

Complaints Report in brief

Why publish an Annual MCCD Report?

- 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 to disseminate the criteria upheld by the Market Conduct and Claims Department (MCCD; since May 2020, the Institutions' Conduct Department) in resolving complaints.
- Along with the data on the activity performed, the Report compiles and summarises the main best banking practice criteria, setting standards of conduct for banks.
- Complaints are a fundamental means of informing supervisory awareness in the field of conduct, as they provide early warning of banks' weaknesses in their customer relations.
- Moreover, the Report is an educational tool, insofar as it also contributes to the financial education of the general public for their banking operations, with inclusion of the main highlights and criteria on the [Bank Customer Portal](#).
- The *Complaints Report 2019* shares the values of the Banco de España's Strategic Plan 2024: independence, transparency, integrity, excellence and, most especially, public service, generating greater confidence in the Banco de España and greater value for society.

CHAPTER 1. SUMMARY OF THE ACTIVITY OF THE MARKET CONDUCT AND CLAIMS DEPARTMENT

Overview

- In 2019, the MCCD processed 14,638 complaints submitted by financial service users and fielded 30,462 enquiries (in writing or by telephone).
- Within the complaints procedure framework, on the information available, banks reimbursed customers a total of €2,568,292.

Complaints

- A total of 14,638 complaints were processed in 2019, 25.7% down on 2018 (19,695).
- In 73.1% of the cases resolved by report or acceptance of liability in 2019, 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.
- By geographical area, complaints filed by customers from the Madrid, Andalusia, Valencia and Catalonia regions accounted for 62.3% of the nationwide total.
- Mortgages are the products in respect of which most complaints are filed (30.5% of the total), although they account for a significantly lower percentage than in 2018 (72.7%). This is due to the lower weight of cases involving mortgage set-up costs. Second-ranked in terms of complaints are accounts and deposits (19.5% of the total), followed by cards (17.9%), which is the fastest-growing category (up 40.1%).

Enquiries

- A total of 30,462 enquiries were received in 2019, compared with 30,013 in 2018 (an increase of 1.5%).
- Of these, 3,719 were submitted in writing and 26,743 by telephone (900 54 54 54, a free-of-charge line open Monday to Friday from 08:30 to 17:00). In 2019, telephone enquiries decreased by 5.6% while written enquiries were up 122.4%.
- Both telephone and written enquiries referred mainly to accounts and deposits, followed by mortgages and payment services.

Complaint channels

Complaint procedure

- The most-used channel for lodging complaints continues to be in person or by mail at the Banco de España headquarters in Madrid and at its branches (58% and 17.3%, respectively). The Virtual Complaints Office is the other option available (24.7%).
- Last year saw significant growth in complaints lodged via the Virtual Office (15.5% in 2018 and 9% in 2017), thanks partly to the Cl@ve system for submitting complaints being set in place.
- 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 (one or two months, depending on whether or not the claimant is a consumer).

This chapter sets out the best banking practice criteria applied to resolve processes in 2019. It also includes tools of use to readers, such as those of the Bank Customer Portal for calculating and comparing fees, and the explanatory boxes on new legislation approved:

- 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

- The recent Law 5/2019 (LCCI by its Spanish abbreviation) has amended several regulations on mortgage loans to adapt them to the Directive on credit agreements entered into with consumers in respect of residential property.
- Banks are free to decide whether or not to grant mortgage loans to 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.
- 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). Customers also have the possibility of requesting a binding offer, currently the European Standardised Information Sheet (ESIS), which is considered as such, and the Standardised Warning Sheet (FiAE) and the rest of the pre-contractual documentation envisaged in the LCCI. In those cases in which the mortgage is offered separately and with the option of taking out a series of products or services that entail a bonus interest rate, the MCCD recommends that both offers be reflected in the ESIS. This should spell out their characteristics in terms of obligations and cost, which means including the annual percentage rate (APR) of each offer. 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 notary public. Also at that stage, a series of formalities must be met that result in certain “set-up costs” (administrative expenses, taxes, etc.).
- 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. This was in turn restricted by Supreme Court jurisprudence to 2 pp above the remunerative interest on mortgage loans granted to consumers.
 - According to the regulations, as a general rule, fees may be freely agreed. In the case of mortgages, the main disputes in 2019 related to arrangement fees and early redemption fees, among others.
 - Currently, under the LCCI, banks cannot make products linked to the granting of mortgage loans on residential property or of personal real estate loans obligatory, unless they prove they entail a benefit for the customer and they are authorised by the competent authority, with the exception of repayment and property insurance. The bank shall accept, with no additional cost involved, other alternative policies from other providers with equivalent conditions and coverage.
- Another regular complaint relates to debtor 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 current creditor’s consent.
- Problems relating to early repayment or redemption are based on discrepancies over the fees or compensation charged by the bank, by virtue of the applicable legal regime, which will depend, among other matters, on the date on which the mortgage was arranged. The changes in these regimes can be seen in detail in Figure 2.1 of the main report.

2

Mortgagors experiencing financial hardship

- The Code of Good Practice protects mortgagors experiencing financial hardship, so that they may keep their principal residence. A total of 201 cases were analysed in detail in 2019 in this connection.
- From the time banks sign up to the Code, they are obliged to publicise the fact, reporting their adhesion to and content of the Code, applying its measures to those borrowers on the exclusion threshold.
- There are four measures: forbearance, debt reduction, dation in payment and the right to rental of principal residence in the event of mortgage foreclosure. The first three measures, which seek to prevent foreclosure proceedings, are implemented in order, such that only if one measure is not viable is the next one analysed.
- The Code further envisages other advantages, such as the limitation of moratory interest.
- Of note are the interpretative criteria laid down by the Oversight Committee on the application of the Code of Good Practice (whose secretary is appointed by the Banco de España), which are published in a compendium of enquiries on this matter.
- Since 2017, a series of supervisory criteria have been included in the *Complaints Report*, as a result of the specific inspections performed by the MCCD in this respect.
- This year, owing to the increase in complaints on applications for further forbearance under the Code of Good Practice, a new section has been added. It concludes that the resolution of this matter forms part of the bank's commercial and risk management policy.

3

Unsecured loans

- Here a distinction is drawn between consumer loans and loans to SMEs.
- In the case of consumer loans, analysis of complaints filed focuses on: compliance with the provision of pre-contractual information – the Standard European Consumer Credit Information (SECCI) – sufficiently in advance; that the form and content of the agreement comply with the applicable regulations (APR, right of withdrawal, right to early repayment, among others); and, finally, that the post-contractual information is also verified, as the regulations include the regular sending of 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.
- A further change this year includes a table with the latest jurisprudence of the Court of Justice of the European Union on the interpretation of the Directive on consumer credit agreements (Fig. 2.2).

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 attendant transparency regulations set out the requirements as to advertising and pre-contractual, contractual and post-contractual information in respect of deposits. 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).
- If what is involved is a demand deposit account, the main feature of which is to provide “cash services” or allow the depositor to make payments and collections, all information relating to fees shall be provided using standardised terms and documents. This is according to the latest regulations, which enable EU-wide comparison of payment account fees and which stipulate that there should be designated websites in this connection.
- There are frequently complaints on how these accounts work, in particular over the regime and restrictions on the withdrawal or availability of funds:
 - In general, funds deposited may be withdrawn by the deposit holders or their representatives, who may be legal (in the case of legally incapacitated persons, minors or legal entities, among others) or voluntary (authorised persons). The account may be held in several names (on an all-to-sign, both-to-sign, any-to-sign or either-to-sign basis).
 - Problems raised with the MCCD regarding restrictions on withdrawals relate to:
 - i) Accounts blocked: in most cases this is due to requirements stemming from compliance with anti-money laundering and counter terrorist financing regulations, which establish specific instances in which financial institutions must abstain from entering into a business relationship or executing operations. In practice, this obligation is implemented through a series of restrictive measures, which may include closing and freezing accounts and restrictions on transactions with customer accounts.

The MCCD does not generally have the power to issue an opinion on the appropriateness or proportionality of the measures adopted by banks to comply with these regulations. This is why we do not question whether the measures should be adopted immediately, in such a way that the party concerned has no advance warning of them.

The MCCD can actually analyse specific aspects of banks' situation in light of best banking practices and, where appropriate, assess whether their management has been diligent vis-à-vis customers as regards the communication of measures to them. In this connection, one change has been the introduction of the principle of effective communication.
 - 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.
 - 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.

One particular change regards the revision of the MCCD's criteria governing the charging of the “fee for claiming past-due debit balances”. There are twin reasons for this: to align the criteria with the analysis in the Supreme Court's ruling of 29 October 2019 and with the latest EU-wide regulations, which advise treating this fee as an expense or surcharge. Accordingly, the new criteria are aimed essentially at reinforcing the contractual and informative transparency of this fee and to bring about, moreover, greater transparency and proportionality in its application.
- When the problems relate to closure of current accounts, it is analysed whether banks have proceeded in the manner and within the timeframe envisaged in the regulations and in the contract.
- In the case of term deposits, the main complaints relate to:
 - The possibility of tacit renewal, as the conditions and notice periods required for non-renewal are not always clear in contracts.
 - Changes to contracts (normally of the interest rate) in the event of the deposit being extended, with obligatory notification 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:
 - Payments by card or mobile devices. Of significance in this section is the analysis of cases in which the card holder claims not to have used it in purchases, either in card-present or Internet transactions; actions by users and by banks in these transactions (notification by the user, and bank proof of authentication and execution and, where appropriate, interim refund of payment operations) are also verified.

Issues relating to revolving credit cards are also highlighted, stressing the necessary information (pre-contractual, contractual and post-contractual) to be provided to customers on product terms and conditions.
 - Transfers of funds (irrevocable nature of transfers, incidents in execution, fees and expenses, etc.).
 - Direct debits (refund and rejection of direct debit payments, cancellation of direct debit orders), including one-off and business-to-business (B2B) direct debits.
 - Deposit and withdrawal of cash and other issues relating to cash services (discrepancy in the cash delivered, time restrictions and requirements that deposits and withdrawals be made through ATMs, among others).

9

Probate services

- This section of the Report sets out the main issues raised following the death of credit institutions' customers. In 2019, 675 complaints were analysed in relation to disputes with banks regarding probate services.
- The following are highlighted:
 - After a customer's death, the heirs have a right to information on the customer's financial position. In this connection, they have to present the death certificate, the certificate of the Register of Wills, copy of the last will and testament and/or of the certificate of intestate succession. Banks must provide the heirs with a certificate of the deceased's account balance(s) at the date of death and details of account activity, at least in the year preceding the death and thereafter. This information is free of charge and shall not be conditional upon the application for probate.
 - 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. Further, the heirs to the funds must choose a withdrawal modality (transfer, cash, etc.), while the bank should offer, at least, a withdrawal modality free of charge. The bank may only charge a fee if the means of withdrawal chosen differs from that offered free of charge.
- A total of 151 complaints were filed in 2019 related to the charging of fees for probate services. This year banks have been recommended that, when heirs present documentation prepared by external professionals and banks have only to verify it, such services should be considered as an activity proper to banks' internal operations and not as the provision of a banking service. Accordingly, no fees should be charged. As from the publication of the Report, this recommendation will be binding on banks and the charging of fees for these cases will be considered as a potential breach of transparency regulations, given the absence of any service actually being provided to the customer.

CHAPTER 3.

SELECTED ENQUIRIES

Lastly, Chapter 3 presents a selection of the most common subjects of enquiry: i) identity theft. Phishing and other forms of fraud; ii) opening of a bank account and issue of cards to a minor; iii) authentication of banking transactions; iv) cashing of cheques; v) information on the accounts of the deceased; vi) the amendment of current account and account closure; vii) prior information and the notary public in the new legislation on real estate credit agreements; viii) novation or floating-rate mortgage subrogation to a fixed rate; ix) opening a bank account for a non-resident; x) bank accounts certificate; xi) exchanging pesetas, and xii) various issues relating to the Code of Good Practice that protects mortgagors experiencing financial hardship.