

## Complaints Report in brief

<p>Why publish an Annual MCCD Report?</p>	<ul style="list-style-type: none"> <li>• To comply with the legal mandate (set out in Article 30(4) of Law 44/2002 of 22 November 2002 on Financial System Reform Measures) to report statistics on enquiries and complaints received and disseminate the criteria upheld by the Market Conduct and Claims Department (MCCD).</li> <li>• In addition to the data presentation, the Report compiles and summarises the main best banking practice criteria, setting standards of conduct for banks.</li> <li>• Complaints are a fundamental channel for informing supervisory awareness in the field of conduct, as they provide early warning of banks' weak points.</li> <li>• Moreover, the Report is an educational tool, insofar as it also contributes to the financial education of the general public for their day-to-day banking operations, with inclusion of the main highlights and criteria at <a href="https://clientebancario.bde.es/pcb/en/">https://clientebancario.bde.es/pcb/en/</a>.</li> </ul>
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## CHAPTER 1. SUMMARY OF THE ACTIVITY OF THE MARKET CONDUCT AND CLAIMS DEPARTMENT

<p>Overview</p>	<ul style="list-style-type: none"> <li>• In 2018, the MCCD processed 49,708 complaints/enquiries submitted by financial service users. This is an overall decrease of 39% on 2017.</li> <li>• Of the total, 19,695 were complaints and 30,013 were enquiries (received in writing or by telephone).</li> <li>• In the framework of the complaints procedure, on the information available, banks reimbursed customers a total of €2,634,767.</li> </ul>
<p>Enquiries</p>	<ul style="list-style-type: none"> <li>• A total of 30,013 enquiries were received in 2018, compared with 41,056 in 2017 (down 26.9%).</li> <li>• Of these, 1,672 enquiries were submitted in writing and 28,341 by telephone (900 545 454 / 913 388 830, lines open Monday to Friday from 08:30 to 17:00). In 2018, telephone enquiries decreased by 27.6% and written enquiries by 11.5%.</li> <li>• Both telephone and written enquiries referred mainly to accounts and deposits, followed by mortgages and payment services.</li> </ul>
<p>Complaints</p>	<ul style="list-style-type: none"> <li>• A total of 19,695 complaints were processed in 2018, a drop of 51% compared with 2017 (40,176 complaints, an all-time record for the service).</li> <li>• In 70.6% of the cases admitted for consideration in the year customers were vindicated in their complaints, either because the bank accepted liability or because it decided to rectify its conduct after a report was issued.</li> <li>• By geographical area, complaints filed by customers from the Andalusia, Madrid, Valencia and Catalonia regions accounted for 61.8% of the nationwide total.</li> <li>• Mortgages are the products in respect of which most complaints are filed – 54% of the total – although this is a considerably lower figure than in 2017. In 2018, complaints relating to mortgage set-up costs accounted for 57.2% of all mortgage complaints.</li> </ul>
<p>Complaint channels</p> <p>Dual complaint procedure (consumers resident in the EU / other customers)</p>	<ul style="list-style-type: none"> <li>• Channels for lodging complaints: the Virtual Complaints Office (15.5% of the total in 2018), the Banco de España headquarters in Madrid (66.6%) and the branch network (17.9%), in the last two cases, in person or by mail.</li> <li>• Following the entry into force of Law 7/2017, changes were made to some of the complaints procedure processes and deadlines regulated in Ministerial Order ECC/2502/2012 (see the complaints procedure for consumers resident in the EU in Figure 1.3 of Chapter 1).</li> <li>• Before lodging a complaint with the Banco de España's MCCD, customers must first have contacted the customer service department of the bank concerned. Accordingly, any customer or user must demonstrate to the MCCD that the bank in question has refused to accept their complaint or that the legal deadline for receipt of a response has elapsed.</li> </ul>

This chapter sets out good banking practice. It also includes explanatory boxes on new legislation approved in the year and the relevant implementing regulations:

- Law 5/2019 regulating real estate credit agreements (Box 2.1).
- Royal Decree-Law 19/2017 on basic payment accounts (Box 2.2), payment account switching and comparability of fees (Box 2.4).
- Royal Decree-Law 19/2018 on payment services and other urgent financial measures and Regulation (EU) 2019/518 of the European Parliament and of the Council on charges on cross-border payments in the EU and currency conversion charges (Box 2.3).

## 1

## Mortgage loans

- Banks are **free to decide whether or not to grant loans** requested by their customers, in accordance with their risk policies and with the “responsible lending” principle according to which the creditworthiness of the potential borrower should be sufficiently assessed. In this initial phase, an **appraisal report** is also drawn up. The MCCD verifies how customers are informed of the cost of the report and of their freedom to choose the appraisal company.
- Banks are also required to provide their customers with certain **prior information**, such as the pre-contractual and the personalised information sheets (FIPRE and FIPER, respectively, by their Spanish abbreviation). In addition, consumers may request that a binding offer be made. In its reports the MCCD analyses whether the contents of these documents comply with the instructions set out in the regulations.
- When a mortgage loan is **arranged** it must be recorded in a public deed, with the customer having the right to choose the public notary. Also at that stage, a series of formalities must be satisfied that result in certain “set-up costs” (administrative expenses, taxes, etc.). In recent years, several Supreme Court judgments have ruled on the distribution of these costs and there has also been new legislation in this respect, as explained in detail in the corresponding section of the Report.
- Of particular importance in a **mortgage loan agreement** are the financial conditions and, specifically, the various components of the formula for calculating the instalment payments:
  - Many complaints filed relate to the **interest rate applicable**, which may be fixed or variable and, in the latter case, may be linked to either an official reference index – published monthly in the Official State Gazette and on the Banco de España’s website – or an unofficial reference index, in which case customers must be informed of any changes.
  - Numerous complaints are also filed relating to the **late payment interest rate** applicable to mortgage loans which, under the previous regulations, was restricted by law to a maximum of three times the statutory interest rate and applicable only to the principal outstanding.
  - According to the regulations, as a general rule, **fees** may be freely agreed. In the case of mortgages, the main disputes in 2018 related to arrangement fees and early redemption fees, among others.
- Lastly, another regular complaint relates to **name changes**. For instance, in the case of subrogation of the debtor (which must be authorised by the bank) and in the case of mortgage subrogation, substituting one creditor for another, which consumers may request without seeking the bank’s consent.

## 2

## Mortgagors experiencing financial hardship

- The regulations providing protection for **mortgagors experiencing financial hardship** include a **Code of Good Practice** which banks may voluntarily sign up to. They must inform their customers if they do so and provide them with information on the contents of the Code.
- The Code envisages a series of **consecutive measures** (forbearance, debt reduction, dation in payment, rental of principal residence after mortgage foreclosure) to be implemented in order, such that only if one measure is not viable is the next one analysed.
- It also places special emphasis on reviewing compliance with and application of **dissemination and information requirements**, especially regarding the **drawing up of forbearance plans** and justification of any refusal to do so.
- Since 2017 a series of **supervisory criteria** have been included, as a result of the specific inspections performed by the MCCD in this respect.

### 3

#### Unsecured loans

- Here a distinction is drawn between **consumer loans** and **loans to SMEs**.
- In the case of consumer loans, all complaints filed are analysed, according to their specific terms, to verify that the **pre-contractual information** – the Standard European Consumer Credit Information (SECCI) – is provided sufficiently in advance and that the form and content of the **agreement** comply with the applicable regulations (APR, right of withdrawal, right to early repayment, among others). The **post-contractual information** is also verified, as the regulations include standardised settlement forms.
- Regarding loans to SMEs, the rules establish two requirements: i) at least three months' notice must be given if the bank stops the funding or reduces it by at least 35%; and ii) the "SME financial information" document must be provided.

### 4

#### Guarantees and collateral

- This section analyses, for example, complaints filed requesting that **risk fees cease to be charged** after guarantees have been cancelled in cases when the bank acts as guarantor, and complaints questioning **whether the bank should be liable for payment of the guarantee**, according to the duration of the guarantee or the obligations guaranteed.

### 5, 6 and 7

#### Bank deposits. Introduction and common aspects; demand deposits and term deposits with principal guaranteed

- The transparency regulations governing deposits set out the requirements as to advertising and pre-contractual, contractual and post-contractual information. They also highlight the **regular information** to be provided by banks to customers, including: i) the standardised form for each interest or fee payment; and ii) a statement of the interest received and paid and the fees and expenses incurred in the previous year (to be provided in January of each year).
- In the case of **demand deposits**, the main feature of which is to provide "cash services", the complaints filed relate to how these deposits work (especially as regards the deposit holders) and the rules and restrictions on the withdrawal of funds:
  - In general, funds deposited may be **withdrawn** by the deposit holders or their legal representatives (in the case of legally incapacitated persons, minors or legal entities, among others). There may also be representatives appointed voluntarily (authorised persons) and deposits held in several names (on an all-to-sign, both-to-sign, any-to-sign or either-to-sign basis).
  - The issues raised with the MCCD regarding **restrictions on withdrawals** relate to: i) **accounts blocked**, in most cases owing to requirements stemming from compliance with anti-money laundering and counter terrorist financing regulations, which include processes for identification of owners; ii) **disagreements between joint account holders** who issue contradictory and incompatible instructions, in which case banks must refrain from taking sides; iii) **offsetting of debit balances** between accounts; and iv) attachments arising from administrative or court orders.
- Regarding current accounts, recurrent disputes relate to **fees charged** (mainly maintenance and/or administration fees) and interest charged on **overdrafts**. In the case of overdrafts, observance of the interest rate limit on unarranged overdrafts for consumers (APR of 2.5 times the statutory interest rate) is verified. In addition, from the good banking practice standpoint, in 2018 a new criterion was established whereby overdraft charges should not exceed a period of three months.
- When the issues raised relate to **closure of current accounts**, it is analysed whether banks have proceeded in the manner and within the time frame envisaged in the regulations.
- In the case of **term deposits**, the main complaints relate to:
  - The possibility and terms and conditions of **tacit renewal**, as the contracts should set out the notice periods required for non-renewal.
  - **Changes** to contracts, which must be notified at least one month in advance, unless the new conditions are more favourable to the customer.
  - **Closure**, if this is permitted by the contract (and with the advance notice envisaged therein) or by agreement between the parties.

## 8

### Payment services

- The most common issues raised relating to payment services are:
  - **Cash deposits and withdrawals** and other matters relating to cash services (among others, limits on in-bank services that can mean they are only available at certain times of the day or on certain days of the week or month, and requirements that deposits and withdrawals be made through ATMs).
  - **Transfers of funds** (irrevocable nature of transfers, expenses, etc.).
  - **Direct debits** (refund of direct debit payments, cancellation of direct debit orders), including one-off and business-to-business (B2B) direct debits.
  - **Payments by card or similar devices**. This section analyses issues relating to cards used as payment instruments in unauthorised card-present or internet transactions and payment service providers' liability. It also specifically addresses issues relating to revolving credit cards, as these products are the subject of many complaints/enquiries, with special emphasis on the (pre-contractual, contractual and post-contractual) information provided to customers on the product terms and conditions.

## 9

### Probate services

- This section of the Report sets out the main issues raised in probate services, highlighting the following:
  - After a customer's death, the heirs have a **right to information**. However, to obtain that information they must demonstrate that they are indeed the heirs, presenting the usual documentation in these cases (certificate of the Register of Wills, copy of the last will and testament and/or of the certificate of intestate succession). Once this is established, banks must provide the heirs, free of charge, with a certificate of the deceased's account balance(s) at the date of death, details of account activity since the date of death and details of account activity at least in the year preceding the death.
  - In order to **gain access to the deceased's assets**, the heirs must present the public or private document evidencing acceptance, division and distribution of the estate, along with proof of payment of, or of exemption from, inheritance tax.
- Numerous complaints filed in 2018 related to the charging of **fees for probate services**. Banks are entitled to charge these fees when customers are duly informed, and grant their consent, and the fees are charged once the process is complete.

## CHAPTER 3.

### SELECTION OF ENQUIRIES

Lastly, Chapter 3 presents a selection of the most common subjects of enquiry: i) mortgage set-up costs and stamp duty; ii) steps for removing mortgages from the Registry; iii) loan sureties' or guarantors' right to information; iv) loan agreements linked to the supply of goods or provision of services; v) authorised representatives' rights in payment accounts; vi) accounts for minors; vii) transfers made incorrectly; viii) user identification in payments through point-of-sale (POS) terminals; ix) instant payments; x) limits on ATM transactions; and xi) heirs' access to funds of the deceased.