

Guidelines on Complaints-Handling by Insurance Undertakings

Introduction

1. According to Article 16 of the EIOPA Regulation¹ and taking into account Recital 16 and Articles 41, 46, 183 and 185 of Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II")², which provide for the following:
 - "The main objective of insurance and reinsurance regulation and supervision is the **adequate protection of policyholders and beneficiaries**....."³.
 - "Member States shall require all insurance and reinsurance undertakings to have in place **an effective system of governance** which provides for **sound and prudent management of the business**"⁴.
 - "Insurance and reinsurance undertakings shall have in place **an effective internal control system**. That system shall **at least** include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function"⁵.
 - In the case of *non-life insurance*, a duty for the insurance undertaking to "**inform the policyholder of the arrangements for handling complaints of policyholders concerning contracts including, where appropriate, the existence of a complaints body**, without prejudice to the right of the policy holder to take legal proceedings"⁶.
 - In the case of *life insurance*, the duty for the insurance undertaking to communicate to the policyholder, in relation to the commitment, "**the arrangements for handling complaints concerning contracts by policyholders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body**, without prejudice to the right to take legal proceedings"⁷.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331 15.12.2010 p. 48

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1

³ Recital 16

⁴ Article 41(1) first para.

⁵ Article 46(1)

⁶ Article 183(1) second para.

⁷ Article 185(3)(l)

2. To ensure the adequate protection of policyholders, the arrangements of insurance undertakings for handling all complaints that they receive should be subject to a minimum level of supervisory convergence.
3. These Guidelines shall apply from their final date of publication.
4. These Guidelines are issued by EIOPA under the powers set out in Article 16 of the EIOPA Regulation.
5. These Guidelines apply to authorities competent for supervising complaints-handling by insurance undertakings in their jurisdiction. This includes circumstances where the competent authority supervises complaints-handling under EU and national law, by insurance undertakings doing business in their jurisdiction under freedom of services or freedom of establishment.
6. Competent authorities must make every effort to comply with these Guidelines in accordance with Article 16(3) in relation to the arrangements of insurance undertakings for handling all complaints that they receive.
7. For the purpose of the Guidelines below, the following indicative definitions, which do not override equivalent definitions in national law, have been developed:
 - *Complaint* means:

A statement of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or service he/she has been provided with. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the contract, information or clarification.
 - *Complainant* means:

A person who is presumed to be eligible to have a complaint considered by an insurance undertaking and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and in some jurisdictions, injured third party.
8. Furthermore, where an insurance undertaking receives a complaint about:
 - (i) activities other than those regulated by the “competent authorities” pursuant to Article 4(2), EIOPA Regulation; or
 - (ii) the activities of another financial institution for which that insurance undertaking has no legal or regulatory responsibility (and where those activities form the substance of the complaint)

these Guidelines do not apply. However, that insurance undertaking should respond, where possible, explaining the insurance undertaking's position on the complaint and/or, where appropriate, giving details of the insurance undertaking or other financial institution responsible for handling the complaint.

9. Please note that more detailed provisions on insurance undertakings' internal controls when handling complaints are contained in a "Draft Best Practices Report on Complaints-Handling by Insurance Undertakings" (EIOPA-CP-11/010b).

1. Guidelines

Guideline 1 - Complaints management policy

10. Competent authorities should ensure that:

- a) A "complaints management policy" is put in place by insurance undertakings. This policy should be defined and endorsed by the insurance undertaking's senior management, who should also be responsible for its implementation and for monitoring compliance with it.
- b) This "complaints management policy" is set out in a (written) document e.g. as part of a "general (fair) treatment policy" (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries etc.).
- c) The "complaints management policy" is made available to all relevant staff of the insurance undertaking through an adequate internal channel.

Guideline 2 - Complaints management function

11. Competent authorities should ensure that insurance undertakings have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

Guideline 3 – Registration

12. Competent authorities should ensure that insurance undertakings register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register).

Guideline 4 - Reporting

13. Competent authorities should ensure that insurance undertakings provide information on complaints and complaints-handling to the competent national authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

Guideline 5 - Internal follow-up of complaints-handling

14. Competent authorities should ensure that insurance undertakings analyse,

on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks, for example, by:

- (i) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;
- (ii) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and
- (iii) Correcting, where reasonable to do so, such root causes.

Guideline 6 – Provision of information

15. Competent authorities should ensure that insurance undertakings:
- a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.
 - b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the insurance undertaking's website.
 - c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:
 - (i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed);
 - (ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or alternative dispute resolution (ADR) scheme etc.).
 - d) Keep the complainant informed about further handling of the complaint.

Guideline 7 - Procedures for responding to complaints

16. Competent authorities should ensure that insurance undertakings:
- a) Seek to gather and investigate all relevant evidence and information regarding the complaint.
 - b) Communicate in plain language, which is clearly understood.
 - c) Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the insurance undertaking should inform the complainant about the causes of the delay and indicate when the insurance undertaking's investigation is likely to be completed.
 - d) When providing a final decision that does not fully satisfy the

complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the insurance undertaking's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.

Compliance and Reporting Rules

17. This document contains Guidelines issued under Article 16, EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities and financial institutions must make every effort to comply with guidelines and recommendations.
18. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
19. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, by [dd mm yyyy].
20. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Review

21. These Guidelines shall be subject to a review by EIOPA.