



<u>Decision Ref:</u>	2021-0302
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Savings Account
<u>Conduct(s) complained of:</u>	Disputed transactions Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The complaint concerns an online stockbroker account.

The Complainants' Case

In their Complaint Form, the Complainants describe their complaint, as follows:

*“Charging for service that was not provided. Unlawfully selling shares owned by us.
Not maintaining our account in accordance with statutory requirements”.*

In support of their complaint, the Complainants have submitted correspondence exchanged with the Provider beginning with a letter to the Provider dated **15 July 2019** and ending with a letter from the Provider dated **14 November 2019**.

The First Complainant made the following statement in his letter dated **20 July 2019**:

“[T]here has been zero activity on the account. I repeat again I have never assessed an online account and indeed was unaware I had such a facility.”

In response to this statement, the Provider says while the account was set up as an online account for trading and viewing, the Complainants did not use this facility as they did not activate and verify their account.

In resolution of this complaint, the Complainants want a “[f]ull refund of all shares sold without our permission”.

The Provider’s Case

The Provider says that an online account for the Complainants was opened on **16 June 2008** with a reference number ending 941 and was subsequently closed on **12 December 2019**.

The Provider says that the Schedule of Fees and Charges along with the Terms and Conditions of the account were provided to the Complainants as part of the account opening documentation in **2008**. The Provider says that the Complainants confirmed they had read, understood, accepted and consented to the Terms and Conditions of the account by signing the account opening documentation.

Since the account inception, the Provider says updates to the Schedule of Fees and Charges along with Terms and Conditions have occurred on the following dates:

- April 2015** – Update to Terms and Conditions
- October 2015** – Update to Client Asset Regulations
- December 2015** – Update to Online Fee and Charges
- January 2019** – Update to Online Fees and Charges

The Provider says that on all of the above occasions, the amendments were communicated to the Complainants before the changes were implemented. The Provider submits it is satisfied that it has complied with the relevant regulatory requirements relating to the provision of the Terms and Conditions to the Complainants.

The Provider explains that an online account is an ‘Execution Only’ account that provides a client with the facility to place their own trades online, view portfolio holdings, review market performance and view any client notifications such as reporting documentation, contract notes and account statements in a secure online platform. The Provider says this makes the operation of the account effectively paperless. Where it is not possible for a client to trade online, perhaps due to stock availability or market location, the Provider says a trade instruction can be taken over the telephone by a member of its Trading Team.

/Cont’d...

For account security, the Provider says a client is not automatically activated to use the online trading platform. Clients are sent an Activation Letter containing their 8-digit username and details on how to activate the account.

The Provider says that where a client does not complete the online activation and verification process, they are not considered to be paperless and therefore continue to receive all their correspondence by post. The Provider says the annual fee for an online account is currently €100.00 plus VAT.

In respect of an 'Execution Only Account' (telephone account), the Provider says this account allows a client to trade by telephone only. The Provider says Execution Only clients may also be set up to view their account online and receive correspondence making them paperless, however they cannot trade online. The Provider says the annual fee for an Execution Only Account (Telephone) is currently €200.00 plus VAT.

For both types of account, the Provider says the client is solely responsible for all suitability and investment decisions. The Provider says trades are placed on a client instruction and no advice is offered.

The Provider says the account was used by the Complainants from **2008** to **2018** to hold their shares in dematerialised form, for the receipt of dividends on holdings and for the administration of a 'Corporate Action' for one of their holdings.

The Provider says that by signing the online account application form in **2008**, the Complainants were aware that they had applied for the account and consented to its operation on the terms provided to them.

In terms of the opening of the online account, the Provider says it cannot confirm whether communications issued from it which may have prompted the Complainants to open the online account.

The Provider has set out a timeline of events for the period **15 July 2019** to **14 November 2019**.

The Provider has also set out a table containing the Annual Account Maintenance Fee charged to the Complainants from **2008** to **2019**, as follows:

Date	Narrative	Charge
17/12/2008	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00

/Cont'd...

28/09/2009	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
26/11/2010	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
01/12/2011	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
12/12/2012	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
28/11/2013	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
03/04/2014	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
14/12/2015	Annual Account Maintenance Fee (yearly charge incl. VAT)	€26.00
02/11/2016	Annual Account Maintenance Fee (yearly charge incl. VAT)	€73.80
27/11/2017	Annual Account Maintenance Fee (yearly charge incl. VAT)	€73.80
08/11/2018	Annual Account Maintenance Fee (yearly charge incl. VAT)	€73.80
25/06/2019	Annual Account Maintenance Fee (yearly charge incl. VAT)	€123.00
14/11/2019	Annual Account Maintenance Fee for 2019 Refunded	-€123.00

In respect of the First Complainant's request for confirmation that the online account complied with all statutory obligations and that the Provider has complied with all of its statutory obligations in his letter dated **14 October 2019**, the Provider says that it has policies and procedures in place to comply with the relevant legal and regulatory obligations relating to the Complainants' account. The Provider says that these policies and procedures are in operation and it is satisfied that they comply with the relevant obligations relating to the Complainants' account.

In respect of its letter dated **3 September 2019**, the Provider contends that this letter clearly states, in simple, user friendly language, the options available to the Complainants in respect of ceasing their relationship with the Provider. In a subsequent letter to the Complainants dated **29 October 2019**, the Provider says it stated that it would be happy to talk through the options laid out in its letter of **3 September 2019** in further detail. In this respect, the Provider says it provided contact details for its Wealth Management agent if the Complainants required any further clarification on any aspect of the correspondence.

/Cont'd...

The Provider says that the Complainants opened an online account and that all correspondence relating to this account was dispatched through the postal system to the Complainants' address provided on the account opening form. The Provider says the address held for the Complainants remained unchanged on the account until its closure in **December 2019**. The Provider says that all fee notes, statements of account and any fee change that occurred in the lifetime of the account were dispatched to this address and the Provider did not receive any returned post. The Provider says it notes that this address is still valid and is the same address on the Complainants' Complaint Form. On this basis, the Provider says it is satisfied that the Complainants received all correspondence relating to their account during its operation.

The Complaints for Adjudication

The complaints are that the Provider:

Wrongfully charged for a service that was not provided;

Wrongfully sold the Complainants' shares;

Failed to maintain the Complainants' account in accordance with statutory requirements; and

Proffered poor communication and customer service.

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 Complainants were 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.

/Cont'd...

A Preliminary Decision was issued to the parties on 12 August 2021, outlining my preliminary determination 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, within the period permitted, I set out below my final determination.

Online Account Opening

The Provider has furnished a copy of the Complainants' online account opening documentation. This appears to be a 12 page document (Version 1 – 15 October 2007) which comprises the Online Account Application Form on pages 1 and 2, the Online Rate Card on page 3, and the Online Terms and Condition of Service on pages 4 to 6, with Appendix A, Appendix B and Appendix C on pages 7, 10 and 12 respectively.

The Complainants signed an Online Account Application Form dated **11 June 2008**. On the second page of this form, it states, as follows:

"Verification questions

When you have received your logon details and wish to activate your account, you will be required to call the [Provider] Online Customer Care Centre and answer the following questions. This is to ensure that only you can activate and access your online account.

[...]

A copy of the [Provider] Online Terms and Conditions of Service is attached. It is important that you read this document carefully. It is your responsibility to review the Terms and Conditions of Service prior to signing the consent acknowledgement below.

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

/Cont'd...

Consent and acknowledgement

I / we have read and understood, accept and consent to the [Provider] Online Terms and Conditions of Service, which include a Risk Disclosure document and Retail Order Execution Policy.

I/we have read and understood, accept and consent to the Private Policy as detailed on the [Provider's] website."

The Online Rate Card states, as follows:

"Costs, Charges & Commission Rates

- * €32 per trade minimum commission.*
- * 1.25% commission up to €25,000.*
- * 0.50% commission on balance*

All of the above commission rates exclude third party charges

Standard Additional Charges

Stamp Duty

[...]

Encashment Tax

[...]

Foreign Exchange

[...]

PTM levy

[...]

ITP levy

[...]

/Cont'd...

US Charges

[...]

Overseas Broker Charges

[...]

Ancillary Charges

- * €26 per annum account maintenance charge
- * €13 Share withdrawal charge per stock.
- * €40 Account closure share withdrawal charge.

All charges will be debited automatically from your [Provider] Online account."

In the Online Terms and Conditions of Service (at page 5 of the account opening document), it states, in respect of online charges, as follows:

"Online Charges

Details of our online charges are available on our Website and are available on request from [the Provider] Online."

In the Terms and Conditions at Appendix A, it states at clause 5 and clause 15, as follows:

"5. Our charges will be in accordance with our published rate card in effect at the time the charges are incurred. A copy of our current rate card accompanies this agreement. You will also have to pay any applicable value added tax, stamp duty or similar third party charges. Charges will change from time to time and we will notify you in advance of any such changes. We will send you a list of current charges on request. [...]

15. Your attention is drawn to the fact that we reserve the right at all times and without prior notice to you to sell or realise any investments which we are holding (or entitled to receive) on your behalf in order to meet any liabilities which you may have incurred to us and failed to discharge. You agree that all your investments held at any time by us or any custodian pursuant hereto shall be and remain a continuing security for the payment and satisfaction when due of all monies, securities and other indebtedness and liabilities of whatever nature (including,

/Cont'd...

without limitation, any resulting from any commitment entered into for you and contingent indebtedness, interest and any of our costs and charges, whether paid or incurred in obtaining or attempting to obtain payment or satisfaction from you in perfecting or enforcing this security, or otherwise) which may at any time be or become due or outstanding to us, from you. [...].”

Fee Notes

The Provider has furnished copies of Fee Notes issued to the Complainants’ postal address on an annual basis between **2013 to 2019**. These fee notes identified the fee being charged as:

*“YEARLY ONLINE CLIENT FEE
Annual Account Maintenance Fee”*

Fee Collection

The Complainants’ Statement of Account dated **12 December 2019** indicates that the Annual Account Maintenance Fee was undischarged and began to accumulate from around **September 2009**. It also appears that as at **25 May 2018**, the balance outstanding on the Complainants’ account was €310.28.

By letter dated **26 June 2018**, the Provider wrote to the Complainants in respect of the outstanding balance on their account, as follows:

*“[I]t has come to our attention that there is an outstanding debit balance of €310.28 on your account which you may have overlooked. It is likely that this balance may relate to unpaid Annual Account Maintenance fees. As this debt has been on your account for some time, we would kindly ask that you make arrangements to clear the outstanding amount by **09 July 2018**. [...]*

*It is important for you to note that if this debit remains unpaid by **09 July 2018**, we will have no alternative but to sell securities on your account to cover both the outstanding debit and the transaction costs incurred by [the Provider]. [...] These actions are undertaken in line with the terms and conditions associated with your account. In the current environment of increased regulatory and operational costs, it is not sustainable for [the Provider] to continue to operate accounts which have lapsed into a debit position. [...].”*

The Statement of Account shows that on **10 July 2018**, a number of the Complainants' shares were sold and the amount of €305.85 was credited to their account.

At **8 November 2018**, the Statement of Account shows an outstanding balance of €78.23. In a letter similar to that outlined above, the Provider wrote to the Complainant on **18 April 2019** in respect of this outstanding balance.

In particular, the Complainants were advised that if the outstanding balance on the account was not discharged by **1 May 2019**, a sale of their shares would take place. The Statement of Account shows that on **8 May 2019**, a number of the Complainants' shares were sold and the amount of €84.69 was credit to their account, leaving a credit balance of €7.00.

The Provider wrote to the Complainants again on **8 November 2019**, noting a debit balance of €108.32 on the account. The Statement of Account shows that this debit balance was written off on **14 November 2019**.

Correspondence

The First Complainant wrote to the Provider on **15 July 2019** (which appears to have been in response to a Fee Note dated **25 June 2019**), as follows:

"I refer to recent communication re yearly on line client fee amounting to €123.

Upon receipt of this communication I gave this matter my full attention. I reviewed the communications from you over the last while and was astounded to see you have charged me fees for providing no service at all.

Furthermore, you sold shares without my consent on more than one occasion to collect fees for providing zero service.

I hereby demand the full restoration of my shares and a full explanation of the history of this account and your abuse of same.

You will see I have never accessed an online account and indeed was unaware I had such a facility."

/Cont'd...

The Provider responded to this letter on **17 July 2019**, as follows:

“As requested, please find enclosed a transaction statement of your account which will show a full history of the account from 2008 - present.

[The Provider] charge an annual maintenance fee each year, for which we issue a fee note to all clients.

This is the cost of keeping your account open.

In 2019, this has increased to €100 plus VAT. We would have informed all clients of this change in writing in November 2018.

Regarding the unauthorised sale of shares; [the Provider] hold a power of sale over client accounts which would authorise us to sell securities to cover any outstanding debits. This is always our least preferred option; however, it is not sustainable to operate accounts which have lapsed into a debit position. This is outlined in our terms of business.

[The Provider] would have notified you of the debit and the potential sale of shares should the debit not be cleared by the provided date. Please find copies of the letter sent enclosed.

We will not be in a position to restore shares sold.

Please find enclosed a copy of your application form where you would request an online account and agreed to our terms of business.

If you would now like to close your account, we will need to remove any existing stock from your account and settle all debts.

We can certainly arrange for any of the below options for you to facilitate this:

- 1. Sell the remaining stock and issue the sale proceeds*
- 2. Transfer the stock to an alternative broker*
- 3. Have the share certificates re-issued*

Please note that if you would like to proceed with option 2 or 3, there is a transfer fee of €40 charged.”

/Cont'd...

By letter dated **20 July 2019**, the First Complainant stated that:

“As you will see from my account there has been zero activity on the account. I repeat again I have never accessed an online account and indeed was unaware I had such a facility. Please outline what you have been maintaining and why I should have to pay for a zero service? What are you expecting me to pay €123 for?

I again dispute your claim to have a right to sell securities without my permission. [...].”

The First Complainant wrote to the Provider again on **27 August 2019** noting that his previous letter had not been acknowledged or responded to and enclosed a copy of this letter. The Provider wrote to the First Complainant on **28 August 2019** advising that it had no record of receiving his letter of **20 July 2019**. The letter further advised that the complaint had been escalated and would proceed through the Provider’s formal complaints process.

The Provider issued a formal response to the First Complainant’s complaint by letter dated **3 September 2019**. In this letter, the Provider discussed the online account application form completed by the Complainants and the terms and conditions accepted as part of this process. The Provider referred to the annual maintenance charge and its entitlement to sell shares in order to discharge an outstanding account balance. The letter also set out the options available to the Complainants should they wish to cease their relationship with the Provider, as follows:

“If you wish to cease your relationship with [the Provider], you may do so by settling any outstanding debts and choosing one of the following options:

Sell your holdings

You may verbally instruct [the Provider] to sell the shares on your account. The remaining funds would be released to you and the account closed.

Transfer to another broker

If you have an account with another broker, you may instruct [the Provider] to transfer your shares to this broker and close your [Provider] account. There is a €40 charge to transfer your remaining shares to another broker.

/Cont’d...

Issue share certificates *You may instruct [the Provider] to request that share certificates be issued to you for the remaining holdings, and thereafter close your [Provider] account. There is a €40 charge to have share certificates issued for your holdings.”*

The First Complainant responded to this letter on **5 September 2019**, as follows:

“I remain dissatisfied with the contents.

Shares were sold without my consent on more than one occasion to collect fees for providing zero service.

I hereby demand the full restoration of my shares. Following the full restoration of my shares I wish to have my share certificates issued to me.

If this matter is not resolved to my satisfaction it is my intention to refer this matter to the Financial Services and Pensions Ombudsman.”

The Provider acknowledged this letter on **16 September 2019**, advising that it would review the matter raised and revert in due course.

By letter dated **30 September 2019**, the Provider wrote to the Complainants advising of its obligation to keep documentation and information in relation to clients up to date. The letter further advised that this obligation was set out in section 54 of the Criminal Justice (Money Laundering & Terrorist Financing) Acts 2010 to 2018 (“the Criminal Justice Act”). To facilitate this, the Provider requested that the Complainants provide certain identification documentation.

The Provider responded to the First Complainant’s letter of **5 September 2019** on **8 October 2019**. In this letter, the Provider advised that it had reviewed the charges applied to the Complainants’ account and subsequent sale of shares. The letter further advised that the Provider was satisfied that its letter of **3 September 2019** fully responded to the issues raised. In the penultimate paragraph, the Provider advised that:

“As a gesture of goodwill, should you wish to choose from the options available to you as detailed in our letter dated 3rd September 2019, we would be willing on a once off basis, to waive the outstanding debt of €108.32 which is currently on the account along with any associated transfer out fees. [...].”

/Cont’d...

Responding to this letter, the First Complainant wrote to the Provider on **14 October 2019**, as follows:

"I also refer to correspondence received by my wife and I separately from [the Provider] dated 30th September indicating that the Identification and Financial Information held on file for both of us is due for renewal.

Please confirm by return the relevance of this request in relation to our present complaint.

If there is no relevance please confirm by return that our account at [the Provider] currently complies with all statutory obligations placed on you as a provider.

Further please confirm by return whether or not our account with [the Provider] has complied with all statutory obligations placed on you as a provider since inception.

Further still please confirm by return that [the Provider] has complied with all statutory obligations placed on you as a provider at all times in your dealings with us.

I previously requested a full explanation in simple user friendly language of the options set out in your letter of September 3rd 2019. This request has been ignored to date. I again request it. [...]."

The Provider responded to this letter on **29 October 2019**, as follows:

"I wish to confirm that the letter you received dated 30th September 2019, relates to the updating of your financial information and identification documents with [the Provider] which is being treated entirely separate to your complaint. Any queries relating to that correspondence should be directed to [telephone number].

In relation to the points you have raised, and in particular the options available to you as outlined in our letter dated 3rd September 2019, we would be happy to explain these in further detail for you by telephone. Please feel free to call us between 09.00 – 17.00, Monday to Friday, on [telephone number], Option 2 and ask to speak to [Wealth Management agent].

/Cont'd...

The First Complainant responded to this letter on **11 November 2019**, as follows:

“With respect you should have provided or at the very least delegated someone within your organisation to provide the information I sought in my correspondence of 14th ult. It should not be up to me, as your client, to establish that our account with [the Provider] has complied with all statutory obligations placed on you as a provider since inception. The dismissive tone of your correspondence is most disappointing and unsatisfactory.

My ongoing requests for a full explanation in simple user friendly language of the options set out in your letter of September 3rd 2019 remain yet ignored. I would have thought at the very least that you would arrange for [the Wealth Management agent] to set out my options in plain language.

You have placed me in a position where I feel I have no option only to request share certificates be issued to me and my account be closed as outlined in [Provider] correspondence of September 3rd 2019.

Please confirm by return that the terms set out in your correspondence of 8th October 2019 namely, waiver of outstanding debt, (which I dispute to be a debt at all as a service of any nature was not provided), of €108.32 along with any associated transfer out fees.

I remain very dissatisfied at how [the Provider] have dealt with my complaint and will now bring these matters to the attention of the Financial Services & Pensions Ombudsman for further consideration.”

The Provider wrote to the Complainants on **14 November 2019**, confirming that it would waive the outstanding balance of €108.32 on their account and also waive the charge associated with issuing the Complainants’ share certificates. The Provider also acknowledged that the Complainants’ account would be closed.

Analysis

The evidence is clear in that the Complainants signed an Online Account Application Form in **June 2008** for the purpose of opening an online account with the Provider. As part of this process, the Complainants acknowledged and accepted the various terms and conditions associated with the operation of this account and further indicated that they had read and understood these terms and conditions.

/Cont’d...

In these circumstances, I believe that the Complainants were aware, or ought to have been aware, that they were opening an online account with the Provider. I also believe that the Complainants were made aware of and accepted the terms and conditions in respect of the operation of this account. Accordingly, I accept that the Complainants were bound by those terms and conditions, regardless of whether or not they used or chose to use their account.

In the First Complainant's letters of **15 July** and **20 July 2019**, he states that *"I have never accessed an online account and indeed was unaware I had such a facility"*. In terms of the First Complainant's awareness of the online account, as noted above, each of the Complainants signed an Online Account Application Form.

In the Provider's letter of **17 July 2019**, it is stated that the Provider charged an annual account maintenance fee for which it issued a fee note to all clients. The Provider has also furnished fee notes issued to the Complainant's in respect of this fee since **2013**. In this respect, I note that the Complainants have not disputed receiving fee notes in respect of their account.

By letter dated **8 April 2015**, the Provider wrote to the Complainants to inform them that it was offering clients the option of receiving account reporting documentation electronically through its online service. The letter further advised that to avail of this service, the Complainants would need to activate their access to the Provider's online service and that a new username was enclosed to facilitate activation.

The Provider also issued fee collection correspondence to the Complainants in **June 2018** and **April 2019** in respect of the online account.

Therefore, in light of the evidence, I believe that the First Complainant or the Complainants ought to have been aware of their online account.

The charges associated with the online account were clearly set out in Online Rate Card, which formed part of the account opening documentation. Further to this, reference is made to the account charges and where to find further information in respect of these charges in the Online Terms and Conditions of Service. Charges are referenced again in clause 5 of Terms and Conditions at Appendix A.

Although the account does not appear to have been activated by the Complainants or used by them, the Statement of Account shows that there was activity on the Complainant's account and that it was used in respect of certain dividend payments and trades, for instance.

/Cont'd...

Thus, the evidence does not support the First Complainant's position in his letter of **15 July 2019** that the Provider "*charged me fees for providing no service at all*", or the Complainants' position in their Complaint Form that the Provider was "[c]harging for a service that was not provided." It is my opinion that this is not a case of a service not being provided, rather the evidence suggests that this is a case of the Complainants not using the services provided as part of the online account opened by them. Furthermore, I do not accept that because the Complainants chose not to activate or use their online account that the Provider was not entitled to, or prevented from, applying any charges in respect of their account; which, in this case, was an annual account maintenance fee.

In terms of the sale of the Complainants' shares by the Provider, the evidence shows that an annual account maintenance fee accumulated on the Complainants' account over a number of years and was not discharged by the Complainants. In this respect, I note that the Provider first wrote to the Complainants in **June 2018** to notify them of the accumulated charge and requested that it be cleared. The letter also outlined the action the Provider would take if the Complainants did not settle this liability. It appears that the Complainants did not clear the outstanding charges or reply to this letter, and the Provider proceeded to sell a number of the Complainants' shares in order to clear the outstanding account maintenance fee. The Provider wrote to the Complainants again in **April 2019** to notify them of the accumulated charge and requested that it be cleared. Again, I note that the Complainants did not engage with the Provider and a number of the Complainants' shares were sold.

While the Complainants are disputing the Provider's entitlement to sell their shares, the Complainants accepted the Provider's terms and conditions regarding the operation of their online account. At clause 15 of the Terms and Conditions, it is stated that the Provider reserved the right, without prior notice, to sell any of the Complainants' investments to satisfy any undischarged liability owed by the Complainants to the Provider.

Accordingly, I accept that the Provider was entitled to sell the Complainants' shares in circumstances where they had not discharged the outstanding account maintenance fee.

In their Complaint Form, the Complainants have stated that the Provider did not maintain their account in line with statutory requirements. In this respect, I note that the Provider wrote to the Complainants on **30 September 2019** requesting certain documentation regarding compliance with the Criminal Justice Act. In the First Complainant's letter of **14 October 2019**, a request was made that the Provider confirm that it had complied with all of its statutory obligations in respect of the Provider's dealings with the Complainants and in respect of their online account.

/Cont'd...

In the Provider's letter dated **29 October 2019**, the Provider advised that the September letter was separate to the present complaint and was for the purpose of updating financial information and identification documents. This letter also provided a telephone number for the First Complainant to contact to discuss the September letter.

It appears from the letter dated **14 October 2019** that the First Complainant may have thought that the Provider's letter of **30 September 2019** was related to his present complaint regarding the online account.

However, having considered this letter and the requirements of sections 54 and 55 of the Criminal Justice Act, I am satisfied that it is reasonably clear from the contents of the Provider's letter that it was unrelated to the issues raised by the First Complainant in respect of the online account and that the purpose of the letter was to ensure compliance with the requirements of the Criminal Justice Act.

However, when responding to the First Complainant's request on **29 October 2019**, I note that the Provider did not confirm its compliance with its various statutory obligations. While I recognise that a telephone contact number was provided to the First Complainant to discuss any matters relating to the letter of **30 September 2019**, I note that, in contrast to the contact information contained in this letter in respect of the online account, the Provider did not identify any particular staff member with whom these matters could be discussed. The First Complainant took issue with the Provider's response in his letter of **11 November 2019**, but the Provider does not appear to have engaged with this in its response dated **14 November 2019**.

In light of the First Complainant's specific requests regarding the Provider's compliance with its statutory obligations, I am not satisfied that the Provider properly responded to or engaged with these requests.

It appears that it was not until its Complaint Response to this Office, that the Provider confirmed that it was acting in compliance with the relevant statutory obligations in respect of the Complainants. In response to this aspect of the Complaint Response, the First Complainant stated in a submission dated **17 September 2020**, that:

"I remain of the view that [the Provider] never at any point answered this question directly and honestly. The response to your question is in my view again Machiavellian and lacks honesty. Having policies and procedures in place in one thing ensuring those policies and procedures are complied with is another!"

/Cont'd...

In the context of [the Provider] writing to us in the middle of this dispute seeking documentation to enable our account to comply with regulation requirements and directing us in a dismissive tone to seek the information from another department within [the Provider], indicates to us that [the Provider] were not compliant with regulatory requirements. We still wonder, was our account ever compliant with regulatory requirements?"

Following a further exchange of submissions on this aspect of the complaint, in a submission dated **7 October 2020**, the First Complainant stated, among other matters, that the Provider should provide *"full details and documentary evidence of compliance with regulatory requirements from when the account was first opened to the time the account was closed."*

Having considered the matter in detail, I do not accept the First Complainant's position that the Provider's response was *"Machiavellian and lacks honesty"*. While I accept that there were certain shortcomings on the part of the Provider in responding to the First Complainant's request, I do not consider that the Provider's letter of **29 October 2019** was dismissive in its tone. Further to this, I do not accept the fact that the Provider issued the letter of **30 September 2019**, the timing of this letter, or the tone of the letter of **29 October 2019** supports the position that the Provider was not compliant with its regulatory obligations.

On the contrary, it is my opinion that the letter of **30 September 2019** demonstrates that the Provider was seeking to ensure it was complying with its regulatory obligations. I also note that correspondence issued to the Complainants in **2015** and **2016** regarding certain regulatory matters.

By letter dated **23 October 2015**, the Provider wrote to the Complainants following the introduction of the Client Asset Regulations (S.I. No. 104/2015) and advised that these regulations replaced existing Client Asset Requirements relating to the safeguarding and protection of client assets held by investment firms. The Provider wrote to the Complainants on **4 December 2015** to advise that the rules governing the administration of the assets in the Complainants' account has been updated. This letter also advised of changes being introduced to its charges from **1 January 2016** and requested updated financial information from the Complainants. The Provider wrote to the Complainants again on **22 December 2015** to advise that by continuing to avail of its services from **January 2016**, the Complainants would be deemed to have accepted and consented to updated terms upon which the Provider provided its service.

/Cont'd...

It appears the First Complainant's position that the Provider failed to comply with its statutory obligations is based on the fact that the Provider issued the letter of **30 September 2019** and nature of the response contained in the letter of **29 October 2019**. However, having regard to the evidence and the parties' submissions, I am not satisfied that there is any evidence to suggest that the Provider failed to comply with any of its statutory obligations in respect of the Complainants or their online account.

Accordingly, in the context of this complaint, I do not consider there is a sufficient basis to require the Provider to set out in a detailed or extensive manner, its precise compliance with its statutory obligations insofar as concerns the Complainants or to provide documentary evidence in this regard. It is my opinion that the Provider is required to confirm, as it has belatedly done so in its Complaint Response, that it has complied with the relevant statutory obligations; and I do not accept that the Provider is required to set out each and every statutory obligation imposed on it, the various procedures it has in place in respect of these obligations and how each such obligation and procedure was satisfied in respect of the Complainants. To do so, in circumstances where no evidence has been furnished identifying any lack of compliance, in my opinion, would be disproportionate.

The First Complainant wrote to the Provider by letter dated **20 July 2019**. However, the Provider says it did not receive this letter. While this letter appears to have been correctly addressed and the First Complainant's other correspondence appears to have been received, it is not clear why this letter was not received by the Provider nor am I able to ascertain from the evidence why this was the case. While this resulted in a delay in responding to the First Complainant, I note that when this matter was brought to the Provider's attention on **27 August 2019**, it promptly responded on **28 August 2019**.

In the First Complainant's letter of **14 October 2019**, he states that:

"I previously requested a full explanation in simple user friendly language of the options set out in your letter of September 3rd 2019. This request has been ignored to date. I again request it. [...]."

However, having considered the evidence, I cannot see any request, as outlined in the above passage, being made prior to this letter.

Further to this, having considered the options set out in the Provider's letter of **3 September 2019**, I accept they were outlined in a reasonably clear and understandable manner. I also note that the First Complainant has not set out precisely how these options were not *"in simple user friendly language"*.

/Cont'd...

In addition, I note that in the Provider's letter of **29 October 2019** it offered to assist in explaining the various options by providing a contact name and contact telephone number for one of its staff members that the First Complainant could contact.

Separately, while there appears to have been some delay between the First Complainant's letter of **14 October 2019** and the Provider's response of **29 October 2019**, I do not believe that this delay was unreasonable.

Having considered the evidence, outside of the matters discussed above in respect of the Provider's conduct in responding to the First Complainant's requests surrounding its compliance with its statutory obligations, I am not satisfied that the level of communication or customer service provided by the Provider fell below the standards reasonably expected of the Provider.

Accordingly, having considered the complaint in detail and the Provider's conduct, it is my opinion that there were certain shortcomings on the part of the Provider in respect of the First Complainant's request for confirmation in respect the Provider's compliance with its statutory obligations in relation to the Complainants. Disappointingly, it appears from the evidence that this confirmation did not come about until the Provider's Complaint Response.

In the Provider's letter of **8 October 2019**, as a goodwill gesture, the Provider offered to waive the outstanding debit balance of €108.32 on the Complainants' account and any associated transfer out fees, which would appear to have been approximately €40.00. This goodwill gesture therefore amounted to €148.32.

I accept that this amount is reasonable in the circumstances, and I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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**

7 September 2021

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.