



<u>Decision Ref:</u>	2019-0001
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to communications from the Provider to the Complainant on an Online Execution account that was opened with the Provider on 2nd January 2002.

The complaint is that the Provider (i) failed to supply the Complainant with "easy to understand" details of its obligations towards him and (ii) that the Provider failed to advise the Complainant of the outcome of a Corporate Event leading to the shares that the Complainant held being sold.

The Complainant's Case

The Complainant states that he owned some shares in an entity known as ("A"). When "A" entity was acquired by another entity ("B") the shares were purchased by "B" entity. The Complainant says that he did not have any say or vote on the matter.

The Complainant says as he later discovered in early September 2016 his shares (which were held by the Provider) were converted to \$6,515.55, he had no communication from "A" or the Provider at anytime about the acquisition. The Complainant submits that he was aware from media reports that the acquisition was going ahead, but nothing more.

The Complainant contacted the Provider in November 2016 for information on his shares and says he was informed of what happened. The Complainant telephoned the Provider on 16th November 2016 to establish why he was not advised that B had paid cash for the A

shares and that the proceeds were in his account. The Complainant says he was informed that it was his responsibility to monitor his account and the Provider was not obliged to advise him of any activity on his account. The Provider pointed out that as he did not have a vote or any say in the sale there was no need to contact him. The Complainant states that he asked the agents he spoke with to tell him about the Provider's obligations towards him as a client. The Complainant submits that the agent refused to provide the information that he requested. The Complainant states that he spoke with two agents before he spoke with the Head of Trading and Execution. The Complainant states that the Head of Trading and Execution also refused to tell him of the Provider's obligations and referred him to the "Terms and Conditions". The Complainant asked if the Head of Trading and Execution would write to him on the matter. The Complainant says that he made it very clear that he did not want to be dismissed with a copy of the Terms and Conditions as an answer. The Complainant states that he requested that if the Head of Trading and Execution wished to refer to some sections of that document he would be happy if he copy and paste the relevant parts into his letter for clarification purposes. The Complainant received a letter dated 24th November 2016 from the Head of Trading and Execution in which the Complainant submits the Head of Trading and Execution "once more" went into great detail about how "the [A entity] event was actioned" and referred to the "Terms and Conditions" for information on the Provider's obligations to him. The Complainant says that he was very unhappy with that response. The Complainant replied on 2nd December 2016 setting out his annoyance and received a "Final Response" letter from the Provider's Senior Compliance Manager, dated 13th December 2016.

The Complainant states he has two complaints

- (1) The Provider should have advised him of the outcome of the A entity event leading to the shares being sold.
- (2) The Provider should have supplied him with "easy to understand" details of its obligations towards its clients.

The Complainant states that he has no legal or financial background so it is not easy for him to understand the Provider's phraseology. The Complainant says that a simple example - in the Head of Trading and Execution's letter where he says the "[A entity] was actioned". The Complainant states that while he understands what he meant in that instance it is not the type of language that the lay person would use. The Complainant states that also it is his understanding that the "Terms and Conditions" is a legal document and not an "information" leaflet suitable for the lay person.

The Resolution that the Complainant requests is, as follows:

- (1) The Provider to accept that it must advise clients of any and all transactions on the customer account.
- (2) The Provider should provide information to clients in a format and manner that the client can understand.

/Cont'd...

The Complainant submits that he suffered no financial loss but says he has wasted a lot of time and was very frustrated by the dismissive and at times insulting manner in which he was treated. The Complainant states that perhaps there should be some compensation for that. The Complainant states that a financial penalty should be imposed on the Provider for the manner in which it dealt with the "[A entity] event" and in the way it dealt with him and his query.

The Provider's Case

The Provider's response to the complaint dated 24th November 2016.

The Provider states that the Complainant opened an Online Execution account with the Provider on 2nd January 2002. The Provider says that the nature of such an account is that the account holder is responsible for ensuring that all investment decisions undertaken are suited to meet the account holder's investments objectives, financial position and attitude to risk. The Provider submits that it will take no responsibility for making such assessment. The Provider explains that clients have online access to their account and can view their account positions, stock holdings and cash values.

The Provider submits that in relation to the Complainant's holding in A entity, the stock was the subject of a mandatory take over by B entity. The Provider states that it had no obligation to write to the Complainant in relation to this matter as there was no options in the take-over. The Provider says that the B entity shares and the cash paid to the B entity were both lodged to the Complainant's account where they would remain until he instructed otherwise. The Provider states that on 1st September 2016 the Complainant telephoned the Provider and spoke with a member of staff in relation to this matter. The Provider submits that it was explained at the time that this was a mandatory takeover and that the B entity shares and the cash resulting from the takeover of A entity were both on the Complainant's account and he could see the position if he logged in to the account. The Provider says that at that time the Complainant said he understood how the corporate event was actioned.

The Provider explained that cash sitting on the Complainant's account with the Provider does not attract any interest. The Provider says this is confirmed in its Online Execution Only Terms and Conditions where it states that: *"Any un-invested funds are held in a non-interest bearing online trading account"*.

Submissions and further evidence

Application Form signed by the Complainant and dated 2nd January 2002.

"Execution Only Clients are responsible for ensuring that all investment decisions undertaken are suited to meet their investment objectives, financial position and attitude to risk.

I / We hereby apply to open an account for the purposes of Online Trading and Valuations with [the Provider] and request that you issue me / us our logon details.

I / We have read and accept the Terms and Conditions of Service governing the use of [The Provider Online] included in the Registration Pack and agree to abide by them as they apply to my / our account. A link to [the Provider] Online Terms and Conditions of Service is also available at the bottom of every page on our Website and from our site map. They are also available when you log on for the first time.

[The Provider] may contact you from time to time in connection with your account”.

Online Terms and Conditions of Service

“By using the services and information on this Website, it is your responsibility to read and accept The Terms and Conditions of Service in place at time of use”

Appendix A

“Terms of Business

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Execution Only Clients are responsible for ensuring that all investment decisions undertaken are suited to meet their investment objectives, financial position and attitude to risk. Only advice specifically requested may be provided by us and will be given in good faith and without any responsibility on our part.

8. We may place on deposit with such bank or other institution and on such terms as we think fit any monies, which we may hold for your from time to time”

“17. ...

(d) Dealing with take-overs, other offers or capital re-organisations: If you are categorised as an advisory / execution only client, we confirm that we will advise you of the options available to you in respect of any of the above and will accept your instructions”

20th July 2007 Correspondence

“Dear Sir/Madam

I am writing to inform you that [the Provider] will be upgrading the Online sharedealing service later this year ...

Other changes on transferring to a Nominee account will be:-

..

You will be notified by [the Provider] of any elective Corporate Action that could impact your underlying holding”.

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[Provider] Online Execution Only Agreement

"Transaction Positions

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You should contact us immediately if you identify any item on our Website or on your [Provider] Online account, which you believe may be incorrect.

1.5 Statement Service

On an annual basis we will provide you with a statement detailing the assets held in your account. This statement will be provided to you electronically via our online service once you activate and verify your account access online. You should be aware that once you do this you will not receive paper copies of the statement.

If you prefer to receive your statement by post, you should contact us and we will arrange this for you".

3.16 Client Contact

We may contact you either in writing (to include e-mail), by telephone or in person in connection with your account. Where you avail of our online service we may also post notices to your account which you can access via our Website".

3.22 Contract Notes

A contract note will be provided to you in respect of every trade on your account. We will assume that you have received the contract note confirming your trade and that the details on it are correct and concur with your instructions unless you contact us within five days of the trade date.

The contract note will be provided to you electronically via our online service. You should be aware that once you do this you will not receive paper copies of your contract notes.

If you prefer to receive your contract notes by post, you should contact us and we will arrange this for you".

4. Methods of Execution

The order execution policy applies where [the Provider]

- *Receives and transmits client order; and / or*
- *Executes orders on behalf a client*

Where a client legitimately places an order with [the Provider], they can expect that we will endeavour to take all reasonable steps to provide the best possible result on their behalf. This will primarily take the form of:

- *Executing an order by dealing as agent,*

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- *Executing an order by dealing as principal.*

Subject to any specific client instructions, [the Provider] will seek to execute the order by one or more of the following methods:

- *Directly on a regulated market or Multilateral Trading Facility (“MTF”),*
- *With an external entity such as a third-party broker to handle the order on that regulated market or MTF”.*

“Section 3: Important Information

As an execution Only Client, you are responsible for ensuring that all investment decisions undertaken are suited to meet your investment objectives, financial position and attitude to risk. [The Provider] will take no responsibility for making such assessment.

Consent and Acknowledgement

I / We have read and understood, accept and consent to the Terms and Conditions of Service, Risk Disclosure Document, Information on the Retail Order Execution Policy and Disclosures / Use of information Notice set out herein which were provided to me / us in good time prior to the me / us being bound by them.

I / We confirm that I / We have received, understand and accept the terms of the Client Assets Key Information Document.

I / We confirm that the information which I/we provided in the Application Form is correct and accurate”.

Provider’s communication of 7th April 2015 to the Complainant

“Please note that once your account access is activated online and you have verified your mobile telephone number or email address, your account reporting documentation will automatically be provided to you through our online service and you will no longer receive this documentation by post.

Your account reporting documentation, including contract notes, statements and corporate action notifications will be securely uploaded to “My Notifications” for you to access online.

For your convenience, you will receive an alert by email or by text message notifying you of important documentation that we have uploaded securely for you to review online”.

Changes to terms of agreements – 11 May 2015

“It is a requirement of the Central Bank of Ireland that before we provide you with Nominee facilities we notify you of the obligations which we have to you in relation to:

..

*(c) exercising conversion and subscription rights,
(d) Dealing with take-overs, other offers or capital re-organisations. We will advise you in writing (or electronically via our online service once you activate and verify your account access online), by telephone or orally of the options available to you in respect of these events and will act on your instructions. In the event of us not being able to contact you to ascertain your instructions we will apply the default option notified by the relevant securities registration agent”.*

The Complainant’s letter to the Provider dated 6th March 2017

“I have received a copy your letter dated 3 March which was addressed to the Financial Services Ombudsman’s Bureau.

I am sure both yourself and Mr L are well aware of the circumstances surrounding my complaint to the FSO. However to ensure there is no misunderstanding I will set out the facts one more time.

There are three separate issues

- 1. [The Provider] refusal to provide me with an “easy to understand” details of [its] obligations towards clients. This has been referred to FSO (FSO Ref 17/21879)*
- 2. [The Provider] refusal to clarify the organisation’s email of 21-11-16 (**not referred to FSO by me**)*
- 3. Mr L scurrilous insinuations about me in his letter dated 9th February (**not referred to FSO by me**)*

I am sure you will agree with me that even if items (2) and (3) had been referred to the FSO that office could not possible interpret an email issued by [the Provider] and/or apologise to me on behalf of Mr L.

I would appreciate an early response to my letter of 14th February”.

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The Complaints for Adjudication

The issues for investigation and adjudication are as follows:

- (1) Whether the Provider should have supplied the Complainant with "easy to understand" details of its obligations towards him. And
- (2) Whether the Provider should have advised the Complainant of the outcome of the "A" entity event leading to the shares being sold.

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.

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 on 6th December 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, the final determination of this office is set out below.

Analysis

The complaint is that the Provider (i) failed to supply the Complainant with "easy to understand" details of its obligations towards him and (ii) that the Provider failed to advise the Complainant of the outcome of a Corporate Event leading to the shares that the Complainant held being sold.

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I have listened to the telephone recordings between the Complainant and the Provider's representatives, and I have considered the documentary submissions in relation to both of these complaint issues. From the evidence submitted, I consider that it was not reasonable of the Complainant to expect to receive a verbal account of the Provider's obligations to him over the telephone, particularly when he was advised by the Provider's representative that she could not do that. Equally I consider that it was not reasonable of the Complainant to seek a response from the Provider that would have required it to set out in writing all its obligations in its response, without it having to refer him to the policy provisions, which already set out its obligations to him.

That said, I do consider that it was not unreasonable for the Complainant to expect some communication from the Provider following the corporate takeover and the funds he received as a result. I particularly consider this is so, as I do not find the account documentation to be as clear as it should be as regards non elective Corporate Actions on the account. The Provider states that the takeover here was a *mandatory corporate event*, which did not require any action from the Complainant. This differs from an elective Corporate Action which could have involved some options for a client to select.

I consider that the Provider could have been clearer in its documentation as to the differing events that could or would not result in an input or communication from the Provider.

While I consider that the Complainant has not suffered a financial loss as a result of the lack of information from the Provider, that is because he could not have altered the outcome of the mandatory corporate event, I nevertheless accept that the issues and complaint that arose, would not have arisen if the Provider had been clearer in its documentation on its obligations in relation to a *mandatory corporate event*. While I accept that a Provider cannot include everything in its documentation that may or may not happen with an account, I consider that such an occurrence as this mandatory corporate event would not be so unusual that some thought should have been given by the Provider to setting out what the Provider's obligations were to its clients on such an eventuality.

Having regard to all of the above, it is my Legally Binding Decision that the complaint is partially upheld and I direct the Provider to make a €200 (two hundred euro) compensatory payment to the Complainant.

Conclusion

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

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- 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 €200, 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

7th January 2019

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.