

**DRAFT**

**Report on Best Practices by Insurance  
Intermediaries in handling complaints**

## Introduction

The following Report contains a list of best practices for handling complaints by insurance intermediaries. Their purpose is to contribute to “enhancing customer protection” as described in the underlying statutory objectives of EIOPA<sup>1</sup>. They are based on Article 29(2), EIOPA Regulation<sup>2</sup> whereby EIOPA may “develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.

They provide examples of best practices and are complementary to the “Guidelines on Complaints-Handling by Insurance Intermediaries” (EIOPA-XXX-XX/XXX).

These Best Practices are not legally binding on competent authorities or financial institutions as defined under the EIOPA Regulation and are not subject to the “comply or explain” mechanism provided for under Article 16 of the EIOPA Regulation as their legal basis is Article 29(2).

When applying the Guidelines, best efforts should be made to take into account the nature and size of insurance intermediaries in light of the principle of proportionality.

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<sup>1</sup> Article 1(6)(f), Regulation 1094/2010 establishing EIOPA (“EIOPA Regulation”)

<sup>2</sup> „ The Authority ([EIOPA] may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.

The Guidelines are designed to provide a framework for insurance intermediaries when handling complaints about their activities. This raises questions for insurance intermediaries about what kinds of complaints are covered. These issues are addressed in paragraphs 10 and 11 of the introduction to the Guidelines and Guideline 1; however this document provides further explanation on how insurance intermediaries might address these issues.

- 1) *What should an insurance intermediary do if he/she receives a complaint about something other than his/her insurance activities (paragraphs 10(i) and 11 of the introduction to the Guidelines)?*

The Guidelines do not apply to that insurance intermediary as they are intended to apply to complaints concerning activities that are regulated by the "competent authorities" pursuant to Article 4(2), EIOPA Regulation. For example, an intermediary might receive a complaint about the sale of a non-insurance product e.g. a credit product. Where an insurance intermediary receives a complaint about these kinds of activities, then **it would be best practice to respond, where possible, explaining the insurance intermediary's position on the complaint.**

- 2) *What should an insurance intermediary do if someone complains to him/her about the activities of another entity (Guideline 1)?*

The Guidelines are designed to be followed by an insurance intermediary when it receives a complaint about its own activities, not those of another entity. For example, an insurance intermediary might receive a complaint about the activity of an insurance undertaking, where the insurance intermediary sold the policy, but had no involvement in the activity that forms the basis of the complaint. In such circumstances, providing the intermediary is not dealing with the complaint on behalf of another financial institution (see question 3 below), the insurance intermediary should **inform the complainant and direct the complaint to the relevant insurance entity. The intermediary would not then be expected to comply with Guidelines 2 to 8.** N.B. In this context, best practice for "informing and directing" would be to **inform** the complainant **in writing** that you are not the correct person to deal with the complaint and to **provide** the complainant with **the contact details** of the relevant insurance entity.

3) *What should an insurance intermediary consider if he/she is handling a complaint on behalf of another financial institution (paragraph 10(ii) of the introduction to the Guidelines)?*

It is possible the insurance intermediary might have an agreement with another financial institution under which he/she has agreed to handle complaints for that financial institution. In such situations, the **Guidelines do not apply, but the insurance intermediary will be expected to comply with the relevant legal provisions (national or European) applicable to the financial institution he/she is acting for.** An example of such legal provisions is the "EIOPA Guidelines on Complaints-Handling by Insurance Undertakings":

<https://eiopa.europa.eu/publications/eiopa-guidelines/index.html>

Having regard to the “Guidelines on Complaints-Handling by Insurance Intermediaries” (EIOPA-XXX-XX/XXX), on internal systems and controls:

## ***Content of a “complaints management policy”***

Having regard to Guideline 2 of the aforementioned Guidelines, it is considered best practice for an insurance intermediary’s “complaints management policy” to include processes for:

- (i) Lodging a complaint with an insurance intermediary by any reasonable means (including complaints submitted by an authorised representative e.g. a family member or a solicitor) and confirmation that this is free of charge;
- (ii) Handling complaints received, including deadlines etc.
- (iii) The fair treatment of complainants;
- (iv) The proper treatment of a complainant’s information and personal data, according to the applicable legal framework;
- (v) Preventing, identifying and managing possible situations of conflicts of interest in complaints management;
- (vi) The adequate training of staff, as appropriate, participating in complaints-handling within the insurance intermediary;
- (vii) Internal reporting, follow-up and monitoring of compliance with the “complaints management policy”.

## ***Endorsement of the complaints management policy***

Having regard to Guideline 2 of the aforementioned Guidelines, which requires that a complaints management policy should be defined and endorsed by the insurance intermediary’s senior management, it is recognised that “senior management” will mean different things depending on the size and structure of the intermediary. For example, in larger entities, it might be appropriate for the complaints policy to be endorsed by the Board or Compliance Committee. Smaller entities might choose to make a director e.g. the managing director or compliance director, responsible. It is understood that sole traders will not have the same formal governance processes as larger intermediaries and therefore, a formal endorsement process may not be necessary; however, it is still important that the complaints policy forms part of the formal processes followed by an individual intermediary.

## ***Organisation of the internal complaints management function***

Having regard to Guideline 3 of the aforementioned Guidelines, irrespective of the specific model that insurance intermediaries have adopted for complaints-handling, it is considered best practice for insurance intermediaries to:

- (i) Appoint one or more senior manager(s), as appropriate, with overall regulatory responsibility for the complaints management function or process;
- (ii) Ensure the necessary internal flows of information and reporting lines for complaints management, as appropriate;
- (iii) Control the effective and efficient treatment of complaints.

It is recognised that, in small intermediaries (especially sole traders), it might not be possible for an insurance intermediary to structure its internal organisation in such a way that it has a separate complaints management unit. However, insurance intermediaries should still ensure that they operate in a manner that ensures that complaints are handled fairly and impartially and they identify and mitigate conflicts of interest.

## ***Registration***

Having regard to Guideline 4 of the aforementioned Guidelines, without prejudice to applicable EU/national legislation on record keeping/data protection, it is considered best practice for:

- (i) an insurance intermediary's register of complaints to contain all the necessary information on the complaints, including:
  - (i) Subject of the complaint;
  - (ii) Data on the complainant;
  - (iii) Date of receiving and answering the complaint;
  - (iv) Result/outcome of the complaints-handling procedure;
  - (iv) Class of the insurance referred to.
- (ii) Documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time (to be determined by the competent authority of the home Member State) based on the nature of the complaint and the insurance intermediary involved.

- (iii) Insurance intermediaries to provide information to complainants regarding their complaint, where reasonably requested by complainants.

### ***Internal follow-up of complaints-handling***

Having regard to Guideline 6 of the aforementioned Guidelines, it is considered best practice for an insurance intermediary to have in place the following processes in order to comply with the proper internal follow-up of complaints:

- (i) The collection of management information on the causes of complaints and the products and services complaints relate to;
- (ii) A process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;
- (iii) A process to consider whether the root causes identified may affect other processes or products;
- (iv) A process for deciding whether root causes discovered should be corrected and how this should be done; and
- (iv) Regular reporting to senior management, as applicable, where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern and keeping records of analysis and decisions taken by senior management in response to management information on root causes of complaints.