



Victorian WorkCover
Authority

**CODE OF PRACTICE
FOR
PRIVATE INVESTIGATORS**

**EFFECTIVE 1 JANUARY 2003
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1. WHY THIS CODE

1.1. Preamble

- 1.1.1. Investigation services have an essential role in protection of claimant entitlements and claim validation. They are used to validate facts, circumstances and activities to ensure fairness and equity for all scheme participants, and to maintain integrity and efficiency in the Victorian Workers Compensation Scheme.
- 1.1.2. Services are procured and managed on behalf of the Victorian WorkCover Authority (VWA) by its Authorised Agents and its Legal Panel firms.
- 1.1.3. The Victorian WorkCover Authority (VWA), through its authorised agents and legal representatives, purchases investigation services from a variety of organisations to assist in the effective, efficient, and economical management of the Victorian WorkCover scheme, a prime objective of the VWA under the *Accident Compensation Act 1985*.
- 1.1.4. The VWA recognises that these services must be managed consistently and transparently in the interests of claimants, stakeholders, service providers and the overall scheme objectives.
- 1.1.5. The VWA is, like any purchaser of services, entitled to set standards which it requires its service providers to observe. The VWA endeavours to ensure that its service providers behave in an appropriate fashion. The VWA reserves the right not to use the services of any organisation which it considers does not meet its required standards.
- 1.1.6. It is VWA policy that any private investigation carried out on its behalf can only be conducted by those who agree to common high standards of behaviour, transparent accountabilities and performance-based relationships with the VWA's authorised representatives.
- 1.1.7. This Code sets out the obligations on private Investigators who wish to be registered as service providers with the VWA and to be allocated work by its Authorised Agents and Panel Firms.
- 1.1.8. The obligations relate to qualifying for registration, allocation of work, conduct of investigations, performance and complaint handling, and general obligations in support of WorkCover's integrity and efficiency.
- 1.1.9. Agreement to this Code is a condition of registration for any prospective private investigation provider. Compliance with the Code will be monitored by the VWA's Authorised Agents and Panel Firms. In addition, the VWA reserves the right to conduct regular audits to monitor adherence to this Code.
- 1.1.10. This Code is to form an attachment to the VWA's Claims Manual and will be publicly available.

1.2. Purpose

- 1.2.1. This Code sets out the obligations to be met by private Investigators engaged by Authorised Agents and Panel Firms to carry out investigation services on behalf of the VWA.

1.3. Application

1.3.1. This Code applies to all VWA registered investigation services providers conducting all investigations in claims management, including:

- 1.3.1.1. assessing new claims where further information may be required;
- 1.3.1.2. return to work review of existing claims;
- 1.3.1.3. assessment of litigated claims; and
- 1.3.1.4. fraud prevention and control.

1.4. Amendments

1.4.1. This Code may be amended by the VWA at any time. The VWA will advise all authorised representatives and Investigators of any amendment. Investigators will be required to comply with any amendment.

1.5. Definitions

1.5.1.1. Throughout this Code of Practice:

“Authorised Agent” means a member of the VWA’s panel of claims and premium insurance managers;

“authorised representative” means any Authorised Agent or Panel Firm;

“Investigator” means any person, partnership or incorporated entity that is registered with and authorised by the VWA to provide investigation services;

“Class A Complaint” means a complaint made by any person or organisation against a private Investigator relating to the Investigator’s behaviour during any investigation and/or any failure by them to comply with the Code, that does not otherwise constitute a Class “B” or Class “C” complaint;

“Class B Complaint” means a complaint made by any person or organisation against a private Investigator that in the opinion of the VWA may constitute a breach of any provision of the Accident Compensation Act (1985);

“Class C Complaint” means a complaint made by any person or organisation against a private Investigator that in the opinion of the Manager Private Investigators Management Unit (PIMU Manager), would constitute serious misconduct or allegations of criminal behaviour;

“Code” means the VWA Code of Practice for Private Investigators

“criminal offence” means any summary or indictable offence.

“Panel Firm” means a member of the VWA’s panel of legal service providers for statutory benefits, common law and recovery claims;

“records” in relation to Investigators includes but is not limited to investigation reports, audio and video tapes, running sheets, notes, instructions, invoices, documentation from the VWA or an authorised representative relating to investigation of a VWA related matter;

“VWA” means the Victorian WorkCover Authority.

2. HOW YOU QUALIFY FOR VWA INVESTIGATIONS

2.1. Code a Condition of Registration

2.1.1. Compliance with this Code is a condition of registration with the VWA.

2.2. Registration Criteria

2.2.1. To provide investigation services on behalf of the VWA an Investigator must apply to the VWA and meet the VWA's Registration Criteria, before it may be issued with a VWA Provider Number.

2.2.2. The Investigator must continue to meet each of the Registration Criteria while registered with the VWA.

2.2.3. The criteria are:

- The business holds a Company or Partnership Licence in accordance with the *Private Security Act 2004 (Vic)*;
- Each Investigator engaged in VWA investigations holds a current Private Security Licence under the *Private Security Act 2004 (Vic)*;
- The firm has a WorkCover insurance policy and premium paid in full (where applicable) with no arrears;
- There must be a contract of professional indemnity insurance in force at all times, with a minimum indemnity limit of \$1 million, for any one or series of events arising in any one policy year;
- There must be a contract of public liability insurance in force at all times, with a minimum indemnity of \$5 million, for any one or series of events arising in any one policy year;
- Proof of currency of the above insurance covers must be provided on application for registration, and at the time of any subsequent renewal;
- Demonstration by National Police Record check for every Investigator and principal that individuals on VWA business have not been found guilty, within the last ten years of a criminal offence involving violence, theft, fraud or other conduct rendering them unfit to perform VWA work;
- No staff member (including any principal, officer holder or other) is an undischarged bankrupt;
- The applicant firm has in place appropriate Occupational Health and Safety policies in accordance with legislative requirements; and
- The applicant firm has read, understood and provided a signed undertaking agreeing to be bound by this Code.

2.2.4. An Investigator may be engaged by an authorised representative to conduct operations on behalf of the VWA only if it holds a valid VWA Provider Number.

2.2.5. An Investigator must advise the VWA of any changes to its Victoria Police Private Security Licence dates for eligibility to ensure its Provider Number remains current.

2.2.6. If an investigation business' Private Security Licence is to be renewed, and the Investigator wishes to keep VWA registration, the Investigator must forward direct to the VWA a renewal copy of its Licence *before* their VWA registration expires. Failure to do so could result in deregistration.

2.2.7. If any matter arises that may impact upon firm registration it must be brought to the attention of the VWA when it becomes known by that firm.

2.3. Your Role under this Code

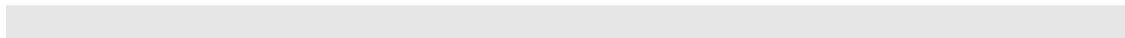
2.3.1. An Investigator must:

- 2.3.1.1. Comply with the requirements of this Code;
- 2.3.1.2. Comply with any instructions of their engaging authorised representative, in conducting investigations;
- 2.3.1.3. Conduct investigation services in a manner that reflects the investigative function's place in claim validation;
- 2.3.1.4. Not damage the reputation of the VWA in the conduct of VWA-related investigations at any time;
- 2.3.1.5. Facilitate access by the VWA or authorised representative to Investigator data and records;
- 2.3.1.6. Facilitate access by the VWA to Investigator data and records for complaint resolution in accordance with the Code; and
- 2.3.1.7. Ensure licensing and registration requirements continue to be met.

2.3.2. Any person bound by this Code becoming aware of any activity in breach of this Code must report the matter to the VWA. Any alleged breach of this Code may also be referred to the Victoria Police Licensing Services Branch.

2.4. No Guarantee

2.4.1. An Investigator accepts that registration shall neither guarantee nor give rise to any right or expectation that referrals will be made by the VWA or its authorised representatives.



3. WHEN YOU ARE ALLOCATED AN INVESTIGATION

3.1. Allocation Discretion

3.1.1. An Investigator acknowledges that VWA authorised representatives may allocate work to any Investigator registered with the VWA at their discretion, but may also take into account performance and geographical location of an Investigator.

3.2. Investigator Diligence

3.2.1. In accepting an allocated investigation an Investigator undertakes to perform to the best of their ability and knowledge diligently and with care.

3.2.2. An Investigator must perform investigations in a professional, legal and impartial manner and in accordance with any performance criteria or service standards issued by the VWA or its authorised representative.

3.2.3. An Investigator must disclose any perceived, or avoid any actual, conflict of interest that may arise from carrying out an investigation to the instructing authorised representative.

3.3. Accepting Instructions

3.3.1. An Investigator must accurately represent its competence, qualifications and experience to those who may engage the services of the Investigator.

3.3.2. An Investigator must not accept instructions if their workload may not permit the investigation to be completed efficiently in accordance with requirements set.

3.3.3. On receipt of an instruction from an authorised representative, the Investigator must acknowledge the date of receipt to the instructing officer.

3.3.4. An Investigator may only take instructions relating to their investigation from the instructing officer of an authorised representative. An Investigator may only act outside original instructions with approval of that officer or other officer nominated by the authorised representative.

3.3.5. The Investigator accepting an instruction must conduct the investigation, unless agreed otherwise with the authorised representative.

3.3.6. An Investigator must promptly notify its instructing authorised representative if the Investigator is unable to comply with instructions in any way.

3.3.7. An Investigator must comply with the requirements of the authorised representative (including in relation to written or verbal instructions, time limits, interviews, contact rules and procedures) for all investigations.

3.3.8. An Investigator must prepare reports of the highest quality fully consistent with instructions, focused on providing the factual information to assist the authorised representative in executing its responsibilities in managing the case.

4. WHEN YOU CONDUCT AN INVESTIGATION

4.1. Legal Compliance

4.1.1. An Investigator must comply with all VWA policies and directions and all applicable Federal and State laws, regulations and guidelines, including, but not limited to:

- Accident Compensation Act 1985 (Vic)
- Private Security Act 2004 (Vic)
- Surveillance Devices Act 1999 (Vic)
- Information Privacy Act 2000 (Vic)
- Health Records Act 2001 (Vic)
- Privacy Act 1988 (Cth)
- Evidence Act 1958 (Vic)
- Occupational Health & Safety Act 1985 (Vic)
- Equal Opportunity Act 1995 (Vic)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)

4.1.2. An Investigator must maintain a sound knowledge of the legislation, policies and objectives of the Victorian workers' compensation scheme.

4.2. Scheme and VWA Reputation

4.2.1. An Investigator must conduct investigations in a manner that will not detract from or damage the reputation of the Victorian workers' compensation scheme or the VWA or its authorised representatives in any way.

4.2.2. An Investigator must not make any public statement on any matter concerning the Victorian workers' compensation scheme or the VWA or VWA authorised representative without the written permission of the VWA. This includes prohibition of advertising, media interviews or publishing the Investigator's name in connection with VWA.

4.3. Instructions Other Than from an Authorised Representative

4.3.1. An Investigator engaged by an authorised representative to investigate a claimant must only take instructions from their instructing officer. Any approach or information from an employer regarding a claimant being investigated by an authorised representative must be referred to your Instructing Officer.

4.4. Your Personnel

4.4.1. An Investigator must not employ or engage any person who has been convicted or found guilty of a criminal offence or dismissed from any employment on the grounds of serious misconduct or who is an undischarged bankrupt.

4.4.2. An Investigator must within 14 days of becoming aware of the fact, notify the VWA if any personnel employed or engaged by the Investigator is under investigation, reported, or alleged to have committed any criminal offence.

- 4.4.3. An Investigator must within 14 days of becoming aware of the fact, notify the VWA of any person employed or engaged by the Investigator that is the subject of an investigation by, or a complaint to, the Victoria Police Licensing Services Branch.
- 4.4.4. An Investigator must consent to the release to the VWA by the Licensing Services Branch, any information requested by the VWA in relation to any allegation, complaint, investigation, or disciplinary action against any personnel employed or engaged by the Investigator.
- 4.4.5. It is the responsibility of an Investigator to ensure that all employees and subcontractors of the Investigator have received, understand and agree to abide by this Code.
- 4.4.6. Investigators must maintain a list of all personnel employed or engaged by Investigators in the performance of investigations, to be available on request from the VWA or an engaging Authorised Agent or Panel Firm, including the following details:
- Full name and date of birth
 - Number of current Licensing Services Branch licence under the Private Security Act 2004
 - Photocopy of current licence and photocopy of licence renewals

4.5. Privacy

- 4.5.1. In performing all activity in connection with instructions, the Investigator agrees to be bound by the Information Privacy Principles set out in Schedule 1 to the *Information Privacy Act (Vic.)* and the Health Privacy Principles set out in Schedule 1 to the *Health Records Act 2001 (Vic)* in the same manner and to the same extent as the VWA would be bound by those principles if it was performing the work.
- 4.5.2. All surveillance activity must comply with all applicable laws, rules and regulations [including the *Private Security Act 2004*, the *Surveillance Devices Act 1999 (Vic)*, the *Privacy Act 1988 (Cth)*, the *Information Privacy Act 2000 (Vic)*, *Health Records Act 2001 (Vic)*] and such policies and directions notified by the VWA from time to time.
- 4.5.3. An Investigator is also required to comply with the privacy instructions of the VWA's authorised representative who will apply the VWA's Surveillance Guidelines for Agents in cases involving compensation claims under the *Accident Compensation Act 1985 (Vic)*.

4.6. Collecting Information

- 4.6.1. An Investigator must only collect material relevant to the investigation purpose.
- 4.6.2. The collection must not involve the commission of a criminal offence or give rise to a civil action, eg, trespass to land or goods.
- 4.6.3. An Investigator in the collection of information must not entrap any person or use any unfair or dishonest means. Passive observation is permissible, however, any attempts to actively induce a claimant into a situation in which that person would not ordinarily and voluntarily enter, thereby creating a false or misleading impression of the claimant's disabilities, is not permitted.

- 4.6.4. An Investigator must not enter any premises unlawfully.
- 4.6.5. An Investigator must not make any threat, promise or inducement when conducting an investigation on a VWA related matter.
- 4.6.6. An Investigator must avoid any actions which may unreasonably impinge on the privacy or other rights of other people (eg, when taking photographs, avoid including, where practicable, other individuals such as relatives and friends, who may be in contact with the surveillance subject during the surveillance period).
- 4.6.7. An Investigator must collect and record only information relevant and responsive to the instructions from the authorising officer/case manager. An Investigator must not collect or record irrelevant information, or make irrelevant observations about unrelated matters.

4.7. Storing Information

- 4.7.1. An Investigator must have in place appropriate measures to protect any material collected against loss, unauthorised access, use, modification or disclosure.
- 4.7.2. An Investigator must store any material collected in a secure area and separately from other routine administrative information.

4.8. Use and Disclosure of Information

- 4.8.1. An Investigator must not divulge any information obtained in the course of its instructions to any other person or company without the express written permission of the VWA or its authorised representatives, or unless that disclosure is required by law as specified in the Accident Compensation Act.
- 4.8.2. Access to material collected in the course of an investigation must be restricted to relevant personnel on a "need to know" basis.
- 4.8.3. An Investigator must maintain a log of all personnel accessing, using or removing material collected in order to establish an audit trail, including when providing information to interstate employees or sub-contractors. The log must include:
 - 4.8.3.1. reason(s) for disclosure
 - 4.8.3.2. recipient's name and signature
 - 4.8.3.3. issuing officer's name
 - 4.8.3.4. time and date of access.
- 4.8.4. Confidential information gained during an investigation must not be used for the benefit of the Investigator or any third party.

4.9. Identification Disclosure

4.9.1. Investigators must ensure that whilst acting on a VWA related matter that:

- 4.9.1.1. a full and accurate disclosure of authorisation is made when conducting circumstance investigations; and
- 4.9.1.2. when making activity review inquiries of information sources other than claimants, a full and accurate disclosure is made upon demand.

4.9.2. In situations where an Investigator is confronted, the Investigator must, having regard to their own personal safety, exercise all due care to defuse and retreat from the situation wherever possible. Where it is considered necessary to produce identification to diffuse the situation, identification must be shown.

4.10. Inducements and Hospitality

4.10.1. An Investigator performing services on behalf of the VWA will not directly or indirectly solicit, accept, offer or give a benefit, gratuity, reward, gift, bribe, commission or procurement fee, in connection with any activity associated with providing those services.

4.10.2. An Investigator must not make any offer of hospitality to an officer of the VWA or VWA authorised representative if it will either:

- 4.10.2.1. give the impression to the general public that the authorised representative is favouring a particular provider above others; or
- 4.10.2.2. put the authorised representative, or appear to put the authorised representative, in the Investigator's debt.

4.11. Risk Management

4.11.1. The Investigator must take upon itself the whole risk of executing the works or providing the services in the written requirements and must observe and comply with all legislation and all requirements of any authority applicable to the works or services.

4.11.2. The Investigator must take effective measures for the protection of persons at or in near proximity to where works or services are being undertaken, and must not cause any loss, injury, or damage (whether to persons or property) in executing the works or services.

4.12. Further Obligations

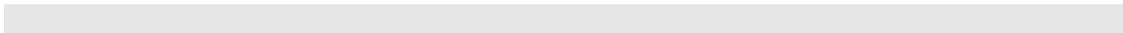
4.12.1. In addition, the Investigator must not:

- 4.12.1.1. Discriminate against any person on the basis of race, sex, colour, sexual orientation, political allegiance, impairment or other unlawful grounds;
- 4.12.1.2. Conduct any interview with a minor without the presence of that minor's parent or guardian. The Investigator must obtain the signature of both the minor and the parent or guardian to the minor's statement whilst on a VWA related matter;

- 4.12.1.3. Continue surveillance if the Investigator suspects that the subject has discovered their surveillance whilst on a VWA related matter;
- 4.12.1.4. Obtain video footage containing audio whilst on a VWA related matter; or
- 4.12.1.5. Have weapons in their possession at any time whilst on a VWA related matter.

4.13. Remuneration and Billing

- 4.13.1. Invoices for investigation services performed on behalf of the VWA will be submitted to an authorised representative in a manner consistent with the VWA fee schedule, established billing processes and performance reporting requirements as advised from time to time.
- 4.13.2. Investigators must provide full details of actual expenditures incurred in completing the instructions, to enable the authorised representative to satisfy their performance requirements within their commercial relationship with the VWA.
- 4.13.3. Investigators must not invoice or charge the VWA's authorised representatives for free information obtained from electoral rolls, electronic White Pages, vehicle licensing or registration information and the like, but may charge for the reasonable cost of obtaining that information if specifically required for completion of the investigation.



5. IN MANAGING PERFORMANCE

5.1. Performance Requirements

- 5.1.1. An Investigator is required to comply with this Code and any requirements of the Authorised Agent or Panel Firm which they deem necessary to satisfy their performance responsibilities with the VWA.
- 5.1.2. The VWA sets specific performance criteria for its authorised representatives to guide and measure their management of investigations on its behalf. These are:
- Appropriate Behaviour
 - Operational Timeliness
 - Production of Quality Information
 - Focus on Cost Effectiveness
 - *Impact on Scheme Performance (yet to be developed)*
- 5.1.3. The performance of Investigators may be identified and reported to the VWA by the instructing Authorised Agent or Panel Firm.

5.2. Performance Monitoring

- 5.2.1. An Investigator must provide to the VWA's authorised representative that issues instructions and to the VWA, information that enables the representative to monitor performance requirements relevant to either party.
- 5.2.2. An Investigator may also be subject to random file audit by the VWA for compliance with this Code and must co-operate fully with access by the VWA to files and data as required, and answer any queries the VWA may have in the conduct of an investigation.
- 5.2.3. The right of an authorised representative (and the VWA) to call for an Investigator's file and to audit the progress of a matter or the results of a concluded investigation is reserved at all times, and VWA records must be retained for a minimum period of 7 years.

6. IF A COMPLAINT IS MADE

6.1. The Procedure

6.1.1. All complaints against Investigators will be referred to the VWA for investigation. The types of complaints may include:

- 6.1.1.1. Complaint to an authorised representative from a member of the public concerning an Investigator;
- 6.1.1.2. Complaint by an authorised representative concerning an Investigator;
- 6.1.1.3. Complaint by any person concerning an Investigator made in relation to a VWA matter; and
- 6.1.1.4. any other complaint against an Investigator relating to its involvement in any VWA related matter.

6.1.2. Should a complaint be upheld, the results may be referred to the appropriate area of the VWA, authorised representative or Victoria Police Licensing Services Branch for appropriate action.

6.1.3. On receipt of a complaint the VWA will assess whether the complaint relates to:

- 6.1.3.1. an alleged breach of the Code (Class A Complaints); OR
- 6.1.3.2. an alleged breach by an Investigator of the Accident Compensation Act 1985 (Class B Complaints);
- 6.1.3.3. alleged serious misconduct or criminal behaviour by an Investigator (Class C Complaints);

6.2. Class A Complaints

6.2.1. Class A Complaints will be dealt with by the VWA.

6.2.2. On receipt of a Class A complaint, VWA will notify the Investigator of the substance and nature of the complaint, in writing, at the time of referral and invite the Investigator to respond, unless the VWA believes it is more appropriate to conduct a preliminary investigation prior to notifying the Investigator.

6.2.3. After considering the nature and substance of a Class A complaint and any response received from the Investigator, and other investigation the VWA considers appropriate, the VWA will make a decision in relation to the complaint.

6.2.4. If the complaint is dismissed, the VWA will notify the parties, in writing, of the reasons for its decision.

6.2.5. If the complaint is upheld, the VWA may

- 6.2.5.1. Caution the Investigator and require any remedial action considered appropriate;
- 6.2.5.2. suspend or terminate the registration of the Investigator as a VWA provider.

6.2.6. If the VWA considers such grounds exist under 6.2.5.2, before taking any action, the VWA will provide the Investigator with an opportunity to make submissions to the VWA as why the registration must not be suspended or terminated. After notifying the Investigator and receiving submissions from the Investigator, the VWA will notify the parties in writing of its decision.

6.2.7. When considering what action to take following a complaint being upheld, the VWA is entitled to consider previous complaints against the Investigator.

6.3. Class B Complaints

6.3.1. Class B Complaints will be dealt with by the VWA and be notified to the Victoria Police Licensing Services Branch.

6.3.2. On receipt of a Class B Complaint the VWA will refer the complaint to the Assessment Centre - Compliance Branch, of the VWA.

6.3.3. When a Class B Complaint is referred to the VWA Compliance Branch, the VWA will notify the Investigator of the substance and nature of the complaint, in writing, at the time of referral and invite the Investigator to respond, unless the VWA believes it is more appropriate to conduct a preliminary investigation prior to notifying the Investigator.

6.3.4. If, on receipt of a Class B Complaint, the VWA considers there are grounds to suspend the registration of the Investigator as a VWA service provider pending resolution of the complaint by the VWA Compliance Branch, the VWA will provide the Investigator with an opportunity to make submissions as to why the registration should not be suspended.

6.3.5. If a Class B Complaint is upheld, the VWA may:

6.3.5.1. caution the Investigator and require any remedial action they consider appropriate; or

6.3.5.2. suspend or terminate the registration of the Investigator as a service provider of the VWA.

6.3.6. If the VWA considers such grounds exist under 6.3.5.2, before taking any action, they will provide the Investigator with an opportunity to make submissions as to why the registration must not be terminated or suspended. After notifying the Investigator and receiving submissions, the VWA will notify parties in writing of its decision.

6.3.7. When considering what action to take following a Class B Complaint being upheld, the VWA is entitled to consider previous complaints against the Investigator.

6.4. Class C Complaints

6.4.1. Class C Complaints must be referred to the Victoria Police Licensing Services Branch (LSB).

6.4.2. When a Class C Complaint is referred to the LSB, the VWA will notify the Investigator of the substance and nature of the complaint, in writing, at the time of referral and invite the Investigator to respond, unless the VWA believes it is more appropriate to conduct a preliminary investigation prior to notifying the Investigator.

6.4.3. If, on receipt of a Class C Complaint, the VWA considers there are grounds to suspend the registration of the Investigator as a VWA service provider pending resolution of the Complaint by the LSB, the VWA will provide the Investigator with an opportunity to make submissions as to why the registration must not be suspended.

6.4.4. If a Class C Complaint is upheld, the VWA may:

6.4.4.1. caution the Investigator and require any remedial action they consider appropriate; or

6.4.4.2. suspend or terminate the registration of the Investigator as a service provider of the VWA.

6.4.5. If the VWA considers such grounds exist, before taking any action, they must provide the Investigator with an opportunity to make submissions as to why the registration should not be terminated or suspended. After notifying the Investigator and receiving submissions, the VWA will notify parties in writing of its decision.

6.4.6. When considering what action to take following a Class C Complaint being upheld, the VWA is entitled to consider previous complaints against the Investigator.

6.4.7. De-licensing by the LSB will mean automatic deregistration from the VWA.

6.5. Exceptional Cases

6.5.1. The VWA in its absolute discretion reserves the right to immediately suspend or terminate registration of any Investigator in exceptional cases of alleged misconduct.