payment was due to be processed on 22 April 2019.

We note that the Subscriber requesting additional information from the Consumer to substantiate the Consumer's disclosure of the other insurance policies is not unfair, disrespectful or dishonest, and is part of the standard claims process. The Subscriber was entitled to investigate if the Consumer had undisclosed sources of income and had provided the Consumer with a reasonable amount of time (21 calendar days) to provide the information that it requested, prior to the payment of the next IP payment.

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.

Disclosure of the Consumer's return to work

The Subscriber confirmed that the Consumer's 2016 return to work was discussed in phone calls with the Consumer on 17 March 2016 and 15 June 2018. However, while the Subscriber was aware of the Consumer's return to work attempt, the Subscriber submitted that the phone calls did not put it on notice as to the true extent of the Consumer's return to work.

The claim form submitted by the Consumer in March 2016 stated that the Consumer's return to work occurred on or about 1 August 2015, for a total of 4 hours. The Subscriber noted that this did not correlate with the Consumer's payslips which it received later, which indicated that the Consumer had made a longer term return to work.

We note the Subscriber requesting additional information from the Consumer to substantiate the Consumer's employment is not unfair, disrespectful or dishonest, and is part of the standard claims process. Given that the IP benefit is an ongoing benefit, the Subscriber was entitled to investigate and request additional information regarding the Consumer's return to work.

Stopped the Consumer's payments without substantiating overpayment

The Subscriber first became aware of the Consumer's other insurance policies and the extent of the Consumer's return to work in March 2019. The Subscriber contacted the Consumer on 1 April 2019 and requested three complete tax returns for the financial years ending 30 June 2016, 30 June 2017 and 30 June 2018.

The Subscriber noted that it would not make further IP payments until the Consumer provided the information requested, allowing the Subscriber to verify that the Consumer did not have any other income. The Consumer's next payment was due on 22 April 2019 (21 days later).

The Life CCC noted that the 21 days provided by the Subscriber to the Consumer was sufficient time for the Consumer to provide the information and was not unfair to the Consumer. In addition, the Consumer's IP benefit is an ongoing benefit which is assessed by the Subscriber prior to each payment.

Payment of a benefit in a prior month does not guarantee payment of a benefit in a subsequent month, and the Subscriber was entitled to investigate if new information indicated that the Consumer was not entitled to the benefit under her policy.

As a result, the Life CCC determined that the Subscriber was not in breach of sections 1.5(b) and 1.5(c) of the Code and that the allegations were unfounded.

Section 8.9(b)

Section 8.9(b) of the Code states that, for income-related claims, subscribers may require consumers to get ongoing statements from their doctor to assess the consumer's condition, but no more frequently than reasonably necessary. For monitoring purposes, the subscriber may also seek information from the doctor every six months, even if the consumer's condition is stable.

The Consumer's representatives alleged that the Subscriber contacted the Consumer directly via telephone on a regular basis requested that the Consumer get ongoing statements from her doctor more frequently than was reasonably necessary to assess her condition.

The Subscriber noted that the Consumer was under the regular care of multiple doctors for varied periods of time and that her medication was changed often, with varied impact on her health. As a result, the Subscriber needed regular updates to understand the Consumer's diagnosis, symptoms, treatment and prognosis.

The Subscriber noted that between July 2017 to January 2018 it requested updates from the Consumer's doctor on a monthly basis. In addition, the Subscriber requested a final update in June 2018. Since then, the arrangement between the Subscriber and the Consumer has been for updates to be provided quarterly until it is established that the Consumer's condition has stabilised.

While the Consumer's representative alleged that the Subscriber's regular telephone contact with the Consumer caused her stress, given the information available, the Subscriber's monthly requests for the ongoing medical statements were reasonable to assess the Consumer's evolving condition.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.9(b) of the Code and that the allegation was unfounded.

Section 9.12

Section 9.12 of the Code creates a requirement for subscribers to provide a final response to a complaint about a life insurance policy that is not owned by a superannuation fund trustee within 45 business days. The section also specifies the information that has to be provided to the consumer within the complaint response letter.

The Consumer's representatives alleged that the Subscriber was in breach of section 9.12 of the Code as it failed to provide a response to their correspondence of 4 June 2019, which the Consumer's representatives noted was a complaint. The Subscriber noted that it responded to the Consumer's representative's 4 June 2019 correspondence as part of its response to the AFCA complaint on 7 June 2019. This was because the Consumer already had an ongoing dispute at AFCA and the 4 June 2019 complaint raised similar concerns to the AFCA dispute.

There was also no indication in the 4 June 2019 correspondence that this was a new complaint that was separate to the existing dispute at AFCA. Instead, the 4 June 2019 letter begins by enclosing the Consumer's 2016, 2017 and 2018 tax information that was requested by the Subscriber. These factors make it reasonable for the Subscriber to form the view that the 4 June 2019 complaint was not a new complaint regarding an issue that was outside the scope of the AFCA dispute, but was instead correspondence that related to the Consumer's existing AFCA dispute with the Subscriber.

The Life CCC considered that the 4 June 2019 correspondence was not a new complaint as it did not raise any new substantive issues that were unrelated to the first complaint at AFCA. As a result, the Subscriber was not required to provide a complaint response letter in line with section 9.12 of the Code. The Life CCC further noted that the Subscriber responded to the concerns raised in the 4 June 2019 correspondence as part of its response to AFCA on 7 June 2019.

As a result, the Life CCC determined that section 9.12 did not apply in this instance and that the allegation was unfounded.

Key learnings

In circumstances where a consumer lodges a dispute with an external dispute resolution (EDR) service prior to lodging a complaint with the subscriber (IDR), it can be difficult to determine whether the complaint obligations under the Code applies. In this instance, the 4 June 2019 correspondence was not a new complaint and thus did not require the subscriber to provide a response in line with section 9.12 of the Code.

Factors that indicate that a correspondence is a new and separate complaint include but are not limited to:

- the correspondence stating that it is a new and separate complaint,
- raising new issues that are wholly distinct and separate to the issues of the initial complaint, and
- the complaint being about a policy or product that is different to the policy or product of the initial complaint.

The Life CCC encourages subscribers to refer to the Life CCC's Guidance Note on section 9.10 of the Code³ for additional guidance.

Relevant Code Sections

Section 1.5

The principles that apply to **our** products and services that are covered by the **Code** are:

- a) clarity and transparency;
- b) fairness and respect;
- c) honesty;
- d) timeliness; and
- e) communications in plain language.

Section 8.9

For income-related claims (such as income protection or business expense cover):

- a) information may need to be provided on an ongoing basis in order to review **your** entitlement to benefits or to calculate **your** payments. This can include financial as well as medical information;
- b) **we** will not require **you** to get ongoing statements from **your** doctor more frequently than reasonably necessary to assess **your** condition, so that **we** can determine **your** ongoing entitlement to benefits. For monitoring purposes, **we** may seek information from **your** doctor every six months, even if **your** condition is stable;
- c) **we** will not request a medical statement from **your** doctor for the sole reason of processing **your** regular payment;
- d) **we** will only request financial information in circumstances where it is required to assess **your** eligibility to claim or to calculate **your** entitlement;
- e) if **you** disagree with the relevance of any requested information, **we** will review this; and
- f) if **your** payment is going to be delayed, **we** will notify **you** prior to this and let **you** know the reasons for the delay.

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**.

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

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.