

Complaints Report in brief



COMPLAINTS

21,320 complaints

(14,638 in 2019)



ENQUIRIES

46,884 enquiries:

6,261 written and 40,623 by telephone

(30,462 in 2019: 3,719 in writing
and 26,743 by telephone)



TOP AREAS OF COMPLAINT

Mortgages, cards and accounts



WHAT CHANNELS ARE AVAILABLE?

- a) Online (Virtual Office)
- b) In writing (in person or by mail)
- c) Email for enquiries only, not complaints

For complaints, remember to contact your bank first



CRITERION

See Chapter 2 for the criteria
and actual cases



RECTIFICATIONS

In nearly 70% of the cases resolved
by report or acceptance of liability,
customers were vindicated in their
complaints in some form

Why publish a Complaints 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 Institutions' Conduct Department (ICD) in resolving complaints.
- Along with the data on the activity performed, the Report compiles and summarises the main best banking practice criteria applied, which set standards of conduct for banks.
- Complaints are a fundamental means of informing supervisory awareness in the field of conduct, providing 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 in their banking operations. The main highlights and criteria are published on the Bank Customer Portal.
- The Report also helps identify possible improvements in the regulation of conduct, thanks to the knowledge acquired through the analysis of disputes, from an eminently practical standpoint.
- The *Complaints Report 2020* shares the values of the Banco de España's Strategic Plan 2020-2024: independence, transparency, integrity, excellence and, in particular, public service, generating greater confidence in the Banco de España and greater value for society.

CHAPTER 1.

SUMMARY OF THE ACTIVITY OF THE INSTITUTIONS' CONDUCT DEPARTMENT

Overview

- In 2020, the ICD processed 21,320 complaints submitted by financial service users and fielded 46,884 enquiries (6,261 in writing and 40,623 by telephone).
- Under the complaints procedure framework, on the information available, banks reimbursed customers a total of €3,093,867 (the highest figure in the last decade).

Complaints

- **A total of 21,320 complaints were received in 2020**, up 45.6% on 2019 (14,638).
- In 2020, **customers were vindicated in their complaints in 69.4% of the cases resolved**, including by acceptance of liability.
- **Mortgages** were the products that drew the most complaints (26.9% of the total), the bulk of which related to mortgage arrangement costs and to products linked to mortgages. These were closely followed by **cards** (26.4% of the total), which was the fastest-growing category (up 114.7%). Notable among these are complaints relating to fraudulent transactions and failure to provide contracts or settlements. Third-ranked were complaints relating to **accounts and deposits** (19.7%), particularly those concerning fees charged to accounts.
- The raft of financial measures adopted to contend with the economic impact of **COVID-19** accounted for just 2% of all complaints received.

Enquiries

- **A total of 46,884 enquiries were fielded in 2020**. This increase on 2019 (53.9%) was prompted by the situation stemming from the COVID-19 pandemic and its impact on banking operations.
- 2020 saw the highest number of **written enquiries** fielded in the service's history (6,261, up 68.4% on 2019). Three areas of complaint stood out: current accounts and deposits (19.2%), mortgage loans (18.4%) and modus operandi of the Banco de España (13.4%).
- **The 40,623 telephone enquiries** (via **900 545 454**, a free-of-charge line open Monday to Friday from 08:30 to 17:00) represented an increase of 51.9% on 2019. The bulk of the enquiries related to the complaint procedure (20.8% of the total), followed by the impact of the COVID-19 pandemic on the provision of banking services (18.7%).

Complaint submission channels

Complaint procedure

- In written enquiries, there was an indisputable preference for the online channels provided (98.6%): the Bank Customer Portal (online form), the Virtual Office and email.
- The same was true of complaints. In 2020, the number of complaints received through the Virtual Office (55.5% of the total) more than doubled the figure in 2019. Email is not accepted as a channel of communication for this procedure.
- Before lodging a complaint with the Banco de España, customers must first have contacted the bank concerned. Accordingly, users must demonstrate that the bank has refused to accept their complaint or that the legal deadline for receipt of a response has elapsed (15 working days for complaints relating to payment services, one month for complaints submitted by EU-resident consumers relating to other matters and two months for those submitted by non-EU resident consumers and non-consumers).

This chapter sets out the best banking practice criteria applied to resolve proceedings in 2020. It also includes useful tools for readers, such as the Bank Customer Portal tools for calculating and comparing fees, and the explanatory boxes and/or diagrams on current regulation, jurisprudence and supplementary actions taken by the ICD in 2020.

1 Mortgage loans

The recent **law regulating real estate credit agreements** (LCCI by its Spanish abbreviation) amended several regulations on mortgage loans to adapt them to the Directive on credit agreements for consumers relating to **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 principle of “responsible lending”, under which the bank must duly assess the potential borrower’s creditworthiness.

Banks are also required to provide their customers with certain prior information, such as the **pre-contractual and the personalised information sheet (FIPRE)**, a binding offer – currently the **European Standardised Information Sheet (ESIS)** –, the **Standardised Warning Sheet (FiAE)** and the other pre-contractual documentation envisaged in the LCCI. Where the mortgage is offered separately and with the option of taking out a series of products or services that entail an interest rate discount, the ICD recommends that both offers be reflected in the ESIS. This should spell out their obligations and costs, including the APR of each offer. In its reports, the ICD analyses whether the contents of these documents comply with regulatory requirements.

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 observed, entailing certain “arrangement 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 relate to the **applicable interest rate**, which may be fixed or variable. In the latter case, it may in turn 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. In 2020, 191 complaints relating to the mortgage loan reference index were analysed.
- 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 rate for mortgage loans granted to consumers.
- According to the regulations, as a general rule, **fees and expenses** may be freely agreed. In the case of mortgages, the main disputes in 2020 related to arrangement fees and early redemption fees, in addition to arrangement costs (2,036 complaints relating to this matter were processed) in light of the CJEU and Supreme Court judgments on the allocation of notary, tax, registration and administrative costs between the bank and the customer, among others. There were also complaints in relation to costs applied to loans predating the LCCI.

One new aspect, detailed more fully in Chapter 10 on Cheques, is the best banking practice criterion regarding prior information, which includes the provision of information on the costs associated with any banker’s drafts that need to be issued.

- Currently, under the LCCI, **banks cannot make products linked to the granting of 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, at no additional cost, other alternative policies from other providers with equivalent conditions and coverage, both upon initial signing and at each renewal.
- Another regular complaint concerns **changes to the parties to the loan agreement**, such as subrogation of the debtor (which must be authorised by the bank) and subrogation of the creditor, 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. See the corresponding section and figure in Chapter 2 for a detailed analysis of the succession of different regimes, identifying some notable practices when new limits are applied to loans predating the LCCI.

2

Mortgagors experiencing financial hardship

- The **Code of Good Practice approved in 2012**, and subsequently amended on successive occasions, ultimately aims to protect mortgagors experiencing financial hardship, so that they may keep their principal residence. In 2020, a total of 186 complaints were analysed in this connection.
- From the moment banks sign up to the Code, **they are obliged to publicise the fact**, reporting their adherence to and the content of the Code, and apply its measures to 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*, developed as a result of the specific inspections performed by the ICD in this respect.

3

Unsecured loans

- Here a distinction is mainly drawn between **agreements** entered into with consumers (especially consumer loans) and **loans to finance 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; the regulatory compliance of the form and content of the agreement (APR, right of withdrawal, right to early repayment, among others); and, lastly, the post-contractual information, since the regulations envisage standard models for periodic settlement statements. The bulk of the loan cancellation complaints analysed in 2020 (360) related to the cancellation of loans linked to a service that had ceased to be provided.
- There was an update of the **CJEU jurisprudence framework** in relation to matters of interpretation put to it by national courts concerning the application of the Directive on consumer credit agreements.
- Regarding loans to SMEs, the regulations establish two requirements if a credit facility is not renewed: 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

COVID-19 moratoria

- The health crisis caused by COVID-19 has given rise to an unprecedented economic and social crisis. To mitigate its effects, the measures adopted by the Government in favour of vulnerable individuals include the introduction of a **legal moratorium** on mortgage and non-mortgage loans, including consumer credit and financial leases.
- To supplement this, at the initiative of banks a **banking sector moratorium** was established, likewise affecting mortgage and non-mortgage loans. This is in response to the existence of private sectoral agreements entered into by banks through their representative associations.
- The particularities of **tourism and road transport** have prompted the establishment of a special moratorium affecting the self-employed and firms in these sectors.
- In application of the moratoria referred to in this section, several complaints were analysed in 2020, mainly deriving from the **refusal to grant moratoria to customers who did not meet the corresponding requirements**.

5

Guarantees and collateral

- In the conduct of business between private parties or before public bodies, bank guarantees or collateral are often requested to provide security to a beneficiary of compliance with obligations together with the principal obligor.
- 90 complaints were analysed in this section. These included, for instance, requests for risk fees to cease to be charged when guarantees have been cancelled and the bank acts as guarantor, and complaints questioning whether the bank should have been liable for the payment requested by the beneficiary, according to the duration of the guarantee and the obligations guaranteed.

6, 7 and 8

Accounts and deposits. Introduction and common aspects; demand deposits or current accounts; basic payment accounts; term deposits with principal guaranteed

- The transparency regulations establish **freedom of contract** for the collection of fees on accounts and deposits and require banks to **provide detailed information** about all of their conditions.
- Thus, before opening an account or a demand or term deposit, the bank must provide the customer with **adequate explanations** and an information document or draft contract with the main conditions.
- Current payment account regulations aim to enable **EU-wide comparison of account fees**.
- To this end, banks offering payment accounts are required to:
 - Provide all pre-contractual or contractual information relating to fees for the most representative services linked to a payment account using **standardised terms and documents**.
 - Deliver, before a contract is entered into, a **Fee Information Document** for each account offered, including the fees for the most representative services linked to the account.¹
 - Send to the customer, **while the contract is in force, periodic information** on the account or deposit: i) account activity statements (at least monthly), and ii) a summary of all the interest, fees and expenses accrued over the previous year (except those relating to the payment account) and a document with standardised information on fees and interest on the account, the Statement of Fees (in January each year).
- Complaints about **requests for contractual documentation** are often not responded to. The ICD considers that requests regarding movements should be specific and proportionate to the purpose pursued. The bank is required to give the customer a copy of the contract and, in general, to keep documentation for a minimum period of six years.
- Many complaints relate to the **fund withdrawal regime**. Funds may be withdrawn by the deposit holders or by their legal or authorised representatives.
- If the account is held in several names a regime can be agreed either on an **all-to-sign/both-to-sign basis** (all the holders' need to sign), or on an **any-to-sign/either-to-sign basis** (each holder may act individually) to operate the account. Unless agreed otherwise, changing from the any-to-sign/either-to-sign regime to the all-to-sign/both-to-sign regime only requires the signature of one of the joint account holders. However, all the account holders need to request a change from the all-to-sign/both-to-sign regime to the any-to-sign/either-to-sign regime.

Common problems regarding withdrawals relate to:

- **Accounts blocked:** many of the complaints analysed (304 in 2020) arise from requirements stemming from compliance with anti-money laundering regulations. The circumstances of each case, particularly whether the bank's management has been diligent and effective as regards its communication with the customer, are assessed from a best practices perspective.

For the first time, in 2020 **a list of joint criteria was drawn up by the Banco de España and Sepblac**. Among other things, they aim to provide guidelines for banks to apply with greater proportionality the measures relating to blocking accounts and ceasing relationships with customers deriving from the anti-money laundering regulations.

- **Discrepancies between joint account holders** which are reflected in contradictory and incompatible instructions.
- **Offsetting of debit balances** between accounts.
- **Attachments arising from administrative or court orders**.
- Regarding the **settlement of payment accounts, recurrent disputes relate to fees and expenses charged** (a total of 2,134 were analysed in 2020), mainly for maintenance, overdrafts and claiming past-due debit balances.

Numerous conflicts arose in 2020 from **increased or new fees**. The ICD analysed in each case banks' compliance with their obligations concerning the modification of conditions. For instance, the new **fees for over-the-counter cash withdrawals or for maintenance, calculated as a percentage of the account balance**, were analysed.
- As regards the complaints filed in 2020 concerning the closure of current accounts by banks, it was analysed whether they had proceeded in the manner and within the timeframe envisaged in the regulations and in the contract. Closure at the customer's request may only be refused if there is just cause. If there are several account holders, the request for closure must be made by all of them. A request by one of the joint holders to be removed from the account will be accepted, provided the other account holders are notified thereof. Problem cases regarding payment account **switching** have also been analysed.

¹ For more information, see the Banco de España's fee comparison tool: https://app.bde.es/csfwciu/GestorDePeticones?IdOperacion=becsfwciu_LanzadorCompararEntidadesCCP&token=925b664b-528d-4be2-8d1b-96858396463d.

- Complaints are frequently filed by customers who state that they had ordered the closure of an account in the past and, years later, the bank claims payment of the debt arising from account charges. The ICD recommends that customers issue their closure instructions in writing and requires banks to prove compliance with their **information obligations regarding dormant accounts**.
- Analysis continued in 2020 of all the complaints received regarding the regulated product “**basic payment account**”, mainly triggered by the refusal to open an account of this kind or to change the conditions of the accounts of existing customers or account holders to those of the basic account. Together with the disputes analysed, other **informative, supervisory and regulatory improvement actions** carried out in 2020 are explained under this heading, in a separate box.
- **Complaints regarding term deposits** had a lower incidence, with the main areas of complaint being tacit renewals and failure to give sufficient advance notice of new conditions (one month), early redemption, penalisation and the related withholding, and the lack of clarity in the contracts in respect of such conditions.

9

Payment services

- In 2020 the most common issues raised relating to payment services were:
 - **Allegedly fraudulent payments with cards and mobile devices** (1,942 complaints in 2020). Of significance in this section is the analysis of cases in which the cardholder claims not to have used it in either online or in-person purchases. 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** (1,869 were processed in the year) are also highlighted, stressing the necessary information (pre-contractual, contractual and post-contractual) to be provided to customers on product terms and conditions. Of note here are the changes introduced by **Ministerial Order ETD/699/2020 of 24 July 2020 on the regulation of revolving credit, reinforcing transparency towards customers in this type of credit and crystallising at regulatory level some of the criteria established by the ICD in previous Complaints Reports**.
 - **Transfers of funds** (irrevocable nature of transfers, incidents in execution, fraud via transfers – 326 complaints in 2020 – 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.

10

Cheques

- In this 2020 Report a specific **section is included** for the problems arising from the use of cheques (106 complaints analysed in 2020). The most common problems relate to: i) fees for issuance of cheques; ii) timeframes for cashing cheques, and iii) previous information provided to customers when withdrawing funds arising from a linked financial transaction arranged with the bank.
- Another change is the reinforcement of banks’ disclosure requirements when cheques are issued in overall financing transactions, particularly to withdraw the funds received; banks are required to **notify cheque fees and expenses when providing the pre-contractual information for the main transaction** (e.g. when arranging a mortgage, at the time the ESIS is provided). In addition, the information must be provided not only in percentage terms, but must also indicate exact amounts.

11

Probate services

- This section of the Report sets out the main issues raised for heirs and successors in title following the death of credit institutions’ customers (764 complaints were processed in 2020).
- The following issues 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, and a 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 one 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.

As a result of the **change in the criterion relating to the charging of fees for probate services described in the 2019 Report**, in 2020 it was considered that no service was provided when banks give no evidence of having provided a true advisory service to the customer, that is, performing tasks beyond the required verification of documentation submitted by external professionals or by the heirs themselves. Along these lines, it is clarified that formalities such as providing a list of documents to initiate the procedure or requesting corrections or clarifications to the documents submitted do not constitute, for the purposes of the foregoing criterion, the provision of a banking service.

CHAPTER 3. SELECTED ENQUIRIES

Lastly, Chapter 3 presents a selection of the most common subjects of written enquiry: remote bank account closure; certificate of life; power of attorney for bank representation; change of a bank account from one branch to another of the same bank; fee for issuance of a mortgage discharge certificate; issuance of unsolicited cards; armoured vehicle charge for withdrawal of a large cash amount; pension payments; maintenance fee for a current account used to make mortgage payments; dormant accounts; change of account holder in current/savings account contracts; authorised purchase transactions and goods not received; notification in a duly evidenced manner of any contractual amendments by means of an electronic mailbox; request for information on accounts, movements and contracts, and information charges for requesting a copy of banking movements.