



<u>Decision Ref:</u>	2022-0021
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Maladministration Delayed or inadequate communication Alleged poor management of fund
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the alleged failure of the Provider to act in accordance with the Complainant's instructions with regard to the buying and selling of shares.

The Complainant's Case

The Complainant submits that on **19 January 2017** he rang the Provider to give instructions on the buying and selling of shares for his account. He stated that he told the Provider to sell 'Bank A' shares, and to buy 'Bank B' shares.

The Complainant submits that the Provider's Agent informed him that "*bank shares were not trading*". The Complainant asked for advice and was told that the Provider did not give advice.

The Complainant stated that, "*on the spur of the moment*", he told the Provider's Agent to "*do what you think best*". He later found out that the Provider had sold his Bank B shares and bought Bank A shares.

In a letter to this office of **22 July 2020**, the Complainant submitted that he was questioning why his Bank A shares were sold "*at 25 cent when [Bank A] were trading at over 5 euro at the time*".

The Complainant further stated:

"I expect they bought those shares themselves and sold them back to me at a handsome profit"

He further submitted that the accounts of his holdings are not accurate, as his Bank A shares should amount to €67,359 (sixty-seven thousand, three hundred and fifty-nine Euro), but instead tally to €2,140 (two thousand, one hundred and forty Euro).

The Provider's Case

In its reply to the formal investigation of this Office, the Provider submitted that no shares have been sold on the Complainant's account since it was opened in **November 2015**.

The Provider submitted that Complainant's account with a third-party stockbroker was transferred to the Provider in **November 2015**, at which point, the Complainant held:

- 65,481 shares in Bank A
- 19,083 shares in Bank B.

The Provider states that on **21 December 2015**, Bank A share consolidation occurred at a ratio of one for 250. As a result of this 'mandatory Corporate Action', the Complainant's 65,481 shares became **262** shares in Bank A.

The Provider submits that it received a letter from the Complainant on **18 January 2017**, requesting that the Provider purchase €25,000 (twenty-five thousand Euro) worth of Bank B shares. An undated letter from the Complainant was furnished with the Provider's response to this Office, which noted a request to sell all Bank A shares, and to use the proceeds to purchase Bank B shares.

The Provider's Agent rang the Complainant on **18 January 2017** to confirm these instructions. The Agent asked the Complainant how this purchase would be funded, and the Complainant responded that the sale of Bank A shares could cover it. The Agent informed the Complainant that his holding in Bank A was valued at approximately €1,300 (one thousand, three hundred Euro) due to the recent consolidation. As a result, he would need to send funds to the Provider to proceed with any purchase above this figure. The Complainant advised not to proceed with the sale and agreed to send a cheque to the Provider.

The Provider says that on **19 January 2017**, it received a cheque for €20,000 (twenty thousand Euro) from the Complainant with a letter of instruction to purchase €10,000 (ten thousand Euro) worth of Bank A and Bank B shares, respectively. The Provider's Agent called the Complainant to confirm his instructions. On the same day, the Agent called the

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Complainant again to ask if he wanted to put a limit on his order, as Bank A shares were illiquid at the time.

The Provider submits in that regard that:

“[The] representative explained to the Complainant that they were so far only able to secure 188 shares at a price of €5.10 but further purchases could potentially drive the price up as a high as €5.19 or €5.20.”

The Complainant asked the Provider’s Agent to “do the best he can”, and the Agent informed the Complainant again, that he could be driving the share price up further, by not putting a limit on his purchase price. The Agent suggested limiting the price to €5.19, and the Complainant confirmed he was happy to proceed at “whatever they cost”. A cap of €5.19 was placed on the Complainant’s purchase, and a further 1,690 shares were bought at this price.

The Provider noted that as of **29 September 2020**, the Complainant held:

- 2,140 shares in Bank A.

In relation to Bank B, the Provider purchased 40,730 shares on behalf of the Complainant, following the phone call of **19 January 2017**. On **10 July 2017**, Bank B shares were consolidated at a ratio of one for 30. As a result of this mandatory Corporation Action, the Complainant’s 59,813 shares became 1,993.

As of **29 September 2020**, the Complainant held:

- 1,993 shares in Bank B.

The Provider says that on **29 September 2020**, the Complainant’s:

- Bank A shares were valued at **€1,988.06** (one thousand, nine hundred and eighty-eight Euro and six Cent), and his
- Bank B shares were valued at **€3,358.21** (three thousand, three hundred and fifty-eight Euro and twenty-one Cent).

In response to the Complainant’s allegations that the Provider acted on his instruction to “do what you think best”, the Provider stated that the Complainant’s account is an ‘Execution Only account’, and it has no power of discretion over investment decisions. However, the Provider noted that the Complainant’s comment of “do what you think best” was in relation to the setting of a limit on the purchase price of shares.

The Provider was asked by this Office (in view of the discretionary power implicit in the instruction “do what you think best”) to what extent the Provider considered the entirety of the phone call with the Complainant, his share dealing history, his investor classification, risk profile, and whether he might be classed as a ‘vulnerable’ customer. In response, the Provider referred to its submission outlining that it did not act on any discretionary power.

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In response to the request of this Office to outline the measures taken by the Provider to inform the Complainant regarding the consolidation of his shares, the Provider stated:

“Where a Corporate Event is mandatory by the issuer, no notification is sent to any of our clients. It is important to note that details relating to holdings on the Complainant’s account were sent to the Complainant in each of the [Provider] statements...”

The Provider further referenced announcements made by Bank A and Bank B in relation to consolidation of shares.

The Provider was asked by this Office whether the Complainant’s transactions were governed by the **European Communities (Markets in Financial Instruments) Regulations 2007** (the MIFID Regulations 2007). This Office asked the Provider whether it was satisfied that it had complied with its obligations under Regulations 76 to 111, and to specifically refer to the requirements of Regulations 76 to 78, 80 to 82, 84, 92, 94 to 99, and 106 to 108, as they apply to the engagement with the Complainant in or about **January 2017**. Further, this Office asked the Provider to set out which category of investor the Complainant fell into, and to provide all documentation relating to this categorisation.

The Provider confirmed that the MIFID Regulations 2007 had application to the Complainant’s transactions. It stated that the Complainant’s account was governed by the terms of the ‘**[Provider] Execution Only Securities Dealing Service Agreement**’ (the Agreement). The Provider noted:

“These terms clearly set out the service provided to Execution Only clients.

In addition they comply with the various requirements relating to conduct of business obligations when providing investment services to retail clients, provision of information to clients and the types of conduct which are not regarded as being in the Client’s best interest.”

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to execute the share transactions instructed by the Complainant.

In his Complaint Form, when asked how he wished the complaint to be resolved, the Complainant stated as follows:

“also accounts of my holdings do not tally with [the Provider] my [Bank A] shares should amount to €67,359 instead of €2,140”

In his submissions dated **19 December 2019** and **29 June 2020** respectively, the Complainant states that the Provider's conduct has "*cost [him] a lot of money*" and that the Provider's conduct has "*caused [him] to lose over 6,500 Euro*".

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 **10 December 2021**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Evidence

- **Letter of 18 January 2017**

I note that the letter from the Complainant to the Provider, dated 18 January 2017, states:

"Dear Sirs

I have decided to put ten thousand into each Bank €10,000 [Bank B] €10,000 [Bank A]"

- **[Provider] Execution Only Securities Dealing Service Agreement - September 2015**

I note that this states at page seven:

"3.22 Contract Notes

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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 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 your contract notes.

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

- **MiFID Regulations 2007**

I note that the following is stated at Regulations 77 and 96:

“Provision of certain types of information by investment firms to clients

77.

(1) Where, for the purposes of these Regulations, information is required to be provided in a durable medium, an investment firm may provide the information in a durable medium other than on paper only if -

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and

(b) the client to whom the information is to be provided -

(i) is offered a choice between information on paper or in that other durable medium, and

(ii) specifically chooses the provision of the information in that other medium.

...

Reporting to clients

96.

(1) Where an investment firm has carried out an order, other than for portfolio management, on behalf of a client, the firm shall take the following action in respect of that order:

(a) *the firm must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;*

(b) *in the case of a retail client, the firm must send the client a notice in a durable medium confirming execution of the order*

(i) *as soon as possible and no later than the first business day following execution, or*

(ii) *if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.*

...”

- **Consumer Protection Code 2012**

“GENERAL REQUIREMENTS

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.”

Analysis

The Complainant asserts that the Provider acted contrary to his instructions in selling his stock. He also maintains that his Bank A shares, are not tallying correctly.

The Provider states that it did not sell any of the Complainant’s stock and that the lower value of the Bank A stock, is due to a mandatory consolidation in **2015**.

I note that the Provider’s submissions in this regard are supported by the evidence available. Evidence of the consolidation of shares was provided in the form of press releases from Bank A and Bank B respectively. This consolidation accords with the drop in the number of shares held by the Complainant. The Provider has additionally provided evidence of the purchase of shares in Bank A and Bank B, in the form of contract notes.

I have listened to the phone calls between the Complainant and the Provider, and I am satisfied that the purchase of these shares was clearly authorised by the Complainant.

The Complainant appears to misunderstand his account holdings. It seems that he was not aware of the consolidation of his shares, during his calls with the Provider’s Agent on **18 January 2017**. Although this was explained to the Complainant verbally during this phone

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call, it appears from the Complainant's complaint relating to the tallying of his share value, that he did not fully understand this explanation, or the impact of consolidation or did not perhaps retain this understanding.

I am conscious that under Provision 4.1 of the CPC, "*key information must be brought to the attention of the consumer*".

The Provider did not however, inform the Complainant when his shares in Banks A and B underwent mandatory consolidation. It referred to the annual statements that it provides to the Complainant, which would allow the Complainant to see the amount and value of his holdings. Somewhat surprisingly, these statements do not refer to consolidation, or provide any explanation as to why the number of shares in Banks A and B have decreased.

In making his complaint, the Complainant was under the impression that shares in Bank B had been sold and shares in Bank A had been bought. In fact, shares in both Banks had been purchased. The Provider was asked by this Office to explain whether it was satisfied that it had complied with its obligations under the MiFID Regulations 2007, and to refer to certain provisions in particular. The Provider responded generally by reference to its Agreement document and did not detail its compliance with the identified Regulations in relation to the Complainant, in the manner which had been requested. This is disappointing.

I am conscious that if the information regarding the consolidation of the shares in Bank A and Bank B had been confirmed to the Complainant at the relevant times, it would have enabled him to better understand his shareholdings, and the impact on value. This is a matter which the Provider should consider, as it seems likely to me that an improved information flow between the Provider and the Complainant could well have avoided the need for the Complainant to pursue his complaint to this Office.

Since the preliminary decision of this Office was issued, the Complainant has supplied a copy of his statement from the Provider dated 11 October 2021 and I note the more recent values of these shares as follows:

- 2,140 Bank A shares valued at **€5,026.86**
- 1,993 Bank B shares valued at **€10,180.24**

Although the Complainant has described this document as "*a contract note for shares sold back to yourselves*", in fact it is, as stated on its face, a "*statement of cash and stock positions, as at 30 September 2021*".

I take the view that this more recent valuation of the Complainant's shareholdings, does not impact on the evidence regarding the Complainant's dealings with the Provider, which gave rise to this complaint. On the evidence available, I do not accept the Complainant's contention that the Provider failed to act on his instructions to execute certain share transactions and accordingly, this complaint cannot not upheld.

Conclusion

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My Decision is that this complaint is rejected pursuant to **Section 60(1)** 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

10 January 2022

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.