

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:	CX7043	Date:	20 June 2022
Code sections:	9.10, 8.17, 8.7 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 a Total and Permanent Disability (TPD) 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).

The Consumer lodged a TPD claim with the Trustee in July 2018 and the claim was referred to the Subscriber on 24 August 2018. The Subscriber declined the TPD claim and notified the Trustee on 13 February 2019. The Trustee notified the Consumer of the claim decision on 26 March 2019.

Subsequently, the Consumer's Legal Representative (CLR) lodged three complaints with the Trustee on 26 January 2020, 9 March 2020 and 26 October 2020.

The CLR made a referral to the Life CCC on 19 June 2020 which alleged that the Subscriber had breached sections 9.10 and 8.17 of the Code. The CLR alleged that the Subscriber did not respond to the complaint of 9 March 2020 within 90-calendar days and took more than six months to issue a decision on the initial claim.

As part of its review of the alleged Code breaches the Life CCC also investigated a possible breach of section 8.7 of the Code.

The Subscriber disagreed that it had breached sections 9.10 and 8.17 of the Code but acknowledged that it had breached section 8.7 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 in breach of section 9.10 of the Code and that the allegation was proven in whole;
- was not in breach of section 8.17 of the Code and that the allegation was unfounded; and
- was in breach of section 8.7 of the Code and that the allegation was proven in whole.

The Life CCC findings and conclusion:

Section 9.10

Section 9.10 of the Code creates an obligation for a subscriber to assist the Trustee in responding to a complaint in writing within 90-calendar days of receiving the complaint. Section 9.10(a) of the Code requires that the final response to the complaint must include the final decision and the reasons for that decision.

The Consumer and the CLR lodged a total of three complaints with the Trustee:

- The **First Complaint** was lodged by the Consumer with the Trustee on 26 January 2020. This was received by the Subscriber on 14 February 2020. The Subscriber provided its final response letter to the Trustee on 13 March 2020, within 28 days. The complaint related to the Subscriber's decision to decline the TPD claim and the level of service provided by the Subscriber throughout the course of assessing the claim.
- The **Second Complaint** was lodged by the CLR with the Trustee on 9 March 2020. This was received by the Subscriber on 7 April 2020. The Subscriber provided its final response letter to the Trustee on 28 April 2020, within 21 days. The complaint was in relation to a request to review the decision to decline the claim based on the work duties definition.
- The **Third Complaint** was lodged by the CLR with the Trustee and the Subscriber on 26 October 2020 with a request to review the decision to decline the claim based on the new medical information provided.

While the CLR's breach allegation was only in relation to the second complaint, the Life CCC reviewed all three complaints under section 9.10 of the Code.

First and Second Complaints

The Life CCC noted that the Subscriber had complied with section 9.10 regarding the first and second complaints.

Third Complaint

The Subscriber provided the final complaint response to the Trustee on 24 November 2020. While the Subscriber's response to this complaint was within 90-calendar days, the complaint response advised the Consumer of the Subscriber's decision to reopen and reassess the claim rather than its decision on the reopened claim.

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.

Following the guidance provided by the Life CCC in Guidance Note 2 (GN2³) issued on 31 October 2019, the Life CCC determined that the Subscriber did not comply with section 9.10 as the final response to the complaint did not include a decision as to whether the Subscriber would accept or decline the reopened claim in line with GN2.

As a result, the Life CCC determined that the Subscriber was in breach of section 9.10 and the allegation was proven in whole.

The Subscriber disagreed that it had breached section 9.10 as it formed the view that the obligation created under section 9.10 was to provide a final decision on the complaint and not a final decision on the reopened claim. The Subscriber considered a reset of the claim timeframes under Chapter 8 of the Code to be more appropriate for decisions on reopened claims.

The Subscriber referenced a previous Determination, CX4331⁴, in support of its position. In CX4331 the Life CCC considered that the circumstances unique to the matter justified a 'reset' of the six-month timeframe of section 8.17. Under CX4331 the declined claim decision was not communicated to the Consumer, only to the Trustee, and the claim was reopened following the submission of new evidence by the Consumer to the Trustee, with no complaint being raised. That was not the case in this matter.

Serious and systemic non-compliance with section 9.10

The Subscriber systematically applied its own approach to section 9.10 and did not adopt the Life CCC's interpretation of section 9.10, despite GN2 being issued over 2 years ago. This meant that the Subscriber did not have adequate processes and was not compliant with the requirements under section 9.10 over five years since its Code adoption. On that basis, the Life CCC determined in accordance with Charter clause 7.4(b)(iv) that the Subscriber's breach of section 9.10 amounted to serious and systemic non-compliance with the Code.

Section 8.17

Section 8.17 of the Code requires the Subscriber to communicate its decision on a lump sum claim within six months, unless Unexpected Circumstances applies. If Unexpected Circumstances applies, the Subscriber has six additional months to communicate its decision on the claim.

The CLR alleged that the Subscriber was not compliant with section 8.17 as it took 11 months to provide its decision on the original claim.

The claim was submitted to the Trustee in July 2018 and the Trustee forwarded the claim to the Subscriber on 24 August 2018. The decision to decline the claim was communicated to the Trustee on 13 February 2019. This was within the required six-month timeframe under section 8.17.

As a result, the Life CCC determined that the Subscriber was not in breach of section 8.17 of the Code and that the allegation was unfounded.

In accordance with GN2, claims reopened following lodgement of a complaint should be assessed under the obligations created in Chapter 9 of the Code, rather than Chapter 8. This meant that the timeframe for section 8.17 did not apply in respect of the reopened claim as part of the third complaint.

³ <https://lifeccc.org.au/resources/interpreting-and-applying-section-9-10-guidance-note/>

⁴ <https://lifeccc.org.au/resources/notice-of-determination-cx4331/>

Section 8.7

Section 8.7 requires the Subscriber to request the information needed in relation to a claim as early as possible and to avoid multiple information requests where possible.

The Subscriber acknowledged that it was in breach of section 8.7 as it identified two instances where it did not request the information it needed to assess the reopened claim as early as possible:

- **First Instance:** As part of the third complaint, the Subscriber received from the CLR an independent medical examination on 27 October 2020. The Subscriber then reopened the claim on 28 November 2020 but did not request the additional information it required to assess the claim until 5 February 2021.
- **Second Instance:** On 30 June 2021, the Subscriber considered the possibility that the Consumer may not have been entitled to the cover they were provided with under their superannuation membership. However, the Subscriber did not request the information it needed to determine Consumer's eligibility for the insurance cover until 10 September 2021.

As a result, the Life CCC determined that the Subscriber was in breach of section 8.7 of the Code and that the allegation was proven in whole.

Serious non-compliance with section 8.7

As there was a delay of three months in the first instance and more than two months in the second instance, this meant that the Subscriber unnecessarily prolonged the claim assessment review duration by a total of 5 months. As a result, the Life CCC determined that the breach of section 8.7 amounted to serious non-compliance with the Code.

Key learnings

Since the introduction of the Code on 30 June 2017, the Life CCC has published through its website various guidance materials including numerous Determinations on various Code breaches and Guidance Notes. The principal purpose of these guidance material is to identify guiding principles and provide a framework for meeting obligations created by the Code as well as to assist subscribers to align their approach and processes with industry best practice.

The Life CCC's expectation is that Subscribers take steps to ensure that the recommended practices outlined in various Life CCC publications are properly adopted to avoid possible non-compliance with the Code.

In this matter, the Life CCC was disappointed that the Subscriber had not adopted the Life CCC's guidance provided in [GN2](#) in relation to reopened claims, despite this being issued over 2 years ago, and possibly affecting a number of consumers.

The Life CCC encourages all subscribers to seek further guidance and direction if they encounter any challenges with ensuring that their processes and procedures remain adequate. In doing so, subscribers will embody the spirit of the Code by striving to consistently meet the high standards of the Code to demonstrate a responsible and committed customer-focused industry.

Relevant Code Sections

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**.

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 8.7

We will request the information **we** need as early as possible and will avoid multiple information requests where possible.

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.