

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:	CX4568	Date:	29 June 2021
Code sections:	8.9, 8.15, 9.10 ¹		
Investigation:	A consumer-reported alleged Code breach		

The alleged Code breaches:

The Consumer is a member of a superannuation fund. As part of that membership, the Consumer obtained a life insurance policy with an Income Protection (IP) benefit. The Life Insurance policy was issued by a Life Insurance Company that is a subscriber (the Subscriber) to the Life Insurance Code of Practice (the Code), and the policy was owned by a Group policy-owner (the Trustee).

We note that in this matter, the Subscriber communicated directly with the Consumer rather than through the Trustee.

The Consumer lodged an IP claim with the Subscriber on 22 July 2016 which was admitted on 14 October 2016. The Consumer lodged a complaint with the Australian Financial Complaints Authority (AFCA) on 17 May 2017 which alleged that the Subscriber had unreasonably delayed the payment of the Consumer's ongoing monthly benefits after September 2016. As these events occurred prior to the Subscriber's adoption of the Code on 1 July 2017, they were not covered by the Code.

On 19 July 2018, AFCA referred the matter to the Life CCC and alleged that the Subscriber had breached sections 8.9(d) and 8.15 of the Code. On 7 September 2018, the Life CCC commenced its investigation after the AFCA complaint had concluded.

As part of its review of the file, the Life CCC also raised a possible breach of section 9.10 of the Code. The Subscriber acknowledged that it was in breach of sections 8.15 and 9.10 of the Code but asserted that it was not in breach of section 8.9 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 section 8.9 of the Code and that the allegation was unfounded, and
- the Subscriber was in breach of sections 8.15 and 9.10 of the Code and that the allegations were proven in whole.

The Life CCC findings and conclusion:

Section 8.9

Section 8.9(a) to (f) of the Code sets out the obligations that subscribers are required to comply with when assessing income-related claims. The Life CCC's review was in relation to section 8.9(d) of the Code - subscribers will only request financial information in circumstances where it is required to assess the consumer's eligibility to claim or to calculate the consumer's entitlement.

The Life CCC agreed with the Subscriber's view that it had not breached section 8.9 of the Code as the Subscriber was entitled to (in accordance with the relevant policy terms) and had requested various financial evidence and information (which related to the Consumer's business) to calculate the Consumer's monthly entitlements under the policy.

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

Section 8.15

Section 8.15 requires a subscriber to communicate a claim decision within ten business days of receiving all the information that the subscriber reasonably needed to assess a claim.

The Subscriber acknowledged that it had breached section 8.15 of the Code as:

- The Subscriber received all the information required to assess the benefits and premium refund payable for the period between 1 June 2017 and 31 August 2017 on 9 October 2017 but only issued the payment to the Consumer on 26 October 2017.
- The Subscriber received all the information required to assess the underpayment benefits payable for the period between 1 August 2017 and 31 August 2017 on 6 December 2017 but only issued the payment to the Consumer on 2 February 2018.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.15 of the Code and that the allegation was proven in whole.

Section 9.10

Section 9.10 contains two separate elements:

- The first element requires a subscriber to respond to a Trustee to enable the Trustee to respond to a Consumer within 90 calendar days of the Trustee receiving a complaint.

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 second element requires a subscriber to provide the information under section 9.10(a) to (d) of the Code within its final complaint response letter.

As the Subscriber received the complaint directly from the Consumer via email on 27 June 2017 and responded to the complaint on 5 July 2017, the Subscriber was compliant with the first element of section 9.10. However, the Life CCC reviewed the Subscriber's 5 July 2017 response and noted that the response did not include the information required under section 9.10 of the Code.

The Subscriber acknowledged that it had breached section 9.10 as the complaint response did not include the information required under section 9.10(a) to (d) of the Code. This was because the claims handler who managed the claim did not treat the email as a 'complaint' as the Consumer had lodged a complaint with AFCA then.

The Life CCC reviewed the complaint response and note that as the Subscriber responded to the complaint (through an apology and provided the Consumer with an explanation of ongoing information requirements under the policy together with a table of past payments issued as requested by the Consumer), the information omitted in the complaint response was section 9.10(b) to (d) of the Code.

As a result, 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.

Serious and systemic non-compliance

The Life CCC reviewed the Subscriber's section 9.10 processes and procedures previously as part of its investigation of the bulk referral from a plaintiff law firm received by the Life CCC in February 2018.³ During the review, the Subscriber acknowledged that it did not have adequate processes in place and had only implemented a compliant complaint response letter template in September 2018.

Given that the Subscriber did not have adequate section 9.10 processes prior to September 2018 as evidenced by the non-compliant complaint response in this matter dated 5 July 2017, the Life CCC determined in accordance with Charter clause 7.4(b)(iv)⁴ that the Subscriber's breach of section 9.10 of the Code amounted to both serious and systemic non-compliance with the Code.

Key learnings

While the Life CCC acknowledges the complexities involved in assessing and calculating ongoing monthly benefits, delays in issuing monthly IP and/or Total and Permanent Disability (TPD) payments could unnecessarily cause and extend a consumer's difficult financial circumstances.

Whilst robust systems tracking, and standardised compliant letter templates are helpful in ensuring systemic compliance with the Code, the Life CCC reminds subscribers of the human element associated with every claim and complaint and the community expectation that claims and complaints will be handled in a timely manner, consistent with the spirit of the Code.

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

⁴ 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.

Relevant Code Sections

Section 8.9:

For income-related claims (such as income protection or business expense cover):⁵

d) **we** will only request financial information in circumstances where it is required to assess **your** eligibility to claim or to calculate **your** entitlement;

Section 8.15:

Once **we** have all the information **we** reasonably need and have completed all reasonable enquiries to assess **your** claim, including **your** response to the evidence **we** are basing **our** decision on if **we** have presented this to **you**, **we** will let **you** know **our** decision on **your** claim within ten **business days**.

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**. **You** will be informed of:

- 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) 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.

⁵ An income-related claim is a claim for an ongoing benefit that **we** pay to **you** when **you** are unable to work due to being ill or injured.