



<u>Decision Ref:</u>	2018-0188
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Pension Plan
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service Failure to process instructions Mis-selling
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a pension plan and alleged poor customer service.

The Complainant's Case

The Complainant took out a pension plan with the Provider. A facility of the plan allows the Complainant to invest his money by making his own trades in stocks and shares. This service is provided on behalf of the Provider by a company called Stocktrade.

The Complainant states that on Monday, 28 February 2018, he decided to sell his shares in Allied Irish Bank on the Irish stock market. In order to do that he telephoned Stocktrade in order to execute the sale of the shares. The Complainant states that he was unable to get through and from around 8:30 AM that morning he rang on numerous occasions and was kept on hold constantly. The Complainant states that he then telephoned the Provider to complain about how frustrating it was not to be able to get through to Stocktrade and talk to somebody about selling his shares. He states that he was then provided with an email address for Stocktrade.

The Complainant explains that he eventually got through at approximately 3:26 PM and spoke to an individual in Stocktrade who told the Complainant that he had only started work at 2:30 PM that afternoon and was only in work to deal with the US market. The Complainant says that he was informed that it was a bank holiday in England and that nobody was in work

to deal with any trades in relation to the Irish stock exchange. The Complainant explained that he was quite angry and was very unsatisfied with the fact that he was living in Ireland and wished to trade his Irish shares in the Irish stock market but was being prevented from doing so because it was a bank holiday in England. The Complainant states that he complained that this was a total neglect of Irish customers.

The Complainant ultimately instructed that his shares be sold and he states that because of the delay in being able to sell shares that he suffered a loss of profit of approximately €6,000. The Complainant states that had he been able to sell his shares in the morning when he first called he would have sold them for a profit of €10,000 but by the time he managed to have his trade executed, this only resulted in a profit of €4,000.

The Complainant states that that the Provider offered him a specific service and failed to follow through on it. He states that the Provider did not make provision for Irish customers in relation to public holidays which are different to those in the UK and in the USA. The Complainant states that at no stage was he told by the Provider that Stocktrade would be closed for trading on UK bank holidays and at no stage was he informed that he could have availed of online trading.

The complaint is that the Provider has failed to comply with its obligations under its agreement with the Complainant and provided him with poor customer service which has resulted in a financial loss to the Complainant.

The Provider's Case

The Provider explains that Stocktrade is based in Edinburgh in Scotland and they are closed for telephone dealing on Saturdays, Sundays and bank holidays. The Provider states that Monday, 28 May 2018 was a bank holiday in the UK. As a result, Stocktrade was closed to both UK and Irish customers. The Provider states that Stocktrade offers an online dealing service also. The Provider states that it uses Stocktrade as third party Provider and it has signed up to their terms and conditions as they are business independent of the Provider . The Provider says it is sorry that the Complainant has had a negative experience but it states that the service guide which was furnished to the Complainant explains that Stocktrade are closed for dealings on Saturdays, Sundays and bank holidays and that this is something that is out of their control given that Stocktrade is a separate company

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 19 November 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, I set out below my final determination.

As appears from the documentation supplied to this office, the Complainant's pension application to the Provider was made on his behalf by a financial adviser. The application form is signed by the Complainant and dated 25 May 2011. The name of the product is a Synergy Executive Pension. The Provider then wrote to the Complainant's financial adviser and enclosed the policy schedule, statement of reasonable projection, policy provisions and scheme rules, member booklet and letter of exchange. The letter goes on to request that the financial adviser provides these documents to the Complainant and note that it is important that they have read and understood them. The letter of exchange is signed and dated by the Complainant.

The Provider explains that the pension plan taken out by the Complainant is a single-member pension scheme that allows a company to invest on behalf of the policyholder whilst also allowing the policyholder the option to invest their own money. It explains that the policy provides customers with the option of managing their own sharedealing portfolio through its self-directed proposition. The Provider explains that Stocktrade is its chosen Provider for this service and if a customer decides to invest through the self-directed option, they set up an account with Stocktrade and they deal directly with Stocktrade on an "execution only" basis.

This office has been provided with a signed Stocktrade requirements form. This form is required to be completed where a Synergy plan customer or product holder wishes to open an execution only stockbroker account. This form is signed by both the Complainant and his financial adviser and is dated 19 August 2013. In addition to the foregoing, the Complainant signed declarations declaring that he had carefully read the information provided in this application before signing. This is dated 16 August 2013.

The Provider has provided a copy of the "[Provider] Ireland Sharedealing Service Guide" booklet. The relevant booklet is the booklet issued to customers in April 2016 following changes to Stocktrade, when Stocktrade became a division of Alliance trust savings Ltd. The Provider has drawn attention to the following parts of the booklet.

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What Is the [Provider] Ireland Sharedealing Service Guide?

The [Provider] Ireland Sharedealing Service Guide (“Service Guide”) explains the services available to you, through an account. It explains the features of the account Stocktrade offers and how your shares can be traded with us.

This is an important document which should be read thoroughly together with the policy holder terms of service (the “terms of service”) and any relevant terms of service from [Provider], as they contain additional important information.

We may vary any of our documents from time to time, upon written notice to you. Terms of service provide further information about how we may vary the terms of service and the service guide.

I note the booklet with the reference ST073/12/15 on Page 3 states in its Definitions Section that a “Business Day” is defined as “a day on which banks are open for business in the city of London except Saturday or Sunday or a bank holiday. It also sets out in the “How to Trade” section of the booklet on Page 9 that “you can speak to a member of the Stocktrade dealing team between 8 AM and 9 PM Monday to Friday (excluding bank or public holidays)”.

I note that in the [Provider] Ireland Sharedealing Service Guide with the reference ST073/07/13 there is no definition of a “Business Day”. In the “How to Trade” Section of this booklet, it states on Page 7 “you can speak to a member of the Stocktrade Dealing Team between 8 a.m. and 9 p.m. Monday to Friday (excluding bank or public holidays)”.

Given that the cover of both Guides clearly indicate that they relate to the “Ireland Sharedealing Service”, I believe greater clarity was required to indicate that the Guides were meant to reference bank and public holidays in a different jurisdiction, namely the UK and did not relate to bank or public holidays in Ireland. In the absence of such clarity, I believe it was entirely reasonable and predictable that an Irish customer, such as the Complainant, would assume that such a reference related to Irish bank and public holidays.

Furthermore, I note that the Provider also states that to provide customers with trading flexibility, an online facility is available to all Stocktrade customers and was available to the Complainant. The Provider explains that the online facility is referenced in documentation issued by Stocktrade when setting up the account. I have examined this provision in the booklet and it is dealt with in the “online dealing” section of the booklet. What it actually says is as follows:

“This service will only be available to you if we have been advised by [Provider] that you may have access to our online dealing service.”

Accordingly therefore, it appears that online trading was possible with Stocktrade but only in circumstances where Stocktrade were advised by the Provider that a product holder can access its online dealing service. Having examined the “Self-Directed Options Guide” and the

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“Your Investment Options” booklets provided by the Provider to the Complainant, I note the following wording:

The “Self-Directed Options Guide” booklet, page 8 deals with “execution only stockbroking”. It states, amongst other things that:

Dealing is carried out by contacting Stocktrade by phone – dealing hours are Monday to Friday from 8 AM to 4:30 PM and their contact number is (01) 639 7200. You must act within the terms and conditions set by Stocktrade and [Provider].

The “Your Investment Options” booklet, page 5 sets out that:

Once your funds are in place you can start dealing using the Stocktrade phone-based dealing service.

I am unable to find any guidance or notification in the documentation issued by the Provider (as opposed to documentation issued by Stocktrade) that brings to the attention of the Complainant that online trading was available as a method of trading with Stocktrade. The two above quoted booklets only provide for telephone trading with Stocktrade.

As the Provider points out in its own submission to this office, the online trading facility is only referenced in the Stocktrade’s documentation. The Provider was unable to rely on any of its own documentation which highlights the availability of online trading.

Recordings of telephone conversations between the Complainant and the Provider were provided in evidence. The two audio recordings provided detail the telephone calls made by the Complainant to the Provider and subsequently to Stocktrade. The content of these calls are consistent with the Complainant’s narrative. The first audio recording details the Complainant’s telephone call with the Provider where he complains that he had been trying to get through to Stocktrade since 8:30 that morning and nobody would answer his call. The Complainant was told that it is a separate company and that they didn’t have any other telephone number but eventually the Complainant was provided with an email address for Stocktrade. The second audio recording details the telephone call that the Complainant had with Stocktrade after eventually getting through. The Complainant spoke with an employee or member of Stocktrade named [S]. The Complainant complained that it was 3:20 PM and he had been ringing since 8:30 AM to sell stock which had now fallen in value by 18% since that morning. It was explained to the Complainant that Stocktrade was not open except for business in relation to the US and North America. It was explained that it was a UK bank holiday that day and there was nobody in the office until 2:30 PM when the US markets opened. The Complainant explained that he wants to trade on the Irish stock market and he queried why Stocktrade were not open. The Complainant expressed his dissatisfaction.

At that stage, the Complainant asked Stocktrade what the current price for his Allied Irish Bank shares was. When he was provided with this price he provided instructions to Stocktrade to sell his shares. Stocktrade acted upon these instructions and executed the trade as per the request made by the Complainant.

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The telephone call unequivocally demonstrates that the Complainant, under his execution only option, instructed Stocktrade to sell his shares for him immediately after being told of the current market price. It was the Complainant who made the decision to sell his stock at that time and at that price. Therefore, while the Complainant may argue that the value of the stock had diminished since the market price earlier in the morning, he was under no obligation to execute a trade that afternoon.

However, I believe the information in relation to the fact that the service was not available to Irish customers on a UK bank or public holiday was not made sufficiently clear to the Complainant.

Furthermore, while the Stocktrade documentation sets out that online trading was available to the Complainant. I'm not satisfied that the Providers documentation describes that facility adequately or at all. This is something that should have been brought to the Complainant's clear attention, particularly in circumstances where Stocktrade would not be available on the telephone during UK bank holidays or public holidays.

I am satisfied that the Provider has failed to provide a satisfactory adequate level of customer service and information to the Complainant.

Notwithstanding the fact that the Complainant is ultimately responsible for executing the sale of his stock, I am satisfied that this is a significant failing on the part of the Provider and it is incorrect for the Provider to submit that it provided its customers with trading flexibility when its own documentation does not appear to refer to online trading or when a service is not available during normal business hours.

For these reasons, I uphold this complaint and direct that the Provider pay a sum of €4,000 in compensation to the Complainant for the loss and inconvenience caused.



Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (a)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 December 2018

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,**
 - (ii) a provider shall not be identified by name or address,**
- and**

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.