



GENERAL INSURANCE
Code Governance Committee

2014 General Insurance Code of Practice

**Snapshot – Own Motion Inquiry
Investigation of Claims and
Outsourced Services**

1 May 2017

Chair's message

I am proud to present the Code Governance Committee's first report on an Own Motion Inquiry examining compliance with the General Insurance Code of Practice. The report is an in-depth look at the claims investigation and outsourcing practices of a selection of Code Subscribers (respondents).

Our interest in this area was sparked in 2014–15, at a time when Code Subscribers were transitioning to the 2014 iteration of the Code. We had been hearing from consumers that they had concerns about how general insurers were outsourcing claims investigations and debt collection services. As a result, we identified this as the focus for our first Own Motion Inquiry. Again in response to consumer feedback, the focus was later expanded to encompass claims investigation practices more generally.

We also felt that there would be enormous benefits to Code Subscribers from a wider survey encompassing both claims investigation practices and outsourced functions, as it is the combination of these that provides a full picture of what happens when fraud is suspected and pursued. This additional information, which we have collected for the first time – in particular about the way general insurers investigate claims – should assist the industry respond more effectively to the number of ongoing external inquiries and reviews into the general and other insurance industries. We have summarised our findings in Appendix 1 of this report.

Most respondents provided some documents to support their responses and several of these respondents gave us extensive supporting documentation. However, it was disappointing that four respondents did not provide any supporting documents. Given the purpose of such inquiries, it is essential that in future all participating Code Subscribers provide relevant supporting documents with their responses. This will enable us to assist Code Subscribers to comply with their Code obligations, including identifying good practice and providing recommendations for improved compliance.

With regard to Code Subscribers and related entity Employees, we found that respondents are managing compliance reasonably well. On the whole, there are processes and procedures in place to support compliance with the Code's standards on claims investigations.

However, once claim-related functions are outsourced to Service Suppliers, compliance is more unpredictable. We uncovered considerable variability in the degree of oversight that respondents exercise over Service Suppliers and we are concerned that in some cases oversight may be inadequate, particularly in relation to claims handling. As well, there is not enough guidance provided to external Investigators when interviewing consumers. We also found that some respondents have authorised Service Suppliers to handle complaints when Code Subscribers are required to perform this function. In addition, some respondents' contracts with Services Suppliers do not align with the Code's requirements.

Most Code Subscribers outsource key claims-related functions to Service Suppliers, and almost always when fraud is considered a possibility. It is critically important, therefore, that Code Subscribers and their Service Suppliers are aware of, and compliant with, the relevant Code obligations. To that end, we have made 30 recommendations – brought together in Appendix 2 of this report – aimed at helping Code Subscribers improve compliance with Code standards. These include several recommendations about Investigators' conduct and as a result, we consider that the

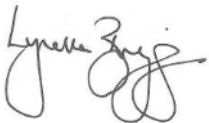
Insurance Council of Australia (ICA) and Code Subscribers should develop a set of best practice standards in relation to the conduct of Investigators that incorporate these recommendations.

The Code itself also contains some gaps. With the Code currently under review by the ICA, there is an opportunity to consider and address such gaps. We will therefore make further recommendations about gaps in current standards in our submission to the ICA's review.

I would like to thank the Code Subscribers who participated in the inquiry. I would like to give a special thank you to Rose-Marie Galea and her team for the enormous amount of detailed work they have put into analysing the material provided by Code Subscribers and supporting our requests for extra information. The extent of practice variability between Code Subscribers and their Service Suppliers added to the task, but the Inquiry provides a rich information source to enable the general insurance industry to inform and improve its future practice.

The General Insurance Code of Practice exists to promote better customer relationships. This goal is only achieved when high standards of service are consistently met. Importantly, Code Subscribers are entitled to ask for relevant information, assess or investigate a claim, to ensure that they are liable for the policy benefits consumers are applying for. At the same time, consumers are entitled to access their policy benefits and Code Subscribers must treat them fairly when making claims.

There is a wealth of information in this report and the appendices on how the general insurance industry conducts investigations and engages with Service Suppliers and consumers on this. Our hope is that the findings of this Own Motion Inquiry will prompt renewed efforts on the part of Code Subscribers to ensure that good industry practice extends to every customer interaction, whether with an Employee or a Service Supplier.



Lynelle Briggs AO
Independent Chair
General Insurance Code Governance Committee
May 2017

This Code Governance Committee (CGC) report documents the findings of its Own Motion Inquiry¹ (Inquiry) into selected Code Subscribers' claims investigation practices and policies and their outsourced claims-related services.

The CGC's report is divided into two parts:

Part one – Claims investigations: This part of the report focuses on the policies and procedures underlying the conduct of claims that are identified as high risk and potentially fraudulent because of the presence of claims anomalies.

Part two – Outsourced functions: This part of the report focuses on the policies and procedures respondents have in place that govern the outsourcing of claims-related functions to Service Suppliers and how they monitor Service Suppliers' compliance with the Code.

During the Inquiry, the CGC engaged with a sample of 27 respondents, comprising 23 general insurers and 4 coverholders and claims administrators.² It also invited several community legal centres and financial counselling groups to provide information about their experiences dealing with Code Subscribers. The Inquiry has led to a number of findings and the CGC has summarised these in **Appendix 1** of this snapshot.

Key messages

Deciding whether to investigate a claim

Respondents rely on claims anomalies – 'fraud investigation indicators' – that suggest a claim is 'high risk'. When a claim has fraud investigation indicators, respondents apply a triage process to determine whether the claim requires further enquiries or closer examination, which is typically done via an external Investigator. The presence of fraud investigation indicators, however, is not evidence of fraud and does not determine that a claim is fraudulent. Code Subscribers should ensure that they regularly review fraud investigation indicators for continued relevance.

Being transparent about claims investigations

Code Subscribers are entitled to investigate a claim. Investigation by Employees or external Investigators enables Code Subscribers to verify a claim's circumstances and ensure that they are liable for the claim. This includes the entitlement to investigate claims where fraud is suspected. At the same time, consumers are entitled to access their policy benefits and to be treated fairly when making claims. Code Subscribers can facilitate transparency by informing consumers that their claim will be investigated and why; of what to expect; and of what their rights and responsibilities are. In addition, Code Subscribers should explain the investigation roles and responsibilities of their Employees and external Investigators.

¹ The CGC conducted the Inquiry in accordance with section 1.1(b) of The Code Governance Committee Charter.

² These are service companies of Lloyd's Australia Limited.

Interviewing consumers

The CGC found that respondents vary considerably in the level of guidance they give external Investigators on interviewing consumers. Code Subscribers should provide clearer guidance about interviewing minors. In addition, some respondents do not provide any guidance to external Investigators about the duration of interviews and access to rest breaks. In the CGC's view, Code Subscribers should ensure that interviews include regular rest breaks and are no longer than two hours unless the Code Subscriber has approved a longer period and the consumer has agreed to that approach.

Access to interpreters and support persons

While all respondents reported that they provide consumers with access to an interpreter or support person during interviews, there are variations in the level of internal and external guidance on assessing consumers' special needs. Some respondents require their Employees to assess consumers' special needs and to provide additional support before requiring them to participate in an interview. Code Subscribers or their external Investigators should never deny a consumer's request for a support person and must ensure that only independent and qualified interpreters are used.

Best practice standards for Investigators

The CGC has made a number of recommendations in this report that respond to various findings about the conduct of Investigators within a claims environment. As a result, it is the CGC's view that Code Subscribers and the ICA should work together to develop a set of best practice standards in relation to the conduct of Investigators that incorporate these recommendations.

Contracts with Service Suppliers

The CGC found that some respondents' contracts with their Service Suppliers comply with the Code's requirements while other respondents' contracts do not align with the relevant standards. It is important that all Code Subscribers review their existing contractual arrangements and ensure their Service Suppliers are aware of the obligations that apply to the services they are providing.

Complaints about Service Suppliers must be handled by Code Subscribers

Several respondents reported that they authorise some of their Service Suppliers to handle their own complaints, even though the Code requires Code Subscribers to handle all complaints themselves – including those relating to their Service Suppliers – under their own complaints process. The Code acknowledges that the use of Service Suppliers is a standard business practice. However, to strengthen consumers' trust and confidence in the general insurance industry, the Code places a high onus on Code Subscribers to take full responsibility for the internal review of complaints that relate to their Service Suppliers.

Maintaining oversight of Service Suppliers

Outsourcing claims-related functions to Service Suppliers means that Code Subscribers must work hard at maintaining oversight as the Code holds them accountable for their Service Suppliers' conduct. The CGC found that some respondents do not maintain adequate oversight of their Service Suppliers, particularly in relation to claims handling. Code Subscribers must proactively monitor their Service Suppliers' compliance with the Code. It is not enough to rely on the reputation of Service

Suppliers or the absence of complaints about their conduct as a means of assessing their level of compliance.

Recommendations

The CGC has made 30 recommendations to Code Subscribers to assist them to comply with the Code, based on the CGC's understanding of good industry practice and how the relevant standards are intended to operate. These recommendations are summarised in the tables below and the full recommendations are contained in **Appendix 2** of this snapshot.

The CGC intends to develop guidance notes related to these recommendations to ensure that stakeholders are aware of the CGC's likely approach to such matters. Apart from these recommendations, the CGC's submission to the ICA's current review of the Code will include additional recommendations about gaps in current standards identified through the Inquiry.

The CGC will also continue to monitor Code Subscribers' compliance with the standards that underlie claims handling and outsourced arrangements through its investigation of Code breach allegations, and its annual compliance statement and breach reporting programs.

Summary of recommendations

Part one – Claims investigations
Recommendation 1 – Regular review of fraud investigation indicators for continued relevance
Recommendation 2 – Maintain a register of external Investigators' licences
Recommendation 3 – External Investigators to obtain authority before alleging fraud
Recommendation 4 – Code training for Service Suppliers
Recommendation 5 – Service Suppliers should monitor and report on compliance with the Code
Recommendation 6 – Updating existing contracts with Service Suppliers
Recommendation 7 – Extend Code standards to subcontractors and agents
Recommendation 8 – Timeframe for Service Suppliers reporting complaints
Recommendation 9 – Transparency about why a claim is being investigated and what to expect
Recommendation 10 – Deciding as early as practical whether further enquiries/more information is needed and making a claim decision within Code timeframes
Recommendation 11 – Location of interviews
Recommendation 12 – Informing Code Subscribers about interview arrangements
Recommendation 13 – Ensuring interview questions are relevant, fair and transparent
Recommendation 14 – Not to exceed scope of investigation without prior consent
Recommendation 15 – Monitoring interview duration
Recommendation 16 – Guidance on length of interview and interview breaks
Recommendation 17 – Interviewing consumers with special needs

Recommendation 18 – Independent and qualified interpreters

Recommendation 19 – Clarity and guidance needed for interview of minors

Recommendation 20 – Complying with privacy obligations

Recommendation 21 – Scope of signed authorities for information held by third parties

Recommendation 22 – Best practice standards for Investigators

Part two – Outsourced functions

Recommendation 23 – Review suitability of Service Suppliers regularly

Recommendation 24 – Proactive monitoring of Service Suppliers is needed

Recommendation 25 – Oversight of approved subcontractors

Recommendation 26 – Active oversight of Collection Agents

Recommendation 27 – Collection Agents to monitor their Code compliance

Recommendation 28 – Code Subscribers must handle complaints about Service Suppliers

Recommendation 29 – Providing feedback to Service Suppliers

Recommendation 30 – Revising breach incident identification and reporting systems

Appendix 1: CGC's key findings

Area of assessment	Key findings: Part one – Claims investigations
Deciding whether to investigate claims	<ul style="list-style-type: none"> • Claims are usually investigated before a respondent decides whether to accept the claim. This may be because: <ul style="list-style-type: none"> – a claim is identified as 'high risk', usually due to the presence of claims anomalies broadly described as 'fraud investigation indicators' – incomplete information has been provided, and/or – further information is needed.
Fraud investigation indicators	<ul style="list-style-type: none"> • Fraud investigation indicators are claims anomalies that suggest a claim is 'high risk'. • Usually the presence of multiple indicators within a claim will influence a respondent to conduct further enquiries or examine the claim more closely, before it decides whether it should accept the claim.
Development of fraud investigation indicators	<ul style="list-style-type: none"> • A respondent's fraud investigation indicators are based on its risk appetite, product coverage and exclusions, and an understanding of fraudulent or high risk behaviours.
Types of fraud investigation indicators	<ul style="list-style-type: none"> • Fraud investigation indicators may vary within a respondent's organisation, and from respondent to respondent, because of a particular product's coverage and exclusions, as well as behavioural, circumstantial and factual characteristics.
Identification and evaluation of fraud investigation indicators	<ul style="list-style-type: none"> • Respondents identify fraud investigation indicators manually or through combined automated and manual processes. • All respondents use a triage process to determine whether a claim flagged as high risk warrants closer examination and allocation (usually) to an external Investigator. • Many respondents said that the presence of fraud investigation indicators does not determine that a claim is fraudulent.
Expertise of Employees	<ul style="list-style-type: none"> • The extent of guidance, education, experience and training varies depending on an Employee's role in the processing or evaluation of high risk claims.
Internal and external Investigators	<ul style="list-style-type: none"> • Only one of the 27 respondents conducts its own investigations to verify the circumstances of high risk claims. • The remaining 26 respondents use external Investigators exclusively or in combination with specialist Employees.
Ensuring external Investigators comply with the Code	<ul style="list-style-type: none"> • Most respondents reported that in relation to external Investigators: <ul style="list-style-type: none"> – they use an appointment/accreditation process to assess whether external Investigators have the ability to provide services competently and professionally – contracts incorporate SLAs – they monitor performance and compliance with the Code in various ways including performance reviews, review of claims files and consumer feedback, and – if a Claims Management Service engages external Investigators, they must verify that they have the necessary competencies. • Four respondents require their external Investigators to complete Code training even though the Code does not require them to do so.
What respondents said about compliance	<ul style="list-style-type: none"> • Section 6 sets out the standards that apply to Code Subscriber's Service Suppliers, including external Investigators. All 26 respondents who use external Investigators reported that they and their external Investigators comply with section 6 of the Code.

	<ul style="list-style-type: none"> • 18 of these 26 respondents provided some supporting documents that enabled the CGC to draw some conclusions about their compliance. • The remaining eight respondents did not provide relevant supporting documents.
Contracts with Service Suppliers entered into after 1 July 2015	<ul style="list-style-type: none"> • Of the 18 respondents who provided some supporting documents: <ul style="list-style-type: none"> – nine had executed new agreements with Service Suppliers and complied with subsections 6.2, 6.4, 6.5, 6.6 and 6.7, and – the remaining nine respondents had not executed new agreements.
Some respondents may not be complying with Code obligations	<ul style="list-style-type: none"> • Some respondents do not maintain adequate oversight of Services Suppliers. • There are concerns about the way in which one Claims Management Service investigates claims that have fraud investigation indicators. • Some respondents reported that they authorise some of their Service Suppliers to handle their own complaints, which is inconsistent with the requirement under the Code that all Code Subscribers must handle all complaints under their complaints process, including those relating to their Service Suppliers.
Informing consumers about investigations	<ul style="list-style-type: none"> • Most respondents proactively inform consumers about their decision to investigate claims and the reasons why.
Time taken to make a claim decision	<ul style="list-style-type: none"> • Respondents use several mechanisms to ensure they can make claims decisions within the specified timeframe, such as embedding the required timeframe within diary systems and procedures manuals.
Arrangements for interviews	<ul style="list-style-type: none"> • Most respondents instruct external Investigators to make interview arrangements directly with interviewees and to notify them if unsuccessful.
Relevance, fairness and transparency of interview questions	<p>Respondents use various means to ensure relevance, fairness and transparency of interview questions including:</p> <ul style="list-style-type: none"> • outlining the scope of the investigation in its instructions to external Investigators • reviewing interview transcripts, external Investigator running sheets, and reports
Duration of interview	<ul style="list-style-type: none"> • Some respondents do not provide any guidance to external Investigators about the duration of interviews. • However, during this Inquiry four respondents provided guidance to external Investigators about interview duration and rest breaks.
Consumer access to an interpreter or support person during interview	<ul style="list-style-type: none"> • All respondents reported that they provide consumers with access to an interpreter or support person during interviews. • The level of guidance provided internally and externally to assess consumers' special needs varied.
Interviewing minors	<ul style="list-style-type: none"> • Several respondents' operations manuals and/or SLAs for external Investigators refer to the interview of minors.
External Investigators compliance with the Privacy Act 1988 (Cth)	<ul style="list-style-type: none"> • Most respondents replied that SLAs require external Investigators to comply with privacy obligations under the <i>Privacy Act 1988</i> (Cth).

Appendix 2: CGC's recommendations to improve compliance

Recommendations: Part one – Claims Investigations

Recommendation 1 – Regular review of fraud investigation indicators for continued relevance

Code Subscribers should review fraud investigation indicators at least annually to ensure they remain relevant.

Recommendation 2 – Maintain a register of external Investigators' licences

Code Subscribers should maintain a register of external Investigators' licences (including the expiry dates) or require proof of licencing at the time that external Investigators are allocated to a claim investigation to ensure that licences are current.

Recommendation 3 – External Investigators to obtain authority before alleging fraud

Code Subscribers should require external Investigators to obtain their express and written authority before putting a fraud allegation to a claimant. This requirement should be included in Code Subscribers' contracts with external Investigators and in their written instructions to external Investigators.

Recommendation 4 – Code training for Service Suppliers

Code Subscribers should provide Service Suppliers with, or require Service Suppliers to receive, training on the requirements of the Code. This includes external Investigators and extends to those engaged by Code Subscribers' Claims Management Services. The training should focus on the standards that apply to the services that Service Suppliers provide on behalf of Code Subscribers.

Recommendation 5 – Service Suppliers should monitor and report on compliance with the Code

Code Subscribers should include in contracts with Services Suppliers a requirement to develop their own systems and processes to ensure compliance with applicable Code obligations. This includes prompt reporting of actual or possible Code breaches and corrective actions.

Recommendation 6 – Updating existing contracts with Service Suppliers

Code Subscribers who have contracts with Services Suppliers pre-dating 1 July 2015, should inform them in writing about the Code, the specific Code standards that apply to their services when acting on behalf of Code Subscribers, and their requirement to comply with it.

Recommendation 7 – Extend Code standards to subcontractors and agents

Code Subscribers who have authorised a Service Supplier to use subcontractors or agents, should ensure that:

- the Service Supplier's arrangements with a subcontractor or agent are in writing and reflect the Code standards that apply to the services provided by the subcontractor or agent
- the Service Supplier's arrangements require the subcontractor or agent to report to the Service Supplier complaints about them or the matters they are dealing with, by the next business day
- the Code Subscriber's contract with the Service Supplier requires it to report to the Code Subscriber complaints about its subcontractor or agent, by the next business day
- the Service Supplier does not engage the services of an agent or subcontractor in the investigation of a 'sensitive claim' – for instance, where the claim includes death or serious injury. If this is not practical, the Code Subscriber should increase its oversight of such matters.

Recommendation 8 – Timeframe for Service Suppliers reporting complaints

Contracts with Service Suppliers should include a requirement to report to Code Subscribers any complaints about a matter under the Code when acting on their behalf either immediately or at least by the next business day.

Recommendation 9 – Transparency about why a claim is being investigated and what to expect

Code Subscribers should:

- initially inform a consumer by telephone that their claim will be investigated and why, and that an external Investigator will interview them
- provide staff with clear guidance on the content of such conversations
- confirm that an investigation will occur and why in writing (letter or email), including information about the following:
 - the purpose of the investigation, what to expect and that the consumer should not draw an adverse inference from this decision
 - the consumer’s primary contact during an investigation, the role and responsibilities of the claims consultant and the external Investigator
 - the external Investigator’s contact details, when to expect to hear from them and what to do if they are not contacted within that timeframe
 - the consumer’s rights and responsibilities during the investigation and interview, including who they can contact if they have any questions about the investigation or process including or if they are unhappy with the external Investigator’s conduct, how their personal information will be handled and their rights after a claim decision has been made
 - the timeframe for making a claim decision after completing the investigation and information gathering, information about the complaints process and other resources to assist the consumer during the investigation such as the Financial Ombudsman Service Australia (FOS) and key consumer advocates.

Recommendation 10 – Deciding as early as practical whether more information is needed and making a claim decision within Code timeframes

Code Subscribers should pay close attention to their compliance with subsections 7.16 and 7.18 of the Code by including in quality assurance programs:

- regular reviews of current and closed claim files, including denied claims
- review of complaints about delays in making a claim decision, including disputes referred to FOS.

Recommendation 11 – Location of interviews

Code Subscribers should ensure that:

- an interview is conducted at an appropriate location that the consumer has consented to
- external Investigators cannot insist on holding the interview in a location that the consumer is uncomfortable with
- they or their external Investigators inform the consumer that it is not compulsory to conduct the interview at the consumer’s home.

Recommendation 12 – Informing Code Subscribers about interview arrangements

Code Subscribers should:

- require external Investigators to notify them of interview arrangements and contact them if unable to arrange an interview
- provide guidance to external Investigators on arrangements for interviews, which must have regard to the interviewee's circumstances as well as the likely length of the interview.

Recommendation 13 – Ensuring interview questions are relevant, fair and transparent

Code Subscribers should pay close attention to their compliance with the Code by including in quality assurance programs:

- regular reviews of current and closed claim files, including denied claims
- audit external Investigator running sheets, interview transcripts or recordings for procedural fairness
- review of complaints about interviews, including disputes referred to FOS.

Recommendation 14 – Not to exceed scope of investigation without prior consent

Code Subscribers should:

- define the scope of an investigation in instructions to external Investigators
- not allow external Investigators to exceed instructions without prior written consent
- confirm in writing changes to instructions, including when expanding the scope of investigation.

Recommendation 15 – Monitoring interview duration

Code Subscribers should include in quality assurance programs measures to monitor interview duration and compliance with the Code through:

- regular reviews of current and closed claim files, including denied claims
- for Employees who conduct telephone interviews – call audit reviews and review interview transcripts or recordings
- audit Investigator running sheets, interview transcripts or recordings to check the duration of interviews
- review of complaints about interviews, including disputes referred to FOS.

Recommendation 16 – Guidance on length of interview and interview breaks

Code Subscribers should provide guidance to staff who interview consumers and external Investigators about the length of an interview and regularity of breaks including that:

- interviewees should be offered breaks at least every half an hour
- an interviewee's request for a break should be adopted in the record of interview (usually audio recorded)
- an interview should not exceed two hours (excluding breaks) in length
- if more time is needed, the interview should be suspended and arrangements made to continue the interview at a later date, subject to the Code Subscriber authorising the continuation of the interview and the consumer's consent.
- if an interviewee decides that they prefer to continue with the interview beyond two hours, then it should be clearly explained that the interviewee may continue the interview at a later date.

- the interviewee's acknowledgement and their agreement to continue the interview in these circumstances should be recorded in writing and by audio recording.

Recommendation 17 – Interviewing consumers with special needs

Code Subscribers should:

- ask interviewees (consumers) to complete an interview consent form which also asks whether they need an interpreter or support person
- assess whether consumers have special needs and provide additional support to such consumers before authorising an Employee or external Investigator to interview them
- ensure that their Employees or their external Investigators never deny a consumer's reasonable request for support person
- ensure that Employees are appropriately trained to identify such consumers and their support needs and that interviews should only be conducted by Employees who have appropriate training or experience
- provide external Investigators with, or require them to receive, appropriate training to assist in identifying and supporting consumers with special needs
- specify in contracts with external Investigators that consumers are entitled to have a representative or support person with them during an interview
- if an agreement about support cannot be reached, require external Investigators to contact them
- specify in contracts with external Investigators their expectations and requirements, or provide guidelines, about consumers with special needs.

Recommendation 18 – Independent and qualified interpreters

Code Subscribers should ensure that if an interpreter is required for an interview or when obtaining a witness's statement on matters relevant to a claim, only appropriately qualified/accredited and independent interpreters are used. This will ensure the integrity and reliability of the information obtained during the interview.

Recommendation 19 – Clarity and guidance needed for interview of minors

Code Subscribers should:

- establish clear guidelines for the interview of minors, including assessing whether it is necessary to interview them, they are capable of distinguishing truth from fiction, and setting a minimum age for minors who may be interviewed
- ensure that the external Investigator conducts the interview of a minor in the presence of a responsible adult, such as a parent or guardian
- ensure that the external Investigator suspends the interview if at any time the minor is distressed by the interview process or at the request of the parent or guardian
- ensure that a senior staff member with appropriate experience and training determines whether it is necessary to interview a minor – this includes assessing whether the minor is capable of distinguishing a truth from a lie
- if the senior staff member decides that it is necessary to interview a minor, the interview should be conducted by an external Investigator with appropriate experience and training
- instructions to an external Investigator must clearly set out the scope of the interview and ensure that the external Investigator will obtain prior written approval to expand the scope of the interview

- a request to expand the scope of an interview must also be assessed by a senior staff member with appropriate experience and training.
- if in the course of an investigation the external Investigator determines that it is necessary to interview a minor, require the external Investigator to obtain prior written approval – such a request should be assessed as described above
- if the external Investigator is required to determine whether the minor has the capacity to distinguish a truth from a lie, provide clear guidance to the external Investigator on how to determine this – this assessment should be recorded.

Recommendation 20 – Complying with privacy obligations

Code Subscribers should:

- ensure that external Investigators have processes and systems in place that enable them to comply with their obligations under the *Privacy Act 1988 (Cth)*
- require external Investigators to provide a privacy statement to a consumer before commencing an interview
- require external Investigators to record an individual's acknowledgement that they have been provided with a copy of its privacy statement before starting an interview
- ensure that management frameworks for external Investigators include scheduled and regular (at least annually) monitoring of compliance with obligations under the *Privacy Act 1988 (Cth)*.

Recommendation 21 – scope of signed authorities for information held by third parties

Code Subscribers should:

- ensure that requests for additional information or documents are reasonable and relevant to the claim under investigation
- require external Investigators to record requests to individuals for written authorisation to access personal information held by other parties
- require external Investigators to surrender to Code Subscribers the original signed authorities at the conclusion of their investigation
- clearly limit the purpose of the authority to the investigation of the claim in question
- define the scope of the authority in terms of the type of information that is being requested and the period covering the request – in other words the authority should not be couched in blanket terms or for an indefinite period
- clearly state on the authority the date of issue and expiry.

Recommendation 22 – Best practice standards for Investigators

Code Subscribers and the ICA should develop a set of best practice standards in relation to the conduct of Investigators that incorporate the recommendations made in this report.

Recommendations – Part two: Outsourced functions

Recommendation 23 – Review suitability of Service Suppliers regularly

Code Subscribers should re-assess the suitability of their Service Suppliers regularly and including in response to:

- feedback from consumers and Employees – this provides Service Suppliers with an opportunity to revise and improve their services if needed and to promote and reinforce good practices among staff
- complaints from consumers – analysis and evaluation of complaints helps to identify issues in a timely way, enabling Code Subscribers to identify and address underlying causes.

Recommendation 24 – Proactive monitoring of Service Suppliers is needed

Code Subscribers should:

- not rely solely on complaints from consumers as a means of monitoring their Service Suppliers' compliance with Code obligations
- include analysis and evaluation of complaints as part of a broader and proactive approach to compliance monitoring which includes quality assurance and audit programs
- ensure that contracts with Service Suppliers require them to:
 - monitor their own compliance with the Code standards that apply to the services they provide
 - provide regular reports to Code Subscribers on their compliance with the Code
 - have an incident and breach reporting system and encourage Employees to report incidents and potential Code breaches
 - report self-identified breaches or potential breaches of the Code, including significant or likely significant Code breaches, to the Code Subscriber.

Recommendation 25 – Oversight of approved subcontractors

In addition to Recommendation 7 Code Subscribers who have authorised a Service Supplier to use subcontractors or agents, should ensure that:

- the subcontractor notifies the Service Supplier of any Code breaches by the next business day, and that these breaches are referred to the Code Subscriber by the next business day
- the Service Supplier retains responsibility for the subcontractor's acts or omissions and/or ensures that the subcontractor complies with the same obligations that apply to the Service Supplier
- the Service Supplier monitors the subcontractor's conduct.

Recommendation 26 – Active oversight of Collection Agents

Code Subscribers should actively and directly monitor Collection Agents' compliance with Code obligations by:

- ensuring that their compliance frameworks include the monitoring of Collection Agents' compliance with the Code
- including quality assurance and audit programs that assess Collection Agents' files and call monitoring, in addition to the analysis and evaluation of complaints.

Recommendation 27 – Collection Agents to monitor their Code compliance

Code Subscribers' agreements with Collection Agents should require them to:

- monitor their own compliance with their Code obligations including compliance with the ACCC & ASIC Debt Collection Guidelines: for collectors and creditors
- provide regular reports to the Code Subscriber on their compliance with the Code
- implement an incident and breach reporting system and encourage Employees to report incidents and potential Code breaches
- report self-identified breaches or potential breaches of the Code, including significant or likely significant Code breaches, to the Code Subscriber
- complete refresher Code training at least annually.

Recommendation 28 – Code Subscribers must handle complaints about Service Suppliers

All Code Subscribers who use Service Suppliers should review existing arrangements to ensure that existing and future agreements comply with the Code and in particular:

- take all necessary steps to ensure that the relevant Service Suppliers notify them of complaints by the next business day
- monitor the referral of complaints by Service Suppliers
- ensure that such complaints are being handled internally in accordance with the Code's standards.

Recommendation 29 – Providing feedback to Service Suppliers

Code Subscribers should ensure that they provide regular feedback to Service Suppliers about their conduct, particularly as a result of:

- identified non-compliance with the Code
- complaints from consumers
- adverse findings by FOS in disputes.

Recommendation 30 – Revising breach incident identification and reporting systems

Code Subscribers should ensure that their breach incident identification and reporting systems:

- are not relying on 'materiality' as a factor in whether Code related incidents are captured and in their subsequent identification and reporting as a breach of the Code
- assess whether matters are significant breaches of the Code by reference to the Code's definition of 'significant breach'
- review matters that may be or have been reported to other regulators against Code obligations
- link to findings in FOS determinations that may be indicative of Code non-compliance
- include the capacity to capture incidents that may have a bearing on compliance with Code obligations
- can distinguish Code non-compliance specifically from other types of non-compliance.