

THE COMPLAINTS HANDLING FUNCTION OF CUSTOMER SERVICES AT INSTITUTIONS SUPERVISED BY THE BANCO DE ESPAÑA

Organisational and operating criteria

BANCO DE **ESPAÑA**
Eurosistema



**THE COMPLAINTS HANDLING FUNCTION OF CUSTOMER SERVICES
AT INSTITUTIONS SUPERVISED BY THE BANCO DE ESPAÑA**
ORGANISATIONAL AND OPERATING CRITERIA

**All of the Banco de España's regular reports
and publications can be found
on the Internet at <http://www.bde.es>.**

Reproduction for educational and non-profit purposes
is permitted provided that the source is acknowledged.
© Banco de España, Madrid, 2017

FOREWORD

The Banco de España Market Conduct and Claims Department (hereafter, MCCD) conducted an extensive supervisory study in 2015 and 2016 aimed at gaining knowledge of and assessing the practices of supervised institutions in respect of the organisation and functioning of their customer services departments (CSDs). The criteria used to make this assessment are detailed below.

It is true that the performance of this study is formally independent from the Banco de España's tasks as a body entrusted with the resolution of claims, and is not a part of such tasks. But insofar as customer services represent an obligatory step that bank customers must take before bringing their unsatisfied claim to the supervisor's attention, the proper or poor functioning of such services may entail evident repercussions as regards the quantity and quality of claims that the Banco de España finally has to address.

CONTENTS

1	INTRODUCTION	9
2	ORGANISATIONAL STRUCTURE, OBJECTIVES AND RESOURCES	10
2.1	Organisational structure	10
2.1.1	Consideration of the CSD as a control function	10
2.1.2	Fitting the CSD into the institution's organisational model	10
2.2	Appointment, removal and renewal of the CSD manager	11
2.3	Externalisation of the customer services department	12
2.4	Conflicts of interest affecting the CSD manager and his/her assigned staff	13
2.5	CSD resources and training programme	13
2.6	Remuneration policy	14
2.7	Objectives and action plan of the CSD	14
3	CRITERIA AND PROCEDURES FOR RECEIVING, PROCESSING AND RESOLVING COMPLAINTS AND CLAIMS	15
3.1	General policy for receiving, processing and resolving complaints and claims	15
3.2	Dissemination of internal regulations and accessibility for customers	15
3.3	Receiving complaints and claims	16
3.3.1	Channels for receiving complaints and claims	16
3.3.2	Controls and register	17
3.4	Resolution of complaints and claims	17
3.4.1	Resolution bodies	17
3.4.2	Resolution criteria and time limits	17
4	LINES OF COMMUNICATION AND MONITORING AND CONTROL MECHANISMS	18
4.1	Lines of communication and participation in committees or groups	18
4.2	Reports prepared by the CSD	18
4.2.1	Annual Report	18
4.2.2	Other reports	19
4.3	Control of the CSD and of the complaints and claims processing procedures	19
4.4	Claims and complaints follow-up and control mechanisms	19
5	CONCLUSIONS	20

THE COMPLAINTS HANDLING FUNCTION OF CUSTOMER SERVICES AT INSTITUTIONS SUPERVISED BY THE BANCO DE ESPAÑA

Organisational and operating criteria

1 Introduction

Ministerial Order ECO/734/2004 of 11 March 2004 on customer services departments (CSDs) and ombudsmen at financial institutions (hereafter, Order 734/2004 or, simply, the Order), implementing Articles 29 and 31 of Law 44/2002 of 22 November 2002 on Financial System Reform Measures, laid down the fundamental requirements applicable to such services, setting in place a legal framework that offers users of the financial services of these institutions a sufficient level of protection to preserve their confidence in the workings of the financial markets.

With regard strictly to the banking sphere, it is incumbent upon the Banco de España not only to receive and resolve claims which, in relation to banking products and services, are brought before it by customers not satisfied with the resolution (or the absence of any resolution) issued by banks' CSDs, but also to verify the procedural rules of these departments and to ensure the appropriate pursuit of the management and processing of claims from the time of their being lodged at credit and other supervised institutions.

These oversight functions in respect of market conduct and transparency of information and, generally, those which, like the functioning of CSDs or ombudsmen, are related to customer protection, are performed within the Banco de España by the Market Conduct and Claims Department (MCCD).

In pursuing this task, and since assuming the attendant oversight competencies on 1 October 2014, the MCCD has progressively deepened its analysis of the functioning of CSDs, identifying in this process both the best practices at supervised institutions in this domain and urging institutions to correct the weaknesses detected.

In an initial phase, during 2015 and early 2016, an aggregate analysis was performed of the quantitative and qualitative information obtained from the replies received to an exhaustive questionnaire circulated to 226 institutions on the most varied aspects relating to their CSDs. The broad results of this aggregate analysis were shared with the industry at a seminar held at the Banco de España on 12 April 2016. The second phase began in 2016, as part of which 24 special supervisory actions were launched aimed at assessing in detail and, where appropriate, correcting the shortcomings detected in the functioning and configuration of the CSDs of certain larger and more complex institutions.

These actions were, in any event, pursued under the principle that CSDs should not only be confined to handling and resolving customer claims and complaints, but should also be a key source of relevant information as an early warning mechanism for the early detection of problems; properly harnessing such a mechanism would enable the correction and prevention of problems bearing in mind, in any event, both the national applicable rules and the supervisory guidelines adopted by the Banco de España in this area, in particular those on the management of complaints and claims for the securities (ESMA) and banking (European Banking Authority - EBA)¹ sectors, the EBA Guidelines on internal governance² and the Guidelines, likewise issued by the EBA, on remuneration poli-

¹ JC 2014 43, prepared by the Joint Committee, comprising the three European Supervisory Authorities.

² EBA Guidelines on Internal Governance (GL 44).

cies and practices relating to the sale of products and the provision of retail banking services.³

The aim of this document is to compile and disclose the criteria which, in light of the aforementioned rules and guidelines, have been taken into consideration for the purposes of determining what, from the Banco de España standpoint, should be understood as good practice in respect of the organisation and functioning of the CSDs at supervised institutions, especially at those whose activity has attained a substantial size and complexity, such as credit institutions and specialised lending institutions. These criteria are organised into three major areas, around which various criteria are pursued: i) the organisational structure, the objectives and the resources of the CSD; ii) the criteria and procedures for receiving, processing and resolving complaints and claims, and iii) the lines of communication and monitoring and control mechanisms for complaints and claims.

2 Organisational structure, objectives and resources

2.1 ORGANISATIONAL STRUCTURE

2.1.1 Consideration of the CSD as a control function

Articles 4, 5 and 6 of Order 734/2004 on the customer services departments and ombudsmen at financial institutions lay down various requirements relating to the organisational structure necessary for the handling of complaints and claims.

In addition to the most evident and explicit function relating to the handling and resolution of claims, Order 734/2004 implicitly or tacitly attributes another function to the CSD as part of the control functions with which the institution must be equipped. Under the now classical model of the “three lines of defence”⁴ assumed by international regulatory agencies in the financial realm, this function must be situated as a second “line of defence”, i.e. forming part of the set of units entrusted with ensuring proper control of risks, prudent corporate conduct, compliance with supervisory laws, regulations and requirements, as well as with the institution’s internal policies and procedures, which is why the function should be sufficiently independent from the business areas that it verifies.

This is so because CSDs are not only entrusted with overseeing and assessing the conduct of the business and operational areas in their relations with customers when a claim or complaint from the latter has been made, but also because they are expected⁵ to analyse on an ongoing basis data on the management of complaints and claims in order to identify and address recurrent or systemic problems, making the findings of such analysis available to their governing body.

In this respect, the requirements in terms of hierarchical and organisational level of the remaining control functions that make up the aforementioned second line of defence should be made extensive to CSDs, such requirements being made commensurately with the complexity and size of the institution.

2.1.2 Fitting the CSD into the institution’s organisational model

Article 6 of Order 734/2004 states, regarding the CSD, that “institutions shall adopt the necessary measures to separate the customer service department from the organisation’s other commercial or operational services, so as to ensure the CSD takes deci-

³ EBA Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services EBA/GL/2016/06.

⁴ This model, which draws on the EBA Guidelines on internal governance, establishes that an institution should have effective risk management processes, by means of a first “line of defence”. It requires as a second “line of defence” an internal control framework with systems that ensure the adequate control of such processes, and a third “line of defence”, developed by the internal audit function, which provides an independent review of the first two “lines of defence”.

⁵ 5th guidelines for complaints-handling for the securities and banking sectors.

sions in respect of its area of activity autonomously and thus avoids conflicts of interest”.

By virtue of the provisions of Article 5 of Order 734/2004, the manager or person responsible for the CSD, in addition to possessing the necessary commercial and professional integrity, shall not only have the appropriate expertise and experience (as the regulations expressly require) but also the institutional authority and weight needed to adopt decisions autonomously, preventing business units or operational services from interfering in the management and resolution of claims, exerting the capacity to submit proposals to the governing body and, in general, enjoying fluid access to this body.

Undoubtedly, it is exclusively for the institution to determine the specific location and reporting lines of the CSD within its structure, so it may be ensured that the CSD manager may act, in the exercise of his or her functions, with independence from the organisation's other commercial or operational services.

In this respect, and with a view to promoting such independence, institutions may opt to have the CSD reporting directly to the institution's governing body, or to have it report to cross-departmental committees or bodies removed from the institution's business management. In any event, the precise measures should be adopted in order to ensure its functional independence from the institution's other operational units.

In short, the aim is for the CSD to be hierarchically and organisationally separate from the services that adopted or influenced the decisions or actions challenged by customers, i.e. the CSD manager should not report to a post which, in turn, is responsible for the aforementioned commercial or operational areas; accordingly, the direct hierarchical superiors of the CSD manager should report to bodies that solely have functions relating to control or supervisory areas. Consequently, the CSD's hierarchical line should not participate – or see its work interfered with – in the performance of functions involving operational or management responsibilities in the institution's business lines or areas.

As regards determining whether the institution should set up a CSD as an independent and exclusive organisational department or unit, or whether it can be integrated into a department performing other functions, and in application of the principle of proportionality, the institution may tailor its decision to its complexity and size, provided that, whatever the option adopted, it enables a flexible and effective service to be offered in the resolution of customer complaints and claims. However, if it is integrated into a department that performs other functions, these functions must – inevitably – not be related to the institution's commercial or operating activity.

2.2 APPOINTMENT, REMOVAL AND RENEWAL OF THE CSD MANAGER

Under Article 5 of Order 734/2004, the CSD manager should have commercial and professional integrity, as well as the appropriate specialist knowledge and experience.

In order to establish responsibility for the appointment process at the highest level, Order 734/2004 lays down the requirements that such managers should be designated by the board of directors or equivalent body of the institution (or by the general management in the case of branches of foreign institutions).

There are no regulatory prescriptions regarding the specific unit or body of the institution that is to select and assess the candidates for the purpose of proposing final appointment (or renewal or removal in the case of incumbents) to the board of directors. However, it

should be borne in mind that, in accordance with Article 25 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions (hereafter, Law 10/2014), institutions must have the appropriate internal units and procedures to carry out the selection and assessment of, among other senior managers, the persons to assume internal control functions (among which CSD managers should be included); accordingly, it would be strongly advisable that the proposal to appoint, renew or remove the CSD manager be made by the institution's appointments committee.

Adding to the foregoing considerations, it may in any event be understood that the post of CSD manager should be identified as one of the key posts for the purposes established in Article 25(1)(2)⁶ of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

In step with this, institutions should not only have CSD manager designation procedures that ensure that the person selected has the necessary commercial and professional integrity and appropriate knowledge and experience, but also documented processes for renewal in and removal from the post that safeguard the foregoing guarantees and preserve autonomous decision-making.

2.3 EXTERNALISATION
OF THE CUSTOMER
SERVICES DEPARTMENT

Article 4(1)(1) of Order 734/2004 establishes the obligation for institutions to have a specialised customer services department.

Article 22 of Royal Decree 84/2015 of 13 February 2015, implementing Law 10/2014 (hereafter, RD 84/2015), establishes the possibility for institutions to delegate the exercise of functions, provided that the institution's activity is not void of contents and that delegation does not diminish the institution's internal control capabilities or entail restrictions for supervisory tasks carried out by the Banco de España.

Three limitations on such delegation are laid down in this same article: i) the prohibition on delegating confidential activities; ii) compliance with the specific requirements demanded for the delegation of critical services or functions, and iii) those other limitations that the Banco de España may establish depending on the nature or criticality of certain functions or activities.

Without prejudice to the foregoing, and with regard to the CSD, the only externalisation envisaged in Order 734/2004 is that expressly mentioned in Article 4(1), whereby institutions forming part of the same economic group may, if they consider it advisable, have a single CSD. In that case, the CSD would have to be located in the structure of a supervised financial institution.

Further, the Banco de España considers that, excepting the group of companies referred to above, each institution should generally have its own CSD, and that the person responsible for this department should be integrated into the institution's organisational structure, thereby avoiding the contingency of transferring this responsibility to a third party, which would limit the Banco de España's supervision and control capacity.

⁶ "Credit institutions shall likewise identify the key posts for the day-to-day running of their financial activity and those in charge of internal control functions, maintaining for the Banco de España an updated list of the individuals performing such functions, the assessment of suitability made by the institution and the attendant substantiating documentation."

A different matter is the potential externalisation of sub-processes related to the management of claims and the processing of resolutions, which, in any event, should they occur, should not void of content the CSD's functions or diminish the institution's internal control capabilities or the Banco de España's supervisory capacity.

2.4 CONFLICTS OF INTEREST AFFECTING THE CSD MANAGER AND HIS/HER ASSIGNED STAFF

While institutions generally have in place a policy for identifying and preventing conflicts of interest, it is deemed advisable that they should also specifically envisage the treatment to be given to those cases in which this conflict of interest affects the CSD manager and the staff assigned to him/her, and that they establish a protocol for the replacement of persons subject to conflict, setting requirements for those who are to replace them.

One of the sources of such conflicts of interest may arise from dedication by the aforementioned persons to other tasks or positions not related to CSD functions.

The degree of dedication of the CSD manager should be appropriate, considering both the number of claims received by the institution and the other resources assigned to the CSD. Generally, for larger, more complex institutions, greater dedication is expected.

Even when in specific cases, justified by the nature, scale and complexity of the institution's activities, the person designated as CSD manager – or, generally, the staff assigned to the CSD – can perform other functions in the institution, these should not interfere in the CSD's functions; accordingly, they should not comprise tasks related to operational functions or to the business areas, so as to prevent the persons in question from being impelled or led to take into consideration aspects that might affect – albeit not necessarily – the content of the resolutions of the attendant claims.

Worthy of special mention are the cases in which the CSD manager may share other functions which, though they are far removed from the business areas, may give rise to conflicts of interest. By way of example, this would be the case if the CSD manager were simultaneously to hold the post of audit head, as the CSD is also an auditable function. Conflicts of interest might also emerge in the case of the head of legal counsel, owing to the general function pursued by this position-holder in defence of the institution's interests. In such cases, simultaneous position-holding, insofar as it may detract from the independence of the CSD's work, should be avoided.

2.5 CSD RESOURCES AND TRAINING PROGRAMME

As detailed in Article 6(2) of Order 734/2004, the institution should ensure that its CSD has the appropriate human, material, technical and organisational resources to fulfil its functions.

In this connection, and depending on the size and complexity of the institution's business, it is considered recommendable that CSDs should have:

- Ready access to the information they need.
- Staffing suited to the institution's complexity and to the number of claims received so that they are able to resolve claims within the legally stipulated terms and with the expected quality.
- A team with appropriate experience in claims processing and in implementing banking transparency regulations that is sufficiently balanced among its members.

- Periodic training programmes to ensure that staff updates knowledge on an ongoing basis.
- IT tools with a capacity proportional to the number of claims processed so that they can be swiftly and appropriately managed.
- Automated processes ensuring efficient receipt, processing and resolution of complaints and claims, and capable of mitigating potential human errors.

Moreover, as regards the training programmes, institutions must have at general organisation level and at CSD employee level, specific mechanisms and programmes encouraging awareness of the applicable regulations, in general, and of transparency rules, in particular; including good practice criteria adopted by supervisors in resolving claims, supervisory guidelines on this subject matter and the related case law impacting its scope of action, in order to incorporate this knowledge into the institution's know-how.

2.6 REMUNERATION POLICY

As mentioned earlier, institutions should have (and implement) policies for preventing and managing conflicts of interest, and for providing resources and training for employees assigned to the CSD in order to ensure that they are not prevented from performing their tasks objectively and independently. This also affects the remuneration policy for CSD staff, since their independence should not be compromised by incentives associated with the manner in which their remuneration is established.

In this respect, the following would be highly advisable:

- A policy specifically applicable to CSD staff and the CSD manager incorporating incentives especially linked to the achievement of specific CSD objectives and, therefore, that the parameters considered do not generate conflicts of interest as a result of being closely related to the objectives of the business units they supervise.
- The body or authority setting the objectives of the CSD and assessing its performance should not be responsible for managing business units.
- The variable remuneration of the CSD manager should not depend on or be in any way linked to the objectives and performance of the business units.

Furthermore, it is also considered necessary for the parameters used to calculate the variable remuneration of commercial network staff to include qualitative criteria relating to consumer satisfaction, such as an incentive that is inversely related to the number of complaints and claims received at each office. Along these lines, there are several EBA guidelines (1.1, 1.2, 1.4 and 1.5) on remuneration policies and practices relating to the sale of products and the rendering of services in retail banking.

2.7 OBJECTIVES AND ACTION PLAN OF THE CSD

Finally, with a view to ensuring that the CSD operates efficiently, it is deemed necessary for institutions to design annual and/or multi-annual action plans on the basis of their size and complexity, specifying objectives, time limits and estimates of resources required by the CSD, whose degree of fulfilment is systematically monitored (and regularly updated) by the governing body.

Examples of some objectives to be attained are: i) decline in the total number of claims and complaints received by the institution; ii) decline in the number of claims and complaints

processed by the CSD; iii) reduction of average resolution time, and iv) higher customer satisfaction in the processing of claims.

3 Criteria and procedures for receiving, processing and resolving complaints and claims

Articles 8 to 15 of Order 734/2004 regulate the procedures for receiving, processing and resolving complaints and claims. Particularly important is respecting the maximum time limit for replying to customers (two months) from the date the claim is received, and the obligation, pursuant to Article 12(1) of Order 734/2004, to transfer any claims or complaints not resolved in favour of the customer by the office or related body to the CSD, which, in accordance with the procedural rules, will in turn transfer them, if appropriate, to the ombudsman.

Although the aforementioned articles have provided appropriate legal coverage for more than a decade, the development of new technologies in recent years has disclosed the need to define certain criteria relating to the procedures for receiving, processing and resolving complaints and claims, which will be analysed in the following sections.

3.1 GENERAL POLICY FOR RECEIVING, PROCESSING AND RESOLVING COMPLAINTS AND CLAIMS

The general policy at institutions as regards receiving, processing and resolving complaints and claims should be included in an Internal Regulation on Customer Protection approved by the board of directors or similar body at each institution and, if appropriate, by general management of the branch, and it should reflect the minimum content provided for by Article 8 of Order 734/2004.

In connection with the time limits envisaged in the Internal Regulation for admission of claims, it is considered that best practices include the provisions in this connection that do not restrict this time limit to two years from the date the customer becomes aware of the events giving rise to the complaint or claim as established by Order 734/2004, extending this time limit to at least six years from the date such events arose, as provided for by Article 10(2)(f) of Order ECC/2502/2012 of 16 November 2012 regulating the procedure for submission of claims to financial supervisors' Complaints Services.

Additionally, it is advisable for institutions to draw up and approve internal rules including general and operating instructions to be followed by the offices and CSDs in order to ensure that the complaints and claims submitted by customers and users through the different channels set up for this purpose are appropriately registered, transferred, managed and replied to.

3.2 DISSEMINATION OF INTERNAL REGULATIONS AND ACCESSIBILITY FOR CUSTOMERS

Under Article 9 of the foregoing Order, institutions are required to ensure that the Internal Regulation is available to their customers at all their offices that are open to the public.

It is also considered necessary for the general complaints management policy and, specifically, the Internal Regulation, to be accessible to all the institution's employees, or at least to those who render services in business units or who have a position in an institution where such knowledge might be necessary or simply useful at any given moment.

Although the obligation under Article 9 of the Order to maintain the Internal Regulation available on the websites of institutions is limited to such cases where arrangements are made by electronic means, such availability in all cases, even where institutions do not enter into contracts remotely, should be considered as a best practice.

In any event, regardless of the format or channel used to make this information available to customers, some measures should be adopted to ensure easy and ready access, seek-

ing, in cases of inclusion in intranet or internet pages, to feature the Internal Regulation prominently, with a clear access route and a small number of intermediate steps or screens, regularly verifying that accessibility conditions are maintained.

In addition, it should be noted that making the Internal Regulation available on the internet does not relieve institutions from their obligation to provide accurate information to their customers by any other means (e.g. orally, through brochures, prospectuses, contractual documents, etc.), in particular, on the manner in which complaints and claims are submitted, time limits and general processing.

3.3 RECEIVING COMPLAINTS AND CLAIMS

3.3.1 Channels for receiving complaints and claims

Article 11 of Order 734/2004 stipulates that complaints and claims may be submitted on paper or by computer, electronic or telematic means, provided the documents may be read, printed and stored. In any event, the institutions must provide an e-mail address for customers to lodge their claims.

As a result of technological developments in recent years, many institutions have set up additional communication channels with customers (websites, telephone, social networks, etc.), which should be highly valued. However, if necessary and sufficient information is lacking, customers may have doubts as to whether such channels actually operate as channels for the official lodging of complaints and claims subject to the Order and, accordingly, the submission and processing of the claims might be hindered or delayed.

For this reason, where the setting up of such channels has the sole purpose of improving service quality but not of serving as a channel for submission of complaints and claims and their consequent recording, the institution must clearly inform the customers who use them of this matter, indicating which channels are available to submit their complaints or claims.

Alternatively, if these channels have been set up as a means for receiving complaints and claims, the institution must abide by the procedural formalities stipulated by Order 734/2004 and, especially, the transfer of such a claim or complaint to the CSD in the event of unfavourable resolutions not issued by the latter.

In any event, regardless of the channel chosen, the institution must ensure that a written confirmation of receipt of the complaint or claim is issued to the customer, whether on paper or in any other durable medium. The latter is understood to be any instrument enabling the customer to store the information personally addressed to him/her in such a way that it can be readily recovered over an appropriate period of time for the purposes for which the information was issued and that allows the information stored to be reproduced without changes, thus documenting the date on which the submission was made and, if appropriate, transferred to the CSD.

It is also advisable for institutions to have forms, on paper and in electronic format, available for their customers to submit their complaints or claims to the CSD, the design of which should comply with the minimum information requirements of Order 734/2004. This, however, should not prevent in any way the admission of complaints or claims that meet the regulatory requirements and are submitted in any other format.

Finally, it should be noted that it is in no manner admissible for institutions to establish alternative channels for the receipt of complaints and claims that are in practice set up as routes parallel to the CSD's intervention under Order 734/2004, which do not fulfil the obligation to transfer to the CSD any complaints and claims not resolved in favour of the

customer and which represent an additional obstacle for customer access to the officially established system for resolution of disputes and which would undoubtedly clearly discourage customers from proceeding with the claim process. In these cases, institutions should be in a position to ensure not only that a claim or complaint is transferred to the CSD in the event of an adverse resolution for the customer, but also that the CSD has sufficient information about the volume and characteristics of the claims filed through these channels.

3.3.2 Controls and register

The plurality of sources and formats for submitting complaints and claims requires that institutions, especially larger and more complex ones, set up controls to ensure that these complaints and claims are not only properly recorded but that they are sent, when appropriate and within the time limits set by the institution for this purpose, to the unit responsible for resolving them within the legally established time limit.

In this connection, a centralised register of claims and complaints received will enable them to be managed integrally, to be handled uniformly irrespective of the channel through which they were received and permit the CSD to be aware of all the claims processed by the institution, including those resolved directly at its offices. Thus, the CSD will be in the ideal position to be aware of any problems that have arisen regarding customers and to send the consequent conclusions to the institution's management and to include all the claims in the calculation in the compulsory annual report.

In short, it is considered recommendable that institutions approve policies envisaging various forms or media for their customers to be able to submit complaints and claims, as well as the bodies specified for receiving them, the procedure established for recording them, the time limits set internally for transferring them to the competent body for resolution and the controls to ensure that the procedures function properly thus avoiding incidents such as loss, errors or delays in transferring them to the unit responsible for their resolution.

3.4 RESOLUTION OF COMPLAINTS AND CLAIMS

3.4.1 Resolution bodies

Where the institution, for strategic reasons related to the decentralisation of the complaints and claims management function, has to set up separate complaint and claims resolution bodies, it is considered necessary to clearly define the thresholds and areas of competence of each one, as well as the resolution criteria in order to apply them in a uniform and predetermined manner throughout the organisation.

However, under no circumstances can such decentralisation lead to failure to comply with the obligation to send to the CSD those claims resolved against the customer, nor can it entail the CSD losing its comprehensive view of the functioning of global claims management at the institution.

Specifically, since the commercial offices are the most direct and easiest point of access for customers, institutions should formulate a procedure determining their powers in the direct resolution of complaints and claims which includes the transfer to the CSD of the information relating to the complaints and claims handled, including those resolved by the branch itself.

3.4.2 Resolution criteria and time limits

Institutions should have a procedure for applying uniform and predetermined criteria for the resolution of claims which documents such criteria, establishes the way in which they are published and defines the frequency with which they are revised and updated so as to monitor possible regulatory changes.

Similarly, institutions should gather and analyse all the relevant data and information about complaints and claims and use straightforward easily understandable language in their communications with customers. Should a decision be taken which does not fully satisfy the customer's claims, institutions are reminded of the need to offer exhaustive reasoning of their position in relation to the complaint or claim as well as of providing information about the possibility of customers resorting either to the claims services of the Banco de España, the National Securities Market Commission or the Directorate General of Insurance and Pension Funds.

Also, in order to ensure compliance with the legally established two-month time limit for the resolution of complaints and claims, institutions should clearly define internal time limits for performing the various steps of the handling process and, in particular, the time limits for transferring to the CSD the information required by the latter from other units and set out the arrangements for the follow-up of effective compliance with these internal time limits and, obviously, for the monitoring of the age of the claims.

Finally, it is recalled that the smooth functioning of the CSD involves adequate follow-up of the claims submitted by its customers to the Banco de España and, without prejudice to the non-binding nature of the resolutions of claims issued by the supervisors, the setting up of an assessment procedure so as to include, if appropriate, the criteria of the good practice described in the Memoria de Reclamaciones which gives rise to fewer claims being submitted to the Banco de España that are finally resolved with a report favourable to the complainant.

4 Lines of communication and monitoring and control mechanisms

4.1 LINES OF COMMUNICATION AND PARTICIPATION IN COMMITTEES OR GROUPS

As indicated in Section 2.1.1 of this document, it is considered that the CSD also has to perform a control function which entails both the task of reporting on its activity to the governing body (in its supervisory function) and the function of continuous analysis of data on the management of complaints and claims in order to identify and address recurring or systemic problems.

As a result of the foregoing, it is considered that there should be clear, direct lines of communication between the CSD manager and other control functions as well as between the former and the governing body, which should be in the form of both regular reporting mechanisms (e.g. regular reports) and occasional reporting, as circumstances require, in order to convey alerts, concerns, etc.

It is particularly significant that the CSD manager should participate fully independently in the committees responsible for the approval of new products or of significant changes in existing ones. This participation should be direct or through the incorporation in the approval process of the standpoint and experience of the CSD, which would benefit the design of products, the mitigation of their risks, the ability to understand them, the definition of their target group and, in short, how they should be marketed. Specifically, it is recommendable that the number and type of complaints and claims that a new product might generate should be envisaged in this process.

4.2 REPORTS PREPARED BY THE CSD

4.2.1 Annual Report

As provided by Article 17 of the Order, CSDs should submit to the management board in the first quarter of the year a report on the performance of their functions during the preceding year. The Order regulates the minimum content of this report, which should include, among other details, statistical summaries of the claims submitted and of the decisions issued, the general criteria included in these decisions and the recommendations or suggestions arising from its action.

In cases where several institutions in a group have a shared CSD, the annual report needs, at least, to contain the minimum information referring to each individual institution and that this information be submitted for approval to their respective governing bodies.

The report should be made available to the governing body sufficiently in advance of the date envisaged for its approval, so that it can be duly analysed. In this same vein, it is considered that making the report available on the same day as it is submitted for approval may compromise the effectiveness of the audit of the CSD's activity by the aforementioned body.

It should be noted, in any event, that aside from the minimum obligations conferred by Order 734/2004 to the annual report, the latter is a core element of the accountability of the claims management function to the board of directors and, consequently, should offices or other bodies in the institution participate in the resolution of claims, inside or outside the framework of Order 734/2004, the information on the volume and way in which they are resolved should also form part of said annual report.

Finally, following up the degree to which the recommendations made by the CSD in previous annual reports are implemented is needed in order to assess the effectiveness of the measures suggested in these reports.

4.2.2 Other reports

In addition to the above-mentioned annual report, it is desirable that the institutions, at least the larger and more complex ones, set in train more frequent, varied and complete reporting procedures of the CSD to the governing bodies including, for example, information on the number of resolutions of the Banco de España finding against the institution, in which regard a decision of non-rectification was taken, and the grounds for said decision.

4.3 CONTROL OF THE CSD AND OF THE COMPLAINTS AND CLAIMS PROCESSING PROCEDURES

The CSD, like any other of the institution's departments, shall be subject to an independent review. The scope of this review by the internal audit function will include not only the proper recording, transfer and processing of claims, but also the full activity and function of the CSD.

4.4 CLAIMS AND COMPLAINTS FOLLOW-UP AND CONTROL MECHANISMS

In line with the CSD's monitoring function and the provisions of the 5th guidelines issued by the Joint Committee of the European Supervisory Authorities for complaints-handling for the securities and banking sectors, it is considered that the CSD should continuously analyse data on the management of complaints and claims in order to identify and address recurrent or systemic problems and the possible legal and operational risks with the initial aim of identifying the common causes of certain types of complaints and claims.

The scope of the assessment process of complaints and claims should cover all the claims processed within the institution, irrespective of the unit which has resolved them.

It is also advisable that, as a result of the analysis, not only the institution's procedures which are directly affected be corrected so that the same problems do not happen again, but that the causes be investigated as to whether they could affect in turn other processes or products, including those for which no direct complaints or claims have been received.

In cases where several institutions in a group have a shared CSD, it is deemed necessary that these follow-up and control mechanisms be defined for each of the institutions attached to the CSD.

5 Conclusions

Given the significance of the proper functioning of supervised institutions' CSDs, the criteria set out above have been and continue to be used to assess two types of performance. These are: firstly, the performance of the function of handling the claims and complaints institutions receive from their customers (which is undoubtedly the most obvious and immediate task of CSDs) and, secondly, the performance of the much more strategic function of control relating to their role in the awareness of sources of customer dissatisfaction, which also involves the analysis of patterns and trends governing customer dissatisfaction, in order to send the conclusions and subsequent proposals to the institution's management body.

This analysis, commensurate with institutions' size and complexity, has provided information for setting the supervisory priorities of the MCCD which are ultimately geared towards achieving an increase in institutions' efforts during 2015 and 2016 to improve the efficiency of the above-mentioned CSDs. This is so that CSDs not only perform properly the function of processing and resolving customer claims and complaints but that they constitute in practice (thanks to the highly important source of significant information that they handle) an early warning engine and a device for the early detection of problems arising from the marketing of products and services and/or from institutions' customer relations, which should necessarily be taken into consideration by the institutions to select and adopt the precise measures which permit the correction of such problems or prevent them before they arise.