

**INSURANCE
BROKERS**

**CODE
COMPLIANCE
COMMITTEE**

Culture is Key

Promoting better behaviour in the insurance broking industry - a report outlining the findings into the underlying culture and behaviours of Code subscribers drawn from self-reported breach data collected in 2019 and 2020.

November 2021

About this Report

This report includes general findings and insights of good practice drawn from self-reported breaches of the Insurance Brokers Code of Practice by Code subscribers in 2019 and 2020. It also sets out key drivers for the industry to consider, methods the Insurance Brokers Code Compliance Committee can use to promote specific good behaviours and recommends actions that would further the Committee's future understanding of the prevalence of good behaviours across the insurance broking industry.

Contents

About this Report.....	1
Introduction.....	2
General themes	2
Driving good behaviour	2
Behavioural biases.....	3
What this means for the Committee	3
General findings	4
The quality of Breach Data Detail Reports varies from broker to broker	4
Processes and procedures inevitably fail	4
Breaches are not necessarily indicative of poor performance	4
What are good behaviours?	5
Brokers should have multiple processes and 'lines of defence'	5
Breach identification is a first step to better behaviour	5
Investigate the root cause of the breach	6
Conduct random internal and external audits.....	7
Learn from mistakes	7
Set explicitly higher internal standards	7
Think about issues from the client's point of view	8
Document all client interactions in detail	8
How the Committee can promote good behaviours	9
Anchor brokers on a higher standard, with specific examples.....	9
Encourage brokers to be vigilant about 'inertia'	9
Encourage brokers to understand client perspective	10
Encourage brokers to focus on client outcomes	10
Ask brokers to demonstrate breaches are not systemic.....	11
Conclusion.....	12
Responding to insights along the way	12

Introduction

Behaviour influences culture, and culture is the key to compliance with both the obligations set out in the Insurance Brokers Code of Practice ([the Code](#)) and the Code's overarching spirit.

In 2020, the independent body that monitors the Code, the Insurance Brokers Code Compliance Committee ([the Committee](#)), engaged an external consultant to review self-reported Code breach data to gain understanding into what drives behaviours and, ultimately, compliance.

Ravi Dutta-Powell, Senior Advisor at Behavioural Insights Team (Australia) Pty Ltd (BIT), was tasked with reviewing detailed self-reported anonymised breach data from the 2019 and 2020 Annual Compliance Statements (ACS) to identify examples of good and bad behaviours in the industry, and to determine how good behaviours could be promoted.¹

This report includes general findings and insights from BIT's two-year review and examples of good practice drawn from the Breach Data Detail Reports. It also sets out key drivers for the industry to consider, methods the Committee can use to promote specific good behaviours and recommends actions that would further the Committee's future understanding of the prevalence of good behaviours across the insurance broking industry.

General themes

BIT identified a number of broad themes including:

- inconsistency in the quality of breach reporting among brokers
- the key driver of the most common breaches was manual error or a failure to follow policies and procedures, and
- reported breaches may just mean a broker has processes in place to identify issues, rather than being an indicator of poor performance.

Driving good behaviour

BIT also identified a number of actions that could help drive good behaviour, including:

- establishing multiple processes or 'lines of defence'
- recording how a breach is discovered as a useful tool
- the need to understand the root cause of breaches and seeing if they are systemic
- conducting random audits
- learning from 'mistakes' and sharing the lessons widely

¹ **Note:** BIT uses the term 'high-performing' or 'poor-performing' when describing some insurance brokers in this report. This term denotes brokers whose Breach Data Detail Reports demonstrated high or poor levels of good behaviours and occasionally (and more generally) the type of brokers who might have good or poor behaviours in place. It does not refer to industry performance.

- setting higher, aspirational internal standards
- encouraging brokers to be more focused on client perspectives and outcomes, and
- documenting discussions and consultations in detail.

Behavioural biases

The findings also identified a number of behavioural biases that may affect brokers and unconsciously lead to poor practices. These include:

- the tendency to regard minimum legal requirements as the goal
- the tendency to stick with the status quo until something bad happens, and
- the ‘curse of knowledge’ that can cause brokers to assume laypeople know more than they do.

What this means for the Committee

This important research has resulted in significant insights into the underlying themes, behaviours and often unconscious biases that drive poor behaviour in the insurance broking industry.

BIT’s identification of good behaviours and of ways to promote them has already had an impact on informing the Committee’s work. It will help shape future activities and emphases, enabling it to respond to the findings by encouraging and contributing to positive change for industry and clients alike.

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General findings

The quality of Breach Data Detail Reports varies from broker to broker

Brokers take very different approaches to breach reporting. Some provide only the bare minimum of information. Others have conducted thorough investigations into the breach and outline in their Breach Data Detail Report what happened, as well as demonstrating how they are proactively taking action to address not only the specific breach, but underlying or systemic issues that may have caused it.

It is important to note that a deeper approach is not always necessary. Some breaches are likely to be a simple case of human error or are not indicative of a wider problem (for example, a staff member accidentally attaching the wrong file to an email).

However, it is notable that, even in these cases, some brokers are at least aware of the fact that breaches may be indicative of wider issues and will include a note that they believe this specific breach is not systemic.

Processes and procedures inevitably fail

The two most common causes of breaches were a failure to follow policies and procedures, and manual error (as noted in 'Tip of the Month', *Insurance Advisor*, October 2019).

Digging deeper, it was notable that the most common issues were:

- renewals not being sent out in time
- communications being sent to the wrong clients (for example, emailed to a client with a similar name or similar business name)
- clients being sent outdated disclosures, such as a Financial Services Guides, and
- disclosure documents not being sent in a timely manner.

These errors typically demonstrated the limits of relying on a single process or procedure – emails being sent to the wrong clients are ultimately a human error issue, while renewals might fail to be sent on time because a staff member was on leave.

Processes and procedures are not infallible. Brokers would be best served by having **multiple** processes and procedures in place, to ensure that back-up processes come into play when the primary process fails.

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Breaches are not necessarily indicative of poor performance

It is worth stressing that breaches of the Code are not always a bad thing. Lapses and process failures are inevitable. A breach ultimately means a broker has effective processes in place to identify and pick up issues.

There may even be a case for reframing Code breaches as a positive. With some exceptions, a broker reporting no breaches at all may be of more concern than a broker that has a small number of identified breaches. The key is that breaches should ideally be minor, identified and resolved quickly.

What are good behaviours?

After reviewing the Breach Data Detail Reports for 2019 and 2020, some key principles and drivers for good behaviours emerged. This is not an exhaustive list; it merely captures the key behaviours that became apparent from the analysis conducted.

Good behaviour example

One Breach Data Detail Report explained that an external review had revealed the broker listed just one breach on its breach register. This was raised as a potential issue, as it could mean that breaches were not being accurately reported and recorded.

As a result, the broker now includes the breach register as a standing discussion item at monthly management meetings – that is, a lack of breaches was seen as a serious potential problem. This suggests that the broker is taking their responsibilities seriously.

Brokers should have multiple processes and ‘lines of defence’

Processes and procedures inevitably fail – a single process cannot hope to prevent all possible negative outcomes. It is therefore important to have multiple processes that act as redundancies and back-ups for each other.

A high-performing broker might have a set process in place for renewals (such as a spreadsheet, or similar central process) as well as an additional process to monitor that this was being followed (such as a management report that identified any renewals that were near-due or overdue).

A poor-performing broker would have just one process in place, or none at all. For example, some Breach Data Detail Reports noted that late renewal breaches were identified through the client calling the broker to chase up a renewal. This is concerning, as many clients are unlikely to follow up renewals, assuming their broker or insurer will take care of the process. It also raises questions about whether other breaches may have been missed.

Good behaviour example

One broker exhibited a number of good behaviours that should be highlighted as an example of best practice. In addition to having higher internal standards than required by the Code (flagging renewals that were due 30 days in advance rather than 14), the broker had an automated process in the form of automatic email reminders for renewals. A notable additional ‘line of defence’ was an unprocessed premium report generated fortnightly.

This important back-up allowed the broker to identify renewals not being actioned. This turned out to be due to an error in the automated reminder system, which was managed by a third party. The third party was contacted, and the issue resolved promptly.

The multiple processes and redundancies in place meant that when one process failed, the failure was detected by another part of the system.

Breach identification is a first step to better behaviour

As noted, how breaches are discovered – or fail to be discovered – is a useful indicator of whether there are robust processes in place to identify a Code breach and whether there are broader issues that need to be addressed. Identification of breaches should be a focus for Code subscribers.

Ideally, breaches should be either detected rapidly, or through a systematic process. Many cases of information being sent to the wrong person were detected almost immediately, for instance, by a staff member realising the mistake. Renewals not being sent on time should be identified through a systematic process such as a weekly report for management that highlights outstanding renewals.

In other instances, discovery was not systematic, but still achieved through an established process; a number of breaches were detected through random audits, compliance reviews or regular client file reviews. Notably, some types of breaches may not be picked up through a regular process, so regular file reviews are a good method to have in place to identify any breaches.

Investigate the root cause of the breach

There was a noticeable difference in how brokers detected breaches and that response can reveal a lot about a broker's overall behavioural performance.

Poor performance involved assuming a breach was an isolated incident, not investigating breaches further and taking no steps to establish that a breach was a one-off. It was notable that where a late renewal was identified by client follow-up, there was rarely further investigation undertaken by the broker.

In one case, a breach noted that the Certificate of Closing was issued with endorsements that the insurer had never actually agreed to, a reasonably significant breach. Interestingly, the comments stated: 'I am aware of four occurrences, but there is a strong possibility this was provided many more times.' This is concerning, as it indicates a potential systemic issue that was not investigated thoroughly.

In contrast, high-performing brokers outlined the extensive steps they had taken to understand the drivers and root causes of breaches in order to determine whether an issue was systemic, or a one-off. This might mean that when a breach is detected, further investigations would take place into, for example:

- other policies held by the affected client
- other clients managed by the relevant broker, or
- other activities that took place around the time of the breach.

Good behaviour example 1

One Breach Data Detail Report identified an insurance policy not including a specific type of cover requested by the client. The client had seven of these policies in total. When the broker found that one policy didn't have the specific cover, it checked all the client's policies. Due to the inexperience of a staff member, none of the policies had the specific cover; the proactive response to the breach meant this was quickly identified and rectified.

Good behaviour example 2

One broker noted that it had identified an issue when a policy was transferred to a new insurer. Specifically, there was a particular sub-cover type not covered by the new insurer. The broker undertook a review of more than a thousand files and found nine instances of a similar issue. This is notable because it shows the broker didn't assume the problem was a one-off but was open to the possibility of there being a broader systemic issue.

Conduct random internal and external audits

A high-performing broker will recognise that procedures will fail and have multiple processes in place. The ultimate fall back involves randomly reviewing or auditing files and processes to determine whether anything has ‘fallen through the cracks’.

In many cases, audits or reviews may not find anything, but it is still good practice to conduct them, to act as an additional assurance that processes are operating as intended. A poorly performing broker would have limited or no review processes in place.

The 2020-21 ACS data showed that a number of brokers appeared to have built on existing internal review processes by conducting **external** audits – that is, engaging external specialists to review their compliance processes as a whole, to identify any gaps or weaknesses.

It is notable that the external reviews typically identified multiple areas for improvement.

While a number of these were relatively minor (for example, some documentation out of date), there were typically some that highlighted breaches or potential gaps.

One broker’s external audit highlighted a number of manual processes. These were not a failing but represented a potential weakness in the compliance process, as manual processes are susceptible to human error. A number of these could have been automated, which would likely reduce the risk of errors and breaches.

Good behaviour would likely involve conducting an external compliance review every three-to-five years to ensure that the broker’s processes continued to be best practice.

Learn from mistakes

Good behaviour involves using breaches as learning opportunities and ensuring that the lessons are learned throughout the organisation.

Some brokers highlighted that Breach Data Detail Reports had been turned into case studies and were used as part of internal training (this was highlighted in a past ‘Tip of the Month’, *Insurance Advisor*, February 2020). Others reported that breaches have become a part of ongoing training. Conversely, brokers that were not performing well would ignore these learning opportunities and not share lessons learnt.

Set explicitly higher internal standards

The Committee has previously highlighted that good behaviour will commonly involve going beyond the minimum standards required in legislation. In some cases, this can be seen explicitly in the behaviour of some brokers and the way they respond to breaches.

Insurers are required to provide minimum notice for renewals no later than 14 days before due date.² However, based on Breach Data Detail Reports, some brokers have internal targets that are more stringent. Some brokers noted that they have an internal policy which aims to secure and send renewal information out four weeks before they are due. As a result, even if this internal target is missed, they still meet their legal requirements. Similar policies were often in place for the provision of documentation.

² Pursuant to Section 58 (2) Insurance Contracts Act 1984

Think about issues from the client's point of view

Some instances of going beyond the legal minimum are less easy to define or specify. One of the best examples of good behaviour – and the hardest to measure and quantify – involves brokers taking the client's point of view as much as possible.

This is particularly pertinent when it comes to taking care and extra steps to explain concepts or terms that could be unusual or unexpected. This approach requires brokers to recognise that their industry experience may mean they view things differently to clients.

Good behaviour example

One Breach Data Detail Report referred to a case where a client had taken out business contents insurance. This product did not cover theft (a standard exclusion across the industry, though it can usually be added as an option). This was disclosed in documentation provided to the client but was not highlighted as a prominent issue.

The client eventually made a claim for theft, believing it would be covered – in fact, when told theft was not included, the client responded: 'One would think a 'contents' policy would automatically include theft.'

This case is notable for two reasons. First, it highlights the point that clients are not experts in insurance. They are unlikely to be familiar with the industry's 'standard practices' and will have their own expectations about what will and will not be covered.

Second, the broker involved ultimately sided with the client. It agreed that an ordinary person wouldn't be expected to know industry standards, and that it was not unreasonable to expect coverage for theft. The broker also recognised that it would need to specify theft as an exclusion more prominently in the future.

This is an excellent example of good behaviour, as it shows the broker is aware of its obligations to ensure that it goes beyond the legal minimum.

Document all client interactions in detail

Good behaviour involves thoroughly documenting discussions, client consultations and including specific needs and objectives. This includes getting written confirmation of key terms or conditions of insurance product. A high-performing broker will get clients to confirm that they are aware of key exclusions from the policy and have records of phone calls or verbal discussions too.

Notably, disputes often came down to whether or not a broker had explained certain terms or took certain actions. Having detailed notes can be key in showing that brokers have met their obligations.

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How the Committee can promote good behaviours

There are a range of methods the Committee could use to promote positive behaviours. A number of key behavioural biases may be currently impacting brokers. BIT has highlighted these and considered how the Committee could overcome them or use them to promote better behaviours.

Anchor brokers on a higher standard, with specific examples

The law sets a bare minimum for behaviour, but minimums can act as an **'anchor'** – that is, brokers may target the minimum, not realising that they will likely have policy or procedural failures that mean that there will be occasions where they fail to meet these standards.

The Committee could consider creating new, better anchors of 'good practice'. By providing a higher standard for behaviour, brokers will have higher standards to aim for and, if they fall short, will still be meeting their legal requirements.

We noted above that the requirement to send notices of renewal at least 14 days in advance often 'falls through the cracks' (people become unwell, there are public holidays or other delays in processing, etc). There may be value in promoting a higher standard – as some brokers already do – with an aim of sending renewals 21 or 28 days before they are due, so if a deadline is missed by a few days, legal obligations are still being met.

It may be necessary to provide specific examples of behaviours that constitute a higher standard. Many brokers may be unclear about what going beyond the basics means in a practical sense. Consider highlighting specific behaviours as 'good practice', such as:

- A longer internal standard for policy renewals.
- Regular internal training that highlights past breaches and lessons learned.
- Fee disclosure about cancellation in 'plain English' and actual dollar disclosure of brokerage/commissions.
- Having multiple procedures in place to catch breaches or potential issues, such as management exception reports.
- Random internal audits and client file reviews.
- Using checklists at renewal time or when on-boarding clients.

These suggestions are drawn from BIT's two-year review of ACS Breach Data Detail Reports but there may be other relevant behaviours. A balance must be struck between making it clear that these behaviours are not mandatory and not necessary to meet legal or regulatory requirements, while regarding them as examples of best practice that should be adopted and aspired to.

Encourage brokers to be vigilant about 'inertia'

One of the most powerful behavioural biases is **inertia**: that is, we stick with the default and assume everything is ok, unless there is a significant adverse event.

This can be an issue in the insurance space, where clients (and often brokers) may regard renewals as a continuation of the status quo. Even when terms or the client's needs or circumstances may have changed. A number of the breaches reviewed by BIT related to

cases where the policy originally met the needs of the client, but no longer did due to a change in terms or circumstances.

Brokers may need to be extra careful with renewals to ensure inertia does not cause them to miss key issues. Changes to terms and conditions, for instance, should be flagged explicitly by brokers in correspondence rather than left for the client to glean from an updated PDS.

Similarly, brokers should, as a matter of course, confirm that their clients' needs have not changed and get explicit acknowledgement that relevant circumstances are the same (for example, confirmation that there have been no major purchases that would necessitate an increase in cover limits).

Encourage brokers to understand client perspective

A key step to good behaviour would be for brokers to find ways to view issues through the clients' perspective and adapt their practice accordingly. One entry point involves a behavioural bias that probably afflicts many brokers, the '**curse of knowledge**' – that is, they have extensive experience and knowledge of the industry and may assume clients have some or all of this knowledge when this is unlikely to be the case.

Brokers need to be aware of their expertise and take active steps to help clients understand terms. They may need to think about how they can use plain language to explain terms and conditions, especially those that might be confusing or unusual.

They also need to think about gaining a deeper understanding of what ordinary people think is covered by standard policies. This could involve substantial client research – or be done simply by asking non-brokers in the office, or family and friends outside the industry, what they would expect to be common inclusions in different policies. Alternatively, some of this work for common products could be undertaken by the Committee or industry body. The findings could be used to build better procedures about how information is disclosed.

Simply encouraging brokers to understand the client perspective could be an important first step in promoting better broker behaviours.

Encourage brokers to focus on client outcomes

Drawing on some of the content in the Committee's submissions to a review of the Code, the Committee could consider ways of encouraging brokers to focus on client outcomes, rather than broker actions.

Brokers should be encouraged to take the actions they believe are most appropriate to achieve the best outcome for each client, noting that the actions may be different depending on the circumstances. This would, in effect, ask the broker to understand each client's perspective, needs and knowledge of insurance products.

Case study 1

The following example drawn from a determination from the Australian Financial Complaints Authority (AFCA) is instructive. A client had asked a broker to insure an old air conditioner, so that if it broke down and couldn't be repaired, it would be replaced. When it broke and could not be repaired due to its age, the insurer assessed the theoretical cost of repairs at well below the cost of replacement and paid the lower amount.

The client complained that the broker had not taken sufficient steps to explain the policy and potential impacts. While the broker was not required to take any action (as there was no

policy that would have covered the client), the determination in this case found the broker to have been deficient.

The determination highlighted that the clause relating to taking the lower of repair and replacement costs (even if actual repair was impossible) was both unusual for the ordinary client, and a foreseeable issue due to the age of the air conditioner.

In this case, good behaviour would have involved taking extra steps to highlight the clause given its unusual nature and the age of the air conditioner (if the appliance had been brand new, the broker may not have needed to highlight the issue).

It is important to note that taking extra steps may not prevent all client complaints but can help protect brokers if issues do arise. Another AFCA determination highlights this:

Case study 2

A client asked for coverage for a new store, identical to the coverage for an existing store. Neither store had flood cover, and the client complained when the new store suffered a flood.

In response, the broker noted that the previous store did not have flood cover and that the exclusion of flood cover was highlighted in multiple places. In addition to the standard exclusion in the PDS, it was specifically called out on the Certificate of Insurance. Most importantly, the broker had included content in the covering email specifically highlighting the lack of coverage for flood (but noting that this could be purchased for an additional cost).

The broker was not relying on the 'standard' disclosures in this case; it had taken clear extra steps to highlight the absence of flood cover (which a reasonable client might consider a standard inclusion). It is notable that the determination cited these extra steps as evidence that the broker had taken sufficient steps to inform the client.

There are a number of ways the Committee can encourage brokers to consider client outcomes. The Committee has already taken some steps through its submissions to the Code review, but it could also feature these cases and the consideration of client outcomes in a 'Tip of the Month', and work with NIBA to develop tools to help brokers improve their understanding of client needs.

Ask brokers to demonstrate breaches are not systemic

In breach registers, brokers could be prompted to consider whether their breach is systemic and to describe what actions they have taken to ensure it is not. The assumption should be that the breach could be systemic (for example, due to an issue with the type of policy, the employee, the insurer, or the relevant system) and the broker should investigate to disprove the assumption.

Conclusion

Responding to insights along the way

After reviewing the 2019 ACS data, BIT made some suggestions about how the Committee could deepen its understanding of broker behaviours and potentially improve the usefulness of future data. In response, the Committee sought information in the 2020 ACS about whether and how subscribers go beyond minimum requirements. That data contributed to findings made in the second year of the BIT review and the Committee's own analysis.

BIT also reinforced to the Committee the important indicative value of information about how breaches are discovered – even when there was little detail provided. This insight helped inform the Committee's analysis of the 2020 ACS data.

The Committee welcomes Mr Dutta-Powell's detailed and thoughtful review and – in response to insights he provided after examination of the first year's data – has already addressed many of the issues and recommendations that emerged. BIT's findings have added considerably to the Committee's understanding of the complex issue of behaviours and unconscious biases. This knowledge will help shape its compliance monitoring work in the years ahead.

Issues raised in BIT's review shaped the information sought in the 2020 ACS and in subsequent analysis. They also featured prominently in the Committee's most recent submission to a review of the current Code, underscoring the Committee's broader focus on culture and behaviours in the industry and active promotion of good behaviours. The Committee's continued work in the area of culture will include seeking further insights through a questionnaire about culture in the 2021 ACS.