

Empirical Paper

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Misselling consumer awareness study – Circumstances surrounding the occurrence of misselling

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Abstract: Misselling is the sale of financial services that do not meet the needs of consumers or in the manner or the way they are sold, which is not appropriate to the nature of those services. The first aim of this article is to characterise the misselling phenomenon and present the most important circumstances surrounding its occurrence. The second aim is to examine the level of consumers' awareness and knowledge of misselling and to show way to protect against misselling, among which the most important postulate is to increase the level of consumers' financial education. The promotion of financial education could improve consumers' sense of security, improve the degree of adjustment of financial services to consumer requirements, strengthen the awareness of the assistance that consumers can receive from public institutions and positively contribute to the activity of Poles on the financial market.

Keywords: consumer rights awareness, financial services, misselling, Poland, survey

JEL Classification: G20, G23, G28

1 Introduction

Misselling can be defined as unfair or improper sale of financial products. The complexity of the construction of financial products and the dominant position of the financial institutions offering them make the materialisation of some risks (losses) more likely, which the consumers and investors are usually unaware of. For this reason, misselling is a phenomenon that deserves special attention. A correct analysis of misselling must be based not only on the presentation of its economic and legal-financial aspects, but should also take into account its behavioural and psychological nature together with elements of moral evaluation. According to the authors, such an approach is essential for proper understanding of the causes of misselling and allows reflection on the possible need to take action to raise consumer awareness of the risks associated with financial services.

The first aim of the article is to characterise the misselling phenomenon and present the most important circumstances surrounding its creation. The second aim is to examine the level of consumers' awareness and knowledge of the misselling phenomenon and create recommendations to prevent it. The results of the survey prove the low level of knowledge of consumers regarding the financial market as well as low awareness of public educational campaigns on this subject. Our survey confirms the need to increase the state's activity in the area of consumer financial education, which is a key way to eliminate misselling. Consumers of financial products (also referred to as investors in the article) who understand their actions are more likely to prevent the effects of unfair behaviour by sellers and effectively assert their rights.

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In the article, the term ‘financial service’, which includes services provided, inter alia, by banks, financial institutions, insurance institutions, trusts and pension funds, will be used as a substitute for the term financial product due to the fact that every financial service is a marketing product and often in the jargon use the terms financial product and financial service are used interchangeably [Grzywacz, 2010, p. 24].

2 Misselling definition

Selling financial products without the customer’s knowledge of the purchase (cross-selling) or selling products that do not function in accordance with the presented offer or products that are mismatched to the risk profile or the customer’s needs is called misselling. The term ‘misselling’ originates from the United Kingdom, where it is spread as a result of the controversial sale of life and life insurance policies (PPIs), the purpose of which was to secure the repayment of a mortgage in the event of the customer’s death, loss of job, accident etc. PPI policies were (often without customers’ knowledge) obligatorily attached to loans and increased the value of the loan principal to be repaid [Cichorska, 2017, pp. 22–23] and in practice did not protect the borrower at all in the event of the loan default. The sale of PPI policies ultimately led to multi-billion-dollar claims by customers and to the payment of high fines by institutions that had previously attached policies to loans [Butor-Keler, 2017, pp. 10–11]. The most well-known examples of misselling in Poland are (1) banks selling currency options before the subprime crisis, (2) insurance companies selling investment policies with very high liquidation fees and long investment periods, (3) banks granting housing loans in foreign currencies without informing customers about currency risks and (4) aggressively selling Getback bonds as a substitute for bank deposits.

Over the time, the concept of misselling began to appear in relation to financial products and services other than insurance [Butor-Keler, 2017, p. 12]. Misselling appears in the context of unethical practices in the sale of financial services from sectors of the economy [UOKIKUOKIK, Nieuczciwa...], which results from the specificity of the sales process as well as the specific nature of financial products, often based on complex financial instruments.

Misselling is undoubtedly the wrong and mostly negligent behaviour of the seller. The Polish Office of Competition and Consumer Protection (OCCP, UOKIK) defines misselling as ‘unfair sale’, that is a legally and ethically questionable way of offering and selling financial products. Fraudulent sales may include both sales behaviours and procedures and marketing activities aimed at misleading consumers [UOKIK, Nieuczciwa...]. These include, for example, the action of an insurance agent who (knowingly or not) misleads the consumer as to the mechanism of operation of the product offered, its function and use, or an advertisement or brochure that omits material information about a given financial product.

In Polish law, misselling is indirectly described in Article 24(2)(4) of the Act of 16 February 2007 on Competition and Consumer Protection as ‘offering consumers the purchase of financial services which do not meet their needs (...) or proposing to purchase these services in a manner which is not appropriate to their nature’. [Competition and Consumer Protection Act, 2007] The Act only protects cases of collective infringement of consumer interests, so there will be no such infringement of an unfair clause in a single contract or incorrect charging of fees to only one customer. Therefore, it is crucial to determine whether the nature of the contract violates the interests of the community that is the circle of non-individualised persons [Wesołowska, 2014, pp. 93–97].

Misselling refers not only to the behaviour of the service provider but also to the whole environment, which creates a situation that prevents the customer from properly assessing the specificity of the product. Misselling undoubtedly fulfils the prerequisites of violating the collective interests of consumers because it is the entrepreneur’s conduct contrary to the law or morality [UOKIK, *Zbiorowe...*]. The catalogue of the prerequisites for the infringement of the collective interests of consumers is open, but the Act in Article 24(2)(2) mentions three specific prohibited situations that concur with the characteristics of unfair sales: violation of the obligation to provide reliable, complete, truthful information and unfair market practices.

In the literature, the occurrence of misselling is mentioned when the following behaviours occur [Cichorska, 2015, pp. 19–20]:

- the use of unethical practices,
- there is a product that is not needed by the customer,
- most often a product has a financial or insurance nature,
- a salesman encourage purchases without knowing the customer's needs,
- knowingly misleading the customer,
- the use of legally questionable practices,
- offering risky products as safe,
- failure to disclose certain facts about the financial product in the sales process, the ignorance of which prevents a correct decision,
- presenting incomplete, incorrect or unclear documents and leaflets.

3 Key misselling factors

Misselling takes place when the financial products sold do not match the risk profile, needs or expectations of the customer. The nature and type of misselling depends on many factors, including: the individual characteristics of the investor, the type of product offered, the way the product is sold and the level of risk of the product, as well as the level of responsibility of financial institutions towards their customers. Distinguishing the circumstances supporting misselling allows to indicate the reasons and ways to prevent it (Table 1).

Note that for the proper assessment of an individual investor's needs, his or her age (life cycle phase), wealth and health will be important [Żurawik and Żurawik, 1999, p. 125]. For example, long-term investment products causing a capital freeze should not be distributed to the elderly because they will not benefit fully from this product and also important are social features, such as education or occupation, and psychological features such as personality traits, individual preferences [Smyczek and Sowa, p. 37] or the ability to perceive risk [Nieborak, 2017, p. 41].

Due to different characteristics and needs of investors, employees of financial institutions play a vital role in the sales process, whose duty (according to MiFID II) is, among others, to conduct the so-called suitability and appropriateness test for the client acquiring financial instruments [MIFID II, 2014, Article 25]. Obtaining a negative test result by an investor makes it difficult for him to access complex financial products. However, the law allows for a conscious acceptance of risk by the investor and concluding an agreement with him provided that a special statement is signed [Trading in Financial Instruments Act, 2005, Article 83g]. Similar knowledge tests (in the form of a needs survey) have also been conducted since 2015 by Polish insurance institutions during the sale of life insurance policies with insurance capital funds (CIF/UFK) [Insurance and Reinsurance Activity Act, 2015, art. 21]. The client does not have to be aware of all risks associated with a given financial product. Moreover, by exercising due diligence, an employee of a financial institution minimises his/her responsibility for a possible wrong decision made by the consumer.

Table 1. Circumstances relevant to the creation of misselling

Type of investor	Type of financial service	Method of sale	Responsibility
Individual vs. Professional Client profile (depending on: investor's age, risk attitude, type of activity, creditworthiness, investment horizon)	Financial instrument/ financial service Bundling The risk associated with the product	Sales channels (remote, branch sales) Intermediaries Construction of the contract The sales process and how to inform the customer Salesman remuneration scheme	Financial institution vs. employee vs. client Nature of liability (intentional, unintentional)

Source: Author own elaboration.

The problem arises when a customer, despite being warned that a product does not match his risk profile, insists on concluding a misselling contract. In another situation, when not all the information will be presented to the consumer, but the financial service fits the needs, then from a formal point of view, it is not appropriate to talk about misselling [Chłopecki, 2017, pp. 35–36]. The Court of Justice of the European Union (CJEU) has ruled that when trying to assess a given practice as unfair, it is necessary to take into account the needs and preferences of the group targeted by the practice. In the view of the CJEU, a practice usually considered misleading cannot be considered as such for each target group [Kończak, 2013, p. 160]. It is worth emphasising how important it is for financial institutions to precisely define the target group of customers for a given financial instrument. By target group means a specific group of purchasers of a financial instrument whose needs, characteristics or objectives the financial instrument complies with [Journal of Laws, 2020, item. 89, Article 83b].

The literature advocates that special protection against misselling should be extended to less wealthy and non-professional market participants. Due to the lower level of financial education, such persons may misjudge the risk, which may lead to losses and their excessive debt [Ćwieliąg and Maciejasz-Świątkiewicz, 2016, p. 56]. Therefore, it seems rational to postulate that part of the responsibility for risk assessment should be transferred by means of regulations and good practices to more competent market participants for example financial institutions. Paradoxically, the less wealthy such as people having lower income and lack of creditworthiness, and not even having a bank account are often less protected by financial supervision institutions and, such people are unable to obtain credit from a bank and benefit from loans from para-bank institutions that operate without a permit and whose loans often have higher interest rates. Contracts constructed by such institutions are often unfair, but clients agree to their terms, as they are usually in a difficult financial or life financial situation, and they may misjudge the risk, which may lead to losses and their over-indebtedness [Ćwieliąg and Maciejasz-Świątkiewicz, 2016].

The risk of misselling is basically the greater the degree of complexity of the instrument. Deficits in consumers' financial education may result in incorrect assessment of risk, and consequently, wrong financial decisions may lead to losses and their over-indebtedness [Ćwieliąg and Maciejasz-Świątkiewicz, 2016, p. 56]. The basic types of financial risk that are related to the purchase of financial services include: credit risk (e.g. insolvency of the bond issuer), market risk (e.g. change in the exchange rate for a loan in a foreign currency), operational and liquidity risk (e.g. lack of awareness of the commitment to make regular payments related to a given product) [Świecka, 2009, pp. 120–122]. Misselling materializes through the appearance of unexpected risks that the customer was unaware of, or in the form of additional costs. In 2012, there was an increase in complaints about investment products in Poland. They were offered instead of traditional deposits. Clients lost significant amounts because the earlier redemption was associated with the loss of the invested amount [Butor-Keler, 2017, p. 12]. The complaining clients were apparently not aware of such risk.

Another feature of the product which is conducive to misselling may be its presence in bundling, which may result in the customer being forced to buy a service he does not need at all. Such practices may be of a monopolistic nature when the customer can only use, for example, card insurance from a particular insurance company. Misselling may involve many different financial services, but the largest number of court cases does involve banks which is the result of unfair advertising [Czech, 2013, p. 182].

As mentioned earlier, financial institutions have more negotiating power, so they can in a way impose the shape and wording of the contract signed with the client. However, there is an asymmetry of information between the seller and the buyer regarding the knowledge of the mechanisms contained in the contract, and often the understanding of the financial instrument itself and its risks. Having asymmetrical, additional information may be used by the entity to achieve an advantage [Blajer-Gołębiowska, 2017, p. 13]. In the case of selling financial instruments, the role of an honest seller should be able to eliminate information noise by reliably informing the client about all product features. Recognising the need to increase confidence in the financial market after the financial crisis and noting the start up cases resulting from misunderstandings of products by investors, the European Union authorities have decided to increase information obligations towards retail investors. European Union rules oblige Packaged Retail and Insurance-based Investment

Products (PRIIP) manufacturers to provide pre-contractual ‘Key Information Document’ to retail investors (Key Information Document - KID) [PRIIPs, 2014, Articles 5–8].

The information noise accompanying the offering of financial instruments may also be caused and increased by aggressive marketing and selling which misleads the client, time pressure on direct sales (e.g. urging comments when signing documents) or online (clock countdown to the end of the promotion). Other examples of aggressive selling include giving the impression that you can’t leave the premises without signing a contract, intrusive solicitation of a purchase, enticing children to buy, telling the consumer that if they don’t buy the product the merchant may lose their job and giving the impression that the consumer has already received some sort of reward or benefit. Due to the high similarity of financial services, the question arises as to what methods of persuasion can be used and how to differentiate the product to win the customer. Long-term relationship based on trust and building customer satisfaction would be an ethical answer [Mazurek-Łopacińska, 2003, p. 279].

The model of remuneration of client advisors and distributors of financial products may also influence the occurrence of unfair sales¹. On the occasion of the PPI sales scandal, it was found that the reason for the misselling was the way employees were motivated (bonuses, incentives, commissions): ‘The driving force behind this practice was (...) sales plans and the emphasis on the PPI product. There is also no doubt that the focus on high sales targets and standards, which were certainly formulated, had a direct impact on the practice of offering products and the quality of consumer service’ [Butor-Keler, 2017, p. 13]. Imposing sales plans results in sales pressure, which manifests itself in ignoring customer needs and trying to sell products without standards. Currently, for this reason, in many financial institutions, the remuneration of client advisors is based, for example, on the volume of assets held by the client within one institution and not on the value of commissions obtained from the sale of financial products to that client.

Misselling also involves conflicts of interest (actual and potential), that occur between financial institutions and their clients or between the clients themselves, and most often result in a decrease in clients’ confidence in financial institutions [Marcacci, 2018, p. 135]. The sources of conflicts of interest may be benefits and incentives² received from third parties in connection with the conduct of their activities and an irregular remuneration policy of a financial institution³. In the case of financial instruments, one of the objectives of the MIFID II Regulation is the prevention and management of conflicts of interest, which is important in eliminating misselling.

Misselling is an example of herd behaviour of financial institutions called ‘gridlock’. It consists in the fact that, although a financial institution knows how to deal with its customers, it takes risky and ethically questionable measures to secure its short-term profits without being sure that its competitors will not do the same. As a consequence, when other institutions do the same, being closed in the so-called network/gridlock, in the absence of appropriate regulation and self-control, the entire financial system will suffer losses as a result of these risky actions [Nieborak, 2017, p. 38].

The creation of a misselling can also be justified by agency theory. An agent who is not exposed to the consequences of his negligence (e.g. does not feel the risk of losing his clients) may, guided by the temptation of abuse, be more willing to sell financial products to clients who should not receive them at all. Participation in possible customer losses should reduce the propensity of sellers of financial products to

¹ The term ‘client adviser’ may suggest that a person in such a position is acting independently of his or her employer and solely in the interest of the client. For this reason, employees of investment firms are more and more often referred to as ‘client assistants’, ‘customer service specialists’ or ‘client bankers’.

² In theory, the main problem of incentives is that a distributor of financial products will offer its customers those products for which it will receive the highest incentives from the manufacturers of those products. The general principle described in Article 23(1) of MiFID II is to prohibit the collection and provision of incentives. Incentives are allowed in three cases: (1) where they are paid to the client, (2) paid by the client or (3) where they are paid by a third party but lead to an improvement in the service provided. The rationale for this exception is that in such cases the influence is no longer exerted by the third party and therefore the investment firm no longer has an incentive not to prioritise the interests of the client.

³ The aim is to ensure that the way employees are remunerated and the sales targets set encourage appropriate business practice, fair and honest treatment of customers and the avoidance of activities that generate conflicts of interest in relations with customers that may lead, for example, to misselling; [MIFID II, 2014, art. 24 par. 10].

be irresponsible [Blajer-Gołębiowska, 2017, pp. 18–19]. In line with this assumption, many regulations have been introduced in Poland in recent years, resulting in the reduction of misselling sources. Apart from the implementation of MIFID II regulations, it is worth mentioning the obligation to distribute/allocate over time and, in the case of early termination of an agreement, also the reimbursement of commissions from the sale of an insurance policy [Insurance and Reinsurance Activity Act, 2015, art. 23] and from granting credit [Consumer Credit Act, 2011, art. 49].

Misselling sales practices are similar to those in the non-financial economy. For example, after buying a cheap printer, the consumer learns that only branded toners work in it. The cost of buying these toners is many times higher than the price of the printer itself, which makes the purchase of the printer unprofitable. A customer knowing about such a situation would certainly not make a decision to buy it. Unfair sales and misselling are combined with pushy sales techniques and consumer behaviour, whose willingness to own prevents them from making a rational decision. Misselling is distinguished from the unfair sale of non-financial goods and services by the fact that financial instruments are often complex (difficult to understand by a person with average financial knowledge) and the entities offering them are in a dominant position, which makes it difficult for the consumers to assert their rights. An individual investor may not be able to afford to use the services of a highly specialised professional attorney (lawyer) to win a lawsuit against a financial institution [Nieborak, 2017, pp. 29–30]. Fair sales should take place in the absence of information noise and with the possibility of obtaining full information (no asymmetry of information) [Nieborak, 2017, p. 39].

4 Survey background and literature review

Counteracting misselling is a complex process that brings positive effects through coordination of activities in the field of law-making, law enforcement, financial education of society, training of employees of financial institutions and creation of ethical internal rules within the organisation. The proper functioning of all these areas should be achieved through compliance with the 39 principles described by the World Bank in Good Practices for Financial Consumer Protection. Among them the five key principles listed by the World Bank lists are ensuring transparency, enabling choice, creating compensation mechanisms, ensuring data protection and trust through the professional behaviour of financial institutions [World Bank, 2012].

In this study, we present how consumers perceive the activities of financial institutions and the phenomenon of misselling. We also examine the level of financial knowledge of consumers. The average consumer has minimal influence on the shaping of the law or the ethical standards of financial institutions, and therefore one of the basic methods of improving consumer safety should be to increase consumer financial knowledge. By measuring the perception of the degree of security of financial instruments and confidence in individual financial institutions, the question can be answered as to where the state should concentrate its activities in order to increase the level of consumer protection against misselling.

First, to understand the idea of the survey, it should be assumed that financial institutions should be institutions of public trust. Misselling can be ‘beneficial’ to financial institutions in the short term as it increases their profits, but in the long term it causes a drop in confidence in the whole sector, discouraging them from investing and using their services [Butor-Keler, 2017, p. 9]. Greater consumer confidence in financial institutions should be built on which result in increase of the profits of these institutions (win-win) in the long term. UK government consumer surveys show that increasing consumer power improves competition and increases economic efficiency [Dziedzic, 2019, p. 90]. Trust is a fundamental value of the market and can only be achieved by ensuring security and stability [Nieborak, 2017, p. 34]. H. Dembliński puts forward a thesis that the price for more ethics in business would be to reduce the inflated sector, but this is the price that is necessary to create a new order in the financial sector [Monkiewicz and Monkiewicz, 2019, p. 47–48]. According to E. Rutkowska-Tomaszewska, unfair practices destroy the positive image of the market and reduce confidence in it [Rutkowska-Tomaszewska, 2016, p. 45].

The confidence of Poles in the banking sector can be assessed as high: in 2018 over 84% of those surveyed had confidence in the bank in which they entrusted their funds [Polish Bank Association, 2018], while in 2019 an increase of 3 percentage points to 87% was recorded [Kantar, 2019]. It is worth checking how clients would assess the safety of banks and other financial institutions if we asked them for a detailed note⁴. In the TNS Kantar survey, 63% of respondents expressed confidence in banks and only 41% in the case of insurance companies [Kantar, 2019]. In 2018, in court cases concerning complaints, lawsuits against insurance companies dominated – ca. 37,600 lawsuits vs. 4,666 lawsuits in cases from the banking and capital market [Polish Financial Ombudsman, 2019].

Second, it is also worth taking into account the expectations and observations of financial market employees. The banking sector as such, considered to be trustworthy, should be a good yardstick for change also in relation to other financial sectors. In September 2015, the Polish Economic Society (PTE) conducted a survey among financial experts on the areas where the banking system requires changes. The respondents indicated the following responses or factors most frequently (multiple choice): financial education of clients (50%), ethical behaviour of banks (37%) and relations with clients (30%) [Polish Economic Society, 2016]. It is clearly visible that experts evaluated the financial knowledge of Poles as the most important area for improvement. Another survey shows that every second Pole (50.5%) has the need to increase his/her knowledge about saving and investing opportunities and almost half of the respondents (45.4%) would be willing to broaden their horizons in the area of financial services and the rules of using them [Malysa-Kaleta, 2017, p. 69]. For this reason, the respondents in this survey were asked about the level of financial knowledge, knowledge of the misselling phenomenon and state bodies and initiatives to protect their interests in the financial market.

Third, it is worth considering what role should be played by the state in the relationship between client and financial institution. Participation in the capital market is not obligatory (outside the social security system), so according to the *volenti non fit inuri* principle (Latin – for those who want no harm done), the level of investor protection on this market could be lower theoretically [Kołacz, 2013, p. 160], so that uneducated people do not want to participate. If the state always intends to protect reckless consumers, then it would create a temptation to abuse them to the detriment of the entire capital market⁵. The aim of the state should be not so much to eliminate all potential sources of abuse and investment risk, but to increase awareness and knowledge of consumers of financial services. It should be noted that further regulatory intervention, aimed at increasing the level of perceived consumer safety, may have the opposite effect to the one intended, and may ‘spill’ customers, making them even more vulnerable to misselling. A similar phenomenon was observed after the spread of ABS in cars – drivers started to drive more aggressively as they felt safer [Carlson, 2020].

The survey was conducted electronically using the Google Forms tool from 10–16 August 2019 on 327 people. The results of the survey do not fully reflect the estimates for the population, as they did not include people who are digitally excluded and have an overrepresentation of people with higher education (71.6%) and young people (62.5% of people up to 24 years old), as well as those living in large urban centres (75.8% in cities with more than 500,000 people). A relatively large sample in the case of strongly unambiguous results allows to assume that a similar result could concern the whole population. The results approximate the distribution of views in particular groups and may be a prelude to further in-depth research. As the largest group among the respondents were young or educated people, the survey may be an indication for public institutions to undertake educational activities. This is due to the fact that people up to 24 years of age will soon be reaching for investment products unknown to them beforehand as they enter the labour market and get rich.

⁴ The ‘yes/no’ question is very dichotomous and since most people have a bank account, they can answer ‘yes’ to be in line with their own behaviour. Otherwise, if they answer would be ‘don’t trust’ they should stop using banking services.

⁵ First of all, investing always involves risk and theoretically higher rates of return are achieved with a higher level of risk. Secondly, artificially eliminating risk and making the environment safer would increase the level of risk acceptable to investors. Thirdly, it would lead to an increase in the number of unreliable capital recipients, causing negative selection and pushing honest capital recipients out of the market. Fourth, the introduction of protection against ‘reckless’ investments (e.g. in bonds of bankrupt companies) would be a significant systemic cost (who would bear it?).

To sum up, the aim of the survey was:

1. to examine the perception and knowledge of the misselling phenomenon by the respondents,
2. to measure the level of trust and perception of the safety of individual financial institutions and the products they offer,
3. a confirmation that the level of financial education of the population is too low and that the State should take action to improve it,
4. recommendations for retail investors and the state to limit the misselling of financial services.

5 Discussion of the survey results

Most of the respondents (69.4%, Figure 1) have not heard of the term ‘misselling’ as opposed to employees of financial institutions (65.5% know the term). As many as 53.3% of the respondents, who have been exposed to unfair market practices several times, know the concept of misselling. A higher level of knowledge of misselling is also noticeable among people earning over PLN 5,000 (39.8%).

About half of the respondents knew that they could withdraw from consumer credit within 14 days. Taking into account the age of respondents, 44.8% of people aged 18–24 and as many as 61.3% of people older than 24 years (probably young people are less interested in such a product) knew about this possibility. The greatest knowledge about the possibility of withdrawing from a consumer credit was among those with net income in the range of PLN 7,000–9,000 and above PLN 9,000 (about 66%), and the lowest among those with income below PLN 1,000 (34.5%) and in the range of PLN 1,000–3,000 (40.7%). These results testify to the need to improve financial education among the poorest and youngest people. Similar results are shown in the survey ‘Financial Knowledge of Poles’, where 46% of respondents were not aware of the possibility of withdrawing from a consumer credit agreement within 14 days [Consumers’ Federation..., 2019].

55.7% of the respondents knew that a financial advisor is obliged to offer a product tailored to the client’s needs, based among others on the MIFID adequacy test. No clear correlation between knowledge and income was found in this aspect; while people aged 45–54 (73.3%) could boast of greater knowledge clearly on the subject than those from the youngest group of 18–24 (53.7%), which may due to lifetime experience.

Further, 54.1% of the respondents were aware of the possibility of notifying the UOKIK President about the use of prohibited contractual templates by financial institutions. The highest level of knowledge in this respect was declared by respondents aged 35–45 (81%) and the lowest by respondents aged over 55 (38.9%). Such a difference is puzzling, but it may probably result from a certain generational

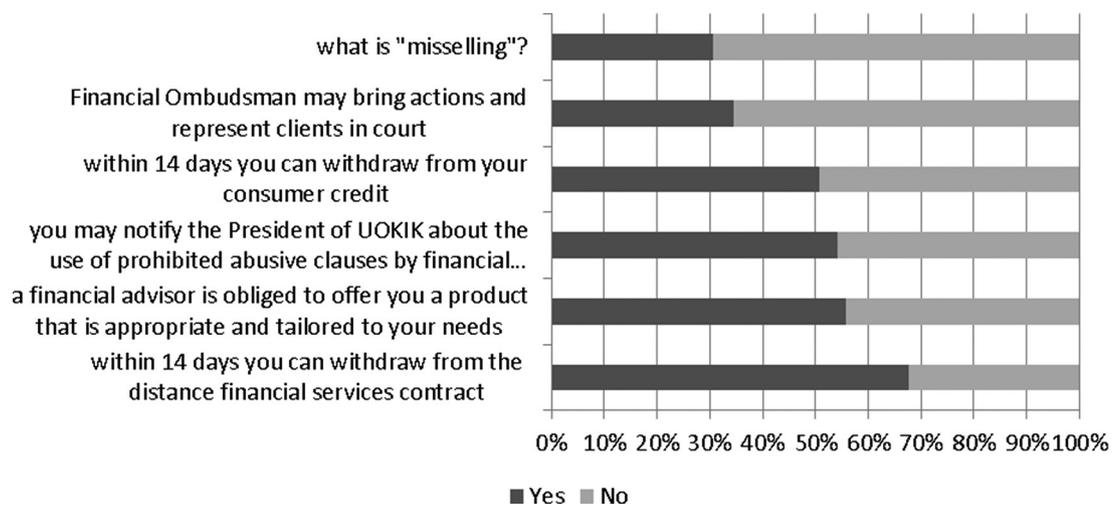


Figure 1. Knowledge test – do you know?

Source: Author own elaboration based on survey results.

difference – the older generation may not be aware of the current design of the consumer protection system, as they were grown up in former socialist system. Interestingly, 58% of the city's population of over 500,000 inhabitants knew about the proceedings before the President of the Office for Competition and Consumer Protection (UOKIKUOKIK), and only 1 in 3 people in rural areas knew about it.

Note that large number of respondents was aware of the possibility of withdrawing from a financial service ends after 14 days (67.6%)⁶. The group that declared the greatest knowledge were people with high net income, that is: PLN 7,000–9,000 (77.8%) and above PLN 9,000 (75.9%), and the smallest is in the range of PLN 1,000–3,000 (57.4%) and below PLN 1,000 (62.1%). Education influenced the level of declared knowledge: 71.8% of people with higher education knew about it, while people with higher education knew about it in 57% of cases at most secondary education. On the other hand, 65.4% did not know that the Financial Ombudsman could sue and represent clients in court (this may be due to the fact that this institution was established relatively recently), and the level of education had little positive impact on the outcome (39.8% of people with higher education vs. 32.5% of others).

Most of the respondents (56.9%) had not experienced the fraudulent practices of financial institutions but only 9.2% experienced that more than twice (Figure 2). After explaining to the respondents what misselling is, almost 9 out of 10 people consider it to be a significant problem in the financial market (only 30.9% said definitely yes) (Figure 3). The perception of misselling as a significant problem is stronger in the group that has experienced this phenomenon at least once (92.8%) than in the case of other people (83.9%). This means that personal experiences shape the negative perception of misselling. An idea for further research could be to find a direction of the correlation between of being a victim of the misselling and knowing what misselling is. A study conducted by the NASD Foundation⁷ has shown that victims of financial fraud have greater financial knowledge than non-victims [Investor Fraud Study Final Report, 2006]⁸. In other words the question is whether they learned from their mistakes (ex post) or whether they thought they were smart (ax ante) but they underestimated the risks.

Almost all respondents (98.2%) considered it necessary for the state to become more active in the field of financial education (rather only 19.6%). Despite having a small contact with misselling in the surveyed group, as much as 68.2% of the respondents believe (definitely or presumably) that the state institutions do not sufficiently protect their interests in case of unfair sales (only 3.1% of the respondents are definitely sure of this). 59.6% of the respondents believe that financial consumers are increasingly better protected by law (of which 10.1% are definitely certain). It is worth noting that as many as 16.8% of the respondents do not have an opinion here, which indicates a low level of knowledge of the law or poor information activity of the authorities of the investor protection system.

What changes does society expect in terms of misselling protection? Although most of the respondents (57.2%) support the model of the state as a night watchman (i.e. liberal approach and less regulation) (Figure 4), paradoxically as many as 48.9% of the respondents would like stronger regulation of the

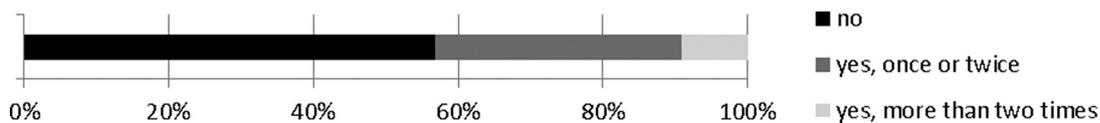


Figure 2. Did you have any experience with unfair practices (misselling)?

Source: Author own elaboration based on survey results.

⁶ This may be due to the fact that there is an intensive advertising campaign on the right of withdrawal from distance consumer contracts, although de facto other legislation regulates financial contracts in this aspect. Perhaps the respondents, not knowing this, indicated that they were aware of the regulations concerning financial service contracts.

⁷ The successor of NASD (National Association of Securities Dealers) Foundation is the Financial Industry Regulatory Authority (FINRA) – it is a private American corporation that acts as a self-regulatory organization (SRO) which regulates member brokerage firms and exchange markets.

⁸ However, the question arises as to what was the first – the acquisition of financial knowledge or the experience of being cheated? Perhaps it was the broad financial knowledge (and in part such personality traits as greed and overconfidence) that made consumers more susceptible to misselling.

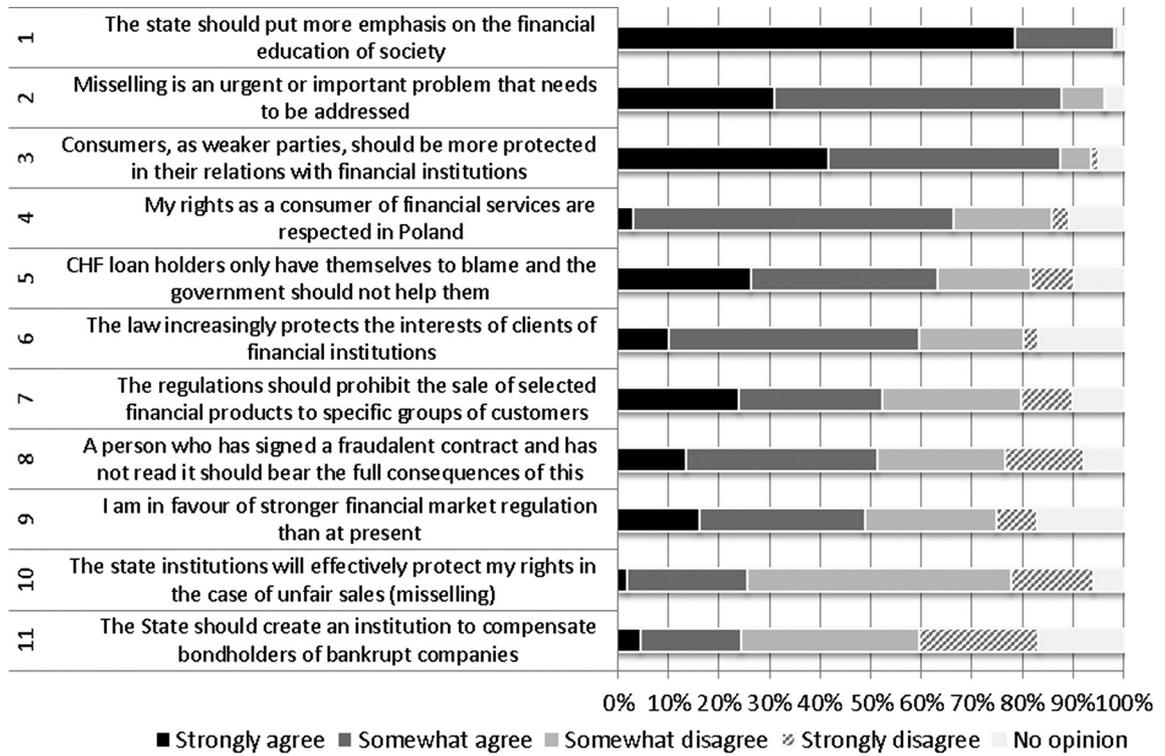


Figure 3. Main Likert scale survey.

Source: Author own elaboration based on survey results.

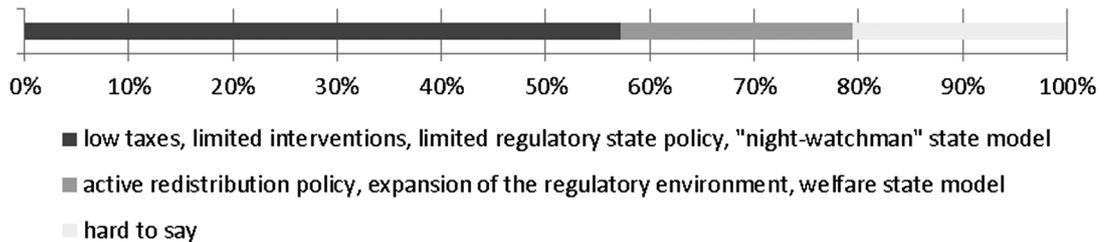


Figure 4. What type of the institutional system do you support?

Source: Author own elaboration based on survey results.

financial market (Figure 3), although as many as 17.1% of people could not express their opinion on this issue. The idea of greater market control is reflected in the proposal to restrict access to certain financial products for specific groups of customers, which 52.3% of respondents supported. As many as 87.5% of the respondents (including 41.6% definitely) believe that consumers should be better protected in their relations with financial institutions.

In the respondents' approach to the personal consequences of an individual, economic liberalism can be observed, as most of the respondents did not want the state to bear the costs of misselling financial institutions. 51.4% of those surveyed considered that in the event of non-reading the contract and its abusive clauses, the consumer should bear the full consequences of his recklessness. This is all the more interesting because under the law, a consumer who has not read a contract and if there were abusive clauses in it, the consumer does not have to abide by the contract with regard to the prohibited terms – it is therefore irrelevant whether the consumer has read the contract or not if it is unfair. The vast majority of respondents (63.3%) also do not feel sorry for customers with a mortgage loan denominated or indexed in the Swiss franc ('Frankowicze') and do not want the government to prepare special assistance programmes for them.

The respondents support the role of the state in the form of prevention (more regulations, bans) rather than assistance to victims. Also, as many as 58.7% of them reject the idea of creating an institution to pay compensation to bondholders of bankrupt companies. The majority vote seems to be reasonable in this case⁹.

The study also asked for an assessment of the security of financial institutions and financial services (Figure 5). Respondents asked to assess confidence on the financial institutions (1-min, 7-max) and the results are as follows: trust banks (mean score: 4.58), insurance companies (3.91) and investment fund companies (3.47, i.e. <3.50, i.e. mistrust prevails). Both credit intermediaries and financial advisory companies (2.59) and cooperative savings and credit unions (SKOK) (2.08) enjoyed low confidence of the respondents. Perhaps the reason for the low trust in the SKOK system was due to bad reports in the press as a result of the bankruptcy of several cash registers and the fact that the whole system of registers was described as a ‘financial scandal’ and often compared with the Amber Gold or Getback scandals. On the other hand, the small share of the SKOK system in the financial system and the fact that the funds were covered by the deposit guarantee scheme made the actual scale of losses suffered by consumers caused by the bankruptcy funds seem to be moderate [Martysz and Kleban, 2019].

By far the lowest trust is placed on loan institutions (1.87), which confirm the need to increase citizens’ awareness of their rights and of the existence of anti-usury laws. Negative opinions about loan companies (also revealed in this study) may be due to the result of historically many unfair practices of those entities in Poland, which lead to the tightening of legal regulations for this sector in 2015. Main infringements included are a lack of information about the interest rate of the loan, the total cost of the loan, the total amount to be repaid and the order in which the instalments were counted towards the repayment etc. [Pindel and Martysz, 2019].

For the most secure financial services (Figure 6), the respondents rated: bank account (mean score of 6.03), deposit (5.73) and treasury bonds (5.43). The most dangerous were: forex contracts (2.62), where ignorance was also indicated by the highest number of respondents, shares (3.15) and investment fund units (3.60). It is surprising that despite commonly known irregularities related to life insurance with insurance capital funds (CIF/UFK)¹⁰ in the survey they received a high rating (4.36) in terms of security.

The subjective safety assessment is worth to comparing with the popularity of particular financial products (Figure 7). The respondents most often treated a bank account (99.4%) and deposits (66.1%) as the safest products. It is worth noting that deposits are guaranteed by the Bank Guarantee Fund up to €100,000

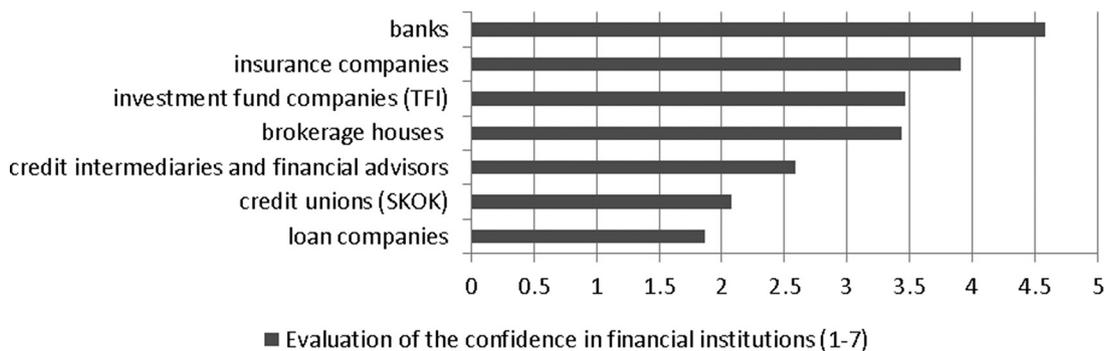


Figure 5. Evaluation of the confidence in financial institutions (1–7).

Source: Author own elaboration based on survey results.

⁹ First of all, the purchase of bonds is not a first-round financial service but has an investment character. Secondly, investors must be aware of and bear the consequences of the investment risk taken. The creation of a compensation fund would make investors no longer assess the investment risk at all and would only be guided by the rate of return when choosing investments (in line with moral hazard). Negative selection would then push ‘fair’ but less profitable investments out of the market, leading to a significant deterioration in economic efficiency. The investors would have no interest in asserting their rights and claims, and would have no interest in passing these obligations on to the state creating the compensation system.

¹⁰ The main misconducts of this product include high liquidation fees, lack of customer needs analysis (misselling) and offering customers risky assets ‘packaged’ in an insurance (including closed-end investment funds) [UOKiK, 2015], [KNF 2019].

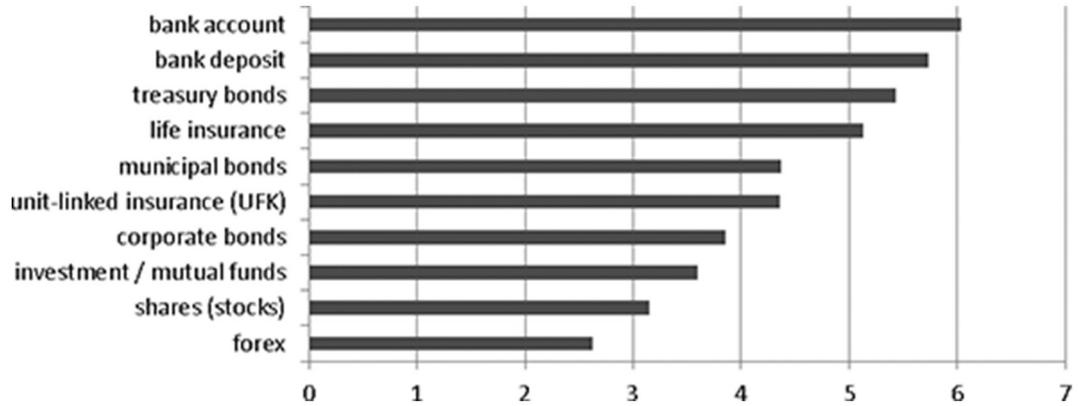


Figure 6. Safety evaluation of a financial product (1–7).

Source: Author own elaboration based on survey results.

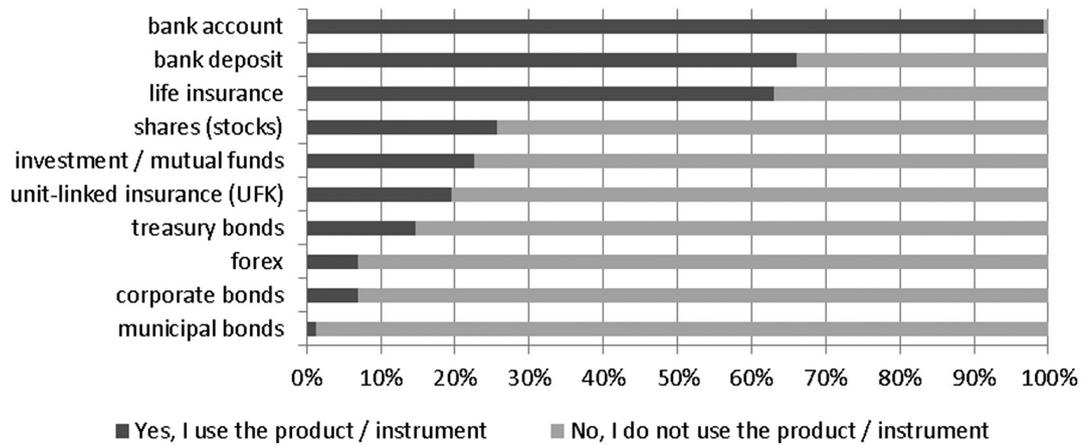


Figure 7. Popularity of a given product/financial instrument.

Source: Author own elaboration based on survey results.

per individual depositor who is a natural person, which undoubtedly has an impact on consumers' decision. Surprisingly, the third place was not taken by treasury bonds (14.7% of beneficiaries) but by life insurance (63%). Thus, customers more often chose products that are considered as safe and necessary for life.

As far as knowledge and understanding of individual financial products are concerned (Figure 8), as we believe, bank accounts (99.7% understand) and deposits (95.4% understand) were the best understood, but interestingly life insurance (94.8%) and shares (90.2%) ranked third, followed by treasury bonds (84.4%), even though their security was assessed as greater than that of shares. Due to a lack of knowledge, there may be a paradox: a more risky product (e.g. shares) is considered to be more understandable, which may encourage more people to use it than to invest in safer instruments (e.g. treasury bonds or municipal bonds), because the consumer does not understand what the mechanism of this product is. This is demonstrated by the survey: a higher percentage of respondents were or are holders of shares than treasury bonds (25.7% to 14.7%). The least known were forex contracts (24.2% did not know and 32.1% did not understand) and municipal bonds (32.7% did not know and 35.2% did not understand).

It is surprising that the low level of knowledge of municipal bonds, which is more secure than for example shares, but this is due to the poor availability of this financial instrument for retail investors (almost all municipal bonds in Poland are purchased by banks on the primary market, and then partially sold to financial investors in the secondary market). A significant percentage of those surveyed have also not heard of life insurance from the CIF/UFK (14.68%), corporate bonds (16.82%) and investment funds

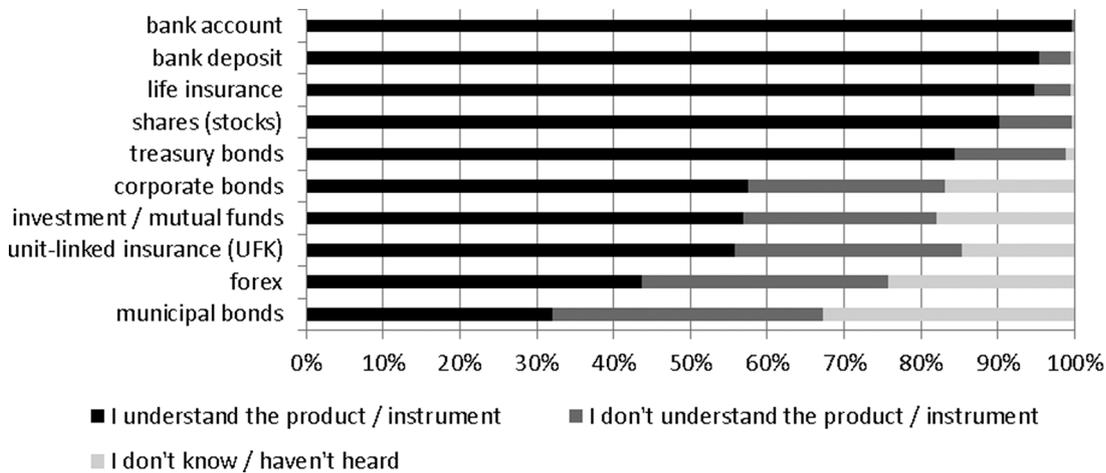


Figure 8. Knowledge and understanding of financial products.

Source: Author own elaboration based on survey results.

(18.04%). It should therefore be in the interest of the state to promote knowledge about treasury retail bonds in order to increase demand for them.

The previous unanimous opinion of respondents on the need to increase public education confirms that the appointment of The Financial Education Council of the Financial Ombudsman in 2019 was a necessary initiative. Only 21.7% of respondents believe that their financial knowledge is good or very good (Figure 9). As there are a disproportionate number of people with higher education among the respondents, self-assessment of financial knowledge in the whole population would be much worse. Moreover, it should be assumed that the subjective assessment of one's own knowledge is overestimated – according to the 'Financial Knowledge of Poles' survey, almost 25% of the respondents overestimated their knowledge of the basics of economics [Consumers' Federation..., 2019]¹¹. Undoubtedly, insufficient financial knowledge and thus a lack of ability to understand financial products and the associated risks may lead to an increase in misselling. Considering the above observations, it should be recognised that there is an urgent need to improve consumers' financial education.

Only 31.8% of respondents always read the financial services contract thoroughly and as much as 4% never read the contracts at all (Figure 10)! What is interesting, as Deloitte's research suggests, this percentage can be much higher when contracting with modern technology – 91% consumers willingly accept legal terms and conditions without reading them before installing apps, registering Wi-Fi hotspots, accepting updates and signing on to online services such as video streaming [Deloitte, 2017].

Making customers aware of the importance of reading contracts and that they have the right to familiarise themselves with the contract should significantly reduce the number of people who have acquired unwanted or unnecessary financial services.

The knowledge of the respondents about state initiatives concerning financial education or misselling is low, among which the most famous was NBPportal.pl (Figure 11). It is worth to note that the Polish Financial Supervision Authority boasts of the number of training courses on the CEDUR project (Education centre for market participants), and the project has low recognition among the respondents. In order to increase the participation of citizens in training, such initiatives should be better promoted, which should obviously be free of charge.

Respondents declared that they most often acquire knowledge from articles presented on Internet portals (72.2%), friends and family (61.5%) and the websites of financial institutions (58.7%) (Figure 12). Interestingly, employees of financial institutions mainly acquire knowledge about finance from friends

¹¹ In the field of social psychology this phenomenon is called an illusory superiority. This is a condition of cognitive bias wherein a person overestimates their own qualities and abilities, in relation to the same qualities and abilities of other people. This phenomenon can be illustrated by drivers having overly positive beliefs in their own skills.

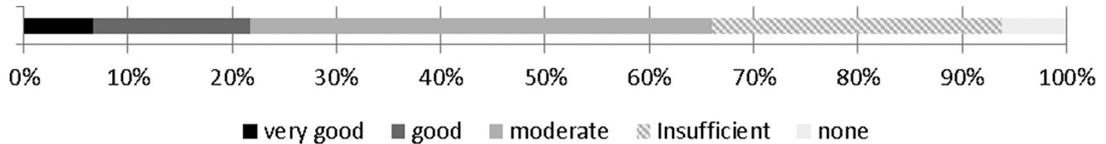


Figure 9. What is my knowledge of the laws and state institutions that protect consumers from misselling?
Source: Author own elaboration based on survey results.

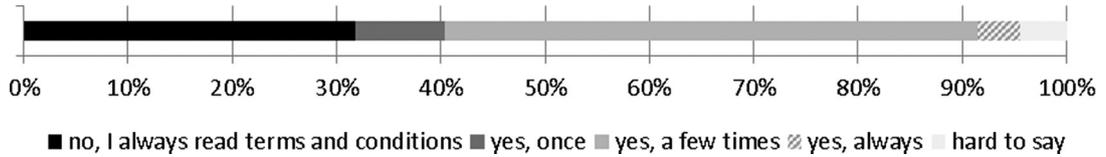


Figure 10. Am I used to sign contracts without reading them carefully?
Source: Author own elaboration based on survey results.

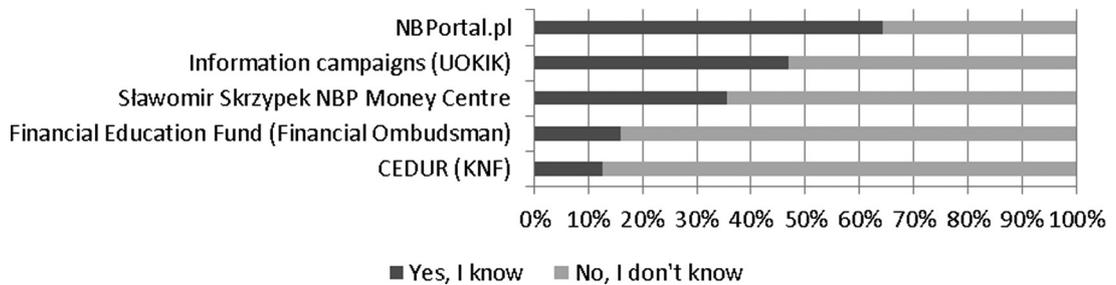


Figure 11. Knowledge of state financial education initiatives.
Source: Author own elaboration based on survey results.

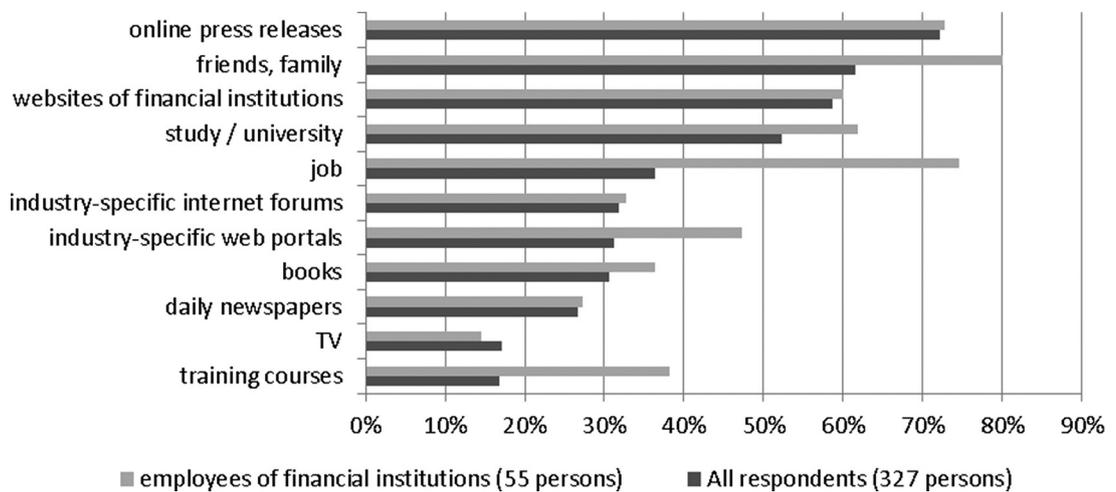


Figure 12. Sources of knowledge and information on financial products.
Source: Author own elaboration based on survey results.

and family (4 in 5 people) and at work (74.5%) that is more than twice as often than others. This group participated in training courses on financial issues much more often (38.2%) than all the respondents (16.8%), mostly conducted by their own employer.

In the case of misselling, the respondents would first of all turn to the President of the UOKIK/OCCP (48.6%) and second to the non-governmental consumer organisations (35.8%) (Figure 13). Interestingly, the third place was taken by the Police – this is puzzling because most misselling cases are civil cases and

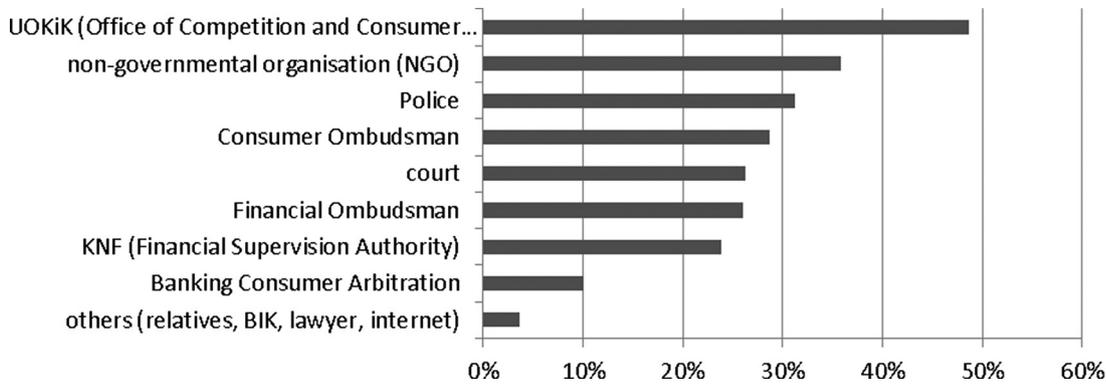


Figure 13. You are a consumer and you have been swindled when signing a financial service contract. Where will you turn for help in the first place?

Source: Author own elaboration based on survey results.

are not reported to the police, while only criminal cases are reported to the Police. Such a response of the respondents proves little knowledge in this area. The respondents' knowledge of the competences of new bodies such as the Financial Ombudsman is low. Respondents are more eager to identify the President of the Office for Competition and Consumer Protection (UOKiK, OCCP) as the 'first contact' authority in the event of a misselling, although the Financial Ombudsman has a wider range of subjects and provides individual assistance, so his support is universal (in all complaints).

6 Conclusion

According to Polish law, misselling is the sale of financial services which do not meet consumers' needs or the very manner of selling them which is inadequate to the nature of those services. Misselling is a multi-faceted phenomenon because its creation depends, among other things, on the individual characteristics of the investor, the type of product offered, the way of selling and the level of risk of the product. However, misselling differs from unfair sales of ordinary non-financial products mainly because it involves financial products that consumers often do not understand. For this reason, misselling deserves special attention because it can not only generate losses for consumers and investors but also discourage them from participating in the financial market. Insufficient financial literacy, a lack of understanding of financial products and their risks and a lack of awareness of consumer rights are key factors in the development of misselling.

The authors believe that the determination of the level of knowledge and public perception of financial institutions allows to identify areas that require increased educational efforts from both the state and the citizens themselves. To this end, a survey has been conducted, which proves that increased efforts are needed from the state in the field of financial education. Among the respondents, the term 'misselling' was not widely known, but after it was explained, most people considered it to be an important problem that deserves special attention. The respondents felt that their knowledge of financial issues was insufficient as well as they had low awareness of available state educational initiatives, and rarely participated in financial education training. Assuming that the state should not interfere more in the process of selling financial services, the way to reduce the misselling phenomenon, apart from raising the ethical standards of employees of financial institutions, should be to spread financial knowledge among consumers. The promotion of financial education could improve consumers' sense of security, improve the degree of adjustment of financial services to consumer requirements, strengthen awareness of the assistance that consumers can receive from public institutions, and positively contribute to the activity of Poles in the financial market.

The introduction of additional legal regulations to protect investors is not necessary if consumers' knowledge and awareness of the current solutions is satisfactory. The lack of awareness of customers' rights and obligations imposed by financial institutions makes it impossible to effectively avoid the negative consequences of misselling. The survey noted a certain contradiction in the responses – despite the majority

of respondents supporting the state model as a night watchdog, almost half of them pointed to the need for stronger regulation of financial markets and supported the preference of the consumer as the weaker party to the contract. This weakness results from asymmetry of information and consumers' subordination to financial institutions. The interests of retail investors and financial consumers (in relation to financial institutions) need to be protected in order to counteract misselling. However, it should be stressed that excessive protection and the strong elimination of investment risk can lead to moral hazard and thus reduce the efficiency of the financial market.

The survey confirmed the need to increase activities in the field of financial education. It was also noted that there is usually a correlation between education or income and the higher level of financial education among the respondents. It is therefore reasonable to assume that despite relatively low overall knowledge level of the participants in this study, it is actually even lower in the general population. State educational programmes are generally low in recognition and respondents (except employees of financial institutions) rarely benefit from financial training.

Furthermore, economic education should create critical attitudes among investors and consumers in order to verify information about financial market services, which at first glance appear to be irrational or economically unjustified (e.g. a bogus deposit with a very high interest rate, the 'complete lack' of costs in the offer, a 'wonderful' investment product etc.). Besides, personal finance is not an abstract art – it is really not worth buying something you do not understand and only relying on a salesperson claiming that 'it will be fine'.

The results of the survey show that consumers should be encouraged to receive financial education, especially through public initiatives. However, it should be remembered that financial education is not enough to effectively protect consumers from misselling, because this also requires properly enforced laws that put the consumer in a privileged position over financial institutions [Ćwieliąg and Maciejasz-Świątkiewicz, 2016, p. 68].

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