



Report

ON THE PROTECTION OF FINANCIAL SERVICE CONSUMERS

National Bank of Serbia

March 2022



NATIONAL BANK OF SERBIA
Department for Financial Consumer Protection

REPORT FOR 2019–2021

Protection of Financial Service Consumers

March 2022

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NBS COMPLAINT PROCEDURE – IN BRIEF



What is the NBS complaint procedure aimed for?

If you are under a loan, or if you have a deposit, a payment account, an account overdraft, a credit or debit card, leasing, etc., and you think that your rights have been violated – the NBS can offer you efficient protection in an alternative procedure for dispute resolution.



What can I get if I am right?

If the NBS establishes that the financial service provider has committed an irregularity, it will order the provider to remove the irregularity, including the return of money to the consumer, in cases when this is what the complaint is about.



What do I need to do? How do I launch the procedure?

Filing a complaint is simple, by filling in [a form on the NBS website](#). Before that, you need to submit a written complaint to the financial service provider and wait for the reply, or for a 15-day reply deadline to expire. Afterwards, you may file a complaint to the NBS within the following 6 months.



How long does the procedure take?

We always try to notify you about our findings upon the complaint within the shortest time possible. You will certainly receive our reply within three months.



Will I have to cover any costs?

No, the complaint procedure is entirely cost-free.



Do I need a lawyer?

No, the procedure is simple and participating in it does not require any special knowledge or skills. We are here to help you and instruct you how to best exercise your rights in this procedure. Therefore, you can do this yourself.



Are there any limitations?

Yes. We cannot resolve a disputable relation if a court procedure has already been launched. Also, in the complaint procedure we cannot present evidence that is particular to a court procedure (hearing of experts, investigation, hearing of witnesses, and similar).

NBS COMPLAINT PROCEDURE – STEPS



1. Submit a complaint to the financial service provider



How? In writing, using the form on the provider's website, on the home page, or by email to the address designated for the receipt of complaints.



When? The deadline for submitting a complaint to the provider is three years from the day when your right or a legal interest were violated, but it is best to file the complaint as soon as possible, when you have detected a problem.



The financial service provider must not charge a fee for the complaint procedure.



2. Wait for the reply of the financial service provider



How? You will receive the reply to your complaint in writing. The reply must clearly state whether the complaint was founded or not, and if it was, whether the reasons because of which the complaint was submitted have been removed, or when they will be removed and how.



When? The deadline for submitting a reply to the complaint is 15 days. By way of exception, the deadline may be extended for another 15 days, however, the financial service provider must first inform you about this.



Make sure your complaint is concise and that you have clearly presented the reasons for submitting the complaint, i.e. what it is that you are requesting with the complaint.



3. If you are dissatisfied with the reply to the complaint – submit a complaint to the NBS



How? Simple, by filling in [a form on the NBS website](#).



When? The deadline for submitting a complaint to the NBS is six months from the date of the receipt of a financial service provider's reply to the complaint or from the expiry of the reply deadline.



Properly fill in all fields in the form. You must enclose the complaint that you submitted to the financial service provider and its reply to the complaint (if you have received it). Also, enclose any other relevant documents if you think it will help with gaining an insight into the disputable relation.




4. Wait for our notification about findings upon complaint



How? We will send you a notification about the findings upon complaint in writing. The notification is always a result of our detailed analysis of all data, information and documents received from you and from the financial service provider. In the notification, we will clearly state our view of your disputable relation. If we determine that the financial service provider did not adhere to the provisions of the law and regulations governing financial services, good business practice pertaining to those services or the agreement concluded with you, we will order the provider to remove the detected irregularities.



When? The deadline for sending the notification about findings upon complaint is three months. Sometimes, if it is a particularly complex case, we are forced to extend the deadline (by no more than three months), of which you will certainly be notified.

 We approach each of your problems with full attention because we understand the importance of the issues that have made you reach out to us. Rest assured that we will always show understanding for your situation because we are here to protect consumers; however, keep in mind that we will take into account the arguments of the other side as well. We will be impartial and we will not give up until we have gained a full view of the problem.



5. If your disputable relation is not resolved in the complaint procedure – you might consider mediation



How? If both sides are in agreement, the disputable relation can be resolved in an out-of-court procedure – a mediation procedure with the NBS. Submitting a proposal for mediation is simple – it is done by filling in [a form on the NBS website](#).



When? Within the deadline that you have set (5–15 days), the financial service provider will state whether it agrees to mediation.



With mediation, the resolution of the disputable relation mostly depends on you and the financial service provider, however, our trained mediators will help both sides to recognise the other party's rights and to view the problem from different standpoints. We will help both sides to define the main questions and interests, and to find mutually satisfactory options. In addition, we will prepare all the necessary documents (agreement on the start of mediation, agreement of the parties reached in the mediation procedure), and ensure the conditions for conducting the mediation (premises, printer, etc.).

Numbers speak 2019–2021

Resolved
complaints

3421

> **900** cases

irregularities removed

ongoing complaint procedures

75

findings

33

decisions



≈RSD 60 million for consumers

Numbers speak 2019–2021

Implemented
21
supervisions

Written
9
warnings

Pecuniary
7
penalties

INACTIVE ACCOUNTS



PRECONTRACTUAL INFORMATION



ADVERTISING



PAYMENT TRANSACTIONS



LOANS



>RSD 310 million for consumers¹

¹ The data from the previously published Report is corrected since the bank, after analyses conducted within set deadline, provided a new notification on the total effects of the one of the measures from the written notice under which the bank acted.

INTRODUCTION

This Report presents activities which the National Bank of Serbia (NBS) implements by performing its function of protection of financial service consumers. Namely, among the functions which the NBS has been entrusted with through the Law on the National Bank of Serbia is the protection of the rights and interests of consumers of services provided by those financial institutions (financial service providers) whose operations are supervised by the NBS – banks, insurance undertakings, financial lessors, voluntary pension fund management companies, payment service providers and electronic money issuers.

Therefore, through appropriate procedures of individual and collective protection, the NBS ensures mechanisms through which consumers of the services of the above providers can protect their rights and interests, though the level of protection it can offer is not the same for each of those providers. Namely, individual protection of consumers of banking and payment services, as well as financial leasing, is conducted in accordance with the Law on the Protection of Financial Services Consumers which authorises the NBS to order the removal of irregularities in relation to an individual consumer when it determines in a procedure upon a consumer's complaint² that a financial service provider has committed an irregularity. In contrast, when we have consumers of insurance services and VPF management companies, the relevant laws do not authorise the NBS to pass a decision in these procedures upon a consumer's complaint which would order the removal of an irregularity. One of the reasons for this is that complaints regarding insurance services are most often related to the resolution of damage claims, where all facts and circumstances relevant for the establishment of the amount of damage can only be determined by presenting the evidence through a hearing of experts, investigation, hearing of witnesses and similar, and these can only be conducted before a court.

Though this is not always visible in the public and among consumers (since data confidentiality prevents the NBS from publishing individual data about the undertaken supervision procedures), the most important results in terms of the protection of financial service consumers are achieved by carrying out the

² Here, a consumer means a natural person, entrepreneur or an agricultural producer, as well as a legal person when using payment services.

procedures for collective protection (supervision of market behaviour) in which the NBS, once it identifies a systemic irregularity, orders the irregularity to be removed in relation to all consumers to whom it pertains (and who are often unaware that their rights have been violated). The same applies to procedures where the NBS determines whether a bank contracted unfair contract terms or engaged in unfair business practice.

Since this Report is intended for the broader public, citizens, consumer associations and media representatives – for the purpose of better understanding the role of the NBS and its results in this area, in addition to the usual statistical data about complaints, the Report also explains the complaint procedure, as well as the NBS's position on specific disputable legal issues which have come up in our practice to date. Due to the latter, legal experts may also find the Report very interesting.

The Report also presents activities we have undertaken in order to encourage competition in the banking market, bearing in mind that competition among financial service providers is staunchly connected with the protection of the rights and interests of consumers.

The first part of the Report provides a detailed presentation of the complaint procedure implemented by the NBS, while the second part offers statistical data for the previous three years pertaining to this procedure. Part three gives examples of best practice, i.e. positions which the NBS took with regard to key disputable legal issues over the past three years in complaint procedures, as well as in supervision procedures and procedures to determine unfair contract terms and unfair business practice. Part four presents illustrative examples from concrete complaint procedures in which the NBS helped consumers. Lastly, aware that in contemporary business conditions in the banking market we cannot offer adequate protection of the rights and interests of consumers if we only rely on traditional mechanisms for supervising the implementation of applicable regulations, and that it is therefore necessary to take a step forward, i.e. give adequate regulatory and other incentives to competitiveness, because this helps raise the quality of financial services in the entire market, the fifth part of the Report presents activities carried out with this aim in mind, as well as the effects of these activities to date.

The aim of this Report is to familiarise the broader and expert public, and financial service consumers and providers about the results the NBS achieved in the area of protection of financial service consumers over the past three years.

It is solely with that aim in mind that the NBS's positions on certain disputable legal issues are presented, since it is our intention to enable the public – to the extent possible due to the limitations regarding data confidentiality – to gain an insight into the segments of financial service consumption which the NBS has advanced and the mechanisms of protection less visible to consumers.



Therefore, the NBS will react to any attempt at abuse, misinterpretation and use of its published positions for purposes other than those for which they were intended and published.

For the purpose of this Report, the presented positions, facts to which they pertain and underlying arguments have been simplified, summarised and generalised – and as such, they cannot be applied a priori directly on some similar disputable situations without previously taking fully into account the entire stance from the relevant NBS regulation and establishing concrete circumstances of each individual case in the relevant procedure.

The presented examples do not include all cases of determined irregularities of financial service providers. To the contrary, the number of cases where the NBS determined that the financial service provider committed an irregularity and in which, in a complaint procedure or a supervision procedure, such irregularity was removed – is much bigger. The examples selected and presented in the third part of the Report are in fact only the key disputable legal issues in regard to which the conduct of the financial service provider did not constitute a direct (obvious) violation of the prescribed obligations, but in order to qualify such conduct as

inadmissible it was necessary not only to determine the full factual state, but also to construct detailed legal argumentation. Also, part four of the Report presents only those examples from individual complaint procedures which we estimated to be the best illustration of the way in which the NBS helps consumers in concrete situations.

In parts three and four of the Report, the term “bank” is used in the meaning of a particular bank(s) in regard to whose conduct the NBS carried out a certain procedure within its jurisdiction and determined some irregularities, and because of the confidentiality of data obtained by the NBS in these procedures, we cannot specify the bank in question. Though cases presented in part four of the Report are given based on the conducted complaint procedures, the initials of consumers and their location are fictional because of personal data protection, and any similarity to actual persons or events is coincidental.

Information and positions in this Report do not constitute legal advice and the NBS shall not be held liable for any damages that may occur as a direct or indirect consequence of a decision that has been made or an activity that has been undertaken based on such information or positions being misinterpreted as legal advice, or an instruction to take certain legal or other actions.

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1. NBS COMPLAINT PROCEDURE – ALL YOU WANTED TO KNOW

What is a complaint procedure?

A complaint procedure is an alternative procedure for settling disputes between financial service consumers and financial service providers conducted by the NBS in accordance with its statutory mandate.

- If a financial service provider and a consumer cannot settle a dispute on their own – we are there to consider the situation without bias.
- The consumer is free to decide whether he/she will opt for the complaint procedure as a method for settling the dispute. The participation of the financial service provider is mandatory.
- Based on the regulations governing financial services and analysis of the contract and other relevant documents – we will determine who is right in the complaint procedure. If presentation of evidence such as hearing of witnesses and experts, etc. is required – the dispute must, however, be resolved before the court.
- If established that a financial service provider breached the law, good business practices or the contract concluded with the consumer – we will order the elimination of irregularities.



What recommends us:

- Authority of the National Bank of Serbia
- Expertise
- Efficiency
- Simple procedure
- No charges
- Accomplished results

Who can file a complaint?

A complaint can be filed by a consumer:

- natural person using, having used or intending to use financial services for purposes outside his business or other commercial activity,

- entrepreneur,
- farmer,
- legal person as a payment services user or electronic money holder within the meaning of the Law on Payment Services.

A complaint can also be filed by a provider of collateral for the debt of a consumer – natural person, entrepreneur, or farmer on account of using financial services (e.g. guarantor).



We focus on the protection of rights and interests of citizens, households, farmers, entrepreneurs.

Legal persons mainly have sufficient resources to be able to protect their own rights and interests. For the purpose of efficient payment operations, they can file a complaint only when having trouble executing payment transactions, trouble relating to accounts, cards, etc.

Who can a complaint be filed against?

A consumer can file a complaint against:

- banks
- lessors
- payment service providers (payment institutions, Post Office)
- electronic money issuers.



The NBS is authorised to conduct complaint procedure and order elimination of irregularities in an individual case only in relation to the listed financial service providers.

The NBS also conducts a special complaint procedure for complaints of insurance and VPF services consumers.

We cannot help you if you are having trouble with a pawn shop, investment fund, electronic communication operator, factoring company, etc.

What can be the subject of a complaint?

A complaint can pertain to different financial and payment services:

- loans
- current account overdrafts
- deposits
- leasing
- credit and debit cards
- payment accounts
- execution of payment transactions (payments), etc.

and different aspects of using financial services – providing information, withdrawal from contract, early repayment, change in interest rate, default rate, data from the Credit Bureau, closing of an account, payment card abuse, money withdrawal from an ATM, (non)execution of a payment transaction, fee increase, contract termination...

A complaint can be filed whenever you are of the opinion that a financial service provider breached your rights, acted contrary to the regulations governing financial services or a contract you have signed.

- The NBS cannot consider a complaint filed after the initiation of a court procedure, i.e. a complaint whose subject is the issue that has given rise to a court dispute.



In the complaint procedure the NBS establishes whether a financial service provider acts in line with the Law on the Protection of Financial Service Consumers, Law on Payment Services, Law on the Protection of Financial Service Consumers in Distance Contracts, Law on Contracts and Torts and other regulations governing financial services, contract concluded with the consumer and good business practices.

We do not check if financial service providers are abiding by regulations in all of their business areas (e.g. we do not address personal data protection, implementation of regulations regarding epidemiological measures, private security, environment protection, etc.).

What needs to be done before filing a complaint to the NBS?

If you think that your rights and interests have been breached, you should address the financial service provider first and request them to solve the problem.

- The complaint should be filed in writing – in any office of a financial service provider, post office, through the website (homepage) of this provider or by e-mail.
- A concise complaint is in your best interest. You must quote data about yourself which can unequivocally establish your relationship with the financial service provider (name and surname, contract number, account/loan number, etc.) and reasons for filing the complaint, i.e. what is the request behind the complaint.
- The deadline for filing a complaint to the financial service provider is three years since the day of the breach of right or legal interest, but it is best to address the financial service provider as soon as possible, i.e. as soon as you encounter a problem.

The financial service provider is obliged to confirm the receipt of the complaint immediately (unless you filed it by mail), to consider it and reply in writing within 15 days. Only exceptionally can this deadline be extended by additional 15 days, but the financial service provider must inform you thereof before the expiry of the first deadline.

In the response, the financial service provider should state clearly whether the complaint is founded or not, and if it is, whether the reasons for filing the complaint were removed, i.e. what is the deadline for their removal and what measures will be taken to remove them.

The financial service provider shall not charge the consumer any fees or any other amount in respect of the costs of complaint handling.



Do not skip this step. If you file a complaint to the NBS before you address the financial service provider in writing, we will not be able to consider your complaint.

How to file a complaint to the NBS?

- The complaint is filed by simply filling in the [form on the NBS website](#). You need to fill in all the mandatory fields in this form. It takes a few minutes only.

Consumers not accustomed to using the internet can also file a complaint by post at the address NBS, PO Box 712, Belgrade. In that case, you need to make sure that the complaint contains information about the consumer (natural person's name, surname and address and/or legal person's business name, head office, registration number, and name and surname of legal representative) and the service provider (business name and head office), the relationship between the consumer and service provider, as well as the reasons for the complaint, i.e. the request behind the complaint.

- Along with filing the complaint to the NBS, the consumer shall submit the complaint filed to the financial service provider, its reply (if any) and the documents based on which the allegations in the complaint may be assessed.

The deadline for filing a complaint to the NBS is six months from the receipt of the financial service provider's reply or from the expiry of the deadline for the delivery of such reply, but there is no reason for you to wait – if unsatisfied with the reply, file a complaint to the NBS immediately.



Enter all the required data in the complaint, describe the situation in question concisely and state your request clearly.

If the complaint is crabbed or obscure, it cannot be addressed, but the NBS will invite the consumer to make it right within a certain deadline.

What is NBS protocol for the complaint procedure?

We are here to consider closely your problem and protect your rights, but we must take into account the arguments of both parties and be objective and fair.

- When we receive your complaint, first we request the financial service provider's explanation, i.e. a statement with regard to your allegations and delivery of evidence corroborating that statement. Sometimes this is sufficient for solving the problem.

We approach every one of your complaints with commitment and full attention. If necessary, the financial service provider will be asked to provide an additional explanation, and in some cases certain additional information may be required from you.

NBS complaint procedure is conducted based on the data, information and documents obtained from the consumer and financial service provider in this procedure. In the complaint procedure, the NBS does not engage in presentation of evidence through hearing of experts, witnesses, investigation, etc.

- As soon as we have considered the situation in question in terms of adherence to the relevant regulations, you will receive our notification about the complaint finding. We manage to provide our notification to the consumers within a month on average, even though the legal deadline for the delivery is three months from the receipt of the complaint. In extraordinary, more complex cases, the deadline can be extended by additional three months at most, of which we will certainly inform you.

We have solved your problems successfully many times, but we cannot promise that this will always be the case. What we can guarantee is that:

- our starting point is our wish to help you and we do our best to do so;
- we consider carefully every one of your requests and every detail you stated (sometimes we investigate more and further than what you pointed out);
- we have understanding for your situation;
- we take into consideration arguments of both parties, and we are impartial when assessing them;
- we are efficient and we will provide you with the reply as soon as possible.



We will not give up until we have had overall picture of the problem. **If a financial service provider made an irregularity – we will order them to remove it** (and to refund your money, if that is what the complaint is about). Even if this is not the case and you do not receive the reply you wished, this will be useful as you will get a detailed and complete analysis of the specific issue and all the necessary relevant explanations.

When a complaint cannot be addressed

We approach every one of your problems with full attention because we understand how much importance you attach to the issues addressed to us. However, it is also important for us to protect our employees committed to solving the problem from any form of harassment and violent, offensive or threatening behaviour and to use the available resources for protecting those consumers whose rights are indeed violated.

- We will not consider a complaint whose contents clearly show that the objective is not the protection of rights and interests of the consumer who filed it, a complaint which clearly shows that the consumer abused the right to complain, a complaint with overall vague, trivial or offensive contents, or a complaint with the same allegations and/or requests as the complaint of the same consumer that had already been addressed.

- We will also not be able to consider a complaint with clear disproportion between the value of the subject of the complaint and costs of the procedure.

There are certain prescribed procedural obstacles to conducting the complaint procedure.

We cannot address a complaint:

- filed to the NBS before a complaint was made to the financial service provider, i.e. before the expiry of the deadline for the service provider to respond to the complaint;

- if the prescribed deadlines expired (if the complaint was made to the service provider after more than three years since the breach of right or interest

or if the complaint was filed to the NBS more than six months after the receipt of the financial service provider's response to the complaint, i.e. since the expiry of the deadline for the delivery of the response);

- when the subject of the complaint is or was the subject of a court dispute;
- if the consideration of the complaint requires presentation of evidence which the NBS cannot do in the complaint procedure (hearing of experts, witnesses, investigations, etc.).



There are only three preconditions for initiating the complaint procedure – that the subject of the complaint is not (and was not) the subject of a court dispute, that the complaint was first made to the service provider and that the prescribed deadlines did not expire.

Pay attention to these three.

If you addressed the NBS to protect your rights and gave us your confidence, please refrain from offences, threats, harassment, etc.

What are the costs of complaint procedure?

The NBS charges no fee for the complaint procedure. A financial service provider is not allowed to charge a fee to the consumer for addressing the complaint.

Therefore, if you file a complaint and submit the accompanying documents in the form on the NBS website – the complaint will be free of charge.

Even though the initiation of the complaint procedure and the participation in the procedure require no special legal knowledge, sometimes consumers decide to hire a lawyer and submit along with the complaint a request for the NBS to order the financial service provider to reimburse representation costs. One should bear in mind that potential costs incurred by the consumer or financial service provider in this procedure are not decided by the NBS, and that each party bears their own costs regardless of the outcome.



Fill in the complaint form on the NBS website and you will bear no costs.

What is the outcome of the complaint procedure?

The complaint procedure ends with the delivery of the notification about the finding concerning the consumer complaint. This notification contains a detailed analysis of the dispute and regulations applied to this dispute. If it is established that a financial service provider made an irregularity, the notification also contains the proof that such irregularity has been removed or precise information stating when and how it will be removed.



Upon the completion of the procedure, each consumer who filed a complaint will receive a written notification on the findings of the complaint with a clear and reasoned position of the NBS stating whether the financial service provider made an irregularity and breached their rights in the specific case.

The consumer may, at any point, withdraw the complaint and end the procedure in that way. However, the completion of the complaint procedure has no effect on the NBS's authority to order the financial service provider by a decision to remove established irregularities and/or fine the financial service provider in accordance with the law.

What follows after the complaint procedure?

- If the NBS establishes that a financial service provider made an irregularity and/or breached a consumer's rights – the irregularity will be removed, and the consumer adequately compensated for. When, for instance, in case of payment card abuse, the NBS assesses that a financial service provider did not make it certain (beyond reasonable doubt) that the consumer, intentionally or due to gross negligence, did not take all the reasonable and appropriate measures to protect personalised security card elements – the NBS will, in line with the law,

order this provider to bear all the losses incurred as a result of unauthorised payment transactions above RSD 3,000.

- If the outcome of the complaint procedure is not satisfactory for the consumer (the NBS establishes that a financial service provider did not make an irregularity in a specific case, or the complaint relates to the circumstances for the establishment of which it is necessary to present evidence which the NBS cannot do in the complaint procedure) – not everything is lost yet.

The consumer may propose the resolution of the dispute in an out-of-court procedure – mediation procedure before the NBS. Mediation procedure may be proposed even before filing a complaint and before the completion of the complaint procedure.

Mediation may be conducted only with the financial service provider's consent.

Many disputes have been resolved in the mediation procedure.



Around 16% of mediation procedures end in agreement.

If you come to an understanding with the financial service provider in the mediation procedure, we will make a written agreement with the power of an enforceable document (which does not have to be certified by court or public notary). This means that a consumer may request enforcement, if, for example, a financial service provider does not pay the agreed amount of money within the set deadline, based on the agreement.

Each party may decide to withdraw from the mediation procedure at any stage.

The mediation procedure is confidential and urgent. The NBS does not charge any fees for carrying out the mediation procedure, while any costs that may arise during the mediation procedure are borne by the parties (representation costs, travel and accommodation costs, unpaid leave from work, etc.).

What is the purpose of the data collected by the NBS in the complaint procedure?

NBS complaint procedure is conducted based on the data, information and documents obtained from the consumer and financial service provider in the procedure. These data also include personal information of a consumer, whose processing is done by the NBS in accordance with the law governing personal data protection and other regulations. When consumers file a complaint to the NBS, they give approval to the NBS to process those data.

The purpose of collecting and further processing these data is to resolve the dispute between a consumer and a financial service provider and determine whether the provider adhered to the provisions of the law governing the protection of financial service consumers, other regulations governing these services, general terms of business and good business practices in relation to those services, as well as contractual obligations. Therefore, the NBS obtains these data and processes them solely for the purpose of performing its statutory tasks defined by the laws governing the protection of financial service consumers, laws governing these services and regulations passed based on these laws.

The withdrawal of consent for processing the data is considered the withdrawal of the complaint, and results in ending of the complaint procedure.



Be at ease – we treat your personal data with caution and in line with regulations and do not use them for purposes other than the resolution of your dispute with the financial service provider and establishment of whether this provider adhered to regulations.



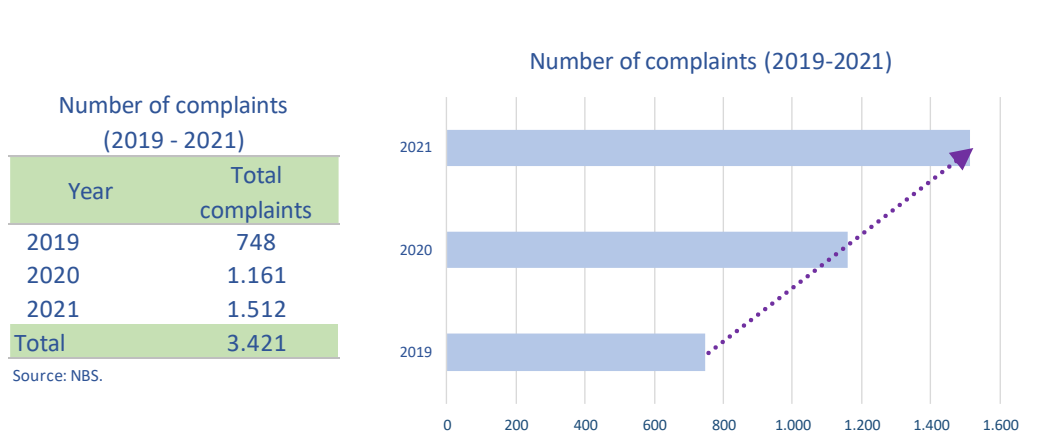
2. STATISTICAL DATA ON COMPLAINTS, MEDIATIONS, ETC.

Complaints

Increase in the number of complaints

In the period between 2019 and 2021 the NBS resolved 3,421 consumer complaints.

This period saw a rising trend in the number of consumer complaints as a result of several factors, but particularly NBS activities aimed at improving the protection of rights and interests of financial service consumers, which led to a significantly greater efficiency of the complaint procedure.



Greater efficiency of the complaint procedure

Owing to NBS regulatory activities in 2019 and 2021, greater efficiency in complaint procedures was ensured.

Communication with consumers improved – a channel enabling filing of complaints from home, without any costs, was established. An e-form was put on the NBS website. It takes consumer a few steps to fill in the mandatory information and documents. When mandatory fields are filled in (which can be done very fast and easy), the complaint is filed and can be addressed immediately.

The duration of the complaint procedure was shortened in practice. Instead of the prescribed three months, the average duration of the procedure was cut to around one month.

More than a quarter of complaints were resolved to the benefit of the consumer

Of the total number of resolved complaints, 929 of them were founded which means that 27.2% of complaints were resolved to the consumers' benefit.

Number of complaints per financial service provider (2019-2021)

Financial service providers	Total	Founded complaints	Unfounded complaints	Share in %
1	2 (3+4)	3	4	5
Banks	3.402	925	2.477	99,4
Financial lessors	9	2	7	0,3
Payment institutions	9	2	7	0,3
E-money institutions	1	0	1	0,0
Total	3.421	929	2.492	100,0

Source: NBS.

One should not lose sight of the fact that only those complaints reach the NBS which could not have been resolved in the complaint procedure before the financial service provider. In other words, all the issues where the consumer is clearly right, on which the NBS has already taken a stand by fining a bank and/or ordering the removal of irregularities in some of the procedures conducted – shall, as a rule, be resolved in the complaint procedure with the financial service provider, while those disputes where it is not immediately obvious if there is a breach of consumer's right (but facts need to be established, relevant regulations interpreted, legal stances adopted) will reach the NBS.

Further, the complaint procedure is free of charge. It is simple and does not last long. Hence, consumers often decide to address the NBS even if it is highly unlikely that their right has been breached so they could find out what the NBS's position on a certain issue is (and they are also educated in this way) and assess their prospects in the event they decide to protect their rights in a procedure before some other institutions.

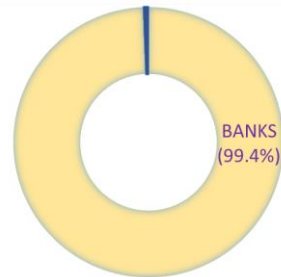
It is mostly natural persons who file complaints

Natural persons account for the majority of consumers who address the NBS to protect their rights and interests (over 90%).

Around 4.5% of complaints were filed through lawyers, of which 15% were founded.

Most consumer complaints were filed against banks, concerning the use of loans and payment cards, as well as payment transactions.

Observing complaints by financial service provider, most complaints were filed against banks (99.4%), while the number of complaints against other financial service providers is negligible (0.6%).³



The NBS resolved 3,402 complaints against banks, of which 925 complaints were resolved to the benefit of the consumer (27.2%).

The following table shows more detailed data about consumer complaints against banks, with the number of resolved, founded and unfounded complaints and the type of financial services.

Number of complaints against banks by type of service with number of resolved, founded and unfounded complaints (2019 – 2021)

Type of service	Resolved complaints	Founded complaints	Unfounded complaints	Resolved complaints (in %)
1	2 (3+4)	3	4	5
FX savings	64	9	55	1,9
Dinar savings	16	3	13	0,5
Other	2	0	2	0,1
Deposit business	82	12	70	2,4
Cash loans	703	169	534	20,7
Other loans	290	27	263	8,5
Consumer loans	159	30	129	4,7
Housing loans	326	86	240	9,6
Loans for entrepreneurs	8	2	6	0,2
Loans for farmers	14	6	8	0,4
Refinancing loans	103	17	86	3,0
Loans	1.603	337	1.266	47,1
Debit cards	200	75	125	5,9
Credit cards	358	116	242	10,5
Payment cards	558	191	367	16,4
Payment accounts/payment services	1.086	371	715	31,9
Account overdrafts	35	7	28	1,0
Other	38	7	31	1,1
Total	3.402	925	2.477	100,0

Source: NBS.

³ Insurance undertakings are not included.

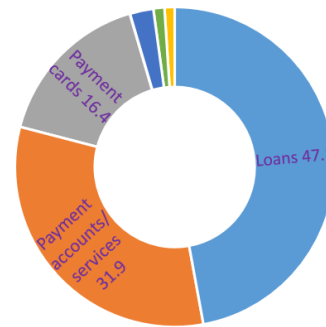
In the observed period, the majority of complaints against banks concerned loans (47.1%), payment accounts/services (31.9%), and payment cards (16.4%).

On the other hand, looking at whether the complaints against banks were founded, we emphasise that most founded complaints concerned payment accounts/payment services (as much as 40%).

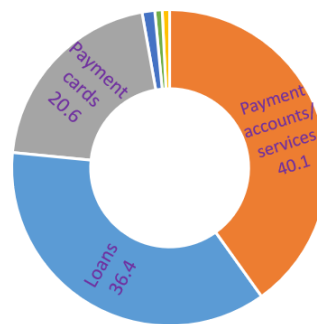
In case of all three reasons for complaint, a rising trend in the number of complaints is discernible, particularly for loans.

The increase in the number of complaints in respect of these financial services was accompanied with a rise in the number of founded complaints on those grounds.

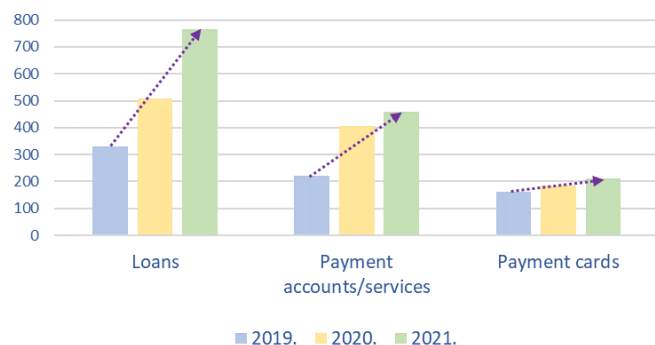
Complaints (banks) by type of service (in %)



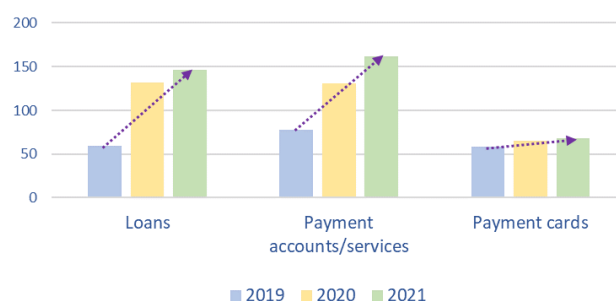
Complaints (banks) by type of service, resolved, founded and unfounded complaints (%)



Complaints against banks by type of service

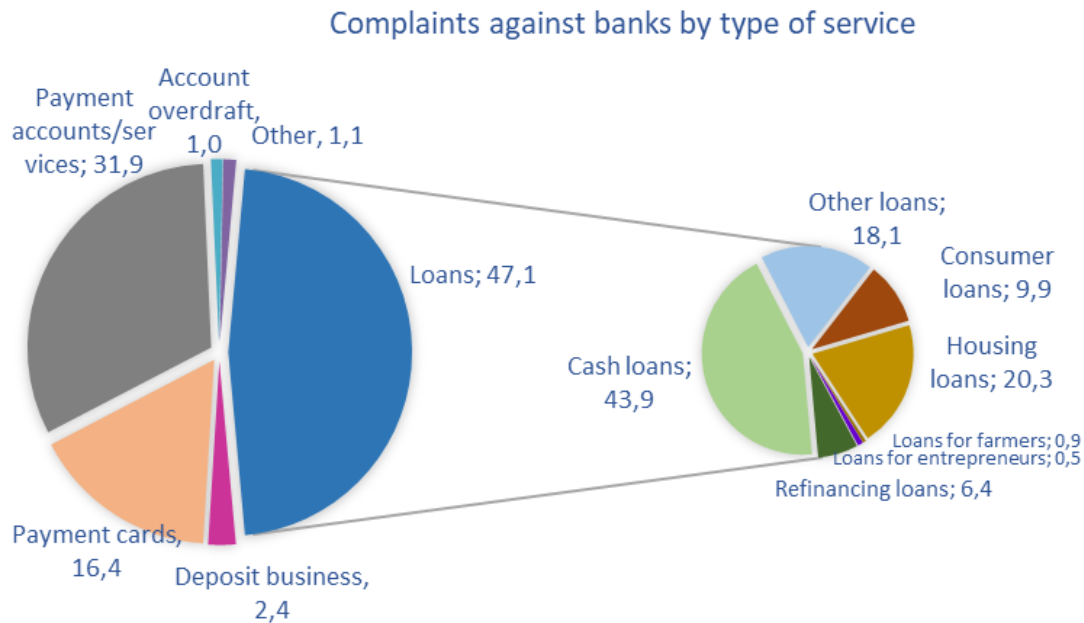


Founded and unfounded complaints against banks by type of service



At the end of the observed period, the number of complaints concerning loans and payment accounts/payment services, as well as the number of founded complaints in respect of this financial service, more than doubled.

What follows is the chart presenting the share of resolved complaints by type of financial service in percentages, with complaints shown by type of loan bearing in mind the number of such complaints.



The most frequent consumer complaints are those concerning payment transactions and records of the Credit Bureau.

The most frequent complaints against banks were those that stated the following as the reason for the complaint:

- Payment transaction (over 10%). Consumers believed that the payment transaction was unauthorised, they had problems concerning the execution of an international payment transaction, they could not use their own funds;
- Data of the Credit Bureau (around 9%). Consumers believed the recorded data were incorrect, that default data were not deleted in time, that the default was unfoundedly recorded or recorded with a delay;

- Suspension in the settlement of liabilities (moratorium) (around 8%) – calculation of interest during the suspension, (non)acceptance of the suspension, non-delivery of the repayment schedule;
- Opening, keeping and closing of accounts (over 4%) – impossibility to close the payment account.

The NBS focuses on complaints concerning payment card use for online payments and ATMs due to potentially large material damage that can be incurred for the consumer within a short period.

In founded complaints that concerned the execution of payment transactions – the average immediate material effect per consumer (complaint) amounted to around RSD 80,000.

Mediation

With the NBS participation in the mediation procedure – around 30% mediation procedures were resolved amicably.

In the period between 2019 and 2021, 137 proposals for mediation in disputes between consumers and banks were submitted, of which 52 proposals (38%) were accepted. Most mediation proposals were submitted by financial service consumers (around 90%), dominantly after the end of the complaint procedure (over 55%).

In the observed period, 50 mediation procedures were completed, mostly concerning the use of loans, payment accounts and payment cards. Owing to NBS participation in the procedure, 30% of mediation procedures were resolved, in a way that parties in the procedure concluded the agreement before the NBS (16%) or ended the dispute amicably without the agreement before the NBS after the completion of the procedure (14%).

Conducted mediation procedures (2019 - 2021)

Year	Agreement	Settled amicably	Termination	Withdrawal	Total
1	2	3	4	5	6 (2+3+4+5)
2019	5	0	15	0	20
2020	1	5	7	1	14
2021	2	2	9	3	16
Total	8	7	31	4	50

Source: NBS.

We also enabled distance mediation using means of e-communication.

Epidemiological situation, particularly in the beginning, significantly decreased the number of mediation procedures.

Amending regulations, the NBS enabled distance mediation using the appropriate means of e-communication, when this is assessed as necessary and when parties to the dispute have the right technical conditions in place. We expect this will increase the number of mediation procedures, because now the parties can try to resolve their dispute, with the assistance of an NBS mediator in a simpler manner, using video-call or online meeting applications.

Overall financial effect of NBS activities

The immediate financial effect of NBS activities in the complaint, mediation and supervision procedures for the consumers in the observed period was around **RSD 370⁴ mn**, but the financial effect could not be calculated in all cases.

Informing citizens and financial education

Conducting its educational and information dissemination activities, the NBS continuously familiarizes consumers with their rights and protection procedure.

⁴ The data from the previously published Report is corrected since the bank, after analyses conducted within set deadline, provided a new notification on the total effects of the one of the measures from the written notice under which the bank acted.

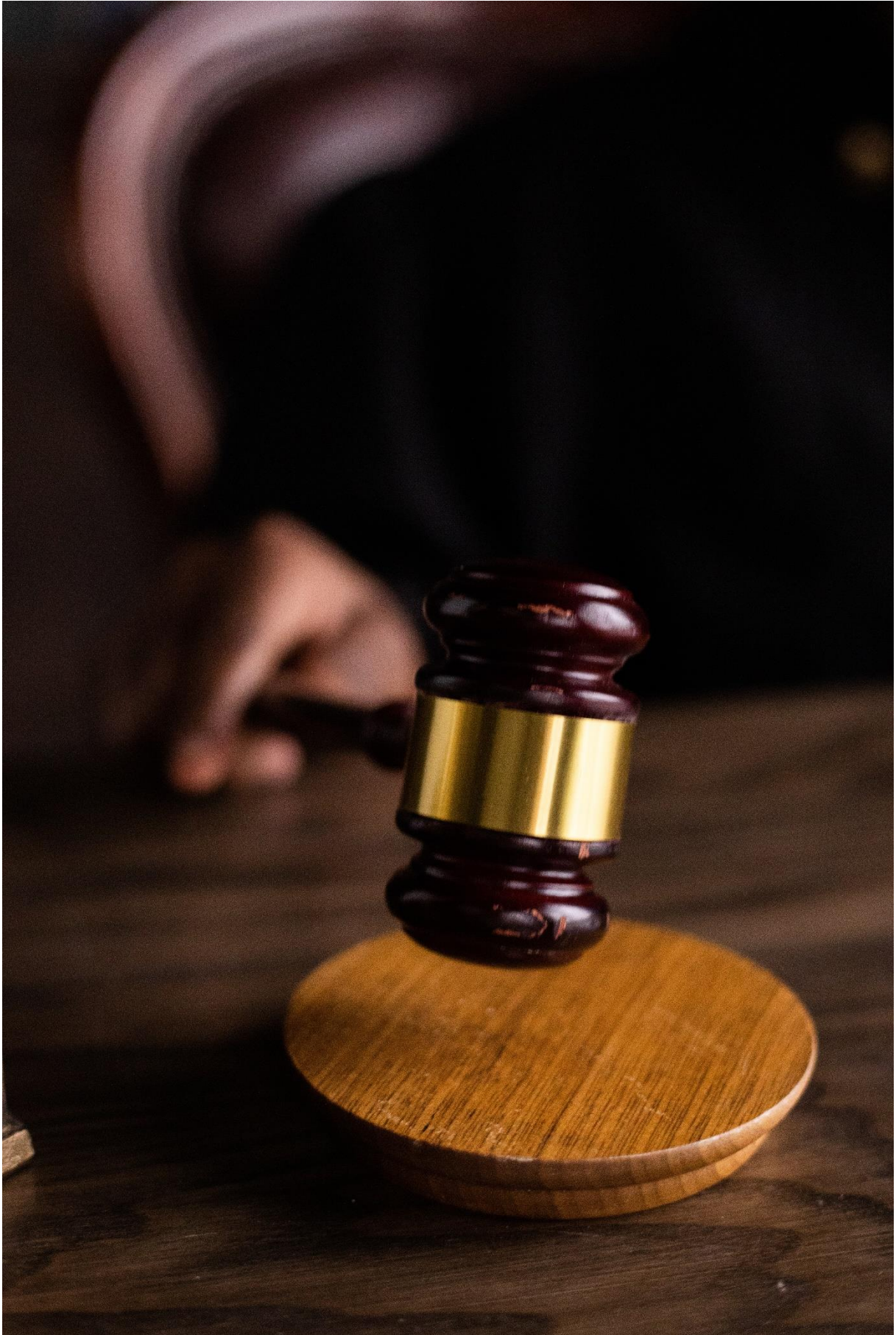
The NBS Info Centre answered around 45,700 consumers' calls, while almost 3,800 consumers addressed regional offices for financial education in NBS branches.

On its website, the NBS placed a special [form](#) – communication channel intended solely for immediate informing of citizens, concerning consumer protection, and other areas within NBS mandate. Citizens will receive a reply to any question concerning NBS mandate, asked in this form, by e-mail, as soon as possible.

Around 5,700 consumers asked the NBS different questions concerning financial services and received an appropriate response.

In order to inform the public, the NBS answered around 150 journalist queries concerning financial services and consumer protection (answers to queries from the press/electronic media, statements by phone, etc.).

One of the channels of consumer education aimed at improving information dissemination and understanding of financial products and services are educational panels implemented through coordination of regional financial education offices in NBS branches. 95 educational panels were held in 47 towns, through 205 presentations/workshops with the participation of around 3,760 consumers – citizens, students and entrepreneurs. Due to the epidemiological situation and containment measures, in the last two years, activities were mostly oriented to "[Your money](#)" – a special website for financial service consumers that is constantly updated.



3. NBS'S POSITIONS ON KEY LEGAL ISSUES – HOW WE SHAPED THE PRACTICE OF FINANCIAL SERVICE PROVIDERS

This part of the *Report* provides an overview of the positions adopted by the NBS in the past three years with regard to key legal issues arising in complaint procedures, supervisory procedures and procedures for identifying unfair contract terms and unfair business practices. In this way, the NBS significantly shaped the practice of financial service providers and upgraded the level of consumer protection. Namely, even the positions adopted by the NBS in individual complaint procedures (and not only in collective consumer protection procedures) have had an important impact on the future conduct of financial service providers with respect to all their consumers. This is mainly because the identified desirable line of conduct in a specific disputable situation, or a well-reasoned interpretation and application of contractual provisions to a specific issue, are most often accepted by other financial service providers as well, as examples of the best practice in the market.

Loans

Applying for authorized overdraft was not allowed during maternity leave (discrimination against pregnant women and women on maternity leave)

The NBS established that a bank did not allow a woman on maternity leave to apply for authorized overdraft extension because she receives a compensation of salary during maternity leave, and the bank's credit policy and the loan request application set out that salary and pension are the only regular income making a person eligible for filing a loan application.

The NBS judged this bank's conduct to be discriminatory.

Though banks are free to choose their clients (and have both the right and the responsibility to manage credit and other risks to which they are exposed in their business) and there is no guaranteed client right to any of the bank's services (other than the right to have a basic payment account), such conduct of the bank has been judged as not permissible from the aspect of the right of financial services consumers to protection against discrimination, since the woman on

maternity leave was not even allowed to have her loan application considered or her creditworthiness determined because during maternity leave she does not earn a salary but a compensation of salary. Though the woman on maternity leave had previously been creditworthy, the bank now even denied her the option of re-evaluating her creditworthiness, though it is evident that the credit risk for a woman on maternity leave cannot be higher than when the same consumer is earning a salary and is not on maternity leave (while the consumer can lose her job or have her salary reduced during the authorized overdraft contract, a consumer on maternity leave has a guaranteed income, known in advance, for the duration of such leave, as the compensation of salary during this time is guaranteed by the Republic of Serbia in the full amount of her average salary in the past 18 months).

At the NBS's order, the bank rectified the irregularity (it apologized to the woman on maternity leave, provided a corresponding material compensation and allowed the authorised overdraft). In order to prevent this situation from happening again in the case of other pregnant women and women on maternity leave, the NBS ordered the bank to reconsider and review its credit rules and application solutions which do not support loan product applications to be filed and approved to consumers earning a compensation of salary while on maternity or pregnancy leave.

Requesting the opening of an account with the bank as the precondition for filling a loan application (unfair business practice)

The NBS defined as unfair the business practice of a bank which requested consumers to open an account with the bank and be issued a card before being allowed to file a loan application. Consumers who opened the account and took the payment card only because they needed a loan were charged the card issuance and/or account maintenance fee by the bank even if the loan subsequently was not approved to them. Moreover, the bank promoted this product as a loan which is guaranteed to be approved and is not contingent upon the fulfilment of any conditions by the consumer.

Such conduct was assessed as unfair and misleading business practice. Namely, in contravention of professional diligence rules, the bank misled

consumers into making an economic decision they would not otherwise have taken (to open an account and take a card for which they will be charged a fee, which they would not have done if the bank had not misled them into believing their loan would be approved).

The NBS ordered the bank to discontinue such practice and fined it, requesting that it return money to the consumers to whom it charged this fee.

The above position of the NBS does not mean that the bank must not bundle a current account contract with a loan agreement or consolidate these two financial services. Namely, a bank may request that, in order for the loan to be disbursed, the client must open an account with such bank which would serve for loan repayment and/or as collateral. In other words, this position does not mean that the bank is not entitled to request the consumer to open a current account with such bank prior to loan disbursement.

Treatment of excess payment as early repayment

The loan agreement usually sets down a procedure to be complied with by a consumer intending to make early loan repayment (they must apply for early loan repayment and obtain the debt balance statement, make the payment within a certain time period after obtaining the debt balance statement, etc.).

The NBS has established that consumers frequently, without announcing early repayment and verifying the exact debt balance, made payments of amounts which corresponded approximately, but not fully, to the balance of debt under a loan. The payment is, in fact, often made by another bank with which the consumer has taken out a refinancing loan. In such circumstances, the bank receiving the funds did not effect early repayment, but treated the funds as excess loan repayment and continued to use this amount to settle monthly instalments under the repayment schedule. Banks justified such conduct by claiming that the consumer did not apply for early repayment (which they are required to do under the agreement and the Law on Contracts and Torts) and that the payment amount did not entirely correspond to the balance of debt under the loan.

In this case, though he believes he has made early loan repayment (by crediting funds to the bank's account), the consumer still has remaining debt under the loan, of which he only becomes aware after a while upon receiving the

bank's notification on the balance of debt under the loan (delivered twice a year), when he files for a new loan and receives data from the Credit Bureau or when all credited funds are used up for regular repayment and the borrower receives a warning from the bank.

In order to avoid such situations, the NBS has delivered an opinion to all banks stating that, if the consumer's behaviour is such that it clearly signals the intention to make early repayment and even if the consumer had not previously complied with the agreed procedure, the bank is required, in line with good business practice, to contact the consumer immediately and refer him to the procedure and/or the activities he needs to take in order to settle loan obligations through early loan repayment.

In the same opinion, it was pointed out that banks approving refinancing loans ought to approve such loans based on a statement on the balance of debt under the loan being refinanced and instruct their clients about the steps which, according to the banking practice so far, the consumer needs to take in order to complete early repayment.

The NBS did not stop at this. It also issued an Instruction on Loan Refinancing by Loan approved by Another Bank, which completely resolved this issue and transferred all activities relating to early loan repayment to the bank with which the consumer is taking out a loan. This Instruction also bolsters competition among banks, increases consumer mobility, accelerates the loan approval procedure and ensures authorised use of the loan.

Charging a higher interest rate in case of job loss (unfair contract terms)

The NBS has identified as unfair the contract terms giving a bank the right to charge a higher interest rate to a consumer during loan repayment if the consumer no longer has regular income to the bank account due to job loss.

In the loan agreement with the consumer regularly receiving his monthly salary to the account with the bank, the bank stipulated a (more favourable) interest rate, but also the right to raise this interest rate if the consumer does not receive salary income to the bank account for two months in a row. In itself, the contractual right for the bank to raise the interest rate during loan repayment in case of an increase in credit risk or the cessation of specific conditions under

which the loan was approved is not disputable. However, the NBS judged it disputable that in this case the bank, using its contractual right to verify client categories each month, classified the client into the second category and applied a much higher interest rate, without taking into account the fact that the client's salary was not paid to the bank's account because the client lost his job (and not, for example, because his salary was transferred to another bank).

In this way, the bank made the financial position of the consumer who lost his job even more difficult. Such conduct is not even in the interest of the bank, since a higher interest rate, loan instalment and total debt of the consumer increase the likelihood that the consumer will not be able to settle his obligations to the bank.

The NBS has prohibited the contracting and application of such unfair contract terms.

Grounds for terminating a loan agreement (unfair contract terms)

The NBS has established that banks' formulations of the grounds for unilateral termination of loan agreements by banks are vague and imprecise (e.g. if the consumer acts in breach of *any* contractual provision, or *any* of the data, information or documents submitted by the consumer to the bank cease to be accurate or up to date). They include even those events which in their nature and material significance do not impact the consumer's ability to regularly settle his loan obligations (e.g. if the user fails to regularly settle any other of his obligations to the bank, including authorised overdraft, account maintenance, etc.), leaving to banks a wide margin of discretion to terminate the agreement in practically any situation. In some cases, banks even contracted that, in case of occurrence of any of the foreseen circumstances, the agreement would terminate automatically (without notice of termination and the possibility for the consumer to eliminate the grounds for termination) and the entire remaining loan amount would immediately fall due for payment.

The NBS judged these provisions to be unfair and prohibited their contracting and application.

Because of the substantial consequences triggered by the activation of the bank's right to terminate the loan agreement (the entire remaining loan amount

falls due), particularly in the case of housing loans, the NBS adopted the position that the bank may not terminate the loan agreement unilaterally for any of the reasons agreed by the bank and the consumer. The main purpose of the loan taken by the consumer from the bank is to procure a certain amount of money (which is significant for the consumer), which the consumer can only repay to the bank through instalments, over a longer time period. For this reason, the termination of the agreement whereupon the entire loan amount falls due should be the measure of last resort (*ultima ratio*), taken only when it is completely certain that the bank will only be able to collect all or at least a part of its receivables from collateral and/or in the enforcement procedure.

For this reason, the NBS holds contractual provisions regulating grounds for terminating a loan agreement must be defined clearly and unambiguously and be limited to those events and circumstances which in their nature and material significance are such as to actually inflate the credit risk and/or affect the bank's ability to collect its receivables.

Though the procedures taken by the NBS have shown that banks have so far mostly not applied the disputable provisions and not terminated loan agreements in case of some less important events affecting the consumer's ability to repay the loan (though this possibility was agreed), the NBS responded by prohibiting their contracting and application. It did so because the mere possibility for a bank to apply this provision at some point (and some banks warned their consumers that they may terminate the agreement in those cases as well and displayed readiness to do so) creates a significant disproportion between the rights and obligations of contractual parties, to the damage of consumers.

Obligations under the loan agreement after the consumer's death

Under the Law on Contracts and Torts, a bank may terminate a loan agreement in case of the consumer's death if this places her in a significantly less advantageous situation. Heirs inherit not only the property but also the obligations of the testator, i.e. they are liable for the testator's debts up to the value of the inherited property. The inheritance procedure which determines the heirs, the level of their inheritance parts, etc. can last for a while. During that time, the bank does not collect its receivables and the debt under the loan goes up

because default interest is charged. Therefore, in most cases, it is in the interest of both the bank and the future heirs to enter into an assumption of debt agreement as soon as possible and carry on with regular repayment.

For this reason, it is the position of the NBS that, as soon as the potential heir of a deceased loan user submits notification of such user's death (appropriate document), the bank should appropriately inform this person and take all measures needed to enter into an assumption of debt agreement, if the necessary preconditions for this have been met. In other words, the NBS holds that the bank should not wait for the inheritance procedure to be completed, but that it should enter into an assumption of debt agreement with the potential heir or another person which has a legal interest in this matter and has identified itself appropriately as such to the bank, if such person displays interest in doing so.

Charging a fee for issuing a dunning letter which was not agreed

A bank frequently sent warnings for overdue loan debt to the consumer and charged a fee for this though no such fee had been agreed. In charging the fee, the bank relied on the general terms and conditions of the bank which apply to all matters not envisaged by the loan agreement. The NBS, however, adopted the position that, unless the loan agreement foresees the costs of issuing dunning letters (which are not even included in the list of mandatory elements of a loan agreement) or sets down the frequency of issuing such letters, the bank may not charge these costs from the consumer.

In other words, a bank may issue dunning letters to consumers who are late in meeting their contractual obligations and charge a fee for their issuance, but it must define the amount of such costs and the frequency of issuance of dunning letters in a contract, and may not change them without the consumer's written consent. These costs can also be agreed upon as variable, but only so as to depend on the officially published elements which are of such nature that they cannot be influenced by the unilateral will of any of the contractual parties (e.g. the consumer price index).

The bank was ordered to return to the consumer the amount of fees charged for the issuance of dunning letters that were not contractually agreed.

Interest rate in the event of default

The NBS has established that banks contract and charge a special, extremely high default interest rate to consumers in some cases of default (e.g. 0.5% daily on the total amount of the due instalment for each day of delay). Because such high interest rate was applied to arrears, the consumer's debt spiralled up from day to day.

The Law on Contracts and Torts sets out that the borrower who is late in the performance of a financial obligation owes, in addition to the principal, also the default interest at a rate determined by law. If the agreed (regular) interest rate is higher than the default rate, it will continue to run even after the borrower's delay. The Law on Contracts and Torts also sets out that it is possible to stipulate in advance that the interest rate will increase if the borrower fails to pay the interest on time, but it also explicitly states that this possibility does not apply to banks and contracts they conclude as part of their credit transactions.

The NBS adopted the position that these provisions should be interpreted as follows: banks may not stipulate a special interest rate to be applied in the case of default, i.e. when a consumer is in default, it is only possible to apply the legal default interest rate or the agreed (regular) interest which was applied before the default. In other words, after a consumer defaults on his debt, the bank may continue to charge the agreed interest rate on such consumer's obligations, but this may only be the rate which was applied to regular debt servicing and not some special (higher) interest rate.

Deposits

Time deposit agreement after the depositor's death

A bank entered into a three-year time deposit agreement with the consumer, applying the interest rate valid for deposits termed for this period. During the term of the agreement, the consumer passed away and from that moment the bank began calculating interest at a much lower rate applied to demand deposits, considering that the time deposit agreement had ceased to

produce effect after the depositor's death and that his heir was not entitled to receiving the agreed interest rate from the bank.

The NBS adopted the position that a deposit agreement may not be considered an agreement the subject of which are obligations created as a result of the personal characteristics or personal capacities of the consumer, and that the obligations arising from this agreement do not therefore end with his death. For this reason, the bank is required to calculate interest on the deposit at the agreed rate until the end of the term period even in case of the consumer's (depositor's) death, unless the time deposit is closed before the end of the contractual period or other grounds for termination stipulated in the contract occur.

Payment services

Inactive accounts and expired receivables

The NBS has established that a bank has an immense number of inactive consumer accounts (accounts in respect of which no payment transactions were made at the consumer's order and/or to which there was no inflow in the past several years) and receivables in respect of such accounts which are greatly overdue (in respect of uncovered cheques realised a long time ago, authorised overdraft, maintenance fees and interest). In many cases, consumers were not even aware that the account has not been closed and that a bank has some receivables from them in respect of such account, as they last had contact with the bank several years ago and the bank did not inform them about the debt afterwards. Typically, they would only learn of the debt when they applied for a loan with another bank (based on records from the Credit Bureau). The bank wrote off expired receivables eligible for write-off only when the consumer, having learnt of such current account debt, contacted the bank and requested the write-off.

The NBS ordered the bank to conduct an in-depth analysis of all inactive consumer accounts and to write-off those receivables which, under the Law on Contracts and Torts, have expired. In particular:

- For all receivables relating to the inactive account for which the consumer did not make payments for five or more years (account running or maintenance fee, interest on authorised or unauthorised overdraft or other periodical payments relating to the account) – to write off all receivables in this respect (if, in this period, there was no interruption of the limitation period under the law and/or if the limitation period was interrupted but five or more years ago), because the right itself being the ground for periodical payments has expired, which means that the bank has lost the right to request not only future periodical payments but also the periodical payments due before this right expired;

- For periodical receivables relating to the inactive account where the right itself being the ground for periodical payments has not expired – to write off as expired each individual (periodical) receivable which fell due three or more years ago (if, in this period, there was no interruption of the limitation period under the law and/or if the limitation period was interrupted but three or more years ago);

- For receivables relating to inactive accounts which are not periodical (e.g. receivables in respect of issued cheques) – to write off all receivables which have expired more than 10 years ago.

The total material effect for consumers topped RSD 159.85⁵ mn in the case of one bank only.

Also, in order to remove the negative consequences sustained by consumers due to the bank's omissions with regard to its receivables from inactive accounts, the bank was ordered to update data in the Credit Bureau for all expired receivables in respect of these accounts, by recording them as receivables written off as at their date of expiry.

⁵ The data from the previously published Report is corrected since the bank, after analyses conducted within set deadline, provided a new notification on the total effects of the one of the measures from the written notice under which the bank acted.

Online card misuse – shared responsibility

When it comes to the liability of the payment service provider – bank for unauthorised payment transactions, the Law on Payment Services envisages a gradation – from full to no liability of the bank.

It is a general rule that the bank is liable for the execution of a payment transaction for which there is no authorization (unauthorized payment transaction) and that it is required to return the amount of the transaction to the payer immediately upon learning that an unauthorised payment transaction has taken place (e.g. when a bank doubles a transaction because of a technical issue – executes the transaction twice in the same amount and the consumer only consented to one such transaction).

The Law on Payment Services envisages shared responsibility of the payer (consumer), liable for up to RSD 3,000, and the bank, liable for the remaining amount of an unauthorised payment transaction, in two specific situations:

- When the transaction was executed through card misuse, but did not involve the use of personalised security features (personal identification number, one-time password, etc.). This can be the case when a stolen or lost payment card is used (misused) to make online payments (without using the one-time password);
- When the transaction was executed though card misuse, but personalised security features were used, e.g. a correct personal identification number (PIN), when this security feature was known to the person misusing the payment card, because the payer did not manage to protect this personalized security feature.

In order for banks to be released from liability for losses exceeding RSD 3,000, they need to prove and/or make certain (beyond reasonable doubt) that the payer acted fraudulently or that he failed, with intention or out of gross negligence, to fulfil his obligations relating to card use, protection of personalised security features and notification of the bank on the loss, theft or misuse of the card.

In other words, if a card is misused to make internet payments worth e.g. RSD 30,000, there is an assumption of shared responsibility under which the consumer will be liable for RSD 3,000 of the loss, while the bank will compensate to him the remaining RSD 27,000. It is the NBS's position that the bank may not be freed from the liability for RSD 27,000 by proving that the person which misused the card entered correct data on the card holder, card number, card expiry date and the CVV number, i.e. that this fact in itself does not prove that the consumer did not, intentionally or out of gross negligence, take all reasonable and appropriate measures relating to card use and protection of security features. It is up to the bank, depending on the circumstances of each specific case, to decide how to prove or make certain (indirect evidence) that the payer acted fraudulently and/or that the payer acted intentionally or with gross negligence in meeting his prescribed obligations. This can also include indirect evidence relating to the manner in which the consumer stored the card and the PIN, the manner in which he uses the payment card and payment instruments in general, the manner in which the person which misused the card uses the card, historical data relating to card use by the given consumer and his use of other bank products, which may indicate a pattern of consumer behaviour. The arguments and evidence submitted by the bank and the consumer are considered both individually and as a whole in the context of specific circumstances of each individual case.

In any case, the practice so far indicates that if, for instance, the consumer photographed his cards and sent these photographs to other persons, this can be taken as evidence of gross negligence of the consumer, which means that, in case of misuse of the card, the consumer is liable for the entire amount of the loss.

Where a card has been misused using the PIN and the camera footage shows that the person using the card is reading this number from a note, this signals gross negligence in protecting the secrecy of the PIN code by the consumer and the latter is therefore fully liable for the loss sustained through card misuse.

*Technical problems in the functioning of the bank's systems
temporarily disabling consumers' disposal of funds in accounts –
responsibility of payment service providers*

Contemporary banking operations almost fully rely on information technologies and systems. Operational risks connected with the functioning of information systems cannot be entirely eliminated, not even in banks that are obliged to comply with high information security and risk management standards. Such risks materialise most often with status changes (bank mergers and acquisitions), significant changes in bank information systems, major organisational changes, or in case of incidents in everyday work (interruptions to payment transactions, doubling of reservations and/or recording of payment transactions, delayed recording of foreign inflows), which can temporarily hinder consumers from using funds in their accounts. Such occurrences are customary and take place in all countries and all banks. However, there are standard procedures (activities) that are complied with and undertaken in case of incidents, and the protection of rights of payment service consumers is in the focus of those activities.

Regardless of banks' obligations to report major incidents, establish and activate rapid response mechanisms for the purpose of detecting and eliminating the causes of these incidents and ensuring unimpeded provision of services – through its practice, the NBS has defined a stance that banks are obliged, in reasonable cases, to compensate in a way to consumers for the damage they suffered because, due to technical problems or other omissions in the functioning of bank systems, they were temporarily unable to use funds in their accounts in particular amounts (e.g. due to double reservations, the available funds in the consumer's account were lower than normal or consumers could not pay with their cards due to malfunctions).

The NBS stance is such that in these incidents, in particular cases, if it is not possible to use funds in accounts for a longer period (e.g. one day or longer), or the period in which these incidents take place is such that it particularly affects consumers (e.g. on the eve or during holidays), or the problem affects a larger number of consumers and/or transactions in larger amounts etc. – a bank shall

compensate consumers in the manner that is adequate given specific circumstances, because they were temporarily unable to use funds in their accounts (e.g. a bank shall release them from the obligation to pay the account maintenance fee in the month when the problem took place, or shall calculate and pay to them default interest over the period when they could not use funds etc.).

*Amendments and supplements to the payment service framework
contract – obligations of payment service providers*

If a bank intends to change the payment service framework contract (as it most often does when changing its fee tariff that is integral to the contract), it must submit to the consumer the proposal of those amendments and supplements in writing by no later than two months before the proposed day of the start of their application. The purpose of prescribing this obligation of a payment service provider is to enable the consumer to learn in time about the proposed amendments and supplements to the framework contract and to decide whether to agree with them or to terminate the framework contract.

Depending on its business practice and on what it agreed with the consumer as the method of communication, a bank shall decide whether to submit the proposed amendments and supplements to the framework contract to the consumer by email or by post (and by what type of parcel and postal service), but in case of a dispute, the burden of proof that the submission was carried out is on the bank.

The proposed amendments and supplements to the framework contract must be in the form that enables the average consumer to determine what has changed in his contractual relationship with the bank concerning the use of payment services. As stipulated by the NBS, it cannot be considered that a bank fulfilled its obligation to submit amendments and supplements to the framework contract to the consumer if it submitted a general notification based on which it cannot be concluded with certainty what provisions of the framework contract concluded with the consumer will be amended and/or supplemented on the bank's proposal, or if it submitted an excerpt from the tariff or general terms and conditions without any additional explanations.

If the fee tariff is changed, a bank is expected to submit, whenever possible, a comparative overview of valid fees and fees being changed, as such overview is most suitable for the consumer to gain insight. However, if this is not possible (if the type of fees is changed, new types are introduced, the existing ones are defined differently etc., and it is therefore not possible to show them comparatively so that the consumer understands what is being changed), the NBS has taken the stance that a bank should emphasize – in the notification submitted to the consumer along with the proposed amendments and supplements to the framework contract (and the new tariff fee) – the most important changes such as those pertaining to fees for payment services from the List of representative services linked to the payment account, and fees being introduced or increased, but concern the services often used by consumers (even if not in the List), so that consumers can more easily see and understand what fees are being changed.

The framework contract may define that it will be considered that the payment service consumer agreed with the proposed amendments and supplements to the framework contract if before the day of the start of application of the proposed amendments and supplements he failed to inform the bank that he does not agree with the proposal, but the bank is obliged to inform the consumer thereof simultaneously with the submission of that proposal. In such case, a bank shall inform the consumer, simultaneously with the submission of such proposal, about his right to terminate the framework contract – before the day of the start of application of proposed amendments and supplements – without paying the fee and other costs, if he refuses the proposal.

Inadmissibility of charging the fee for acting upon an ungrounded complaint

The NBS has determined that in their fee tariffs some banks envisage different types of fees for acting upon an ungrounded complaint concerning a payment transaction. In practice, the largest number of banks has not charged these fees although they were contracted. The NBS believed it would be necessary to take a clear stance about the inadmissibility of their contracting and charging because such contractual provisions can unjustifiably deter consumers from the procedure intended for the efficient protection of their rights.

The complaint concerning the execution of a payment transaction – when the consumer claims that he did not approve a particular transaction (e.g. card abuse), that the transaction was not carried out (e.g. the ATM did not dispense cash) or was carried out inappropriately – must be considered a complaint within the meaning of the Law on the Protection of Financial Services Consumers and a bank, according to the Law, cannot charge against the complainant a fee or any other costs under the complaint. The same applies to complaints concerning banks' handling of payment orders (non-execution of a payment order, refusal to execute a payment order or its revocation etc.).

On the other hand, if the consumer does not complain (only) about bank's actions, but also requires from the bank to undertake activities to eliminate the consumer's omissions (e.g. when the consumer states a wrong number of the payee's account in the payment order and requires from the bank to undertake activities to determine the flow of funds and try to refund these funds) – a bank may contract and charge a concrete fee, in accordance with the Law on Payment Services. Also, if the consumer does not dispute the payment transaction, but there is a dispute between him and the merchant from the underlying contract (most often in case of online purchases paid by card), a bank may contract and charge the fee for acting upon such type of complaints.

Duration of the complaint procedure related to payment transactions

The NBS has detected that in some cases, banks resolve complaints concerning the execution of a payment transaction too long. Banks justified their actions and long-lasting complaint procedures most often by card scheme rules and procedures.

The NBS has taken the stance that the provision of the Law on Payment Services, stipulating that *immediately upon learning of it*, a bank shall restore the payer's payment account to the condition it would have been in if the unauthorised payment transaction had not been executed – must be interpreted in the way that corresponds to the meaning and purpose of that provision. The moment of learning by the bank must be assessed based on the activities undertaken by the bank (bank's consciousness) after the consumer disputes the

payment transaction because, otherwise, a bank could always claim that it did not have knowledge, whereas the consumer, who is not a part of the card scheme or the payment system, does not have the possibility to provide such information directly to the bank, but by his address he, in fact, requires from the bank to check his claims – to learn. Therefore, after it obtains the notification from its consumer, whereby he disputes the payment transaction, the bank shall immediately undertake measures to obtain knowledge whether there are irregularities, in order to immediately eliminate them – if such irregularities exist (knowledge).

Therefore, in the NBS opinion, immediately upon receiving the complaint concerning the unauthorised payment transaction, a bank shall undertake all reasonable activities to determine all circumstances and to adopt, thereafter, the decision on whether the complaint is grounded. The bank may and should lead the procedure before the card scheme, but if based on available data it turns out that the payment transaction is unauthorised within the meaning of the Law on Payment Services, the bank shall, in accordance with the Law, immediately indemnify the consumer, without waiting for the conclusion of the procedure within the card scheme, whereas the bank has the possibility to be compensated by the acquiring bank, and/or the merchant in such procedure.

Cheques

Collection of the fee for the cheque not executed within a concrete deadline and fee under an executed cheque (unfair business practice)

The NBS has determined that a bank which already charged against its consumers the fee for the issuance of cheque forms (RSD 30) also introduced a fee charged for cheques not executed within 30 days from the day of issuance (RSD 30), and a fee under an executed cheque (RSD 100). The notification on changes to the fee tariff submitted to consumers did not contain the stated information about the type and level of new fees introduced with these changes and did not explain under what conditions they are charged, when they fall due for payment etc. It was therefore concluded that an average consumer could not be informed to the degree necessary when making the economic decision on whether to accept these changes or terminate the contract. Namely, the terms “executed

cheque” and “unexecuted cheque” which were not used in the previous fee tariff and are not recognised by the Law on Cheque can be understood in different ways. Therefore, the consumer should have been informed about the nature of the fee being introduced and about the moment of its introduction. Moreover, the bank contracted those fees in such a way that in the greatest number of cases, the consumer will in fact be charged three fees under one cheque – a fee for the issuance of the cheque form, a fee for the unexecuted cheque (because the greatest number of consumers uses cheques for delayed payments with a merchant, and usually more than 30 days elapse from the day when the cheque is delivered to the consumer until the moment when the merchant submits the cheque for collection, and the length of that period does not depend only on the consumer) and a fee for cheque execution (when the cheque finally falls due for collection).

The NBS determined as unfair business practice the entire behaviour of the bank when it comes to the introduction and charging of these fees. It concluded that the bank, contrary to the requirements of professional diligence, significantly undermined the economic behaviour of an average consumer during his decision-making on whether to use cheques, i.e. request their issuance.

General stances

Local jurisdiction of the court outside the consumer's permanent place of residence (unfair contract terms)

The NBS determined as unfair the provisions in loan, deposit and other financial service contracts that a bank concludes with the consumer, whereby in case of a dispute concerning such contract the local jurisdiction of the court outside the consumer's permanent/temporary place of residence is determined.

The NBS determined that some banks, in case of a dispute, contract the local jurisdiction of the court in respect of the bank's head office. As the Law on Consumer Protection (to which refers the Law on the Protection of Financial Services Consumers in terms of the meaning of unfair business practice and unfair contract terms) envisages that contract terms are considered unfair, regardless of the circumstances of an individual case, if their case or consequence is the determination of the local jurisdiction of the court outside the consumer's

permanent/temporary place of residence – the NBS reacted and prohibited the contracting and application of these provisions.

Banks were ordered to re-examine the content of their model contracts that they conclude with consumers and to eliminate from them the unfair contract terms whereby the local jurisdiction of the court in case of a dispute is determined outside the consumer's permanent/temporary place of residence (to stop contracting this unfair provision without delay). When it comes to contracts which have already been concluded and contain such unfair terms, and given that unfair contract terms are null and void according to the Law on Consumer Protection, the application of such terms is forbidden, which means it is forbidden that: a bank, in case of initiation of court proceedings against the consumer, submits a complaint to the court whose jurisdiction is outside the consumer's permanent/temporary place of residence by *referring to this contract term*; in case the consumer submits a complaint against the bank to the court that exercises jurisdiction according to the consumer's permanent/temporary place of residence, a bank submits the complaint concerning local jurisdiction by *referring to this contract term*.

This stance of the NBS does not prejudice the court's right – based on provisions of the Law on Litigation Procedure, and/or by applying procedural rules of litigation, in the dispute between the consumer and the bank in relation to financial service consumption – to determine the jurisdiction of the court outside the consumer's permanent/temporary place of residence, if such jurisdiction is not based on the unfair contract terms.

*Advertising of financial services (selection of examples from
conducted supervisory procedures)*

The NBS supervises whether banks advertise their products in the manner that is clear and understandable to the average consumer, and whether advertising contains information that can create for the average consumer a wrong impression about the conditions under which these services are used. To ensure that the consumer obtains correct information and a clear picture about the conditions offered by the bank in this earliest phase of informing about the

financial service, when advertising their products banks must act fully in line with the NBS regulation governing advertising.

The most significant advertising irregularities ascertained by the NBS in supervisory procedures carried out in the past three years are the following:

- Information about conditions to be fulfilled in order to conclude a financial service contract with features highlighted in the advertisement, or information about limitations and/or limits concerning the provision of the financial service – is hidden, and/or does not have similar prominence as the features of the financial service highlighted by the bank in the advertisement (e.g. an attractive loan interest rate is emphasized, and information that it can be obtained only under the condition of opening a current account (taking a package subject to fee payment) and transferring one's wages to the bank – is hidden; an attractive loan interest rate is emphasized and information that it can be obtained only for the exact loan amount and only for the exact term of repayment, while a significantly higher interest rate applies to all other amounts and repayment terms – is hidden);

- Information is presented in the advertisement in the manner that is misleading for an average consumer, and/or facts are distorted as some features of the financial service are overemphasized and other important information concerning the service is omitted (e.g. the advertisement overemphasizes that the bank does not charge the loan processing fee for a particular loan and does not state that the bank charges the loan monitoring fee for the same loan);

- The credit card is advertised as interest-free, but some costs and fees must be paid (which is why the effective interest rate is not 0%) – in the advertisement these costs and fees are not equally visibly presented as “0% interest”, “interest-free”, etc.;

- There is no data about the duration of the validity of the promotional loan offer (a low interest rate for a very short period), so that over the following months consumers arrive in the bank lured by attractive conditions which are no longer valid;

- The advertisement that contains the interest rate or other numerical data (e.g. loan and instalment amount) does not contain representative examples and the effective interest rate is not visible more than other elements (e.g. only information about the amount of the monthly instalment and loan is presented

and the consumer does not know over how many months he should pay the monthly instalment being advertised in order to repay the loan in the amount being advertising, and/or does not know the total cost of such loan).



4. SELECTED EXAMPLES FROM THE NBS COMPLAINT PROCEDURES – HOW WE HELPED CONSUMERS

This part of the report presents illustrative examples from concrete complaint procedures where the NBS helped the consumers.

Early repayment

✓ Consumer B.J. from Leskovac filed a complaint because in June 2014 he had made an early repayment of a cash loan, but in 2018 he received from the bank the notice on the debt balance and a dunning letter. Early repayment was made to the consumer's current account, the bank did not derecognise that amount in the loan account because the consumer did not file for early repayment, and the bank has not established a systemic control of payment purpose. In the complaint procedure, the NBS repeated to the bank its position that in early repayment the date when the funds were paid into the loan account is considered to be the debt settlement date, so there are no grounds for charging regular interest in the period between the payment date and payment recognition date. If it had had any ambiguities, the bank should have immediately contacted the consumer who, in this specific case, according to the NBS's estimate, showed a clear and unambiguous intention to make early loan repayment.

The bank wrote off the claims on the consumer generated after the consumer made the early repayment, which resulted in a financial effect of RSD 120,000 to the benefit of the consumer.

✓ Consumer D.M. from Belgrade complained because he made an early repayment of the loan in the amount specified in the debt balance statement issued by the bank, but it turned out that amount was insufficient to fully settle the loan debt, for which reason the loan account was not closed. The NBS's stance was that it is reasonable to expect that the average consumer will not question the correctness of the statement issued by the bank and that it is up to the bank to take all the necessary measures to make sure that the statements should contain accurate data. Therefore, the bank refunded to the consumer the amount corresponding to the increase in debt due to the fact that early repayment was not effected at the moment when the consumer paid the amount stated in the bank's statement.

Thanks to the NBS complaint procedure, the consumer received RSD 82,785.

Collection of receivables from the collateral provider

✓ Consumer D.R. from Zrenjanin submitted a complaint in 2021 stating that the bank unfoundedly recorded debt in the Credit Bureau based on guarantee under a cash loan from 2005, because enforced collection procedure was discontinued by a court decision from 2017. After the NBS requested the bank to state its position, the bank stated that its receivables from the consumer equalled RSD 215,610 and that it would initiate a new court procedure to collect the debt. Since the NBS cannot consider a complaint which is subject to a court procedure or in respect of which the procedure has been completed, or which is in the enforced collection phase subject to a separate law, the NBS's options for helping the consumer were very limited. Therefore, the NBS requested the bank to submit an additional statement including all notices and warnings it sent to the consumer as the guarantor under the loan agreement during the contractual relationship (with the proof of receipt), as well as the relevant court decisions, all transactions in respect of the loan in question, with the date of the last registered payment into the loan account and the proof of all activities taken by the bank to collect the receivable since 2017 until the date of receiving the consumer's complaint. After the NBS further questioned the grounds for future collection of this receivable, the bank submitted the notice that it will no longer request the disputable receivable in the amount of RSD 215,610, as well as the corrected report of the Credit Bureau with derecognised loan debt.

Informing the consumer on debt balance and settling the receivable

✓ Consumer S.Đ. from Pirot submitted a complaint stating that she no longer receives from the bank the information about the debt balance after the initiated enforced collection procedure and that after several years of enforced collection her debt is the same as at the beginning. She also noted that she receives minimum pension. Since the NBS cannot consider a complaint that is subject to a court procedure or in respect of which the procedure has been completed, or which is in the enforced collection phase subject to the provisions of a separate law, its options for helping the consumer were very limited. Thus, the NBS asked the bank to submit certain data about the amount collected, in view of the fact that previous bank statements were inconsistent and unclear as to the manner of debt recognition. After that, the bank corrected the debt balance,

by writing off a total of RSD 333,016 i.e. 42% of the total receivables on the consumer.

Execution of payment transactions

✓ An entrepreneur from Kladovo submitted a complaint because the bank executed her international payment order with delay. The bank justified itself by citing unintentional omission of its employees, caused by the increased workload and reduced staffing, as well as aggravated work conditions during the pandemic. Given that the payment service provider must refund all the fees charged to the consumer for any incorrectly executed payment transaction and make a refund, i.e. pay all the interests to which the consumer is entitled in relation to the improperly executed payment transaction, while the consumer has the right, according to law, to request the compensation of the damage incurred due to the improper execution of the payment transaction for which the provider was responsible – the NBS instructed the bank to contact the consumer to establish what kind of damage she sustained. After establishing the concrete financial damage which occurred due to losing the right to 7% discount for payment within 30 days from order confirmation, in the NBS complaint procedure the bank refunded to the consumer the amount of the discount lost due to the delayed payment and the amount of fees for international payment, and issued to user the confirmation stating that the omission in order execution was due to the bank's error (the confirmation was intended for the consumer's international partner, because the delayed payment dented her credibility).

Owing to the NBS completed complaint procedure, the consumer received damage compensation of RSD 118,086.

✓ Consumer I.V. who resides abroad filed a complaint regarding the damage she suffered due to bank's failure to execute standing payment orders which she issued to the bank for the payment of electricity, telephone and utility services bills. The consumer found out that the orders were not executed (though she had funds available in her account) only when the neighbours informed her about the enforcement decision for the collection of debt. During the NBS complaint procedure it was established that due to the changes in its information system the bank separated the account into the dinar and FX segments, but failed to inform the consumer, in the draft amendments to the framework contract, that the standing order on the multicurrency payment account would cease to be valid

for the FX account, while on the other hand it expressly emphasized that all issued authorisations under the multicurrency payment account would continue to be valid also for the newly opened FX account. That is why the NBS's position was that while the bank may have intended, through changes in the framework contract, to abolish standing orders for all accounts derived from the multicurrency payment account except for the dinar current account, it however failed to do so, which means that bank's failure to execute those standing orders may be qualified as refusal to execute the payment order.

After that, the bank compensated to the consumer the costs of the enforcement collection procedure and other costs – in the amount of around RSD 35,000.

✓ Consumer M.R. from Vrnjačka Banja filed a complaint because the bank collected the fee of EUR 26 in dinar equivalent by a standing order each month, based on the insurance policy for household construction facility and objects under the housing loan agreement, instead of charging it once a year as agreed. The bank stated the error was made by a bank employee when opening the standing order, when instead of implementing the order once in 12 months, it was set up in such a way as to be executed each month. The bank returned to the consumer the overcharged amount (RSD 67,909), and the amount of exchange rate differences and penal interest.

The total financial effect for the consumer is around RSD 100,000.

✓ Consumer S.J. from Novi Sad filed a complaint because at the bank teller he gave to the bank the order to transfer the amount of EUR 180 for reservation of accommodation for his family during summer vacation abroad, but it turned out that the order was not executed, due to which the lower-price summer vacation package was cancelled, incurring damage to the consumer. In the complaint procedure the NBS asked the bank to propose a solution for the disputed situation, given that it failed to execute a payment order in accordance with the Law on Payment Services. The bank compensated the damage to the consumer in the amount of RSD 25,000.

✓ Consumer J.M.R. from Kragujevac filed a complaint because on 30 December 2020 there was an unauthorised overdraft on her account, since on that day the account was debited by a payment transaction of RSD 35,990 which she executed on 2 August 2020 at an *online* point of sale, using the payment card

issued by the bank. The bank authorised the transaction on 2 August 2020 and reserved the funds for the period of 30 days, but the acquiring bank submitted the payment order only on 27 December 2020, while on that day the consumer had no funds in the account. In the complaint procedure the NBS indicated to the bank that the general terms and conditions on issuance and use of payment cards by natural persons set out that the bank should reserve funds in the consumer's account in the amount of the transaction, as well as fees, commission and costs, until the account is debited, and requested the bank to explain why in this particular case it released the funds after 30 calendar days.

After that, the bank refunded to the consumer the amount of the unauthorised account overdraft (RSD 18,389), the costs of sending the SMS message and the interest charged for the unauthorised current account overdraft.

✓ Consumer B.B. from Novi Sad complained because the bank did not inform him that the payment transaction he initiated by using the e-banking application was not executed, while the consumer received confirmation from the system that the dinar payment request was successfully received. After his complaint to the bank, he received the explanation that the transaction was rejected by the payee's bank, and he was referred to that bank in order to establish the reason for rejection. Given that he was inadequately informed about the execution of the payment transaction, the consumer failed to pay the utility bill, due to which he suffered a certain damage. The bank stated that the consumer could have seen in the e-banking application that his order was not executed (by checking the payment order status and in the review of payments). According to the Law on Payment Services, the payment services provider must notify the consumer on refusal to execute the payment order and, if possible, on the reasons therefore and the procedure for correcting the mistakes that led to the refusal (unless such notification is prohibited by a regulation), in the manner agreed in the payment service contract, without delay and at the latest within the deadline specified for the execution of the payment transaction. The NBS analysed the bank's actions from the aspect of prescribed and agreed obligations regarding the notification of consumers about refusal to execute a payment order and established that the changed status of the payment order in the e-banking application is insufficient to conclude that the bank fulfilled its obligation to notify the consumer about the refusal to execute the transaction. Namely, the NBS took the stance that there is a difference between the requirement to "make the

information available“ (which assumes that the consumer himself must take certain steps to learn the information) and the requirement to “notify” the consumer. In view of the potential risks of non-execution of the payment transaction for the consumer, in this case the legislator envisaged the obligation of the payment service provider to take certain steps and notify the consumer that the transaction was refused, and to state the reasons for refusal, if possible, which in practice means the obligation to contact the consumer through the agreed communication channels. The bank may use the electronic or mobile banking application to notify the consumer, if that is the agreed communication channel between the consumer and the bank, but a mere change of status of the payment order cannot be considered an adequate notification, without an additional visual and/or audio notification to the consumer via the application which would ensure that the consumer’s attention has been drawn to the fact and that he has received an appropriate message from the bank. Only after sending such notification the bank may be deemed to have fulfilled its obligation to notify the consumer on the refusal to execute the payment order, and as of that moment the responsibility for further actions and learning about the content of the notification is transferred to the consumer. The NBS fined the bank for inadequately notifying the consumer about its refusal to execute the order and the bank paid the damage compensation to the consumer in the amount of RSD 19,000.

Payment card abuse

✓ Consumer M.G. from Belgrade submitted a complaint saying that during the night between 27 and 28 September 2020 unauthorised transactions were executed in his current account totalling around RSD 48,000. After he woke up in the morning, he saw that he had received 19 SMS messages from the bank about spending USD 25, or RSD 2,535 per each transaction. The consumer said that he immediately called the bank and blocked the account and that the money from his account was charged via the social network Facebook, but claimed that he never entered his PIN in any social network. The bank said that the consumer has the current account package within which he uses a debit card to make online payments. As for the unauthorised transactions, the bank established these were e-commerce transactions (20 transactions), which were executed by using standard payment card protection mechanisms: CV code, payment card number

and payment card validity date, without using the one-time password, because the merchant does not support this option. The bank sent to the consumer an SMS message for each executed transaction above RSD 1,000 immediately upon payment execution. The bank also stated that the consumer did not call the bank at the number stated in the card immediately upon receiving the information about card debits. Instead, he called the bank processing operator only after the execution of all transactions and the bank blocked the card immediately upon receiving the call. The bank pointed out that by blocking the card it prevented the execution of another 16 transactions. The bank also stated that the responsible bank employee then contacted the consumer, that the consumer said he received SMS messages from the bank, but did not read them immediately, that he had previously already paid for advertisements with that merchant, which is why he left the card number with the merchant, but he did not know what the specific disputable transactions referred to (the bank also submitted the audio recording of the conversation). Bearing in mind the consumer's contractual obligations regarding the protection of payment card data and rules for its safe handling, the bank stated it cannot be held accountable for the online payments the consumer made by his own free will, which may be the consequence of fraudulent activities, payments through unsafe websites and potential collection of consumer's unpaid obligations. The bank pointed out that the consumer failed to comply with the agreed instructions for safe online payments and detection of unsafe websites. Also, the bank stated that the conditions were met for the application of Article 51 of the Law on Payment Services specifying that the consumer shall bear the losses of up to RSD 3,000 of the transaction amount, but since no single transaction exceeded this amount, the consumer should bear all the costs in question.

The NBS first took the position that the bank may not transfer by contract to the consumer the full responsibility for online transactions with merchants not supporting the 3D Secure Code mechanism, because that is just an additional protection mechanism enabled by the card scheme within which the transactions initiated by a concrete payment card are processed. Its absence in itself does not mean that payment is not safe, given that a large number of merchants, producers and service providers of well-known brands have not set up this additional protection mechanism. Therefore, if the bank issued to the consumer a payment instrument that he can use regardless of whether the 3D

Secure Code mechanism has been activated and/or used for a specific transaction, the framework contract cannot impose additional conditions apart from those envisaged in the Law on Payment Services for the consumer to fulfil in order not to be liable for the total amount of damage incurred. The same holds true for numerous other obligations which the bank imposed on the consumer in the contract, the non-compliance with which also entails the transfer of full responsibility for the execution of an unauthorised payment transaction to the consumer (to make sure that at the bottom of the internet browser there is a padlock or key before the card number is entered, that the internet address has changed from http to https when protected connection is used and that security settings in the internet browser are set to maximum, that he is using the last version of the browser, that the online merchant has the encryption certificate, etc). In addition to the fact that these requirements, as determined by the framework contract, are in themselves disputable, the NBS further ascertained that in this procedure the bank (which is assumed to be the responsible party and the one burdened with proving that the consumer failed to meet contractual obligations regarding the use of the card and protection of security features) actually failed to submit the evidence that these conditions were not met. On the contrary, the NBS accessed the website of the online merchant in question and established that there is a padlock symbol and the green mark “connection secure” implying that all the data, codes and numbers of the cards used to make the payments are safe, that the internet website has the encryption certificate and that the initial letters in the address bar are changed to “https”. Therefore, in the complaint procedure the NBS established that the consumer did not breach the contractual provisions, and that from the aspect of the provisions of the framework contract there are no conditions to apply Article 51, paragraph 2 of the Law on Payment Services, because the consumer did not act intentionally or with gross negligence when applying the prescribed and/or agreed terms of using the card or card data. If, as in the concrete case, the consumer states he did not give consent for the execution of the transaction – it is in the interest of the bank, on which the law places the assumption of responsibility and the burden of proof, to initiate the complaint procedure within the card scheme and in that way try to prove that conditions have been met for the consumer to bear full responsibility within the meaning of Article 51, paragraph 2 of the Law on Payment Services or to see that it is reimbursed in the procedure after refunding to the consumer the

amount of the disputed transaction. Therefore, though the consumer had previously made payments to the same merchant (and given authorisation for payment execution), in the case of transactions he did not authorise, the bank could have established in the complaint procedure whether this was a case of card abuse (in a wider sense), where some person employed with the merchant or the merchant itself abused data from the card they had received during previous transactions or whether it was a dispute between the consumer and the merchant on the existence of grounds for payment. In relation to the prescribed obligation on the consumer's part to immediately report card abuse, it was established that the consumer did inform the bank about the abuse of the payment instrument promptly upon learning about the abuse. Namely, the consumer received the SMS messages about the executed transactions during night (after midnight) when he cannot be reasonably expected to be awake and due care of a diligent owner in this case does not mean that the consumer should keep his mobile phone by the bed with sound notifications turned on so that he could immediately react if he received an SMS during the night. The consumer reported payment card abuse already at 7:37 in the morning, which, given the circumstances of the concrete case, cannot be interpreted otherwise than as informing the bank about payment card abuse immediately upon learning about it, while the consumer's actions may be qualified as acting with the due care of a diligent owner. The bank's claim that the consumer did not report abuse at the number specified on the card but contacted the bank's processor do not change the conclusion because the purpose of the notification was to block the card which the processor did after the reported abuse and promptly informed the bank thereof, after which the bank received the confirmation of the reported abuse and card blockage from the consumer himself. The bank's claim that the condition for the application of Article 51, paragraph 1 of the Law on Payment Services about the division of responsibility between the bank and the consumer was not met because each individual transaction was in the amount below RSD 3,000 cannot be accepted, because neither the wording nor the logical or intended interpretation of this provision give rise to such conclusion. This provision prescribes that the payer shall bear the losses arising from any unauthorised payment transactions up to RSD 3,000, which means that the amount of RSD 3,000 relates to losses and not the individual transaction amount or the total amount of all transactions (because the total amount of loss may differ from the total amount of transactions).

In this procedure the bank compensated to the consumer the total amount of RSD 48,000.

✓ Consumer V.K. from Belgrade filed a complaint because her account was debited by EUR 1,259 for a payment card transaction based on the email message saying she was supposed to pay customs duty of RSD 36.14 for the received package. The transaction was executed with the 3D Secure verification, which means that the consumer received the security OTP code (one-time password) via mobile phone number which she entered when executing the transaction. In the complaint procedure, the NBS requested the bank to state whether it initiated the complaint procedure immediately after learning it was a fraud. The bank said it was a payment transaction which was fully Secure verified and that in such situations, according to the card scheme rules, there is no possibility to file a complaint. In the specific case, the bank did not violate the regulations nor the set procedures. However, in the complaint procedure the bank invested additional efforts to refund money to the consumer which, luckily, turned out to be successful and EUR 1,259 was refunded to the consumer.

✓ Consumer Lj.Č. from Kruševac filed a complaint stating that her stolen card was misused at an ATM, because the bank did not allow the consumer to timely block the card at the teller since she did not have personal documents (which were also stolen), but referred her to call the Contact Centre instead. In the meantime (before the consumer managed to reach the Contact Centre) RSD 50,000 was withdrawn at the ATM using the stolen card. It was pointed out to the bank that it was obliged to prevent further use of the payment card (to block it) right after the consumer informed the bank employee at the teller about the theft. Hence, the bank refunded to the consumer the amount of RSD 50,000.

Responsibility of the bank – ATM owner

✓ Consumer V.O. from Stara Pazova filed a complaint stating that he tried to withdraw RSD 15.000 at the ATM using the card issued by a foreign bank, and that his account was debited, but the ATM failed to pay out the money because of a power outage. The consumer addressed the bank–ATM owner on the same day and submitted the printed statement from the current account in the issuing bank, but the bank requested additional documents. Although it registered the cash surplus at the ATM and established that the money was not paid out, even 55 days after the disputed transaction the bank failed to refund the money

to the consumer. The bank pointed out it had taken the necessary steps to return the money to the consumer's account with the card issuing bank, referred to the payment card scheme rules applied in such cases and the oversights on the part of the payment card organisation, and instructed the consumer to file a complaint to the card issuing bank because of the delay in the refund to his account. The NBS took the position that in case of one-off payment transactions (such as cash withdrawal at the ATM), the acquiring bank (ATM-owner) is the provider of the payment service of cash payout, and that all rights and obligations from the Law on Payment Services which are applied to the payer's payment service provider accordingly apply to that bank. As, in this case, the payment transaction was not executed because of the acquiring and not because of the card issuing bank, the NBS fined the acquiring bank (ATM-owner) and requested that it makes the refund to the consumer.

Inactive accounts and expired receivables

✓ Consumers M.Z., S.K. and M.S. filed complaints because they identified in Credit Bureau reports arrears in respect of inactive current accounts dating from 2004, 2005 and 2010. After the NBS asked the bank to give a statement about the grounds and amounts of the receivables and whether they have expired, the bank decided to write off the current account and loan debt because they have expired (a total of RSD 653,360, RSD 557,900 and RSD 40,172), based on which it made the corrections in the Credit Bureau report.

Disposing with funds in the account

✓ A company in Belgrade filed a complaint because unauthorised payments worth RSD 600,000 and RSD 500,000 were made from the account in two different bank branches. "Repayment of liquidity loan to the founder" was specified as the payment purpose and forged ID documents were presented. The bank did not dispute that these were unauthorised payment transactions and that the consumer informed the bank about the unauthorised transactions promptly upon learning about them. The internal investigation carried out by the bank showed that an NN person, after withdrawing the money at two bank branches, tried to do so at other two branches as well, but an employee at one of those branches saw that the number of the presented ID card was not correct and that the ID card looked suspicious, after which the NN person failed to respond

correctly to questions about the phone number and other data from the client file – so the payout was not approved. The bank proposed to pay out to the consumer the amount of RSD 1,100,000 on condition that he submits a proof of filing criminal charges and two blank bills of exchange which would be called upon in case it turns out that the disputable actions were committed by an employee working with the consumer. Thus, in this concrete case it was disputable who was responsible for the execution of unauthorised payment transactions according to the Law on Payment Services, and whether the bank may make the refund conditional upon the submission of signed blank bills of exchange. The NBS concluded that the bank bears the responsibility for executing the unauthorised payment transactions, because there is not a single condition in the Law on Payment Services for transferring such responsibility to the consumer. Although, according to the Law on Payment Services, the bank's responsibility is assumed and it is not necessary to establish that bank employees failed to apply the appropriate diligence in executing payment transactions, in this specific case this is the fact, because the bank employees at two branches did not comply with the bank's internal regulations and did not ascertain that the data in the presented ID card did not fully correspond to the data in the bank's system. The NBS's position was that the Law on Payment Services does not provide grounds for the bank to make the refund of an unauthorised payment transaction conditional upon the issuance of two blank bills of exchange.

The bank paid out RSD 1,100,000 to the user, without any conditions.

✓ Consumer D.P. from Belgrade filed a complaint because the bank acted upon the order of his former wife and paid out RSD 160,000 from his account, though the former wife was not a person authorised to dispose with funds in the account, because her authorisation was revoked more than 13 years ago. The bank stated that the former wife was registered in the bank's application as a person authorised to dispose with funds in the account. In the complaint procedure, the NBS asked the bank to give an additional explanation, because it took the stance that, according to the documentation envisaged in the general terms and conditions related to payment service provision, the bank has to prove that the consumer's former wife was authorised to dispose with the funds and that the authorisation cannot be proved solely by the fact that she was registered in the application.

The bank refunded to the consumer the amount of RSD 160,000.

✓ Consumer S.R. from Smederevska Palanka filed a complaint claiming that someone made an unauthorised payment of EUR 2,000 from her FX account and that the bank rejected her complaint, though the signature in the payout order was not hers. In the NBS complaint procedure, after conducting expert analysis, the bank established that the signature in the payout order did not correspond to the signature on the signature specimen card at the bank, so it refunded to the consumer the amount that was paid out in an unauthorised manner.

In this concrete case the NBS complaint procedure had the financial effect of EUR 2,000 to the benefit of the consumer.

Payment card blockage

✓ Consumer D.K. from Vršac filed a complaint because during his stay abroad, on a vacation, he was unable to dispose with his money in his FX and dinar current account because the bank blocked his account and payment card. The reason for the blockage was the fact that the consumer's payment account was inactive for one year. The consumer pointed out that the blockage was effected without him being informed, before his leaving on vacation, which is why he was forced, irrespective of a significant amount of foreign currency and dinars in his account, to borrow money from friends. The bank explained its actions by the fact that according to bank's internal acts, the account which is inactive for 365 days is automatically deactivated by system, to prevent abuse, i.e. disposal with the account funds by unauthorised persons. Taking into account the provisions of the Law on Payment Services regulating card blockage, the NBS took the position that while it is in the interest of both consumers and the bank to prevent the abuse of the payment instrument, this cannot be done in the way in which it was done by the bank in this specific case – with the rigid assumption that not using the payment instrument for international payment transactions, while regularly using it in domestic payment operations, automatically means abuse, while this assumption can be rejected only if the payment card user appears in person on the bank's premises, without any other possibility to verify transaction authorisation, i.e. the consumer's identity. The NBS fined the bank because it blocked the consumer's card though the prescribed conditions were not fulfilled, and the consumer was not even informed about the intention and reasons for blocking the card. The bank offered to compensate to the consumer the damage

incurred through his inability to dispose with his funds in the amount of the transactions he tried to perform with his card.



5. INSTRUCTION ON LOAN REFINANCING BY LOAN APPROVED BY ANOTHER BANK – HOW WE PROMOTE COMPETITION

Owing to a continuous and significant drop in market interest rates, the demand for refinancing loans is on the increase. Through refinancing, debtors basically replace costlier loans with cheaper ones.

However, refinancing or early loan repayment requires the observance of the agreed procedure and takes certain time. The customary practice was that a debtor who wanted to repay a loan early by taking out a refinancing loan from another bank had to take a number of actions. First, in accordance with contractual terms, the debtor had to file an application for early loan repayment several days ahead of the repayment and to request from the bank a statement of outstanding debt balance as at a specific date. With that statement, the debtor had to go to another bank and apply for a refinancing loan. Once a refinancing loan was approved, the loan proceeds in accordance with the statement of debt had to be transferred to the loan account with the bank whose loan was being refinanced. Despite all these actions, it sometimes happened that a loan was not fully repaid, on account of the unreconciled changes in data on the debt balance (as these data can change on a daily basis) or for some other reason. What also often happened in practice was that debtors failed to comply with the agreed procedure, i.e. failed to file an application for early repayment, to obtain a statement of debt balance, etc. due to which the loan was not closed and they found themselves in a situation where for some time they had to repay two loans concurrently.

Aiming to prevent such situations and spare loan users from the administrative hassle, as well as to make the process of early repayment faster and more efficient, while ultimately bolstering interbank competition, encouraging banks' efforts to win clients and ensuring client mobility, the NBS adopted the Instruction on Loan Refinancing by Loan Approved by Another Bank. The Instruction (applied as of 1 July 2021) enabled debtors to refinance all credit liabilities towards a bank (loans, credit cards, authorised overdrafts) in a simple and fast way, without going to the bank with which they want to close their liabilities and without any risk that those liabilities will remain unrepaid. Under the new Instruction, it will take only one visit to the bank from which a debtor wants

to take out a refinancing loan to close all liabilities with the previous bank. All communication with the bank whose loan is refinanced is taken over by the refinancing bank. Along with the right to a payment account switching service introduced in 2019, the consumer may transfer the account to the bank from which he is taking a refinancing loan, without going to the bank in which he closes the current and loan accounts. Also, banks may not charge any fees or costs in connection with these liabilities. This enables all debtors wishing to reduce their current credit liabilities, i.e. reduce the price of their loans, to do so comfortably, because all activities in this context are to be taken by banks themselves. In addition, the Instruction provides for full transparency and sets out the structure of the calculation of the amount needed to repay the loan early and in full.

Banks are obligated to inform the clients intending to apply for a refinancing loan about the advantages of loan refinancing in accordance with this NBS Instruction, as well as to disclose the relevant information on their websites. Also, the clients intending to refinance their credit liabilities by taking out a refinancing loan from another bank can request detailed information about the application of the Instruction from the potential refinancing bank.

- ✓ Shortened and simplified refinancing procedure
- ✓ It takes one visit to a new bank to complete the procedure
- ✓ Loan closed in 3 days
- ✓ Current account transferred to a new bank and closed in the previous one
- ✓ Consumer is freed from the obligation to communicate with the previous bank
- ✓ Time and cost savings
- ✓ Consumer is completely sure that the previous loan and current accounts have been closed