

Complaints Report in brief



COMPLAINTS

34,330 complaints

(21,320 in 2020)



ENQUIRIES

48,955 enquiries:

6,748 in writing and 42,207 by telephone

(46,884 in 2020: 6,261 in writing
and 40,623 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 post)
- c) Email for enquiries only, not for complaints

For complaints, remember to contact your bank first



CRITERIA

See Chapter 2 for the criteria
and actual cases



RECTIFICATIONS

In 73% 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.
- The Report also provides for compliance with Article 38 of Law 7/2017 of 2 November 2017, which transposes into Spanish law Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes, as regards the annual activity reports required of alternative dispute resolution (ADR) entities.
- 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 essential for the field of conduct supervision, as they provide an early warning of areas for improvement in banks' 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 areas for improvement in the regulation of conduct, thanks to the eminently practical knowledge acquired from analysing disputes.
- The *Complaints Report 2021* 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.
- 2022 marks the 35th anniversary of the creation of the Banco de España's Complaints Service. Considered one of the pioneers in its field, and with the largest volume of activity in Europe, it has directly witnessed how customer disputes have evolved, against a backdrop of continuous change, having processed some 400,000 complaints filed by financial service users and customers.

CHAPTER 1.

INSTITUTIONS' CONDUCT DEPARTMENT: SUMMARY OF ACTIVITY

Overview

- In 2021, the ICD processed 34,330 complaints submitted by financial service users and fielded 48,955 enquiries (6,748 in writing and 42,207 by telephone).
- Under the complaints procedure framework, on the information available, banks reimbursed customers almost €4 million (€3,943,354), the highest figure in the last decade.

Complaints

- A total of 34,330 complaints were received in 2021, up 61% on the 21,320 complaints received in 2020.
- In 73% of the cases resolved by report or acceptance of liability, 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.
- Mortgages were the products that drew the most complaints (33.4% of the total), the bulk of which related to mortgage arrangement costs and mortgage-linked products. These were closely followed by complaints related to cards (29.5% of the total). Notable among these are complaints relating to alleged fraudulent card transactions and failure to provide the respective documentation (copies of contracts or settlements). Complaints relating to accounts and deposits (17.2% of the total) ranked third, many of which concerned fees charged to accounts.

Enquiries

- The number of enquiries fielded rose by 4.4% in 2021, totalling 48,955 compared with 46,884 in 2020.
- 2021 saw the highest ever number of written enquiries fielded (6,748, up 7.8% on 2020). Although these enquiries covered a broad range of issues, three areas stood out: current accounts and deposits (23.5%), mortgage loans (18.4%) and the Banco de España's modus operandi (13%).
- The number of telephone enquiries received (via 900 545 454, a toll-free number open Monday to Friday from 08:30 to 17:00) rose by 3.9%, from 40,623 in 2020 to 42,207 in 2021. The bulk of these enquiries (37% of the total) related to the complaint procedure: users enquiring about the status of their complaints, asking how to make a complaint, or reporting problems experienced with the Virtual Office. The second largest group of telephone enquiries (15.2% of the total) concern current accounts and deposits, including issues relating to fees, money laundering, freezing of accounts, etc.

Complaint submission channels	<ul style="list-style-type: none"> • In the case of enquiries in writing, there is a clear preference for the online channels available (98.9%): the Bank Customer Portal (online form), the Virtual Office and email. • In 2021 the same was true of complaints, 59.8% of which were received through the Virtual Office. Unlike enquiries, complaints cannot be filed by email. • 95.2% of the complaints received were filed by consumers resident in the EU. The remainder were filed by non-EU resident consumers or non-consumers.
Complaint procedure	<ul style="list-style-type: none"> • Before lodging a complaint with the Banco de España, customers must first have contacted the bank concerned, which must be a supervised entity. They 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, and for complaints relating to other matters, one month if filed by EU-resident consumers and two months if filed by non-EU resident consumers or non-consumers). • The three different channels for filing complaints with the Banco de España are explained on the Bank Customer Portal: (1) online; (2) in writing, either in person in the General Register of the Banco de España or by post, addressed to Banco de España, Departamento de Conducta de Entidades, C/Alcalá 48, 28014 Madrid; or (3) through any of the Banco de España's branches.

CHAPTER 2. INSTITUTIONS' CONDUCT DEPARTMENT: CRITERIA APPLIED

	<p>This chapter sets out the best banking practice criteria applied to settle disputes in 2021. It also includes references to useful tools for readers, such as the Bank Customer Portal tools for calculating and comparing fees, and explanatory boxes and/or diagrams on current regulation, best banking practice criteria, relevant jurisprudence and supplementary actions taken by the ICD in 2021.</p>
<p>1, 2 and 3</p> <p>Accounts and deposits. Introduction and common aspects; demand deposits or current accounts; basic payment accounts; term deposits with principal guaranteed</p>	<p>The transparency regulations establish freedom of contract for fees and interest on accounts and deposits, but they also require that banks provide detailed information on all of their terms and conditions.</p> <ul style="list-style-type: none"> • Thus, before opening an account or deposit, the bank must provide the customer with adequate explanations and an information document, leaflet or draft of the framework contract with the main terms and conditions. • One of the goals of current regulations is to enable EU-wide comparison of account fees. To this end, banks offering payment accounts are required to: <ul style="list-style-type: none"> — 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 (FID) for each account offered, including the fees for the most representative services linked to the account.¹ The FID must also be published in a prominent place in banks' branches and on their websites. — Send to the customer, throughout the life of the contract, periodic information on the account or deposit. This includes, in addition to monthly statements and settlement documents (which inform customers of the interest rate and charges applied in each of the services provided), sending in January each year: (i) in the case of term deposits, an annual summary of the interest, fees and expenses accrued over the previous year; and (ii) in the case of a payment account, the Statement of Fees, which has standardised information on the fees and interest applied to the account in the previous year. • Many complaints relate to unheeded requests for documentation. In these cases, the ICD considers that customers should be given a copy of their contract upon request. It also considers that requests for account activity should be specific and proportionate to the aim pursued. In general banks must keep bank account and deposit documentation for six years.

¹ For more information, see the Banco de España's [fee comparison tool](#) (Spanish version only).

- Other complaints relate to **fund withdrawals**. Funds may be withdrawn by the account holders or by their legal or authorised representatives. If an account is held in several names there are two possible alternatives: a) the default system, which is **all-to-sign**, whereby all of the account holders (or a specified number of them) must sign to withdraw funds; or b) **any-to-sign/either-to-sign**, whereby each account holder may withdraw funds with their signature alone. To request a change from any-to-sign/either-to-sign to all-to-sign, banks will only need the signature of one of the joint account holders. However, if the change is from all-to-sign to any-to-sign/either-to-sign, the request must come from all the account holders.
- **Freezing and cancellation of accounts under anti-money laundering regulations** are also frequent grounds for complaint. The ICD considers the circumstances of each case, particularly whether the bank has acted diligently and effectively in informing customers of the specific restrictive measures applied to their accounts.
- Regarding **settlement of payment accounts, disputes relating to fees and expenses charged** are a recurrent issue. A total of 3,554 such disputes were handled in 2021, mainly relating to account maintenance and overdraft services and claims relating to debit balances. Numerous disputes arose in the year from **increased fees, or new fees** on previously fee-free accounts, usually with the account holders denying any prior knowledge of the change. In each case the ICD analysed banks' compliance with their formal obligations regarding changes in terms and conditions, especially to determine if two months' prior notice was given, thus allowing customers to close their accounts free of charge if they were unhappy with the new fees. If the change is notified via an electronic banking mailbox, banks must inform their customers, proactively or via another means of communication, of the existence of the notification in the electronic mailbox.
- Complaints were also filed relating to **offsetting of debit balances** between accounts and **attachment** of bank accounts. The ICD considered that offsetting of debit balances was possible, even if the debt in question belonged to only one of the joint account holders, provided that both account contracts included a clause clearly authorising the bank to offset balances. In the case of attachment of accounts, the ICD indicated that banks are merely intermediaries and that they are obliged to execute any attachment orders received. It added that it is only competent to analyse whether banks acted transparently with account holders, notifying them of the existence of an attachment order as soon as it was received and making the corresponding attachment, and whether the steps taken were consistent with the strict terms of the order received.
- Another frequent area of complaint in 2021 was banks' **failure to cancel accounts** after having allegedly been asked to do so by account holders. Requests to cancel accounts must necessarily be met within 24 hours, and may only be ignored when this is sufficiently warranted. In the case of joint account holders, the cancellation must be requested by all of them, but in practice, if just one account holder asks for an account to be cancelled, the request should be heeded, with the other account holders simply being notified.

In 2021, some customers argued that, despite the pandemic, banks required them to go into the branch in person to cancel their accounts. The ICD disagreed with this requirement, which does not generally figure in account contracts. It considers, from a best practice standpoint, that banks should offer alternatives for cancellation of accounts that do not involve actually having to go into the branch, especially in the case of customers who have electronic banking and perform online banking transactions.

Complaints are frequently filed by customers who say that they had asked for an account to be closed in the past and that, years later, the bank claims payment of the debt arising from account fees and expenses. The ICD recommends that customers ask in writing for accounts to be closed. In the case of **dormant accounts**, banks must be able to show that they fulfilled their obligations to provide **customers with periodic** and specific **information** on the existence of the accounts.

- In 2021 complaints were also received regarding **basic payment accounts**, mainly relating to banks' refusals to open accounts of this kind, or to the grounds given for such refusals not being included in the current regulations. The reasons for refusal to open a basic payment account are regulated, and include the fact of already holding another payment account.
- **Term deposits** drew fewer complaints. They were mostly concerned with tacit renewals and failure to give sufficient advance notice (one month) of new terms and conditions, early redemption and penalisation or the corresponding withholding, and the lack of clarity in contracts on these matters.

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Payment services

In 2021 the most common issues raised relating to payment services were:

- **Allegedly fraudulent payments with cards and mobile devices** (4,098 cases). Here the important aspect is analysis of the cases in which cardholders claim not to have used their cards for either in-person or online purchases. The ICD also verifies the steps taken by users and by banks in these transactions (notification by users, proof of authentication and execution and, where appropriate, provisional interim refund of payment transactions by banks).

In the Cards section, Figure 2.1 showing the types of limits that may be set on the use of payment instruments and means of payment has been included, together with details on how they may be modified by the different parties.

- Complaints relating to **revolving credit cards** (4,360 processed in the year) are also highlighted, underlining the need for customers to be provided with the necessary information (pre-contractual, contractual and post-contractual) on product terms and conditions. Reference is made to **Ministerial Order ETD/699/2020 of 24 July 2020 on the regulation of revolving credit, which strengthens transparency for customers in this type of credit** and enshrines, at regulatory level, some of the criteria established by the ICD in previous reports. Banco de España Circular 3/2022 was published on 30 March 2022. It amends, inter alia, Circular 5/2012 of 27 June 2012 and fleshes out disclosure requirements for banks on the marketing of revolving credit products.
- **Transfers of funds:** irrevocable nature of transfers, incidents in execution, bank transfer fraud (839 complaints in 2021), fees and expenses, etc.
- **Direct debits** (including one-off and business-to-business (B2B) direct debits): refund and rejection of direct debit payments and cancellation of direct debit orders. If a direct debit is rejected because the payer is not domiciled in the same Member State as the payee, this is a case of IBAN discrimination.
- **Cash payments into accounts** are a cash service remunerated through the account maintenance fee. Accordingly, any other fees charged for this service are deemed inappropriate.

5

Cheques

This report for 2021 includes a **specific section on issues arising from the use of cheques**. The most common problems relate to: (i) the associated charges, including those calculated as a percentage; (ii) cheque collection times; and (iii) prior information provided to customers on these aspects.

6

Unsecured loans

- Here a distinction is mainly drawn between **loan agreements** entered into with consumers (especially consumer loans) and **loan facilities for 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 loan agreement (annual percentage rate (APR), right of withdrawal, right to early repayment, among others); and, lastly, the post-contractual information, since the regulations envisage standard models for the periodic settlement statements. A significant number of the complaints analysed in 2021 (394) related to disagreements about the loan's outstanding amount.
- 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.
- In the wake of the COVID-19 health emergency, several liquidity support measures were adopted aimed at sustaining economic activity amid the temporary difficulties brought about by the pandemic. These include State guarantee facilities, whose effect has been extended through successive regulations. The complaints analysed in 2021 focused mainly on the processing of applications for ICO-guaranteed financing and the refusal to extend the term of the guarantees.

The **law regulating real estate credit agreements** (LCCI by its Spanish abbreviation) amended several mortgage loan regulations 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 potential borrowers’ creditworthiness. The approval or rejection of loans, the loan amount and the applicable financial conditions should preferably be based on customers’ estimated ability to meet their payment obligations over the life of the loan or credit, rather than solely on the expected value of the collateral.

Banks are also required to provide their customers with certain prior information, such as the **pre-contractual information sheet (FIPRE)**, a binding offer in the form of the **European Standardised Information Sheet (ESIS)**, the **Standardised Warning Sheet (FiAE)** and the other pre-contractual documentation envisaged in the LCCI and its implementing regulations. Where the mortgage is offered separately or 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, which should spell out the obligations and costs of each offer, including the APR. 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 customers having the right to choose the notary public. The notary must check that customers have been given prior information and advise them prior to the signing of the loan, recording this in a public deed. Also at that stage, a series of formalities must be met, 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 filed 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 2021, 86 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 applied only to the principal outstanding. Supreme Court jurisprudence caps it to 2 percentage points (pp) above the remunerative interest rate for mortgage loans granted to consumers. Law 5/2019 sets a limit of 3 pp above the remunerative interest for loans under its scope arranged after its entry into force.
 - According to the regulations, as a general rule, **fees and expenses** may be freely agreed. In the case of mortgages, the main disputes in 2021 related to arrangement fees and early redemption fees, in addition to arrangement costs (which drew 7,083 complaints) in light of the rulings of the Court of Justice of the European Union and the Spanish Supreme Court on the allocation of notary, tax, registration and administrative costs between the bank and the customer, among other aspects. There were also complaints in relation to costs applied to loans when the LCCI was already in force.

The best banking practice criterion regarding prior information to be provided to the customer is maintained. This includes the provision of information on the costs associated with any banker’s drafts that need to be issued in order to obtain the mortgage loan, specified in Section 4 of the ESIS, “interest rate and other costs”.

 - Currently, under the LCCI, **banks cannot make products linked to the granting of mortgage 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**. Banks 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 mortgage lender’s consent.
 - Problems relating to **early repayment or redemption** relate to discrepancies over the fees or compensation charged by the bank, under the applicable legal regime, which will depend, inter alia, on the date on which the mortgage was arranged. See the corresponding section of Chapter 2 and Figure 2.2 for a detailed analysis of the succession of the different regimes, identifying some notable practices when new limits are applied to loans predating the LCCI.

8

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 2021, a total of 210 complaints were analysed in this connection.
- From the moment banks sign up to the Code, **they are obliged to publicise the fact**, informing of the content of the Code, and to apply its measures to borrowers on the exclusion threshold.
- There are four **measures**: forbearance, debt reduction, dation in payment of the principal residence and the right to rental 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 **limits on 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, available here.
- Since 2017, the *Complaints Report* includes **supervisory criteria** developed as a result of the specific inspections performed by the ICD in this respect.

9

COVID-19 moratoria

- During the COVID-19 health crisis, the Government adopted measures in favour of vulnerable individuals. Specifically, it introduced a **legal moratorium** on mortgage and non-mortgage loans, including consumer credit and financial leases.
- Additionally, **moratoria measures** on mortgage and non-mortgage loans were established by the banking sector, through private sectoral agreements signed by lenders through the banking sector associations. Various complaints about the application of these moratoria measures were analysed in 2021, mainly relating to the information provided by banks to customers on the effects of the measures, rejection of applications to extend the moratorium period and review of their effects once granted.

10

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 for a beneficiary that the principal obligor's obligations will be met.
- The 156 complaints analysed in this section 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, given the duration of the guarantee and the obligations guaranteed.

11

Probate services

- This section of the Report sets out the main issues arising between heirs and successors in title and credit institutions following the death of a customer.
- 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. Once the heirs have proven their status, banks must provide them with a certificate of the deceased's account balance(s) at the date of death and with details of account activity, at least in the year preceding the death and thereafter. This information shall be provided 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, in addition to the documentation indicated above, 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 must offer at least one withdrawal modality free of charge. The bank may only charge a fee if the withdrawal modality chosen differs from that offered free of charge.

Following the **change in the criterion for charging the probate services fee described in the 2019 Report**, in 2021 it was deemed that no such services had been provided unless the bank had proved that it had provided a genuine advisory service to the customer. In the same vein, it was clarified that matters such as the bank providing a list of documents to initiate the procedure or requesting corrections or clarifications to the documents submitted, or preparing what some banks call a "legal report", do not constitute, for the purposes of the foregoing criterion, provision of a banking service.

Lastly, Chapter 3 presents a selection of the written enquiries received, on subjects such as: financial exclusion; refusal to open an account; authorised signatories; cashing cheques; certificate of outstanding debt; where the register of guarantees is kept; delays in probate services; negative interest rates on mortgage loans; whether the Banco de España is responsible for declaring an account balance unclaimed; debt assignment and securitisation; currency exchange at the Banco de España and purchase and sale of currency not authorised by the holder; allegedly fraudulent card transactions; identity theft in account opening; cash withdrawals; access to funds by heirs; change of account ownership without cancelling the account; change in an account's terms and conditions and what happens after the merger/absorption of a bank; maintenance fee charged on a deceased's account; mortgage loan arrangement costs; refinancing; limits on cash payments into accounts; and interest rates on credit transactions.